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## **Inducements and fees: the AMF updates its policy to comply with MiFID II**

**The Autorité des Marchés Financiers (AMF) has updated its Position-Recommendation DOC-2013-10 on inducements and fees received in connection with the distribution and portfolio management of financial instruments to take account of the impacts of the transposition of MiFID II.**

### **Update to comply with MiFID II**

Position-Recommendation DOC-2013-10 has been updated to take into account the following new provisions resulting from the transposition of MiFID II:

- providers offering independent investment advice or portfolio management services are banned from receiving any inducements or fees from third parties and retaining them without passing them on to the client;
- the criteria of enhancement of the quality of the service provided to the client that will make it legal to receive or pay out inducements or fees received or paid out to third parties;
- the introduction of the concept of minor non-monetary benefits that may be received or retained under certain conditions under portfolio management and independent advice services. These benefits may be described broadly in the case of the provision of other services.

Information about inducements and fees is also included because it can no longer be given to the client in the form of a summary. Furthermore, the new obligations to inform clients of related costs and associated charges must include fees received from third parties.

## Clarifications made by the AMF

The AMF has also added some other modifications:

- a position specifying that the concept of minor non-monetary benefits received from or paid to a third party in connection with the provision of a service other than portfolio management or independent investment advice corresponds to the same definition as that of minor non-monetary benefits that are acceptable under the provision of a portfolio management or independent investment advice service;
- a position specifying the time when information is provided about the payment or the benefit received from third parties in connection with the provision of a non-independent investment advice service;
- a position specifying the quality and medium of the information relating to placement fees received by an investment services provider that is also providing an investment service to the investor.

The AMF also recommends that clients are provided with information about inducements and fees received from third parties during the distribution of savings products via the same document as the one in which these clients are informed about the costs and associated charges that they will have to bear. When these inducements and fees are received in connection with the provision of non-independent investment advice, the AMF recommends that the retail client be given the document on costs and associated charges, including payments received from third parties, at the same time as the suitability report.

## Focus on turnover commissions and entry and exit fees under portfolio management

MiFID II reinforces the provisions applicable to conflict of interest management. The collection, on one hand, of turnover commissions and, on the other hand, entry and exit fees (paid to the distributor) on UCIs by an investment service provider (ISP) providing the portfolio management service, the operative factor of which is the investment or divestment made by the manager, generates a conflict of interests that is likely to have an adverse effect on the customer's interest. Position-Recommendation DOC-2013-10 is based on the consequences of this observation.

With regard to the collection of turnover commissions for providing portfolio management services, the AMF asks in particular that:

- a specific warning about the conflicts of interest resulting from this method of manager remuneration be communicated to the client beforehand;
- the actual amount of these expenses be expressly identified and communicated to the client once a year.

With regard to the distributor's entry and exit fees: given the differences in regimes with life insurance, the AMF, at this stage, maintains the possibility (except for funds managed by a group entity) of their collection by ISPs providing portfolio management services on behalf of third parties, under the same conditions of ex ante and ex post transparency as for turnover commissions.


The AMF also recommends that the entry and exit fees collected by the ISP providing the asset management service be identical (as a percentage) for all CIUs that belong to the same asset class. These asset classes will be determined on the basis of consistent economic units, such as AMF classifications, where applicable.

Nevertheless, the AMF eventually plans to reopen this issue with a view to prohibiting the collection of these fees in connection with the provision of a portfolio management service. In this respect, the AMF is promoting reflection on the rules applicable to the distribution of financial instruments directly and through life insurance policies.

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