

General regulation of the AMF

Book III - Service providers into force since 17/03/2022

Information boxes have been inserted within the General Regulation. They allow for a direct access to the relevant European regulations on the subject matter.

The user will be redirected to the European regulations as initially published in the Official Journal of the European Union and to the subsequent corrigenda, if any. The AMF does not guarantee the completeness of the redirections to these European regulations and corrigenda.

The boxes are located at the most relevant level of the GRAMF depending on the provision of the EU regulations to which they refer (Book, Title, Chapter, Section, etc.).

This additional material is provided for information purposes only and does not constitute a regulatory instrument. The AMF shall not be held liable or responsible for any harm resulting directly or indirectly from the provision or the use of these information boxes.

Table of contents

^ **Book III - Service providers**

^ **Title I - Investment services providers (Articles 311-0 à 315-26)**

^ Chapter I - Procedures for authorisation and programme of operations (Articles 311-2 à 311-3)

Section single - Approval of the programme of operations (Articles 311-2 à 311-3)

^ Chapter II - Organisational rules (Articles 312-1 à 312-48)

Section 1 - Compliance system (Articles 312-1 à 312-2)

Section 2 - Verification of the knowledge of specified persons (Articles 312-3 à 312-5)

Section 3 - Safeguarding client assets (Articles 312-6 à 312-19)

^ Section 4 - Professional licences (Articles 312-20 à 312-38)

Sub-section 1 - General provisions

Sub-section 2 - Professional licences issued by the AMF

Sub-section 3 - Professional licenses issued by investment services providers

Section 5 - Record keeping (Articles 312-39 à 312-41)

Section 6 - Annual data sheet (Article 312-42)

^ Section 7 - Third-party risk management (Articles 312-43 à 312-48)

^ Sub-section 1 - Risk management policy and risk measurement

Paragraph 1 - Permanent risk management function

Paragraph 2 - Risk management policy

Paragraph 3 - Assessment, monitoring and review of risk management policy

Sub-section 2 - Risk management processes, counterparty risk exposure and issuer concentration

- ⤴ Chapter III - Financial instrument governance requirements (Articles 313-1 à 313-27)
 - Section 1 - Financial instrument governance obligations for manufacturers (Articles 313-3 à 313-17)
 - Section 2 - Financial instrument governance obligations for distributors (Articles 313-18 à 313-27)
- ⤴ Chapter IV - Conduct of business rules (Articles 314-1 à 314-31)
 - ⤴ Section 1 - General provisions (Articles 314-1 à 314-4)
 - Sub-section 1 - Approval of codes of conduct
 - Sub-section 2 - Primacy of the client's interest and market integrity
 - Sub-section 3 - Client categories
 - ⤴ Section 2 - Information to customers (Articles 314-5 à 314-7)
 - Sub-section 1 - Information media
 - Sub-section 2 - Marketing communications
 - Section 3 - Assessment of the suitability and appropriateness of the service to be provided (Article 314-8)
 - Section 4 - Verification of the level of knowledge and assessment of the knowledge and skills of the persons providing investment advice or information (Articles 314-9 à 314-10)
 - ⤴ Section 5 - Clients agreements (Articles 314-10-1 à 314-11)
 - Sub-section 1 - Changes to agreements entered into before 3 January 2018
 - Sub-section 2 - Agreements entered into retail clients
 - Section 6 - Order handling and execution when providing the portfolio management service (Article 314-12)
 - ⤴ Section 7 - Inducements and fees (Articles 314-13 à 314-30)
 - Sub-section 1 - General provisions relating to inducements
 - Sub-section 2 - Inducements in respect of investment advice on an independent basis or portfolio management services for third parties
 - Sub-section 3 - Provisions concerning inducements in relation to research
 - Sub-section 4 - Portfolio management services' trading costs
 - Section 8 - Obligations in the case of offers of financial securities or minibons via a website (Article 314-31)
- ⤴ Chapter V - Other provisions (Articles 315-1 à 315-23)
 - ⤴ Section 1 - Management of inside information and restrictions to be applied within authorised investment services providers (Articles 315-1 à 315-6)
 - Sub-section 1 - Rules to prevent undue circulation of inside information
 - Sub-section 2 - Watch list
 - Sub-section 3 - Restricted list
 - Sub-section 4 - Listing of a company's securities on a regulated market in financial instruments
 - Section 2 - Derogations to the publication of transactions (Article 315-7)
 - Section 3 - Obligations of investment services providers relating to the prevention of money laundering and terrorist financing (Article 315-8)
 - Section 4 - Handling and monitoring of subscription applications and book entry (Article 315-9)
 - Section 5 - Accepted market practices (Article 315-10)
 - ⤴ Section 6 - Provisions for orders with instructions for deferred settlement and delivery and derivatives markets (Articles 315-11 à 315-23)
 - Sub-section 1 - Orders with instructions for deferred settlement and delivery
 - Sub-section 2 - Derivatives markets
- ⤴ Chapter VI - Systematic internalisers (Articles 315-24 à 315-26)
 - Section 1 - Informing the AMF (Article 315-24)
 - Section 2 - Derogations to the publication of transactions (Articles 315-25 à 315-26)
- ⤴ **Title I bis - Asset management companies of AIFs (Articles 316-1 à 320-25)**
 - ⤴ Chapter I - Procedures for authorisation, programme of operations and passport (Articles 316-3 à 316-14)
 - ⤴ Section 1 - Authorisation and programme of operations (Articles 316-3 à 316-9)
 - Sub-section 1 - Authorisation
 - Sub-section 2 - Withdrawal of authorisation and deregistration
 - Sub-section 3 - Resignations
 - Section 2 - Passport for asset management companies seeking to manage aifs or provide investment services in the other member states of the european union (Article 316-10)
 - Section 3 - Specific rules on the authorisation of managers seeking to manage european union aifs or to market aifs of the european union or third countries under their management in the european union with a passport (Articles 316-11 à 316-14)
 - ⤴ Chapter II - Authorisation requirements for aif asset management companies and for acquiring or increasing an equity interest in an aif asset management company (Articles 317-1 à 317-14)

- Section 1 - Authorisation requirements (Articles 317-1 à 317-6)
- Section 2 - Content of the programme of operations (Articles 317-7 à 317-9)
- Section 3 - Requirements for acquiring or increasing an equity interest in an asset management company (Articles 317-10 à 317-14)
- ^ Chapter III - Organisational rules (Articles 318-1 à 318-62)
 - Section 1 - Organisational rules (Article 318-3)
 - Section 2 - Compliance system (Articles 318-4 à 318-5)
 - Section 3 - Responsibilities of senior management and supervisory bodies (Article 318-6)
 - Section 4 - Verification of the knowledge of specified persons (Articles 318-7 à 318-9)
 - Section 5 - Complaint handling (Articles 318-10 à 318-10-1)
 - Section 6 - Personal transactions (Article 318-11)
 - Section 7 - Conflicts of interest (Articles 318-12 à 318-19)
 - ^ Section 8 - Professional licences (Articles 318-20 à 318-35)
 - Paragraph 1 - General provisions
 - Paragraph 2 - Compliance and internal control officer professional licence issuance
 - Section 9 - Record keeping (Article 318-36)
 - Section 10 - Annual data sheet (Article 318-37)
 - Section 10 bis - Report of compensation paid and non-compliance with AIF investment rules (Article 318-37-1)
 - Section 11 - Risk management (Articles 318-38 à 318-43)
 - Section 12 - Liquidity management (Articles 318-44 à 318-46)
 - Section 13 - Information transmission on financial contracts (Article 318-47)
 - Section 14 - Internal audit (Article 318-48)
 - ^ Section 15 - Organisation of compliance and internal control functions (Articles 318-49 à 318-57)
 - Sub-section 1 - Compliance and internal control systems
 - Sub-section 2 - Compliance and internal control officers
 - Section 16 - Outsourcing (Articles 318-58 à 318-61)
 - Section 17 - Delegation of AIF management (Article 318-62)
- ^ Chapter IV - Conduct of business rules (Articles 319-1 à 319-27)
 - ^ Section 1 - General provisions (Articles 319-1 à 319-8)
 - Sub-section 1 - Approval of codes of conduct
 - Sub-section 2 - Primacy of the AIF and its unit holders or shareholders' interest and market integrity
 - Section 2 - Order handling and execution
 - ^ Section 3 - Fees (Articles 319-9 à 319-20)
 - Sub-section 1 - Remuneration policy within the framework of AIF management
 - Sub-section 2 - Other provisions
 - Section 4 - Information about AIF management (Articles 319-21 à 319-26)
 - Section 5 - Obligations in the case of offers of financial securities or minibons via a website (Article 319-27)
- ^ Chapter V - Other provisions (Articles 320-1 à 320-25)
 - ^ Section 1 - Management of inside information and restrictions to be applied within the asset management companies of aifs (Articles 320-2 à 320-10)
 - Sub-section 1 - Rules to prevent undue circulation of inside information
 - Sub-section 2 - Watch list
 - Sub-section 3 - Restricted list
 - Section 2 - Obligations relating to the prevention of money laundering and terrorist financing (Articles 320-13 à 320-23)
 - Section 3 - Miscellaneous provisions (Article 320-24)
 - Section 4 - Handling and monitoring of subscription applications and book (Article 320-25)
- ^ **Title I ter - Asset management companies of UCITS (Articles 321-1 à 321-152)**
 - ^ Chapter I - Procedures for authorisation, programme of operations and passport (Articles 321-2 à 321-8)
 - ^ Section 1 - Authorisation and programme of operations (Articles 321-2 à 321-7)
 - Sub-section 1 - Authorisation
 - Sub-section 2 - Withdrawal of authorisation and deregistration
 - Section 2 - Passport (Article 321-8)
 - ^ Chapter II - Authorisation requirements for asset management companies and for acquiring or increasing an equity interest in an asset management company (Articles 321-9 à 321-22)
 - Section 1 - Authorisation requirements (Articles 321-9 à 321-14)

- Section 2 - Content of the programme of operations (Articles 321-15 à 321-17)
- Section 3 - Requirements for acquiring or increasing an equity interest in an asset management company (Articles 321-18 à 321-22)
- ^ Chapter III - Organisational rules (Articles 321-23 à 321-97)
 - Section 1 - General organisational requirements (Articles 321-23 à 321-29)
 - ^ Section 2 - Compliance system (Articles 321-30 à 321-33)
 - Sub-section 1 - General provisions
 - Sub-section 2 - Appointment and responsibilities of the compliance and internal control officer
 - Section 3 - Responsibilities of senior management and supervisory bodies (Articles 321-34 à 321-36)
 - Section 4 - Verification of the knowledge of specified persons (Articles 321-37 à 321-39)
 - Section 5 - Complaint handling (Articles 321-40 à 321-41)
 - Section 6 - Personal transactions (Articles 321-42 à 321-45)
 - ^ Section 7 - Conflicts of interest (Articles 321-46 à 321-52)
 - Sub-section 1 - Principles
 - Sub-section 2 - Conflicts of interest policy
 - Sub-section 3 - Disclosure to holders of units or shares
 - ^ Section 8 - Professional licences (Articles 321-53 à 321-68)
 - Sub-section 1 - General provisions
 - Sub-section 2 - Compliance and internal control officer professional licence issuance
 - Section 9 - Record keeping (Articles 321-69 à 321-74)
 - Section 10 - Annual data sheet (Article 321-75)
 - Section 10 bis - Report of compensation and non-compliance with UCITS investment rules (Article 321-75-1)
 - ^ Section 11 - Risk management (Articles 321-76 à 321-81)
 - ^ Sub-section 1 - Risk management policy and risk measurement
 - Paragraph 1 - Permanent risk management function
 - Paragraph 2 - Risk management policy
 - Paragraph 3 - Assessment, monitoring and review of risk management policy
 - Sub-section 2 - Risk management processes, counterparty risk exposure and issuer concentration
 - Section 12 - Transmission of information on derivative instruments (Article 321-82)
 - Section 13 - Internal audit (Article 321-83)
 - ^ Section 14 - Organisation of compliance and internal control functions (Articles 321-84 à 321-92)
 - Sub-section 1 - Compliance and internal control systems
 - Sub-section 2 - Compliance and internal control officers
 - Section 15 - Outsourcing (Articles 321-93 à 321-96)
 - Section 16 - Delegation management of UCITS (Article 321-97)
- ^ Chapter IV - Conduct of business rules (Articles 321-98 à 321-135)
 - ^ Section 1 - General provisions (Articles 321-98 à 321-106)
 - Sub-section 1 - Approval of codes of conduct
 - Sub-section 2 - Primacy of the UCITS' interest and market integrity
 - ^ Section 2 - Handling and executing orders (Articles 321-107 à 321-115)
 - ^ Sub-section 1 - General provisions
 - Paragraph 1 - Principles
 - Paragraph 2 - Grouped orders
 - ^ Sub-section 2 - Best execution obligation
 - Paragraph 1 - Principles
 - Paragraph 2 - Execution policy
 - Paragraph 3 - Supervision of execution policies
 - Sub-section 3 - Obligations of UCITS asset management company
 - Section 3 - Inducements (Articles 321-116 à 321-125)
 - ^ Section 4 - Information about subscription or redemption orders for units or shares of UCITS and the management of UCITS (Articles 321-126 à 321-134)
 - Sub-section 1 - Reporting on subscription or redemption orders for units or shares of UCITS
 - Sub-section 2 - Reporting on UCITS management
 - Section 5 - Obligations in the case of offers of financial securities or minibons via a website (Article 321-135)
- ^ Chapter V - Other provisions (Articles 321-136 à 321-152)
 - ^ Section 1 - Management of inside information and restrictions to be applied within authorised asset management

companies (Articles 321-136 à 321-140)

Sub-section 1 - Rules to prevent undue circulation of inside information

Sub-section 2 - Watch list

Sub-section 3 - Restricted list

Section 2 - Obligations relating to the prevention of money laundering and terrorist financing (Articles 321-141-A à 321-150)

Section 3 - Miscellaneous provisions (Article 321-151)

Section 4 - Handling and monitoring of subscription applications and book entry (Article 321-152)

Title I quater - Others asset management companies (Articles 321-153 à 321-168)

^ Title II - Other service providers (Articles 322-1 à 328-2)

^ Chapter I - Custody account-keepers (Articles 322-1 à 322-90)

^ Section unique - Provisions relating to custody account-keeping - terms of reference for the custody account-keeper (Articles 322-1 à 322-90)

^ Sub-section 1 - Scope of application of the terms of reference and definition of the activity of custody account-keeping

^ Paragraph 1 - Scope of terms of reference for the custody account-keeper

Sub-paragraph 1 - Persons, services and financial instruments concerned

Sub-paragraph 2 - Form of the financial securities

Paragraph 2 - Definition of the activity of custody account-keeping

^ Sub-section 2 - Professional obligations of the keepers of securities accounts other than the issuing entities

Paragraph 1 - Obligations relating to the prevention of money-laundering and the financing of terrorism

^ Paragraph 2 - Relationships with customers

Sub-paragraph 1 - General provisions relating to the start of a relationship

Sub-paragraph 2 - General provisions relating to the services provided and to the protection afforded to clients

Sub-paragraph 3 - General provisions relating to the information provided to clients

Sub-paragraph 4 - General provisions relating to orders with deferred settlement and delivery service

^ Paragraph 3 - Resources and procedures of the custody account-keeper

Sub-paragraph 1 - General provisions

Sub-paragraph 2 - IT resources

Sub-paragraph 3 - Accounting procedures

Sub-paragraph 4 - Relationships with other service providers

Sub-paragraph 5 - Verification of the custody account-keeping activity

Sub-section 3 - Provisions applicable to the domiciliation of negotiable loan notes and Treasury bonds

^ Sub-section 4 - Professional obligations of the issuer entities considered in their capacity as custody account-keepers and provisions relating to the administration of registered financial securities

Paragraph 1 - General provisions

Paragraph 2 - Stipulations of the terms of reference of the custody account-keeper applicable to legal entities issuing financial securities via public offerings, with the exception of those mentioned in 1 or 2 of Article L. 411-2 of the Monetary and Financial Code or in Article L. 411-2-1 of said code, which (i) record issued financial securities in "pure registered" accounts, or (ii) record issued financial securities in a distributed ledger system

^ Sub-section 5 - Provisions relating to the keeping of securities accounts within the framework of an employee savings scheme

Paragraph 1 - Account-opening agreement

Paragraph 2 - Maintenance and consultation of the accounts

Paragraph 3 - Relations between the custody account-keeper and the other parties concerned, within the framework of an employee savings scheme

^ Paragraph 4 - Operations for payment, redemption, modification of investment decision and of individual transfer of bearer

Sub-paragraph 1 - Payment operations

Sub-paragraph 2 - Redemption operations

Sub-paragraph 3 - Operations for modification of the bearers' investment decisions

Sub-paragraph 4 - Transfer operations

Paragraph 5 - The accounting procedures

^ Chapter II - Depositaries of UCITS (Articles 323-1-A à 323-22)

Section 1 - Duties of the UCITS depositary (Articles 323-1 à 323-5)

^ Section 2 - Organisational structures and resources of the depositary (Articles 323-6 à 323-15)

- Sub-section 1 - Performance specifications for depositaries
- Sub-section 2 - Relations between the depositary and the UCITS
- Sub-section 3 - Relations between the depositary and other service providers
- ^ Section 3 - Procedures for safekeeping of certain assets by the UCITS depositary (Articles 323-16 à 323-17)
 - Sub-section 1 - Procedures for keeping register in financial contracts
 - Sub-section 2 - Record-keeping procedures for pure registered financial instruments, deposits and cash accounts
- Section 4 - Procedures for supervising legal and regulatory compliance of decisions made by the UCITS or its management company (Articles 323-18 à 323-22)
- ^ Chapter III - AIF depositaries (Articles 323-23-A à 323-41)
 - Section 1 - Duties of the depositary of AIF (Articles 323-23 à 323-25)
 - ^ Section 2 - Organisational structures and resources of the AIF depositary (Articles 323-26 à 323-35)
 - Sub-section 1 - Performance specifications for AIF depositaries
 - Sub-section 2 - Relations between the depositary and the AIF
 - Sub-section 3 - Relations between the depositary and other service providers
 - ^ Section 3 - Procedures for custody of certain assets by the AIF depositary (Articles 323-36 à 323-37)
 - Sub-section 1 - Procedures for keeping positions in financial contracts
 - Sub-section 2 - Procedures for keeping positions in pure registered financial instruments, deposits and cash accounts
 - Section 4 - Procedures for supervising compliance of the decisions made by the AIF or its asset management company (Articles 323-38 à 323-41)
- ^ Chapter III bis - Depositaries of securitisation vehicles (Articles 323-42 à 323-64)
 - Section 1 - Duties of the depositary of securitisation vehicles (Articles 323-43 à 323-47)
 - ^ Section 2 - Organisational structures and resources of the depositary of securitisation vehicles (Articles 323-48 à 323-57)
 - Sub-section 1 - Performance specifications for depositaries
 - Sub-section 2 - Relations between the depositary and the securitisation vehicle
 - Sub-section 3 - Relations between the depositary and other service providers
 - ^ Section 3 - Procedures for custody of certain assets by the depositary (Articles 323-58 à 323-59-2)
 - Sub-section 1 - Procedures for keeping positions in financial contracts
 - Sub-section 2 - Procedures for custody for pure registered financial instruments and deposits
 - Sub-section 3 - Procedures for custody for claims
 - Sub-section 4 - Procedures for the control of certain assets
 - Section 4 - Procedures for supervising legal and regulatory compliance of decisions made by the management company of securitisation vehicle (Articles 323-60 à 323-64)
- Chapter IV - Clearers (Articles 324-1 à 324-2)
- ^ Chapter V - Financial investment advisers (Articles 325-1-A à 325-47)
 - Section 1 - Professional entrance requirements (Articles 325-1 à 325-2-1)
 - ^ Section 2 - Conduct of business rules (Articles 325-3 à 325-17)
 - Sub-section 1 - General provisions
 - Sub-section 2 - Entering into a new client relationship
 - Sub-section 3 - Letter of engagement
 - Sub-section 4 - Knowledge about clients
 - ^ Sub-section 5 - Information provided to clients
 - Paragraph 1 - General provisions
 - Paragraph 2 - Clear, accurate and non-misleading information
 - Paragraph 3 - Information on costs and charges
 - Sub-section 6 - Compensation and benefits
 - Sub-section 7 - Suitability statement
 - ^ Section 3 - Organisational rules (Articles 325-18 à 325-30)
 - Sub-section 1 - General provisions
 - Sub-section 2 - Conflicts of interest
 - Section 4 - Governance of products, services and transactions (Article 325-31)
 - Section 5 - Reception and transmission of units or shares in collective investment undertakings (Article 325-32)
 - ^ Section 6 - Authorisation of representative associations (Articles 325-33 à 325-47)
 - Sub-section 1 - Authorisation requirements

- Sub-section 2 - Authorisation procedure
- Sub-section 3 - Reporting to the AMF
- Sub-section 4 - Withdrawal of authorization
- ^ Chapter V bis - Crowdfunding investment advisers (Articles 325-51 à 325-50)
 - Section 1 - Admission requirements (Articles 325-48 à 325-50)
- Chapter VI - Direct marketers
- ^ Chapter VII - Investment analysts not associated with an investment service provider (Articles 327-1 à 327-23)
 - Section 1 - Scope (Article 327-1)
 - ^ Section 2 - Production and dissemination of investment research (Articles 327-2 à 327-18)
 - Sub-section 1 - Production of analysis: Independence of analysts and management of conflicts of interest
 - Sub-section 2 - Establishing a code of conduct
 - ^ Sub-section 3 - Recognition of representative bodies
 - Paragraph 1 - Requirements for recognition by the AMF
 - Paragraph 2 - Recognition procedure
 - Paragraph 3 - Disclosures to the AMF
 - Paragraph 4 - Withdrawal of recognition
 - Section 3 - Dissemination of investment research produced by third parties (Articles 327-19 à 327-23)
- ^ Chapter VIII - Data reporting services providers (Articles 328-1 à 328-2)
 - Section single - Authorisation requirements and changes (Articles 328-1 à 328-2)

Book III - Service providers

Title I - Investment services providers (Articles 311-0 à 315-26)

[Article 311-0](#)

In this Book III, "financial instrument" means financial instruments as defined by Article L. 211-1 of the Monetary and Financial Code and the units referred to in Article L. 229-7 of the Environmental Code.

[Article 311-1](#)

Unless otherwise provided, the present Title is applicable:

I.- To investment services providers.

For the purposes of this Title, the term "investment service provider" shall designate investment services providers other than asset management companies.

II. - To the branches of a person that is authorised in a country that is party to the Agreement on the European Economic Area other than France to provide the investment services referred to in Article L. 532-18-1 of the Monetary and Financial Code, in accordance with sub-paragraph 2 of Article L. 532-18-1 and Article L. 532-18-2 of the said Code;

III. - To the branches of companies of third countries that are authorised to provide the investment services referred to in Article L. 532-48 of the Monetary and Financial Code, or to the branches of credit institutions referred to in I of Article L. 511-10 of said Code when they provide investment services, in accordance with II of Article L. 532-50;

IV. - To the relevant persons defined in paragraph 1 of Article 2 of Commission Delegated Regulation (EU) No. 2017/565 of 25 April 2016 for the provisions of Chapters II, III, IV and V of the present Title. For the above-mentioned persons, these constitute a professional obligation.

The provisions of Chapters IV and V of this Title shall apply under the same conditions to the relevant persons referred to in IV within the branches referred to II and III above.

Commission Delegated Regulation (EU) [2017/565](#) of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Commission Delegated Regulation (EU) [2017/592](#) of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business

Commission Delegated Regulation (EU) [2017/1018](#) of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions

Commission Delegated Regulation (EU) [2017/1943](#) of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms

Commission Delegated Regulation (EU) [2017/1946](#) of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm

Commission Implementing Regulation (EU) [2017/1945](#) of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council

Section single - Approval of the programme of operations (Articles 311-2 à 311-3)

[Article 311-2](#)

I. – When the applicant plans to provide an investment service or an activity referred to in Article R. 532-2 of the Monetary and Financial Code, its programme of operations shall be presented in accordance with Article R. 532-1 of said Code.

II.- When an investment services provider plans to modify its authorisation relating to an investment service or activity referred to in Article R. 532-2 of the Monetary and Financial Code in accordance with Article L. 532-3-1 of said Code, the AMF will notify its decision regarding the programme of operations within the time period indicated in II of Article R. 532-6 of this same Code.

III. – As part of the procedure for authorisation of the branches of investment companies of third countries referred to in III of Article 311-1 by the French Prudential Supervision and Resolution Authority (Autorité de contrôle prudentiel et de résolution), set out in Article L. 532-48 of the Monetary and Financial Code, and prior to the granting of this authorisation, the AMF will notify its decision regarding the programme of operations of the applicant in accordance with Article R. 532-4 of said Code.

[Article 311-3](#)

If the AMF finds that an investment services provider no longer meets the conditions for the approval of its programme of operations, it shall so inform the Prudential Supervision and Resolution Authority.

Chapter II - Organisational rules (Articles 312-1 à 312-48)

[Règlement \(UE\) 2017/565](#) de la Commission du 25 avril 2016 complétant la Directive MIF 2 en ce qui concerne les exigences organisationnelles et les conditions d'exercice applicables aux entreprises d'investissement et la définition de certains termes aux fins de ladite directive ;

[Règlement délégué \(UE\) 2017/578](#) de la Commission du 13 juin 2016 complétant la Directive MIF 2 par des normes techniques de réglementation précisant les exigences relatives aux accords et aux systèmes de tenue de marché ;

[Règlement délégué \(UE\) 2017/589](#) de la Commission du 19 juillet 2016 complétant la Directive MIF 2 par des normes techniques de réglementation précisant les exigences organisationnelles applicables aux entreprises d'investissement recourant au trading algorithmique.

Section 1 - Compliance system (Articles 312-1 à 312-2)

[Article 312-1](#)

To ensure compliance with all of the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code, the investment services provider shall implement the compliance policy and the procedures relative to the responsibilities of the management body laid down in Articles 22 and 25 of Commission Delegated Regulation 2017/565 of 25 April 2016.

[Article 312-2](#)

The compliance officer referred to in Paragraph 3 of Article 22 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 shall hold a professional license issued under the conditions defined in Section 4 of this Chapter.

Senior management shall apprise the investment services provider's board of directors, its supervisory board or, failing that, its body responsible for supervision, if such a body exists, of the appointment of the compliance officer.

Section 2 - Verification of the knowledge of specified persons (Articles 312-3 à 312-5)

[Article 312-3](#)

I.- The investment services provider shall ensure that natural persons acting on its behalf have the minimum qualification as well as a sufficient level of knowledge.

II. - It verifies that the persons carrying out one of the following functions can prove they have the minimum level of knowledge set forth in Point 1° of II of Article 312-5:

- a) asset manager, within the meaning of Article 312-4;
- b) head of financial instrument clearing, within the meaning of Article 312-4;
- c) head of post trade services, within the meaning of Article 312-4;
- d) persons referred to in Article 312-21.

III. - The investment services provider shall not carry out the verification provided for in II with regard to persons employed as at 1 July 2010. Persons having passed one of the examinations referred to in Point 3° of II of Article 312-5 shall be deemed to have the minimum knowledge required to perform their duties.

IV. - To conduct the verification referred to in II, the investment services provider has six months from the date on which the employee starts to perform one of the above functions. However, where the employee has been taken on under a work/study contract, as provided in Articles L. 6222-1 and L. 6325-1 of the labour code, the investment services provider may not conduct such verification. If it decides to hire the employee when his or her training period finishes, the investment services provider shall

2022-06-11

ensure that he or she has the minimum qualification as well as a sufficient level of knowledge as referred to in I, at the latest by the end of the contract training period.

The investment services provider shall ensure that any employee whose minimum knowledge has not yet been verified is appropriately supervised.

Article 312-4

- 1 • An asset manager is any person authorised to take investment decisions in connection with an individual investment mandate;
- 2 • A head of financial instrument clearing is a natural person representing the clearing member before the clearing house with respect to transaction registration, risk organisation and supervision, and the related financial instrument clearing functions;
- 3 • A head of post-trade services is a person who assumes direct responsibility for custody account keeping, settlement, depositary functions, securities administration or securities services for issuers.

Article 312-5

I. - The AMF has formed a Financial Skills Certification Board.

- 1 • the Financial Skills Certification Board issues opinions at the request of the AMF concerning certification of the professional knowledge of natural persons acting under the authority or on behalf of an investment services provider and performing one of the functions referred to in Articles 312-3 (II), 314-9 and 314-10 ;
- 2 • The Financial Skills Certification Board issues opinions at the request of the AMF on the need to introduce optional or mandatory modules in addition to the content of minimum knowledge, and on the functions subject to these modules;
- 3 • when rendering opinions, the Financial Skills Certification Board considers the possibility of establishing equivalencies with similar schemes abroad.

II. - Further to an opinion of the Financial Skills Certification Board, the AMF:

- 1 • Determines the content of the minimum knowledge to be acquired by natural persons acting under the authority or on behalf of an investment services provider and performing one of the functions referred to in Articles 312-3 (II), 314-9 and 314-10. It shall publish that content:
- 2 • defines the content of the modules completing the minimum knowledge mentioned in 1°. It shall publish the content of these modules;
- 3 • ensures that the content of this minimum knowledge and complementary modules is updated;
- 4 • determines and verifies the arrangements for the examinations and complementary modules that validate acquisition of knowledge;
- 5 • certifies examinations for a two-year period within four months of the filing of applications. This deadline shall be extended as necessary until requests for further information are met. This certification can be renewed for a three-year period.
- 6 • the AMF shall charge an application fee when applications for certification are filed.

III. The Financial Skills Certification Board has at least seven members:

- 1 • one person appointed from among its own members by the AMF Board;

2022-06-11

- 2 • at least four members named by the AMF on the basis of their professional skills, after consulting with the main professional associations representing investment services providers;
- 3 • two independent persons named by the AMF and skilled in the fields of education or vocational training in finance.

The member of the AMF Board chairs the Financial Skills Certification Board. However, in the event of a temporary absence of the chairperson lasting no more than six months, the Financial Skills Certification Board shall choose another of its members to chair its meetings. In the event of an absence of more than six months or if the chairperson is permanently unable to fulfil their duties, the Board shall appoint another of its members as its chairperson, for the remainder of the chairperson's term of office.

The members of the Financial Skills Certification Board are appointed for a renewable three-year term. The chairperson of the Financial Skills Certification Board will continue in office until the end of their term as member of the Board. The AMF publishes a list of members.

IV. - The Financial Skills Certification Board shall draw up bylaws and present them to the AMF Board.

V. - Members of the Financial Skills Certification Board receive no remuneration for their duties. The chair of the Financial Skills Certification Board shall be compensated in accordance with the conditions set out in the AMF's internal rules.

Section 3 - Safeguarding client assets (Articles 312-6 à 312-19)

Article 312-6

The investment services provider shall comply with the following obligations to safeguard its clients' rights in relation to the financial instruments belonging to them:

- 1 • It must keep such records and accounts as are necessary to enable them at any time and immediately to distinguish assets held for one client from assets held for other clients, and from its own financial instruments.
- 2 • It must maintain its records and accounts in a way that ensures their accuracy, and in particular, their correspondence to the financial instruments held by clients, and that enables them to be used as an audit trail;
- 3 • It must conduct periodic reconciliations between its internal accounts and records and those of the third parties with whom the clients' financial instruments are held.
- 4 • It must take the necessary steps to ensure that any client financial instruments deposited with a third party can be identified separately from the financial instruments belonging to the third party and from the financial instruments belonging to the investment services provider by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;

If the law applicable in the territory in which the third party holds the financial instruments prevents that party from complying with the previous subparagraph, the third party shall inform affected clients that they are not covered by this protection.

- 5 • It must introduce adequate organisational arrangements to minimise the risk of loss or diminution of clients' assets or of rights in connection with those financial instruments resulting from misuse of the financial instruments, fraud, poor administration, incorrect record-keeping or negligence.

Article 312-7

The investment services provider shall ensure that the statutory auditor makes a report at least every year to the AMF on the adequacy of the arrangements made by the service provider, pursuant to points of Article II 7° and 9° L. 533-10 of the Monetary and Financial Code and this sub-section.

Article 312-8

2022-06-11

The investment services provider using a third party to hold its clients' financial instruments shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements made by said party for the holding of those financial instruments.

The investment services provider shall take into account the expertise and market reputation of the third party, as well as any legal or regulatory requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

Article 312-9

If the investment services provider propose to use a third party to hold its clients' financial instruments then this investment services provider shall choose a third party that is located in a country that has specific regulations and supervision regarding the holding of financial instruments on behalf of a client, and shall select that third party from among those subject to the specific regulations and supervision and do so in accordance with the provisions of Article 312-8.

Article 312-10

The investment services provider may not use a third party to hold its clients' financial instruments if that third party is located in a State that is not party to the European Economic Area agreement and that does not regulate the holding of financial instruments on behalf of another person, unless one of the following conditions is met:

- 1 • The nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in the State that is not party to the European Economic Area agreement.
- 2 • If the financial instruments are held on behalf of a professional client, that client makes a written request to the investment services provider to have them held with a third party in the State that is not party to the European Economic Area agreement.

Article 312-11

The requirements set forth in Articles 312-9 and 312-10 shall also apply if the third party uses another third party to perform one of its functions in the areas of holding or custody of financial instruments.

Article 312-12

I.- The investment services provider may not enter into securities financing transactions in respect of financial instruments held by it on behalf of a client or otherwise use such financial instruments for its own account, for the account of another person or for the account of one of its other clients, unless the client has given his prior express consent for the use of the instruments on specified terms, as evidenced by his signature or an equivalent alternative mechanism.

The use of that client's financial instruments must be restricted to the specified terms to which the client has consented.

II. - The investment services provider may not enter into securities financing transactions in respect of financial instruments held by it on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for its own account or for the account of another person unless at least one of the following conditions is met:

- 1 • Each client whose financial instruments are held on an omnibus account must have given consent in accordance with I.
- 2 • The investment services provider must have systems and controls to ensure that only financial instruments belonging to clients who have given prior consent in accordance with I are so used.

The investment services provider' records shall include data on the client on whose instructions the financial instruments have been used and on the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss of financial instruments.

III. – A “securities financing transaction” means a transaction as defined by Article 3 (11) of Regulation (EU) 2015/2365 of 25 November 2015 on transparency of securities financing transactions and of reuse.

[Article 312-13](#)

Security interests, liens or rights of set-off over client financial instruments enabling a third party to dispose of client's financial instruments in order to recover debts that do not relate to the client or provision of services to the client are not permitted except where this is required by applicable law in a third country jurisdiction in which the client financial instruments are held.

If the investment services provider is obliged to create such security interests, liens or rights of set-off, it must disclose that information to its clients indicating to them the risks associated with those arrangements.

Where security interests, liens or rights of set-off are established by the service provider in respect of client financial instruments, or where the service provider has been informed that they are established, they shall be recorded in client contracts and the service provider's own accounts to ensure that these financial instruments are clearly identified as belonging to the client, particularly in the event of an insolvency.

[Article 312-14](#)

I.- The investment services provider shall make information pertaining to clients' financial instruments readily available to the following persons or entities:

- 1 • the AMF;
- 2 • the *mandataire judiciaire*, *administrateur judiciaire*, *liquidateur* and *commissaire à l'exécution du plan* referred to in Annex B of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings;
- 3 • the Resolution College of the *Autorité de contrôle prudentiel et de résolution*.

II.- The information to be made available shall include:

- 1 • related internal accounts and records that readily identify the balances of financial instruments held for each client;
- 2 • the place where financial instruments are held by the service provider as well as details on the accounts opened with third parties and on agreements entered into with such entities;
- 3 • details of any outsourced tasks relating to the holding of financial instruments and details of third parties carrying out such tasks;
- 4 • key individuals of the service provider involved in related processes, including those responsible for oversight of the service provider's requirements in relation to the safeguarding of client financial instruments; and
- 5 • agreements making it possible to establish client ownership over financial instruments.

[Article 312-15](#)

The investment services provider shall take appropriate measures to prevent the unauthorised use of client financial instruments for its own account or the account of any other person, such as:

- 1 • the conclusion of agreements with clients on measures to be taken by the investment services provider in case the client does not have provision on its account at the settlement date, such as the borrowing of the corresponding financial instruments on behalf of the client or unwinding the position;
- 2 • the close monitoring by the service provider of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done; and
- 3 • the close monitoring and prompt requesting of undelivered financial instruments outstanding on the settlement day.

2022-06-11

[Article 312-16](#)

Where the investment services provider has taken part in a securities financing transaction, it shall adopt specific arrangements for every client to ensure that, in the event that a client loans financial securities, the borrower provides appropriate collateral. The service provider shall monitor the continued appropriateness of such collateral and take the necessary steps to maintain the balance with the value of client financial instruments.

[Article 312-17](#)

The investment services provider shall not enter into arrangements which are prohibited under Article L. 533-10 (II) (9) of the Monetary and Financial Code.

[Article 312-18](#)

I.- The investment services provider should consider the appropriateness of title transfer collateral arrangements used with professional clients and eligible counterparties with regard to the relationship between the client's obligations to the provider and the client financial instruments and funds subject to the abovementioned arrangements.

At the request of the AMF, the service provider must be able to demonstrate, by any means, that it has undertaken these steps.

II.- When considering the appropriateness of using title transfer collateral arrangements pursuant to I, the investment services provider shall take into account all of the following factors:

- 1 • there is a sufficiently strong present or future connection between the client's obligations towards the service provider and the use of title transfer collateral arrangements;
- 2 • the amount of financial instruments and funds subject to the title transfer collateral arrangement does not substantially exceed the client's obligations, or is not unlimited, and whether the client has an obligation of any kind towards the service provider; and
- 3 • if all client financial instruments and funds are subject to title transfer collateral arrangements, irrespective of the respective obligations of each client towards the service provider.

III.- When using title transfer collateral arrangements pursuant to I, the investment services provider should warn professional clients and eligible counterparties about the risks incurred and about the effects of title transfer collateral arrangements on the client's financial instruments and funds.

[Article 312-19](#)

The investment services provider should appoint a single officer who shall possess the requisite skills and authority and be placed specifically in charge of issues relating to the service provider's compliance with its obligations in terms of safeguarding client financial instruments and funds.

The investment services provider may decide, while taking care to ensure compliance with this sub-section, whether the single officer shall be devoted solely to this assignment or whether the officer can discharge these duties effectively while also carrying out other duties.

Section 4 - Professional licences (Articles 312-20 à 312-38)

Sub-section 1 - General provisions

[Article 312-20](#)

The following relevant persons must hold a professional license issued by the AMF or the investment services provider under the terms of Articles 312-29 and 312-36:

- 1 • Traders of financial instruments;

2 • Clearers of financial instruments;

3 • Compliance officers for investment services;

4 • Investment analysts.

Article 312-21

1° Traders of financial instruments are natural persons empowered to commit the person under whose responsibility or on whose behalf they are acting in transactions in financial instruments for its own account or for a third party.

2° Clearers of financial instruments are natural persons empowered to commit a clearing-house member vis-à-vis the clearing house.

3° Compliance officers for investment services are the persons referred to in Article 312-2.

4° Investment analysts are the relevant persons defined in Paragraph 2 of Article 2 of Regulation (EU) 2017/565 of 25 April 2016.

Article 312-22

A natural person may perform one of the functions referred to in Article 312-20 on a trial basis or temporarily, without holding the required professional licence, for a maximum period of six months that can be renewed once.

Use of this exception by an investment services provider for traders, clearers and investment analysts shall require the prior consent of the compliance officer for investment services.

The function of compliance officer for investment services may only be performed on a trial basis or temporarily with the prior consent of the AMF.

Article 312-23

Issuance of a professional license shall require the applicant to compile an request for authorisation, which shall be submitted to the investment services provider issuing the license or to the AMF.

The request for authorisation shall include the items stipulated in an AMF instruction.

Article 312-24

The request for authorisation shall be retained by the investment services provider that issues the licence or by the AMF for ten years after the licensee has ceased to perform the functions that gave rise to the issuance of the professional licence.

Article 312-25

Where a person provisionally ceases to perform the activity that required a professional licence, such interruption shall not result in withdrawal of the licence.

The person shall be deemed to have permanently ceased engaging in the activity that gave rise to the issuance of the license when the interruption lasts longer than one year, unless the AMF grants an exception.

Article 312-26

When a person definitively ceases to perform the function for which a professional licence was issued, the licence shall be withdrawn. The license shall be withdrawn by the investment services provider that issued it or by the AMF, as the case may be.

If a professional license has been issued by the AMF, the investment services provider on whose behalf the license-holder is acting shall notify the AMF immediately upon the definitive cessation of activity referred to in the preceding paragraph.

2022-06-11

[Article 312-27](#)

Whenever an investment services provider takes disciplinary measures against a person holding a professional licence because of a breach of the professional obligations, it shall so notify the AMF within one month.

[Article 312-28](#)

The AMF shall keep a register of professional licences.

For this purpose, the person issuing or revoking the professional license referred to in 1°, 2°, 3° and 4° of Article 312 20 shall notify the AMF of the identities of the persons whose licenses are issued or revoked within one month.

The AMF shall be notified of the appointments of the compliance officers referred to in 3° of Article 312-20.

The information in the register of professional licences shall be retained for ten years after licences have been revoked.

Sub-section 2 - Professional licences issued by the AMF

[Article 312-29](#)

The AMF shall issue the professional licenses of the persons performing the functions of compliance officers for investment services. For this purpose, the AMF shall organise a professional examination under the terms referred to in Articles 312-33 to 312-35.

However, where investment services providers appoint one of their senior managers to the function of compliance officer, that person shall hold the relevant professional license. He shall not be required to pass the examination provided for in the first paragraph.

[Article 312-30](#)

Before issuing the professional license, the AMF shall verify:

- 1 • that the relevant natural person is fit and proper, that he is familiar with the professional requirements and capable of performing the functions of a compliance officer for investment services.
- 2 • that pursuant to II of Article 312-3, the investment services provider has conducted an internal verification or an examination as stipulated in 3° of II of Article 312-5 to ensure that the relevant person has the minimum knowledge mentioned in 1° of II of Article 312-5.
- 3 • that the investment services provider complies with the provisions of Paragraph 3 of Article 22 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

[Article 312-31](#)

The AMF may waive the examination requirement for a person who has performed comparable functions with another investment services provider with equivalent business activities and organisational structures, provided that person has already passed the examination and the investment services provider planning to appoint him has already presented a candidate who passed the examination.

[Article 312-32](#)

If an investment services provider requires professional licenses for several compliance officers for investment services, the AMF shall ensure that the number of license holders is proportionate to the nature and the risks of the investment services provider's business activities, scale and organisational structure.

Investment services providers shall provide precise written definitions of the attributions of each professional license holder.

[Article 312-33](#)

2022-06-11

The examination shall consist of interviews of professional license applicants by a jury. The applicants shall be presented by the investment services providers on whose behalf they are to perform their functions.

The AMF shall hold the examinations at least twice a year. It shall decide who sits on the jury, set the examination dates and determine the amount of examination fees. This information shall be made known to investment services providers.

The AMF shall collect the examination fees from the investment services providers presenting applicants.

Article 312-34

The members of the jury referred to in the first paragraph of Article 312-33 shall be:

- 1 • An active compliance officer, chair;
- 2 • The head of an operational function with an investment services provider;
- 3 • A member of the AMF's staff.

If an applicant feels that a member of the jury has a conflict of interest with regard to him, he may ask the AMF to be examined by another jury.

Article 312-35

If it deems that the conditions referred to in Article 312-30 have been met, the jury shall propose that the AMF issue a professional license.

However, if the jury deems that the applicant has the necessary qualities to perform the function of compliance officer for investment services but that the investment services provider does not grant him proper independence or does not provide him with adequate resources, the jury may propose that the issuance of a professional license be subject to the condition that the investment services provider remedies the situation and notifies the AMF of the measures taken for this purpose.

If outsourcing of the function of compliance officer for investment services is planned, the jury may be asked for its opinion.

Sub-section 3 - Professional licenses issued by investment services providers

Article 312-36

Professional licences referred to in 1°, 2° and 4° of Article 312-20 shall be issued by the investment services providers under whose authority or on whose behalf the professional license holders are acting.

Article 312-37

Before any of the professional licences referred to in Article 312-36 are issued, the compliance officer for investment services shall ensure that the applicant is fit and proper, that it has met the procedural requirements established by the investment services provider to ascertain that applicants are cognisant of their professional obligations, and that it meets the conditions set forth in Article 312-3.

The compliance officer may obtain from AMF, upon request made by registered or hand-delivered letter with acknowledgment of receipt, a record of any disciplinary actions that the AMF has taken against the applicant during the previous five years.

Article 312-38

Investment services providers shall notify the AMF of the issuance of the professional licenses referred to in 1°, 2°, 3° and 4° of Article 312-20 within one month.

The AMF may ask the investment services provider to forward a copy of the license application.

Any person to whom a professional licence is issued shall be personally informed of that fact.

Section 5 - Record keeping (Articles 312-39 à 312-41)

[Article 312-39](#)

If the investment services provider's authorisation is revoked, the AMF may require said provider to retain all the relevant records for the five-year period stipulated in Article L. 533-10 (III) of the Monetary and Financial Code.

The AMF may, in exceptional circumstances, require investment services providers to retain any or all those records for the seven year period stipulated in Article L. 533-10 (III) of the Monetary and Financial Code, to the extent justified by the nature of the instrument or transaction, if that is necessary to enable it to exercise its supervisory functions.

[Article 312-40](#)

The purpose of recording telephone conversations shall be to facilitate monitoring to ensure that transactions are lawful and that they comply with clients' instructions.

The compliance officer may listen to the recordings of telephone conversations made pursuant to Article 76 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. If the compliance officer does not himself listen to the recording, it may not be listened to without his agreement or the agreement of a person designated by him.

[Article 312-41](#)

Investment services providers shall retain information about the monitoring and assessments referred to in Point a) of Paragraph 2 of Article 76 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 in accordance with the requirements referred to in Article 76 of the same Regulation.

Section 6 - Annual data sheet (Article 312-42)

[Article 312-42](#)

Within four-and-a-half months of the end of the financial year, the investment services provider providing portfolio management services for third parties shall send the AMF the information specified on the annual data sheet.

Section 7 - Third-party risk management (Articles 312-43 à 312-48)

[Article 312-43](#)

The provisions of this section shall apply to investment service providers who provide the investment service mentioned in 4 of Article L. 321-1 of the Monetary and Financial Code.

[Article 312-44](#)

The following terms shall have the following meanings for the purposes of this Section:

- “counterparty risk” means the risk of loss for the individual portfolio resulting from the fact that the counterparty to the transaction or to a contract may default on its obligations prior to the final settlement of the transaction's cash flow;
- “liquidity risk” means the risk that a position in the portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short time frame and that the ability of the investment service provider to liquidate positions in an individual portfolio in accordance with the contractual requirements of the portfolio management mandate, is thereby compromised;
- “market risk” means the risk of loss for the individual portfolio resulting from a fluctuation in the market value of positions in the portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices, or an issuer's creditworthiness;
- “operational risk” means the risk of loss for the individual portfolio resulting from inadequate internal processes and failures in relation to people and systems of the investment service provider or from external events, and includes legal and

2022-06-11

documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the individual portfolio;

— “board of directors” means the board of directors, executive board or any equivalent body of the investment service provider.

Sub-section 1 - Risk management policy and risk measurement

Paragraph 1 - Permanent risk management function

[Article 312-45](#)

I - The investment service provider shall establish and maintain a permanent risk management function.

II.- The permanent risk management function shall be hierarchically and functionally independent from operating units.

However, the investment service provider may derogate from this obligation where the derogation is appropriate and proportionate in view of the nature, scale, diversity and complexity of its business and of the individual portfolios it manages.

The investment service provider shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities, and that its risk management process satisfies the requirements of Article L. 533-10-1 of the Monetary and Financial Code.

III.-The permanent risk management function shall:

- a) Implement the risk management policy and procedures;
- b) Ensure compliance with the system for limiting the risks of individual portfolios;
- c) Provide advice to the board of directors as regards the identification of the risk profile of each individual portfolio managed;
- d) Provide regular reports to the board of directors and, where it exists, the supervisory function, on:
 - the consistency between the current levels of risk incurred by each individual portfolio managed and the risk profile agreed for that portfolio;
 - the compliance of each individual portfolio managed with relevant risk limiting systems;
 - the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
- e) Provide regular reports to the senior management outlining the current level of risk incurred by each individual portfolio managed and any actual or foreseeable breaches of their limits, so as to ensure that prompt and appropriate action can be taken.

Where appropriate in view of the nature, scale and complexity of its business and of the individual portfolios it manages, the investment service provider may apply the obligations of c, d and e for each type or profile of individual portfolio managed.

IV.-The permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in III.

Paragraph 2 - Risk management policy

[Article 312-46](#)

2022-06-11

I.- The investment service provider shall establish, implement and maintain an adequate and documented risk management policy which identifies the risks to which the individual portfolios it manages are or might be exposed to.

II.- The risk management policy shall comprise such procedures as are necessary to enable the investment service provider to assess, for each individual portfolio it manages, the exposure of said portfolio to market, liquidity and counterparty risks, and the exposure of the individual portfolios to any other risks, including operational risks, which may be material for the individual portfolios it manages.

III.- The risk management policy shall address at least the following:

- a) The techniques, tools and arrangements that enable them to comply with the obligations set out in Article 312-48;
- b) The allocation of responsibilities within the investment service provider pertaining to risk management.

IV.- The investment service provider shall ensure that the risk management policy referred to in I states the terms, contents and frequency of reporting of the risk management function referred to in Article 312-45 to the board of directors and to senior management and, where appropriate, to the supervisory function.

V.- For the purposes of this article, investment service providers shall take into account the nature, scale and complexity of their business and the individual portfolios they manage.

Paragraph 3 - Assessment, monitoring and review of risk management policy

Article 312-47

The investment service provider shall assess, monitor and periodically review:

- a) The adequacy and effectiveness of the risk management policy and procedures, and of the arrangements, processes and techniques referred to in Article 312-48;
- b) The level of compliance by the investment service provider and the relevant persons referred to in Article 2 of Delegated Regulation 2017/565 of the Commission of 25 April 2016 with the risk management policy and with the arrangements, processes and techniques referred to in Article 312-48;
- c) The adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process or shortcomings in these arrangements and procedures, including any failure by the relevant persons to comply with the requirements of these arrangements or procedures.

Sub-section 2 - Risk management processes, counterparty risk exposure and issuer concentration

Article 312-48

I.- Investment service providers shall adopt adequate and effective arrangements, processes and techniques to measure and manage at any time the risks which the individual portfolios they manage are or might be exposed to.

Those arrangements, processes and techniques shall be proportionate to the nature, scale and complexity of the business of the investment service providers and of the individual portfolios they manage, and be consistent with the risk profile of the individual portfolios managed.

II.- For the purposes of I, investment service providers shall take the following actions for each individual portfolio they manage:

- a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

- b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
- c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the individual portfolios they manage;
- d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each individual portfolio taking into account all risks which may be material to the individual portfolio as referred to in Article 312-44 and ensuring consistency with the risk profile of the individual portfolios;
- e) ensure that the current level of risk complies with the risk limiting system as set out in d) for each individual portfolio;
- f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches of the risk limiting system for the individual portfolio, result in timely remedial actions in the best interests of its clients.

III.-Investment service providers shall use an appropriate liquidity risk management process for each individual portfolio they manage.

This procedure shall, in particular, ensure that the investment service provider's ability to liquidate positions in an individual portfolio in accordance with the contractual requirements of the portfolio management mandate.

Chapter III - Financial instrument governance requirements (Articles 313-1 à 313-27)

[Article 313-1](#)

In this Chapter, any person or entity referred to in Article L. 533-24 of the Monetary and Financial Code that designs or manufactures a financial instrument, which encompasses the creation, development, issuance and design of financial instruments, shall be, as the case may be:

I.- A person or entity referred to in Article 311-1 (I to III).

