

AMF Instruction n° 2012-07 Complaint handling

Reference texts: AMF General Regulation articles 313-8, 318-10, 322-71-1 and 325-12-1, and article 321-43-1 as worded prior to the Executive Order of 8 August 2013.

This instruction concerns complaint handling and applies to investment services providers, financial investment advisers, real-estate investment fund management companies¹ and legal entities issuing registered securities for which they keep custody accounts (hereinafter referred to as “the professional”).

A complaint means a statement of dissatisfaction by a client towards the professional. A request for information, opinion, clarification, service or provision is not a complaint.

The instruction stipulates the information on the complaint handling system that must be given to the client of the investment services provider² or the financial investment adviser, or to the shareholder of the real-estate investment fund or to the holder of pure registered securities (hereinafter referred to as “the client”).

It details the procedures to be established in order to guarantee efficient, fair, harmonised complaint handling.

Lastly, it provides for a complaint tracking procedure in order to identify any malfunctions and implement remedial actions.

1. Information about and access to the complaint handling system

The professional provides the client, free of charge, with information in clear, understandable language on:

- the procedures for making complaints to the professional and, as the case may be, those for each of the complaint handling levels put in place,³ most notably the contact details (address, non-surcharged phone number, etc.) of the dedicated person(s) or authority in charge of handling complaints and those of the competent ombudsman(men).⁴
- when several persons are involved in the service provision process, this information is given for each category of complaint requiring a distinct handling channel;
- the complaint handling time to which the professional commits (point 2 below);
- the existence of mediation charter(s) or protocol(s), as well as their references.

The professional shall make the information listed above rapidly available to all clients, in its reception area if it exists, or on a website.

It acknowledges receipt of the complaint within the time period it has committed to (point 2 below), unless the response itself is given to the client within this period.

¹ In accordance with point VI of Article 33 of Order 2013-676 of 25 July 2013 amending the legal framework for asset management, real-estate investment fund management companies must apply to be authorised as asset management companies before 22 July 2014.

² These are the persons described in articles 313-8 and 313-8-1 of the AMF General Regulation and in articles 318-10 and 318-10-1 of the AMF General Regulation for persons referred to article 316-2 of the AMF General Regulation as regards their FIA activities.

³ In accordance with FBF Good Practice, it is recommended for large networks to implement two-level handling: at local level and at Directorate-General level via an authority that is independent of the operational departments (see below)

⁴ The information must cover all competent ombudsmen, including that of the AMF.

It replies to requests for information from the client about the complaint handling process. It keeps him informed about the process when the time period to which the professional has committed cannot be respected due to the occurrence of special circumstances.

In the event that the complaint is rejected or not satisfied in full or in part, the professional specifies the avenues of appeal in its response to the client, in particular the existence and contact details of the competent ombudsmen⁴.

The professional must avoid all confusion, in particular in the names of departments or in the letters set to the client, between the professional's own complaint handling departments and the independent mediation system.

When the professional uses direct marketers or tied agents or delegates (hereinafter referred to as "persons acting on behalf of the professional" or "persons acting on its behalf"), it ensures that the information given to the client by these persons is of equivalent standard to that given to its own clients.

As access to the complaint handling system is free of charge, no specific pricing may be applied to the client for handling his complaint.

2. Organisation of complaint handling

The professional must have the necessary resources and procedures to identify letters, telephone calls and emails of complaint and to define the channels for handling them.

It must ensure that the staff member(s) in contact with the client or who receive his requests are adequately trained to identify the complaints received clearly and to use the complaint handling channel(s) appropriately.

The professional puts in place a complaint handling organisation which:

- allows the client to make his complaint to his usual contact person and, if he has not received a satisfactory response from this person, to a dedicated complaint handling authority that is distinct from operational departments, insofar as the extent or the size of the professional's structure so permits.⁵
- when several complaint handling channels exist,⁶ clearly determines:
 - the professionals or departments or, as the case may be, the persons acting on behalf of the professional, who are competent to deal with the complaint or, failing this, a single point of entry to which the client can address his complaint and which will pass it on to the competent person and will ensure the response is transmitted;
 - the procedures for transmission between the professionals and departments or, as the case may be, the persons acting on behalf of the professional, of the complaints sent by mistake to a non-competent person;
- allows the handling times communicated to the client to be respected, that is:
 - a maximum of ten business days from receipt of the complaint to acknowledge receipt, unless the response itself is given to the client within this time period;

⁵ This complaint handling channel could be organised transversally between the professionals or departments concerned or, as the case may be, the persons acting on behalf of the professional who is likely to be held responsible for the object of the complaints.

⁶ Several complaint handling channels coexist when more than one professional is involved in the transaction subject to complaint, in particular when CIS are marketed within a bank network.

- a maximum of two months between the date of receipt of the complaint and the date on which the response is sent to the client, unless duly-justified special circumstances occur;
- clearly indicates the methods for transmission to the designated ombudsmen of any letter for their attention;
- provides for the recording of complaints and the tracking of their management;
- provides for a required level of qualification for the staff member(s) in charge of the complaint handling function, including good knowledge of the professional's products, services, contracts, tools and procedures;
- provides for the principles of responsibilities and delegations, in particular regarding the level of authorisation of staff members.⁷

The professional must formalise this organisation in one or more client complaint handling procedures and send them to all staff members concerned.

3. Tracking and control of complaint handling – Due consideration of the malfunctions identified through complaints

The professional is required:

- to put in place a complaint tracking procedure⁸ and to give it to the professional's departments/personnel concerned and, as the case may be, to the bodies that define the sales policy of the network to which the professional or the persons acting on its behalf belong;
- to identify malfunctions in order to implement remedial actions at the level of the professional and, as the case may be, at the level of its network or the persons acting on behalf of the professional.

Professionals required to implement a compliance and internal control system must:

- implement the necessary resources and procedures to provide suitable control over the information issued and the organisation and quality of complaint handling;
- take into account and control the risks which could cause the malfunctions identified through complaints;
- in its annual report on compliance and internal control, report on the malfunctions identified through complaints and indicate whether measures have been taken.

⁷ For example with regard to the signing of letters or commercial gestures.

⁸ For example: name of the client, date of receipt of the complaint, object of the complaint, contract, product or service targeted by the complaint, persons other than the professional, division or department targeted by the complaint, date of response to the client, response to the complaint (positive or negative response to the client's demand), malfunctions identified.