AMF POSITION-RECOMMENDATION

DOC-2013-10

INDUCEMENTS AND FEES RECEIVED IN CONNECTION WITH THE DISTRIBUTION AND DISCRETIONARY MANAGEMENT OF FINANCIAL INSTRUMENTS

Reference texts: Articles L. 533-10 II 3°, L. 533-12-4 and L. 542-1 of the Monetary and Financial Code, Articles 314-13 to 314-20 and 325-16 of the AMF General Regulation, and Articles 33 to 34 of Delegated Regulation (EU) 2017/565

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Introduction

Directive 2014/65/EU of the European Parliament and of the Council (the "MiFID II Directive") supplemented by Commission Delegated Directive (EU) 2017/593 (the "MiFID II Delegated Directive") strengthened the existing regime governing fees, commissions or non-monetary benefits (hereinafter the "inducements and fees regime"), in particular:

- by prohibiting the retention of fees, commissions or non-monetary benefits, with the exception of minor non-monetary benefits, where the service provider provides the client with a service of investment advice on an independent basis or where the service provider provides the client with the service of portfolio management;

- for other investment services:
  - by specifying the conditions that must be satisfied for a fee, commission or non-monetary benefit to be deemed to enhance the quality of the service provided to the client;
  - by providing more information to clients.

The inducements and fees regime resulting from the transposition of the MiFID II Directive[1] and the MiFID II Delegated Directive is provided for in French law:

- for investment services providers ("ISPs"), in Articles L. 533-12-2 to L. 533-12-4 of the Monetary and Financial Code and Articles 314-13 to 314-20 of the AMF General Regulation;

- for financial investment advisors, in Article L. 541-8-1 7° b) of the Monetary and Financial Code and Article 325-16 of the AMF General Regulation, referring to Articles 314-13 to 314-20 of the said General Regulation.

This document sets out a number of AMF positions and recommendations for the application of some of these provisions as regards the fees and benefits received in connection with the distribution and portfolio management of financial instruments.

Scope of application

Scope as regards persons and entities: These positions and recommendations apply:

- to the persons and entities referred to in Article 311-1 of the AMF General Regulation[2], including management companies (hereinafter "ISPs");
- to the entities authorised to provide the ancillary service of safekeeping and administration of financial instruments for the account of clients referred to in Article L. 321-2 of the Monetary and Financial Code (hereinafter "Custody account-keepers");

[1] Excluding specific provisions relating to inducements and fees in connection with research, which do not fall under the scope of this document.

[2] Article 311-1 of the AMF General Regulation: "*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 data subjects defined in paragraph 1 of Article 2 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 for the provisions of Chapters II, III, IV and V of this 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."

- to financial investment advisors as regards the majority[3] of the positions and recommendations.

The term “service providers” is used to denote ISPs and financial investment advisors jointly[4]. Otherwise, the terms "financial investment advisors", "custody account-keepers" or "ISPs" are used. For ease of reading, the term "service provider" is also used to refer to investment services providers when they provide the service of portfolio management on behalf of third parties.

Scope as regards activities: These positions and recommendations apply to investment and ancillary services provided in France in connection with the distribution of financial instruments and to the service of portfolio management. However, they do not cover the management of collective investments, which is subject to specific provisions in terms of fees under Articles 321-116 *et seq.* of the AMF General Regulation and Article 24 of Commission Regulation (EU) 231/2013 of 19 December 2012.

However, it should be recalled that the distribution of units or shares in UCITSs or AIFs carried out directly by management companies is subject to the requirements set out in Article 314-13 of the AMF General Regulation, by virtue of Articles 411-129 and 421-26 of the AMF General Regulation[5], as regards the service of investment advice, and the service of reception and processing of subscription or redemption orders. These positions and recommendations apply to these distribution activities.

These positions and recommendations are primarily intended to address issues relating specifically to retail activities[6], regardless of whether these activities are carried out to the benefit of professional or retail clients[7] (with the exception of the positions and recommendations in section 1.1: Internal identification and classification frameworks and procedures, which apply to all the activities carried out by service providers).