II.- A person or entity authorised to provide one or several investment services in a State party to the European Economic Area agreement other than France, equivalent to that referred to in I.

III.- A person other than those referred to in I or II above.

Unless otherwise specified, in this Chapter, “manufacturer” means the persons and entities referred to in I.

[Article 313-2](#)

The provisions of section 2 of this Chapter are applicable to the distributors referred to in Article L. 533-24-1 of the Monetary and Financial Code and Article 311-1 (I to III).

Section 1 - Financial instrument governance obligations for manufacturers (Articles 313-3 à 313-17)

[Article 313-3](#)

The manufacturer shall comply with the provisions of this section when it manufactures financial instruments.

It shall comply, in a way that is appropriate and proportionate, with the provisions of Articles 313-4 to 313-17, taking into account the nature of the financial instrument, the investment service and the target market for the financial instrument.

[Article 313-4](#)

2022-06-11

The manufacturer shall establish, implement and maintain procedures and measures to ensure the manufacturing of financial instruments complies with the provisions on proper management of conflicts of interest, including remuneration.

In particular, the manufacturer shall ensure that the manufacturing of the financial instrument, including its features, does not adversely affect end clients or does not lead to problems with market integrity by enabling it to mitigate or transfer its own risks or exposure to any underlying assets of the financial instrument that it already holds on own account.

Article 313-5

The manufacturer must analyse potential conflicts of interest each time a financial instrument is manufactured.

In particular, it shall assess whether the financial instrument creates a situation where end clients may be adversely affected if they take, by investing in, buying, selling or establishing such an instrument:

- 1 • an exposure opposite to the one held by the manufacturer before investing in, purchasing or establishing the financial instrument; or
- 2 • an exposure opposite to the one that the manufacturer wants to hold after investing in, selling or establishing the financial instrument.

Article 313-6

The manufacturer should consider whether the financial instrument may represent a threat to the orderly functioning or to the stability of financial markets before deciding to proceed with the launch of the financial instrument.

Article 313-7

The manufacturer shall ensure that relevant staff involved in the manufacturing of financial instruments possess the necessary expertise to understand the characteristics and risks of these financial instruments.

Article 313-8

The manufacturer shall ensure that senior managers mentioned as applicable in points 1° and 2° of Articles L. 533-25 and L. 511 51 of the Monetary and Financial Code or in Article R. 123-40 of the Commercial Code have effective control over the financial instrument governance process.

It shall ensure that compliance reports to the senior managers mentioned in the previous subparagraph include information about the financial instruments manufactured by it, including information on the distribution strategy for these instruments.

It shall make the reports available to the AMF on request.

Article 313-9

The manufacturer shall ensure that the compliance function checks and monitors the development and periodic review of financial instrument governance arrangements in order to detect any risk of failure by it to comply with the obligations set out in this section.

Article 313-10

Where several manufacturers or one or several manufacturers and one or several other persons referred to in Article 313-1 (II) or (III) collaborate to develop, issue or design a financial instrument, these persons shall outline their mutual responsibilities under this collaboration in a written agreement.

Article 313-11

The manufacturer shall identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client for whose needs, characteristics and objectives the financial instrument is compatible.

As part of this process, it shall identify any group(s) of clients for whose needs, characteristics and objectives the financial

instrument is not compatible.

Where manufacturers or one manufacturer and one or several other persons referred to in Article 313-1 (II) collaborate to manufacture a financial instrument, only one target market needs to be identified.

Where the manufacturer is not also the distributor of a financial instrument, and where the financial instrument is distributed through one or several distributors, the manufacturer shall determine the financial instrument's compatibility with the needs and characteristics of clients based on:

- 1 • their theoretical knowledge of and past experience with:
 - a • the financial instrument or similar financial instruments; and
 - b • financial markets; and
- 2 • the needs, characteristics and objectives of potential end clients.

Article 313-12

I.- The manufacturer shall undertake an analysis for each financial instrument that it manufactures to assess:

- 1 • the risks of poor outcomes for end clients posed by the financial instrument; and
- 2 • in which circumstances these outcomes may occur.

II.- It shall assess the financial instrument under negative conditions covering what would happen if, for example:

- 1 • the market environment deteriorates;
- 2 • the manufacturer or a third party involved in manufacturing and or functioning of the financial instrument experiences financial difficulties or other counterparty risk materialises for the manufacturer or the third party;
- 3 • the financial instrument fails to become commercially viable; or
- 4 • demand for the financial instrument is much higher than anticipated, compromising its financial position or disrupting the market of the underlying assets.

Article 313-13

The manufacturer shall determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:

- 1 • the financial instrument's risk/reward profile is consistent with the target market; and
- 2 • financial instrument design is driven by features that are in the client's interest and not by a business model that relies on poor client outcomes if the instrument is to be profitable for the manufacturer.

Article 313-14

The manufacturer shall consider the charging structure proposed for the financial instrument, including by examining the following:

- 1 • financial instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market;

2022-06-11

- 2 • costs and charges do not undermine the financial instrument's return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument; and
- 3 • the charging structure of the financial instrument is appropriately transparent for the target market, and does not disguise charges or make them too complex to understand.

Article 313-15

The manufacturer shall ensure that the provision of information to distributors includes information about the appropriate channels for distribution of the financial instrument, the financial instrument approval process and the target market assessment and is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly.

Article 313-16

The manufacturer shall review the financial instruments it manufactures on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market.

It shall consider if the financial instrument remains consistent with the needs, characteristics and objectives of the target market and if it is being distributed to the target market, or is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.

Article 313-17

I.- The manufacturer shall:

- 1 • review, if it is aware of any event that could materially affect the potential risk to investors, any financial instrument prior to:
 - a • any further issue of financial instruments with similar characteristics;
 - b • any issue of a financial instrument that is fungible with a previously issued financial instrument; or
 - c • any new financial contract; and
- 2 • conduct reviews at regular intervals to assess whether the financial instrument functions as intended.

II.- It shall determine how regularly to review manufactured financial instruments based on relevant factors, including factors linked to the complexity or the innovative nature of the investment strategies pursued.

III.- It shall also identify crucial events that would affect the potential risk or return expectations of the financial instrument, such as:

- 1 • the crossing of a threshold that will affect the return profile of the financial instrument; or
- 2 • the solvency of certain issuers whose securities or guarantees may impact the performance of the financial instrument.

IV.- When such events occur, it shall take appropriate action which may consist in:

- 1 • providing relevant information on the event and its consequences on the financial instrument to the clients or the distributors of the financial instrument if the manufacturer does not offer or sell the financial instrument directly;
- 2 • changing the financial instrument approval process;
- 3 • stopping further issuance of the financial instrument;

2022-06-11

- 4 • changing the financial instrument's contractual stipulations to avoid any unfair terms;
- 5 • considering whether the sales channels through which the financial instruments are distributed are appropriate where it becomes aware that the financial instrument is not being sold as envisaged;
- 6 • contacting the distributor to discuss a modification of the distribution process;
- 7 • terminating the relationship with the distributor; or
- 8 • informing the AMF.

Section 2 - Financial instrument governance obligations for distributors (Articles 313-18 à 313-27)

Article 313-18

The distributor, when deciding the range of financial instruments manufactured by itself or other persons and services it intends to offer or recommend to clients, shall comply, in a way that is appropriate and proportionate, with the requirements laid down in Articles 313-19 to 313-27, taking into account the nature of the financial instrument, the investment service and the target market for the financial instrument.

Distributors shall also comply with the provisions of this section when offering or recommending financial instruments manufactured by a manufacturer referred to in Article 313-1 (III).

It shall have in place effective arrangements to ensure that it obtains sufficient information about these financial instruments from the person mentioned in the previous subparagraph.

It shall determine the target market for each financial instrument, even if the target market was not defined by the manufacturer referred to in Article 313-1 (I to III).

Article 313-19

The distributor shall have in place adequate financial instrument governance arrangements to ensure that financial instruments and services it intends to offer or recommend are compatible with the needs, characteristics, and objectives of an identified target market and that the intended distribution strategy is consistent with the identified target market.

It shall identify and assess the circumstances and needs of the clients it intends to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures.

As part of this process, it shall identify any group(s) of clients for whose needs, characteristics and objectives the financial instrument or service is not compatible.

The distributor shall obtain from the manufacturer or the person referred to in Article 313-1 (II) information to gain the necessary understanding and knowledge of the financial instruments it intends to recommend or sell in order to ensure that these instruments will be distributed in accordance with the needs, characteristics and objectives of the identified target market.

The distributor shall also take all reasonable steps to ensure it also obtains adequate and reliable information from any person referred to in Article 313-1 (III) to ensure that financial instruments will be distributed in accordance with the characteristics, objectives and needs of the target market.

Where relevant information is not publicly available, the distributor shall take the necessary steps to obtain such relevant information from the person referred to in Article 313-1 (III) or from anyone acting on that person's behalf.

Acceptable publicly available information is information which is clear, reliable and produced to meet legal or regulatory

2022-06-11

requirements, such as investor disclosure requirements under Directive 2003/71/EC of 4 November 2003 or Directive 2004/109/EC of 15 December 2004.

This obligation applies to products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is obtainable and the complexity of the product.

The distributor shall use the information obtained from the persons referred to Article 313-1 (I to III) and information on its own clients to identify the target market and distribution strategy.

When a distributor acts both as a manufacturer and a distributor, only one target market assessment shall be required.

Article 313-20

When deciding the range of instruments and services that it offers or recommends and the respective target markets, the distributor shall establish and maintain procedures and measures to ensure compliance with all applicable provisions under Directive 2014/65/EU of 15 May 2014 including those relating to client disclosure, assessment of suitability or appropriateness of the financial instrument for the client, inducements and proper management of conflicts of interest.

Particular care shall be taken when it intends to offer or recommend new financial instruments or there are variations to the services it provides.

Article 313-21

The distributor shall periodically review and update its financial instrument governance arrangements in order to ensure that they remain robust and fit for their purpose, and take appropriate actions where necessary.

Article 313-22

The distributor shall review the financial instruments it distributes and the services it provides on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market.

It shall assess whether the instrument or service remains consistent with the needs, characteristics and objectives of the identified target market and whether the intended distribution strategy remains appropriate.

It shall modify the identified target market and if necessary update the product governance arrangements if it becomes aware that it has wrongly identified the target market for a specific financial instrument or service or that the instrument or service no longer meets the expectations of the identified target market, and notably if the financial instrument becomes illiquid or very volatile due to market changes.

Article 313-23

The distributor shall ensure that its compliance function checks the conditions and procedures for the development and periodic review of financial instrument governance arrangements in order to detect any risk of failure to comply with the obligations set out in this section.

Article 313-24

The distributor shall ensure that relevant persons possess the necessary expertise to understand the characteristics and risks of the financial instruments that it intends to distribute and the services provided as well as the needs, characteristics and objectives of the identified target market.

Article 313-25

The distributor shall ensure that senior managers mentioned as applicable in points 1° and 2° of Articles L. 533-25 and L. 511-51 of the Monetary and Financial Code or in Article R. 123-40 of the Commercial Code or the management body of an asset management company have effective control over the financial instrument governance process to determine the range of financial instruments that it distributes and the services provided to the target markets.

2022-06-11

It shall ensure that the compliance reports referred to in Article 22(2)(c) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 provided to the senior managers mentioned in the previous subparagraph include information about the financial instruments distributed and the services provided. The compliance reports shall be made available to the AMF on request.

[Article 313-26](#)

The distributor shall provide to the relevant manufacturer or person referred to in Article 313-1 (II) with information on sales and, where appropriate, information on the reviews that it has conducted pursuant to Articles 313-21 to 313-23 to support the manufacturer or person referred to in Article 313-1 (II) when it carries out the reviews referred to in Articles 313-9, 313-16 and 313 17.

[Article 313-27](#)

Where different distributors work together in the distribution of a financial instrument or service, any distributor with a direct client relationship has ultimate responsibility to meet the product governance obligations set out in this section.

A distributor acting as an intermediary shall:

- 1 • ensure that relevant information about the financial instrument obtained from the manufacturer or person referred to in Article 313-1 (II) is passed to the final distributor in the chain;
- 2 • take the necessary measures to enable the manufacturer or the person referred to in Article 313-1 (II) who requests information on sales of a financial instrument to obtain that information in order to comply with their own financial instrument governance obligations; and
- 3 • apply the financial instrument governance obligations for manufacturers, as relevant, within the framework of the services that it provides.

Chapter IV - Conduct of business rules (Articles 314-1 à 314-31)

Commission delegated regulation (EU) [2017/565](#) of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Section 1 - General provisions (Articles 314-1 à 314-4)

[Article 314-1](#)

The provisions of this Chapter shall not apply to branches established in other States party to the European Economic Area agreement by investment services providers authorised in France.

Investment services providers shall ensure that relevant persons are reminded that they are bound by the obligation of professional confidentiality, subject to the terms and penalties prescribed by law.

For the purposes of this Chapter, the term "client" shall designate existing and potential clients.

Sub-section 1 - Approval of codes of conduct

[Article 314-2](#)

Where a professional organisation draws up a code of conduct applicable to investment services, the AMF shall verify whether the code's provisions are consistent with this General Regulation.

The professional organisation may ask the AMF to approve all or part of the code as professional standards.

If, having sought the opinion of the *Association Française des Etablissements de Crédit et des Entreprises d'Investissement* (AFECEI), the AMF considers that some or all the provisions of such code should be recommended to investment services providers, the AMF shall announce its decision by publishing it on its website.

Sub-section 2 - Primacy of the client's interest and market integrity

[Article 314-3](#)

Investment services providers shall act honestly, fairly and professionally, with due skill, care and diligence, in the best interests of clients and the integrity of the market. More specifically, they shall comply with all the rules pertaining to the organisation and operation of trading platforms that they use.

Sub-section 3 - Client categories

[Article 314-4](#)

[Removed by Decree of 10 april 2020]

Section 2 - Information to customers (Articles 314-5 à 314-7)

Sub-section 1 - Information media

[Article 314-5](#)

A durable medium is any instrument which enables a client to store information addressed personally to that client in a way that affords easy access for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

Sub-section 2 - Marketing communications

[Article 314-6](#)

The AMF may require investment services providers to submit to it their marketing communications for the investment services that they provide and the financial instruments that they offer prior to publication, distribution or broadcast.

It may require changes to the presentation or the content to ensure that the information is accurate, clear and not misleading.

[Article 314-7](#)

Article L. 533-12-7 of the Monetary and Financial Code applies to categories of financial contracts with any of the following characteristics:

- depending on whether a condition specified in the contract is met or not, they give rise upon the contract's expiry either to the payment of a predetermined gain or the partial or total loss of the amount invested;
- they give rise to the payment of a positive or negative differential between the price of an underlying asset or basket of assets at the time the contract has been entered into and the price at which the position is closed out, and can oblige the client to pay an amount greater than the amount invested at the time the contract has been entered into;
- their underlying asset is a currency or basket of currencies.

Section 3 - Assessment of the suitability and appropriateness of the service to be provided (Article 314-8)

[Article 314-8](#)

For the purposes of 2° of III of Article L. 533-13 of the Monetary and Financial Code, a service may be deemed to have been provided at the client's initiative if the client requests it following any communication containing a promotion or offer of financial

instruments made by any means and which is nature a general communication addressed to the public or a broader group or category of clients.

A service may not be deemed to have been provided at the client's initiative if the client requests it following a personalised communication addressed to him by the investment services provider or in its name that invites the client, or attempts to invite the client, to take an interest in a given financial instrument or transaction.

Section 4 - Verification of the level of knowledge and assessment of the knowledge and skills of the persons providing investment advice or information (Articles 314-9 à 314-10)

Article 314-9

I.- The investment services provider shall ensure that natural persons acting on its behalf as sales personnel have the minimum qualification as well as a sufficient level of knowledge.

Sales personnel shall mean any natural person responsible for providing investment advices or informations on financial instruments, investment or ancillary services, to the clients of the investment services provider on whose behalf he is acting;

II. - It verifies that the sales personnel can prove they have the minimum level of knowledge set forth in Point 1° of II of Article 312-5:

III. - The investment services provider shall not carry out the verification provided for in II with regard to persons employed as at 1 July 2010. Persons having passed one of the examinations referred to in Point 3° of II of Article 312-5 shall be deemed to have the minimum knowledge required to perform their duties.

IV. - To conduct the verification referred to in II, the investment services provider has six months from the date on which the employee starts to perform one of the above functions. However, where the employee has been taken on under a work/study contract, as provided in Articles L. 6222-1 and L. 6325-1 of the labour code, the investment services provider may not conduct such verification. If it decides to hire the employee when his or her training period finishes, the investment services provider shall ensure that he or she has the minimum qualification as well as a sufficient level of knowledge as referred to in I, at the latest by the end of the contract training period.

The investment services provider shall ensure that any employee whose minimum knowledge has not yet been verified is appropriately supervised.

Article 314-10

When an investment services provider ensures that the persons who provide investment advice or information on financial instruments, investment services or ancillary services to clients, on its behalf, possess the necessary knowledge and competence in accordance with Article L. 533-12-6 of the Monetary and Financial Code, it may consider that it has fulfilled its obligations in terms of the verification of the minimum knowledge levels provided for in II of Article 314-9, subject to the regular update of their skills and knowledge.

An investment services provider shall ensure that the persons referred to in the first paragraph, when they do not yet possess an appropriate level of knowledge and competence, acquire them within a period of six months full-time equivalent from the date on which they took on their functions. During this period, these persons shall be supervised by one or more member(s) of the staff of the investment services provider who possess the adequate qualifications and experience.

Section 5 - Clients agreements (Articles 314-10-1 à 314-11)

Sub-section 1 - Changes to agreements entered into before 3 January 2018

Article 314-10-1

Without prejudice to the provisions of Article 314-26, investment services providers that concluded agreements with clients before 3 January 2018 shall inform such clients before that date of any changes made to comply with client disclosure obligations

2022-06-11

introduced by the provisions of the Monetary and Financial Code implementing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and the European regulations completing this Directive and the provisions introduced by the present Book.

If no objection has been expressed by the client within a period of two months following this communication, this implies acceptance of said changes.

Sub-section 2 - Agreements entered into retail clients

Article 314-11

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.

Section 6 - Order handling and execution when providing the portfolio management service (Article 314-12)

Commission delegated regulation (EU) [2017/565](#) of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Commission delegated regulation (EU) [2017/575](#) of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions

Commission delegated regulation (EU) [2017/576](#) of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution

Article 314-12

Investment services providers providing portfolio management services shall define the planned allocation of the orders they give beforehand. As soon as they learn that their orders have been executed, they shall transmit to the account keeper exact instructions for the allocation of the orders executed to the beneficiaries. This allocation shall be final.

Section 7 - Inducements and fees (Articles 314-13 à 314-30)

Sub-section 1 - General provisions relating to inducements

Article 314-13

Where the investment services provider pays or is paid any fee or commission or provides or is provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service to the client, it shall ensure that all the conditions set out in Article L. 533-12-4 of the Monetary and Financial Code and the requirements set out in Articles 314-14 to 314-17 are met at all times.

Article 314-14

A fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

- 1 • it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of

inducements received, such as:

- a •** the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product manufacturers having no close links with the service provider;
- b •** the provision of non-independent investment advice combined with either:
 - an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested; or
 - another ongoing service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client;
- c •** the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party manufacturers having no close links with the service provider, together with:
 - either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which it has invested; or
 - the provision of periodic reports of the performance and costs and charges associated with the financial instruments;
- 2 •** it does not directly benefit the recipient service provider, its shareholders or employees without tangible benefit to the relevant client;

- 3 •** it is justified by the provision of an ongoing benefit to the relevant client in relation to an ongoing inducement.

A fee, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

Article 314-15

The investment services provider shall fulfil the obligations set out in Article 314-14 as long as it continues to pay or receive the fee, commission or non-monetary benefit.

Article 314-16

The investment services provider shall hold evidence that any fees, commissions or non-monetary benefits paid or received by it are designed to enhance the quality of the relevant service to the client:

- 1 •** by keeping an internal list of all fees, commissions and non-monetary benefits received from a third party in relation to the provision of investment or ancillary services; and
- 2 •** by recording:
 - a •** how the fees, commissions and non-monetary benefits paid or received by it, or that it intends to use, enhance the quality of the services provided to the relevant clients; and
 - b •** the steps taken in order to comply with its duty to act honestly, fairly and professionally in accordance with the best interests of the client.

[Article 314-17](#)

As regards any payment or benefit received from or paid or provided to third parties, the investment services provider shall disclose the following information to the client:

- 1 • prior to the provision of the relevant investment or ancillary service, it shall disclose to the client information on the payment or benefit concerned in accordance with the second subparagraph of Article L. 533-12-4 of the Monetary and Financial Code.

Minor non-monetary benefits may be described in a generic way.

Other non-monetary benefits provided or received in connection with the investment service provided to the client shall be priced and disclosed separately.

- 2 • prior to the provision of an investment or ancillary service to a client, where it has been unable to ascertain the amount of any payment or benefit to be received or paid, it shall disclose to the client the method for calculating that amount. In this case, after providing the service, it shall provide its client with information on the exact amount of the abovementioned payment or benefit received or paid; and
- 3 • at least once a year, as long as ongoing fees, commissions or benefits are received by it in relation to the investment or ancillary services provided to the relevant clients, it shall inform its clients on an individual basis about the actual amount of payments or benefits received, paid or provided.

Minor non-monetary benefits may be described in a generic way.

Where the investment services provider implements the obligations mentioned in this article, it shall take into account the provisions on costs and charges set out in point 3° of Article D. 533-15 of the Monetary and Financial Code and in Article 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

Where more firms are involved in a distribution channel, each investment services provider providing an investment or ancillary service shall comply with its disclosure obligations to its own clients.

[Article 314-17-1](#)

Pursuant to the second subparagraph of Article L. 533-12-4 of the Monetary and Financial Code, the dissemination by the issuer of the prospectus required pursuant to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 fulfils the obligation to disclose, to professional clients, the information that may be required by Article 314-17 on the investment commission charged by the investment services provider when the latter provides an investment service to an investor client. This article does not apply when the investment services provider provides investment advice to its clients.

Sub-section 2 - Inducements in respect of investment advice on an independent basis or portfolio management services for third parties

[Article 314-18](#)

Where the investment services provider provides investment advice on an independent basis or portfolio management services for third parties, it shall return to its client any fees, commissions or any monetary benefits paid or provided by a third party or anyone acting on behalf of a third party in relation to the services provided to that client as soon as reasonably possible after receipt.

All fees, commissions or monetary benefits received from third parties in relation to the provision of independent investment advice or portfolio management services for third parties shall be transferred in full to the client.

It shall set up and implement a policy to ensure that any fees, commissions or any monetary benefits paid or provided by a third party or anyone acting on behalf of a third party in relation to the provision of independent investment advice or portfolio management services for third parties are allocated and transferred to each individual client.

It shall inform clients about the fees, commissions or any monetary benefits transferred to it, such as through the periodic reporting statements provided to the client.

Article 314-19

Where the investment services provider provides investment advice on an independent basis or portfolio management services for third parties, it shall not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits in accordance with Article 314-20.

Article 314-20

Only the following benefits shall qualify as acceptable minor non-monetary benefits:

- 1 • information or documentation relating to a financial instrument or an investment service, which is generic in nature or personalised to reflect the circumstances of an individual client;
- 2 • written material from a third party:
 - a) that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company; or
 - b) where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis;provided that the material:
 - a) clearly discloses the relationship between the issuer and the third party; and
 - b) is made available at the same time to any investment services provider wishing to receive it or to the general public;
- 3 • participation in conferences, seminars and other training or information events on the benefits and features of a specific financial instrument or an investment service;
- 4 • hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training or information events mentioned under point 3° of this article; and
- 5 • other minor non-monetary benefits which the AMF deems:
 - a) capable of enhancing the quality of service provided to a client; and
 - b) having regard to the total level of benefits provided by one entity or group of entities, to be of a scale and nature that are unlikely to impair compliance with the service provider's duty to act in the best interest of the client.

Acceptable minor non-monetary benefits shall be reasonable and proportionate and of such a scale that they are unlikely to influence the service provider's behaviour in any way that is detrimental to the interests of the relevant client.

Disclosure of minor non-monetary benefits shall be made prior to the provision of the relevant investment or ancillary services to clients.

In accordance with Article 314-17(1), minor non-monetary benefits may be described in a generic way.

Sub-section 3 - Provisions concerning inducements in relation to research

Article 314-21

In this paragraph, "research" means research material or services concerning:

2022-06-11

1 • one or several financial instruments or other assets; or

2 • the issuers or potential issuers of financial instruments; or

3 • a specific industry or market;

such that it informs views on financial instruments, assets or issuers within that sector or market.

That type of material or services:

1 • explicitly or implicitly recommends or suggests an investment strategy and provides a substantiated opinion as to the present or future value or price of such instruments or assets; or

2 • contains analysis and original insights and reaches conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the decisions by the investment services provider on behalf of clients being charged for that research.

Article 314-22

I.- The provision of research by third parties to investment services providers other than asset management companies that provide portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for either of the following:

1 • Direct payments by the service provider out of its own resources;

2 • Payments from a separate research payment account controlled by the investment service provider, provided the following conditions relating to the operation of the account are met:

a • the research payment account is funded by a specific research charge to the client;

b • as part of establishing a research payment account and agreeing the research charge with clients, the investment service provider shall set and regularly assess a research budget as an internal administrative measure;

c • the investment service provider is held responsible for the research payment account;

d • the investment service provider regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

II.- Where an investment services provider makes use of the research payment account, it shall provide the following information to clients:

1 • before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them;

2 • annual information on the total costs that each of them has incurred for third party research.

Article 314-23

The investment services provider that operates a research payment account shall also be required, upon request by its clients or by the AMF, to provide a document indicating:

1 • the providers paid from this account;

2022-06-11

2 • the total amount they were paid over a defined period;

3 • the benefits and services received by it; and

4 • how the total amount spent from the account compares to the budget set by the service provider for that period, noting any rebate or carry-over if residual funds remain in the account.

For the purposes of Article 314-22 (I)(2)(a), the specific research charge shall:

1 • only be based on a research budget set by the investment service provider based on the need for third party research estimated to be necessary in order to provide investment services to clients; and

2 • not be linked to the volume or value of transactions executed on behalf of the clients.

Article 314-24

If research charges are included alongside a transaction commission and cannot be collected separately, the operational arrangement for the collection of client research charges shall enable these research charges to be separately identified and must comply with the conditions set out in Article 314-22 (I)(2) and (II).

Article 314-25

The total amount of research charges received may not exceed the research budget.

Article 314-26

The investment services provider shall agree with clients, in the portfolio management agreement or general terms of the service delivery contract:

1 • the research charge set out in its estimated budget; and

2 • the frequency with which the specific research charge will be charged to the budget over the period.

Clients shall be informed clearly and in advance of any increase in the estimated research budget.

If there is a surplus in the research payment account at the end of a period, the investment service provider should implement arrangements to rebate those funds to the client or to allocate them to the research budget for the following period.

After the client has been informed and given the opportunity to express its disagreement, where applicable, the client agreement referred to in the first subparagraph shall be deemed to be obtained where:

1 • the planned research charge budget for a given period does not result in an increase in the total charges paid by the client compared with the previous equivalent period; and

2 • the frequency with which the investment service provider plans to charge specific research charges to the client over a given period is equivalent to that planned for the previous period for other charges.

Article 314-27

For the purposes of applying Article 314-22 (I)(2)(b), the research budget shall be managed solely by the investment service provider.

This budget shall be based on a reasonable assessment of the need for third party research.

2022-06-11

The allocation of the research budget to purchase third party research shall be subject to appropriate controls and oversight by the management body to ensure it is managed and used in the best interests of the investment service provider's clients.

Those controls include a clear audit trail of payments made to research providers and may be used to check that the amounts paid were determined with reference to the quality criteria referred to in Article 314-22 (1)(2)(d).

The investment services provider shall not use the research budget and research payment account to fund internal research.

Article 314-28

For the purposes of applying Article 314-22 (1)(2)(c), the investment services provider may delegate the administration of the research payment account to a third party, provided that the arrangement facilitates the purchase of third party research and payments to research providers in the name of the service provider without any undue delay in accordance with the investment services provider's instruction.

Article 314-29

For the purposes of applying Article 314-22 (1)(2)(d), the investment services provider shall establish a written policy and provide it to its clients.

This policy shall also identify situations in which the investment service provider considers that research purchased through the research payment account may benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the investment services provider will take to allocate such costs fairly to the various clients' portfolios.

Where the investment services provider provides execution services, it shall identify separate charges for these services that only reflect the cost of executing the transaction.

Charges relating to the provision of any other benefit or service by an investment services provider to another investment services provider established in a State party to the European Economic Area agreement shall be separately identified.

The supply of benefits or services and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

Sub-section 4 - Portfolio management services' trading costs

Article 314-30

All fees and commissions paid by clients for transactions in portfolios under management, with the exception of subscription and redemption transactions relating to collective investment schemes or investment funds of third countries, shall be trading costs. They include:

- 1 • Intermediation costs, taxes and duties included, charged directly or indirectly by third parties that provide:
 - a • Order reception and transmission services and order execution services on behalf of third parties referred to in Article L. 321-1 of the Monetary and Financial Code;
 - b • Services referred to in Article L. 321-2 (4) of the Monetary and Financial Code charged under the conditions set out in Article 314-24 and order execution services specified in an AMF Instruction;
- 2 • If applicable, a turnover commission.

Section 8 - Obligations in the case of offers of financial securities or minibons via a website (Article 314-31)

Article 314-31

2022-06-11

Investment services providers authorised before 10 November 2021 to provide the investment service referred to in point 5 of Article L. 321-1 of the Monetary and Financial Code and offering financial securities via a website as provided for in Article 325-48 in the version applicable before the date of publication of the Order of 9 March 2022 approving the amendments to the AMF General Regulation, shall remain subject to the provisions of Article 314-31 in the version applicable before the date of publication of the aforementioned Order until 10 November 2022 or until they have obtained their authorisation to operate as a crowdfunding service provider, whichever date comes first.

Chapter V - Other provisions (Articles 315-1 à 315-23)

Commission delegated regulation (EU) [2017/567](#) of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions

Commission delegated regulation (EU) [2017/582](#) of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing

Commission delegated regulation (EU) [2017/591](#) of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives

Commission implementing regulation (EU) [2017/1093](#) of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators

Commission implementing regulation (EU) [2017/953](#) of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

Commission delegated regulation (EU) [2017/2417](#) of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives.

Section 1 - Management of inside information and restrictions to be applied within authorised investment services providers (Articles 315-1 à 315-6)

Regulation (EU) No [596/2014](#) of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

Sub-section 1 - Rules to prevent undue circulation of inside information

[Article 315-1](#)

Investment services providers shall establish and maintain effective and adequate procedures to control the circulation and use of inside information, as defined in Article 7 of Regulation (EU) n° 596/2014 of the European Parliament and of the Council of 16 April 2014, with the exception of paragraph 1.c of that same Article, taking into account the activities conducted (same Regulation) by

2022-06-11

the group to which the investment services provider belongs and the organisation adopted by that group. These procedures, called "information barriers", shall provide for:

- 1 • Identification of business segments, divisions, departments or any other entities likely to possess inside information;
- 2 • Organisation, in particular physical organisation, so as to separate entities within which the relevant persons referred to in Paragraph 1 of Article 2 of Delegated Regulation (EU) n° 2017/565 are likely to possess inside information;
- 3 • Prohibition of disclosure of inside information by the persons possessing it to other persons, except as provided for in Article 10 of Regulation (EU) n° 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and after informing the compliance officer;
- 4 • The conditions in which the investment service provider may authorise a relevant person assigned to a given entity to provide assistance to another entity, whenever one of the two entities is likely to possess inside information. The compliance officer shall be informed whenever the relevant person assists the entity possessing inside information;
- 5 • The manner in which the relevant person benefiting from the authorisation provided for in 4° is informed of the temporary consequences thereof on the performance of his regular duties.

The compliance officer shall be informed when this person returns to his regular duties.

Sub-section 2 - Watch list

Article 315-2

To ensure compliance with the abstention requirement set forth in Articles 8, 10 and 14 of Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014, investment services providers shall establish and maintain an appropriate procedure for monitoring the issuers and financial instruments on which they have inside information. This monitoring shall be proportionate to the risks identified and will concern, where applicable:

- 1 • transactions in financial instruments by the investment services provider for its own account;
- 2 • personal transactions, as defined in Article 29 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, made by or on behalf of the relevant persons mentioned in the same Regulation;
- 3 • investment research as defined in Article 36.1 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

To this end, the investment services provider shall draw up a watch list of the issuers on which it has inside information.

The relevant entities shall inform the compliance officer at once when they believe they possess inside information.

In such case, the issuer shall be put on the watch list, under the supervision of the compliance officer.

The relevant entities shall inform the compliance officer when they believe that information they had previously reported pursuant to the sixth subparagraph has ceased to be inside information. The contents of the watch list are confidential.

Dissemination of items on the watch list is restricted to the persons designated by name in the procedures referred to in the first subparagraph of 315-1.

Article 315-3

The investment services provider shall exercise supervision in accordance with the procedures set forth in Article 315-2. It shall take appropriate measures if it detects an anomaly.

2022-06-11

The investment services provider shall keep a record on a durable medium of the measures it has taken in the event of an anomaly or, if it takes no measures, of the reasons for so doing.

Sub-section 3 - Restricted list

Article 315-4

I. - Investment services providers shall establish and maintain an appropriate procedure for monitoring compliance with any restrictions that apply to:

- 1 • transactions in financial instruments by the investment services provider for its own account;
- 2 • personal transactions, as defined in Article 28 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, made by or on behalf of the relevant persons referred to in Paragraph 1 of Article 29 of the same Regulation;
- 3 • investment research as defined in Article 36.1 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

II. - To this end, the investment services provider shall establish a restricted list. This list includes those issuers in which the investment services provider must restrict its activities, or the activities of relevant persons, because of:

- 1 • legal or regulatory provisions to which the investment services provider is subject other than those resulting from the abstention requirements set forth in Articles 8, 10 and 14 of Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014;
- 2 • the application of undertakings given on the occasion of a financial transaction.

When an investment services provider deems it necessary to prohibit or restrict the performance of an investment service, an investment activity or an ancillary service in respect of certain issuers or financial instruments, those issuers and/or financial instruments shall also be included on the restricted list.

Article 315-5

Investment services providers shall determine, based on the restricted list, which entities are subject to the restrictions referred to in Article 315-4 and how those restrictions shall apply.

They shall inform the relevant persons affected by the restrictions of the list and the nature of the restrictions.

Sub-section 4 - Listing of a company's securities on a regulated market in financial instruments

Article 315-6

In allotting securities, the lead manager, in cooperation with the company concerned, ensures that the various categories of investors, other than those connected with the issuer (e.g. suppliers, clients, shareholders, senior managers, employees or third parties whom such persons are authorised to represent), are treated fairly. When several allotment procedures intended specifically for individual investors are applied concurrently, the lead manager shall ensure that the allotment percentages resulting therefrom are substantially equivalent.

The lead manager shall make its best efforts to satisfy demand for the securities from individual investors to a meaningful extent. This objective is deemed to have been met when there is a procedure, centralised by the market operator and characterised by an allotment proportional to applications submitted, under which at least 10% of the overall offering amount is put on the market and made accessible to individual investors.

The lead manager shall endeavour to avoid an obvious imbalance, to the detriment of individual investors, between the allotment for such investors and the allotment for institutional investors. Thus, when a placing procedure intended specifically for institutional investors coexists with one or more procedures intended specifically for individual investors, the lead manager shall

endeavour to provide for a transfer mechanism to avoid an imbalance of the kind mentioned above.

Section 2 - Derogations to the publication of transactions (Article 315-7)

Regulation (EU) No [600/2014](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation

Commission Delegated Regulation (EU) [2017/583](#) of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

Commission Delegated Regulation (EU) [2017/590](#) of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

Commission Delegated Regulation (EU) [2017/587](#) of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

[Article 315-7](#)

The AMF may authorise an investment services provider to defer the publication of transactions in the financial instruments referred to in paragraph 1 of Article 21 of Regulation (EU) No 600/2014 of 15 May 2014 in the cases described in paragraph 4 of this same Article.

Section 3 - Obligations of investment services providers relating to the prevention of money laundering and terrorist financing (Article 315-8)

[Article 315-8](#)

Investment services providers shall have organisational structures and procedures that enable them to comply with the vigilance and disclosure requirements provided for in Title VI of Book V of the Monetary and Financial Code relating to the fight against money laundering and terrorist financing.

Section 4 - Handling and monitoring of subscription applications and book entry (Article 315-9)

[Article 315-9](#)

Investment services providers authorised before 10 November 2021 to provide the investment service referred to in point 5 of Article L. 321-1 of the Monetary and Financial Code and offering financial securities via a website as provided for in Article 325-48 in the version applicable prior to the date of publication of the Order of 9 March 2022 approving the amendments to the AMF General Regulation, shall remain subject to the provisions of Article 315-9 in the version applicable before the date of publication of the aforementioned Order until 10 November 2022 or until they have obtained their authorisation to operate as a crowdfunding service provider, whichever date comes first.

Section 5 - Accepted market practices (Article 315-10)

Regulation (EU) No [596/2014](#) of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

Commission Delegated Regulation (EU) [2016/908](#) of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance

[Article 315-10](#)

To benefit from the exemption provided for by Article 13 of Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, any investment services provider using an accepted market practice shall comply with the requirements set out in the AMF decision that established said accepted market practice in application of the above-mentioned Regulation.

Section 6 - Provisions for orders with instructions for deferred settlement and delivery and derivatives markets (Articles 315-11 à 315-23)

Sub-section 1 - Orders with instructions for deferred settlement and delivery

[Article 315-11](#)

The provisions of Articles 315-12 to 315-22 shall apply to authorised investment services providers receiving orders for deferred settlement and delivery as well as to custody account keepers.

Where the market rules provide for the possibility referred to in the first paragraph of Article 516-1, an investment services provider who receives an order for deferred settlement or delivery shall not accept it unless the investor remits a margin deposit, either in the provider's books or in the books of the custody account keeper if the provider does not perform that function.

[Article 315-12](#)

An investment services provider who does not keep his client's account cannot consent to transmit or execute an order for deferred settlement and delivery unless it is able, under an agreement with the client's custody account keeper, to ascertain that the necessary margin has been duly deposited with the custody account keeper before it transmits or executes that order.

The investment services provider who keeps the client's account shall be subject to the provisions of this section.

[Article 315-13](#)

The investment services provider shall be subject to the rules governing the posting and composition of clients' mandatory margin deposits.

Margin is calculated as a percentage of the position and according to the type of assets pursuant to the following indications:

- 1 • cash (euros and other currencies in circulation in the European Union), Treasury bills, units or shares of “short-term money market” or “money market” UCITS: 20%;
- 2 • debt instruments admitted for trading on a regulated market of a State that is party to the Agreement on the European Economic Area, negotiable debt securities and other debt instruments of States party to the Agreement on the European Economic Area, units or shares of UCITS classified as “bonds and other debt securities in euros”, units or shares of UCITS classified as “international bonds and other debt securities”: 25%;
- 3 • equity instruments admitted for trading on a regulated market of a State that is party to the Agreement on the European

2022-06-11

Economic Area, units or shares of UCITS classified as “French equities”, units or shares of UCITS classified as “eurozone equities”, units or shares of UCITS classified as “equities of European Union countries”, units or shares of UCITS classified as “international equities”: 40%.

[Article 315-14](#)

Should a client fail, within the required time period, to remit or top up the margin deposit or to fulfil the commitments arising from the order executed on his behalf, the investment services provider shall liquidate some or all of the client's commitments or positions.

The AMF can, where necessary, set more stringent margin deposit rules for a given financial instrument or market, either temporarily or permanently.

[Article 315-15](#)

Where a margin deposit consists of financial instruments, the investment services provider can legally refuse any such instrument that:

- 1 • it considers he would be unable to realise at any time or on his own initiative;
- 2 • it deems will not provide adequate collateral, having regard to the type of position to be collateralised.

In any event, long positions in a given financial instrument cannot be collateralised with the same financial instrument.

[Article 315-16](#)

Cheques cannot be accepted as margin until they have been cashed.

[Article 315-17](#)

An investment services provider must be able to inform his client, upon request, of the value of the margin deposited under the three categories set forth in article 315-13 and, pursuant to the same article, of the position that may be taken or the increase in an existing position that may be realised.

[Article 315-18](#)

The AMF can increase the minimum margin rates provided for in Article 315-13 for one or more designated financial instruments, as specified in that article. The new rates cannot come into force for at least two trading days after they have been published.

[Article 315-19](#)

Initial margin deposits are readjusted, if need be, in view of the daily marking to market of the position and the assets accepted as collateral therefor, so that the deposits comply at all times with the minimum regulatory requirement.

The investment services provider shall order the client, by any and all means, to top up or restore its collateral within one trading day.

If the collateral is not topped up or restored in due time, the investment services provider shall take the necessary measures so that the client's position is once again collateralised. Unless the provider and the client have agreed on a different procedure, the investment services provider shall begin by reducing the position before realising some or all of the collateral.

[Article 315-20](#)

Absent a contractual agreement, an investment services provider who wishes to increase the collateral on a client's position by higher rates than those provided for in article 315-13 shall warn the client of the new rates by registered letter with return receipt. That letter shall be sent at least eight calendar days before the effective date of the increase.

[Article 315-21](#)

Where an investment services provider reduces a client's position or realises some or all of its collateral, pursuant to the third

2022-06-11

paragraph of Article 315-19, it shall send the corresponding trade confirmations and account statements to the client by registered letter with return receipt.

Article 315-22

Notwithstanding the first paragraph of Article 315-12, a member of a regulated market who does not hold the account of a client is not required to ascertain that margin has been deposited if the order is sent to it by an investment services provider acting as an order receiver-transmitter.

Sub-section 2 - Derivatives markets

Article 315-23

An investment services provider who receives an order for execution on a regulated market in derivative financial instruments shall not accept such order unless the client remits a margin deposit, either in the provider's books or in the books of the custody account keeper if the provider does not perform that function.

By way of derogation from the first paragraph, where the client is a professional client or an eligible counterparty within the meaning of Articles D. 533-11 and D. 533-13 of the Monetary and Financial Code, the investment services provider may grant it a period of time in which to remit the margin. Such period may not exceed the period granted by the clearing house to the clearing member with whom the positions are recorded.

The margin referred to in the first paragraph shall be equal to or greater than that required by the market rules, if called from market members, or that required by the clearing house rules, if called from clearing house members. Since the aforementioned margin levels are minimum requirements, the investment services provider may, upon receiving the orders and at any time, call additional margin from the client.

If, in light of market conditions, the margin posted by the client falls below the amount required under the third paragraph, additional margin shall be deposited in the same conditions and time limits as those specified in the second and third paragraphs.

Should a client fail to post margin or remit additional margin within the above time limits, the investment services provider shall liquidate some or all of the client's commitments or positions.

Chapter VI - Systematic internalisers (Articles 315-24 à 315-26)

Regulation (EU) no [600/2014](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012

Commission Delegated Regulation (EU) [2017/565](#) of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Commission Delegated Regulation (EU) [2017/567](#) of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions

Commission Delegated Regulation (EU) [2017/575](#) of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions

Commission Delegated Regulation (EU) [2017/576](#) of 8 June 2016 supplementing Directive 2014/65/EU of the European

Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution

Commission Delegated Regulation (EU) [2017/583](#) of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

Commission Delegated Regulation (EU) [2017/585](#) of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities

Commission Delegated Regulation (EU) [2017/587](#) of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

Commission Delegated Regulation (EU) [2017/590](#) of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities

Section 1 - Informing the AMF (Article 315-24)

[Article 315-24](#)

A systematic internaliser within the meaning of Article L. 533-32 of the Monetary and Financial Code shall inform the AMF when it acts as a systematic internaliser for one of the categories of financial instruments mentioned in paragraph 1 of Articles 14 and 18 of Regulation (EU) No. 600/2014 of 15 May 2014 and when it ceases to act as a systematic internaliser for this category.

Section 2 - Derogations to the publication of transactions (Articles 315-25 à 315-26)

[Article 315-25](#)

A systematic internaliser may, in accordance with paragraph 2 of Article 18 of Regulation (EU) No 600/2014, be waived from pre-trade disclosure requirements in the cases described in paragraph 1 of Article 9 of said Regulation.

[Article 315-26](#)

The AMF may authorise systematic internalisers to defer publication of transactions in the financial instruments referred to in Article 21, paragraph 1 of Regulation (EU) No 600/2014 of 15 May 2014 in the cases described in paragraph 4 of said Article.

Title I bis - Asset management companies of AIFs (Articles 316-1 à 320-25)

[Article 316-1](#)

For the application of this Title:

- 1 • The term "asset management company" shall mean a French asset management company;
- 2 • The term "management company" shall mean a company established in another Member State of the European Union;
- 3 • The term "manager" shall mean a manager established in a third country.

I. - This Title is applicable:

- 1 • To asset management companies managing AIFs whose assets exceed the thresholds set out in Article R. 532-12-1 of the Monetary and Financial Code;
- 2 • To asset management companies managing the "Other AIFs" referred to in Article L. 214-24, III, 1 of the Monetary and Financial Code;
- 3 • To asset management companies or legal entities managing AIFs whose assets are below the thresholds set out in Article R. 532-12-1 of the Monetary and Financial Code or the "Other AIFs" referred to in Article L. 214-24, III, 2 and 3 of the Monetary and Financial Code or, in the case referred to in the last paragraph of the same Article L. 214-24, III, when these asset management companies or legal entities have chosen to submit these AIFs or "Other AIFs" to the present title.

II. - Unless otherwise provided, asset management companies authorised under Directive 2009/65/EC of the European Parliament and Council of 13 July 2009 and authorised under Directive 2011/61/EU of the European Parliament and Council of 8 June 2011 must apply Titles Ib and Ia of the present Book cumulatively.

III. - An asset management company may apply for authorisation to provide investment services comprising the reception and transmission of orders on behalf of a third party, portfolio management or investment advice referred to in 1, 4 and 5 of Article L. 321-1 of the Monetary and Financial Code.

IV. - When an asset management company is authorised to provide one or more of the investment services referred to in III or when it markets units or shares of AIFs or UCITS in France in accordance with Article 421-26 and Article 411-129, to perform these activities it shall comply with the provisions of this Title as well as the provisions applicable to investment services providers contained in Title I.

V. - When an asset management company markets financial instruments in France in accordance with Article L. 533-24-1 of the Monetary and Financial Code, it shall comply with section 2 of Chapter III of Title I.

VI. For the purposes of applying the present title, references to Member States of the European Union and to the European Union must be understood to include States parties to the Agreement on the European Economic Area.

Chapter I - Procedures for authorisation, programme of operations and passport (Articles 316-3 à 316-14)

Commission Implementing Regulation (EU) No [447/2013](#) of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council

Section 1 - Authorisation and programme of operations (Articles 316-3 à 316-9)

Sub-section 1 - Authorisation

[Article 316-3](#)

The authorisation of asset management companies referred to in Article L. 532-9 of the Monetary and Financial Code requires submission to the AMF of an application specifying the scope of the authorisation, together with a file complying with the model provided for in Article R. 532-10 of the said Code.

The application file must contain the following information:

- 1 • Information on the persons who effectively manage the activities of the asset management company;
- 2 • Information on the identity of the shareholders or members, either direct or indirect, of the asset management company who have qualifying holdings, and the amounts of such holdings;
- 3 • A programme of operations for each of the services that the asset management company intends to provide, specifying the conditions in which it expects to provide those services and indicating the type of transactions envisaged and its organisational structure. This programme of operations is completed, as appropriate, by any additional information corresponding to the assets used by the asset management company;
- 4 • Information about remuneration policies and practices;
- 5 • Information on the terms it has defined for delegating or sub-delegating its asset management company functions to third parties;
- 6 • Information about each AIF it manages or intends to manage;
- 7 • The rules or instruments of incorporation of each AIF it intends to manage;
- 8 • Information on the arrangements made for the appointment of the depositary for each AIF it intends to manage;
- 9 • All or any additional information provided for in the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code for each AIF it manages or intends to manage.

If the asset management company is already authorised by the AMF under Directive 2009/65/CE of the European Parliament and Council of 13 July 2009, it is not required to provide the AMF again with the information or documents it already supplied to it in its authorisation application under the said directive, provided that this information and these documents are up to date.

The AMF shall issue an acknowledgement of receipt when it receives this file.

Article 316-4

In deciding whether to grant authorisation to an asset management company, the AMF shall review the items in the file referred to in Article 316-3, along with the items set out in Chapter II of this Title. The AMF may require the applicant to produce any additional information it needs to make its decision.

It may restrict the scope of the authorisation, notably relating to the investment strategies of the AIFs the applicant shall be authorised to manage.

The AMF rules on the authorisation application within a period of three months as of submission of the full file.

It may extend this period by up to an additional three months if it deems necessary on account of the specific circumstances of the case at hand and after informing the applicant to this effect.

For the purposes of the present article, an application is deemed to be complete when the applicant's file contains at least the information referred to in points 1 to 4 and 6 of Article 316-3.

The applicant may commence its AIF management activity as soon as it receives its authorisation, but no earlier than one month after submitting all the missing information referred to in points 5 and 7 to 9 of Article 316-3.

The procedure and the terms and conditions of authorisation are set out in an AMF instruction.

The AMF informs the European Authority on a quarterly basis of the authorisations it has granted under the terms of the present Chapter.

Article 316-5

Any changes to the information contained in the authorisation file of the asset management company shall require, as applicable, a declaration, a notification or an application for prior approval to be made to the AMF.

On receiving the declaration, notification or application for prior approval from the asset management company, the AMF shall issue a receipt.

Pursuant to Article L. 532-9-1, II of the Monetary and Financial Code, when the asset management company submits an application for prior approval of a material change to the information contained in its authorisation file, the AMF shall have one month to inform it of its refusal or of any restrictions placed upon its application.

The AMF may, if the particular circumstances of the case at hand so justify, inform the asset management company of an extension of this deadline by a period of as much as one month.

The changes are implemented after the one-month assessment period as extended, if appropriate.

Sub-section 2 - Withdrawal of authorisation and deregistration

Article 316-6

Except in cases where the company requests withdrawal, the AMF, whenever it envisages withdrawing an asset management company's authorisation pursuant to Article L. 532-10 of the Monetary and Financial Code, shall so inform the company, specifying the reasons for which such decision is envisaged. The company shall have one month from receipt of such notification to submit any observations it may have.

Article 316-7

When the asset management company requests the AMF to withdraw its authorisation, the company must comply with 1 to 3 and the last paragraph of Article L. 532-10 of the Monetary and Financial Code.

When the AMF decides of its own accord to withdraw an authorisation, the company concerned shall be notified of the AMF's decision by registered letter with acknowledgement of receipt. The AMF shall inform the public of the withdrawal by inserting notices in newspapers or other publications of its choosing.

This decision shall specify the timetable and method for implementing the withdrawal.

During this period:

- a) The company shall be put under the supervision of an administrator appointed by the AMF on the basis of his or her skills. The administrator shall be bound by professional secrecy rules. The administrator appointment decision shall specify the terms of their monthly compensation, allowing, in particular, for the nature and importance of the work and the position of the appointed administrator. If he manages another company, said company may not acquire the clientele directly or indirectly;
- b) The administrator shall choose another asset management company to manage the collective investments. For employee investment undertakings, this choice shall be subject to ratification by the supervisory board of each fund. If the administrator does not find an asset management company, he shall invite the custodians to enter into proceedings for liquidation of the collective investments;
- c) The company may make only such transactions as are strictly necessary to protect the interests of the unitholders or

shareholders of the managed collective investments and its clients;

d) The company shall inform the custodians and unitholders or shareholders of the managed collective investments of the withdrawal of authorisation, as well as the custody account-keepers of the individual portfolios under discretionary management and its clients;

e) The company shall ask its clients in writing to request transfer of their accounts to another investment service provider, or to request liquidation of their portfolios, or to manage their portfolios themselves;

f) The company shall update its website notably by removing all references to its capacity of asset management company;

g) On the day the withdrawal of authorisation comes into effect, the company shall change its company name and its corporate object.

The AMF informs the European Securities and Markets Authority on a quarterly basis of the authorisations it has withdrawn under the terms of the present article.

Article 316-8

When the AMF pronounces a deregistration pursuant to Article L. 532-12 of the Monetary and Financial Code, the AMF shall notify the company of its decision with the conditions stipulated in Article 316-7. The AMF shall inform the public by inserting notices in newspapers or other publications of its choosing.

Sub-section 3 - Resignations

Article 316-9

When it is considering demanding the resignation of a company from its capacity as the asset management company of an AIF pursuant to Article L. 621-13-4 of the Monetary and Financial Code, the AMF informs the company to this effect, specifying the reasons for which such decision is envisaged. The company shall have one month from receipt of such notification to submit any observations it may have.

When it decides to demand the resignation of a company from its capacity as the asset management company of an AIF, the AMF shall inform the company of its decision by registered letter with acknowledgement of receipt. The AMF shall inform the public of its decision by inserting notices in newspapers or other publications of its choosing.

The decision shall specify the terms and implementation timeframe for the resignation.

During this period:

a) The company shall be put under the supervision of an administrator appointed by the AMF on the basis of his or her skills. The administrator shall be bound by professional secrecy rules. The administrator appointment decision shall specify the terms of their monthly compensation, allowing, in particular, for the nature and importance of the work and the position of the appointed administrator. If he manages another company, said company may not take over management of the relevant AIF directly or indirectly;

b) The administrator shall choose another asset management company to manage the relevant AIF. If the administrator does not find an asset management company, he shall invite the custodian to enter into proceedings for liquidation of the relevant AIF;

c) The company may make only such transactions as are strictly necessary to protect the interests of the unitholders or shareholders of the relevant AIF;

d) The company shall inform the custodian and the unitholders or shareholders of the relevant AIF of its resignation.

2022-06-11

The units or shares in the AIF in question must no longer be marketed in France or, as applicable, in the other Member States of the European Union.

Where necessary, the AMF informs the competent authorities of the host Member States of the asset management company of its decision immediately.

Section 2 - Passport for asset management companies seeking to manage aifs or provide investment services in the other member states of the european union (Article 316-10)

Article 316-10

An asset management company seeking to create and manage an AIF or provide investment services in another State of the European Union, under the freedom to provide services or under the right of establishment, shall notify the AMF of its plans in accordance with Articles R. 532-25-1 et R. 532-30 of the Monetary and Financial Code.

Section 3 - Specific rules on the authorisation of managers seeking to manage european union aifs or to market aifs of the european union or third countries under their management in the european union with a passport (Articles 316-11 à 316-14)

Commission Implementing Regulation (EU) No [448/2013](#) of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council

Article 316-11

The date of entry into force of the present Section is set in accordance with the provisions of the European Commission delegated act provided for in Paragraph 6 of Article 67 of Directive 2011/61/EU of the European Parliament and Council of 8 June 2011.

Article 316-12

Without prejudice to Article L. 532-9 of the Monetary and Financial Code, no authorisation shall be granted unless the following additional conditions are fulfilled:

- 1 • The manager appoints France as its reference Member States in accordance with the criteria set out in Article R. 532-31 of the same Code and the appointment is backed up by the disclosure of its marketing strategy;
- 2 • The manager has appointed a legal representative established in France;
- 3 • The legal representative is, with the manager, the contact point of the manager for holders of units or shares in the AIFs in question, for the European Securities and Markets Authority and for the AMF and the competent authorities concerning the activities for which the manager is authorised in the European Union and shall be equipped to perform its compliance function by virtue of the legislative and regulatory provisions applicable to asset management companies;
- 4 • There are appropriate cooperation arrangements in place between France, the competent authorities of the Member State of reference of the European Union AIFs concerned and the supervisory authorities of the third country where the manager is established in order to ensure an efficient exchange of information that allows the AMF and the competent authorities to carry out the duties incumbent upon them;
- 5 • The third country where the manager is established is not listed as a Non-Cooperative Country and Territory by FATF;
- 6 • The third country where the manager is established has signed an agreement with France, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

2022-06-11

- 7 • The effective exercise by the AMF of its supervisory functions is neither prevented by the laws, regulations or administrative provisions of the third country governing the manager, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

Article 316-13

The authorisation of the AIF manager shall be granted in accordance with Article L. 532-36 of the Monetary and Financial Code, subject to the following criteria:

- 1 • The information referred to in Article L. 532-9 of the same code is supplemented by:
 - a • A justification by the manager of its assessment regarding the Member State of reference in accordance with the criteria set out in Article R. 532-31 of the same code with information on the marketing strategy;
 - b • A list of the legislative and regulatory provisions applicable to asset management companies of AIFs for which compliance by the manager is impossible, as compliance by the manager with those provisions is incompatible with compliance with a mandatory provision in the law to which the manager established in a third country or the third-country AIF marketed in the Union is subject;
 - c • Written evidence based on the regulatory technical standards developed by ESMA that the relevant third-country law in question provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant AIFs and that the manager complies with that equivalent rule. Such written evidence shall be supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the investor protection pursued by it;
 - d • The name of the legal representative of the manager and the place where it is established;
- 2 • The information referred to in Article 316-3, Points 1 to 6 may be limited to the EU AIFs the manager intends to manage and to those AIFs it manages and intends to market in the European Union with a passport;
- 3 • The second paragraph of Article L. 532-9, II of the Monetary and Financial Code is without prejudice to Article L. 532-31 of the same code;
- 4 • Point 1 of Article L. 532-9, II of the Monetary and Financial Code is not applicable;
- 5 • The fifth paragraph of Article 316-4 shall be understood as including a reference to the "information referred to in Article L. 532-37 of the Monetary and Financial Code".

Article 316-14

[Empty]

Chapter II - Authorisation requirements for aif asset management companies and for acquiring or increasing an equity interest in an aif asset management company (Articles 317-1 à 317-14)

Section 1 - Authorisation requirements (Articles 317-1 à 317-6)

Articles 12 to 15 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Article 317-1

The asset management company shall have its registered office in France. It may be incorporated in any form, subject to a review of the compatibility of its instruments of incorporation with the laws and regulations applicable to it, and provided that its accounts are subject to a statutory audit.

Article 317-2

I. - The share capital of asset management companies shall be equal to a minimum of EUR 125,000 and must be fully paid in cash at least to this minimum amount.

II. - When authorisation is granted and in subsequent financial years, the asset management company must be able to prove at any time that its level of own funds is at least equal to the higher of the two amounts referred to in Points 1 and 2 below:

- 1 • EUR 125,000 plus an amount equal to 0.02 % of the amount by which the assets under management by the asset management company exceeds EUR 250 million.

The total own funds requirement shall not exceed EUR 10 million.

The assets included in the calculation of the additional own funds requirement referred to in the third paragraph are:

- a • French or foreign AIFs in corporate form that have globally delegated management of their portfolio to the asset management company;
- b • French or foreign AIFs in fund form managed by the asset management company, including portfolios for which it has delegated management but excluding portfolios that it manages on a delegated basis.

Up to 50% of the additional own funds requirement may be met by a guarantee given by a credit institution or insurance undertaking having its registered office in a State that is a party to the European Economic Area agreement, or in another State, provided the guarantor is subject to prudential rules considered by the AMF to be equivalent to those applicable to credit institutions and insurance undertakings having their registered offices in States that are parties to the European Economic Area agreement.

- 2 • One-quarter of general operating expenses for the previous financial year calculated in accordance with Articles 34 *ter* to 34 *quinter* of Commission Regulation (EU) No 241/2014 of 7 January 2014.

III. - The own funds requirement at the time of authorisation shall be calculated on the basis of forecast data.

For subsequent years, the amount of general operating expenses and the total value of portfolio assets used to determine the own funds requirement shall be calculated on the basis of the most recent of the following asset management company documents: financial statements for the previous financial year, interim statement of financial position certified by the statutory auditor or the data sheet referred to in Article 318-37.

IV. - To cover any potential professional liability risks resulting from AIF management activities, the asset management company must:

- 1 • Either have additional own funds of an amount sufficient to cover potential liability risks arising from professional negligence;
- 2 • Or hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

V. - When the asset management company is also authorised by the AMF by the terms of Directive 2009/65/EC of the European Parliament and Council of 13 July 2009, it is not subject to points I, II and III the present Article.

Article 317-3

I. The asset management company's own funds, including any additional own funds, must be invested in liquid assets or assets that can easily be converted into cash in the short term and that do not include speculative positions.

II. However, if own funds exceed 130 % at least of the regulatory own funds mentioned in Article 317-2, the excess portion of this amount may be invested in assets that do not meet the requirements of I, provided that these assets do not create a material risk for the company's regulatory own funds.

Article 317-4

The asset management company shall disclose the identities of legal entities or individuals who are direct or indirect shareholders with qualifying holdings as well as the amounts of their holdings. The AMF shall assess the quality of the company's shareholders having regard to the need for sound and prudent management and proper performance of its own supervisory responsibilities. It shall make the same assessment of partners and members in an economic interest grouping.

Article 317-5

The asset management company shall be effectively directed by at least two persons of sufficiently good repute and sufficient experience for their duties, so as to ensure sound and prudent management.

The directors must, among other things, be sufficiently experienced as regards the investment strategies pursued by the AIFs managed by the asset management company.

At least one of these two persons must be a company officer with the power to represent the company in its dealings with third parties.

The other person may be the chairman of the board of directors or a person specifically empowered by the company's governing bodies or instruments of incorporation to direct the company and determine its policies.

Article 317-6

The persons effectively managing the asset management company as defined in Article 317-5 undertake to inform the AMF promptly of any modification of their situation as declared at the time of their appointment.

Section 2 - Content of the programme of operations (Articles 317-7 à 317-9)

Article 317-7

The asset management company shall have a programme of operations in accordance with Chapter III.

The programme of operations also contains information on the remuneration policies and practices implemented pursuant to Article L. 533-22-2 of the Monetary and Financial Code, and information concerning the AIFs the asset management company intends to manage:

- 1 • Information about the investment strategies, including the types of underlying funds if the AIF is a fund of funds, and the manager's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs it manages or intends to manage, including information about the Member States or third countries in which such AIFs are established or are expected to be established;
- 2 • Information on where the master AIF is established if the AIF is a feeder AIF;
- 3 • The rules or instruments of incorporation of each AIF the asset management company intends to manage;

2022-06-11

- 4 • Information on the arrangements made for the appointment of the depositary for each AIF in question;
- 5 • For each AIF the asset management company manages or intends to manage, any additional information disclosed to investors pursuant to the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code

Article 317-8

The asset management company may also hold equity interests in companies set up for purposes that represent an extension of its own activities. These holdings must be compatible with the provisions the asset management company is required to implement to detect and prevent or manage any conflicts of interest likely to arise from these holdings.

Article 317-9

[Removed by Decree of 10 april 2020]

Section 3 - Requirements for acquiring or increasing an equity interest in an asset management company (Articles 317-10 à 317-14)

Article 317-10

The AMF shall be notified of any transaction that enables a person acting alone or in concert with other persons, within the meaning of Article L. 233-10 of the Commercial Code, to acquire, increase or decrease or cease owning, directly or indirectly, a qualifying holding in an asset management company. The notice must be given to the AMF by the person or persons concerned before the transaction is executed, if one of the following conditions is met:

- 1 • The capital or voting rights held by the person(s) exceed or fall below one-tenth, one-fifth, one-third or one-half of the capital or voting rights;
- 2 • The asset management company becomes or stops being a subsidiary of the person(s) concerned;
- 3 • The person or persons gain or lose significant influence over management of the management company as a result of the transaction.

Article 317-11

For the purposes of this Chapter:

- 1 • A “qualifying holding” means, pursuant to sub-paragraph h of Article 4(1) of Directive 2011/61/EU of 8 June 2011, “a direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists”;
- 2 • Voting rights are calculated in accordance with the provisions of Article L. 233-4, points I and IV of Article L. 233-7 and Article L. 233-9 of the Commercial Code;
- 3 • The capital holding is calculated by adding up, as applicable, the direct holding and any indirect holdings in the capital of the asset management company. Indirect holdings are calculated by multiplying together the fractions held in the capital of each intermediate entity and in the capital of the asset management company;
- 4 • The fraction of capital or voting rights held by investment firms or credit institutions as a result of underwriting or guaranteed placement of financial instruments, within the meaning of 6-1 or 6-2 of Article D. 321-1 of the Monetary and Financial Code, shall not be counted, as long as these rights are not exercised or used in any other way to influence the issuer's management and provided that they are sold within one year of acquisition;
- 5 • In the case of an indirect holding, any person likely to acquire, sell or lose a qualifying holding must notify the AMF of this.

However, without prejudice to the obligations of the direct holder, the final holder may make notifications for and on behalf of the entities under its control, provided it includes the relevant information on these entities.

Article 317-12

Transactions to acquire or increase qualifying holdings are subject to prior authorisation by the AMF under the following conditions:

- 1 • within two trading days of receipt of the notice and all the documents required, the AMF shall provide the applicant with written acknowledgement of receipt.

The AMF shall have up to sixty trading days, starting from the date of the written acknowledgement of receipt of the notice, in which to assess the transaction. The written acknowledgement of receipt shall specify the expiry date of the assessment period.

- 2 • During the assessment period and by the fiftieth trading day thereof at the latest, the AMF may request further information to complete the assessment. This request shall be made in writing and shall specify additional necessary information. Within two trading days of receipt of the further information, the AMF shall send the applicant a written acknowledgement of receipt.

The assessment period shall be suspended from the date of the AMF's request for further information until the receipt of the applicant's response to this request. The suspension shall not last more than twenty trading days. The AMF may make further requests for more information or clarifications, but these requests shall not suspend the assessment period.

- 3 • The AMF may extend the suspension mentioned in the preceding paragraph to thirty trading days, if the applicant:

a) is established outside the European Union or is governed by non-European Union regulations;

b) or is a person who is not subject to monitoring under the terms of European Directives 2013/36/EU, 2009/65/EC, 2009/138/EC or 2014/65/EU.

- 4 • if the AMF decides to object to a planned acquisition after the assessment, it shall give written notice of its decision to the applicant within two trading days and before the end of the assessment period. The AMF shall give the grounds for its decision. The portfolio asset management company shall also be notified.

At the request of the applicant, the AMF shall publish the grounds for its decision on the website mentioned in Article R. 532-15-2 of the Monetary and Financial Code.

- 5 • if the AMF has not made a written objection to the planned acquisition by the end of the assessment period, the acquisition shall be deemed to be approved.
- 6 • the AMF may set a deadline for completing the planned acquisition and may extend this deadline.
- 7 • if the AMF receives several notifications under the terms of Article L. 532-9-1 of the Monetary and Financial Code concerning the same asset management company, it shall examine them jointly in such a way as to ensure equal treatment of the applicants.

Notwithstanding the preceding provisions, the AMF shall be notified only of transactions that occur between companies directly or indirectly owned and controlled by the same company and that change the structure of ownership among the existing shareholders holding, prior to the transaction, a qualifying participating interest in the portfolio asset management company, unless such transactions result in the transfer of control or ownership of some or all of the above-mentioned rights to one or more persons that are not subject to the laws of a State party to the European Economic Area agreement.

When the number or distribution of voting rights is restricted in relation to the number or distribution of the relevant shares or units under the provisions of legislation or the instruments of incorporation, the percentages stipulated in this Chapter and in Article 317-11 shall be calculated and implemented in terms of shares or units respectively.

Transactions to acquire or increase qualifying holdings are subject to prior authorisation by the AMF under the following conditions:

- 1 • within two trading days of receipt of the notice and all the documents required, the AMF shall provide the applicant with written acknowledgement of receipt.

The AMF shall have up to sixty trading days, starting from the date of the written acknowledgement of receipt of the notice, in which to assess the transaction. The written acknowledgement of receipt shall specify the expiry date of the assessment period.

- 2 • During the assessment period and by the fiftieth trading day thereof at the latest, the AMF may request further information to complete the assessment. This request shall be made in writing and shall specify additional necessary information. Within two trading days of receipt of the further information, the AMF shall send the applicant a written acknowledgement of receipt.

The assessment period shall be suspended from the date of the AMF's request for further information until the receipt of the applicant's response to this request. The suspension shall not last more than twenty trading days. The AMF may make further requests for more information or clarifications, but these requests shall not suspend the assessment period.

- 3 • The AMF may extend the suspension mentioned in the preceding paragraph to thirty trading days, if the applicant:

a) is established outside the European Union or is governed by non-European Union regulations;

b) or is a person who is not subject to monitoring under the terms of European Directives 2013/36/EU, 2009/65/EC, 2009/138/EC or 2014/65/EU.

- 4 • if the AMF decides to object to a planned acquisition after the assessment, it shall give written notice of its decision to the applicant within two trading days and before the end of the assessment period. The AMF shall give the grounds for its decision. The portfolio asset management company shall also be notified.

At the request of the applicant, the AMF shall publish the grounds for its decision on the website mentioned in Article R. 532-15-2 of the Monetary and Financial Code.

- 5 • if the AMF has not made a written objection to the planned acquisition by the end of the assessment period, the acquisition shall be deemed to be approved.
- 6 • the AMF may set a deadline for completing the planned acquisition and may extend this deadline.
- 7 • if the AMF receives several notifications under the terms of Article L. 532-9-1 of the Monetary and Financial Code concerning the same asset management company, it shall examine them jointly in such a way as to ensure equal treatment of the applicants.

Notwithstanding the preceding provisions, the AMF shall be notified only of transactions that occur between companies directly or indirectly owned and controlled by the same company and that change the structure of ownership among the existing shareholders holding, prior to the transaction, a qualifying participating interest in the portfolio asset management company, unless such transactions result in the transfer of control or ownership of some or all of the above-mentioned rights to one or more persons that are not subject to the laws of a State party to the European Economic Area agreement.

2022-06-11

When the number or distribution of voting rights is restricted in relation to the number or distribution of the relevant shares or units under the provisions of legislation or the instruments of incorporation, the percentages stipulated in this Chapter and in Article 317-11 shall be calculated and implemented in terms of shares or units respectively.

Article 317-13

Transactions involving the sale or decrease qualifying holdings in an asset management company mentioned in Article 317-10 shall entail a re-examination of the authorisation in view of the need to ensure sound and prudent management.

Article 317-14

The AMF may ask asset management companies for the identity of partners or shareholders who report holdings of less than one twentieth, but more than 0.5%, or the relevant figure set by the instruments of incorporation for the purposes of Article L. 233-7 of the Commercial Code.

Chapter III - Organisational rules (Articles 318-1 à 318-62)

Article 318-1

The asset management company shall use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

Given the nature of the AIFs it manages, it shall have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

Article 318-2

The annual financial statements of the asset management company shall be certified by a statutory auditor. Within six months of the end of the financial year, asset management companies shall file copies of their balance sheet, income statement and the notes to the financial statements, along with their annual management reports and notes, the statutory auditors' general and special reports with the AMF. If applicable, the companies shall also produce consolidated financial statements.

Section 1 - Organisational rules (Article 318-3)

Articles 57 to 59 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Article 318-3

[Empty]

Section 2 - Compliance system (Articles 318-4 à 318-5)

Articles 61 and 62 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 318-4](#)

Asset management companies shall apply the compliance policy provided for in Article 61 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 as well as the provisions relating to the responsibilities of the management body referred to in Article 60 of the same Regulation, to the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code that do not fall under the scope of application of the Articles of that Regulation.

[Article 318-5](#)

The compliance officer referred to in Article 61, 3, b of Commission Delegated Regulation (EU) n° 231/2013 of 19 December 2012 shall hold a professional licence issued on the terms defined in Section 8 of this Chapter.

Section 3 - Responsibilities of senior management and supervisory bodies (Article 318-6)

[Article 318-6](#)

In application of Article L. 621-8-4 of the Monetary and Financial Code, the effective managers within the meaning of Article L. 532-9, II, 4 of said Code shall immediately inform the AMF of any incidents that could lead to a loss or gain for the asset management company, a cost linked to its civil or criminal liability, an administrative sanction or reputational damage and resulting from non-compliance with Articles 57 to 59 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012, of an amount that exceeds 5% of its regulatory capital. Under the same conditions, they shall inform the AMF of any event preventing the asset management company from meeting the requirements of its authorisation. They shall provide the AMF with an incident report indicating the nature of the incident, the measures implemented after it happened and the initiatives taken to prevent similar incidents from taking place in the future.

Section 4 - Verification of the knowledge of specified persons (Articles 318-7 à 318-9)

[Article 318-7](#)

I.- The asset management company shall ensure that natural persons acting on its behalf have the minimum qualification as well as a sufficient level of knowledge.

II. - It verifies that the persons carrying out one of the following functions can prove they have the minimum level of knowledge set forth in Point 1° of II of Article 318-9:

- a) Asset manager within the meaning of Article 318-8;
- b) Compliance and internal control officer within the meaning of Article 318-21.

III. - The asset management company shall not carry out the verification provided for in II with regard to persons employed at 1st July 2010. Persons having passed one of the examinations referred to in Article 38-9, II, 3° shall be deemed to have the minimum knowledge required to perform their duties.

IV. - To conduct the verification referred to in II, the asset management company shall have six months from the date on which the employee starts to perform one of the above functions.

However, when the employee has been taken on under a work/study contract, as provided in Articles L. 6222-1 and L. 6325-1 of the Labour Code, the asset management company may choose not to perform any such verification. If it decides to hire the employee when his or her training period finishes, the asset management company shall ensure that he or she has the minimum qualification as well as a sufficient level of knowledge, as referred to in I, at the latest by the end of the contract training period.

The asset management company shall ensure that any employee whose minimum knowledge has not yet been verified is appropriately supervised.

[Article 318-8](#)

An asset manager is any person authorised to take investment decisions within the framework of the management of one or several AIFs.

[Article 318-9](#)

I - Portfolio asset management companies may entrust to an external organisation which can provide evidence of its ability to organise examinations, the verification of the professional knowledge of the physical persons under their authority or acting on their behalf who carry out one of the functions referred to in Article 318-7 (II);

- 1 • the Financial Skills Certification Board mentioned in Article 312-5 shall also issue opinions at the request of the AMF on the certification of organisations that can prove they have the capacity to organise examinations.
- 2 • The Financial Skills Certification Board issues opinions at the request of the AMF on the need to introduce optional or mandatory modules in addition to the content of minimum knowledge, and on the functions subject to these modules;
- 3 • when rendering opinions, the Financial Skills Certification Board considers the possibility of establishing equivalencies with similar schemes abroad.

II. - Further to an opinion of the Financial Skills Certification Board, the AMF:

- 1 • determines the content of the minimum knowledge to be acquired by natural persons acting under the authority or on behalf of an asset management company and performing one of the functions referred to Article 318-7 (II). It shall publish that content:
- 2 • defines the content of the modules completing the minimum knowledge mentioned in 1°. It publishes the content of these modules;
- 3 • ensures that the content of this minimum knowledge and complementary modules is updated;
- 4 • determines and verifies the arrangements for the examinations and the complementary modules that validate acquisition of the knowledge;
- 5 • certifies organisations within four months of the filing of applications. This deadline shall be extended as necessary until requests for further information are met.

The organisation shall provide the AMF with a report on the anniversary of the date when it was certified, and then every three years;

- 6 • the AMF shall charge an application fee when applications for certification and reports are filed.

Section 5 - Complaint handling (Articles 318-10 à 318-10-1)

[Article 318-10](#)

The asset management company shall establish and maintain operational an effective and transparent procedure for reasonable and prompt handling of complaints received from all holders of units or shares in AIFs, when no investment service is provided to them upon subscription.

Holders of units or shares may file complaints free of charge with the asset management company.

The asset management company shall respond to the complaint within a maximum of two months as of the date of receipt of the said complaint, except in duly justified special circumstances.

2022-06-11

They shall implement a system enabling fair and consistent handling of complaints from the holders of units or shares. This system shall be allocated the necessary resources and expertise.

It shall record each complaint and the measures taken to handle it. It shall also implement a complaint monitoring system enabling it, among other things, to identify problems and implement appropriate corrective measures.

Information on the complaint handling procedure shall be made available free of charge to the holders of units or shares.

The complaint handling procedure shall be proportionate to the size and structure of the asset management company.

Article 318-10-1

The asset management company shall establish appropriate procedures and arrangements to ensure that it deals properly with complaints from AIF unit or shareholders and that there are no restrictions on these persons exercising their rights if they reside in another European Union Member State. These measures shall allow AIF unit or shareholders to send a complaint in the official language or one of the official languages of the Member State in which the AIF is marketed and to receive a response in the same language.

The asset management company shall also establish appropriate procedures and arrangements to supply information, at the request of the public.

These provisions shall apply if no investment service is provided upon subscription.

Section 6 - Personal transactions (Article 318-11)

Article 63 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Article 318-11

[Empty]

Section 7 - Conflicts of interest (Articles 318-12 à 318-19)

Articles 30 to 36 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Article 318-12

This Section is applicable to management of French AIFs by asset management companies except, for branches established in other European Union Member States, for AIFs they manage in that Member State.

It is also applicable to branches established in France by management companies or managers.

Article 318-13

I. - The asset management company shall take all reasonable steps to identify conflicts of interest that arise in the course of managing AIFs between:

- 1 • The asset management company, including its managers, employees or any person directly or indirectly linked to the asset management company by control, and the AIF managed by the asset management company or the unit or shareholders in that AIF;
- 2 • The AIF or the unit or shareholders in that AIF, and another AIF or the unit or shareholders in that other AIF;
- 3 • The AIF or the unit or shareholders in that AIF, and another client of the asset management company;
- 4 • The AIF or the unit or shareholders in that AIF, and a UCITS managed by the asset management company or the unit or shareholders in that UCITS; or
- 5 • Two clients of the asset management company.

The asset management company shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their unit or shareholders.

The asset management company shall segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. It shall assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the unit or shareholders of the AIFs.

II. - Where organisational arrangements made by an asset management company to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of unit or shareholders will be prevented, the asset management company shall clearly disclose the general nature or sources of conflicts of interest to such holders before undertaking business on their behalf, and develop appropriate policies and procedures.

III. - Where the asset management company, on behalf of an AIF, uses the services of a prime broker, the terms shall be set out in a written contract. In particular any possibility of transfer and reuse of AIF assets shall be provided for in that contract and shall comply with the AIF rules or instruments of incorporation. The contract shall provide that the depositary be informed of the contract.

The asset management company shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract is to be concluded.

[Article 318-14](#)

When collective investment scheme or investment funds managed by the asset management company or a related company are acquired or subscribed on behalf of an AIF, the investor information document of that AIF must make provision for such a possibility.

[Article 318-15](#)

[Empty]

[Article 318-16](#)

[Empty]

[Article 318-17](#)

[Empty]

2022-06-11

[Article 318-18](#)

[Empty]

[Article 318-19](#)

[Empty]

Section 8 - Professional licences (Articles 318-20 à 318-35)

Paragraph 1 - General provisions

[Article 318-20](#)

The compliance and internal control officer must hold a professional licence issued by the AMF, pursuant to Article 318-29.

[Article 318-21](#)

The persons referred to in Article 318-56 shall fulfill the function of compliance and internal control officer.

[Article 318-22](#)

A natural person may perform the function of compliance and internal control officer, on a probationary or temporary basis, without holding the required professional licence, for a maximum period of six months, that can be renewable once.

The function of compliance and internal control officer may only be performed on a probationary or temporary basis with the prior consent of the AMF.

[Article 318-23](#)

Issuance of a professional license shall require the applicant to compile an application for authorisation, which shall be submitted to the AMF.

[Article 318-24](#)

The application for authorisation shall be kept on file by the AMF for ten years after the licensee has ceased to perform the functions that gave rise to the issuance of the professional licence.

[Article 318-25](#)

Where a person provisionally ceases to perform the activity that required a professional licence, such interruption shall not result in withdrawal of the licence.

The person shall be deemed to have permanently ceased to perform the activity that gave rise to the issuance of the license when the interruption exceeds twelve months, except in exceptional cases as assessed by the AMF.

[Article 318-26](#)

When a person definitively ceases to perform the function for which a professional licence was issued, the licence shall be withdrawn. This withdrawal is performed by the AMF.

The asset management company on behalf of which the licensee is acting informs the AMF promptly when a person definitively ceases the activity as referred to in the previous paragraph.

[Article 318-27](#)

Whenever an asset management company takes disciplinary measures against a person holding a professional licence because of a breach of their professional obligations, it shall notify the AMF to this effect within one month.

[Article 318-28](#)

The AMF shall keep a register of professional licences.

2022-06-11

It is kept informed of the appointment of the compliance and internal control officer.

The information in the register of professional licences shall be kept on file for ten years after the professional licence has been withdrawn.

Paragraph 2 - Compliance and internal control officer professional licence issuance

Article 318-29

The AMF shall issue compliance and internal control officer professional licenses to the persons performing such functions. For this purpose, the AMF shall organise a professional examination under the terms referred to in Articles 318-33 to 318-35.

However, where asset management companies appoint one of their effective managers within the meaning of Article L. 532-9, II, 4° of the Monetary and Financial Code to the function of compliance and internal officer, that person shall hold the relevant professional license. He or she shall not be required to take the examination provided for in the first paragraph.

Article 318-30

Before issuing the professional license, the AMF shall verify:

- 1 • That the relevant natural person is fit and proper, that he is familiar with the professional requirements and capable of performing the functions of compliance and internal control officer.
- 2 • That pursuant to Article 318-7, II, the asset management company has conducted an internal verification or an examination as provided for in Article 318-9, II, 3 to ensure that the person in question has the minimum knowledge referred to in Article 318-9, II, 1.
- 3 • That the asset management company complies with Article 318-4.

Article 318-31

The AMF may waive the examination requirement for a person who has performed comparable functions with another asset management company having equivalent business activities and organisational structures, provided that person has already passed the examination and that the asset management company planning to appoint him or her has already presented a candidate who passed the examination.

Article 318-32

If an asset management company requires compliance and internal control officer professional licenses to be issued to several persons, the AMF shall ensure that the number of license holders is proportionate to the nature and risks of the asset management company's business activities, size and organisational structure.

Asset management companies shall provide precise written definitions of the attributions of each professional license holder.

Article 318-33

The examination shall consist of an interview of the professional license applicant by a jury. The applicants shall be presented by the asset management companies on whose behalf they are to perform their functions.

The AMF shall hold the examinations at least twice a year. It shall decide who sits on the jury, set the examination dates and determine the amount of examination fees. This information shall be made known to asset management companies.

The AMF shall collect the examination fees from the asset management companies presenting applicants.

Article 318-34

The members of the jury referred to in the first paragraph of Article 318-33 shall be:

1 • A serving compliance officer, chair;

2 • A person holding an operational function in an asset management company;

3 • A member of the AMF staff.

If an applicant considers that a member of the jury has a conflict of interest with regard to him, he or she may ask the AMF to be examined by another jury.

[Article 318-35](#)

If the jury deems that the conditions referred to in Article 318-30 have been met, it shall propose that the AMF issue a professional license.

However, if the jury considers that the applicant has the necessary qualities to perform the function of compliance and internal control officer, but that the asset management company does not allow him proper independence or does not provide him with adequate resources, the jury may propose that issuance of a professional license be subject to the condition that the asset management company remedies the situation and notifies the AMF of the measures taken to this effect.

If outsourcing of the compliance and internal control officer function is being considered, the jury may be asked for its opinion.

Section 9 - Record keeping (Article 318-36)

Articles 64 to 66 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 318-36](#)

[Empty]

Section 10 - Annual data sheet (Article 318-37)

[Article 318-37](#)

Within four and a half months of the close of the financial year, asset management companies shall send the AMF the information specified on a data sheet.

Section 10 bis - Report of compensation paid and non-compliance with AIF investment rules (Article 318-37-1)

[Article 318-37-1](#)

Pursuant to Article L. 621-8-4 of the Monetary and Financial Code, asset management companies shall provide the AMF, at the latest one calendar month after the end of each quarter of the calendar year:

- 1 • information relating to compensations paid by the asset management company to shareholders or unitholders of the AIFs that it manages, including by delegation, and to clients to which the asset management company provides one or more investment or ancillary services. The asset management company shall also inform the AMF if it has not paid any compensation during the period covered;
- 2 • Information relating to the non-compliance, by the asset management company, with investment and asset structure rules laid down by legal and regulatory provisions and the investor disclosure documents for the AIFs that it manages, including by

delegation, with the exception of cases of non-compliance with these rules occurring beyond the control of the asset management company and not resulting from the maturity of a financial instrument held by the AIF.

This article shall not apply to asset management companies that manage an AIF by delegation when the asset management company, the investment management company or the manager of said AIF is already subject to the disclosure requirements under this Article.

Section 11 - Risk management (Articles 318-38 à 318-43)

Articles 38 to 45 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 318-38](#)

Asset management companies shall functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management.

[Article 318-39](#)

The functional and hierarchical separation of the functions of risk management, pursuant to Article 318-38, shall be examined in accordance with the principle of proportionality, on the understanding that the asset management company shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this Article and is consistently effective.

[Article 318-40](#)

The asset management company shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed.

In particular, the asset management company shall not make exclusive or mechanical use of credit ratings issued by credit ratings agencies within the meaning of Article 3, Paragraph 1, point b of Regulation (EC) n° 1060/2009 of the European Parliament and Council of 16 September 2009 on credit ratings agencies, to assess the creditworthiness of AIF assets.

The asset management company examines the risk management systems, at appropriate intervals and at least once a year, and adapts them if necessary.

[Article 318-41](#)

Asset management companies shall at least:

- 1 • Implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, objectives and risk profile of the AIF;
- 2 • Ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
- 3 • Ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

2022-06-11

[Article 318-42](#)

The asset management company shall set a maximum level of leverage which they may employ on behalf of each AIF they manage as well as the extent of the right to reuse collateral or any guarantee that could be granted under the leveraging arrangement, taking into account, inter alia:

- 1 • The type of the AIF;
- 2 • The investment strategy of the AIF;
- 3 • The sources of leverage of the AIF;
- 4 • Any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;
- 5 • The need to limit the exposure to any single counterparty;
- 6 • The extent to which the leverage is collateralised;
- 7 • The asset-liability ratio;
- 8 • The scale, nature and extent of the activity of the asset management company on the markets concerned.

[Article 318-43](#)

[Empty]

Section 12 - Liquidity management (Articles 318-44 à 318-46)

Articles 46 to 49 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 318-44](#)

Asset management companies shall, for each AIF that they manage which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

Asset management companies shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly.

[Article 318-45](#)

Asset management companies shall ensure that, for each AIF that they manage, the investment strategy, liquidity profile and redemption policy are consistent.

[Article 318-46](#)

[Empty]

Section 13 - Information transmission on financial contracts (Article 318-47)

2022-06-11

[Article 318-47](#)

Asset management companies shall, for each AIF they manage, send the AMF and update at least once a year, information providing a true image of the types of financial contracts, underlying risks, quantitative limits and methods chosen to estimate the risks related to operations on financial contracts.

The AMF may check that this information is regular and exhaustive and ask for explanations relating to it.

Section 14 - Internal audit (Article 318-48)

Article 62 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 318-48](#)

[Empty]

Section 15 - Organisation of compliance and internal control functions (Articles 318-49 à 318-57)

Sub-section 1 - Compliance and internal control systems

[Article 318-49](#)

The compliance and internal control system includes monitoring described in Article 318-50, internal audits and consulting and assistance assignments.

[Article 318-50](#)

Monitoring includes the compliance function referred to in of Article 61, 2, a of Commission Delegated Regulation (EU) n° 231/2013 of 19 December 2012, the control system referred to in Article 57, 6 of the same Regulation and the control system for compliance with the professional obligations referred to in Article L. 621-15, II of the Monetary and Financial Code and the risk control system provided for in Section 11 of this Chapter.

[Article 318-51](#)

First-level control shall be exercised by persons in operational functions.

Monitoring shall be conducted through second-level controls to ensure proper execution of first-level controls.

Monitoring shall be performed exclusively, subject to the provisions of Article 318-55, by staff appointed solely to that function.

Sub-section 2 - Compliance and internal control officers

[Article 318-52](#)

Compliance and internal control officers shall be responsible for the compliance function referred to in Article 61, 2 of Commission Delegated Regulation n° 231/2013 of 19 December 2012, for the monitoring referred to in Article 318-50 and for the internal audits referred to in Article 62 of the same Delegated Regulation.

[Article 318-53](#)

If an asset management company establishes a separate and independent internal audit function, that function shall be performed by an internal audit manager who is not the same person as the compliance and continuing monitoring officer.

[Article 318-54](#)

Asset management companies may give responsibility for monitoring, other than compliance monitoring, and responsibility for compliance monitoring to two different people.

[Article 318-55](#)

When the manager carries out the function of compliance and internal control officer, he or she shall also be responsible for internal audit and monitoring, other than compliance monitoring.

[Article 318-56](#)

The following persons shall hold professional licenses:

- 1 • The officer referred to in Article 318-52;
- 2 • The compliance and monitoring officer referred to in Article 318-53;
- 3 • The officer for monitoring, other than compliance monitoring, referred to in Article 318-54 and the compliance officer referred to in the said Article, if the two functions are separate.

Employees of asset management companies or employees of other entities in their group may hold professional licenses if the asset management companies present them for the examination.

The AMF shall ensure that the number of professional license holders is proportionate to the nature and the risks of the asset management company's business activities, scale and organisational structure.

The internal audit officer referred to in Article 318-53 shall not hold a professional license.

[Article 318-57](#)

Asset management companies shall establish a procedure that enables all their employees and all natural persons acting on their behalf to discuss questions they might have about deficiencies they have noted in the actual implementation of compliance obligations with the compliance and internal control officer.

Section 16 - Outsourcing (Articles 318-58 à 318-61)

[Article 318-58](#)

If asset management companies outsource the execution of critical operational tasks and functions or tasks and functions that are important for the provision of a service or the conduct of business, they shall take reasonable measures to prevent an undue exacerbation of operating risk.

Outsourcing of critical or important operational tasks or functions must not be done in such a way that it materially impairs the quality of internal control and prevents the AMF from verifying that the asset management company complies with all its obligations.

Outsourcing to an extent that makes the asset management company into a letter box entity must be deemed to be in violation of the requirements that the asset management company must comply with to obtain and keep its authorisation.

[Article 318-59](#)

Outsourcing shall consist of any agreement, in any form, between an asset management company and a service provider under which the service provider takes over a process, service or activity that otherwise would have been performed by the asset management company itself.

[Article 318-60](#)

I. An operational task or function shall be regarded as critical or important if a defect or failure in its performance would

2022-06-11

materially impair the asset management company's capacity for continuing compliance with the conditions and obligations of its authorisation or its professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code, or its financial performance, or the continuity of its business.

II. - Without prejudice to the status of any other task or function, the following tasks or functions shall not be considered as critical or important:

- 1 • The provision to the asset management company of advisory services, and other services which do not form part of the investment services of the firm, including the provision of legal advice, the training of personnel, billing services and the security of the asset management company's premises and personnel;
- 2 • The purchase of standard services, including market information services and the provision of price feeds.

Article 318-61

I. - Asset management companies that outsource an operational task or function shall remain fully responsible for complying with all their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code and complying, in particular, with the following conditions:

- 1 • Outsourcing must not result in the delegation by senior management of its responsibility.
- 2 • The relationship and obligations of the asset management company towards its clients must not be altered.
- 3 • The conditions or commitments with which the company must comply in order to be authorised must not be undermined.

II. - Asset management companies shall exercise due skill, care and diligence when entering into, managing or terminating an outsourcing contract for critical or important operational tasks or functions.

In particular, asset management companies must take the necessary steps to ensure that the following conditions are satisfied:

- 1 • The service provider must have the ability, capacity, and any authorisation required to perform the outsourced tasks or functions reliably and professionally.
- 2 • The service provider must carry out the outsourced services effectively. To this end, the asset management company must establish methods for assessing the standard of performance of the service provider.
- 3 • The service provider must properly supervise the carrying out of the outsourced tasks or functions, and adequately manage the risks stemming from outsourcing.
- 4 • Asset management companies must take appropriate action if it appears that the service provider may not be carrying out the functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.
- 5 • Asset management companies must retain the necessary expertise to supervise the outsourced tasks or functions effectively and manage the risks stemming from outsourcing and must supervise those tasks and manage those risks.
- 6 • The service provider must disclose to the asset management company any development that may have a material impact on its ability to carry out the outsourced tasks or functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.
- 7 • The procedures for terminating outsourcing contracts at the initiative of either party must ensure the continuity and the quality of the activities carried out.

- 8 • The service provider must cooperate with the AMF in connection with the outsourced tasks or functions.
- 9 • The asset management company, its auditors and the relevant competent authorities must have effective access to data related to the outsourced tasks or functions, as well as to the business premises of the service provider.
- 0 • The service provider must protect any confidential information relating to the asset management company and its clients.
- 1 • The asset management company and the service provider must establish and maintain an effective contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the nature of the outsourced task or function.

III. - The respective rights and obligations of asset management companies and service providers shall be clearly defined in a contract.

IV. - Where the asset management company and the service provider are members of the same group, the asset management company may, for the purposes of determining how this Article shall apply, take into account the extent to which it controls the service provider or has the ability to influence its actions.

V. - Asset management companies must provide the AMF, at its request, all information necessary to enable it to supervise the compliance of the performance of the outsourced tasks or functions with the requirements of this Book.

Section 17 - Delegation of AIF management (Article 318-62)

Articles 75 to 82 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 318-62](#)

I. - When an asset management company delegates the management of an AIF, the following conditions shall be met:

- 1 • It shall notify the AMF of the delegation before the delegation arrangements become effective;
- 2 • It must be able to justify its entire delegation structure on objective reasons;
- 3 • The delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;
- 4 • Where the delegation concerns asset management or risk management, it may be conferred only on a person authorised for the purposes of asset management and subject to supervision within the meaning of and as set forth under Article 78 of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 or, if those conditions cannot be met subject to prior approval by the AMF;
- 5 • Where the delegation concerns asset management or risk management of an AIF that is open to professional investors and is conferred upon a third country undertaking, under the conditions specified in point 4°, cooperation between the AMF and the supervisory authority of the undertaking must be ensured;
- 6 • The delegation must not prevent the effectiveness of supervision of the asset management company, and, in particular, must not prevent the asset management company from acting, or the AIF from being managed, in the best interests of its unit or

- 7 • The asset management company must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the asset management company is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of the unit or shareholders of the AIF.

The asset management company shall review the services provided by each delegate on an ongoing basis.

II. - No delegation of portfolio management or risk management shall be conferred upon:

- 1 • The depositary or a delegate of the depositary;
- 2 • Any other entity whose interests may conflict with those of the asset management company or the unit or shareholders of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unit and shareholders of the AIF.

III. - The liability of the asset management company towards the AIF and its unit or shareholders shall not be affected by the fact that it has delegated functions to a third party, or by any further sub-delegation. The asset management company shall not delegate its functions to the extent that it becomes a letter-box entity.

IV. - The delegate may sub-delegate any of the functions delegated to it, provided that the following conditions are met:

- 1 • The delegating asset management company consented prior to the sub-delegation;
- 2 • The delegating asset management company notified the AMF before the sub-delegation arrangements become effective;
- 3 • The conditions set out in Paragraph I are met, on the understanding that all references to the "delegate" are read as references to the "sub-delegate".

V. - No sub-delegation of portfolio management or risk management shall be conferred upon entities referred to in Paragraph II. The relevant delegate shall review the services provided by each sub-delegate on an ongoing basis.

VI. - Where the sub-delegate further delegates any of the functions delegated to it, the conditions set out in Paragraph 4 shall apply *mutatis mutandis*.

Chapter IV - Conduct of business rules (Articles 319-1 à 319-27)

Section 1 - General provisions (Articles 319-1 à 319-8)

Article 319-1

This Chapter shall apply to management of AIFs by asset management companies, except, for branches established in other European Union Member States, for the AIFs they manage in that State.

Pursuant to Article L. 532-21-3 of the Monetary and Financial Code, this Chapter shall also apply to management of French AIFs by branches established in France by management companies.

Pursuant to Article L. 532-30 of the Monetary and Financial Code, this Chapter shall also apply to management of AIFs by branches established in France by managers.

Asset management companies shall ensure that the relevant persons are reminded that they are bound by the obligation of professional confidentiality, subject to the terms and penalties prescribed by law.

For the application of this Chapter, the term "client" shall designate existing and potential clients, including, where relevant, AIFs or their unit holders or shareholders.

Sub-section 1 - Approval of codes of conduct

[Article 319-2](#)

Where a professional organisation draws up a code of conduct applicable to AIF management, the AMF shall verify whether the code's provisions are consistent with this General Regulation.

The professional organisation may ask the AMF to approve all or part of the code as professional standards.

If, having sought the opinion of the *Association Française des Etablissements de Crédit et des Entreprises d'Investissement* (AFECEI), the AMF considers that some or all the provisions of such code should be recommended to investment services providers, the AMF shall announce its decision by publishing it on its website.

Sub-section 2 - Primacy of the AIF and its unit holders or shareholders' interest and market integrity

Articles 17 to 23 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 319-3](#)

The asset management company shall:

- 1 • Act honestly, with due skill, care and diligence and fairly in conducting their activities;
- 2 • Act in the best interests of the AIFs or the unit and shareholders of the AIFs they manage and the integrity of the market;
- 3 • Have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;
- 4 • Take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their unit and shareholders and to ensure that the AIFs they manage are fairly treated;
- 5 • Comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the unit and shareholders of the AIFs they manage and the integrity of the market;
- 6 • Treat all AIF unit or shareholders fairly. No unit or shareholder in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's rules or instruments of incorporation.

[Article 319-5](#)

[Empty]

[Article 319-6](#)

2022-06-11

Asset management companies that market units or shares in AIFs shall comply with the provisions relating to the assessment of the suitability and appropriateness of the service to be provided set out in Section 4 of Chapter IV of Title I of this Book.

[Article 319-7](#)

[Empty]

[Article 319-8](#)

[Empty]

Section 2 - Order handling and execution

Section 3 - Fees (Articles 319-9 à 319-20)

Articles 24 and 107 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 319-9](#)

[Empty]

Sub-section 1 - Remuneration policy within the framework of AIF management

[Article 319-10](#)

I. - When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff referred to in Article L. 533-22-2 of the Monetary and Financial Code, asset management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- 1 • The remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage;
- 2 • The remuneration policy is in line with the business strategy, objectives, values and interests of the asset management company and the AIFs it manages or the unit and shareholders in such AIFs, and includes measures to avoid conflicts of interest;
- 3 • The management body of the asset management company, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;
- 4 • The implementation of remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- 5 • Staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- 6 • The remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;
- 7 • Where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment

of the performance of the individual and of the business unit or AIF concerned and of the overall results of the asset management company. When assessing individual performance, financial as well as non-financial criteria are taken into account;

- 8 • Assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the asset management company, in order to ensure that it is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks;
- 9 • Guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;
- 10 • Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration;
- 1 • Payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- 2 • The measurement of performance, when used to calculate individual or collective variable remuneration components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- 3 • Subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of AIFs accounts for less than 50% of the total portfolio managed by the asset management company, in which case the minimum of 50% does not apply.

The instruments referred to in this paragraph shall be subject to an appropriate retention policy designed to align incentives with the interests of the asset management company and the AIFs it manages and the unit or shareholders of such AIFs;

- 4 • Payment of a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned. This portion is fairly proportionate to the nature of the risks of the AIF in question.

The period referred to in the previous paragraph shall be at least three to five years unless the life cycle of the AIF concerned is shorter. The remuneration payable under deferral arrangements vests no faster than on a pro-rata basis.

In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount is deferred;

- 5 • The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the asset management company as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned.

The total variable remuneration shall generally be considerably reduced where subdued or negative financial performance of the asset management company or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- 6 • The pension policy is in line with the business strategy, objectives, values and long-term interests of the asset management company and the AIFs it manages.

If the employee leaves the asset management company before retirement, discretionary pension benefits shall be held by the asset management company for a period of five years in the form of instruments defined in point 13. In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments

defined in point 13, subject to a five-year retention period;

- 7 • Staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- 8 • Variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the legislative and regulatory provisions applicable to asset management companies.

II. - The principles set out in paragraph I shall apply to remuneration of any type paid by the asset management company, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that they manage.

III. - Asset management companies that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the asset management company or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the asset management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the asset management company concerned.

Article 319-11

[Empty]

Sub-section 2 - Other provisions

Article 319-12

Asset management companies shall be remunerated for their management of AIFs by a management fee and, if applicable, a proportionate share of subscription and redemption fees or by incidental fees, under the conditions and within the limits set by Articles 319-13 to 319-20 and 422-91. These conditions and limits shall apply whether the fees are charged directly or indirectly.

Article 319-13

The management fee referred to in Article 319-12 may include a variable portion tied to the outperformance of the AIF relative to the investment objective, provided that:

- 1 • It is expressly provided for in the key investor information document or, failing this, in the information document for investors in the AIF;
- 2 • It is consistent with the investment management objective as set out in the prospectus and the key investor information document or, failing this, in the information document for investors in the AIF;
- 3 • The share in the outperformance of the AIF allocated to the asset management company must not induce that company to take excessive risk with regard to the investment strategy, investment objective and risk profile set out in the prospectus and the key investor information document or, failing this, in the information document for investors in the AIF.

Article 319-14

All fees and commissions paid by the AIF for transactions in the portfolios under management, with the exception of subscription

and redemption transactions relating to collective investment scheme, shall be trading costs. They include:

- 1 • Intermediation costs, taxes and duties included, charged directly or indirectly by third parties that provide:
 - a) The reception and transmission of orders service and the order execution service for third parties referred to in Article L. 321-1 of the Monetary and Financial Code;
 - b) The investment decision assistance service;
- 2 • As appropriate, a turnover commission shared exclusively between the asset management company and the depositary of the AIF.

This turnover commission may also benefit:

- a) A company to which the financial management of the portfolio has been delegated;
- b) Persons to which the depositary of the AIF has delegated all or part of the responsibility for safekeeping of portfolio assets;
- c) An affiliated company conducting only AIF management business, order reception, transmission and execution services, principally on behalf of AIFs managed by the asset management company or by an affiliated company as part of its AIF management activity.

These provisions shall not apply to fees and commissions incurred in connection with advisory and arrangement services, financial engineering, advice on industrial strategy, mergers and acquisitions, or initial public offerings of unlisted securities in which a venture capital fund (fonds de capital investissement), a specialised professional fund or professional venture capital fund has invested.

The sharing of any of the fees or commissions referred to in Point 1 is prohibited unless it would be exclusively and directly of benefit to the AIF. Agreements under which the asset management company shares some of the intermediation fees referred to in Point 1, a, on the occasion of a transaction in a financial instrument shall be prohibited.

Article 319-15

The provisions of Article 319-14 shall not apply to fees and commissions for real-estate advice or operations relating to the purchase or sale of the assets referred to in Article L. 214-36, I, 2, a to c of the Monetary and Financial Code in which the assets of a real-estate collective investment undertakings or a professional real-estate collective investment undertakings are invested.

The nature and terms of calculation of these fees and commissions are expressly mentioned in the prospectus and the key investor information document of the real-estate collective investment undertakings or professional real-estate collective investment undertakings.

Pursuant to Article 319-14, the sharing of fees or commissions shall be prohibited unless it would be exclusively and directly of benefit to the real-estate collective investment undertakings or the professional real-estate collective investment undertakings. Agreements under which the broker, intermediary or counterparty in a transaction involving one of the assets referred to in Article L. 214-36, I, 2, a to c of the Monetary and Financial Code shares the fees referred to in Point 1° of Article 319-14 or the fees referred to in the first paragraph of this Article shall constitute such sharing of fees and commissions.