This does not, of course, rule out the possibility that these positions and recommendations may, where appropriate, also apply to fees for non-retail activities that the AMF considers contrary to the principle whereby ISPs and financial investment advisers must act honestly, fairly and professionally in accordance with the best interests of their clients.

In any event, they do not cover issues relating to the inducements and fees received by the service providers responsible for executing client orders from execution venues[8].
Neither do they cover research-related inducements.

[3] Application to financial investment advisers is specified for each position, with reference to financial investment advisers or, more broadly, to service providers.
[4] The term "service provider" is used here solely for ease of reading and does not affect the application of the other provisions.
[5] See also AMF Instruction 2008-04 - Article 3 Principles for applying the conduct of business rules:
3.1 - The conduct of business rules referred to in this article are those set out in Book V Title III Chapter III Section 5 of the Monetary and Financial Code and in Book III Title I Chapter IV of the AMF General Regulation.
3.2 - A management company providing investment advice shall apply the conduct of business rules for this investment service. In this context, there is no need to distinguish between whether the management company receives and subsequently processes the investor's order or whether it does not receive and process the investor's order, or whether the investor does or does not place an order following the advice received.
3.3 - A management company that receives and processes a subscription or redemption order for units or shares in a UCITS or OPCI (real estate collective investment undertaking) shall apply:
- the conduct of business rules for the service of executing orders on behalf of third parties in the case of a UCITS or an OPCI for which it is the investment management company, even where all or part of the financial management of the UCITS or OPCI is delegated to a third party;
- the conduct of business rules for the service of reception and transmission of orders on behalf of third parties in the case of a UCITS or an OPCI for which it is not the investment management company, even when the portfolio asset management company that receives and processes the order carries out all or part of the financial management of the UCITS or OPCI by delegation.
For the purposes of applying the above rules, no distinction should be made as to whether the management company receives and processes an order after having provided the investor with investment advice or independently of the provision of such a service.
[6] Solely in terms of the application of the position on guaranteed placement transactions in paragraph 1.2.2 of this Position-Recommendation, private banking activities are considered here to be retail activities, regardless of the type of client involved.
[7] It is recalled that under Article L. 533-20 of the Monetary and Financial Code, the provisions relating to fees and inducements do not apply to relations with eligible counterparties.
[8] Pursuant to the final paragraph of Article 64 (1) of Delegated Regulation 2017/565, ‘execution venue’ includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.”

Scope as regards fees and inducements: This Position-Recommendation does not deal with fees, commissions or benefits paid or provided by service providers, only those received by them.

Furthermore, it does not deal with information about the fees received from third parties and transferred in full to the client for the service of investment advice on an independent basis or the service of portfolio management[9].
For each of the topics covered, the following are set out in turn:

- a recap of the European doctrine on the topics covered, and with which the AMF requires service providers to comply;

- and the positions and recommendations of the AMF.

1 INTERNAL ORGANISATION AND PROCEDURES FOR IDENTIFICATION AND CLASSIFICATION

The texts resulting from the transposition of the MiFID II Directive differentiate between the following fees and inducements that are provided or paid to the ISP:

a) Fees, commissions or non-monetary benefits received from the client or from the person acting on behalf of the client in connection with the provision of an investment or ancillary service to the client[10] (referred to in this Position-Recommendation as "**fees received from the client**")

As under the MiFID I Directive, fees received from the client are not subject to any particular constraints under the inducements and fees regime.

b) Payments or benefits which enable or are necessary for the provision of investment services[11] (referred to in this Position-Recommendation as "**proper fees**").

The regime governing these fees has not changed under the MiFID II Directive.

c) The fees, commissions or non-monetary benefits received from third parties in connection with the provision of an investment or ancillary service to the client[12] (referred to in this Position-Recommendation as "**fees received from third parties**").

The fees received by a service provider in connection with the service of investment advice, where this is provided on an independent basis or together with the service of portfolio management[13] may not be retained by the service provider and must therefore be returned in full to the client[14].