Article 319-16

Without prejudice to Article 319-13, the income, fees and capital gains generated by AIF management, along with any rights attached thereto, shall belong to the unit and shareholders. The AIF shall be the sole beneficiary of the sharing of management fees and subscription and redemption commissions arising from its investments in collective investment scheme.

2022-06-11

The asset management company, the delegate of the asset management company for financial management, the depositary, the delegate of the depositary and the company referred to in Article 319-14, 2, c may receive a share of the income from temporary acquisitions and disposals of securities belonging to the AIF on the terms set out in the prospectus or, failing that, the information document for investors in the AIF.

The prospectus or, failing that, the information document for investors in the AIF may provide for payment of a donation to one or several organisations complying with at least one of the following conditions:

- 1 • It holds an administrative ruling certifying that it falls under the category of associations exclusively for purposes of assistance, charity, scientific or medical research, or a religious association;
- 2 • It holds a tax ruling attesting that it is eligible for the scheme of Articles 200 or 238 *bis* of the French General Tax Code entitling to tax rebates on donations;
- 3° It is a religious congregation that has been legally recognised by decree further to an opinion issued by the Conseil d'État in compliance with Article 13 of the Law of 1st July 1901.

Article 319-17

Asset management companies may enter into written commission-sharing agreements under which the investment services provider providing the order execution service shares the portion of the intermediation fees that it charges for investment decision-making aid services and order execution services with the third party providing such services.

Asset management companies may enter into such agreements provided that they comply with the principles referred to in Articles 319-18 and 319-19.

Article 319-19

The intermediation fees referred to in Article 319-14, 1, b:

- 1 • Must be directly related to order execution;
- 2 • Must not cover:
 - a) The provision of goods or services that correspond to resources that the portfolio management should have for its programme of activity, such as administrative or accounting management, the purchase or leasing of premises, or compensation for staff;
 - b) The provision of services for which the asset management company receives a management commission.

Article 319-20

Where units or shares in collective investment scheme managed by an asset management company are purchased or subscribed by that asset management company or an affiliated company on behalf of an AIF, subscription and redemption commissions shall be prohibited, except for the portion retained by the AIF in which the investment has been made.

Section 4 - Information about AIF management (Articles 319-21 à 319-26)

Article 37 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

2022-06-11

[Article 319-21](#)

[Removed by Decree of 11 may 2020]

[Article 319-22](#)

[Removed by Decree of 11 may 2020]

[Article 319-23](#)

[Removed by Decree of 11 may 2020]

[Article 319-24](#)

[Removed by Decree of 11 may 2020]

[Article 319-25](#)

[Removed by Decree of 11 may 2020]

[Article 319-26](#)

Pursuant to Article L. 621-8-4 of the Monetary and Financial Code, asset management companies shall provide the AMF with data on the composition of the AIFs they manage.

Section 5 - Obligations in the case of offers of financial securities or minibons via a website (Article 319-27)

[Article 319-27](#)

The asset management company authorised before 10 November 2021 to provide the investment service referred to in point 5 of Article L. 321-1 of the Monetary and Financial Code and offering financial securities via a website as provided for in Article 325-48 in the version applicable before the date of publication of the Order of 9 March 2022 approving the amendments to the AMF General Regulation, shall remain subject to the provisions of Article 320-25 in the version applicable before the date of publication of the aforementioned Order until 10 November 2022.

Chapter V - Other provisions (Articles 320-1 à 320-25)

[Article 320-1](#)

[Empty]

Section 1 - Management of inside information and restrictions to be applied within the asset management companies of aifs (Articles 320-2 à 320-10)

Sub-section 1 - Rules to prevent undue circulation of inside information

[Article 320-2](#)

Asset management companies shall establish and maintain effective and adequate procedures to control the circulation and use of inside information, as defined in Article 7 of the market abuse regulation (regulation n° 596/2014/EU), with the exception of paragraph 1.c of that same Article, taking account of the activities conducted by the group to which they belong and the organisation adopted by the company. These procedures, referred to as "information barriers", shall provide for:

- 1 • Identification of business segments, divisions, departments or any other entities likely to possess inside information;
- 2 • The organisation, in particular physical organisation, implemented so as to separate entities within which the relevant persons referred to in point 2 of Article 1 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012 are likely to possess inside information;
- 3 • The prohibition of disclosure of inside information by the persons possessing it to other persons, except as provided for in Article 10 the market abuse regulation (regulation n° 596/2014/EU) and after informing the compliance and internal control

- 4 • The conditions in which the asset management company may authorise a relevant person assigned to a given entity to provide assistance to another entity, whenever one of the two entities is likely to possess inside information. The compliance and internal control officer shall be informed whenever the relevant person assists the entity possessing inside information;
- 5 • The manner in which the relevant person benefiting from the authorisation provided for in 4° is informed of the temporary consequences thereof on the performance of his regular duties.

The compliance and internal control officer shall be informed when this person returns to his regular duties.

Sub-section 2 - Watch list

[Article 320-3](#)

To ensure compliance with the abstention requirement set out in Articles 8, 10 and 14 of Regulation (EU) n° 596/2014 of the European Parliament and of the Council of 16 April 2014, the asset management company shall establish and maintain an appropriate procedure for supervising the issuers and financial instruments on which it has inside information.

This supervision shall be proportionate to the identified risks and shall cover, where applicable:

- 1 • Transactions in financial instruments by the asset management company for its own account;
- 2 • Personal transactions referred to in Article 63 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, made by or on behalf of the relevant persons referred to in Article 1 (2) of the same Regulation;

To this end, the asset management company shall draw up a watch list of the issuers on which it has inside information.

The relevant entities shall inform the chief compliance and internal control officer at once when they believe they possess inside information.

In such case, the issuer shall be put on the watch list, under the supervision of the chief compliance and internal control officer.

[Article 320-4](#)

The asset management company shall exercise its supervision in accordance with the procedures set out in Article 320-3. It shall take appropriate measures whenever it detects an anomaly.

The asset management company shall keep a record on a durable medium of the measures it has taken in the event of a material anomaly or, if it takes no measures, of the reasons for so doing.

Sub-section 3 - Restricted list

[Article 320-5](#)

I. – The asset management company shall establish and maintain an appropriate procedure for monitoring compliance with any restrictions that apply to:

- 1 • Transactions in financial instruments by the asset management company for its own account;
- 2 • Personal transactions referred to in Article 63 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012, made by or on behalf of the relevant persons referred to in Article 1 (2) of the same Regulation;

II. - To this end, the asset management company shall establish a restricted list. This list shall include the issuers for which it must

2022-06-11

restrict its activities, or the activities of relevant persons, due to:

- 1 • Legal or regulatory provisions to which the asset management company is subject, other than those resulting from the abstention requirements set out in Articles 8, 10 and 14 of Regulation (EU) n° 596/2014 of the European Parliament and of the Council of 16 April 2014;
- 2 • The implementation of any commitment made on the occasion of a financial transaction.

When an asset management company deems it necessary to prohibit or restrict the performance of an investment service, an investment activity or an ancillary service in respect of certain issuers or financial instruments, those issuers and financial instruments shall also be included on the restricted list.

[Article 320-6](#)

Asset management companies shall determine, based on the restricted list, which entities are subject to the restrictions referred to in Article 320-5 and how those restrictions shall apply.

They shall inform the relevant persons affected by the restrictions of the list and the nature of the restrictions.

[Article 320-7](#)

[Empty]

[Article 320-8](#)

[Empty]

[Article 320-9](#)

[Empty]

[Article 320-10](#)

[Empty]

Section 2 - Obligations relating to the prevention of money laundering and terrorist financing (Articles 320-13 à 320-23)

[Article 320-13](#)

This section shall also apply to branches of European management companies managing AIFs referred to in Article L. 532-21-3 of the Monetary and Financial Code.

[Article 320-14](#)

Asset management companies shall have organisational structures and procedures that enable them to comply with the vigilance and disclosure requirements provided for in Book V, Title VI of the Monetary and Financial Code relating to the prevention of money laundering and terrorist financing.

[Article 320-15](#)

[Removed by Decree of 28 August 2019]

[Article 320-16](#)

The asset management company shall define and implement systems for identifying and assessing the risk of money laundering as well as an appropriate policy for dealing with those risks.

If it belongs to a group as defined in Article L. 561-33 of the Monetary and Financial Code and if the parent company has its registered office in France, the asset management company shall implement a system for identifying and assessing the risks that exist at group level as well as an appropriate policy for dealing with those risks, to be defined by the parent company.

It shall set up suitable organisational structures, internal procedures and a supervision system to ensure compliance with the obligations relating to the prevention of money laundering and terrorist financing.

If the asset management company belongs to a group as defined in Article L. 561-33 of the Monetary and Financial Code, and if the parent company has its registered office in France, the latter shall define the above-mentioned organisation, procedures and supervision system at group level and ensure they are respected.

Article 320-17

The asset management company shall appoint a member of management to be responsible for implementing the anti-money laundering and terrorist financing system stipulated in Article L. 561-32 of the Monetary and Financial Code. Where appropriate, such a person shall also be appointed at the level of the group defined in Article L. 561-33 of the Monetary and Financial Code.

This manager may delegate some or all of the implementation under the following conditions:

- 1 • the empowered person must have the necessary authority, resources and skills, and access to all relevant information;
- 2 • the empowered person must not be involved in the execution of the services and activities under supervision.

The manager shall remain responsible for the delegated activities.

Article 320-18

The asset management company shall ensure that the reporting party and correspondent referred to in Articles R. 561-23 and R. 561-24 of the Monetary and Financial Code have access to all the information they need to perform their duties. The company shall provide them with the appropriate tools and resources to comply with their obligations relating to the prevention of money laundering and terrorist financing.

The abovementioned reporting party and correspondent shall also be informed of:

- 1 • Incidents relating to the prevention of money laundering and terrorist financing that are brought to light by internal control systems.
- 2 • Shortcomings found by domestic or foreign supervisory authorities in the implementation of provisions relating to the prevention of money laundering and terrorist financing.

Article 320-19

In order to establish the risk identification and evaluation systems referred to in Article 320-16, the asset management company shall compile, document and periodically update a classification of the money laundering and terrorist financing risks to which it is exposed in the course of its business. It shall assess its exposure to these risks according, in particular, to the nature of the products offered, the investment services provided or the collective management activity, the trading terms proposed, the distribution channels used, the characteristics of the clients and the country or territory of origin or destination of the funds.

To this end, in particular, the recommendations of the European Commission, the risk factors referred to in Annexes II and III of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, information provided by the Financial Action Task Force (FATF) and the national risk analysis and information provided in the Minister for the Economy's orders are taken into account.

Prior to the launch of new products, services or sales practices, including the use of new distribution mechanisms and new or developing technologies, in relation to new or existing products and services, the asset management company shall also identify and assess the related money laundering and terrorist financing risks. It shall take appropriate measures to manage and mitigate these risks.

Article 320-20

2022-06-11

The asset management company shall draft and implement written internal procedures to ensure compliance with the provisions relating to the prevention of money laundering and terrorist financing. It shall update them periodically.

These internal procedures shall focus on:

- 1 • assessing, monitoring and managing the risks of money laundering and terrorist financing;
- 2 • implementing vigilance measures, such as:
 - a) the requirements and procedures for accepting new clients and occasional clients;
 - b) due diligence for identifying and obtaining knowledge about clients, beneficial owners and the purpose and nature of the business relationship; where the client is a legal entity, a trust or a comparable legal structure under foreign law, this due diligence enables the asset management company to understand the nature of the client's business, as well as its ownership and control structure. The frequency of these information updates shall be specified;
 - c) The additional vigilance measures stipulated in Articles L. 561-10 and L. 561-10-2 of the Monetary and Financial Code and the requirements and procedures for their implementation.
 - d) The information to be gathered and retained about the transactions stipulated in Article L. 561-10-2 of the Monetary and Financial Code;
 - e) The vigilance measures to be implemented with regard to any other risks identified by the risk classification referred to in Article 320-19;
 - f) the third-party selection procedure pursuant to Article L. 561-7 of the Monetary and Financial Code, taking into account, in particular, information available about the level of risk related to the countries in which the third parties are established and the equivalence of the supervision and regulations to which the third parties are subject, in particular with regard to data retention, as well as the procedures for implementing the requirements set out in Article R. 561-13 of the same code, relating to the monitoring of the measures taken by the third party to comply with its due diligence obligations;
 - g) The vigilance measures for determining the conditions in which it needs to sign the agreement stipulated in Article R. 561-9 of the Monetary and Financial Code.
- 3 • if the asset management company belongs to a financial group, a mixed group or a financial conglomerate, the procedures for circulating the information needed to organise the prevention of money laundering and terrorist financing within the group as stipulated in Article L. 511-34 of the Monetary and Financial Code, while ensuring that this information is not used for any other purpose than the prevention of money laundering and terrorist financing.
- 4 • detecting and dealing with unusual or suspicious transactions;
- 5 • implementing the obligation to report and send information to the national financial intelligence unit;
- 6 • procedures for sharing information about suspicious transaction reports sent to the national financial intelligence unit, when the entities concerned belong to a group or act on behalf of the same client and in the same transaction as stipulated in Articles L. 561-20 and L. 561-21 of the Monetary and Financial Code;
- 7 • the record-keeping procedures for the purposes of 2°, as well as:
 - a) the results of the enhanced examination stipulated in Article R. 561-22 of the Monetary and Financial Code;

b) The results of any other analysis, in particular stipulated in Articles R. 561-12 and R. 561-14 of the Monetary and Financial Code;

c) the information, documents and reports about the transactions referred to in Article L. 561-15 of the Monetary and Financial Code.

d) correspondence relevant to anti-money laundering and terrorist financing.

Such information and documents are kept under conditions that enable the requests for information mentioned in Article L. 561-25 of the Monetary and Financial Code to be met.

- 8 • the organisation of the internal control system and the internal control activities conducted, which give rise to an annual report.

This report describes:

a) The internal control procedures implemented according to the assessment of the money laundering and terrorist financing risks;

b) The means employed to exercise and control the control activity;

c) The incidents and shortcomings found and the corrective measures taken.

- 9 • When the asset management company belongs to a group as defined in Article L. 561-33 (I) of the Monetary and Financial Code, the organisation of the internal control system and activities set up and conducted at group level, which give rise to an annual report drawn up by the parent company.

In addition to the items under point 8°, this report concerns:

a) The exchanging of information necessary to the prevention of money laundering and terrorist financing within the group;

b) The treatment of any subsidiaries and/or branches of the group in third countries.

The information provided in the reports required by points 8° and 9° concerns the calendar year up to 31 December. They shall be provided to the AMF at the latest by 30 April of the following year.

Article 320-21

The internal procedures shall also specify under what conditions the asset management company applies the provisions of Article L. 561-33 (II) of the Monetary and Financial Code in terms of vigilance with regard to clients and the sharing and retention of information and data protection with regard to its branches and subsidiaries in a third country.

Article 320-22

When it implements its investment policies for its own account or for third parties, the asset management company shall assess the risk of money laundering and terrorist financing and establish procedures to oversee the investment selections made by its employees.

Article 320-23

When recruiting employees, the asset management company shall consider the risks relating to the prevention of money laundering and terrorist financing, in accordance with employees' level of responsibility.

At the time of hiring, and periodically thereafter, it shall provide its personnel with information on and training in the applicable

2022-06-11

regulations and amendments, current money-laundering techniques, prevention and detection measures, and the procedures and terms referred to in Article 320-17. They shall be adapted to the functions performed, members, locations and risk classification.

It shall draft and implement written procedures to ensure compliance with the provisions relating to the prevention of money laundering and terrorist financing.

It shall take the necessary measures to ensure that recruitment within its subsidiaries takes into account, according to the level of responsibilities exercised, the risks relating to the fight against money laundering and terrorist financing, and that the above-mentioned information and training is provided to staff when they are recruited and on a regular basis thereafter.

Section 3 - Miscellaneous provisions (Article 320-24)

Articles 50 to 56 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[Article 320-24](#)

Chapters III, IV and V of this Title and Article 316-2 (V) apply to the relevant persons referred to in point 2 of Article 1 of Delegated Regulation (EU) N° 231/2013 of the Commission of 19 December 2012.

The rules adopted by the asset management company under the provisions of Chapters III, IV and V of this Title and Article 316 2 (V) and applying to the relevant persons referred to in point 2 of Article 1 of Delegated Regulation No. 231/2013 mentioned above shall constitute professional obligations for those persons.

Chapter IV and sections 1 and 4 of Chapter V of this Title and Article 316-2 (V) shall apply to the relevant persons referred to in point 2 of Article 1 of Delegated Regulation N° 231/2013 mentioned above in branches established in France by management companies.

Section 2 of chapter V of this Title applies to the relevant persons referred to in point 2 of article 1 of Delegated Regulation (EU) n° 231/2013 mentioned above in branches established in France by european management companies of AIFs mentioned referred to in article L. 532-21-3 of the Monetary and Financial Code.

Section 4 - Handling and monitoring of subscription applications and book (Article 320-25)

[Article 320-25](#)

The asset management company authorised before 10 November 2021 to provide the investment service referred to in point 5 of Article L. 321-1 of the Monetary and Financial Code and offering financial securities via a website as provided for in Article 325-48 in the version applicable before the date of publication of the Order of 9 March 2022 approving the amendments to the AMF General Regulation, shall remain subject to the provisions of Article 320-25 in the version applicable before the date of publication of the aforementioned Order until 10 November 2022.

Title I ter - Asset management companies of UCITS (Articles 321-1 à 321-152)

[Article 321-1](#)

I. - The present Title is applicable to asset management companies that are authorised to manage UCITS.

II. - An asset management company may apply for authorisation to provide investment services comprising portfolio management on behalf of a third party or investment advice referred to in 4 and 5 of Article L. 321-1 of the Monetary and Financial Code.

2022-06-11

III. - When it is authorised to provide one or more of the investment services referred to in II or when it markets units or shares of UCITS or AIFs in France in accordance with Article 411-129 and Article 421-26, to perform these activities it shall comply with the provisions of this Title as well as the provisions applicable to investment services providers contained in Title I.

IV. - When an asset management company markets financial instruments in accordance with Article L. 533-24-1 of the Monetary and Financial Code, it shall comply with section 2 of Chapter III of Title I.

V. - Unless otherwise provided, asset management companies that are authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 and authorised in accordance with Directive 2011/61/EU of the Parliament and of the Council of 8 June 2011 shall cumulatively apply Title I *bis* and Title I *ter* of the present Book.

Chapter I - Procedures for authorisation, programme of operations and passport (Articles 321-2 à 321-8)

Section 1 - Authorisation and programme of operations (Articles 321-2 à 321-7)

Sub-section 1 - Authorisation

[Article 321-2](#)

The authorisation of an asset management company referred to in Article L. 532-9 of the Monetary and Financial Code requires submission to the AMF of an application specifying the scope of the authorisation, together with a file that complies with the model provided for in Article R. 532-10 of the Monetary and Financial Code.

The file shall include a programme of operations for each of the services that the asset management company intends to provide, specifying the conditions in which it expects to provide those services and indicating the type of transactions envisaged and its organisational structure. The programme of operations is supplemented, where necessary, by additional information corresponding to the assets used by the asset management company. The AMF issues an acknowledgement of receipt when it receives this file.

[Article 321-3](#)

In deciding whether to grant authorisation to an asset management company, the AMF shall review the items in the file referred to in Article 321-2, along with the items set forth in Chapter II of this Title. The AMF may require the applicant to produce any additional information it needs to make its decision. The AMF shall outline the scope of the authorisation.

The AMF shall reach a decision on the application within three months of receiving the file.

It may extend this deadline by up to three months where it considers this necessary due to special circumstances, having notified the asset management company.

[Article 321-4](#)

For any amendments to the information provided in the asset management company's authorisation file pursuant to Article 321-2, a prior declaration, notification or application for authorisation, as appropriate, is made to the AMF.

On receiving the prior declaration, notification or application for authorisation from the asset management company, the AMF issues a receipt.

In accordance with II of Article L. 532-9-1 of the Monetary and Financial Code, when the asset management company submits an application for authorisation prior to making a material change to the information in its authorisation file, the AMF has one month to notify the company of its rejection or of any restrictions placed on its application.

Should the specific circumstances of the case so justify, the AMF may notify the applicant that this deadline has been extended by up to one month.

The changes are implemented at the end of the one-month assessment period, extended as appropriate.

Sub-section 2 - Withdrawal of authorisation and deregistration

Article 321-5

Except in cases where the company requests withdrawal, the AMF, whenever it envisages withdrawing a management company's authorisation pursuant to Article L. 532-10 of the Monetary and Financial Code, shall so inform the company, specifying the reasons for which such decision is envisaged. The company shall have one month from receipt of such notification to submit any observations it may have.

Where the asset management company manages a UCITS established in another European Union Member State or in another State party to the European Economic Area agreement, the AMF consults the competent authorities of the home Member State before withdrawing the authorisation of the management company of the UCITS.

Where the AMF is consulted by the competent authorities of the home Member State of an asset management company that manages a French UCITS, it shall take appropriate measures to safeguard the interests of the UCITS's unit holders or shareholders. These measures may include measures preventing the asset management company from carrying out new transactions on the behalf of the UCITS.

Article 321-6

When the portfolio asset management company requests the AMF to withdraw its authorisation, the company must comply with 1 to 3 and the last paragraph of Article L. 532-10 of the Monetary and Financial Code.

When the AMF decides as a matter of course to withdraw an authorisation, the company concerned shall be notified of the AMF's decision by registered letter with acknowledgement of receipt. The AMF shall inform the public of the withdrawal by inserting notices in newspapers or other publications of its choosing.

This decision shall specify the timetable and method for implementing the withdrawal.

During this period:

- a) The company shall be put under the supervision of an administrator designated by the AMF on the basis of his or her skills. The administrator shall be bound by professional secrecy rules. The administrator appointment decision shall specify the terms of their monthly compensation, allowing, in particular, for the nature and importance of the work and the position of the appointed administrator. If he or she manages another company, said company may not acquire the clientele directly or indirectly;
- b) The administrator shall choose another portfolio asset management company to manage the collective investments. If the administrator does not find a portfolio asset management company, he or she shall invite the custodians to enter into proceedings for liquidation of the collective investments;
- c) The company may make only such transactions as are strictly necessary to protect the interests of the unitholders or shareholders of the managed collective investments and its clients;
- d) The company shall inform the depositaries and unitholders or shareholders of the managed collective investments of the withdrawal of authorisation, as well as the custody account-keepers of the individual portfolios under discretionary management and its clients;
- e) The company shall ask its clients in writing to request transfer of their accounts to another investment service provider, or to request liquidation of their portfolios, or to manage their portfolios themselves;
- f) The company shall update its website notably by removing all references to its capacity as a portfolio asset management company;

2022-06-11

g) On the day the withdrawal of authorisation comes into effect, the company shall change its company name and its corporate object.

Article 321-7

When the AMF deregisters the company pursuant to Article L. 532-12 of the Monetary and Financial Code, the AMF shall notify the company of its decision in accordance with the conditions stipulated in Article 321-6. The AMF shall inform the public by inserting notices in newspapers or other publications of its choosing.

Section 2 - Passport (Article 321-8)

Article 321-8

An asset management company seeking to create and manage a UCITS or to provide investment services under the freedom to provide services or under the right of establishment in another European Union Member State or in another State party to the European Economic Area agreement, shall notify the AMF of its plans in accordance with Articles R. 532-24, R. 532-25, R. 532-28 and R. 532-29 of the Monetary and Financial Code.

Chapter II - Authorisation requirements for asset management companies and for acquiring or increasing an equity interest in an asset management company (Articles 321-9 à 321-22)

Section 1 - Authorisation requirements (Articles 321-9 à 321-14)

Article 321-9

The asset management company shall have its registered office in France. It may be incorporated in any form, subject to a review of its constitutive rules to ensure they are consistent with the laws and regulations applicable to the company and provided its accounts are subject to a statutory audit.

Article 321-10

I. - The share capital of an asset management company must be at least EUR 125,000 and must be fully paid in cash at least to this minimum amount.

II. - When authorisation is granted and in subsequent financial years, the asset management company must be able to prove at any time that its capital is at least equal to the higher of the two amounts specified in Points 1° and 2° below:

- 1 • EUR 125,000 plus an amount equal to 0.02 % of assets under management by the asset management company in excess of EUR 250 million.

The total capital requirement shall not exceed EUR 10 million.

The assets included in the calculation of the additional capital requirement referred to in the third paragraph are:

- a) French or collective investments, organised as companies, that have delegated the overall management of their portfolio to the asset management company;
- b) French or foreign collective investments in the form of funds, managed by the asset management company, including portfolios for which it has delegated management to another entity, but excluding portfolios that it manages on a delegated basis.

Up to 50% of the additional capital requirement may be met by a guarantee given by a credit institution or insurance undertaking having its registered office in another State party to the European Economic Area agreement, or in another State, provided the guarantor is subject to prudential rules that the AMF deems equivalent to those applicable to credit institutions and insurance undertakings having their registered offices in States parties to the European Economic Area agreement.

2022-06-11

- 2 • One-quarter of general operating expenses for the preceding financial year, calculated in accordance with Articles 34 *ter* to 34 *quinter* of Commission Regulation (EU) No. 241/2014 of 7 January 2014.

Where an asset management company is also authorised to manage a securitisation vehicle mentioned in I of Article L. 214-167 of the Monetary and Financial Code, it is not subject to the provisions of this section II.

III. - The capital requirement at the time of authorisation shall be calculated on the basis of forecast data.

For subsequent years, the amount of general operating expenses and the total value of portfolio assets used to determine the capital requirement shall be calculated on the basis of the most recent of the asset management company's financial statements for the preceding financial year, interim statement of financial position certified by the statutory auditor, or the data sheet referred to in Article 321-75.

Article 321-11

I. - The asset management company's own funds must be invested in liquid assets or assets that can easily be converted into cash in the short term and that do not include speculative positions.

II. - However, if own funds exceed 130% at least of the regulatory own funds mentioned in Article 321-10, the excess portion of this amount may be invested in assets that do not meet the requirements of I, provided that these assets do not create a material risk for the company's regulatory own funds.

Article 321-12

The asset management company shall disclose the identities of legal entities or individuals who are direct or indirect shareholders with qualifying holdings as well as the amounts of their holdings. The AMF shall assess the quality of the company's shareholders having regard to the need for sound and prudent management and proper performance of its own supervisory responsibilities. It shall make the same assessment of partners and members in an economic interest grouping.

Article 321-13

The asset management company shall be effectively directed by at least two persons of sufficiently good repute and sufficient experience for their duties, so as to ensure sound and prudent management.

At least one of these two persons must be a company officer with the power to represent the company in its dealings with third parties.

The other person may be the chairman of the board of directors or a person specifically empowered by the company's governing bodies or bylaws to direct the company and determine its policies.

Article 321-14

The persons who effectively manage the asset management company within the meaning of Article 321-13 shall undertake to inform the AMF without delay of any changes in the situation they declared when they were appointed.

Section 2 - Content of the programme of operations (Articles 321-15 à 321-17)

Article 321-15

The asset management company shall have a programme of operations that complies with the provisions of Chapter III.

Article 321-16

An asset management company may hold equity interests in companies set up for purposes that represent an extension of its own activities. These holdings shall be compatible with the measures that the asset management company is required to take in order to detect and prevent or manage the conflicts of interest that may arise from these holdings.

Article 321-17

Section 3 - Requirements for acquiring or increasing an equity interest in an asset management company (Articles 321-18 à 321-22)

[Article 321-18](#)

The AMF shall be notified of any transaction that enables a person acting alone or in concert with other persons, within the meaning of Article L. 233-10 of the Commercial Code, to acquire, increase or decrease or cease owning, directly or indirectly, a qualifying holding in an asset management company. The notice must be given to the AMF by the person or persons concerned before the transaction is executed, if one of the following conditions is met:

- 1 • The capital or voting rights held by the person(s) exceed or fall below one-tenth, one-fifth, one-third or one-half of the capital or voting rights;
- 2 • The asset management company becomes or stops being a subsidiary of the person(s) concerned;
- 3 • The person or persons gain or lose significant influence over the management of the management company as a result of the transaction.

[Article 321-19](#)

For the purposes of this Chapter:

- 1 • A “qualifying holding” means, pursuant to sub-paragraph j of Article 2(1) of Directive 2009/65/EC of 13 July 2009, “a direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists”;
- 2 • Voting rights are calculated in accordance with the provisions of Article L. 233-4, points I and IV of Article L. 233-7 and Article L. 233-9 of the Commercial Code;
- 3 • The capital holding is calculated by adding up, as applicable, the direct holding and any indirect holdings in the capital of the asset management company. Indirect holdings are calculated by multiplying together the fractions held in the capital of each intermediate entity and in the capital of the asset management company;
- 4 • The fraction of capital or voting rights held by investment firms or credit institutions as a result of underwriting or guaranteed placement of financial instruments, within the meaning of 6-1 or 6-2 of Article D. 321-1 of the Monetary and Financial Code, shall not be counted, as long as these rights are not exercised or used in any other way to influence the issuer's management and provided that they are sold within one year of acquisition;
- 5 • In the case of an indirect holding, any person likely to acquire, sell or lose a qualifying holding must notify the AMF of this. However, without prejudice to the obligations of the direct holder, the final holder may make notifications for and on behalf of the entities under its control, provided it includes the relevant information on these entities.

[Article 321-20](#)

Transactions to acquire or increase qualifying holdings are subject to prior authorisation by the AMF under the following conditions:

- 1 • within two trading days of receipt of the notice and all the documents required, the AMF shall provide the applicant with written acknowledgement of receipt.

The AMF shall have up to sixty trading days, starting from the date of the written acknowledgement of receipt of the notice, in which to assess the transaction. The written acknowledgement of receipt shall specify the expiry date of the assessment

2022-06-11
period.

- 2 • During the assessment period and by the fiftieth trading day thereof at the latest, the AMF may request further information to complete the assessment. This request shall be made in writing and shall specify additional necessary information. Within two trading days of receipt of the further information, the AMF shall send the applicant a written acknowledgement of receipt.

The assessment period shall be suspended from the date of the AMF's request for further information until the receipt of the applicant's response to this request. The suspension shall not last more than twenty trading days. The AMF may make further requests for more information or clarifications, but these requests shall not suspend the assessment period.

- 3 • The AMF may extend the suspension mentioned in the preceding paragraph to thirty trading days, if the applicant:

a) is located outside of the European Union or is covered by regulations from outside the Union;

b) or is a person who is not subject to monitoring under the terms of European Directives 2013/36/EU, 2009/65/EC, 2009/138/EC or 2014/65/EU.

- 4 • if the AMF decides to object to a planned acquisition after the assessment, it shall give written notice of its decision to the applicant within two trading days and before the end of the assessment period. The AMF shall give the grounds for its decision. The portfolio asset management company shall also be notified.

At the request of the applicant, the AMF shall publish the grounds for its decision on the website mentioned in Article R. 532-15-2 of the Monetary and Financial Code.

- 5 • if the AMF has not made a written objection to the planned acquisition by the end of the assessment period, the acquisition shall be deemed to be approved.
- 6 • the AMF may set a deadline for completing the planned acquisition and may extend this deadline.
- 7 • if the AMF receives several notifications under the terms of Article L. 532-9-1 of the Monetary and Financial Code concerning the same asset management company, it shall examine them jointly in such a way as to ensure equal treatment of the applicants.

Notwithstanding the preceding provisions, the AMF shall be notified only of transactions that occur between companies directly or indirectly owned and controlled by the same company and that change the structure of ownership among the existing shareholders holding, prior to the transaction, a qualifying participating interest in the portfolio asset management company, unless such transactions result in the transfer of control or ownership of some or all of the above-mentioned rights to one or more persons that are not subject to the laws of a State party to the European Economic Area agreement.

When the number or distribution of voting rights is restricted in relation to the number or distribution of the relevant shares or units under the provisions of legislation or the instruments of incorporation, the percentages stipulated in this Chapter and in Article 321-19 shall be calculated and implemented in terms of shares or units respectively.

Article 321-21

Transactions involving the sale or decrease qualifying holdings in an asset management company mentioned in Article 321-18 shall entail a re-examination of the authorisation in view of the need to ensure sound and prudent management.

Article 321-22

The AMF may ask asset management companies for the identity of partners or shareholders who report holdings of less than one twentieth, but more than 0.5%, or the relevant figure set by the articles of association for the purposes of Article L. 233-7 of the Commercial Code.

Section 1 - General organisational requirements (Articles 321-23 à 321-29)

[Article 321-23](#)

I. - Asset management companies must use adequate and appropriate resources, including material, financial and human resources at all times.

II. - They shall establish and maintain effective decision-making procedures and an organisational structure that clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities.

III. - They shall ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities.

IV. - They shall establish and maintain effective and adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the asset management company.

V. - They shall employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

VI. - They shall establish and maintain effective and effective internal reporting and communication of information at all relevant levels.

VII. - They shall maintain adequate and orderly records of their business and internal organisation.

VIII. - They shall ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

IX. - For the purposes of I to VIII above, asset management companies shall take into account the nature, scale, complexity and range of the services that they provide and the businesses that they engage in.

[Article 321-24](#)

Asset management companies shall establish and maintain effective systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[Article 321-25](#)

Asset management companies shall establish and maintain effective business continuity plans aimed to ensure, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of their UCITS management activity, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their activities.

[Article 321-26](#)

Asset management companies shall establish and maintain effective accounting policies and procedures that enable them, at the request of the AMF, to deliver in a timely manner financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

[Article 321-27](#)

Asset management companies shall monitor and, on a regular basis, to evaluate the adequacy and effectiveness of their systems, internal control mechanisms and other arrangements established in accordance with Articles 321-23 to 321-26, and to take appropriate measures to address any deficiencies.

2022-06-11

[Article 321-28](#)

The annual financial statements of the asset management company must be certified by a statutory auditor. Within six months of the end of the financial year, asset management companies shall file copies of their balance sheet, income statement and the notes to the financial statements, along with their annual management reports and notes, the statutory auditors' general and special reports with the AMF. If applicable, the companies shall also produce consolidated financial statements.

[Article 321-29](#)

The asset management company shall:

- 1 • Ensure that the accounting procedures referred to in Article 321-26 are applied so that unit holders and shareholders in the UCITS are protected;
- 2 • Establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS, as consistent with the applicable rules referred to in Article L. 214-17-1 of the Monetary and Financial Code;
- 3 • Ensure compliance with Articles 411-24 to 411-33.

Section 2 - Compliance system (Articles 321-30 à 321-33)

Sub-section 1 - General provisions

[Article 321-30](#)

Asset management companies shall establish and maintain appropriate operational policies, procedures and measures to detect any risk of non-compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code and the subsequent risks and to attenuate those risks.

For the purposes of the preceding paragraph, asset management companies shall take into account the nature, scale, complexity and range of the businesses that they engage in.

[Article 321-31](#)

I. - The asset management company shall establish and maintain an effective compliance function that operates independently. Its role is to:

- 1 • Monitor and, on a regular basis, assess the adequacy and effectiveness of policies, procedures and measures implemented for the purposes of Article 321-30, and actions taken to remedy any deficiency in compliance of asset management company and the relevant persons with their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code;
- 2 • Advise and assist the relevant persons in charge of the management company's services and business so that they comply with the asset management company's professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code.

II. - In this Title, a relevant person is any person who is:

- 1 • A manager, member of the board of directors, the supervisory board, or the executive board, managing director or deputy managing director, or any other company officer or tied agent of the asset management company referred to in Article L. 545-1 of the Monetary and Financial Code;
- 2 • A manager, member of the board of directors, the supervisory board, or the executive board, managing director or deputy managing director, or any other company officer of any tied agent of the asset management company;
- 3 • An employee of the asset management company or of a tied agent of the asset management company;

2022-06-11

- 4 • A natural person that is seconded to and placed under the authority of the asset management company or of a tied agent of the asset management company and that takes part in the management of a collective investment scheme by the asset management company;
- 5 • A natural person who takes part, under a delegation of authority to manage a collective investment scheme, in the investment asset management company's management of such a scheme.

Article 321-32

Asset management companies shall ensure that the following conditions are met to enable the compliance function to perform its tasks properly and independently:

- 1 • The compliance function must have the necessary authority, resources and expertise and access to all relevant information;
- 2 • A compliance and internal control officer must be appointed and must be responsible for this function and for reporting as to compliance, including the report referred to in Article 321-36.
- 3 • The relevant persons involved in the compliance function are not involved in the performance of the services and activities that they monitor;
- 4 • The method for determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

However, asset management companies shall not be required to comply with Points 3° or 4° if they are able to demonstrate that, in view of the nature, scale, complexity and range of the businesses that they engage in, the requirements under Points 3° or 4° are not proportionate and that their compliance function continues to be effective.

Sub-section 2 - Appointment and responsibilities of the compliance and internal control officer

Article 321-33

The compliance and internal control officer referred to in Point 2° of Article 321-32 shall hold a professional license issued under the conditions defined in Section 8 of this Chapter.

Senior management shall apprise the board of directors, the supervisory board or, failing that, the body responsible for supervision, if such a body exists, of the appointment of the compliance and internal control officer.

Section 3 - Responsibilities of senior management and supervisory bodies (Articles 321-34 à 321-36)

Article 321-34

For the purposes of this Section, the supervisory body shall be the board of directors, the supervisory board or, failing that, the body responsible for supervision of senior management referred to in Article L. 532-9 of the Monetary and Financial Code, if such a body exists,.

Article 321-35

The responsibility for ensuring that asset management companies comply with their professional obligations stipulated in II of Article L. 621-15 of the Monetary and Financial Code shall lie with senior management and, where appropriate, with the supervisory body.

More specifically, senior management and, where appropriate, the supervisory body, shall periodically assess and review the effectiveness of the policies, systems and procedures that the asset management company has established to comply with its professional obligations and take the appropriate measures to remedy any deficiencies.

The asset management company shall ensure that its senior management:

2022-06-11

a) is responsible, with regard to each UCITS and managed by the asset management company, for implementing the general investment policy set forth in the SICAV's prospectus, rules or articles of association, as the case may be;

b) oversees the approval of investment strategies for each managed UCITS;

c) is responsible for ensuring that the asset management company has a permanent and effective compliance function, within the meaning of Article 321-31, even if this function is performed by a third party;

d) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

e) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;

f) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in Article 321-78, including the risk limit system for each managed UCITS;

g) in application of Article L. 621-8-4 of the Monetary and Financial Code, informs the AMF immediately of any incidents that could lead to a loss or gain for the asset management company, a cost linked to its civil or criminal liability, an administrative sanction or reputational damage and resulting from non-compliance with Articles 321-23 to 321-26, of an amount that exceeds 5% of its regulatory capital. Under the same conditions, they shall also inform the AMF of any event preventing the asset management company from meeting the requirements of its authorisation. They shall provide the AMF with an incident report indicating the nature of the incident, the measures implemented after it happened and the initiatives taken to prevent similar incidents from taking place in the future.

Article 321-36

Asset management companies shall ensure that senior management receives frequent compliance, risk control and periodic control reports at least once a year specifying if the appropriate measures have been taken in the event of deficiencies.

Asset management companies shall also ensure that its supervisory body, if such a body exists, receives periodic written reports on the same topics.

These reports give information about the implementation of investment strategies and internal procedures for approving the investment decisions referred to in items b to e of Article 321-35.

Section 4 - Verification of the knowledge of specified persons (Articles 321-37 à 321-39)

Article 321-37

I.- The asset management company shall ensure that natural persons acting on its behalf have the minimum qualification as well as a sufficient level of knowledge.

II. - It verifies that the persons carrying out one of the following functions can prove they have the minimum level of knowledge set forth in Point 1° of II of Article 321-39:

a) asset manager, within the meaning of Article 321-38;

b) compliance and internal control officer, within the meaning of Article 321-53;

III. - The asset management company shall not carry out the verification provided for in II with regard to persons employed as at 1 July 2010. Persons having passed one of the examinations referred to in Point 3° of II of Article 321-39 shall be deemed to have the minimum knowledge required to perform their duties.

2022-06-11

IV. - To conduct the verification referred to in II, asset management company has six months from the date on which the employee starts to perform one of the above functions. However, where the employee has been taken on under a work/study contract, as provided in Articles L. 6222-1 and L. 6325-1 of the labour code, the asset management company may not conduct such verification. If it decides to hire the employee when his or her training period finishes, the asset management company shall ensure that he or she has the minimum qualification as well as a sufficient level of knowledge as referred to in I, at the latest by the end of the contract training period.

The asset management company shall ensure that any employee whose minimum knowledge has not yet been verified is appropriately supervised.

Article 321-38

An asset manager is any person authorised to take investment decisions in connection with the management of one or more UCITS.

Article 321-39

I - Portfolio asset management companies may entrust to an external organisation which can provide evidence of its ability to organise examinations, the verification of the professional knowledge of the physical persons under their authority or acting on their behalf and who carry out one of the functions referred to in Article 321-37 (II);

- 1 • the Financial Skills Certification Board mentioned in Article 312-5 shall also issue opinions at the request of the AMF on the certification of organisations that can prove they have the capacity to organise examinations;
- 2 • the Financial Skills Certification Board issues opinions at the request of the AMF on the need to introduce optional or mandatory modules in addition to the content of minimum knowledge, and on the functions subject to these modules;
- 3 • when rendering opinions, the Financial Skills Certification Board considers the possibility of establishing equivalencies with similar schemes abroad.

II. - Further to an opinion of the Financial Skills Certification Board, the AMF:

- 1 • determines the content of the minimum knowledge to be acquired by natural persons acting under the authority or on behalf of an asset management company and performing one of the functions referred to in Article 321-37 (II). It shall publish that content;
- 2 • defines the content of the modules completing the minimum knowledge mentioned in 1°. It publishes the content of these modules;
- 3 • ensures that the content of this minimum knowledge and complementary modules is updated;
- 4 • determines and verifies the arrangements for the examinations and complementary modules that validate acquisition of the knowledge;
- 5 • certifies organisations within four months of the filing of applications. This deadline shall be extended as necessary until requests for further information are met.

The organisation shall provide the AMF with a report on the anniversary of the date when it was certified, and then every three years;

- 6 • the AMF shall charge an application fee when applications for certification and reports are filed.

Section 5 - Complaint handling (Articles 321-40 à 321-41)

[Article 321-40](#)

Asset management companies shall establish and maintain an effective and transparent procedure for reasonable and prompt handling of complaints received from holders of units or shares in a UCITS when no investment service is provided to them when they subscribe.

These unitholders or shareholders can file complaints free of charge with the asset management company.

Asset management companies shall respond to the complaint within a maximum of two months from the date of receipt of the complaint, except in duly justified exceptional circumstances.

They shall implement a procedure for handling complaints from unitholders and shareholders in an equal and consistent manner. This procedure shall be allocated the necessary resources and expertise.

Asset management companies shall record each complaint and the measures taken to handle it. They shall also implement a complaint handling monitoring system enabling them to identify problems and implement the appropriate corrective measures.

Information on the complaint handling procedure shall be made available to unitholders and shareholders free of charge.

The complaint handling procedure shall be proportionate to the size and structure of the asset management company.

[Article 321-41](#)

Asset management companies shall take measures in accordance with Article 411-138 and establish appropriate procedures and arrangements to ensure that they deal properly with complaints from all holders of units or shares in a UCITS and that there are no restrictions on these persons exercising their rights if they reside in another European Union Member State or State party to the European Economic Area agreement. These measures shall allow holders of units or shares in a UCITS to send a complaint in the official language or one of the official languages of the Member State in which the UCITS is sold and to receive a response in the same language.

Asset management companies shall also establish appropriate procedures and arrangements to supply information, at the request of the public or, where the asset management company manages a UCITS established in another European Union Member State or State party to the European Economic Area agreement, of the competent authorities of the home Member State of that UCITS.

These provisions apply if no investment service is provided upon subscription.

Section 6 - Personal transactions (Articles 321-42 à 321-45)

[Article 321-42](#)

I. - For the purposes of this Title, "personal transaction" shall refer to a transaction carried out by or on behalf of a relevant person where at least one of the following criteria is met:

- 1 • The relevant person is acting outside of the scope of his functions;
- 2 • The transaction is carried out on behalf of one of the following persons: the relevant person, any person with whom he has a family relationship or close links, a person whose relationship with the relevant person is such that the relevant person has a material direct or indirect interest in the outcome of the trade, other than the payment of a fee or commission for the execution of the trade.

II. - A person with a family relationship with the relevant person means any of the following:

- 1 • The spouse of the relevant person or the partner of the relevant person under the terms of a civil solidarity pact;

2022-06-11

- 2 • Children over whom the relevant person holds parental authority or resident in his household, or who are his permanent wards;
- 3 • Any other relative of the relevant person resident in his household for at least one year on the date of the personal transaction concerned.

III. - A situation in which a person has close links with the relevant person shall mean a situation where natural or legal persons are linked:

- 1 • By an equity holding, meaning a direct holding or a holding through a controlled entity of 20% or more of the voting rights or the share capital of a company;
- 2 • Or by control, meaning the relationship between a parent company and a subsidiary, in any of the cases referred to in Article L. 233-3 of the Commercial Code or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation where two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

Article 321-43

Asset management companies shall establish and maintain effective and adequate arrangements aimed at preventing the following activities in the case of any relevant person, or person acting on behalf of a relevant person, who is involved in activities that may give rise to a conflict of interest, or who has access to inside information defined in Article 7 of Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 or to other confidential information relating to clients or transactions with or for clients by virtue of the performance of his functions within the asset management company:

- 1 • Entering into a personal transaction that meets at least one of the following criteria:
 - a) The transaction is prohibited by the provisions of Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014;
 - b) The transaction involves the misuse or improper disclosure of inside or confidential information;
 - c) The transaction conflicts or is likely to conflict with the asset management company's professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code.
- 2 • Advising or procuring, other than in the proper course of the relevant person's function, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by III of Article 321-107;
- 3 • Disclosing, other than in the proper course of his employment, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:
 - a) Entering into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by III of Article 321-107;
 - b) Advising or procuring another person to enter into such a transaction.

Article 321-44

For the purposes of the provisions of Article 321-43, asset management companies must specifically ensure that:

- 1 • All the relevant persons referred to in Article 321-43 are aware of the restrictions on personal transactions, and of the measures decided by the asset management company in connection with personal transactions and disclosure for the purposes of Article 321-43;
- 2 • The asset management company is informed promptly of any personal transaction entered into by a relevant person referred to in the first paragraph of Article 321-43, either by notification of any such transaction or by other procedures enabling the asset management company to identify such transactions;

If the asset management company has entered into an outsourcing contract, it must ensure that the service provider to which the task or function has been outsourced keeps a record of personal transactions entered into by any relevant person and is able to provide such information to the asset management company promptly on request.

- 3 • A record is kept of the personal transaction notified to the asset management company or identified by it. The record shall also mention any authorisation or prohibition in connection with the transaction.

[Article 321-45](#)

Articles 321-43 and 321-44 do not apply to the following personal transactions:

- 1 • Personal transactions executed as part of a third-party portfolio management service and without any prior instruction concerning the transaction between the portfolio manager and the relevant person or another person on whose behalf the transaction is executed;
- 2 • Personal transactions in units or shares in a collective investment scheme, provided that the relevant person or any other person on whose behalf the transactions are executed is not involved in the management of such scheme.

The foregoing provision shall not apply to the collective investment schemes governed by Article L. 214-154 of the Monetary and Financial Code, or to the schemes referred to in Articles L. 214-144 to L. 214-147 *ibid.* that rely on the waiver provided for in III of Article R. 214-193 *ibid.*

Section 7 - Conflicts of interest (Articles 321-46 à 321-52)

Sub-section 1 - Principles

[Article 321-46](#)

The asset management company shall take all reasonable measures to detect conflicts of interest that arise in the course of providing management of UCITS:

- 1 • Either between itself, relevant persons, or any person directly or indirectly linked to the asset management company by control, on the one hand, and its clients, on the other hand;
- 2 • Or between two UCITS.

This Section is applicable to all collective investment schemes managed by the asset management company.

[Article 321-47](#)

In order to detect conflicts of interest that could damage a UCIT' interests for the purposes of Article 321-46, the asset management company shall at least take into account the possibility that the persons referred to in Article 321-46 might find themselves in one of the following situations, whether as a result of providing management of a UCITS or other activities:

- 1 • The asset management company or that person is likely to make a financial gain or avoid a financial loss, at the expense of the UCITS;
- 2 • The asset management company or that person has an interest in the outcome of a service provided to a client or a UCITS, or of a transaction carried out on behalf of the client or the UCITS, which is distinct from the UCITS' interest in that outcome;
- 3 • The asset management company or that person has a financial or other incentive to favour the interest of another client or a group of clients or a UCITS over the interest of the UCITS to whom the service is being provided;
- 4 • The asset management company or that person carries on the same business for the UCITS as the client;
- 5 • The asset management company or that person receives or will receive from a person other than the UCITS an inducement in relation to a service provided to the UCITS in any form whatsoever, other than the commissions or fees usually charged for such service.

Sub-section 2 - Conflicts of interest policy

Article 321-48

Asset management companies shall establish and maintain an effective conflicts of interest policy, set out in writing and appropriate to their size and organisation and to the nature, scale and complexity of their business.

Where an asset management company is a member of a group, its conflicts of interest policy must also take into account any circumstances, of which it is or should be aware, that may give rise to a conflict of interest as a result of the structure and business activities of the other members of the group.

Article 321-49

I. - The conflicts of interest policy established in compliance with Article 321-48 must specifically:

- 1 • Identify, with reference to the asset management company's collective asset management activities, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more clients when providing management of a UCITS;
- 2 • Specify procedures to be followed and measures to be adopted in order to manage such conflicts.

II. - The procedures and measures provided for in Point 2° shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in Point 1° carry on those activities at a level of independence appropriate to the size and activities of the asset management company and of the group to which it belongs, and to the materiality of the risk of damage to clients' interests.

The procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the asset management company to ensure the requisite degree of independence:

- 1 • Effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more clients;
- 2 • Separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the asset management company;
- 3 • Elimination of any direct links between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, other relevant persons principally engaged in another activity, where a conflict of

interest is likely to arise in relation to those activities;

- 4 • Measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out his activities;
- 5 • Measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate activities other than collective asset management where such involvement may impair the proper management of conflicts of interest;
- 6 • Measures to ensure that a relevant person may only provide paid advisory services in that capacity and on behalf of the asset management company to companies issuing the securities held by the UCITS under the company's management or the securities that it plans to acquire, regardless of whether it is the company concerned or the UCITS under management that pays for those services.

If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, asset management companies shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

[Article 321-50](#)

The asset management company shall keep and regularly update a log of the collective asset management activities carried out by it or on its behalf where a conflict of interest entailing a material risk of damage to the interests of a UCITS or one or more clients has arisen or, in the case of ongoing activities, is likely to arise.

Sub-section 3 - Disclosure to holders of units or shares

[Article 321-51](#)

Where the organisational or administrative arrangements made by the asset management company for the management of conflicts of interest are not sufficient to ensure with reasonable confidence that the risk of damage to the interest of the UCITS or its unit holders or shareholders will be prevented, the senior management or other competent internal body of the asset management company shall be promptly informed in order for them to take any necessary decision to ensure that in any case the asset management company acts in the best interests of the UCITS and of its unit holders or shareholders.

Unit holders or shareholders in the UCITS shall be informed, using a durable medium, of the decision taken by the asset management company.

[Article 321-52](#)

When collective investment schemes or third country investment funds managed by the asset management company or by an affiliated company are purchased or subscribed on behalf of a UCITS, the prospectus of this UCITS must provide for this possibility.

Section 8 - Professional licences (Articles 321-53 à 321-68)

Sub-section 1 - General provisions

[Article 321-53](#)

The compliance and internal control officer must hold a professional licence issued by the AMF, pursuant to Article 321-62.

[Article 321-54](#)

The persons referred to in Article 321-91 shall fulfill the function of compliance and internal control officer.

[Article 321-55](#)

A natural person may perform the function of compliance and internal control officer, on a probationary or temporary basis, without holding the required professional licence, for a maximum period of six months, that can be renewable once.

2022-06-11

The function of compliance and internal control officer may only be performed on a probationary or temporary basis with the prior consent of the AMF.

[Article 321-56](#)

Issuance of a professional license shall require the applicant to compile an application for authorisation, which shall be submitted to the AMF.

[Article 321-57](#)

The application for authorisation shall be kept on file by the AMF for ten years after the licensee has ceased to perform the functions that gave rise to the issuance of the professional licence.

[Article 321-58](#)

Where a person provisionally ceases to perform the activity that required a professional licence, such interruption shall not result in withdrawal of the licence.

[Article 321-59](#)

When a person definitively ceases to perform the function for which a professional licence was issued, the licence shall be withdrawn. This withdrawal is performed by the AMF.

The asset management company on behalf of which the licensee is acting informs the AMF promptly when a person definitively ceases the activity as referred to in the previous paragraph.

[Article 321-60](#)

Whenever an asset management company takes disciplinary measures against a person holding a professional licence because of a breach of their professional obligations, it shall notify the AMF to this effect within one month.

[Article 321-61](#)

The AMF shall keep a register of professional licences.

It is kept informed of the appointment of the compliance and internal control officer.

The information in the register of professional licences shall be kept on file for ten years after the professional licence has been withdrawn.

Sub-section 2 - Compliance and internal control officer professional licence issuance

[Article 321-62](#)

The AMF shall issue compliance and internal control officer professional licenses to the persons performing such functions. For this purpose, the AMF shall organise a professional examination under the terms referred to in Articles 321-66 to 321-68.

However, where asset management companies appoint one of their effective managers within the meaning of Article L. 532-9, II, 4° of the Monetary and Financial Code to the function of compliance and internal officer, that person shall hold the relevant professional license. He or she shall not be required to take the examination provided for in the first paragraph.

[Article 321-63](#)

Before issuing the professional license, the AMF shall verify:

- 1 • That the relevant natural person is fit and proper, that he is familiar with the professional requirements and capable of performing the functions of compliance and internal control officer.
- 2 • That pursuant to Article 321-37, II, the asset management company has conducted an internal verification or an examination as provided for in Article 321-39, II, 3 to ensure that the person in question has the minimum knowledge referred to in Article

- 3 • That the asset management company complies with Article 321-32.

[Article 321-64](#)

The AMF may waive the examination requirement for a person who has performed comparable functions with another asset management company having equivalent business activities and organisational structures, provided that person has already passed the examination and that the asset management company planning to appoint him or her has already presented a candidate who passed the examination.

[Article 321-65](#)

If an asset management company requires compliance and internal control officer professional licenses to be issued to several persons, the AMF shall ensure that the number of license holders is proportionate to the nature and risks of the asset management company's business activities, size and organisational structure.

Asset management companies shall provide precise written definitions of the attributions of each professional license holder.

[Article 321-66](#)

The examination shall consist of an interview of the professional license applicant by a jury. The applicants shall be presented by the asset management companies on whose behalf they are to perform their functions.

An AMF instruction shall specify the examination programme and procedures.

The AMF shall hold the examinations at least twice a year. It shall decide who sits on the jury, set the examination dates and determine the amount of examination fees. This information shall be made known to asset management companies.

The AMF shall collect the examination fees from the asset management companies presenting applicants.

[Article 321-67](#)

The members of the jury referred to in the first paragraph of Article 321-66 shall be:

- 1 • A serving compliance officer, chair;
- 2 • A person holding an operational function in an asset management company;
- 3 • A member of the AMF staff.

If an applicant considers that a member of the jury has a conflict of interest with regard to him, he or she may ask the AMF to be examined by another jury.

[Article 321-68](#)

If the jury deems that the conditions referred to in Article 321-63 have been met, it shall propose that the AMF issue a professional license.

However, if the jury considers that the applicant has the necessary qualities to perform the function of compliance and internal control officer, but that the asset management company does not allow him proper independence or does not provide him with adequate resources, the jury may propose that issuance of a professional license be subject to the condition that the asset management company remedies the situation and notifies the AMF of the measures taken to this effect.

If outsourcing of the compliance and internal control officer function is being considered, the jury may be asked for its opinion.

Article 321-69

I.

- 1 • Asset management companies shall make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of the information referred to in II concerning each portfolio transaction.
- 2 • They shall ensure a high level of security during the electronic data processing as well as integrity and confidentiality of the recorded information, as appropriate.

II. - They shall ensure that, for each portfolio transaction relating to the UCITS, a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

The record referred to in the above paragraph shall include:

- a) the name or designation of the UCITS and of the person acting on behalf of the UCITS;
- b) the details necessary to identify the UCITS in question;
- c) the quantity;
- d) the type of the order or transaction;
- e) the price;
- f) for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;
- g) the name of the person transmitting the order or executing the transaction;
- h) where applicable, the reasons for the revocation of the order;
- i) for executed transactions, the identification of the counterparty and of the execution venue, within the meaning of Article 321-110.

III.

- 1 • Asset management companies shall ensure that the entity placed in charge of centralising subscription and redemption orders for shares or units of the UCITS pursuant to Article L. 214-13 of the Monetary and Financial Code is able to record promptly and correctly all the information relating to the subscription and redemption orders referred to in II of Article 411-65.
- 2 • Asset management companies shall ensure a high level of security during the electronic processing of the data referred to in the above paragraph as well as integrity and confidentiality of the recorded information.

Article 321-70

Asset management companies shall retain the records referred to in Article L. 533-8 and in 5 of Article L. 533-10 of the Monetary and Financial Code for at least five years.

If the asset management company's authorisation is revoked, the AMF may require said company to retain all the relevant records for the five-year period stipulated in the first paragraph.

2022-06-11

The AMF may, in exceptional circumstances, require asset management companies to retain any or all those records for longer periods, to the extent justified by the nature of the instrument or transaction, if that is necessary to enable it to exercise its supervisory functions.

Where the UCITS is managed by a new asset management company, arrangements shall be made such that records for the past five years are accessible to that company.

Article 321-71

The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the AMF, and in such a form and manner that the following conditions are met:

- 1 • The AMF must be able to access them readily and to reconstitute each key stage of the handling of each transaction;
- 2 • It must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
- 3 • It must not be possible for the records otherwise to be manipulated or altered.

Article 321-72

Asset management companies shall make arrangements under conditions that comply with laws and regulations for recording telephone conversations:

- 1 • Of traders of financial instruments within the meaning of Article 312-21;
- 2 • Of relevant persons, other than traders, who are involved in business relationships with clients, whenever the compliance officer deems it necessary in view of the amounts involved and the risks incurred with regard to the orders.

However, the asset management company may specifically empower traders who are likely to carry out a trade in a financial instrument outside of the usual business hours and away from the usual site of the department to which they report. It shall establish a procedure setting the conditions for such trades, so that they are executed with the required security.

Article 321-73

The purpose of recording telephone conversations shall be to facilitate monitoring to ensure that transactions are lawful and that they comply with clients' instructions

The compliance and internal control officer may listen to the recordings of telephone conversations made pursuant to Article 321-72. If the compliance and internal control officer does not himself listen to the recording, it may not be listened to without his agreement or the agreement of a person designated by him.

The persons referred to in Article 321-72, whose telephone conversations may be recorded, shall be notified of the conditions under which they are able to listen to the relevant recordings.

The retention period for telephone recordings required under this Regulation shall be at least six months. It must not be more than five years.

Article 321-74

Asset management companies shall retain information about the monitoring and assessments referred to in I of Article 321-31 in accordance with the requirements referred to in Article 321-71.

Section 10 - Annual data sheet (Article 321-75)

2022-06-11

[Article 321-75](#)

Within four and a half months of the close of the financial year, asset management companies shall send the AMF the information specified on the data sheet.

Section 10 bis - Report of compensation and non-compliance with UCITS investment rules (Article 321-75-1)

[Article 321-75-1](#)

Pursuant to Article L. 621-8-4 of the Monetary and Financial Code, asset management companies shall provide the AMF, at the latest one calendar month after the end of each quarter of the calendar year:

- 1 • information relating to compensation paid by the asset management company to shareholders or unitholders of the UCITS that it manages, including by delegation, and to clients to which the asset management company provides one or more investment or ancillary services. The asset management company shall also inform the AMF if it has not paid any compensation during the period covered;
- 2 • Information relating to the non-compliance by the asset management company with investment and asset structure rules laid down by legal and regulatory provisions and the investor disclosure documents for the UCITS that it manages, including by delegation, with the exception of cases of non-compliance with these rules occurring beyond the control of the asset management company and not resulting from the maturity of a financial instrument held by the UCITS.

This article shall not apply to asset management companies that manage a UCITS by delegation when asset management the investment management company or the said UCITS is already subject to the disclosure requirements under this article.

Section 11 - Risk management (Articles 321-76 à 321-81)

[Article 321-76](#)

The following terms shall have the following meanings for the purposes of this Section:

- "counterparty risk" means the risk of loss for the UCITS resulting from the fact that the counterparty to the transaction or to a contract may default on its obligations prior to the final settlement of the transaction's cash flow;
- "liquidity risk" means the risk that a position in the portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short time frame and that the ability of the UCITS to comply at any time with the provisions of the third paragraph of Article L. 214-7 or Article L. 214-8 of the Monetary and Financial Code is thereby compromised;
- "market risk" means the risk of loss for the UCITS resulting from fluctuation in the market value of positions in the CIS portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices, or an issuer's creditworthiness;
- "operational risk" means the risk of loss for the UCITS resulting from inadequate internal processes and failures in relation to people and systems of the asset management company or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS;
- "board of directors" means the board of directors, executive board or any equivalent body of the asset management company.

Sub-section 1 - Risk management policy and risk measurement

Paragraph 1 - Permanent risk management function

[Article 321-77](#)

I. – The asset management company shall establish and maintain a permanent risk management function.

II. - The permanent risk management function shall be hierarchically and functionally independent from operating units.

However, the asset management company may derogate from this obligation where the derogation is appropriate and proportionate in view of the nature, scale diversity and complexity of its business and of the UCITS it manages.

The asset management company shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements of Article L. 533-10-1 du Monetary and Financial Code.

III. - The permanent risk management function shall:

- a) implement the risk management policy and procedures;
- b) ensure compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Articles 411-71-1 to 411-83;
- c) provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS;
- d) provide regular reports to the board of directors and, where it exists, the supervisory function, on:
 - i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS;
 - ii) the compliance of each managed UCITS with relevant risk limit systems;
 - iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
- e) provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;
- f) review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in Article 411-84.

IV. - The permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in III.

Paragraph 2 - Risk management policy

Article 321-78

I. - Asset management companies shall establish, implement and maintain an adequate and documented risk management policy which identifies the risks to which the UCITS they manage are or might be exposed to.

In particular, the asset management company shall not solely or mechanistically rely on credit ratings issued by credit rating agencies as defined in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies for assessing the creditworthiness of the assets of UCITS.

II. - The risk management policy shall comprise such procedures as are necessary to enable the asset management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS portfolio it manages.

III. - The risk management policy shall address at least the following:

2022-06-11

a) the techniques, tools and arrangements that enable them to comply with the obligations set out in Articles 321-81, 411-72 and 411-73;

b) the allocation of responsibilities within the asset management company pertaining to risk management.

IV. - Asset management companies shall ensure that the risk management policy referred to in I states the terms, contents and frequency of reporting of the risk management function referred to in Article 321-77 to the board of directors and to senior management and, where appropriate, to the supervisory function.

V. - For the purposes of this article, asset management companies take into account the nature, scale and complexity of their business and the UCITS they manage.

Article 321-79

Asset management companies shall establish, implement and maintain a risk management policy and procedures that are efficient, appropriate and documented, making it possible to identify the risks relating to their business, processes and systems, and, where needed, to determine the level of risk they can tolerate.

Paragraph 3 - Assessment, monitoring and review of risk management policy

Article 321-80

The asset management company shall assess, monitor and periodically review:

a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in Articles 321-81, 411-72 and 411-73;

b) the level of compliance by the asset management company with the risk management policy and with arrangements, processes and techniques referred to in Articles 321-81, 411-72 and 411-73

c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process or shortcomings in these arrangements and procedures, including any misconduct by persons concerned by the requirements of these arrangements or procedures.

Sub-section 2 - Risk management processes, counterparty risk exposure and issuer concentration

Article 321-81

I. - Asset management companies shall adopt adequate and effective arrangements, processes and techniques in order to:

a) measure and manage at any time the risks which the UCITS they manage are or might be exposed to;

b) ensure compliance with limits applicable to UCITS concerning global exposure and counterparty risk, in accordance with Articles 411-72 and 411-73 and Articles 411-82 to 411-83.

Those arrangements, processes and techniques shall be proportionate to the nature, scale and complexity of the business of the asset management companies and of the UCITS they manage and be consistent with the risk profile of these UCITS.

II. - For the purposes of I, asset management companies shall take the following actions for each UCITS they manage:

a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which

include model-based forecasts and estimates;

c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS they manage;

d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS taking into account all risks which may be material to the UCITS as referred to in Article 321-76 and ensuring consistency with the risk-profile of the UCITS;

e) ensure that the current level of risk complies with the risk limit system as set out in d) for each UCITS;

f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the risk limit system of the UCITS, result in timely remedial actions in the best interests of unit holders or shareholders.

III. - Asset management companies shall use an appropriate liquidity risk management process for each UCITS they manage.

This procedure shall enable them in particular to ensure that all the UCITS they manage comply at all times with the requirement set out in the third paragraph of Article L. 214-7 or Article L. 214-8 of the Monetary and Financial Code.

Where appropriate, investment services providers companies shall conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances.

IV. - Investment services providers shall ensure that for each UCITS they manage the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the fund rules or the instruments of incorporation or the prospectus.

V. - Investment services providers shall ensure that the UCITS is able at all times to respond to all the payment and delivery obligations to which they committed themselves when concluding a derivative instrument.

VI. - The risk management procedure shall enable asset management companies to satisfy at all times with the requirements referred to in V.

Section 12 - Transmission of information on derivative instruments (Article 321-82)

[Article 321-82](#)

Asset management companies shall deliver to the AMF and update on at least an annual basis, reports containing information which gives a true and fair view of the types of derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the derivative transactions.

The AMF may review the regularity and completeness of this information and ask for explications about it.

Section 13 - Internal audit (Article 321-83)

[Article 321-83](#)

Asset management companies, where appropriate and proportionate in view of the nature, scale, complexity and range of their business, shall establish and maintain an effective internal audit function which is separate and independent from their other functions and activities and which has the following responsibilities:

- 1 • To establish and maintain an effective audit plan to examine and evaluate the adequacy and effectiveness of the asset management company's systems, internal control mechanisms and arrangements;
- 2 • To issue recommendations based on the result of work carried out in accordance with 1°;

2022-06-11

3 • To verify compliance with those recommendations;

4 • To provide reports on internal audit issues in accordance with Article 321-36.

Section 14 - Organisation of compliance and internal control functions (Articles 321-84 à 321-92)

Sub-section 1 - Compliance and internal control systems

[Article 321-84](#)

The compliance and internal control systems shall include a monitoring system as described in Article 321-85 and internal audits as described in Article 321-83.

[Article 321-85](#)

The monitoring system shall include the compliance monitoring system referred to in I of Article 321-31, the monitoring system referred to in Article 321-27 and the risk management system provided for in Articles 321-76 to 321-81.

[Article 321-86](#)

First-level control shall be exercised by persons in operational functions.

Monitoring shall be conducted through second-level controls to ensure proper execution of first-level controls.

Monitoring shall be performed exclusively, subject to the provisions of Article 321-90, by staff appointed solely to that function.

Sub-section 2 - Compliance and internal control officers

[Article 321-87](#)

The compliance and internal control officers shall be responsible for the compliance function referred to in I of Article 321-31, the monitoring system referred to in Article 321-85 and the internal audits referred to in Article 321-83.

[Article 321-88](#)

If an asset management company establishes a separate and independent internal audit function for the purposes of Article 321-83, that function shall be performed by an internal audit manager who is not the same person as the compliance and continuing monitoring officer.

[Article 321-89](#)

Asset management companies may give the responsibility for monitoring, other than compliance monitoring, and the responsibility for compliance monitoring to two different people.

[Article 321-90](#)

When the manager carries out the function of compliance and internal control officer, he shall also be responsible for internal audit and monitoring, other than compliance monitoring.

[Article 321-91](#)

The following persons shall hold professional licenses:

1 • The compliance and internal control officer referred to in Article 321-87;

2 • The compliance and monitoring manager referred to in Article 321-88;

3 • The manager for monitoring, other than compliance monitoring, referred to in Article 321-89 and the compliance officer referred to in the said Article, if the two functions are separate.

Employees of asset management companies or employees of another entity in their group may hold professional licenses if the asset management companies present them for the examination.

The AMF shall ensure that the number of professional license holders is proportionate to the nature and the risks of the asset management company's business activities, scale and organisational structure.

The internal audit manager referred to in Article 321-88 shall not hold a professional license.

Article 321-92

Asset management companies shall establish a procedure that enables all their employees and all natural persons acting on their behalf to discuss questions they have about deficiencies that they have noted in the actual implementation of compliance obligations with the compliance and internal control officer.

Section 15 - Outsourcing (Articles 321-93 à 321-96)

Article 321-93

If asset management companies outsource the execution of critical operational tasks and functions or tasks and functions that are important for the provision of a service or the conduct of business, they shall take reasonable measures to prevent an undue exacerbation of operating risk.

Outsourcing of critical or important operational tasks or functions must not be done in such a way that it materially impairs the quality of internal control and prevents the AMF from verifying that the asset management company complies with all its obligations.

Outsourcing to an extent that makes the asset management company into a letter box entity must be deemed to be in violation of the requirements that the asset management company must comply with to obtain and keep its authorisation.

Article 321-94

Outsourcing shall consist of any agreement, in any form, between an asset management company and a service provider under which the service provider takes over a process, service or activity that otherwise would have been performed by the asset management company itself.

Article 321-95

I. An operational task or function shall be regarded as critical or important if a defect or failure in its performance would materially impair the asset management company's capacity for continuing compliance with the conditions and obligations of its authorisation or its professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code, or its financial performance, or the continuity of its business.

II. - Without prejudice to the status of any other task or function, the following tasks or functions shall not be considered as critical or important:

- 1 • The provision to the asset management company of advisory services, and other services which do not form part of the investment services of the firm, including the provision of legal advice, the training of personnel, billing services and the security of the asset management company's premises and personnel;
- 2 • The purchase of standard services, including market information services and the provision of price feeds.

Article 321-96

I. - Asset management companies that outsource an operational task or function shall remain fully responsible for complying with all their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code and complying, in particular, with the following conditions:

- 1 • Outsourcing must not result in the delegation by senior management of its responsibility.
- 2 • The relationship and obligations of the asset management company towards its clients must not be altered.
- 3 • The conditions or commitments with which the company must comply in order to be authorised must not be undermined.

II. - Asset management companies shall exercise due skill, care and diligence when entering into, managing or terminating an outsourcing contract for critical or important operational tasks or functions.

In particular, asset management companies must take the necessary steps to ensure that the following conditions are satisfied:

- 1 • The service provider must have the ability, capacity, and any authorisation required to perform the outsourced tasks or functions reliably and professionally.
- 2 • The service provider must carry out the outsourced services effectively. To this end, the asset management company must establish methods for assessing the standard of performance of the service provider.
- 3 • The service provider must properly supervise the carrying out of the outsourced tasks or functions, and adequately manage the risks stemming from outsourcing.
- 4 • Asset management companies must take appropriate action if it appears that the service provider may not be carrying out the functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.
- 5 • Asset management companies must retain the necessary expertise to supervise the outsourced tasks or functions effectively and manage the risks stemming from outsourcing and must supervise those tasks and manage those risks.
- 6 • The service provider must disclose to the asset management company any development that may have a material impact on its ability to carry out the outsourced tasks or functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.
- 7 • The procedures for terminating outsourcing contracts at the initiative of either party must ensure the continuity and the quality of the activities carried out.
- 8 • The service provider must cooperate with the AMF in connection with the outsourced tasks or functions.
- 9 • The asset management company, its auditors and the relevant competent authorities must have effective access to data related to the outsourced tasks or functions, as well as to the business premises of the service provider.
- 0 • The service provider must protect any confidential information relating to the asset management company and its clients.
- 1 • The asset management company and the service provider must establish and maintain an effective contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the nature of the outsourced task or function.

III. - The respective rights and obligations of asset management companies and service providers shall be clearly defined in a contract.

IV. - Where the asset management company and the service provider are members of the same group, the asset management company may, for the purposes of determining how this Article shall apply, take into account the extent to which it controls the service provider or has the ability to influence its actions.

V. - Asset management companies must provide the AMF, at its request, all information necessary to enable it to supervise the compliance of the performance of the outsourced tasks or functions with the requirements of this Book.

Section 16 - Delegation management of UCITS (Article 321-97)

Article 321-97

When the asset management company delegates the management of a UCITS, it shall be bound by the following conditions:

- 1 • It shall inform the AMF about the mandate without delay. Where the asset management company manages a UCITS in another European Union Member State or State party to the European Economic Area agreement, the AMF sends the information without delay to the competent authorities of the home Member State of the UCITS in question;
- 2 • Delegation shall not prevent the effectiveness of the AMF's supervision over the delegating asset management company and, in particular, must not prevent the management company from acting, or the UCITS from being managed in the best interests of its unit holders or shareholders;
- 3 • Financial management can only be delegated to a person authorised for the purpose of asset management; the delegation must be in accordance with the investment allocation criteria laid down periodically by the delegating asset management company.

For the purposes of this point, the following are considered authorised for the purpose of asset management:

- a) Asset management companies authorised to manage UCITS or AIFs;
- b) Investment services providers authorised to provide portfolio management services on behalf of third parties;
- c) Entities equivalent to those referred to in a) and b) which are authorised in a State that is party to the European Economic Area agreement;
- d) Entities equivalent to those referred to in a) and b) which are authorised in a State that is not party to the European Economic Area agreement;

- 4 • Financial management cannot be delegated to a person established in a State that is not party to the European Economic Area agreement except in the conditions specified in point 3° and provided that an effective cooperation has been entered into between the AMF and the supervisory authority of that State;
- 5 • The mandate shall not be likely to generate conflicts of interest; delegation of financial management to the depositary is prohibited;
- 6 • The asset management company has implemented measures enabling its senior management to effectively monitor at all times the entity to which management has been delegated;
- 7 • The mandate must not prevent the persons who conduct the business of the asset management company from giving further instructions to the entity to which functions are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of unit holders or shareholders of the UCITS;
- 8 • The entity to which management is delegated must be qualified and capable of undertaking the delegated functions;
- 9 • The prospectus for the UCITS shall list the functions that the AMF has allowed the asset management company to delegate in accordance with this article.

2022-06-11

The liability of the asset management company or the depositary shall not be affected by delegation by the management company of any functions to third parties.

The management company shall not delegate its functions to the extent that it becomes a letter-box entity.

The asset management company shall maintain the resources and expertise needed to effectively supervise the activities undertaken by third parties under an agreement with them, notably as regards management of the risk associated with that agreement.

Chapter IV - Conduct of business rules (Articles 321-98 à 321-135)

Section 1 - General provisions (Articles 321-98 à 321-106)

[Article 321-98](#)

This Chapter is applicable to management of UCITS by asset management companies except, for branches established in other European Union Member States or States that are parties to the European Economic Area agreement, for UCITS they manage in these States.

Pursuant to the final sub-paragraph of Article L. 532-20-1 of the Monetary and Financial Code, this Chapter shall also apply to the management of French UCITS by the branches established in France of asset management companies authorised in other European Union Member State or State party to the European Economic Area agreement.

Asset management companies shall ensure that relevant persons are reminded that they are bound by the obligation of professional confidentiality, subject to the terms and penalties prescribed by law.

For the purposes of this Chapter, the term "client" shall designate existing and potential clients, which includes, where relevant, UCITS or their unit holders or shareholders.

Sub-section 1 - Approval of codes of conduct

[Article 321-99](#)

Where a professional organisation draws up a code of conduct applicable to management of a UCITS, the AMF shall verify whether the code's provisions are consistent with this General Regulation.

The professional organisation may ask the AMF to approve all or part of the code as professional standards.

If, having sought the opinion of the *Association Française des Etablissements de Crédit et des Entreprises d'Investissement* (AFECEI), the AMF considers that some or all the provisions of such code should be recommended to investment services providers, the AMF shall announce its decision by publishing it on its website.

Sub-section 2 - Primacy of the UCITS' interest and market integrity

[Article 321-100](#)

Asset management companies shall act honestly, fairly and professionally, with due skill, care and diligence, in the best interests of UCITS and unit holders or shareholders and the integrity of the market. More specifically, they shall comply with all the rules pertaining to the organisation and operation of the regulated markets and multilateral trading facilities that they use.

[Article 321-101](#)

Investment services providers shall:

- 1 • ensure that the unit holders and shareholders of the same UCITS are treated fairly;

2022-06-11

- 2 • refrain from placing the interests of any group of unit holders or shareholders above the interests of any other group of unit holders or shareholders;
- 3 • apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
- 4 • ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit holders and shareholders. Management companies must be able to demonstrate that the portfolios of UCITS have been accurately valued;
- 5 • act in such a way as to prevent undue costs being charged to the UCITS and its unit holders or shareholders;
- 6 • ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market;
- 7 • ensure they have adequate knowledge and understanding of the assets in which the UCITS are invested;
- 8 • establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of these UCITS;
- 9 • when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, to formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out the investment. The analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

Article 321-102

Asset management companies shall demonstrate all the necessary skill, caution and diligence when entering into, managing and terminating agreements with third parties in connection with risk management activities. Before entering into such agreements, asset management companies shall take the necessary measures to ensure that the third party has the necessary skills and capabilities to carry on its risk management activity reliably, professionally and effectively.

Asset management companies shall establish methods for continuous assessment of the quality of the services supplied by third parties.

Article 321-103

[Empty]

Article 321-104

[Empty]

Article 321-105

[Empty]

Article 321-106

[Empty]

Section 2 - Handling and executing orders (Articles 321-107 à 321-115)

Sub-section 1 - General provisions

[Article 321-107](#)

I. – Asset management companies shall comply with the following requirements for the execution of orders:

- 1 • They shall ensure that orders on behalf of UCITS are registered and routed rapidly and accurately;
- 2 • They shall transmit or execute orders rapidly in their order of arrival, unless the nature of the order or prevailing market conditions do not make this possible, or the interests of the UCITS call for a different action;

II. - Where asset management companies are given the task of supervising or organising the settlement of an executed order, they shall make all reasonable arrangements to ensure that the UCITS' financial instruments or funds received in settlement of the executed order are rapidly and correctly allocated to the account of the UCITS concerned.

III. - Asset management companies must not misuse information about client orders pending execution and they shall be required to take all reasonable measures to prevent misuse of such information by any of the relevant persons referred to in Article 321-31.

IV. - Asset management companies shall define the planned allocation of the orders they give beforehand. As soon as they learn that their orders have been executed, they shall transmit to the UCITS depositary exact instructions for the allocation of the orders executed to the beneficiaries. This allocation shall be final.

Paragraph 2 - Grouped orders

[Article 321-108](#)

I. - Asset management companies must not group client orders with orders passed on behalf of UCITS or with transactions for their own account prior to transmission or execution, unless the following conditions are met.

- 1 • The grouping of orders and transactions is unlikely to be detrimental overall for any of the clients or UCITS whose orders have been included;
- 2 • An order allocation policy has been established and is effectively applied to ensure by means of sufficiently specific procedures an equitable allocation of grouped orders and transactions, explaining how, in each case, the order quantities and prices determine the allocations and the treatment of partially executed orders.

II. - Where an asset management company groups an order with one or more other client orders or orders passed on behalf of other UCITS and the grouped order is partially executed, the company shall allocate the corresponding transactions in accordance with its order allocation policy referred to in 2° of I.

[Article 321-109](#)

I.- Any asset management company that has grouped a transaction for its own account with one or more client orders or orders passed on behalf of UCITS shall refrain from allocating the corresponding transactions in a way that is detrimental to a client or a UCITS.

II. - In cases where an asset management company groups a client order or an order passed on behalf of a UCITS with a transaction for its own account and the grouped order is partially executed, the client or the UCITS shall have the priority for the allocation of the corresponding transactions rather than the asset management company.

However, if the asset management company is able to demonstrate reasonably that, without the grouping of orders, it would not have been able to execute the order on such advantageous terms, or even at all, it may then allocate the transaction for its own account proportionately, in accordance with its order allocation policy referred to in 2° of I of Article 321-108.

Sub-section 2 - Best execution obligation

[Article 321-110](#)

For the purposes of I of Article L. 533-22-2-2 of the Monetary and Financial Code, asset management companies executing orders on behalf of UCITS shall take account of the following criteria to determine the relative importance of the factors referred to in I of the said Article:

- 1 • The characteristics of the order concerned;
- 2 • The characteristics of the financial instruments covered by the order;
- 3 • The characteristics of the execution venues to which the order may be routed;
- 4 • The objectives, investment policy and risks specific to the UCITS and listed in the prospectus or, where such is the case, its fund rules or instruments of incorporation.

For the purposes of this Sub-section, "execution venue" shall mean a trading platform, a systematic internaliser, a market maker, another liquidity provider, or an entity that performs similar tasks in a country that is not party to the European Economic Area agreement.

Paragraph 2 - Execution policy

[Article 321-111](#)

Asset management companies shall be required to provide holders of shares or units in the UCITS with the following information about their execution policy in good time, prior to the provision of services:

- 1 • The relative importance that the asset management company attributes to the factors referred to in I of Article L. 533-22-2-2 of the Monetary and Financial Code based on the criteria referred to in Article 321-110 or the process by which the relative importance of these criteria is determined;
- 2 • A list of the execution venues in which the asset management company has the most confidence for meeting its obligation to take all reasonable measures to obtain the best execution of the orders passed on behalf of UCITS on a consistent basis.

Paragraph 3 - Supervision of execution policies

[Article 321-112](#)

Asset management companies shall supervise the effectiveness of their arrangements for order execution and their policy on this matter in order to detect any deficiencies and to remedy them as appropriate.

In particular, they shall periodically verify whether the execution systems stipulated under their order execution policies obtain the best possible result for the UCITS or whether they need to modify their execution arrangements.

Asset management companies shall notify holders of shares or units in the UCITS of any material changes in their order execution arrangements or policies.

[Article 321-113](#)

Asset management companies shall conduct an annual review of their order execution arrangements and policies.

Such a review must also be conducted whenever a material change occurs affecting the asset management company's ability to continue obtaining best execution for the orders passed on behalf of UCITS on a consistent basis using the execution venues stipulated under its order execution policy.

Sub-section 3 - Obligations of UCITS asset management company

[Article 321-114](#)

I. - When they transmit for execution orders resulting from their decisions to trade financial instruments on behalf of UCITS that they manage to other entities, asset management companies shall comply with the obligation referred to in Article 321-100 to act in the best interest of the UCITS that they manage.

II. - Asset management companies shall take the measures referred to in III, IV and V to comply with I.

III. - Asset management companies shall take all reasonable measure to obtain the best possible results for for the UCITS that they manage, taking into account the measures referred to in Article L. 533-22-2 of the Monetary and Financial Code. The relative importance of these factors shall be determined with reference to the criteria defined in Article 321-110.

IV. - Asset management companies shall establish and implement policies that enable them to comply with the obligation referred to in III. Such policies shall select the entities to which orders for each class of instruments are transmitted for execution. The selected entities must have order execution mechanisms that enable the asset management companies to comply with their obligations under the terms of this Article when they transmit orders to that entity for execution. Asset management companies shall provide unit holders or shareholders in UCITS that they manage with appropriate information about their policies developed for the purposes of this paragraph. This information shall be included in the management report.

V. - Asset management companies shall monitor the effectiveness of the policies established for the purposes of IV on a regular basis, especially with regard to the quality of the execution provided by the entities selected under their policies.

Where appropriate, they shall remedy any deficiencies brought to light.

In addition, asset management companies shall be required to conduct an annual policy review. Such a review must also be conducted each time a material change occurs that has an effect on an asset management company's ability to continue obtaining best execution for the UCITS that it manages.

VI. - This Article shall not apply when an asset management company also executes orders resulting from its investment decisions. In this case, the provisions of Article L. 533-22-2 of the Monetary and Financial Code and Sub-section 2 of this Section shall apply.

[Article 321-115](#)

An asset management company shall draw up and implement a policy for selecting and assessing the entities that provide it with the services referred to in (b) of Point 1° of Article 321-119, having regard to criteria related inter alia to the quality of the investment research produced.

It shall provide the holders of shares or units in the UCITS it manages, with suitable information, posted on its website, about the policy it has adopted in accordance with the first paragraph. The management report for each UCITS shall refer explicitly to this policy.

If the asset management company does not have a website, this policy shall be described in the management report for each UCITS.

Section 3 - Inducements (Articles 321-116 à 321-125)

[Article 321-116](#)

Asset management companies shall be deemed to be acting honestly, fairly and professionally in accordance with the best interests of a unit holder or shareholder of a UCITS if, in relation to management of a UCITS, they pay, provide or receive the following fees, commissions or non-monetary benefits:

- 1 • a fee, commission or non-monetary benefit paid or provided to or by a unit holder or shareholder of a UCITS or to or by a person on behalf of the unit holder or shareholder of a UCITS;

- 2 • a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of that third party, where the following conditions are satisfied:
- a) the unit holder or shareholder of a UCITS is clearly informed of the existence, nature and amount of the fee, commission or benefit or, where the amount cannot be ascertained, the method of calculating that amount;
 - b) this disclosure is made in a manner that is comprehensive, accurate and understandable, prior to the management of a UCITS;
 - c) asset management companies may disclose the essential terms of the arrangements relating to the fees, commissions or non-monetary benefits in summary form, provided that they undertake to disclose further details at the request of the unit holder or shareholder of a UCITS and provided they honour that undertaking; the payment of the fee or commission, or the provision of the non-monetary benefit, must be designed to enhance the quality of the relevant service to the unit holder or shareholder of a UCITS and not impair compliance with the asset management company's duty to act in the best interests of the unit holder or shareholder of a UCITS;
- 3 • Proper fees which enable or are necessary for the management of a UCITS, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the asset management company's duty to act honestly, fairly and professionally in accordance with the best interests of unit holders or shareholders of a UCITS.

Article 321-117

Asset management companies shall be remunerated for their management of UCITS by a management fee and, if applicable, a proportionate share of subscription and redemption fees or by incidental fees, under the conditions and within the limits set by Articles 321-118 to 321-124 and 411-130 or 422-91. These conditions and limits shall apply whether the fees are charged directly or indirectly.

Article 321-118

The management fee referred to in Article 321-116 may include a variable portion tied to the outperformance of the UCITS relative to the investment objective, provided that:

- 1 • It is expressly provided for in the key investor information document of the UCITS;
- 2 • It is consistent with investment management objective set forth in the prospectus and the key investor information document of the UCITS;
- 3 • The share of outperformance of the UCITS allocated to the asset management company must not induce that company to take excessive risk with regard to the investment strategy, investment objective and risk profile set forth in the prospectus and the key investor information document of the UCITS.

Article 321-119

All fees and commissions paid by the UCITS for transactions in portfolios under management, with the exception of subscription and redemption transactions relating to collective investment schemes or investment funds of third countries, shall be trading costs. They include:

- 1 • Intermediation costs, taxes and duties included, charged directly or indirectly by third parties that provide:
 - a) Order reception and transmission services and order execution services on behalf of third parties referred to in Article L. 321-1 of the Monetary and Financial Code;
 - b) Investment decision aid services and order execution services;

2022-06-11

- 2 • If applicable, a turnover commission shared exclusively between the asset management company and the custodian of the UCITS.

This turnover commission may also benefit:

- a) A company to which the financial management of the portfolio has been delegated;
- b) Persons to which the custodian of the UCITS has delegated all or part of the responsibility for safekeeping of portfolio assets;
- c) An affiliated company providing only the UCITS management activity, order reception, transmission and execution services, principally for UCITS managed by the asset management company or by an affiliated company as part of its UCITS management activity.

The sharing of any of the fees or commissions referred to in Point 1° is prohibited unless it would be exclusively and directly of benefit to the UCITS. Agreements under which the asset management company shares some of the intermediation fees referred to in a of Point 1° on the occasion of a transaction in a financial instrument shall be prohibited.

Article 321-120

Without prejudice to Article 321-118, the income, fees and capital gains generated by management of the UCITS, along with any rights attached thereto, shall belong to the unit holders and shareholders. The UCITS shall be the sole beneficiary of shared management fees and subscription or redemption commissions arising from investments in collective investment schemes or third country investment funds.

The asset management company, the service provider handling the financial management, the custodian, the custodian's delegatee and the affiliated company referred to in c of point 2° of Article 321-119 may receive a share of the income from securities financing transactions using securities belonging to the UCITS, under the conditions set forth in the prospectus of the UCITS.

The prospectus of the UCITS may stipulate that a portion of the income be paid to one or more associations that comply with at least one of the following conditions:

- 1 • It holds an administrative ruling attesting that it falls under the category of associations whose purpose is exclusively assistance, charity, scientific or medical research, or religious association;
- 2 • It holds a tax ruling attesting that it is eligible for the scheme of Articles 200 or 238 *bis* of the French General Tax Code providing a tax reduction for a gift to a charitable organisation;
- 3 • It concerns a religious congregation that has been legally recognised by decree rendered after clearance by the *Conseil d'État* in compliance with Article 13 of the Law of 1 July 1901.

Article 321-121

Asset management companies may enter into written commission-sharing agreements under which the investment services provider providing order execution service shares the portion of the intermediation fees that it charges for investment decision-making aid services and order execution services with the third party providing such services.

Asset management companies may enter into such agreements, provided that the agreements:

- 1 • Do not violate the provisions of Article 321-114;
- 2 • Comply with the principles referred to in Articles 321-122 and 321-123.

[Article 321-122](#)

The intermediation fees stipulated in Article 321-119 shall pay for services that are of direct interest for the UCITS. Such services shall be covered by a written agreement.

These fees shall be assessed periodically by the asset management company.

If the asset management company uses investment decision aid and order execution services and if the intermediation fees for the previous year came to more than EUR 500,000, it shall compile a document entitled "Report on Intermediation Fees" that shall be updated as needed. The report shall specify the terms and conditions on which the asset management company used investment decision aid and order execution services, along with the breakdown between:

- 1 • Intermediation fees related to order reception, transmission and execution services;
- 2 • Intermediation fees related to investment decision aid and order execution services.

The breakdown for applying costs shall be formulated as a percentage and based on an established method using relevant and objective criteria.

It may be applied to:

- 1 • Either all the assets in a specific UCITS;
- 2 • Or any other procedure suited to the method used for applying costs.

If applicable, the "Report on Intermediation Fees" shall specify the percentage of all intermediation fees in the previous year shared with third parties under the terms of the commission sharing agreements referred to in Article 321-121 for the fees referred to in b in Point 1° of Article 321-119.

It shall also give an account of the measures implemented to prevent or deal with any potential conflicts of interest in the selection of service providers.

This document shall be posted to the asset management company's website, if the company has one. The management report for each UCITS shall refer explicitly to this document. If the asset management company does not have a website, the document shall be included in the management report for each UCITS.

[Article 321-123](#)

The intermediation fees referred to in b in Point 1° of Article 321-119:

- 1 • Must be directly related to order execution;
- 2 • Must not cover:
 - a) The provision of goods or services that correspond to resources that the portfolio management should have for its programme of activity, such as administrative or accounting management, the purchase or leasing of premises, or compensation for staff;
 - b) The provision of services for which the asset management company receives a management commission.

[Article 321-124](#)

Where units or shares of a collective investment scheme or of third-country investment funds managed by an asset management company are purchased or subscribed by that company or an affiliated company on behalf of a UCITS, subscription and

redemption commissions shall be prohibited, except for the portion retained by the UCITS in which the investment has been made.

Article 321-125

I. – Where establishing and applying remuneration policies, notably concerning the fixed and variable components of salaries and discretionary pension benefits, for the staff categories referred to in Article L. 533-22-2 of the Monetary and Financial Code, the asset management company shall comply with the following principles in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities:

- 1 • The remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;
- 2 • The remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;
- 3 • The management body of the asset management company in its supervisory function, or, if management and supervisory functions are separated, the supervisory board of the management company or any other body or person performing equivalent supervisory functions in a company with a different corporate structure, adopts the remuneration policy, reviews at least annually the general principles of the remuneration policy and is responsible for, and oversees, implementation of the policy; the tasks referred to in this point shall be undertaken only by members of the above bodies who do not perform any executive functions in the asset management company concerned and who have expertise in risk management and remuneration;
- 4 • The implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the bodies mentioned in point 3;
- 5 • Staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;
- 6 • The remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;
- 7 • Where remuneration is performance-related, when assessing individual performance the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or UCITS concerned, having regard to the risks they take, and of the overall results of the asset management company, taking financial and non-financial criteria into account;
- 8 • The assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the asset management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;
- 9 • Guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;
- 0 • Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- 1 • Payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

- 2 • The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- 3 • Subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50%, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50% of the total portfolio managed by the management company, in which case the minimum of 50% does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the asset management company and the UCITS that it manages and the investors of such UCITS.

This paragraph shall apply to both the portion of the variable remuneration component deferred in line with point 14 and the portion of the variable remuneration component not deferred;

- 4 • A substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

The period referred to in the previous sub-paragraph shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred;

- 5 • The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the asset management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- 6 • The pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.

If the employee leaves the asset management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments referred to in point 13.

In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point 13, subject to a five-year retention period;

- 7 • Staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- 8 • Variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the statutory and regulatory requirements applicable to asset management companies.

II. - The principles set out in I shall apply to any benefit of any type paid by the asset management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on the risk profiles of the management company or of the UCITS that it manages.

III. – Asset management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the asset management company or the UCITS concerned and which are to be taken by the bodies mentioned in I, 3 in their supervisory function. The remuneration committee shall be chaired by a member of one of the bodies mentioned in I, 3 who does not perform any executive functions in the asset management company concerned. The members of the remuneration committee shall be members of the bodies mentioned in I, 3 who do not perform any executive functions in the asset management company concerned.

If employee representation on the bodies mentioned in I, 3 is provided for, the remuneration committee shall include one or more employee representatives.

When preparing its decisions, the remuneration committee shall take into account the long-term interest of unit holders or shareholders of UCITS and other stakeholders and the public interest.

Section 4 - Information about subscription or redemption orders for units or shares of UCITS and the management of UCITS (Articles 321-126 à 321-134)

Sub-section 1 - Reporting on subscription or redemption orders for units or shares of UCITS

[Article 321-126](#)

Asset management companies that receive a subscription or redemption order for units or shares of UCITS shall take the following measures in respect of that order:

- 1 • The asset management company must promptly provide the investor, in a durable medium, with the essential information concerning the execution of that order;
- 2 • In the case of a retail investor, the asset management company must send the investor a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the asset management company from a third party, no later than the first business day following receipt of the confirmation from the third party.

Points 1° and 2° shall not apply where the confirmation from the asset management company contains the same information as a confirmation that is to be promptly dispatched to the investor by another person.

[Article 321-127](#)

Asset management companies shall supply the investor, on request, with information about the execution status of his order.

[Article 321-128](#)

In the case of orders from retail investors relating to units or shares in a UCITS which are executed periodically, asset management companies shall either take the action specified in Point 2° of Article 321-126 or provide the investor, at least once every six months, with the information referred to in Article 321-129 in respect of those transactions.

[Article 321-129](#)

The notice referred to in Point 2° of Article 321-126 shall, where applicable, contain the following information:

- 1 • The management company identification;
- 2 • The name or other designation of the unit holder or shareholder;

2022-06-11

- 3 • The date and time of receipt of the order and method of payment;
- 4 • The date of execution;
- 5 • The identification of the UCITS;
- 6 • The nature of the order (subscription or redemption);
- 7 • The number of units or shares involved;
- 8 • The unit value at which the units or shares;
- 9 • The reference value date;
- 0 • The gross value of the order including charges for subscription or net amount after charges for redemptions;
- 1 • A total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

Sub-section 2 - Reporting on UCITS management

[Article 321-130](#)

Pursuant to Article L. 621-8-4 of the Monetary and Financial Code, asset management companies shall provide the AMF with data on the composition of the UCITS they manage.

[Article 321-131](#)

Asset management companies must provide unit holders or shareholders with all necessary information about the management of the UCITS.

Annual reports of UCITS must contain, where relevant, information about the financial instruments in the portfolio that have been issued by the asset management company or entities from its group. The annual reports must also mention, where relevant, collective investment schemes and third country investment funds managed by the asset management company or entities from its group.

[Article 321-132](#)

[Removd by Decree of 11 may 2020]

[Article 321-133](#)

[Removd by Decree of 11 may 2020]

[Article 321-134](#)

[Removd by Decree of 11 may 2020]

Section 5 - Obligations in the case of offers of financial securities or minibons via a website (Article 321-135)

[Article 321-135](#)

The asset management company authorised before 10 November 2021 to provide the investment service referred to in point 5 of Article L. 321-1 of the Monetary and Financial Code and offering financial securities via a website as provided for in Article 325-48 in the version applicable before the date of publication of the Order of 9 March 2022 approving the amendments to the AMF General Regulation, shall remain subject to the provisions of Article 321-135 in the version applicable before the date of publication of the aforementioned Order until 10 November 2022.

Section 1 - Management of inside information and restrictions to be applied within authorised asset management companies (Articles 321-136 à 321-140)

Sub-section 1 - Rules to prevent undue circulation of inside information

[Article 321-136](#)

Asset management companies shall establish and maintain effective and adequate procedures to control the circulation and use of inside information, as defined in Article 7 of Regulation (EU) n° 596/2014 of the European Parliament and of the Council of 16 April 2014, with the exception of paragraph 1.c of that same Article, taking into account the activities conducted by the group to which the asset management company belongs and the organisation adopted by that group. These procedures, called "information barriers", shall provide for:

- 1 • Identification of business segments, divisions, departments or any other entities likely to possess inside information;
- 2 • Organisation, in particular physical organisation, so as to separate entities within which the relevant persons referred to in II of Article 321-31 are likely to possess inside information;
- 3 • Prohibition of disclosure of inside information by the persons possessing it to other persons, except as provided for in Article 10 of the market abuse Regulation (Regulation n° 596/2014/EU) and after informing the compliance and internal control officer;
- 4 • The conditions in which the asset management company may authorise a relevant person assigned to a given entity to provide assistance to another entity, whenever one of the two entities is likely to possess inside information. The compliance and internal control officer shall be informed whenever the relevant person assists the entity possessing inside information;
- 5 • The manner in which the relevant person benefiting from the authorisation provided for in 4° is informed of the temporary consequences thereof on the performance of his regular duties.

The compliance and internal control officer shall be informed when this person returns to his regular duties.

Sub-section 2 - Watch list

[Article 321-137](#)

To ensure compliance with the abstention requirement set out in Articles 8, 10 and 14 of Regulation (EU) n° 596/2014 of the European Parliament and of the Council of 16 April 2014, the asset management company shall establish and maintain an appropriate procedure for supervising the issuers and financial instruments on which it has inside information. This supervision shall be proportionate to the identified risks and will cover, where applicable:

1° Transactions in financial instruments by the asset management company for its own account;

2° The personal transactions, as defined in Article 321-42 and made by or on behalf of the relevant persons referred to in the first paragraph of Article 321-43;

To this end, the asset management company shall draw up a watch list of the issuers on which it has inside information.

The relevant entities shall inform the chief compliance and internal control officer as soon as they believe they possess inside information.

In such case, the issuer shall be put on the watch list, under the supervision of the chief compliance and internal control officer.

The relevant entities shall inform the compliance and internal control officer when they believe that information they had previously reported pursuant to the fifth subparagraph has ceased to be inside information.

The contents of the watch list are confidential. Dissemination of items on the watch list is restricted to the persons designated by name in the procedures referred to in the first subparagraph of Article 321-136.

[Article 321-138](#)

The asset management company shall exercise supervision in accordance with the procedures set forth in Article 321-137. It shall take appropriate measures if it detects an anomaly.

The asset management company shall keep a record on a durable medium of the measures it has taken in the event of an anomaly or, if it takes no measures, of the reasons for so doing.

Sub-section 3 - Restricted list

[Article 321-139](#)

I. – The asset management company shall establish and maintain an appropriate procedure for monitoring compliance with any restrictions that apply to:

- 1 • Transactions in financial instruments by the asset management company for its own account;
- 2 • The personal transactions, as defined in Article 321-42 and made by or on behalf of the relevant persons referred to in the first paragraph of Article 321-43;

II. - To this end, the asset management company shall establish a restricted list. This list shall include the issuers for which it must restrict its activities, or the activities of relevant persons, due to:

- 1 • Legal or regulatory provisions to which the asset management company is subject, other than those resulting from the abstention requirements set out in Articles 8, 10 and 14 of Regulation (EU) n° 596/2014 of the European Parliament and of the Council of 16 April 2014;
- 2 • The implementation of any commitment made on the occasion of a financial transaction.

When an asset management company deems it necessary to prohibit or restrict the performance of an investment service, an investment activity or an ancillary service in respect of certain issuers or financial instruments, those issuers and financial instruments shall also be included on the restricted list.

[Article 321-140](#)

Asset management companies shall determine, based on the restricted list, which entities are subject to the restrictions referred to in Article 321-139 and how those restrictions shall apply.

They shall inform the relevant persons affected by the restrictions of the list and the nature of the restrictions.

Section 2 - Obligations relating to the prevention of money laundering and terrorist financing (Articles 321-141-A à 321-150)

[Article 321-141-A](#)

This section shall also apply to branches of European management companies managing UCITS referred to in Article L. 532-20-1 of the Monetary and Financial Code.

[Article 321-141](#)

Asset management companies shall have organisational structures and procedures that enable them to comply with the vigilance and disclosure requirements provided for in Title VI of Book V of the Monetary and Financial Code relating to the fight against

money laundering and terrorist financing.

[Article 321-142](#)

[Removed by Decree of 28 August 2019]

[Article 321-143](#)

The asset management company shall define and implement systems for identifying and assessing the risk of money laundering as well as an appropriate policy for dealing with those risks.

If it belongs to a group as defined in Article L. 561-33 of the Monetary and Financial Code and if the parent company has its registered office in France, the asset management company shall implement a system for identifying and assessing the risks that exist at group level as well as an appropriate policy for dealing with those risks, to be defined by the parent company.

It shall set up suitable organisational structures, internal procedures and a supervision system to ensure compliance with the obligations relating to the prevention of money laundering and terrorist financing.

If the asset management company belongs to a group as defined in Article L. 561-33 of the Monetary and Financial Code, and if the parent company has its registered office in France, the latter shall define the above-mentioned organisation, procedures and supervision system at group level and ensure they are respected.

[Article 321-144](#)

The portfolio asset management company shall appoint a member of management to be responsible for implementing the anti-money laundering and terrorist financing system stipulated in Article L. 561-32 of the Monetary and Financial Code. Where appropriate, such a person shall also be appointed at the level of the group defined in Article L. 561-33 of the Monetary and Financial Code.

This manager may delegate some or all of the implementation under the following conditions:

- 1 • the empowered person must have the necessary authority, resources and skills, and access to all relevant information;
- 2 • the empowered person must not be involved in the execution of the services and activities under supervision.

The manager shall remain responsible for the delegated activities.

[Article 321-145](#)

The asset management company shall ensure that the reporting party and correspondent referred to in Articles R. 561-23 and R. 561-24 of the Monetary and Financial Code have access to all the information they need to perform their duties.