Apart from these two instances, in order to comply with the inducements and fees regime, such fees received from third parties must comply, as under the MiFID I Directive, with the conditions (i) of enhancing the quality of the service in question, (ii) of not prejudicing compliance with the service provider's obligation to act honestly, fairly and professionally in accordance with the best interests of the client and (iii) of informing the client of the existence, nature, amount or, where this amount cannot be established, the calculation method for such fees received from third parties before the service is provided to the client[15].

d) Acceptable minor non-monetary benefits which are likely to improve the service provided to the client and which are of such a size and nature that they cannot be regarded as preventing the service provider from complying

[9] Article 314-18 of the AMF General Regulation.
[10] Referred to in Article L. 533-12-4 (1) of the Monetary and Financial Code.
[11] Referred to in Article L. 533-12-4 (3) of the Monetary and Financial Code.
[12] Referred to in Article L. 533-12-4 (1) of the Monetary and Financial Code.
[13] Referred to in Articles L. 533-12-2 and L. 533-12-3 of the Monetary and Financial Code.
[14] With the exception of the acceptable minor non-monetary benefits referred to in Article L. 533-12-2 and L. 533-12-3 of the Monetary and Financial Code.
[15] Under Article L. 533-12-4 of the Monetary and Financial Code, and Article 325-16 of the AMF General Regulation.

with their duty to act in accordance with the best interests of the client[16].

Position

Although the definition of acceptable minor non-monetary benefits is given only in the provisions specific to investment advice provided on an independent basis and to portfolio management, the AMF considers that the minor non-monetary benefits referred to in Article 314-17 of the AMF General Regulation (which covers investment advice provided on a non-independent basis and other investment services) fall under the same definition.

1.1 Internal identification and classification frameworks and procedures

1.1.1 European doctrine

The CESR report of 19 April 2010 recommends:

a) defining and formalising the frameworks and procedures for identifying and subsequently classifying the types of inducements and fees, taking into account the nature, scale, complexity and diversity of the investment services provided and the activities carried out;

b) that this identification and classification work take place before the fee or benefit is paid;

c) that the implementation of these frameworks and procedures be traceable and that the ISP's records enable the competent authorities to ascertain that it has complied with its obligations in this area[17];

d) that the adoption of these frameworks and procedures involve the compliance function and executive management;

e) that compliance controls be put in place to verify compliance with the rules on inducements and fees;

f) that the compliance analysis of inducements and fees be included in the scope of the compliance reports prepared for executive management[18];

g) that there be a monitoring framework and procedure in place to regularly verify that the inducements and fees initially identified and classified continue to comply with the provisions of the fees, commissions or non-monetary benefits regime;

h) that significant changes to inducements or fees be identified and, when this happens, the latter be re-evaluated to ensure they are compliant;

i) that any new commercial relationship with a third party giving rise to inducements and fees be subject to an appropriate assessment, to verify its compliance with regard to the applicable rules, and be classified.

In addition, this CESR report, along with the earlier recommendations published in May 2007, clarifies that inducements or fees paid or provided within a group fall within the scope of the inducements and fees regime.

Position

The AMF considers that ISPs should apply these practices encouraged by CESR, and which remain relevant under the texts resulting from MiFID II. The AMF further considers that financial investment advisers should apply them, with the exception of paragraphs d) to f).

[16] Referred to in Articles L. 533-12-2 and L. 533-12-3 of the Monetary and Financial Code, and Article 314-17 of the AMF General Regulation.
[17] See also Article 314-16 of the AMF General Regulation.
[18] These reports are provided for in Article 25 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

1.1.2 AMF positions

It should be noted that, pursuant to Article 22 (1) of Commission Delegated Regulation No. 2017/565 of 25 April 2016, each ISP must have policies, procedures and measures to detect any risk of failure to comply with their professional obligations, and in particular with the provisions of Articles 314-13 to 314-17 of the AMF General Regulation, and to minimise such risks. However, these policies, procedures and measures must "take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business."

Position

Solely carrying out monitoring on an accounting level to ensure that the ISP receives all the fees due to it under the agreements it has signed cannot be considered a sufficient mechanism in the light of Article 22 (1) of Delegated Regulation 2017/565. Similarly, controls aimed solely at ensuring that such fees are received in full are not considered sufficient in the light of the definition of the control task assigned to the compliance function as set out in paragraph 2 of the said article and worded as follows: "to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations".