The company shall provide them with the appropriate tools and resources to comply with their obligations relating to the prevention of money laundering and terrorist financing.

The abovementioned reporting party and correspondent shall also be informed of:

- 1 • Incidents relating to the prevention of money laundering and terrorist financing that are brought to light by internal control systems.
- 2 • Shortcomings found by domestic or foreign supervisory authorities in the implementation of provisions relating to the prevention of money laundering and terrorist financing.

[Article 321-146](#)

In order to establish the risk identification and evaluation systems referred to in Article 321-143, the asset management company

2022-06-11

shall compile, document and periodically update a classification of the money laundering and terrorist financing risks to which it is exposed in the course of its business. It shall assess its exposure to these risks according, in particular, to the nature of the products offered, the investment services provided or the collective management activity, the trading terms proposed, the distribution channels used, the characteristics of the clients and the country or territory of origin or destination of the funds.

To this end, in particular, the recommendations of the European Commission, the risk factors referred to in Annexes II and III of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, information provided by the Financial Action Task Force (FATF) and the national risk analysis and information provided in the Minister for the Economy's orders are taken into account.

Prior to the launch of new products, services or sales practices, including the use of new distribution mechanisms and new or developing technologies, in relation to new or existing products and services, the asset management company shall also identify and assess the related money laundering and terrorist financing risks. It shall take appropriate measures to manage and mitigate these risks.

Article 321-147

The portfolio asset management company shall draft and implement written internal procedures to ensure compliance with the provisions relating to the prevention of money laundering and terrorist financing. It shall update them periodically.

These internal procedures shall focus on:

- 1 • assessing, monitoring and managing the risks of money laundering and terrorist financing;
- 2 • implementing vigilance measures, such as:
 - a) the requirements and procedures for accepting new clients and occasional clients;
 - b) due diligence for identifying and obtaining knowledge about clients, beneficial owners and the purpose and nature of the business relationship; where the client is a legal entity, a trust or a comparable legal structure under foreign law, this due diligence enables the asset management company to understand the nature of the client's business, as well as its ownership and control structure. The frequency of these information updates shall be specified;
 - c) the additional vigilance measures stipulated in Articles L. 561-10 and L. 561-10-2 of the Monetary and Financial Code and the requirements and procedures for their implementation.
 - d) the information to be gathered and retained about the transactions stipulated in of Article L. 561-10-2 (II) of the Monetary and Financial Code;
 - e) the vigilance measures to be implemented with regard to any other risks identified by the risk classification referred to in Article 321-146;
 - f) the third-party selection procedure pursuant to Article L. 561-7 of the Monetary and Financial Code, taking into account, in particular, the information available about the level of risk related to the countries in which the third parties are established and the equivalence of the supervision and regulations to which the third parties are subject, in particular with regard to data retention, as well as the procedures for implementing the requirements set out in Article R. 561-13 of the same code, relating to the monitoring of the measures taken by the third party to comply with its due diligence obligations;
 - g) the vigilance measures for determining the conditions in which it needs to sign the agreement stipulated in Article R. 561-9 of the Monetary and Financial Code.
- 3 • if the portfolio asset management company belongs to a financial group, a mixed group or a financial conglomerate, the procedures for circulating the information needed to organise the prevention of money laundering and terrorist financing

2022-06-11

within the group as stipulated in Article L. 511-34 of the Monetary and Financial Code, while ensuring that this information is not used for any other purpose than the prevention of money laundering and terrorist financing.

- 4 • detecting and dealing with unusual or suspicious transactions;
- 5 • implementing the obligation to report and send information to the national financial intelligence unit;
- 6 • procedures for sharing information about suspicious transaction reports sent to the national financial intelligence unit, when the entities concerned belong to a group or act on behalf of the same client and in the same transaction as stipulated in Articles 561-20 and L. 561-21 of the Monetary and Financial Code;
- 7 • the record-keeping procedures for the purposes of 2°, as well as:
 - a) the results of the enhanced examination stipulated in Article R. 561-22 of the Monetary and Financial Code;
 - b) the results of all other analyses, in particular stipulated in Articles R. 561-12 and R. 561-14 of the Monetary and Financial Code;
 - c) the information, documents and reports about the transactions referred to in Article L. 561-15 of the Monetary and Financial Code;
 - d) correspondence relevant to anti-money laundering and terrorist financing.

Such information and documents are kept under conditions that enable the requests for information mentioned in Article L. 561-25 of the Monetary and Financial Code to be met.

- 8 • the organisation of the internal control system and the internal control activities conducted, which give rise to an annual report.

This report describes:

- a) The internal control procedures implemented according to the assessment of the money laundering and terrorist financing risks;
- b) The means employed to exercise and control the control activity, including when that activity is performed by a third party;
- c) The incidents and shortcomings found and the corrective measures taken.

- 9 • When the portfolio asset management company belongs to a group as defined in Article L. 561-33 (I) of the Monetary and Financial Code, the organisation of the internal control system and activities set up and conducted at group level, which give rise to an annual report drawn up by the parent company.

In addition to the items under point 8°, this report concerns:

- a) The exchanging of information necessary to the prevention of money laundering and terrorist financing within the group;
- b) The treatment of any subsidiaries and/or branches of the group in third countries.

The information provided in the reports required by points 8° and 9° concerns the calendar year up to 31 December. They shall be provided to the AMF at the latest by 30 April of the following year.

[Article 321-148](#)

The internal procedures shall specify under what conditions the portfolio asset management company applies the provisions of Article L. 561-33 (II) of the Monetary and Financial Code in terms of vigilance with regard to clients and the sharing and retention of information and data protection with regard to its branches and subsidiaries in a third country.

[Article 321-149](#)

When it implements its investment policies for its own account or for third parties, the asset management company shall assess the risk of money laundering and terrorist financing and establish procedures to oversee the investment selections made by its employees.

[Article 321-150](#)

When recruiting employees, the asset management company shall consider the risks relating to the prevention of money laundering and terrorist financing, in accordance with employees' level of responsibility.

At the time of hiring, and periodically thereafter, it shall provide its staff with information on and training in the applicable regulations and amendments, current money-laundering techniques, prevention and detection measures, and the procedures and implementation arrangements referred to in Article 321-144. They shall be adapted to the functions performed, clients, locations and risk classification.

The asset management company shall make the persons acting on its behalf aware of the measures to be taken to ensure compliance with provisions relating to the prevention of money laundering and terrorist financing.

It shall take the necessary measures to ensure that recruitment within its subsidiaries takes into account, according to the level of responsibilities exercised, the risks relating to the fight against money laundering and terrorist financing, and that the above-mentioned information and training is provided to staff when they are recruited and on a regular basis thereafter.

Section 3 - Miscellaneous provisions (Article 321-151)

[Article 321-151](#)

The provisions of Chapters III, IV and V of this Title and Article 321-1 IV shall apply to the relevant persons referred to in II of Article 321-31.

The rules adopted by the asset management company under the provisions of Chapters III, IV and V of this Title and Article 321-1 IV and applying to the relevant persons referred to in II of Article 321-31 shall constitute professional obligations for those persons.

The provisions of Chapter IV and sections 1 and 4 of Chapter V of this Title and Article 321-1 IV shall apply to the relevant persons referred to in II of Article 321-31 within the branches opened in France by asset management company authorised in other States parties to the European Economic Area agreement.

Section 2 of Chapter V of this Title shall apply to the relevant persons referred to in II of Article 321-31 within the branches opened in France by European management companies managing UCITS referred to in Article L. 532-20-1 of the Monetary and Financial Code.

Section 4 - Handling and monitoring of subscription applications and book entry (Article 321-152)

[Article 321-152](#)

The asset management companies authorised before 10 November 2021 to provide the investment service referred to in point 5 of Article L. 321-1 of the Monetary and Financial Code and offering financial securities via a website as provided for in Article 325-48 in the version applicable before the date of publication of the Order of 9 March 2022 approving the amendments to the AMF General Regulation, shall remain subject to the provisions of Article 321-152 in the version applicable before the date of publication of the aforementioned Order until 10 November 2022.

Title I quater - Others asset management companies (Articles 321-153 à 321-168)

Articles 2 to 5 and 12 to 15 of the Commission Delegated Regulation (EU) No [231/2013](#) of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

Regulation (EU) No [345/2013](#) of the European Parliament and of the Council of 17 April 2013 on European venture capital funds

Regulation (EU) No [346/2013](#) of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds

[Article 321-153](#)

The present Title is applicable to asset management companies referred to in Article L. 543-1 of the Monetary and Financial Code other than asset management companies covered by Title I *bis* and Title I *ter* of this Book.

[Article 321-154](#)

Unless otherwise provided, Title Ib and Articles 321-155 to 321-166 are applicable for the management of collective investment:

I. - To the asset management companies referred to in Article L. 532-9, IV of the Monetary and Financial Code.

These legal entities also send the AMF the information mentioned in Article L. 214-24-20, I and II of the Monetary and Financial Code and in Article 421-36 on the terms set out in Article 110 and pages 71 to 77 of Annexe IV to Delegated Regulation (EU) No. 231/2013 of the Commission of 19 December 2012. These entities also comply with the investor disclosure obligations in Article L. 214-24-19 of the Monetary and Financial Code and in Articles 421-33 to 421-35 herein.

Without prejudice to Article 4, (3) of abovementioned Delegated Regulation (EU) No. 231/2013, if the AIFs they manage no longer fulfil the conditions referred to in Article L. 532-9, IV, first sub-paragraph 1 of the Monetary and Financial Code, these legal entities shall comply, for the management of these AIFs, with Title Ia of the present Book.

These legal entities may choose to submit the AIFs they manage to Title Ia of the present Book.

II. - To asset management companies referred to in Article L. 532-9, III, second sub-paragraph of the Monetary and Financial Code.

III. - To the asset management companies of the securitisation schemes referred to in of Article L. 214-167, I of the Monetary and Financial Code.

1 • By way of derogation from Article 321-10, an asset management company that manages one or more securitisation schemes referred to in Point I of Article L. 214-167, I of the Monetary and Financial Code must be able to prove at any time that its own funds are at least equal to the higher of the two amounts specified in a and b hereafter:

a) EUR 125,000 plus the sum of:

i) 0.02% of the amount of assets under management by the asset management company in excess of EUR 250 million, excluding the securitisation schemes referred to in Article 214-167, I of the Monetary and Financial Code; and

ii) 0.02% of the assets held by securitisation schemes referred to in Article 214-167, I of the Monetary and Financial Code and managed by the asset management company, the result being capped at a ceiling of EUR 760,000.

The own funds requirement is capped at a ceiling of EUR 10 million.

The assets included in the calculation of the additional own funds requirement referred to in a) are:

- Assets of open-ended investment companies (Sociétés d'investissement à capital variable, SICAVs) that have delegated the management of their portfolio to the asset management company;
- Assets of common funds (Fonds communs de placement, FCPs) managed by the asset management company, including portfolios for which it has delegated management to another entity, but excluding portfolios that it manages on a delegated basis;
- Assets of investment funds managed by the asset management company, including portfolios for which it has delegated management to another entity, but excluding portfolios that it manages on a delegated basis.

b) One-quarter of general operating expenses for the previous financial year, calculated in accordance with Articles 34b to 34d of Commission Regulation (EU) N° 241/2014 of 7 January 2014.

- 2 • The own funds requirement at the time of authorisation shall be calculated on the basis of forecast data.

For subsequent years, the amount of general operating expenses and the total value of portfolio assets used to determine the own funds requirement shall be calculated on the basis of the most recent of the following asset management company documents: financial statements for the previous financial year, interim statement of financial position certified by the statutory auditor or the data sheet referred to in Article 321-75.

- 3 • In order to cover any potential professional liability risks resulting from AIF management activities, excluding the securitisation schemes referred to in Article L. 214-167, I of the Monetary and Financial Code, the asset management company must:

- a) Either have additional own funds of an amount sufficient to cover potential liability risks arising from professional negligence;
- b) Or hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

IV. - To the asset management companies of "Other Collective Investments".

For the application of Title Ib to the asset management companies referred to in I to IV, the reference to "UCITS" is replaced, depending on the case, by the reference to "AIFs" or "Other collective investment undertakings".

By way of derogation to Articles 321-167 and 321-168, Section 2 of Chapter V of Title 1b shall apply to legal entities managing the AIFs referred to in Article L. 214-24 III 3° and to managers of European venture capital funds falling under Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds and managers of European social entrepreneurship funds falling under Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds.

Article 321-155

By derogation to II of Article 321-1, the asset management companies falling under this Title may request authorisation to provide investment services that consist of investment advice or, when they do not also fall under Title I *ter*, the reception and transmission of orders on the behalf of third parties referred to in 5 and 1 of Article L. 321-1 of the Monetary and Financial Code.

Article 321-8 does not apply to them.

[Article 321-156](#)

For employee investment funds (FCPEs), the appointment of another manager by the custodian, referred to in Article 321-6, shall be subject to ratification by the supervisory board of each fund.

[Article 321-157](#)

By way of derogation from Article 321-13, an asset management company covered by this Title may be effectively managed by a single person in the following conditions:

- 1 • The asset management company does not manage any UCITS;
- 2 • The total assets managed by the asset management company amount to less than EUR 20 million or, if such amount is higher, the asset management company is authorised solely to manage professional private equity investment funds;
- 3 • The governing bodies or bylaws of the asset management company empower a person to replace the manager immediately and perform all his duties if he himself is unable to perform them;
- 4 • The person appointed pursuant to Point 3° shall be of sufficiently good repute and have sufficient experience to carry out the function of manager so as to ensure sound and prudent management of the asset management company. He must have the necessary availability to replace the manager.

[Article 321-158](#)

[Removed by Decree of 11 may 2020]

[Article 321-159](#)

[Removed by Decree of 11 may 2020]

[Article 321-160](#)

[Removed by Decree of 11 may 2020]

[Article 321-161](#)

The material and technical resources and the control and security systems that asset management companies covered by this Title are required to have under the terms of Article 321-23 must be, as the case may be, adequate and appropriate for the management of real-estate collective investment undertakings or professional real-estate collective investment undertakings, real-estate investment companies and real-estate asset management referred to in points 1° to 3° of I of Article L. 214-36 of the Monetary and Financial Code.

Asset management companies must be able to monitor developments in the real-estate markets and assets referred to above, which are included in the portfolios under management, and to record and retain, under satisfactory conditions of security, information about the transactions in these assets so as to provide an audit trail.

They must be able to measure the risks associated with such investments at all times and to assess their contribution to the risk profile of the real-estate collective investment undertaking or the professional real-estate collective investment undertaking.

For the purposes of Article R. 214-112 of the Monetary and Financial Code, the asset management company shall calculate the liabilities of the real-estate collective investment undertaking or the professional real-estate collective investment undertaking at all times.

[Article 321-162](#)

The internal organisational structures of asset management companies covered by this Title must enable them to provide detailed explanations about the origins and execution of transactions in the assets referred to in points 1° to 3° of I of Article L. 214-36 of the Monetary and Financial Code.

Asset management companies must have special and appropriate procedures at all times for monitoring transactions involving the purchase and sale of the assets referred to in points 1° to 3° of I of Article L. 214-36 of the Monetary and Financial Code.

Article 321-163

Compliance with the steps provided for in Articles 321-161 and 321-162 shall satisfy the data recording and record keeping requirements set forth in I and II of Article 321-69 as regards the assets referred to in points 1° to 3° of I of Article L. 214-36 of the Monetary and Financial Code.

Article 321-164

For the purposes of Article 321-97, if the delegated management entity has its registered office in another country, it must have the necessary authorisations to provide management services for the assets referred to in points 1° to 3° of I of Article L. 214-36 of the Monetary and Financial Code in its home country or be subject to equivalent supervision.

Article 321-165

Sub-paragraphs one to nine of Article 321-119 do not apply to fees and commissions incurred in connection with advisory and arrangement services, financial engineering, advice on industrial strategy, mergers and acquisitions, or initial public offerings of unlisted securities in which a private equity fund, professional specialised fund or professional private equity investment fund has invested.

Article 321-166

The provisions of Article 321-119 shall not apply to fees and commissions for advice or real-estate promotions relating to the purchase or sale of the assets referred to in points 1° to 3° of I of Article L. 214-36 of the Monetary and Financial Code in which the assets of a real-estate collective investment undertaking or a professional real-estate collective investment undertaking are invested.

The nature of the fees and commissions, as well as the methods for calculating them, shall be explicitly referred to in the simplified prospectus and the detailed memorandum of the real-estate collective investment undertaking or the professional real-estate collective investment undertaking.

Under the terms of Article 321-119, fee-sharing shall be prohibited unless it is exclusively and directly of benefit to the real-estate collective investment undertaking or the professional real-estate collective investment undertaking.

Fee-sharing include agreements under which the broker, intermediary or counterparty in a transaction involving one of the assets mentioned in points 1° to 3° of I of Article L. 214-36 of the Monetary and Financial Code shares the fees referred to in point 1° of Article 321-119 or the fees referred to in the first paragraph of this Article.

Article 321-167

The legal entities referred to in Article L. 214-24, III, 3 of the Monetary and Financial Code are not subject to this Title. They shall comply with the procedure for registration with the AMF.

They shall send the AMF the information referred to in Article L. 214-24-20, I and II of the Monetary and Financial Code and in Article 421-36 on the terms set out in Article 110 and pages 71 to 77 of Annexe IV to Commission Delegated Regulation (EU) N° 231/2013 of 19 December 2012.

They shall comply with Articles 2 to 5 of Delegated Regulation (EU) No. 231/2013 referred to above.

If such legal entities should choose to submit the "Other AIFs" they manage to the regime described in Article L. 214-24, III, 1 of the Monetary and Financial Code, they shall comply, for the management of these "Other AIFs", with Title 1 *bis* of the present Book and Commission Implementing Regulation (EU) No. 447/2013 of 15 May 2013.

Article 321-168

Managers of European venture capital funds and European social entrepreneurship funds are not subject to the present Title.

They shall comply with the procedure for registration with the AMF.

Title II - Other service providers (Articles 322-1 à 328-2)

Chapter I - Custody account-keepers (Articles 322-1 à 322-90)

Section unique - Provisions relating to custody account-keeping - terms of reference for the custody account-keeper (Articles 322-1 à 322-90)

Sub-section 1 - Scope of application of the terms of reference and definition of the activity of custody account-keeping

Paragraph 1 - Scope of terms of reference for the custody account-keeper

Sub-paragraph 1 - Persons, services and financial instruments concerned

Article 322-1

I. - The provisions of the present section are applicable to the persons mentioned in Article L. 542-1 of the Monetary and Financial Code when they supply the service of custody account-keeping for financial instruments on behalf of third parties and the ancillary services such as the cash account management corresponding to these financial instruments or the management of the financial guarantees mentioned in Article L. 321-2 (1°) of the Monetary and Financial Code.

II. - The financial instruments concerned are the financial securities mentioned in II of Article L. 211-1 of the Monetary and Financial Code and, in application of Article L. 211-41 of the said code, or equivalent instruments or rights pertaining to a financial instrument in an entity issued on the basis of a foreign right.

Sub-paragraph 2 - Form of the financial securities

Article 322-2

I. - In application of Article R. 211-2 of the Monetary and Financial Code, where the financial securities are recorded in a securities account held by one of the intermediaries mentioned in 2° to 7° of Article L. 542-1 of the Monetary and Financial Code, they are considered to be in "bearer" form.

Securities likely to be in bearer form are, in application of Article L. 211-7 of the Monetary and Financial Code, financial securities admitted to the operations of the central depository. As an exception, units or shares in a collective investment scheme which are not admitted for operations by the central depository may be recorded in securities accounts held by one of the intermediaries mentioned in 2° to 7° of Article L. 542-1 of the Monetary and Financial Code.

II. - In application of Article R. 211-2 of the Monetary and Financial Code, where the financial securities are recorded in a securities account kept by an issuer or by a person acting on its behalf, or where they are recorded by the issuer or by a person acting on its behalf in a distributed ledger system, they are considered to be in "registered" form. When registered securities are administered by the issuer, they are referred to as "pure registered". Where they are administered by an intermediary mentioned in 2° to 7° of Article L. 542-1 of the Monetary and Financial Code, in accordance with the conditions defined in the following article, they are referred to as "administered registered".

Paragraph 2 - Definition of the activity of custody account-keeping

Article 322-3

The activity of custody account-keeping consists:

- 1 • Of recording in a securities account, or in a distributed ledger system the financial securities in the name of their owner, i.e., recognising the owner's rights over the said financial securities.

2022-06-11

Where registered financial securities are concerned, in application of Article R. 211-4 of the Monetary and Financial Code, an owner of registered financial securities may charge an intermediary with maintaining its securities account opened at the issuer, or with administering the entries in the distributed ledger system. In this case, the entries appearing on the securities account or on the distributed ledger system also appear in an administration account held in the name of this owner by this intermediary. The securities are then considered to be in "administered registered" form;

2 • Of keeping the corresponding assets;

For the keeping of the assets corresponding to the financial securities mentioned in I of Article 322-2, the intermediary custody account-keeper mentioned in 2° to 7° of Article L. 542-1 of the Monetary and Financial Code:

- Opens one or more accounts with the central depository, or opens one or more accounts with another custody account-keeper or a foreign entity which has equivalent status;
- Opens one or more accounts with the issuer or the person acting on behalf of this latter, if the financial securities are units or shares of a collective investment scheme which are not admitted to the operations of the central depository.

3 • Of processing the events occurring in the life of the retained financial securities.

Sub-section 2 - Professional obligations of the keepers of securities accounts other than the issuing entities

Paragraph 1 - Obligations relating to the prevention of money-laundering and the financing of terrorism

Article 322-4

The custody account-keeper shall define and implement systems for identifying and assessing money laundering and terrorism financing risks as well as an appropriate policy for dealing with those risks.

The custody account-keeper shall be equipped with an organisation and procedures which allow it to meet the prescriptions of vigilance and information relating to the prevention of money-laundering and the financing of terrorism, as stipulated in Title VI of Book V of the Monetary and Financial Code and in the texts implementing them

Paragraph 2 - Relationships with customers

Sub-paragraph 1 - General provisions relating to the start of a relationship

Article 322-5

Prior to the supply of the custody account-keeping service, the custody account-keeper shall conclude an agreement with each holder of a securities account.

This agreement shall define the principles for the operation of the securities account and identify the respective rights and obligations of the parties.

I. - It shall include the following information:

1 • The identity of the person or persons with which the agreement is established:

- a •** Where this involves a legal entity, the modalities for informing the service provider of the name of the persons authorised to act in the name of the said legal entity;
- b •** Where this involves a natural person, his/her capacity, where applicable, as a French resident, a resident of a State which is a party to the European Economic Area agreement or a resident of a third country, plus, where applicable, the identity of

the persons authorised to act in the name of the said natural person;

- 2 • The type of services supplied as well as the categories of financial securities to which the services relate;
- 3 • The pricing of the services supplied by the custody account-keeper and the terms for remuneration of this latter;
- 4 • The validity period of the agreement;
- 5 • The obligations of confidentiality of the custody account-keeper in accordance with the laws and regulations in force concerning professional secrecy.

II. - It shall also specify:

- 1 • The terms according to which the information stipulated in Article 322-12 shall be sent to the holder of the securities account;
- 2 • The conditions for the sending, by the custody account-keeper, of the securities operation notes, depending on the regulations specific to the country of residence of the parties concerned and, where applicable, the restrictions imposed by the issuer in the issue prospectus. In the event of specific regulations or restrictions, the agreement shall set out the measures to be taken as a consequence by the custody account-keeper;
- 3 • If the custody account-keeper is also the service provider which supplies the client with the investment service of receipt and transmission of orders or the order execution service, the conditions according to which its client sends to it his/her orders for execution and the terms on which the custody account-keeper completes in good time the settlement in question, by borrowing securities on behalf of the client and by lending the necessary cash if required;
- 4 • The terms, and in particular the deadline, for transmission by the client of his/her instructions relating to a securities operation in order that these instructions can be taken into account by the custody account-keeper, as well as the measures adopted by the latter if the said instructions are not transmitted to it in accordance with the terms set out in the agreement. In the event that these measures consist of the systematic sale by the custody account-keeper of the rights of the holder, the agreement shall specify this explicitly;
- 5 • The information set out in Article 49 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 in terms of the modalities for the holding of securities and the terms for the use of the securities;
- 6 • The information relating to the tax situation of the holder of financial securities which the custody account-keeper must possess in order to be able to fulfil its professional obligations.

Article 322-5-1

Where the custody account-keeper does not supply the service of receipt and transmission of orders or the order execution service to the client, the agreement shall provide, without prejudice to the provisions of Article 322-5:

- 1 • The terms according to which the client transmits to the custody account-keeper the instructions to engage in a settlement and delivery process;
- 2 • The level, the nature and the timing for constitution of the securities or cash provision and, where applicable, the coverage required by the custody account-keeper for the settlement and delivery operations concerned;
- 3 • Subject to the conditions set out in 1° and 2° both being fulfilled and the agreement not requiring that the provision is constituted on the date of settlement and delivery, the terms and conditions according to which the custody account-keeper carries out, on behalf of the client, settlement of the instructions:

2022-06-11

- in accordance with Article 312-15, in the event of an insufficient provision of securities, a loan or a repurchase of securities, unless exceptional market conditions make borrowing or repurchase impossible;
- in the event of an insufficient provision of cash, a loan of cash;

4 • That, in the specific case:

- Of a delivery instruction from the client to the custody account-keeper of securities which are themselves to be received from a matching operation by the custody account-keeper and the counter-party which is due to deliver to it the securities concerned; and
- Of non-settlement of this latter operation on the planned date as a result of a failure by the said counter- party, the custody account-keeper shall take, immediately on recording the default, all the measures necessary for borrowing or repurchase in order to ensure the settlement of the delivery instructions as quickly as possible, subject to the conditions set out in 1° and 2° both being fulfilled, except where exceptional market conditions make these measures impossible.

[Article 322-6](#)

Before entering into a business relationship, the custody account-keeper shall carry out the same identity checks as those stipulated by the legislative and regulatory texts in force relating to the prevention of money-laundering and the financing of terrorist activities.

The custody account-keeper shall ensure that the client has the legal capacity and the status required to carry out this operation.

Where the client has appointed a person to act on his/her behalf, the custody account-keeper shall obtain any documents attesting to this appointment.

Where a legal entity client is concerned, the custody account-keeper shall verify that the representative of this legal entity has the capacity to act, either by virtue of his/her capacity as legal representative, or under the terms of a delegation or mandate in his/her possession. For this purpose, the custody account-keeper shall request the production of any documents which allow it to verify the authorisation or appointment of the representative.

The custody account-keeper may ask natural persons and legal entities which are subject to the legislation of a foreign State to present a certificate in accordance with normal practice attesting to the validity of the envisaged operations under the terms of this legislation.

The securities account must mention the identification information concerning the persons in the name of whom it was opened and any specificities affecting the exercise of their rights.

Sub-paragraph 2 - General provisions relating to the services provided and to the protection afforded to clients

[Article 322-7](#)

Articles 26, 30 and 31 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 and 312-6 to 312-16 of this General Regulation apply to all custody account-keepers, even when they are not investment service providers.

The custody account-keeper shall in all circumstances comply with the following obligations:

- 1 • It shall take every care to carry out all the security and cash movements in line with the instructions from its clients;
- 2 • It shall take every care in the conservation of the financial securities and, in this respect, ensure the strict account- recording of these latter and their movements in compliance with the procedures in force; it shall also take every care to facilitate the exercise of the rights attached to these financial securities, in compliance with the regulations applicable to the said securities;

2022-06-11

- 3 • It shall ensure that the assets of its clients are distinguished from its own assets in the books of third parties with which, in application of 2° of Article 322-3, it keeps the corresponding assets;
- 4 • In accordance with the provisions of Article 312-12 and 312-15, it may neither make use of the financial securities recorded in the account or the rights attached thereto, nor transfer the ownership thereof without the express agreement of their owner. It shall organise its internal procedures in such a way as to guarantee that any movement related to the holding of financial securities on behalf of third parties for which it is responsible is justified by a validly registered operation in an account of the holder;
- 5 • Subject to the provisions of Article 322-35, it shall have the obligation to return the financial securities which are recorded in a securities account in its books. If the securities are not represented by any medium apart from the accounting entry, it shall transfer them to the custody account-keeper which the holder of the securities account shall designate. This return shall be carried out as quickly as possible, on condition that the said holder has fulfilled his/her own obligations.

Article 322-8

The custody account-keeper shall ensure that, unless a legal or regulatory provision to the contrary applies, any movement of financial securities affecting the securities account of a client shall be carried out exclusively on the instructions of the latter, of his/her representative or, in the event of a transfer, of an authorised third party.

If the holder has entrusted the management of his/her portfolio under the terms of a mandate, the custody account-keeper shall have him/her complete an attestation signed by the holder and the representative, based on the template included in an instruction from the AMF. The custody account-keeper is not obliged to have knowledge of the terms of the portfolio management mandate.

Any operation which creates or modifies the rights of a holder of a securities account shall be the subject of recording as soon as the right is acknowledged.

Where the operation involves a movement of cash and financial securities or a movement of cash, rights and financial securities, these movements will be recorded concomitantly.

Article 322-9

A securities account must not have a debit balance on the date of settlement and delivery of the financial securities disposed of and the custody account-keeper shall in all circumstances comply with the provisions of 4° of Article 322-7 relating to the rule of non-utilisation of financial securities belonging to a client without his/her express agreement.

Article 322-10

In application of Article 322-9 and pursuant to Points 2° and 3° of Article 312-15, the custody account-keeper shall establish and keep operational the procedures:

- 1 • Enabling the highlighting of any trading or disposal of financial securities liable to produce a debit balance on a securities account on the date of settlement and delivery;
- 2 • Providing for its intervention with the clients in order to ensure that they take measures:
 - To avoid any settlement and delivery default; or,
 - Where applicable, to remedy such a default which may have occurred;
- 3 • Implementing as required the measures provided for in II (3°) of Article 322-5 and 3° of Article 322-5-1 in accordance with the terms set out in the agreement mentioned in the same articles.

Article 322-11

2022-06-11

Where it carries out operations for its own account, which oblige it to deliver financial securities, whether related or not to operations carried out by clients, the custody account-keeper shall be obliged to ensure that it is able to proceed with this delivery on the planned date of settlement and delivery and shall take, where applicable, any measure enabling it to proceed with the delivery of the said securities on the said date, pursuant to Point 2° of Article 312-15.

Sub-paragraph 3 - General provisions relating to the information provided to clients

Article 322-12

I. - The custody account-keeper shall send, on a durable medium, at least once quarterly to its client, and on each request by this latter, a statement of his/her financial securities. The statement shall include the information mentioned in Paragraph 2 of Article 63 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

II. - The custody account-keeper shall send, as quickly as possible, to each holder of a securities account the following information:

- 1 • Information relating to operations in financial securities which require a response from the account holder, which it receives individually from the issuers of financial securities;
- 2 • Information relating to the other operations in financial securities which give rise to a modification to the assets recorded on the client's account, which it receives individually from the issuers of financial securities;
- 3 • Subject to them having been identified as such by the collective investment scheme or the asset management company which, where applicable, represents it, and in accordance with the conditions set out in 6° of Article 411-70, the specific information which must, in application of the provisions of Article 411-15, be sent individually to the holders of the collective investment scheme, which it receives from the said collective investment scheme or from its asset management company.

III. - The custody account-keeper shall be obliged, as quickly as possible, to inform each holder of a securities account:

- 1 • Of the information necessary for the preparation of his/her tax return;
- 2 • Of all the movements relating to the financial securities and cash recorded in his/her name.

However, where the holder of the securities account subscribes to a pensions saving plan scheme which contractually includes repetitive and systematic operations, the custody account-keeper may inform the holder of the execution of these operations only twice a year.

Article 322-13

Where it is the responsibility of the custody account-keeper to inform its client about the conditions for execution or transmission of his/her orders concerning the financial securities, it shall send to this latter the information mentioned in Paragraphs 1, 2, 3 and 4 of Article 59 and Paragraph 2 of Article 62 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. This information shall include details of the costs or commissions charged by the service providers involved and by the custody account-keeper.

Article 322-14

The custody account-keeper shall forward to the issuing companies the requests for preparatory documents for their general meetings made by the shareholders or shall hold these documents at the disposal of these latter, subject to the issuing legal entity having fulfilled its contractual obligations with regards to the custody account-keeper.

Sub-paragraph 4 - General provisions relating to orders with deferred settlement and delivery service

Article 322-15

The provisions of Articles 516-1 and 315-11 to 315-22 are applicable to keepers of securities accounts.

Sub-paragraph 1 - General provisions

[Article 322-16](#)

In accordance with the provisions of Articles 21, 23, 24, 25 and 27 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, the custody account-keeper shall:

- 1 • continuously use resources, particularly material, financial and human resources, which are suitable and sufficient.
- 2 • establish and keep operational suitable procedures for decision making and an organisational structure which specifies in a clear and documented form the hierarchical structure and the distribution of functions and responsibilities.
- 3 • ensure that the persons concerned are fully informed of the procedures which must be followed for the appropriate exercise of their responsibilities.
- 4 • establish and keep operational appropriate internal control mechanisms, designed to guarantee compliance with the decisions and procedures at all levels of the custody account-keeper.
- 5 • employ staff with the qualifications, knowledge and expertise required to exercise the responsibilities which are entrusted to it.
- 6 • establish and keep operational an efficient system for feedback up the hierarchical chain and communication of information at all the relevant levels.
- 7 • record in a suitable and ordered manner the details of its activities and of its internal organisation.
- 8 • ensure that the fact of entrusting multiple functions to the persons concerned does not prevent them or is not liable to prevent them from carrying out, in an adequate, honest and professional way, any of these functions.

Sub-paragraph 2 - IT resources

[Article 322-17](#)

The custody account-keeper shall establish and keep operational systems and procedures for safeguarding the security, integrity and confidentiality of information in a manner which is appropriate with regard to the nature of the information consulted.

[Article 322-18](#)

The custody account-keeper shall establish and keep operational business continuity plans in order to guarantee, in the event of the interruption of its systems and procedures, the safeguarding of its data and essential functions and the continuity of its custody account-keeping activities or, where this is impossible, in order to enable the recovery as quickly as possible of this data and these functions and the restarting of its activities as quickly as possible.

Sub-paragraph 3 - Accounting procedures

[Article 322-19](#)

The custody account-keeper shall describe its accounting organisation in an appropriate document.

It shall maintain its securities account records in accordance with the rules of double entry accounting.

The nomenclature of the accounts and their rules for operation shall be fixed by an instruction from the AMF. The purpose of this nomenclature is in particular, for the purposes of audit, to classify the financial securities in collective investment schemes in separate categories from those of the other clients and those belonging to the custody account-keeper.

[Article 322-20](#)

The custody account-keeper shall proceed with the accounting input of the operations as soon as it becomes aware thereof.

[Article 322-21](#)

Where operations remain to be confirmed between the custody account-keeper and its counter-parties, the corresponding commitments are the subject of commitments recorded in accounting entries, or of non-accounting records.

[Article 322-22](#)

The custody account-keeper shall record, as quickly as possible, any information necessary to manage settlement of the operations.

[Article 322-23](#)

All accounting entries are supported:

- 1 • Either by a written document;
- 2 • Or by computerised and unalterable data.

[Article 322-24](#)

Where the holders of administered registered financial securities accounts are concerned, the custody account-keeper shall proceed, based on a reasonable periodicity, with the reconciliation of its accounting records with those held by the issuing entity. Where required, it shall justify any difference.

The custody account-keeper shall establish a daily report on the nominative references not transmitted to the central depository concerned within the required deadlines and for which the transmission remains to be completed.

[Article 322-25](#)

The custody account-keeper shall organise its processing procedures in such a way as to guarantee the complete input, the reliability and the retention of the basic data, particularly that relating to the holders of accounts, to the financial securities held, to the counter-party service providers and to the movements occurring related to the financial securities.

[Article 322-26](#)

The custody account-keeper shall organise its processing system in order that it is capable of producing the following documents, for each of the financial securities held:

- 1 • The history of the movements in the financial securities;
- 2 • The history of the financial security accounts opened in all classes of the accounting plan.

[Article 322-27](#)

The custody account-keeper shall process and retain the data relating to customers and to the operations which they carry out, in compliance with the professional secrecy mentioned in Article 314-1.

[Article 322-28](#)

The custody account-keeper shall establish an audit trail between the securities and accounting entries and the cash corresponding to the same operation, with the aid either of common references, or of management rules.

[Article 322-29](#)

The custody account-keeper shall design the system of accounting for financial securities in such a way that it is capable of justifying, on the one hand, the balances of each financial security based on the balances of each of the holders and the balances of the operations in transit and, on the other hand, the reconstitution of each balance based on the detailed operations which are at the source thereof.

It shall carry out these justifications based on a reasonable periodicity.

Article 322-30

The custody account-keeper shall implement continuous audit procedures relating to the accuracy of the processing procedures.

For each financial security, it shall verify on a daily basis:

- 1 • The equilibrium between the total of credit entries on the accounts and the total of debit entries thereon;
- 2 • The equilibrium between the accounts with credit balances and the accounts with debit balances.

It shall also organise the system of accounting for the financial securities, in such a way that it allows, by the implementation of appropriate procedures, for the audit of the data.

Article 322-31

The custody account-keeper shall implement continuous procedures for the verification of the accuracy of the available asset accounts, with the aid of the supporting documents for the corresponding assets supplied by the central depository, the keepers of securities accounts in which are kept the financial securities and the issuing entities which make public offerings. The custody account-keeper shall justify any difference.

Article 322-32

The custody account-keeper shall record the normal dates on which the receipt or delivery of the financial securities is anticipated. This recording shall take account of the specificities of cross-border operations.

The custody account-keeper shall organise its procedures in such a way as to continuously monitor suspense items as follows:

- The report on financial security and cash suspense items, for all the financial securities concerned, shall be supplied daily to the department which has operational responsibility for the delivery and settlement operations with the counter-parties;
- The suspense items mentioned in the second paragraph include:
 - 1° Operations which are not matched within the normal deadlines;
 - 2° Deliveries and settlements which are pending, relating to operations which have been matched with the counter- parties and for which the normal settlement dates have been exceeded;
- The suspense items are monitored by counter-party and by the date of delivery which was foreseen at the outset;
- In addition, the agreement of the counter-parties concerning the identified suspense items, both in financial securities and in cash, shall be regularly sought.

Sub-paragraph 4 - Relationships with other service providers

Article 322-33

Without prejudice to the provisions of Article 31 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, the custody account-keeper may make use of a third party for:

- 1 • Preserving the assets corresponding to the financial securities which it records in the holders' accounts in accordance with the conditions specified in 2° of Article 322-3;
- 2 • Recording the financial securities in a securities account, in the capacity of representative of the custody account- keeper, in

the name of their holder.

The custody account-keeper may make use of a third party to carry out, on its behalf, other essential operational tasks or functions within the meaning of Paragraph 1 of Article 30 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

[Article 322-34](#)

Where, in application of 2° of I of Article 322-33, the custody account-keeper makes use of a third party which, in its capacity of representative, records financial securities in a securities account in the name of their holder, this third party shall be another custody account-keeper or a foreign entity which has a similar status.

[Article 322-35](#)

When it makes use of a third party, in application of Article 322-33, and apart from cases where it retains the assets corresponding to the securities of its clients in one or more accounts opened with a central depository or issuer, the custody account-keeper shall apply the provisions of Articles 312-8 to 312-10 and 321-93 to 321-96.

The liability of the custody account-keeper to the holder of the securities account shall not be affected by the fact that it makes use of a third party mentioned in Article 322-33.

However, where a custody account-keeper retains, on behalf of a professional client, financial securities issued under foreign law, it may agree on a clause which exempts it totally or partially from its liability to this professional client.

[Article 322-36](#)

A contract shall be established between the custody account-keeper and the third-party mentioned in Article 322-33, which shall specify in particular:

- 1 • The tasks entrusted to this third party;
- 2 • The responsibilities of the custody account-keeper and the third party;
- 3 • The obligations on the third party to provide information to the custody account-keeper;
- 4 • The modalities for verification implemented by the custody account-keeper in respect of the operations carried out by the third party;
- 5 • Where required, the necessity to comply with local practices.

[Article 322-37](#)

When, in application of 2° of I of Article 322-33, a third party is appointed by the custody account-keeper to record financial securities in a securities account in the name of their holders, the third party shall ensure that its principal applies the procedures established in application of Article 322-9. If, in particular, it observes that these procedures have not been implemented in the case of a client who is selling securities, it shall not proceed with the delivery of the said securities.

However, in the event that, for technical reasons related to the operation of the settlement and delivery system, it is incapable of preventing the delivery of the securities, it shall ensure that no financial instrument belonging to clients will be used for this purpose, without their express agreement, as provided for in 4° of Article 322-7.

[Article 322-38](#)

Where the custody account-keeper is caused to complete, on the instructions of a holder, a transfer of a financial securities portfolio to another custody account-keeper, in accordance with the conditions mentioned in 5° of Article 322-7, it shall, as quickly as possible, supply to the new custody account-keeper all the information which is necessary to it, particularly that relating to the precise identification of the holders concerned as well as detailed information enabling it to prepare the tax returns.

Article 322-39

Custody account-keepers shall ensure compliance with the provisions which are applicable to them, as well as compliance by the persons placed under their authority or acting on their behalf, with the provisions applicable to custody account-keepers themselves and to these persons.

For this purpose, they shall designate an audit manager who, at custody account-keepers which are investment service providers, is a compliance officer for the investment services.

The audit manager shall have the authority, resources and expertise necessary and access to all relevant information. He/she shall not be involved in the execution of the operations which he/she audits.

He/she shall ensure the quality of the procedures specific to the custody account-keeping activity and the reliability of the internal controls and management tools.

He/she shall have access to regularly-updated documentation describing the organisation of the departments, the operational procedures and all the risks incurred as a result of the custody account-keeping activity.

He/she should be held to consult the principal reporting systems and shall be an addressee of the files of anomalies and complaints made by clients or professional partners, relating in particular to any malfunctions and any failures in ethical business practices.

Article 322-40

The audit manager shall organise the verification of the custody account-keeping activity by distinguishing:

- 1 • The systems which ensure day-to-day verification of operations;
- 2 • The systems which, as a result of recurrent or random checks and detailed audits of operational procedures, ensure the consistency and efficiency of the verification of the operations.

Article 322-41

The audit manager shall be involved in the validation of any new accounting system and verifications of updates to the accounting plan.

Article 322-42

The audit manager shall ensure the existence of continuous monitoring of the risks with regard to the counter-parties, whether credit risks, operational risks or risk relating to the settlement of operations.

Article 322-43

The audit manager shall define the rules for monitoring of positions considered sensitive with regard to the continuity and integrity of the processing or confidentiality of operations.

Article 322-44

The audit manager shall ensure the existence and application of procedures guaranteeing the taking into account, in compliance with the instructions from clients and sundry operations in financial instruments, concerning both the time taken for execution and the modalities for the updating of the financial instrument and cash accounts.

Article 322-45

The audit manager shall ensure the efficiency of the procedures for forward planning of the flows of financial instruments and cash intended to prevent the suspense items mentioned in Article 322-32 and breaches of the prescriptions in 4° of Article 322-7.

2022-06-11

In the event that suspense items should nevertheless occur, the audit manager shall verify the terms and deadlines for the clearance thereof.

Sub-section 3 - Provisions applicable to the domiciliation of negotiable loan notes and Treasury bonds

Article 322-46

Prior to the issue of negotiable loan notes, a written agreement shall be concluded between the issuer and a domiciliation establishment which will supervise the validity of the issue terms.

Authorised to be domiciliation agents are the establishments mentioned in Article 3 of the ministerial order of 31 December 1998 relating to the conditions which must be fulfilled by issuers of negotiable loan instruments mentioned in 2° to 10° of Article L.213-3 of the Monetary and Financial Code.

The domiciliation agent is in particular responsible for the accuracy of the amount of the issue with regard to the instructions received from the issuer. It shall be obliged to account to the issuer for the characteristics of the issues in accordance with the modalities set out in the above-mentioned agreement.

The domiciliation agent shall ensure the financial service for the issue and fulfil, *vis-à-vis* the Bank of France, the statistical declaration obligation provided for in the ministerial order mentioned in the second paragraph and the regulations issued for its application.

Article 322-47

Where an issuer decides to have the account for the issue of negotiable loan instruments kept at a central depository, it shall inform the latter of the domiciliation agent which it mandates in order to transmit its instructions to it. The central depository shall open a specific account for each issue. The central depository shall be the guarantor of the equilibrium between the number of securities issued and the number of securities recorded in its books in the name of the custody account-keepers.

Article 322-48

Where an issuer decides not to have the account for the issue of negotiable loan securities held at a central depository, its domiciliation agent shall be the guarantor of the equilibrium between the number of securities issued and the number of securities registered in its books in the name of the other custody account-keepers.

Article 322-49

Only the provisions referred to in Articles 322-46 and 322-47 shall apply to Treasury bonds.

Sub-section 4 - Professional obligations of the issuer entities considered in their capacity as custody account-keepers and provisions relating to the administration of registered financial securities

Paragraph 1 - General provisions

Article 322-49-1

Pursuant to point 1° of Article L. 542-1 of the Monetary and Financial Code, legal entities that issue financial securities that have been offered to the public, except for those offers referred to in point 1° or point 2° of Article L. 411-2 of the Monetary and Financial Code or in Article L. 411-2-1 of said code, are authorised to carry out the activity of custody account keeping for those securities.

Article 322-50

Where a holder of registered financial securities uses the option which is given to it by Article R. 211-4 of the Monetary and Financial Code to entrust to a custody account-keeper intermediary, mentioned in Article L. 211-3 of the said code, the responsibility for their administration, it shall sign with this latter a mandate based on a template set out in an instruction from the AMF. This mandate shall be notified by the said intermediary to the issuer entity.

Where the administration mandate entrusted to this custody account-keeper intermediary is terminated, this latter shall so inform

Article 322-51

The issuer entities shall maintain specific accounting records for each of the financial securities which they issued.

This accounting system shall distinctly record the pure registered financial securities and the administered registered financial securities mentioned in Article 322-2.

A chronologically-completed general journal shall retrace all the operations concerning each of the financial securities issued.

A general account, "Issue of registered financial securities", opened for each financial security shall register, on the debit side, all the financial securities registered at the issuer.

Its credit counterpart shall appear in the individual accounts of the pure registered holders, on the one hand, and administered registered holders, on the other hand, as well as in the various registered financial security accounts in the process of allocation.

Article 322-52

The recognition, in favour of the holders, of the rights detached from registered financial securities is carried out exclusively by the custody account-keeper intermediaries of administered registered financial securities, where administered registered financial securities are concerned and by the issuer entities where pure registered financial securities are concerned.

These rights take the "bearer" form if they arise from administered registered financial securities, and the "pure registered" form if they arise from pure registered financial securities.

Regardless of the form in which they are registered, these rights circulate in bearer reform.

Article 322-53

The accounts of the issuers at the central depository for the issue shall retrace the assets of the issuer in pure registered financial securities.

The accounts of the custody account-keeper intermediaries at the central depository for the issue shall separately register the assets of the holders of financial securities held in "bearer" form and in the "administered registered" form.

Accounts which are specific to essentially registered financial securities, open only at investment service providers carrying on the business of order-execution on behalf of third parties and trading on their own account, shall register at the central depository for the issue the movements in financial securities consecutive to the operations made by their intermediary on a regulated market.

Article 322-54

In the event of a change in the holder of an administered registered financial security or a change in the method of administration of the account or any other modification affecting the registration on the account of a holder of an administered registered financial security, each custody account-keeper intermediary concerned shall establish the list of nominative references for the holder mentioned in Article L. 211-19 of the Monetary and Financial Code and shall proceed, where appropriate, with the agreed operations of cash settlement and delivery of the financial securities.

Where a holder of registered financial securities charges a custody account-keeper intermediary with administering their account opened at a legal entity which is an issuer of financial securities admitted to the operations of a central depository, this issuer legal entity shall draw up a sheet of nominative references. Where it holds an administration account, the custody account-keeper intermediary shall alone be authorised to receive from the holder the orders relating to the financial securities in question; consequently, it shall establish the sheet of nominative references in accordance with the conditions set out in the first paragraph.

Any sheet of nominative references shall be materialised by a collection of computerised data, established in accordance with the standards set out in an instruction from the AMF and intended to be transmitted remotely.

2022-06-11

Registered financial securities not admitted to the operations of a central depository, but which were issued by an offer to the public public offer, with the exception of those referred to in points 1° or 2° of Article L. 411-2 of the Monetary and Financial Code or Article L. 411-2-1 of said code, shall circulate in accordance with the professional standards in force.

Article 322-55

In the event of the change of the holder of an administered registered financial security, following the execution of an order on the financial security, the custody account-keeper intermediary in question shall forward to the central securities depository concerned the sheet of nominative references no later than midday the second trading day following the date of execution of the order. The central securities depository in its turn shall transmit the sheet of nominative references to the issuing entity, no later than the second trading day following the date of execution of the order, specifying the date on which it is recording the said sheet.

No later than the trading day following the receipt of the sheet of nominative references, the issuing entity shall update its accounting records. No later than the second trading day following the receipt of the sheet of nominative references, the issuing entity shall return the sheet of nominative references to the central securities depository. This latter shall forward the sheet of nominative references to the intermediary in question no later than the trading day following the receipt of the sheet.

The date of the movements recorded by the issuing entity is the date specified by the central depository referenced in the first paragraph, on which it records the sheet.

As of 1 January 2022, the date of the movements recorded by the issuing entity is the settlement date of the financial security being executed in accordance with the order referenced in the first paragraph. This provision may be applied in advance by any issuing entity that irrevocably chooses to do so before 1 January 2022. This choice takes the form of a statement published in accordance with Article 221-3.

Article 322-56

The issuing entity or the custody account-keeper intermediary responsible for the preparation of a sheet of nominative references following a change in the method of administration of the account of a holder of a financial security shall send, no later than two trading days from the date on which it records the change to the account of the said holder held in its books, this sheet to the central depository. The central depository shall forward the sheet of nominative references to the custody account- keeper in question no later than the trading day following the receipt of the said sheet.

Article 322-57

The sheets of nominative references circulate via the intermediary of the central depositories.

The rules of operation for the central depositories and their application instructions establish the technical standards determining the computerised data making up the sheets of nominative references and organise the circulation of the sheets.

Article 322-58

The rules of operation of the central depositories shall establish the penalties which may be imposed on the custody account-keeper intermediaries and issuer entities which do not establish the sheets of nominative references within the required deadlines. Consequently, the rules set out the delays which give rise to penalties and their amounts.

Article 322-59

If, in the event of the rejection by an issuer entity of a sheet of nominative references, the issue of a regularisation sheet by the custody account-keeper intermediary is required, the delay which gives rise to a penalty for the issue of this regularisation sheet cannot exceed seven trading days following the date of the recording of the rejection at the central depository.

Article 322-60

For any sheet of nominative references not mentioned in Articles 322-55 and 322-56, and for which the deadline for issue does not arise from the modalities of a operation carried out at the initiative of the issuer of financial securities, the delay giving rise to a penalty for the issue of the sheet by the custody account-keeper intermediary cannot exceed three trading days following the date of the event at the origin of this issue and recorded on the sheet.

2022-06-11

The delay giving rise to the penalty to which is subject the issuer entity which received the said sheet cannot exceed three trading days following the date of the registration mentioned in the first paragraph of Article 322-55.

Paragraph 2 - Stipulations of the terms of reference of the custody account-keeper applicable to legal entities issuing financial securities via public offerings, with the exception of those mentioned in 1 or 2 of Article L. 411-2 of the Monetary and Financial Code or in Article L. 411-2-1 of said code, which (i) record issued financial securities in "pure registered" accounts, or (ii) record issued financial securities in a distributed ledger system

[Article 322-61](#)

Ancien numéro de l'article : 322-73

Provisions of the terms of reference of the custody account-keeper applicable to legal entities issuing financial securities via offers to the public, except for those referred to in points 1 or 2 Article L. 411-2 of the Monetary and Financial Code or Article L. 411-2-1 of said code, and recording the financial securities issued in pure registered accounts.