With regard to traceability, it should also be noted that Article L. 533-10 II 6° of the Monetary and Financial Code provides that: "Investment services providers must (...) Keep a record of any service they provide (...), enabling the Autorité des Marchés Financiers to monitor service providers' compliance with all their professional obligations, including with regard to their potential clients (...)". In addition, Article 314-16 of the AMF General Regulation stipulates that: "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" in particular 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". As a result, each ISP must be able to provide the AMF with evidence that it has exhaustively identified and classified the various types of inducements or fees received, paid or provided in connection with the provision of an investment or ancillary service, and that it has analysed their compliance with the provisions of Articles 314-13 to 314-17 of the AMF General Regulation, including evidence of their having enhanced the quality of the service provided to the client.

1.2 Categorisation of fees

1.2.1 European doctrine

In its recommendations of May 2007, and more specifically in points 2 and 3 thereof, CESR clarifies both the rationale and the scope of application of the inducements and fees regime, as follows:

- in certain circumstances, the firm that receives or pays inducements or fees is placed in a situation where it would not be acting in compliance with its general obligation to act in the best interests of its clients;

- further, the inducements and fees regime applies to all inducements or fees received or paid by the firm;

- the inducements and fees regime sets out the conditions that fees or benefits must meet to be authorised[19]. In so doing, it applies to all inducements or fees paid or received in connection with the provision of an investment or ancillary service;

- this is why the inducements and fees regime should not be considered as applying only to inducements and fees designed to influence the actions of a firm;

- nevertheless, regulators and supervisors will give priority attention to facts and situations in which there is an increased possibility of harm to clients' interests.

[19] With the exception of the services of investment advice provided on an independent basis and portfolio management on behalf of third parties since 3 January 2018.

In its report of 19 April 2010, CESR considers that the work of identifying and classifying benefits and fees should cover all the categories set out in the inducements and fees regime. It also calls for the classification work to include verification of the compliance of these inducements and fees in the light of all the conditions set out in the inducements and fees regime.

With regard to the fees received from clients, in its May 2007 report CESR indicates that the fact that the economic cost of a commission, fee or non-monetary benefit is borne by the client is not sufficient to consider that it falls into this category.

CESR further points out that the proper fees category is limited in nature. It indicates that it is likely that all the items falling into this category will be items paid by the firm to the third party rather than those received by it, as it is hard for the latter to satisfy the condition of not giving rise to conflicts with the obligation to act in the best interests of the client.

It cites as an example of proper fees the fees necessary for the provision of order execution services that do not, by their very nature, create a conflict with the client's interest (such as those paid by an investment firm for access to and trading on an execution venue). Another example is certain types of fees relating to account keeping, such as those paid by an investment firm in connection with a securities transaction (general meeting of shareholders, dividend distribution, etc.). Other items necessary for the provision of the service to the client, according to CESR, also constitute proper fees, such as payments to data providers and consultants for services in connection with providing investment or ancillary services (for example, when the intermediary receives tax advice on an investment that they are going to handle).

It also clarifies the inclusion[20], in the scope of the fees received from third parties, of the underwriting fees[21] received by the ISPs that provide this service and also sell the financial instruments in question to the investors, while indicating that in the absence of this sale, the fees will generally fall under fees received from the client. Additionally, it holds up as a good practice[22] the disclosure of the payments received from financial instrument issuers in the context of share issues on the primary market, or for structured or over-the-counter products.

Position

The AMF considers that service providers should apply these practices encouraged by CESR.

1.2.2 AMF positions and recommendations

Firstly, it is recalled that the last paragraph of Article 314-17 of the AMF General Regulation states that: "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".

Position

Where the distribution channels involve several professionals, the obligations towards the end client imposed on service providers under the inducements and fees regime apply only to those professionals who provide the client with an investment or ancillary service[23].

The remuneration paid to employees does not fall within the scope of the inducements or fees regime. It does, however, fall within the scope of the provisions on conflicts of interest set out in L. 533-12-5 and L. 541-8-1 3° of the Monetary and Financial Code, Articles 33 and 34 of Delegated Regulation (EU) 2017/565, and Articles 325-28 and 325-29 of the AMF General Regulation.

Gifts provided by third parties to the service provider's employees in connection with an investment service or ancillary service provided to the client, with the exception of minor non-monetary benefits, are covered by the inducements and fees regime, and in particular by Article 314-14 2° of the AMF General Regulation, which provides that the only those benefits and

[20] See paragraph 47 of the April 2010 report.
[21] "Underwriting fees".
[22] Good and poor practices - disclosure of information in summary form, Good practices, Example 1.
[23] Without prejudice to the possibility of investment services being provided between the various professionals in the distribution chain.

fees that do "not directly benefit the recipient service provider, its shareholders or employees without tangible benefit to the relevant client" are legitimate[24].

Position

The AMF's position in terms of the fees received for "placing"[25] operations on financial securities is as follows:

- **In certain situations, the ISP that provides the issuer or transferor of financial securities with an underwriting, guaranteed placing or non-guaranteed placing service[26] does not itself distribute these securities to the end investors, but entrusts this task to a third party[27]. In this case, the ISP is not obliged to comply with the rules on inducements and fees vis-à-vis these investors.**

  The third-party service provider is responsible for ensuring compliance with these obligations (transparency, enhancing the quality of the service provided, etc.) in respect of the commissions it receives from the ISP. In this case, the fee received by the ISP solely for the placing service provided to the issuer will be considered as a fee received from the client. The fee received by the third party service provider, on the other hand, will be subject to the rules governing fees received from third parties.

- **Where the ISP that provides the issuer or transferor of financial securities with an underwriting, guaranteed placing or non-guaranteed placing service itself distributes the securities to the end investors, whether professional or retail, the fees received from the issuer or transferor for the placing service provided, in the event that these are variable depending on the amount of securities actually distributed by this ISP, will be considered as being "in connection with the provision" of an investment service to investors and, as such, will be subject to the rules governing fees received from third parties. It is recalled that the provisions on inducements and fees are designed to "enable clients to understand how their service provider may be encouraged to act in a particular way".**

  However, if the fees received from the issuer or transferor of financial instruments does not vary according to the number of securities actually distributed by the ISP[28], they will not be subject to the rules governing fees received from third parties. In such cases, pursuant to the provisions of Article L. 533-10 II (3) of the Monetary and Financial Code[29], investors must, however, be clearly informed of the conflict of interest arising from the provision of a service to the issuer and the receipt of a fee for it before the investment service is provided.

  The above developments apply to situations in which an ISP provides its investor client with an investment service, especially investment advice on a non-independent basis, in connection with a placing service provided to the issuer or transferor and for which it receives fees from the latter.

[24] This is without prejudice to the fact that such gifts may, in certain cases and in compliance with the applicable provisions, be considered as minor non-monetary benefits.

[25] Within the meaning of Article D. 321-1 (6), (7) and (8) of the Monetary and Financial Code.

[26] Within the meaning of point 1 of AMF Position 2012-08 Placement services and marketing of financial instruments: "Each of these three investment services [non-guaranteed placement, guaranteed placement and underwriting] is thus characterised by the presence of two cumulative conditions: one is the existence of a service rendered to an issuer or vendor of financial instruments; and the other is the act of finding subscribers or purchasers, either directly or indirectly. The latter condition is the result of the former, in that subscribers or purchasers are only sought for the requirements of the service rendered to the issuer or the vendor. The service rendered to the issuer or vendor is thus central and is a prerequisite to the provision of one of these three investment placement services".

[27] See point 4 of AMF Position 2012-08 Placement services and marketing of financial instruments.

[28] Thus, when the fee paid by the issuer or vendor is fixed *ex ante*, even if it is expressed as a percentage of the amount to be placed, and does not vary according to the amount actually distributed by the ISP, this fee is not proportional.

[29] Investment services providers other than portfolio asset management companies: (...)