[Article 322-62](#)

A pure registered securities account must not have a debit balance on the date of settlement and delivery in respect of any financial security sold.

[Article 322-63](#)

The issuer legal entity shall organise the procedures for processing in such a way as to guarantee the recording of the sheets of nominative references in chronological order, the complete input, reliability and retention of the basic data, in particular that relating to the holders of accounts, to the financial securities safeguarded, to the intermediaries and to any events affecting the securities.

For financial securities not admitted to the operations of a central depository, but which were issued by an offer to the public other than those referred to in points 1° or 2° of Article L. 411-2 of the Monetary and Financial Code or Article L. 411-2-1 of said code, the issuer legal entity shall keep, in chronological order, the supporting documents resulting from the professional standards in force and any modifications made to the holders' accounts.

[Article 322-64](#)

The issuer entity shall process and retain the data relating to the holders of pure registered financial securities and to the operations which they make, in compliance with professional secrecy, in accordance with the regulations in force.

[Article 322-65](#)

The issuer entity shall design the system of accounting for financial securities in such a way that it is capable of justifying, on the one hand, the balances of each financial security based on the balances of each of the holders of pure registered financial securities and the balances of the operations in transit and, on the other hand, the reconstitution of each balance based on the detailed operations which are at the source thereof.

It shall carry out these reconciliations based on a reasonable periodicity.

[Article 322-66](#)

The issuer entity shall organise its procedures in such a way that the report on the suspense items in terms of financial securities is supplied on a monthly basis to the audit manager mentioned in Article 322-72.

Suspense items mean operations rejected by the issuer entity and not regularised by the intermediaries. These operations are:

- 1 • Negotiations on an essentially registered financial security;

2 • Elementary operations;

3 • Transfers, sales and rectifications of account names;

4 • Sundry operations in financial securities;

5 • Transfers of portfolios.

The report on the suspense items is filed by the intermediary and each line therein is completed with the accounting reference of the operation.

All suspense items shall be regularised as quickly as possible.

To the extent required, a procedure for bilateral reconciliation between the issuer entity and the intermediaries shall be implemented with a view to resolution of the suspense items.

[Article 322-67](#)

For all accounting input into its books or any recording in the distributed ledger system:

1 • Verify the identity of the said holder;

2 • Ensure that it has the legal capacity and the status required to open the account or so that recording may be performed on its behalf in the distributed ledger system;

3 • Verify, where a legal entity holder of pure registered financial securities is concerned, that the representative of this legal entity has the capacity to act, either by virtue of his/her capacity as legal representative, or under the terms of a delegation or mandate in his/her favour; for this purpose, the issuer entity shall request the production of any documents enabling it to verify the authorisation or appointment of the representative;

4 • Establish an account-opening agreement or an agreement for recording the financial securities in a distributed ledger system with the holder of the pure registered financial securities.

[Article 322-68](#)

The account opening agreement or the agreement for recording the financial securities in a distributed ledger system shall contain:

1 • The identity of the holder of the pure registered financial securities;

2 • Where a legal entity is concerned, the modalities for informing the issuer entity about the name of the person or persons authorised to act in the name of the said legal entity; where a natural person is concerned, his/her capacity as a French resident, a resident of another State which is a party to the European Economic Area agreement or a resident of a third country and the identity, where applicable, of the person or persons authorised to act in the name of the said natural person;

3 • The information relating to the tax situation of the holder of the financial securities, which are necessary to the issuer entity in order to fulfil its professional obligations.

4 • If a service of receipt and transmission of orders is supplied to the holder of pure registered financial securities, the characteristics of the orders likely to be sent to the issuer entity, the method of receipt and transmission of the orders, the modalities for informing the holder when the transmission of the order was not able to be completed, and the content and modalities for informing the holder following execution of the order;

- 5 • The modalities for information relating to movements recorded on the holder's account or relating to recordings in a distributed ledger system.

Article 322-69

Where the receipt of an order concerning financial securities is sent by a holder of pure registered financial securities, the issuer entity shall verify, prior to transmission of this order for execution, that the conditions necessary for the said execution have in fact been fulfilled. In particular, it shall ensure the existence:

- 1 • Of an adequate cash provision or, failing that, suitable coverage, for a purchase of securities;
- 2 • Of an adequate provision in securities in the case of a sale, at least on the date of settlement and delivery.

Article 322-70

Where the issuer entity is caused to complete, on the instructions of a holder of pure registered financial securities, a transfer of a portfolio of financial securities to another custody account-keeper intermediary, in accordance with the conditions mentioned in 5° of Article 322-7, it shall, as quickly as possible, supply to the new custody account-keeper all the information which is necessary to it, particularly that relating to the precise identification about the holders concerned as well as detailed information enabling it to prepare the tax returns, in particular the information about the taxable cost base.

Article 322-71

Where an issuer entity uses a representative and decides to change it, it will ensure that the new representative completes the effective transfer of the archives concerning the issuer entity with the representative which it is replacing.

Article 322-71-1

The issuer entity shall establish and keep operational and efficient and transparent procedure for the reasonable and rapid processing of complaints sent to it by holders of registered financial securities.

These holders shall be able to send complaints to the issuer entity free of charge.

The issuer entity shall respond to the complaint by the registered financial security holder within a maximum deadline of two months with effect from the date of receipt of this complaint, except in the event of duly justified specific circumstances.

It shall put in place a system for equitable and harmonised processing of complaints by holders of registered financial securities.

It shall record each complaint and the measures taken for its handling. It shall put in place a system for monitoring complaints allowing it in particular to identify any malfunctions and to implement the appropriate corrective actions.

Information about the procedure for handling complaints is made available free of charge to holders of registered financial securities.

The procedure put in place shall be proportionate to the number of holders of registered financial securities and to the size and the structure of the issuer entity.

Article 322-72

The issuing entity will charge an employee, appointed by name, to ensure compliance with the rules applicable to the activity of custody account-keeping and, where applicable, the service of receipt and transmission of orders. This audit manager shall carry out the function set out in Articles 322-39 to 322-45.

The audit manager will have the appropriate autonomy of decision-making, as well as the human and technical resources necessary for the accomplishment of his/her assignment and which shall be adapted to the nature and volume of the activities carried out.

2022-06-11

Each year, he/she will prepare a report including a description of the audit organisation, a listing of the tasks completed in the exercise of his/her assignment, the recommendations which he/she has been led to make and the measures adopted as a result of his/her remarks. This report shall be forwarded to the management of the custody account-keeping function of the issuer entity and to the executive body of the said entity.

Sub-section 5 - Provisions relating to the keeping of securities accounts within the framework of an employee savings scheme

Article 322-73

This sub-section concerns the keeping of securities accounts for units or shares in a collective investment scheme acquired within the framework of an employee savings scheme, with the exception of FCPE units covered by Article L. 214-164 of the Monetary and Financial Code subscribed under a retirement savings plan as defined in Article L. 224-1 of the same code opened with an insurance company, mutual insurance company or union, provident institution or union. It also concerns other financial securities acquired under such a scheme.

For the purposes of the present sub-section, the following definitions will apply:

- 1 • "Units", units or shares in a collective investment scheme offered within the framework of an employee savings scheme;
- 2 • "Funds", the collective investment schemes of which the units and shares are offered within the framework of an employee savings scheme;
- 3 • "Bearers", the beneficiaries of an employee saving scheme;
- 4 • "Management companies", the portfolio management companies and open-ended investment companies which do not delegate their asset management.

Paragraph 1 - Account-opening agreement

Article 322-74

Prior to the opening of a financial securities account within the framework of an employee savings scheme, the custody account-keeper shall verify the identity of the company as well as the validity of the powers delegated to its representative.

The account-opening agreement mentioned in Article 322-5 shall be established, subject to the provisions of the third paragraph, between the company which has put in place the employee savings scheme on behalf of its employees and other bearers and the custody account-keeper specified in the savings plan or participation agreement.

Where, within the framework of an employee savings scheme, the company is an issuer entity carrying on the business of custody account-keeping and keeping of pure registered bearer accounts, it is not obliged to establish with the said bearers an account-opening agreement or to have it established by its representative.

Article 322-75

Prior to the opening of the individual accounts mentioned in Article 322-77, the custody account-keeper shall ask the company or its delegated keeper of the register of administrative rights, hereafter the registered keeper, to provide it with the list of the beneficiaries of the employee savings scheme. Failing this, the accounts shall not be opened.

Article 322-76

The account-opening agreement shall specify:

- 1 • The method for the transmission of the orders for payment, redemption, modification of the choice of investment or transfer of the role incumbent on the custody account-keeper in terms of order execution.

The orders shall be transmitted directly to the custody account-keeper when it is the agent of the company to receive the

orders and to check that they are valid, or by the intermediary of the company which, in this case, is responsible for checking that they are valid;

- 2 • The modalities for the update of the individual information relating to the bearers, including bearers who have left the company and the processing related to the loss of the capacity of employee. It shall provide that a bearer who loses this capacity remains covered by this agreement or by any other agreement in force which may subsequently be substituted therefor;
- 3 • The role of custody account-keeper in terms of informing the company and the bearers, and the modalities for this provision of information, without prejudice to the legal and regulatory provisions concerning the responsibilities of the company where providing information to bearers is concerned. This information concerns the investment of the profit share and the payments made under the terms of the savings plan, operations in financial securities, operations for changing the custody account-keeper, individual transfers, changes in the appropriation of bearers' assets and other individual operations by the bearers.

The custody account-keeper, if it is distinct from the registered keeper, shall agree with it the modalities for the sending to bearers of a report summarising the nature and number of the financial securities registered on their account, mentioned in Article 322-12 and in article R. 3332-16 of the Employment Code;

- 4 • The level, periodicity and modalities for the payment of the expenses due by the company and by the bearer;
- 5 • The extent of the right of usage of the custody account-keeper with regard to the files on the bearers;
- 6 • The existence of agreements applicable to the custody account-keeper in its relations with the other parties concerned, within the framework of employee savings schemes, as stipulated in Articles 322-79 to 322-81;
- 7 • The deadlines for reimbursement to the bearer, where there are no stipulations provided for by the regulations or Articles of Association of the fund;
- 8 • The deadlines for investment of the sums paid on behalf of the bearers. These deadlines will run with effect from the receipt by the securities account-keeper of the information about the destination fund and the corresponding financial flows.

Paragraph 2 - Maintenance and consultation of the accounts

Article 322-77

The custody account-keeper shall keep an account of the units in the name of each bearer. In application of Article 322-6, this account shall mention the identification information for the bearer in the name of whom it was opened and the specificities affecting the exercise of the rights of the said bearer. This identification data and the specificities shall be forwarded by the company.

A merger between two accounts held for a single bearer may only be carried out on the basis of a formal request by the company.

The closure of a bearer's account may only take place if the entirety of the assets has been liquidated and if he/she has no further rights due.

The custody account-keeper shall also keep accounts for "operations in progress" intended to receive the sums paid by the company or the bearers and to record the sums in the process of payment, due to the bearers.

Article 322-78

When, in application of Article 322-33, a custody account-keeper charges a third party with providing it with technical resources, it shall ensure that this latter implements the provisions of the present sub-section.

Where it charges this third party with accounting record-keeping relating to the bearers, the custody account-keeper shall not be

obliged to duplicate the said records in its own information system.

When, in application of Article 322-34, an OEIC holds, in the capacity of custody account-keeper, pure registered bearer accounts and where it makes use of a representative, it will ensure that this latter implements the provisions of the present sub- section.

In application of Article 322-35:

- 1 • The securities account-keeper mentioned in the first paragraph shall not be exempted from its responsibility to the company and the bearers, where a third party provides it with resources;
- 2 • The OEIC mentioned in the third paragraph shall not be exempted from its responsibility to the company and the bearers where it makes use of a representative.

Paragraph 3 - Relations between the custody account-keeper and the other parties concerned, within the framework of an employee savings scheme

Article 322-79

The custody account-keeper shall establish, with the asset management company and the entity holding the unit issue account, an agreement defining the exchanges of information which enable:

- 1 • The asset management company to proceed with the investments or disinvestments for the funds;
- 2 • The custody account-keeper to account for the number of units of each employee, after notification of the net asset values by the asset management company;
- 3 • The entity holding the unit issue account to create or cancel units and, where applicable, to proceed with dealing with the difference between the number of units transmitted to it by the custody account-keeper and that which it recorded.

Article 322-80

If it is separate from the depository, the custody account-keeper shall establish with it an agreement defining the exchanges of information between them, enabling:

- 1 • The custody account-keeper and the depository to organise the financial flows, in compliance with the deadlines for settlement announced in the account-opening agreement or fixed by the regulations or Articles of Association of the fund;
- 2 • The depository to receive the information necessary for its audit role.

Article 322-81

Where the custody account-keeper is caused to complete, in compliance with the regulations in force, a transfer of units or cash held by a bearer or by all the bearers to another custody account-keeper, it shall, as quickly as possible and no later than the time of the transfer to the new custody account-keeper, transfer all the information which is necessary to it, particularly that relating to the precise identification of the holders concerned and their units, as well as detailed information for the preparation of the tax returns.

Paragraph 4 - Operations for payment, redemption, modification of investment decision and of individual transfer of bearer

Sub-paragraph 1 - Payment operations

Article 322-82

The custody account-keeper shall provide the company with the statement of bank account identity for the bearer who is the holder of the "operations in progress" accounts mentioned in Article 322-77 and who receives the payments on this account(s).

2022-06-11

On receipt of the instructions for the appropriation of the sums, by bearer and by fund, and on the recording of the receipt of the corresponding sums on the "operations in progress" account concerned, it shall debit the said account in order to credit the accounts of the funds on the date of the next asset valuation. It shall inform the asset management company of this operation. Simultaneously, it shall calculate and record the number of individual units on the basis of the net asset value or values notified by the asset management company of the fund(s) concerned.

The custody account-keeper shall notify to the depository, to the asset management company and to the entity holding the unit issue account, the summary of the subscriptions, in amounts and in units, which concern them.

It shall send to the bearers and to the company or its delegated register-keeper the details of the operations completed.

[Article 322-83](#)

Where the custody account-keeper has not received instructions for the appropriation, by bearer and by fund, of the sums paid by the company, it shall pay the sum into the fund specified, where applicable, for this purpose by the savings plan or the profit-sharing agreement. The units thereby created ("units in the process of allocation") shall be retained by the custody account-keeper on behalf of the bearers in a separate account.

The individual distribution of the units or cash in favour of the bearers shall only be carried out when the company or its delegated register-keeper notifies the custody account-keeper of the information necessary for this purpose.

In the absence of a fund specified for this purpose, the custody account-keeper shall retain the sums received until receipt of the instructions for allocation.

Sub-paragraph 2 - Redemption operations

[Article 322-84](#)

Where the bearers decide to proceed with redemptions, the custody account-keeper:

- 1 • Accepts the redemption instructions after verification of their validity by the company or its delegated registered keeper;
- 2 • Determines, on the basis of the net asset value notified by the asset management company for each fund, the amount to be paid to the bearers or to any substituted beneficiary and debits the account of the bearers with the corresponding number of units;
- 3 • Notifies the depository, the asset management company and the entity holding the unit issue account of the summary of redemptions, in amounts and in units;
- 4 • Sends to the bearers and to the company or to its delegated registered keeper the details of the operations carried out;
- 5 • Issues or gives instructions to issue the means of payment corresponding to the payment for the redemptions by the bearers.

Sub-paragraph 3 - Operations for modification of the bearers' investment decisions

[Article 322-85](#)

Where the bearers modify their choice of investment, the custody account-keeper:

- 1 • Accepts the instructions for modification of the choice of investment after verification of their validity by the company or its delegated registered keeper;
- 2 • Executes these instructions like the succession of redemption instructions and subscription instructions, in accordance with the terms set out in the three previous articles and taking account of the specificities of the regulations concerning modifications by bearers of the choice of investments, made within the framework of an employee savings scheme;

- 3 • Sends to the bearers and to the company or to its delegated registered keeper the details of the operations carried out.

Sub-paragraph 4 - Transfer operations

[Article 322-86](#)

In the event of individual transfers by bearers, the custody account-keeper:

- 1 • Accepts the individual transfer instructions from the bearers, after verification of their validity by the company or its delegated registered keeper;
- 2 • To the extent required, determines, on the basis of the net asset value notified by the asset management company, the amount of the sums to be transferred;
- 3 • Notifies the depository, the asset management company and the entity holding the unit issue account of the summary of transfers, in amounts and in units, and the total balance of units for each fund held by the bearers;
- 4 • Forwards to the new custody account-keeper all the information which is necessary to it and, at the same time, transfers the assets concerned to this new custody account-keeper;
- 5 • Sends to the bearers and to the company or to its delegated registered keeper the details of the operations carried out.

Paragraph 5 - The accounting procedures

[Article 322-87](#)

By derogation from the stipulations of Article 322-19, the custody account-keeper for financial securities acquired within the framework of an employee saving scheme may decide not to keep the accounts of the beneficiaries in accordance with the principle of double entry bookkeeping, on condition that it has a specific audit procedure which offers equivalent security.

[Article 322-88](#)

The reconciliations mentioned in the first paragraph of Article 322-29 must be able to be carried out at the time of each valuation of a fund.

The custody account-keeper shall participate, on request by the entity holding the unit issue account, in the process of reconciliation between the number of units which it holds and the number which is recorded by the entity holding the unit issue account.

[Article 322-89](#)

Within the framework of the audit procedures provided for by Article 322-30, the custody account-keeper shall verify, for each fund and at the time of each valuation:

- 1 • The data relating to the number of units: the equilibrium between the balance of the operations entered to the credit and to the debit of the bearers' accounts and the corresponding total number of units recorded by it for the fund;
- 2 • The data relating to the amounts debited or credited: the equality between the balance of the amounts received from the bearers and paid to the bearers on the "operations in progress" accounts, on the one hand and, on the other hand, the total of the corresponding payments or withdrawals, made on the account of each fund;
- 3 • The matching between the amounts to be credited or to be debited on the account of a fund and the number of units created or cancelled.

[Article 322-90](#)

The suspense items, mentioned in Article 322-32, include in particular the following operations, where they are not completed

2022-06-11

within the normal deadlines:

- 1 • Payments received, to be allocated to a fund;
- 2 • Payments to the bearers;
- 3 • Sundry operations on a fund (merger, etc.);
- 4 • Account transfers;
- 5 • The handling of the difference between the number of units transmitted by the custody account-keeper to the entity holding the unit issue account and the number of units recorded by this latter.

To the extent required, with a view to the resolution of the suspense items, a procedure of reconciliation with the various entities concerned (company, asset management company, entity holding the unit issue account, register-keeper, etc.) shall be implemented by the custody account-keeper.

Chapter II - Depositaries of UCITS (Articles 323-1-A à 323-22)

Commission Delegated Regulation (EU) [2016/438](#) of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries

[Article 323-1-A](#)

Prior to issuance of a UCITS depositary authorisation by the Prudential Supervision and Resolution Authority, the investment firm mentioned in Article L. 214-10-1, I, 5 of the Monetary and Financial Code must obtain approval from the AMF for the programme of operations referred to in III of the same article in accordance with Articles L. 532-1 to L. 532-5 of the same code.

Section 1 - Duties of the UCITS depositary (Articles 323-1 à 323-5)

[Article 323-1](#)

Pursuant to Article L. 214-10-5, I of the Monetary and Financial Code, the depositary shall ensure that the cash flows of the UCITS are properly monitored, and, in particular, that all payments made by, or in the name of, investors upon the subscription of units or shares of the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts that are:

- 1 • Opened in the name of the UCITS, of the asset management company acting on behalf of the UCITS, or of the depositary acting on behalf of the UCITS;
- 2 • Opened at one or more of the following entities:
 - a • A central bank;
 - b • A credit institution authorised in a Member State of the European Union or a State party to the EEA agreement;
 - c • A bank authorised in a third country;
 - d • Caisse des dépôts et consignations, when it is the UCITS depositary;

Where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, no cash of one of the entities referred to in point 2 and none of the own cash of the depositary shall be booked on such accounts.

Article 323-2

As regards the custody of financial instruments and pursuant to Article L. 214-10-5, II, 1 of the Monetary and Financial Code, the depositary shall ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 312-6, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS at all times.

For the purposes of record keeping of other assets by the depositary, and pursuant to Article L. 214-10-5, II, 2 of the Monetary and Financial Code, the depositary shall verify the ownership by the UCITS or by the asset management company of such assets based on information or documents provided by the UCITS or by the asset management company and, where available, on external evidence.

Article 323-3

The custody of the financial instruments included in the assets of the UCITS shall be governed by the provisions of Chapter I of this Title, with the exception of Article 322-7, 4.

To carry on the business of depositary under the same conditions as the credit institutions referred to in Article L. 214-10-1, I, 3 of the Monetary and Financial Code, the depositary mentioned in I, 4 of the same article shall have, within French territory, the necessary resources and organisation and shall meet the obligations referred to in the previous sub-paragraph.

Article 323-4

[Empty]

Article 323-5

[Empty]

Section 2 - Organisational structures and resources of the depositary (Articles 323-6 à 323-15)

Sub-section 1 - Performance specifications for depositaries

Article 323-6

The depositary shall draft a set of performance specifications that describes the conditions under which it carries on its business and that is approved by the AMF pursuant to Article L. 214-10-1, II of the Monetary and Financial Code.

Article 323-7

The depositary shall all times have at adequate human and material resources, compliance and internal control systems, and organisational structures and procedures to conduct its business.

Article 323-8

The depositary shall designate a person to take charge of the depositary function. It shall notify the AMF of the identity of this person.

Article 323-9

[Empty]

Article 323-10

The depositary's statutory auditor shall conduct a special annual audit of the accounts opened by the depositary for the UCITS.

2022-06-11

Within seven weeks of the end of UCITS's financial year, the depositary shall certify:

- 1 • The assets for which it keeps a custody account;
- 2 • The keeping of positions of other assets listed in the inventory, which it shall produce and carry out in accordance with the provisions of Article 323-2.

The depositary shall send this certification to the management company in lieu of a periodic account.

Sub-section 2 - Relations between the depositary and the UCITS

Article 323-11

In accordance with Article L. 214-10 of the Monetary and Financial Code, the depositary shall enter into a written agreement with the SICAV or the UCITS management company.

Where this agreement concerns a French UCITS managed by a management company established in another European Union member state or in another State that is a party to the European Economic Area, the agreement shall be governed by French law.

Article 323-12

[Empty]

Sub-section 3 - Relations between the depositary and other service providers

Article 323-13

If the depositary does not effect the clearing of financial contracts, it shall sign a written agreement with the institution that provides this service.

This agreement shall specify the obligations of the depositary and the clearing institution, as well as the procedures for transmitting information so as to enable the depositary to register the positions in the financial instruments and the cash positions concerned in a position-keeping book.

This agreement shall stipulate:

- 1 • The list of financial instruments and markets, including, where appropriate, over-the-counter transactions, in which the clearing institution operates;
- 2 • The list of data about the positions recorded on the accounts that the UCITS holds with the clearing institution. The latter institution shall send the list to the depositary;
- 3 • Where appropriate, the transfer of full ownership of the cash and financial instruments to the keeper of the clearing account.

Article 323-14

I.-Pursuant to the second sub-paragraph of Article L. 214-10-6 of the Monetary and Financial Code, the depositary may delegate some of the duties related to its custody of the assets of the UCITS, provided that the following conditions are satisfied:

- 1 • The tasks are not delegated with the intention of avoiding the requirements laid down under the depositary's professional obligations;
- 2 • The depositary can demonstrate that there is an objective reason for the delegation;
- 3 • The depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it

intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;

- 4 • The depositary shall ensure that the third party satisfies the following conditions at all times during the performance of the tasks delegated to it:
- a • The third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the SICAV or the management company acting on behalf of the UCITS which have been entrusted to it;
 - b • For custody tasks referred to in Article L. 214-10-5, II, 1 of the Monetary and Financial Code, the third party is subject to:
 - i) effective prudential regulation, including minimum capital requirements, and supervision;
 - ii) an external periodic audit to ensure that the financial instruments are in its possession;
 - c • The third party segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;
 - d • The third party takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
 - e • The third party complies with the general obligations and prohibitions laid down in Articles L. 214-9, L. 214-10-2 and L. 214-10-5, II of the Monetary and Financial Code.

II. – Notwithstanding point I 4° b) i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point i), the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

- a) The investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
- b) The SICAV or the asset management company of the UCITS has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

III. - The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article L. 214-11-1 of the Monetary and Financial Code shall apply mutatis mutandis to the relevant parties.

For the purposes of this article, the provision of services as specified by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 by securities settlement systems as designated for the purposes of that directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

When a central securities depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No. 909/2014 of the European Parliament and of the Council, or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities accounts at the top tier level, as specified in section A of the annex to that regulation, the provision of those services by that CSD with respect to the securities of the UCITS that are initially recorded in a book-entry system through initial crediting by that CSD should not be considered to be a delegation of custody functions. However, entrusting the custody of securities of the UCITS to any CSD, or to any third-country CSD should be considered to be a delegation of custody functions.

Section 3 - Procedures for safekeeping of certain assets by the UCITS depositary (Articles 323-16 à 323-17)

Sub-section 1 - Procedures for keeping register in financial contracts

[Article 323-16](#)

Pursuant to Article L. 214-10-5, III, 3 of the Monetary and Financial Code, acting on instructions from the SICAV or the asset management company of the UCITS, the depositary shall execute transfers of the cash and the financial instruments needed to constitute initial margin and respond to margin calls. It shall notify the SICAV or the asset management company of the UCITS of any problems encountered at this time.

These instructions shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-11.

As soon as it becomes aware of them, the asset management company shall send the following to the depositary:

- 1 • Information about the characteristics of a new framework agreement signed on financial contracts or amendments to an existing framework agreement;
- 2 • Copies of the signed trade confirmation slips or trade confirmations with regard to financial contracts, which identify the transactions and their specific characteristics;
- 3 • The list of framework agreements with regard to financial contracts at intervals to be defined in the agreement referred to in Article 323-11. Where applicable, the list shall indicate amendments made to the characteristics of the framework agreements. The depositary may ask for copies of the framework agreements and any further information required for the performance of its tasks.

At intervals to be defined in the agreement referred to in Article 323-11, the depositary shall send the asset management company a statement with the list of financial contracts held by the UCITS, along with the list of security provided, indicating security involving transfers of full ownership.

Sub-section 2 - Record-keeping procedures for pure registered financial instruments, deposits and cash accounts

[Article 323-17](#)

Acting on the instructions of the SICAV or the asset management company of the UCITS, the depositary shall make the cash payments related to transactions in pure registered financial instruments, deposits and between cash accounts opened in the name of the UCITS. It shall notify the SICAV or the asset management company of any problems encountered at this time.

The instructions of the SICAV or of the asset management company of the UCITS shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-11.

As soon as it has knowledge of them, the SICAV or the asset management company of the UCITS shall send the following to the depositary

- 1 • Documents evidencing the purchase and sale of registered financial instruments;
- 2 • Documents related to any deposits made and cash accounts open at another institution;
- 3 • Documents that provide the depositary with information about the characteristics and events affecting pure registered financial instruments and deposits and cash accounts, such as certifications by the issuer, which shall be transmitted to the

2022-06-11

depository in accordance with the procedures stipulated in the agreement referred to in Article 323-11.

Section 4 - Procedures for supervising legal and regulatory compliance of decisions made by the UCITS or its management company (Articles 323-18 à 323-22)

Article 323-18

[Empty]

Article 323-19

The depository shall establish and implement a control plan. This plan shall define the purpose, nature and regularity of the controls concerned.

Controls shall be carried out ex post and exclude any discretionary review. They shall include verifications of the following:

- 1 • Compliance with the investment and asset composition rules;
- 2 • Minimum asset size;
- 3 • The regularity of UCITS valuations;
- 4 • The rules and procedures for establishing the net asset value;
- 5 • Justification of the content of UCITS suspense accounts;
- 6 • Elements specific to certain types of UCITS;
- 7 • The inventory reconciliation report communicated by the asset management company.

The control plan, reports of controls carried out and notes on any anomalies shall be retained for five years.

Article 323-19-1

Pursuant to Article L. 621-8-4 of the Monetary and Financial Code, and without prejudice to the disclosure requirements applicable to management companies, UCITS and depositaries under the same article, the depository shall provide the AMF on a daily basis, at the latter's request, with information relating to the non-compliance by the asset management company with investment and asset structure rules laid down by legal and regulatory provisions and the investor disclosure documents for the UCITS for which it is the depository, no more than two days after the date on which such non-compliance is noted.

Article 323-20

[Empty]

Article 323-21

[Empty]

Article 323-22

The depository shall ensure that the terms of the winding up of the UCITS comply with the provisions of the UCITS' rules or articles of association.

Chapter III - AIF depositaries (Articles 323-23-A à 323-41)

Article 323-23-A

This chapter applies to AIFs and to "Other collective investments" referred to in Article L. 214-191 of the Monetary and Financial

Section 1 - Duties of the depositary of AIF (Articles 323-23 à 323-25)

[Article 323-23](#)

Pursuant to Article L. 214-24-8, I of the Monetary and Financial Code, the depositary shall in general ensure that the AIF's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of units or shares of an AIF have been received and that all cash of the AIF has been booked in cash accounts opened in the name of the AIF or in the name of the portfolio management company acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF with one or more of the following entities:

- 1 • A central bank;
- 2 • A credit institution authorised in a Member State of the European Union or a State party to the EEA agreement;
- 3 • A bank authorised in a third country;
- 4 • Caisse des dépôts et consignations or another entity of the same nature as those referred to in points 1, 2 and 3 in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as Union law and are effectively enforced and in accordance with the principles set out in Article 312-6.

Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, no cash of the entity referred to in the first paragraph and none of the depositary's own cash shall be booked on such accounts.

The terms of application of this Article are specified in Articles 85 to 87 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012.

[Article 323-24](#)

Custody of the financial instruments in the assets of the AIF is subject to Chapter I of the present Title, without prejudice to the application of the particular provisions of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012 and Articles 323-32 to 323-35 of the present Regulation.

[Article 323-25](#)

As regards the custody of the financial instruments and pursuant to Article L. 214-24-8, II of the Monetary and Financial Code, the depositary shall ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 312-6, opened in the name of the AIF or in the name of the asset management company acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF.

For the purposes of record keeping of the other assets by the depositary, and pursuant to Article L. 214-24-8, II, 2 of the Monetary and Financial Code, the depositary checks their ownership by the AIF or its asset management company on the basis of information or documents provided by the AIF or its asset management company and, where available, on external evidence.

The terms of application of the two foregoing paragraphs are specified in Articles 88 to 91 of Delegated Regulation (EU) 231/2013 of the Commission of 19 December 2012.

When a specialised financial vehicle acquires receivables by means of the transfer deeds referred to in 2° of V of Article L. 214-169 or in Article L. 313-23 of the Monetary and Financial Code, the custodian shall verify the existence of these receivables on the basis of samples under the conditions defined in Article 323-59-1.

Section 2 - Organisational structures and resources of the AIF depositary (Articles 323-26 à 323-35)

[Article 323-26](#)

The depositary shall draft a set of performance specifications that describes the conditions under which it carries on its business.

[Article 323-27](#)

The depositary shall all times have adequate human and material resources, compliance and internal control systems, and organisational structures and procedures to conduct its business.

[Article 323-28](#)

The depositary shall designate a person to take charge of the depositary function. It shall notify the AMF of the identity of this person.

[Article 323-29](#)

The depositary's statutory auditor shall conduct a special annual audit of the accounts opened by the depositary for the AIFs. Within seven weeks of the end of the AIF's financial year, the depositary shall certify:

- 1 • The existence of the assets for which it keeps a custody account.
- 2 • Keeping positions in other assets listed in the inventory, which it shall produce and carry out in accordance with the terms set out in Article L. 214-24-8, II of the Monetary and Financial Code Article.

The depositary shall send this certification to the asset management company. This annual certification shall serve as the periodic statement of account.

Sub-section 2 - Relations between the depositary and the AIF

[Article 323-30](#)

Pursuant to Article L. 214-24-4 of the Monetary and Financial Code, the AIF or its asset management company shall draw up a written contract with the depositary, containing at least the clauses set out in Article 83 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012.

Sub-section 3 - Relations between the depositary and other service providers

[Article 323-31](#)

For the purposes of keeping positions of financial contracts, the depositary shall sign a written agreement with the institution responsible for clearing financial contracts when it does not execute this service itself.

This agreement shall specify the obligations of the depositary and the clearing institution, as well as the procedures for transmitting information so as to enable the depositary to act as record-keeper for the financial instruments and cash positions concerned.

This agreement shall stipulate:

- 1 • This list of financial instruments and markets in which the clearing institution operates;
- 2 • The list of data about the positions recorded on the accounts that the AIF holds with the clearing institution. The latter institution shall send the list to the depositary;
- 3 • Where applicable, the transfer of full ownership of the cash and financial instruments to the keeper of the clearing account.

[Article 323-32](#)

I. - Pursuant to Article L. 214-24-9 of the Monetary and Financial Code, the depositary may delegate its safekeeping functions for

the assets of the AIF, subject to the following conditions:

- 1 • The tasks are not delegated with the intention of avoiding their professional obligations;
- 2 • The depositary can demonstrate that there is an objective reason for the delegation;
- 3 • The depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;
- 4 • The depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:
 - a) The third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or its asset management company, which have been entrusted to it;
 - b) For financial instrument custody tasks referred to in Article L. 214-24-8, II, 1 of the Monetary and Financial Code, the third party is subject to effective prudential regulation, including minimum own funds requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;
 - c) The third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;
 - d) The third party does not make use of the assets without the prior consent of the AIF or its asset management company and without prior notification to the depositary;
 - e) The third party complies with the general obligations and prohibitions referred to in Articles L. 214-24-3, L. 214-24-6 and L. 214-24-8, II of the Monetary and Financial Code.

II. - Where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in Paragraph I, Point 4, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:

- 1 • The investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment;
- 2 • The AIF or its asset management company must instruct the depositary to delegate the custody of such financial instruments to such local entity.

III. - The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article L. 214-24-10, II and III of the Monetary and Financial Code shall apply mutatis mutandis to the relevant parties.

For the purposes of this paragraph, the provision of services as specified by Directive 98/26/EC of the European Parliament and Council of 19 May 1998, by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions.

The terms of application of this Article are specified in Articles 98 to 99 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012.

[Article 323-33](#)

The terms on which the loss of financial instruments, as referred to in Article L. 214-24-10, I of the Monetary and Financial Code, may incur the liability of the depositary to the AIF or the unit or shareholders, are specified in Articles 100 and 101 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012.

[Article 323-34](#)

The terms of application of Article L. 214-24-10, III of the Monetary and Financial Code are specified in Article 102 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012.

[Article 323-35](#)

Pursuant to Article L. 214-24-10, IV of the Monetary and Financial Code, where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the requirements of being subject to effective regulation and prudential supervision and to external periodic audit, as laid down in Article 323-32, I, 4, b, the depositary can discharge itself of liability provided that the following conditions are met:

- 1 • The rules or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions set out in this sub-section;
- 2 • The unit or shareholders of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- 3 • The AIF or its asset management company has instructed the depositary to delegate the custody of such financial instruments to a local entity;
- 4 • There is a written contract between the depositary and the AIF or its asset management company, which expressly allows such a discharge;
- 5 • There is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or its asset management company to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

Section 3 - Procedures for custody of certain assets by the AIF depositary (Articles 323-36 à 323-37)

Sub-section 1 - Procedures for keeping positions in financial contracts

[Article 323-36](#)

In accordance with Article L. 214-24-8, III, 3 of the Monetary and Financial Code, the depositary, acting on instructions from the asset management company, shall execute transfers of the cash and the financial instruments needed to constitute initial margin and respond to margin calls. It shall notify the asset management company of any problems encountered at this time.

These instructions shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-30.

As soon as it has knowledge of them, the asset management company shall send the following to the depositary:

- 1 • Information about the characteristics of a new framework agreement signed on financial contracts or amendments to an existing framework agreement;
- 2 • Copies of the signed trade confirmation slips or trade confirmations with regard to financial contracts, which identify the transactions and their specific characteristics;
- 3 • The list of framework agreements with regard to financial contracts at intervals to be defined in the agreement referred to in

2022-06-11

Article 323-30. Where applicable, the list shall indicate amendments made to the characteristics of the framework agreements. The depositary may ask for copies of the framework agreements and any further information required for the performance of its tasks.

At intervals to be defined in the agreement referred to in Article 323-30, the depositary shall send the asset management company a statement with the list of financial contracts held by the AIF, along with the list of security provided, indicating security involving transfers of full ownership.

Sub-section 2 - Procedures for keeping positions in pure registered financial instruments, deposits and cash accounts

Article 323-37

Acting on the instructions of the portfolio management company, the depositary shall make the cash payments related to transactions in pure registered financial instruments, deposits and between cash accounts opened in the name of the AIF. It shall notify the portfolio management company of any problems encountered at this time.

The asset management company's instructions shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-30.

As soon as it has knowledge of them, the asset management company shall send the following to the depositary:

- 1 • Documents evidencing the purchase and sale of registered financial instruments;
- 2 • Documents related to any deposits made and cash accounts open at another institution;
- 3 • Documents that provide the depositary with information about the characteristics and events affecting pure registered financial instruments and deposits, such as certifications by the issuer, which shall be transmitted to the depositary in accordance with the procedures stipulated in the agreement referred to in Article 323-30.

Section 4 - Procedures for supervising compliance of the decisions made by the AIF or its asset management company (Articles 323-38 à 323-41)

Article 323-38

The terms of application of Article L. 214-24-8, III of the Monetary and Financial Code are specified in Articles 92 to 97 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012.

Article 323-39

The depositary checks notably the existence and application, within the asset management company, of appropriate and consistent procedures to verify:

- 1 • The maximum number of unit or shareholders for AIFs limited to twenty holders at most;
- 2 • Dissemination by the asset management company of regulatory disclosures to the unit or shareholders of the AIF;
- 3 • The criteria relating to the eligibility of the subscribers and purchasers, if the depositary does not verify their eligibility.

The depositary also ensures compliance with the procedures for sharing information with the asset management company stipulated in the agreement referred to in Article 323-30.

Article 323-40

The depositary establishes and implements a supervision plan. The plan shall define the object, nature and frequency of supervision for this purpose.

2022-06-11

Supervision shall be carried out ex post and shall exclude any discretionary review (*contrôle d'opportunité*). Supervision shall focus on the following:

- 1 • Compliance with investment and asset structure rules;
- 2 • The minimum asset amount;
- 3 • The frequency of valuation of the AIF;
- 4 • The rules and procedures for determining the net asset value;
- 5 • Substantiation of the contents of the AIF's suspense accounts;
- 6 • Information that is specific to certain types of AIF, such as the tracking error of index AIFs;
- 7 • The statement of reconciliation with the inventory transmitted by the asset management company. The asset management company shall take an inventory of the AIF's assets, as specified in Articles L. 214-24-49, L. 214-50, L. 214-135 and L. 214-175 of the Monetary and Financial Code, at least once every six months under the supervision of the depositary.

The characteristics of the supervision plan shall take account of the information gathered during the initial contact with the AIF or the asset management company. The plan shall be updated at intervals suited to the characteristics of the activity engaged in and be made available to the AMF.

The supervision plan, audit reports and reports on problems revealed shall be kept for five years.

The depositary shall have access to all of the AIF's accounting information at all times. It shall also have access at all times to all the detailed accounting and non-accounting information pertaining to the assets referred to in Article L. 214-36, I, 1 of the Monetary and Financial Code. The manner and means of transmitting this information shall be provided for in the contract referred to in Article 323-30.

[Article 323-40-1](#)

Pursuant to Article L. 621-8-4 of the Monetary and Financial Code, and without prejudice to the disclosure requirements applicable to management companies, investment management companies, AIFs and depositaries under the same article, the depositary shall provide the AMF on a daily basis, at the latter's request, with information relating to the non-compliance by the asset management company with investment and asset structure rules laid down by legal and regulatory provisions and the investor disclosure documents for the AIFs for which it is the depositary, latest two days after the date on which such non-compliance is noted.

[Article 323-41](#)

The depositary shall ensure that the terms of the winding up of the AIF comply with the provisions of the AIF's rules or articles of association.

Chapter III bis - Depositaries of securitisation vehicles (Articles 323-42 à 323-64)

[Article 323-42](#)

This chapter applies to securitisation vehicles governed by Article L. 214-167, I of the Monetary and Financial Code.

Notwithstanding the first paragraph, and under the conditions set out in Article 5, III of Order No. 2017-1432 of 4 October 2017, any securitisation vehicle formed before 1 January 2020 shall remain subject to the provisions of this section in their wording applicable before the date of publication of the order of 29 March 2021.

2022-06-11

For the purposes of this chapter, references to units or shares in aux parts Delegated Regulation (EU) 231/2013 of the Commission of 19 December 2012 shall be replaced by a reference to "units, shares or debt securities".

Section 1 - Duties of the depositary of securitisation vehicles (Articles 323-43 à 323-47)

Article 323-43

Pursuant to Article L. 214-175-4, I of the Monetary and Financial Code, the depositary shall generally ensure that the securitisation vehicle's cash flows are properly monitored and, more specifically, that all payments made by holders of units, shares or debt securities issued by the securitisation vehicle, or on behalf of holders of units, shares or debt securities when subscribing for such units, shares or debt securities have been received and that all cash has been accounted for in cash accounts opened in the name of the securitisation vehicle with one or more of the following entities:

- 1 • A central bank;
- 2 • A credit institution authorised in a Member State of the European Union or a State party to the EEA agreement;
- 3 • A bank authorised in a third country;
- 4 • Caisse des Dépôts et Consignations or another entity of the same nature as those referred to in points 1°, 2° and 3° in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as Union law and are effectively enforced and in accordance with the principles set out in Article 312-6.

For the purposes of this article, the depositary shall apply Articles 85 to 87 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012.

Article 323-44

As regards the custody of the assets of the securitisation vehicle mentioned in Article L. 214-175-4 of the Monetary and Financial Code, the depositary:

- 1 • Shall ensure the custody of all the financial instruments included in the assets of the securitisation vehicle and ensures that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 312-6, opened in the name of the securitisation vehicle or the asset management company acting on behalf of the securitisation vehicle, so that they can be clearly identified as belonging to the securitisation vehicle at all times.
- 2 • Holds the transfer deeds mentioned in Article L. 214-169, 2, V or Article L. 313-23 of the Monetary and Financial Code, maintains a record of claims and verifies their existence and, subject to the provisions of Article L. 214-175-5 of said code, holds the deeds arising from these claims;
- 3 • Maintains a record, pursuant to Article L. 214-175-4, II, 3 of the Monetary and Financial Code, of the other assets of the securitisation vehicle and verifies the ownership by the securitisation vehicle based on information or documents provided by the securitisation vehicle or its asset management company and, where available on external evidence.

For the application of paragraphs 1° and 3° of this article, the depositary shall apply the provisions of Articles 88 to 90 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012.

The conditions under which the loss of financial instruments held in custody in accordance with Article L. 214-175-4, II of the Monetary and Financial Code by the depositary or by a third party to whom it has delegated custody and the conditions under which the depositary is not liable to the securitisation vehicle or holders of units, shares or debt securities are set out in Articles 100 and 101 of Commission delegated regulation (EU) No. 231/2013 of 19 December 2012.

[Article 323-45](#)

The custody account for the financial instruments included in the assets of the securitisation vehicle shall be governed by the provisions of Chapter I of this Title.

[Article 323-46](#)

Position keeping consists in establishing a register of the assets referred to in 3° of Article 323-44. This register shall identify the characteristics of the assets and record their movements to ensure traceability.

[Article 323-47](#)

Pursuant to Article L. 214-175-2 of the Monetary and Financial Code, the depositary shall ensure the legal and regulatory compliance of decisions made by the asset management company applying to the securitisation vehicle under the terms referred to in Articles 323-60 to 323-64.

Supervision shall be carried out ex post and shall exclude any discretionary review.

Section 2 - Organisational structures and resources of the depositary of securitisation vehicles (Articles 323-48 à 323-57)

Sub-section 1 - Performance specifications for depositaries

[Article 323-48](#)

The depositary shall draft a set of performance specifications that describes the conditions under which it carries on its business. These specifications shall be made available to the AMF.

[Article 323-49](#)

The depositary shall at all times have adequate human and material resources, compliance and internal control systems, and organisational structures and procedures to conduct its business.

For the purposes of this article, the depositary shall apply the provisions of Articles 92 and 95 to 97 of Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012. The depositary shall also apply the provisions of Article 93 of the same regulation, relating to the subscription, issue and sale of units or shares.

[Article 323-50](#)

The depositary shall designate a person to take charge of the depositary function. It shall notify the AMF of the identity of this person.

[Article 323-51](#)

[Empty]

[Article 323-52](#)

The depositary's statutory auditor shall conduct a special annual audit of the accounts opened by the depositary for the securitisation vehicle.

Within seven weeks of the end of each financial year of the securitisation vehicle or two weeks of the receipt of the inventory produced by the asset management company, whichever is later, the depositary shall certify:

- 1 • The existence of the assets for which it keeps a custody account;
- 2 • The keeping of positions in other assets mentioned in Article 323-44, 2° and 3° listed in the inventory, which it shall produce and carry out in accordance with Article 323-44.

The depositary shall send this certification to the management company in accordance with the procedures referred to in Article 323-53, 3. This annual certification shall be in lieu of the periodic statement of account mentioned in Article 322-12.

Article 323-53

A written agreement whereby the depositary is appointed pursuant to Article L. 214-175-2, I of the Monetary and Financial Code, is established between the depositary on one hand and the securitisation vehicle on the other hand or, where applicable, the asset management company acting on behalf of the securitisation vehicle. This agreement shall contain at least the following clauses:

- 1 • A description of the procedures, including those related to custody, to be adopted for each type of asset of the securitisation vehicle entrusted to the depositary;
- 2 • A description of the procedures to be followed where the securitisation vehicle envisages a modification of its rules or articles of association or prospectus, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;
- 3 • A description of the means and procedures by which the depositary will transmit to the securitisation vehicle all relevant information that the securitisation vehicle needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the securitisation vehicle to have timely and accurate access to information relating to its accounts;
- 4 • A description of the means and procedures by which the depositary will have access to all relevant information it needs to perform its duties;
- 5 • A description of the procedures by which the depositary has the ability to enquire into the conduct of the securitisation vehicle and to assess the quality of information transmitted, including by way of on-site visits;
- 6 • A description of the procedures by which the securitisation vehicle can review the performance of the depositary in respect of the depositary's contractual obligations;
- 7 • The following elements related to the exchange of information and to obligations on confidentiality and money laundering:
 - a • A list of all the information that needs to be exchanged between the securitisation vehicle and the depositary related to the subscription, redemption, issue and cancellation of its units, shares and debt securities;
 - b • The confidentiality obligations applicable to the parties to the agreement pursuant to prevailing laws and regulations on professional secrecy;
 - c • Information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable;
- 8 • Where the parties envisage appointing third parties to carry out their respective duties, they shall include at least the following particulars in that agreement:
 - a • An undertaking by each party to the agreement to provide details, on a regular basis, of any third parties appointed to carry out their respective duties;
 - b • An undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;
 - c • A statement that a depositary's liability shall not be affected by the fact that the depositary has entrusted to a third party all or some of the assets in its safekeeping, unless it has itself been discharged from its liability in accordance with the provisions of Article L. 214-175-6, III of the Monetary and Financial Code;

9 • The following elements related to potential amendments and the termination of the agreement:

- a • The period of validity of the agreement;
 - b • The conditions under which the agreement may be amended or terminated;
 - c • The conditions which are necessary to facilitate transition to another depositary and, in case of such transition, the procedure by which the depositary shall send all relevant information to the other depositary;
- 0 • Where the parties to the agreement agreed to the use of electronic transmission for part or all of information flows between them, the agreement shall contain provisions ensuring that a record is kept of such information;
- 1 • The parties may provide that the agreement shall cover more than one securitisation vehicle managed by the management company. In this case, a list of the securitisation vehicles concerned shall be included in the agreement;
- 2 • The agreement also includes the clauses in points b, h, n, o and p of paragraph 1 and the clause in paragraph 6 of Article 83 of Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012.

The parties may provide that the agreement covers several securitisation vehicles managed by the investment management company and may include all or part of the information on the above-mentioned means and procedures in a separate written agreement.

The parties may include details of the means and procedures referred to in points 3 and 4 in a separate written agreement.

[Article 323-54](#)

On the day that the termination or the novation leading to the replacement of the securitisation vehicle's depositary takes effect or when the agreement mentioned in Article 323-53 expires, as applicable, the former depositary shall immediately transfer all information relating to the custody of the assets of the securitisation vehicle to the new depositary.

The former depositary shall provide the asset management company and the new depositary with the inventory mentioned in Article 323-52.

Sub-section 3 - Relations between the depositary and other service providers

[Article 323-55](#)

If the depositary does not effect the clearing of financial contracts, it shall sign a written agreement with the institution that provides this service.

This agreement shall specify the obligations of the depositary and the clearing institution, as well as the procedures for transmitting information so as to enable the depositary to register the position of the financial contracts and the cash positions concerned.

This agreement shall stipulate:

- 1 • The list of financial contracts and markets in which the clearing institution operates, including, where appropriate, over-the-counter transactions;
- 2 • The list of data about the positions recorded on the accounts that the securitisation vehicle holds with the clearing institution. The latter institution shall send the list to the depositary;
- 3 • Where appropriate, the transfer of full ownership of the cash and financial instruments to the keeper of the clearing account.

[Article 323-56](#)

The depositary may delegate to one or more third parties all or part of the tasks related to the custody of the assets of the securitisation vehicle referred to in Article 323-44 (1° and 3°), under the conditions defined by Article 323-32. Where the delegation to a third-party concerns tasks related to the custody of the assets of the securitisation vehicle referred to in Article 322-44, 1°, this third party is a person authorised for the administration or custody of financial instruments pursuant to Article L. 542-1 of the Monetary and Financial Code.

If the depositary delegates these tasks, it shall draw up an agreement that specifies the scope of the delegated tasks, along with the procedures and resources established to ensure supervision of the transactions carried out by the delegatee.

Each delegatee shall provide the depositary with an annual certification from its statutory auditor regarding the audit of the accounts held in its books for the securitisation vehicle.

The depositary's liability shall not be affected by the fact that has delegated to a third party all or part of the tasks related to the custody of the assets of the securitisation vehicle referred to in Article 323-44 1° and 3°.

Notwithstanding the preceding paragraph, the depositary may be exempted from its liability under the conditions set out in Article L. 214-175-6 III of the Monetary and Financial Code and Article 102 of Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012.

[Article 323-57](#)

The depositary may not delegate the task of supervising the compliance of decisions taken by the securitisation vehicle nor the tasks performed in accordance with I, 2° of II and III of Article L. 214-175-4 of the Monetary and Financial Code.

Section 3 - Procedures for custody of certain assets by the depositary (Articles 323-58 à 323-59-2)

Sub-section 1 - Procedures for keeping positions in financial contracts

[Article 323-58](#)

Acting on instructions from the asset management company, the depositary shall execute transfers of the cash and the financial instruments needed to constitute initial margin and respond to margin calls. It shall notify the asset management company of any problems encountered at this time.

These instructions shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-53.

As soon as it becomes aware of them, the asset management company shall send the following to the depositary:

- 1 • Information about the characteristics of a new framework agreement signed on financial contracts or amendments to an existing framework agreement;
- 2 • Copies of the signed trade confirmation slips or trade confirmations with regard to financial contracts, which identify the transactions and their specific characteristics;
- 3 • The list of framework agreements with regard to financial contracts, at intervals to be defined in the agreement referred to in Article 323-53. Where applicable, the list shall indicate amendments made to the characteristics of the framework agreements. The depositary may ask for copies of the framework agreements and any further information required for the performance of its tasks.

At intervals to be defined in the agreement referred to in Article 323-53, the depositary shall send the asset management company a statement with the list of financial contracts held by the securitisation vehicle, along with the list of security provided, indicating security involving transfers of full ownership.

Article 323-59

Acting on the instructions of the asset management company, the depositary shall make the cash payments related to transactions in pure registered financial instruments and deposits. It shall notify the asset management company of any problems encountered at this time.

The asset management company's instructions shall be transmitted to the depositary in accordance with the procedures and intervals defined in the agreement referred to in Article 323-53.

As soon as it has knowledge of them, the asset management company shall send the following to the depositary:

- 1 • Documents evidencing the purchase and sale of registered financial instruments;
- 2 • Documents related to any deposits made at another institution;
- 3 • Documents that provide the depositary with information about the characteristics and events affecting pure registered financial instruments and deposits, such as certifications by the issuer, which shall be transmitted to the depositary in accordance with the procedures stipulated in the agreement referred to in Article 323-53.

Sub-section 3 - Procedures for custody for claims

Article 323-59-1

With regard to its duties related to the custody of claims mentioned in Article 323-44, 2°, the depositary:

- 1 • Shall determine the frequency and extent of the checks relating to the existence of claims based on samples and shall provide for checks proportionate to the risk of non-existence of claims that take into account at least the following criteria:
 - a) The number of claims acquired by the vehicle;
 - b) The frequency of acquisition of claims by the vehicle;
 - c) The cumulative tasks performed by the transferor, such as those related to the recovery of debts;
 - d) The fact that the transferor is subject to effective prudential regulations and supervision;
 - e) The existence of the notification of transfers of claims to debtors or the acceptance of this claim by the debtor;
 - f) The existence of a special allocation account, within the meaning of Article L. 214-173 of the Monetary and Financial Code;
 - g) The retention of the deeds from which the claims arise by the transferor or the entity responsible for the recovery of the claims mentioned in Article L. 214-175-5 of the Monetary and Financial Code;
 - h) The concentration of claims acquired by the vehicle from the same transferor;
- 2 • Shall set up and implement effective arrangements, appropriate to the nature of the claims, in particular depending on whether or not the claims exist on the date of the check, in order to comply with the obligations referred to in paragraph 1. In particular, the depositary shall define in writing and implement a control policy to justify the frequency and extent of the checks conducted;
- 3 • Shall regularly check the effectiveness of its control arrangements and policy in order to identify and address any deficiencies;

2022-06-11

- 4 • Shall review its control policy annually. It shall also review this policy whenever a significant change occurs that has an impact on the risk of non-existence of the claims held by the securitisation vehicle.

Sub-section 4 - Procedures for the control of certain assets

Article 323-59-2

With regard to its duties related to the control of other assets mentioned in Article 323-44, 3°, the depositary shall apply the provisions of Article 323-59-1 to claims transferred or acquired other than by the transfer deeds mentioned in Article L. 214-169, V, 2° or Article L. 313-23 of the Monetary and Financial Code, as well as to the securities, guarantees and similar commitments attached thereto.

Section 4 - Procedures for supervising legal and regulatory compliance of decisions made by the management company of securitisation vehicle (Articles 323-60 à 323-64)

Article 323-60

The depositary of the securitisation vehicle shall put in place a monitoring and contact procedure that enables it to:

- 1 • Familiarise itself with and assess the organisational structure and internal procedures of the securitisation vehicle and its management company, having regard to its duties. This assessment shall also consider factors relating to the delegation of financial functions and the delegation of administrative and accounting functions. The management company shall make available to the depositary the information necessary for this periodic review on-site or off-site.

For this purpose, the depositary shall ensure that the management company has suitable and auditable procedures to verify the dissemination of regulatory disclosures to holders of shares or units by the management company.

- 2 • Familiarise itself with the accounting system of the securitisation vehicle;
- 3 • Ensure compliance with the procedures for sharing information with the management company stipulated in the agreement referred to in Article 323-53.

The information referred to in points 1, 2 and 3 shall be updated at the intervals stipulated in the supervision plan referred to in Article 323-61.

Article 323-61

For the purposes of Article 323-47, the depositary shall establish and implement a supervision plan. The plan shall define the object, nature and frequency of supervision for this purpose.

Supervision shall focus on the following:

- 1 • Compliance with investment and asset structure rules;
- 2 • The minimum asset amount;
- 3 • The frequency of valuation of the securitisation vehicle;
- 4 • Rules and procedures for calculating the value of the units, shares or debt securities of the securitisation vehicle;
- 5 • Substantiation of the contents of the suspense accounts of the securitisation vehicle;
- 6 • Information that is specific to certain types of securitisation vehicle;
- 7 • The statement of reconciliation with the inventory transmitted by the management company.

2022-06-11

The management company shall take an inventory of the securitisation vehicle's assets at least once every six months under the supervision of the depositary.

The characteristics of the supervision plan shall take account of the information gathered during the initial contact with the asset management company. The plan shall be updated at intervals suited to the characteristics of the activity engaged in and be made available to the AMF.

The supervision plan, audit reports and reports on problems revealed shall be kept for five years.

The depositary shall have access to all of the accounting information of the securitisation vehicle at all times. The manner and means of transmitting this information shall be provided for in the agreement referred to in Article 323-53.

[Article 323-62](#)

The asset management company shall notify the depositary of any changes regarding the securitisation vehicle in accordance with the procedures and time limits stipulated in the agreement referred to in Article 323-53.

The asset management company shall obtain the consent of the depositary before any significant changes to the securitisation vehicle in accordance with the procedures and within the time limits stipulated in the agreement concluded between the vehicle or its management company and the depositary pursuant to Article 323-53.

[Article 323-63](#)

The securitisation vehicle's depositary shall establish an alert procedure for problems revealed by its supervision. This procedure shall be appropriate to the nature of the problems revealed and shall require notification of the managers of the management company, followed by notification of the entities responsible for supervising and monitoring the securitisation vehicle.

[Article 323-64](#)

The depositary shall ensure that the terms of the winding up of the securitisation vehicle comply with the provisions of the securitisation vehicle's rules or articles of association.

Chapter IV - Clearers (Articles 324-1 à 324-2)

Commission Delegated Regulation (EU) [2017/582](#) of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing

Commission Delegated Regulation (EU) [2017/2154](#) of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements

[Article 324-1](#)

Clearing members shall have in place effective systems and controls to ensure that clearing services are provided solely to the appropriate persons, meet clear criteria, and that adequate requirements are imposed on these persons in order to reduce the risks for the investment services provider and the market.

[Article 324-2](#)

Clearing members shall enter into a written contract with each of the persons whose transactions they clear, setting forth the essential rights and obligations entailed in the provision of such service.

The contract shall stipulate:

1 • The clauses referred to in Article 541-20;

2 • The arrangements for recording transactions;

3 • Provisions relating to deposit, margins, and, generally, all types of guarantees that clearing members must call from clients whose accounts they keep, as well as the assets or collateral accepted to cover their exposure to these clients;

4 • The applicable procedure in the event of default by one of the parties to the contract to ensure, where applicable, that clearing members may liquidate all or part of the commitments or positions of clients that has failed to fulfil their obligations with regard to settlement of market transactions or the cover or collateral referred to the paragraph hereabove and to in Article 541-30, in particular when these clients are the subject of any of the proceedings referred to in Book VI, Title II of the Commercial Code.

Chapter V - Financial investment advisers (Articles 325-1-A à 325-47)

Article 325-1-A

I. For the purposes of this chapter, a “durable medium” is an instrument allowing:

1 • A client to store information addressed personally to that client in a way that affords easy access for future reference for a period of time adequate for the purposes of the information; and

2 • Which allows the unchanged reproduction of the information stored.

II. - Where information has to be provided by a financial investment adviser on a durable medium, this information may be published on a durable medium other than paper only if:

1 • The provision of that information in that medium is appropriate to the context in which the business between the financial investment adviser and the client is, or is to be, carried on; and

2 • The person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

III. - Where a financial investment adviser provides information to a client by means of a website and that information is not addressed personally to the client, the financial investment adviser shall ensure that the following conditions are satisfied:

a) The provision of that information in that medium is appropriate to the context in which the business between the financial investment adviser and the client is, or is to be, carried on;

b) The client must specifically consent to the provision of that information in that form;

c) The client must be notified electronically of the address of the website and the place on the website where the information may be accessed;

d) The information must be up to date;

e) The information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

IV. - For the purposes of this article, the provision of information by means of electronic communications is deemed to be appropriate to the context in which the business between the financial investment adviser and the client is, or is to be, carried on

where there is evidence that the client has regular access to the Internet. The provision by the client of an e-mail address for the purpose of conducting that business shall be construed as evidence of such regular access.

Section 1 - Professional entrance requirements (Articles 325-1 à 325-2-1)

Article 325-1

Before commencing business, a financial investment adviser shall demonstrate that he or she has one of the following:

- 1 • A national degree demonstrating three years of higher education study in law, economics or management, or a credential or diploma of the same level suitable for the carrying out of the operations mentioned in I of Article L. 541-1 of the Monetary and Financial Code;
- 2 • Relevant professional training in carrying out the transactions mentioned in I of Article L. 541-1 of the Monetary and Financial Code;
- 3 • At least two years' professional experience in positions related to the conduct of transactions in the categories specified in I of Article L. 541-1 of the Monetary and Financial Code, gained during the five years before commencing business.

Article 325-2

For the purposes of this Chapter, each financial investment adviser shall belong to only one of the associations mentioned in Article L. 541-4 of the Monetary and Financial Code.

Article 325-2-1

Before accepting the financial investment adviser as a member, the associations mentioned in Article L. 541-4 of the Monetary and Financial Code shall verify the programme of activity mentioned in II of the same article.

Section 2 - Conduct of business rules (Articles 325-3 à 325-17)

Sub-section 1 - General provisions

Article 325-3

Financial investment advisers shall apply the provisions of this Chapter when they provide the advice mentioned in Point 4° of I of Article L. 541-1 of the Monetary and Financial Code.

Article 325-4

Except with the express agreement of the client, financial investment advisers shall refrain from disclosing and using for their own benefit or the benefit of another, outside the scope of their engagement, the client-related information that they hold in their professional capacity.

Sub-section 2 - Entering into a new client relationship

Article 325-5

When establishing a relationship with a new client, the financial investment adviser shall give the client a document including the following references:

- 1 • The adviser's name or company name, business address or address of the registered office, status as a financial investment adviser and registration number in the register mentioned in I of Article L. 546-1 of the Monetary and Financial Code;
- 2 • The name of the professional association to which the adviser belongs;
- 3 • Where applicable, the adviser's capacity as a direct marketer and the identities of the principals for which the adviser carries on a direct marketing business;

- 4 • If the financial investment adviser is likely to provide investment advice on an independent basis, a non-independent basis, or a combination of the two. This indication shall be accompanied by an explanation concerning the scope of this advice and about the remuneration paid to the financial investment adviser. Where the advice is likely to be offered or provided to the same client on an independent and non-independent basis, the financial investment adviser shall explain the scope of these two services to enable investors to distinguish them, and shall not present itself as an independent investment adviser as regards its overall activity;
- 5 • Where applicable, the name(s) of any institution(s) promoting products mentioned in Point 1° of Article L. 341-3 of the Monetary and Financial Code in which the adviser has a material ownership or commercial interest;
- 6 • Where applicable, any other regulated status that the adviser holds;
- 7 • The methods of communication to be used between the financial investment adviser and the client.

Sub-section 3 - Letter of engagement

Article 325-6

Before offering advice, financial investment advisers shall submit a letter of engagement to the client. This letter shall be drawn up in duplicate and signed by both parties.

The letter of engagement shall contain, inter alia, the following indications:

- 1 • Acknowledgement by the client that he has received and read the document mentioned in Article 325-5;
- 2 • The nature of and arrangements for the service to be provided, the description of which is suited to the client's status as a natural or a legal person and to his principal characteristics and motivations;
- 3 • The means by which information is to be given to the client, specifying the special arrangements for reporting on the advisory activity and for updating the information mentioned in Points 4° and 5° of Article 325-5 whenever the relationship is expected to be a lasting one;
- 4 • The terms and conditions of remuneration of the financial investment adviser, specifying the calculation of the fees charged for the advisory service and, where applicable, the existence of any remuneration received from institutions mentioned in Point 5° of Article 325-5 in respect of products acquired pursuant to advice given by the adviser;
- 5 • Where the adviser provides the service mentioned in Point 1° of I of Article L. 541-1 of the Monetary and Financial Code, the financial investment adviser shall also inform the client:
 - Whether the investment advice is provided on an independent or non-independent basis. In order to specify to the client the scope of the service, reference shall be made to the document mentioned in Article 325-5;
 - Whether the investment advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the financial investment adviser or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;
 - Whether the adviser will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client.
- 6 • Information on the proposed financial instruments and investment strategies, which must include appropriate guidelines and warnings about the inherent risks of investing in such instruments or of certain investment strategies, given the target market defined in accordance with Article L. 541-8 of the Monetary and Financial Code;

- 7 • Information on associated costs and charges, including a description of the different categories of costs and charges associated with the investments that the financial investment adviser is offering to its clients, as well as the manner in which the client may pay these costs and charges, which includes payment by third parties.

A signed copy of the letter of engagement shall be remitted to the client.

Sub-section 4 - Knowledge about clients

Article 325-7

Financial investment advisers shall not create any ambiguity or confusion about their responsibilities when assessing the suitability of advisory services in accordance with Point 4° of Article L. 541-8-1 of the Monetary and Financial Code. When conducting this assessment, financial investment advisers shall inform clients and potential clients, in a clear and simple manner that the reason for assessing suitability is to enable them to act in the client's best interest.

Where investment advisory services are provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the financial investment adviser providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation.

Article 325-8

I. - Financial investment advisers shall determine the extent of the information to be collected from clients in light of the features of the advisory services to be provided to those clients. Financial investment advisers shall obtain from clients or potential clients such information as is necessary for them to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction, operation or service to be recommended satisfies the following criteria:

- 1 • It meets the investment objectives of the client in question, as well as the client's risk tolerance in the case of the advisory services mentioned in Points 1° and 3° of I of Article L. 541-1 of the Monetary and Financial Code;
- 2 • It is such that the client is able financially to bear any related risks consistent with his investment objectives;
- 3 • The client has the necessary experience and knowledge in order to understand the risks involved in the transaction, operation or service.

II. - The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his or her regular income, his assets, including liquid assets, investments and real property, and his or her regular financial commitments.

III. - The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

IV. - Financial investment advisers shall ensure that the information regarding a client's or potential client's knowledge and experience includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved in the said service:

- 1 • The types of service, transaction and financial instrument with which the client is familiar;
- 2 • The nature, quantity, and frequency of the services or transactions in financial instruments carried out or subscribed by the client and the length of the period over which the client carried out or subscribed to these services or transactions;
- 3 • The level of education and occupation or relevant former occupation of the client or potential client.

2022-06-11

V. - Where a client is a legal person or a group of two or more legal persons or where one or more legal persons are represented by another legal person, the financial investment adviser shall establish and implement a policy as to who should be subject to the suitability assessment and how this assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives should be collected. The financial investment adviser shall formally record this policy.

Where a legal person is represented by another legal person, the financial situation and investment objectives shall be those of the legal person or, in relation to the legal person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

VI. - Financial investment advisers shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable. This shall include, but shall not be limited to, the following:

- 1 • Clients are aware of the importance of providing accurate and up-to-date information;
- 2 • All tools, such as risk assessment profiling tools or tools to assess a client's knowledge and experience, used in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their clients, with any limitations identified and actively mitigated through the suitability assessment process;
- 3 • Questions used in the process are likely to be understood by clients, capture an accurate reflection of the client's objectives and needs, and the information necessary to undertake the suitability assessment; and
- 4 • Appropriate steps are taken to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies in the information provided by clients.

Financial investment advisers having an ongoing relationship with a client and that provide an ongoing advisory service shall have, and be able to demonstrate, procedures to maintain appropriate and up-to-date information about clients to the extent necessary to fulfil the requirements under I.

VII. - Financial investment advisers that do not obtain the information required under Point 4° of Article L. 541-8-1 of the Monetary and Financial Code shall not recommend investment services or financial instruments to client or potential clients.

VIII. - Financial investment advisers shall have procedures in place to ensure that they understand the nature and features, including costs and risks, of investment services and financial instruments selected for their clients in their overall offering. This procedure shall assess in addition, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile. Financial investment advisers shall be able to demonstrate that they have such procedures.

IX. - Financial investment advisers shall not recommend where none of the services or instruments are suitable for the client.

X. - When providing investment advisory services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, financial investment advisers shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

Sub-section 5 - Information provided to clients

Paragraph 1 - General provisions

[Article 325-9](#)

Any information, including advertisements, regardless of the medium, issued by a financial investment adviser acting in this capacity, shall contain the information mentioned in Points 1° and 2° of Article 325-5.

Article 325-10

Financial investment advisers shall notify clients in good time of any material change in the information mentioned in Articles 325-5 and 325-6 that significantly affects the advice provided. The notification must be given in a durable medium if the relevant information is to be provided in such a medium.

Article 325-11

I. - Financial investment advisers shall ensure that information contained in advertisements is consistent with information provided to clients within the framework of advisory activities.

II. - When communicating with clients, financial investment advisers shall not unduly emphasise their independent investment advisory services over their non-independent advisory services.

Paragraph 2 - Clear, accurate and non-misleading information

Article 325-12

I. - Financial investment advisers shall ensure that the information mentioned in Point 8° of Article L. 541-8-1 of the Monetary and Financial Code that they provide or disseminate to existing or potential clients satisfies the conditions laid down in this article.

II. - Financial investment advisers shall make sure that the information referred to in I satisfies the following conditions:

- 1 • The information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument;
- 2 • The information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent;
- 3 • The information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
- 4 • The information does not disguise, diminish or obscure important items, statements or warnings;
- 5 • The information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has accepted to receive information in more than one language;
- 6 • The information is up-to-date and relevant to the means of communication used.

III. - Where the information compares investment services, financial instruments, or persons providing investment services, financial investment advisers shall ensure that the following conditions are satisfied:

- 1 • The comparison is meaningful and presented in a fair and balanced way;
- 2 • The sources of the information used for the comparison are specified;
- 3 • The key facts and assumptions used to make the comparison are included.

IV. - Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, financial investment advisers shall ensure that the following conditions are satisfied:

- 1 • That indication is not the most prominent feature of the communication;
- 2 • The information must include appropriate performance information which covers the preceding five years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the financial investment adviser may decide, and in every case that performance information is based on complete 12-month periods;
- 3 • The reference period and the source of information are clearly stated;
- 4 • The information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- 5 • Where the indication relies on figures denominated in a currency other than the euro, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- 6 • Where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed.

V. - Where the information includes or refers to simulated past performance, financial investment advisers shall ensure that the information relates to a financial instrument or a financial index, and that the following conditions are satisfied:

- 1 • The simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;
- 2 • In respect of the actual past performance referred to in Point 1°, the conditions set out in points 1°, 2°, 3°, 5° and 6° of IV, are satisfied;
- 3 • The information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

VI. - Where the information contains information on future performance, financial investment advisers shall ensure that the following conditions are satisfied:

- 1 • The information is not based on and does not refer to simulated past performance;
- 2 • The information is based on reasonable assumptions supported by objective data;
- 3 • Where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed;
- 4 • The information is based on performance scenarios in different market conditions (both negative and positive scenarios) and reflects the nature and risks of the specific types of instruments or transactions included in the analysis;
- 5 • The information contains a prominent warning that such forecasts are not a reliable indicator of future performance.

VII. - Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual situation of each client and may be subject to change in the future.

VIII. - The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services covered by the advice.

[Article 325-13](#)

Where financial instruments covered by investment advice incorporate a guarantee or capital protection, financial investment advisers shall provide information about the scope and nature of such guarantee or capital protection. Where the guarantee is provided by a third party, information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the client or potential client to make a fair assessment of the guarantee.

Paragraph 3 - Information on costs and charges

Article 325-14

I. - For the purposes of providing information to clients on all costs and charges pursuant to point 5° of Article L. 541-8-1 of the Monetary and Financial Code, the financial investment adviser shall comply with the requirements of paragraphs II to VIII. The information shall be provided on a durable medium or on a website (when that does not constitute a durable medium) provided that the conditions set out in paragraph III of Article 325-1 A are fulfilled.

II. - For ex-ante and ex-post disclosure of information on costs and charges to clients, financial investment advisers shall aggregate the following:

- 1 • All costs and associated charges charged by the financial investment adviser or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and
- 2 • All costs and associated charges associated with the manufacturing and managing of the financial instruments.

Costs referred to in points 1° and 2° are listed in Annex II to Commission Delegated Regulation (UE) 2017/565 of 25 April 2016. For the purposes of point 1°, third party payments received by the financial investment adviser in connection with the advisory service provided to a client shall be itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage.

III. - Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, the financial investment adviser shall provide an indication of the currency involved and the applicable currency conversion rates and costs. The financial investment adviser shall also inform about the arrangements for payment.

IV. - In relation to the disclosure of costs and associated charges related to the products which are not included in the key investor information documents of the collective investment, the financial investment adviser shall calculate and disclose these costs, for example, by liaising with portfolio asset management company to obtain the relevant information.

V. - A financial investment adviser that recommends or markets to its clients the services provided by third party, shall aggregate the cost and charges of its services together with the cost and charges of the services provided by the third party. It shall also take into account the costs and charges associated to the provision of other services by third parties where it has directed the client to these third parties.

VI. - Where it calculates costs and charges on an ex-ante basis, the financial investment adviser shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the financial investment adviser shall make reasonable estimations of these costs. The financial investment adviser shall review ex-ante assumptions based on ex-post experience and shall make adjustment to these assumptions, where necessary.

VII. - The financial investment adviser shall provide annual ex-post information about all costs and charges related to both the financial instruments and investment services where they have or have had an ongoing relationship with the client during the year. Such information shall be based on costs incurred and shall be provided on a personalised basis.

The financial investment adviser may choose to provide such aggregated information on costs and charges of the investment services and the financial instruments together with any existing periodic reporting to clients

VIII. - The financial investment adviser shall provide its clients with an illustration showing the cumulative effect of costs on return

2022-06-11

when providing advisory services. Such an illustration shall be provided both on an ex-ante and ex-post basis. The financial investment adviser shall ensure that the illustration meets the following requirements:

- 1 • The illustration shows the effect of the overall costs and charges on the return of the investment
- 2 • The illustration shows any anticipated spikes or fluctuations in the costs; and
- 3 • The illustration is accompanied by a description of the illustration.

Article 325-15

Financial investment advisers distributing units or shares in collective investments or packaged retail and insurance-based investment products shall additionally inform their clients about any other costs and associated charges related to the product which may have not been included in the key investor information of a collective investment or in the key information document of a packaged retail and insurance-based insurance products and about the costs and charges relating to their provision of advisory services in relation to that financial instrument.

Sub-section 6 - Compensation and benefits

Article 325-16

I. - Financial investment advisers shall not pay or be paid any fee or commission, or provide or be provided with any non-monetary benefit in connection with the provision of an advisory service to any party except the client or a person acting on behalf of the client, other than where the payment or benefit is designed to enhance the quality of the relevant service to the client and does not impair compliance with the financial investment adviser's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.

The existence, nature and amount of the payment or benefit referred to in the first paragraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service. Where applicable, the financial investment adviser shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the service.

The payment or benefit which enables or is necessary for the provision of advisory services, and which by its nature cannot give rise to conflicts with the financial investment adviser's duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements set out in the second paragraph.

II. - Financial investment advisers shall apply the provisions of Articles 314-13 to 314-20.

Sub-section 7 - Suitability statement

Article 325-17

I. - Where financial investment advisers provide advice, the suitability statement mentioned in Point 9° of Article L. 541-8-1 of the Monetary and Financial Code shall explain how the recommendation provided is suitable for the client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, the client's knowledge and experience and the client's attitude to risk and capacity for loss.

Financial investment advisers shall draw clients' attention to and shall include in the suitability report information on whether the recommended services or instruments are likely to require the client to seek a periodic review of their arrangements.

Where a financial investment adviser provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.

II. - Financial investment advisers providing a periodic suitability assessment shall review, in order to enhance the service, the

suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.

Section 3 - Organisational rules (Articles 325-18 à 325-30)

Sub-section 1 - General provisions

Article 325-18

I. - Financial investment advisers must at all times have resources and procedures appropriate to the conduct of their business, in particular:

- 1 • Sufficient technical resources;
- 2 • Secure data storage facilities enabling in particular retention for the entire duration of the client relationship of any document or medium provided to the client as part of the provision of advisory services.

II. - Financial investment advisers shall have adequate organisational arrangements in place to ensure that both types of investment advisory services – independent and non-independent – are clearly separated from each other, that clients are not likely to be confused about the type of advice that they are receiving and that clients are given the type of advice that is appropriate for them. Financial investment advisers shall not allow a natural person in their employ to provide both independent and non-independent advice.

Article 325-19

Financial investment advisers shall ensure that the people whom they employ to carry on the activity of financial investment advice meet the conditions of professional competence set out in Article 325-1 and the good repute conditions set out in Articles L. 500-1 and D. 541-8 of the Monetary and Financial Code. Financial investment advisers shall forward to the association of which they are a member the list of these people, before they begin their activities.

Article 325-20

I. - Where financial investment advisers employ several persons especially for their advisory activity, they shall adopt an organisational structure and written procedures that enable them to conduct their business in compliance with applicable laws, regulations and ethical provisions.

For the purposes of the previous paragraph, financial investment advisers shall take into account their size and internal organisation, as well as the nature, scale and complexity of their business.

II. - Financial investment advisers who are natural persons and natural persons empowered to manage or administer legal entities authorised to act as financial investment advisers shall commit sufficient time to perform their functions.

Article 325-21

I. - The financial investment adviser shall inform the association of which it is a member of any modification of the information concerning it and any event which may have consequences on its membership as a financial investment adviser, pursuant to the second paragraph of Article L. 541-5 of the Monetary and Financial Code. The information shall be forwarded no later than during the month which precedes the event or, when it cannot be anticipated, during the month which follows.

II. - No later than 30 April each year, the financial investment adviser shall send a data sheet to the association of which it is a member.

Article 325-22

The financial investment adviser shall apply the provisions of Articles 321-141 and 321-143 to 321-150, with the exception of:

- 1 • Those relating to the annual internal control report provided for in 8° and 9° of Article 321-147;

If the financial investment adviser is not a legal entity, he or she shall be responsible for implementing the system referred to in Article L. 561-32 of the Monetary and Financial Code.

Article 325-23

Financial investment advisers shall establish and maintain an effective and transparent procedure for reasonable and prompt handling of complaints received from clients or potential clients.

Clients can file complaints free of charge with the financial investment adviser.

Financial investment advisers shall respond to the complaint filed by the client within a maximum of two months from the date of receipt of the complaint, except in duly justified exceptional circumstances.

They shall implement an equal and consistent procedure for handling complaints filed by clients.

Financial investment advisers shall record each complaint and the measures taken to handle it. They shall also implement a complaint monitoring system enabling them to identify problems and implement the appropriate corrective measures.

Information on the complaint handling procedure shall be made available to clients free of charge.

The procedure put in place shall be proportionate to the size and structure of the financial investment adviser.

Article 325-24

I. - Financial investment advisers who are natural persons, natural persons empowered to manage or administer legal entities authorised to act as financial investment advisers and natural persons employed to carry on the activity of financial investment advice shall prove they satisfy knowledge level requirements specified in Point 1° of II of Article 325-26.

II. - Associations authorised under Section 6 shall, no later than 31 December 2019, verify the knowledge level of the people described in I when they have taken office on or before that date.

III. - As from 1 January 2020, the verification of the knowledge level of the people described in I shall be made with one of the examinations described in Point 3° of II of Article 312-5.

The people described in I shall have six months from the date on which they start to carry out their activity to demonstrate the minimum knowledge level described in I.

However, where an employee is recruited to carry out the business of financial investment advice under a temporary employment contract, an apprenticeship or training contract or a training course, the financial investment adviser may decide to not require for that person to meet the condition stated in I. If the financial investment adviser decides to recruit that employee at the end of the contract or training course, the adviser must ensure that he or she has sufficient level of knowledge as described in I, under the terms referred to in the preceding paragraph.

The financial investment adviser shall ensure that employees whose minimum knowledge has not been fully verified are appropriately supervised.

IV. - People described in I that have passed one of the examinations described in Point 3° of II of Article 312-5 are deemed to have the minimum level of knowledge required to carry out the activities assigned to them.

Article 325-25

The people described in I of Article 325-24 shall each year take training courses adapted to their activity and experience, in

accordance with the procedures set out by the professional association of which the financial investment adviser is a member.

These annual training courses may be dedicated to the verification of knowledge levels during the period and under the conditions specified in II of Article 325-24.

Article 325-26

Financial investment advisors may entrust to an external organisation which can provide evidence of its ability to organise examinations, the verification of their professional knowledge or that of the physical persons under their authority or acting on their behalf and who carry out one of the functions referred to in Article 325-24 (I) ;

I. - The Financial Skills Certification Board mentioned in Article 312-5 shall also issue opinions at the request of the AMF on the certification of organisations that can prove they have the capacity to organise examinations.

The Financial Skills Certification Board issues opinions at the request of the AMF on the need to introduce optional or mandatory modules in addition to the content of minimum knowledge, and on the functions subject to these modules.

II. - Further to an opinion of the Financial Skills Certification Board, the AMF:

- 1 • Determines the content of the minimum knowledge of the natural persons described in Article 325-24 (I), and publishes a description of this knowledge; It shall publish that content;
- 2 • defines the content of the modules completing the minimum knowledge mentioned in 1°. It publishes the content of these modules;
- 3 • Ensures the content of this minimum knowledge and complementary modules is updated;
- 4 • Determines and verifies the arrangements for the examinations and complementary modules that validate acquisition of knowledge;
- 5 • Certifies examinations for a two-year period within four months of the filing of applications. This deadline shall be extended as necessary until requests for further information are met.

The organisation shall provide the AMF with a report on the anniversary of the date when it was certified, and then every three years;

- 6 • The AMF shall charge an application fee when applications for certification and reports are filed.

Article 325-27

Where the financial investment adviser is a legal entity, the natural persons with the power to manage or administer this entity shall ensure that it complies with relevant laws, regulations and professional obligations.

Sub-section 2 - Conflicts of interest

Article 325-28

For the purposes of identifying the types of conflict of interest that arise in the course of exercising one of the activities mentioned in I of Article L. 541-1 of the Monetary and Financial Code or a combination of these activities and whose existence may damage a client's interests, financial investment advisers take into account, by way of minimum criteria, the question of whether the financial investment adviser, a person employed to provide an advisory service, or a person directly or indirectly linked by way of control to the financial investment adviser, is in any of the following situations, whether as a result of providing the activities mentioned in I of Article L. 541-1 of the Monetary and Financial Code or otherwise:

- 1 • The financial investment adviser or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
- 2 • The financial investment adviser or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
- 3 • The financial investment adviser or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;
- 4 • The financial investment adviser or that person carries on the same business as the client;
- 5 • The financial investment adviser or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monetary or non-monetary benefits or services.

Article 325-29

I. - Financial investment advisers shall establish and maintain an effective conflicts of interest policy, set out in writing and appropriate to their size and organisation and to the nature, scale and complexity of their business.

Where a financial investment adviser is a member of a group, its conflicts of interest policy must also take into account any circumstances, of which it is or should be aware, that may give rise to a conflict of interest as a result of the structure and business activities of the other members of the group.

II. - The conflicts of interest policy established in compliance with I must specifically:

- 1 • Identify, with reference to the concerned activities mentioned in I of Article L. 541-1 of the Monetary and Financial Code carried out by the financial investment adviser, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more clients;
- 2 • Specify procedures to be followed and measures to be adopted in order to prevent or manage such conflicts.

III. - The procedures and measures provided for in Point 2° of II shall be designed to ensure that persons employed to provide an advisory service and engaged in different business activities involving a conflict of interest of the kind specified in Point 1° of II carry on those activities at a level of independence appropriate to the size and activities of the financial investment adviser and of the group to which it belongs, and to the risk of damage to clients' interests.

For the purposes of Point 2° of II, procedures to be followed and measures to be adopted shall include at least such of the following as are necessary for the financial investment adviser to ensure the requisite degree of independence:

- 1 • Effective procedures to prevent or control the exchange of information between persons employed to provide an advisory service and engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more clients;
- 2 • Separate supervision of persons employed to provide an advisory service and whose principal functions involve providing services to clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the financial investment adviser;
- 3 • Elimination of any direct links between the remuneration of persons employed to provide an advisory service who are principally engaged in one activity and the remuneration of, or revenues generated by, other relevant persons principally engaged in another activity, where a conflict of interest is likely to arise in relation to those activities;
- 4 • Measures to prevent or limit any person from exercising inappropriate influence over the way in which a person employed to

provide an advisory service carries out his activities;

- 5 • Measures to prevent or control the simultaneous or sequential involvement of a person employed to provide an advisory service in several of the activities mentioned in I of Article L. 541-1 of the Monetary and Financial Code, where such involvement may impair the proper management of conflicts of interest.

IV. - Financial investment advisers shall ensure that disclosure to clients, pursuant to the second paragraph of Point 4° of Article L. 541-8 of the Monetary and Financial Code, is a measure of last resort that shall be used only where the effective organisational and administrative arrangements established by the financial investment adviser to prevent or manage its conflicts of interest in accordance with Point 4° of Article L. 541-8 of the Monetary and Financial Code are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.

The disclosure shall clearly state that the organisational and administrative arrangements established by the financial investment adviser to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented. The disclosure shall include specific description of the conflicts of interest that arise in the provision of advisory services, taking into account the nature of the client to whom the disclosure is being made. The description shall explain the general nature and sources of conflicts of interest, as well as the risks to the client that arise as a result of the conflicts of interest and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to take an informed decision with respect to the advisory service in the context of which the conflicts of interest arise.

V. - Financial investment advisers shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with I to IV and shall take all appropriate measures to address any deficiencies. Over-reliance on disclosure of conflicts of interest shall be considered a deficiency in the financial investment adviser's conflicts of interest policy.

[Article 325-30](#)

Financial investment advisers shall keep and regularly update a record of the kinds of advisory service in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

Section 4 - Governance of products, services and transactions (Article 325-31)

[Article 325-31](#)

Financial investment advisers shall apply Articles 313-18 to 313-27, with the exception of Articles 313-23 and 313-25. For the purposes of Article 313-24, the term “relevant person” is replaced by “person employed to provide an advisory service”.

Section 5 - Reception and transmission of units or shares in collective investment undertakings (Article 325-32)

[Article 325-32](#)

A financial investment adviser may agree to receive for transmission purposes an order for one or more units or shares in a collective investment undertaking that a client to whom it has provided an advisory service intends to subscribe for or sell.

Prior to providing such service, the financial investment adviser shall enter into an agreement with its client, setting forth the rights and obligations of both parties.

The financial investment adviser must be able to prove that the order originates from its client. It shall keep a record of the time-stamping of the reception and transmission of the client's order.

Section 6 - Authorisation of representative associations (Articles 325-33 à 325-47)

Sub-section 1 - Authorisation requirements

[Article 325-33](#)

The association mentioned in Article L. 541-4 of the Monetary and Financial Code shall have its registered office in France.

[Article 325-34](#)

The legal representatives of the association shall have a good reputation and experience relevant to their functions.

[Article 325-35](#)

The association shall draw up a code of conduct setting forth the professional rules defined in Articles 325-3 to 325-17 as well as the rules for monitoring and oversight of the training programmes called for in Article 325-38.

This code shall be submitted for approval by the AMF as professional rules.

[Article 325-36](#)

The association shall carry out an on-site verification of each of its members at least once every five years. Where applicable, the verifications delegated by the AMF to the association in application of Article L. 621-9-2 of the Monetary and Financial Code shall be taken into account for the purposes of the present paragraph.

The association shall implement an internal procedure for sharing information covered by professional secrecy with the AMF pursuant to point IV of Article L. 541-4 of the Monetary and Financial Code.

[Article 325-37](#)

The association must have the staff and technical resources needed to carry out its mission on an ongoing basis.

The association shall appoint a person who will be responsible for the exchanges of information covered by professional secrecy with the AMF pursuant to point IV of Article L. 541-4 of the Monetary and Financial Code. This person must meet the requirements specified by an AMF instruction.

These technical resources shall include, inter alia:

1 • A computerised tool to establish a list indicating, where applicable, for each member:

a) Where the activity of financial investment advice is operated by a natural person:

- the surname, forenames, date of birth, place of birth and business address of the natural person financial investment adviser; and
- the surname, forenames, date and place of birth of the natural persons employed by the financial investment adviser to operate the financial investment advice business; or

b) Where the activity of financial investment advice is operated by a legal entity

- the business name and address of this legal entity;
- the surname, forenames, date and place of birth and personal address of the natural persons who have the power to manage or administer this legal entity; and
- the surname, forenames, date and place of birth of the natural persons employed by the financial investment adviser to operate the financial investment advice business.

This list shall be held at the disposal of the AMF.

2 • A data storage facility for the retention of documents, in particular inspection reports, for five years.

[Article 325-38](#)

The association shall seek to ensure that its members' knowledge is kept current by selecting or organising training programmes.

[Article 325-39](#)

The association shall be independent of institutions promoting products mentioned in Point 1° of Article L. 341-3 of the Monetary and Financial Code.

Sub-section 2 - Authorisation procedure

[Article 325-40](#)

Authorisation of a representative association within the meaning of Article L. 541-4 of the Monetary and Financial Code shall be subject to the filing of an application with the AMF containing:

- 1 • The articles of the association;
- 2 • The identity, the curriculum vitae and an extract from the judicial record of its legal representatives, and the name and curriculum vitae of the person appointed to be responsible for the exchanges of information covered by professional secrecy with the AMF pursuant to point IV of Article L. 541-4 of the Monetary and Financial Code.
- 3 • A three-year provisional budget for the association;
- 4 • A draft code of conduct;
- 5 • The standard letter of engagement for use by members of the association;
- 6 • A description of the human and technical resources that will enable the association to fulfil its obligations under the terms of this chapter.
- 7 • The written procedures by which the association decides on the membership, withdrawal of membership, inspection and sanctioning of its members pursuant to point III of Article L. 541-4 of the Monetary and Financial Code.
- 8 • The internal procedure provided for by Article 325-36 for sharing information covered by professional secrecy with the AMF pursuant to point IV of Article L. 541-4 of the Monetary and Financial Code.

[Article 325-41](#)

In deciding whether to issue authorisation to an association, the AMF shall review the application to assess whether the applicant, based on its filing, fulfils the requirements set forth in Articles 325-33 to 325-39. The AMF may ask the applicant to provide any further information it considers necessary to reach its decision.

Sub-section 3 - Reporting to the AMF

[Article 325-42](#)

I. - No later than 31 May of each year, the association shall provide the AMF with a copy of the balance sheet and the income statement for the most recent financial year and an activity report describing in particular, for the previous calendar year, the verifications carried out and their archiving and the training courses undertaken or selected.

II. - No later than 30 June each year, the association shall provide the AMF with the data sheet for each of its members, collected pursuant to Article 325-21.

[Article 325-43](#)

The association shall inform the AMF promptly of any changes to key items in the initial authorisation application, notably concerning its management, organisation or supervision.

2022-06-11

The AMF shall inform the association of any potential consequences for its authorisation.

The following are subject to prior authorisation of the AMF:

- 1 • Any material modification to the authorisation application;
- 2 • Any modification to the code of conduct;
- 3 • The appointment of a new person responsible for the exchanges of information covered by professional secrecy with the AMF pursuant to point IV of Article L. 541-4 of the Monetary and Financial Code.

[Article 325-44](#)

The association shall inform the AMF promptly of disciplinary action taken against any of its members and shall hold the reports of its verifications at its disposal.

Sub-section 4 - Withdrawal of authorization

[Article 325-45](#)

The AMF may withdraw its authorisation of the association if it no longer meets the requirements of its initial authorisation or a subsequent authorisation, or if it fails to meet commitments given at such time, or when the association has not made use of its authorisation within the past twelve months, or when it has been inactive for at least three months.

[Article 325-46](#)

When the AMF is considering withdrawing its authorisation, it shall so inform the association, indicating the reasons therefor.

The association shall have one month from receipt of such notification to submit any observations it might have.

[Article 325-47](#)

When the AMF decides to withdraw an authorisation, the association shall be notified of the AMF's decision by registered letter with return receipt. The AMF shall inform the public of the withdrawal by means of an online news release posted on its website and placed in newspapers or other publications of its choosing.

This decision shall specify the timetable and method for implementing the withdrawal.

Pending withdrawal, the association shall be placed under the supervision of an agent appointed by the AMF. It must inform its members that its authorisation has been withdrawn.

The agent shall be bound by professional secrecy rules.

Chapter V bis - Crowdfunding investment advisers (Articles 325-51 à 325-50)

[Article 325-51](#)

[Removed by decree of 9 march 2022]

[Article 325-52](#)

[Removed by decree of 9 march 2022]

[Article 325-53](#)

[Removed by decree of 9 march 2022]

2022-06-11

[Article 325-54](#)

[Removed by decree of 9 march 2022]

[Article 325-55](#)

[Removed by decree of 9 march 2022]

[Article 325-56](#)

[Removed by decree of 9 march 2022]

[Article 325-57](#)

[Removed by decree of 9 march 2022]

[Article 325-58](#)

[Removed by decree of 9 march 2022]

[Article 325-59](#)

[Removed by decree of 9 march 2022]

[Article 325-60](#)

[Removed by decree of 9 march 2022]

[Article 325-61](#)

[Removed by decree of 9 march 2022]

[Article 325-62](#)

[Removed by decree of 9 march 2022]

[Article 325-63](#)

[Removed by decree of 9 march 2022]

[Article 325-64](#)

[Removed by decree of 9 march 2022]

[Article 325-65](#)

[Removed by decree of 9 march 2022]

[Article 325-66](#)

[Removed by decree of 9 march 2022]

[Article 325-66-1](#)

[Removed by decree of 9 march 2022]

[Article 325-66-2](#)

[Removed by decree of 9 march 2022]

[Article 325-66-3](#)

[Removed by decree of 9 march 2022]

[Article 325-66-4](#)

[Removed by decree of 9 march 2022]

2022-06-11

[Article 325-67](#)

[Removed by decree of 9 march 2022]

[Article 325-68](#)

[Removed by decree of 9 march 2022]

[Article 325-69](#)

[Removed by decree of 9 march 2022]

[Article 325-70](#)

[Removed by decree of 9 march 2022]

[Article 325-71](#)

[Removed by decree of 9 march 2022]

[Article 325-72](#)

[Removed by decree of 9 march 2022]

[Article 325-73](#)

[Removed by decree of 9 march 2022]

[Article 325-74](#)

[Removed by decree of 9 march 2022]

[Article 325-75](#)

[Removed by decree of 9 march 2022]

[Article 325-76](#)

[Removed by decree of 9 march 2022]

[Article 325-77](#)

[Removed by decree of 9 march 2022]

[Article 325-78](#)

[Removed by decree of 9 march 2022]

[Article 325-79](#)

[Removed by decree of 9 march 2022]

[Article 325-80](#)

[Removed by decree of 9 march 2022]

[Article 325-81](#)

[Removed by decree of 9 march 2022]

[Article 325-82](#)

[Removed by decree of 9 march 2022]

[Article 325-83](#)

[Removed by decree of 9 march 2022]

[Article 325-48](#)

Crowdfunding investment advisers registered before 10 November 2021 on the single register referred to in Article L. 546-1 of the Monetary and Financial Code shall remain subject to the provisions of this section in the version applicable prior to the date of publication of the Order of 9 March 2022 approving the amendments to the AMF General Regulation until 10 November 2022 or until they have obtained their authorisation to operate as crowdfunding service providers, whichever date comes first.

[Article 325-49](#)

[Removed by decree of 9 march 2022]

[Article 325-50](#)

[Removed by decree of 9 march 2022]

Chapter VI - Direct marketers

Chapter VII - Investment analysts not associated with an investment service provider (Articles 327-1 à 327-23)

Section 1 - Scope (Article 327-1)

[Article 327-1](#)

I. - Pursuant to VIII of Article L. 621-7 of the Monetary and Financial Code, this Chapter sets forth:

- 1 • Conduct of business conditions for natural and legal persons engaging in the activity of investment analysis;
- 2 • Rules of conduct for natural persons working under the authority or on behalf of legal persons engaged in the activity of investment analysis;
- 3 • Provisions to ensure the independence of investment analysts' evaluations and prevent conflicts of interest.

II. - The investment analysts concerned are natural and legal persons other than investment services providers that produce or disseminate investment recommendations as provided for in Point 35 of Article 3(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014.

Section 2 - Production and dissemination of investment research (Articles 327-2 à 327-18)

Sub-section 1 - Production of analysis: Independence of analysts and management of conflicts of interest

[Article 327-2](#)

The provisions of Article 28 and Paragraphs 1, 5 and 6 of Article 29 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 and of Article 314-13 are applicable to financial analysts not employed by an investment services provider.

[Article 327-2-1](#)

[Empty]

[Article 327-3](#)

Whenever a natural or legal person not associated with an investment service provider is subject to internal procedures or to a code of conduct, that person makes reference to such procedures or code in the investment research that it disseminates.

[Article 327-4](#)

I. - An investment analyst that does not depend on an investment service provider shall be deemed to produce independent

- 1 • It has no significant shareholdings in credit institutions or investment firms;
- 2 • No credit institution or investment firm owns more than one-third of its shares directly or indirectly;
- 3 • It has no equity holdings in the issuers that it analyses or in the advisers to these issuers, and none of the issuers that it analyses and none of the advisers to these issuers have an equity holding in it.
- 4 • It has no legal links to the issuers that it analyses, unless the issuer that orders an analysis undertakes not to intervene in the production of this analysis or to impede its dissemination.
- 5 • If the investment analyst is a legal person, the majority of its share capital is owned by investment analysts that comply with the requirements stipulated in 1°, 2°, 3° and 4°.

II. - An investment analyst governed by this Chapter that has relations with a person or entity that prevent it from complying with any of the requirements stipulated in I shall adopt procedures and means to ensure that this person or entity shall not interfere in any way in the conduct of its business.

[Article 327-5](#)

Investment analysts governed by this Chapter shall retain all documents, in particular the analyses produced and published, including the preparatory documents, for at least five years.

Sub-section 2 - Establishing a code of conduct

[Article 327-6](#)

I. - Investment analysts governed by this Chapter shall adopt a code of conduct that defines:

- 1 • The principles of integrity, independence, skill and organisation that they must comply with;
- 2 • The methodology used to produce their analyses.

The code of conduct shall be available for consultation at the investment analyst's registered office or business address. This document shall be posted on the investment analyst's website, if it has one.

II. - Investment analysts governed by this Chapter shall be exempted from the requirements in I if they belong to an industry association that is recognised by the AMF under the terms of Sub-section 3 of this Section.

Sub-section 3 - Recognition of representative bodies

Paragraph 1 - Requirements for recognition by the AMF

[Article 327-7](#)

An association of investment analysts governed by this Chapter may apply to the AMF for recognition.

The recognised association must be representative of the investment analysis activity governed by this Chapter.

[Article 327-8](#)

I. - The industry association shall draw up a code of conduct that defines the fundamental principles that its members must comply with. The members of the association may give consideration to their size and organisational structure for the application of such principles.

2022-06-11

The association shall draw up written procedures for supervising its members' compliance with legal, regulatory and ethical provisions.

II. - More specifically, the association's code of conduct shall define:

- 1 • Written procedures for admitting and sanctioning its members;
- 2 • The skills, training, professional experience and resources that the members must have;
- 3 • A code of conduct, as stipulated in Article 337-6;
- 4 • The confidentiality rules applying to its members;
- 5 • Where applicable, the establishment, management and supervision or participation in a mutual fund to finance research.

III. - The code of conduct shall specify any penalties for non-compliance.

IV. - The code of conduct shall be available for consultation by anyone at anytime by applying to the association's registered office. It shall also be posted on the association's website, if it has one.

Article 327-9

The association shall ensure that its members' knowledge is up to date by selecting or organising training.

Article 327-10

The association must have the human and material resources necessary for performing its tasks and ensuring its sustainability.

Paragraph 2 - Recognition procedure

Article 327-11

The recognition of an industry association requires the filing of an application, containing:

- 1 • The articles of association of the association;
- 2 • A *curriculum vitae* and a copy of the judicial record for the legal representatives;
- 3 • The association's budget for the next three years;
- 4 • A draft code of conduct;
- 5 • A description of the personnel and technical resources to be used to ensure compliance with the requirements stipulated in this Chapter;
- 6 • The list of members.

Article 327-12

Before recognising an association, the AMF shall examine the application contents to see if the association meets the requirements set out in Articles 327-8 to 327-10.

The AMF shall have the right to request that the association provide any further information that it needs to make its decision.

[Article 327-13](#)

Within six months of the end of the financial year, the association shall provide the AMF with copies of its balance sheet and income statement, along with the activity report describing the supervision carried out and record keeping, and the training courses provided or selected.

[Article 327-14](#)

The association shall immediately notify the AMF of changes to the information contained in the initial application for recognition, and in particular, changes in management, organisation and supervision.

[Article 327-15](#)

The association shall immediately notify the AMF of any sanctions imposed on one of its members.

[Article 327-16](#)

The industry association shall provide the AMF with an updated list of its members within three months of the end of each calendar year.

Paragraph 4 - Withdrawal of recognition

[Article 327-17](#)

I. - The AMF may withdraw its recognition if the association no longer complies with the requirements and obligations therefor.

If it plans to withdraw recognition, the AMF shall notify the association and explain the grounds for the planned decision. The association then has one month from the receipt of this notice to make any response.

II. - If the AMF decides to withdraw recognition, the association shall be informed of its decision by registered letter with acknowledgement of receipt. The AMF shall inform the public of the withdrawal of recognition by posting a news release on its website.

The decision shall specify the terms and the implementation timeframe for the withdrawal of recognition.

The association must inform its members of the withdrawal of its recognition.

[Article 327-18](#)

If an association asks to surrender its recognition, it shall explain to the AMF the reasons for its request and the planned procedures for enabling its members to continue to conduct their business.

Section 3 - Dissemination of investment research produced by third parties (Articles 327-19 à 327-23)

[Article 327-19](#)

[Empty]

[Article 327-20](#)

[Empty]

[Article 327-21](#)

[Empty]

[Article 327-22](#)

[Empty]

[Article 327-23](#)

Chapter VIII - Data reporting services providers (Articles 328-1 à 328-2)

Commission Delegated Regulation (EU) [2017/565](#) of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Commission Delegated Regulation (EU) [2017/571](#) of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers

Commission Delegated Regulation (EU) [2017/577](#) of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations

Commission Implementing Regulation (EU) [2017/1110](#) of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

Section single - Authorisation requirements and changes (Articles 328-1 à 328-2)

[Article 328-1](#)

In application of Article L. 549-4 of the Monetary and Financial Code, the AMF shall notify its decision to the applicant within six months from the date of receipt of the complete application, or, where relevant, of any additional information that it requested.

[Article 328-2](#)

In application of Article L. 549-3 of the Monetary and Financial Code, data reporting services providers shall promptly inform the AMF prior to any changes made with respect to Annex I of Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017, or of any material change in the conditions under which the authorisation was granted referred to in the last sub-paragraph of Article L. 549-3 of said Code.

The AMF shall consider the appropriate follow-up to these changes within four months from the date of receipt of the complete application or, where relevant, of any additional information that it requested.

Changes relating to the composition of the management body of a data reporting services provider shall be considered to be a material change in the conditions under which the authorisation was granted as described in the last sub-paragraph of Article L. 549-3 of said Code.