3° Maintain and apply effective organisational and administrative arrangements to take all reasonable measures to prevent conflicts of interest from adversely affecting the interests of their clients. To this end, they shall take all appropriate measures to identify and avoid, or manage conflicts of interest. These conflicts of interest are those which arise between, on the one hand, the service providers themselves, persons under their authority or acting on their behalf, or any other person directly or indirectly linked to them by a control relationship, and, on the other, their clients, or between two clients, in the course of providing any investment or ancillary service or combination of these services, including those arising from the receipt of benefits from third parties or from the fee structure and other inducement structures specific to the service providers.

Where these measures are not sufficient to ensure, with reasonable certainty, that the risk of harm to clients' interests will be avoided, service providers shall clearly inform clients, before acting on their behalf, of the general nature and source of such conflicts of interest and of the measures taken to mitigate such risks. This information shall be provided on a durable medium and shall include sufficient details, taking into account the nature of the client, to enable the client to make an informed decision about the service in the context of which the conflict of interest arises;

In this respect, it should be recalled that the service of investment advice may also be provided at the client's request. It should also be noted that the receipt of fees directly from the client is not a prerequisite for a service provision to be classified as investment advice.

- **Fees arising from underwriting activities, which are comprised of the difference between the final sale price to investors, and the issue or sale price, and which are the corollary of a market risk borne by the service provider, are not fees "paid by a third party". As such, they are not subject to the rules governing fees received from third parties, except in the specific case of so-called re-offer transactions: in this case, a service provider buys securities from a service provider that it has pre-placed and receives a fee in the form of a price difference (re-offer) agreed in advance with the issuer or vendor. Because it is fixed and known in advance, this fee is similar to the fee paid by a third party.**

Position

With regard to the distribution of savings products (UCITSs, AIFs and structured debt securities issued by credit institutions or investment firms in the European Economic Area) that do not give rise to the provision of a placing service to their issuer or manufacturer[30] and/or 'tailor-made' derivatives (over-the-counter financial instruments), the AMF's approach is the same as that for placement:

- **The fees paid by the issuers or manufacturers of financial instruments to their service providers are considered to be in connection with the investment service provided to the client, and as such are subject to the rules governing fees received from third parties.**

- **Remuneration in the form of the price difference, which reflects the market risk borne by the service provider, is not considered to be a fee received from issuers or manufacturers and is therefore not subject to the inducements and fees regime.**

- **On the other hand, remuneration paid in the form of a fixed price difference that is agreed in advance with the issuer or manufacturer (re-offer transactions) and which is not the corollary of a market risk will be considered to be a fee received from said issuer or manufacturer and will be subject to the rules governing fees received from third parties.**

Position

The AMF's position on the transfer to the service provider by the client's Custody account-keeper of the entry or exit fees owing to the service provider (by retaining them) is as follows:

- **in the context of the provision of a service of reception and transmission of orders on behalf of third parties, the service provider is entitled to consider that these fees are paid to it by a third party (the Custody account-keeper) acting on behalf of the client (and therefore that these fees fall under the category of fees paid by the client) provided that:**
  - **said fees have been agreed with the client, as well as their level, the event giving rise to them and the fact that they will be paid to it by the Custody account-keeper; and**
  - **the agreement between the client and the Custody account-keeper authorises the latter to deduct these charges from the client's account.**

  Provided that they have no impact on the Custody account-keeper's income statement, these UCITS or AIF entry fees do not fall within the scope of the provisions of Article 314-13 of the AMF General Regulation.
- **in the context of the provision of service of investment advice (on an independent basis or otherwise) and of portfolio management on behalf of third parties:**
  - **the same conditions apply;**
  - **the AMF also recalls the requirement applicable to ISPs and financial investment advisers set out,**

[30] Within the meaning of AMF Position 2012-08 3° on placement services and marketing of financial instruments.

respectively, in Article 54 (11) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 and in Article 325-8 X of the AMF General Regulation, relating to switches in investment (notably through the sale of a financial instrument and the purchase of another financial instrument), whereby service providers *"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"*[31];

Position

The AMF considers that the transfer by Custody account-keeper to ISPs providing the service of portfolio management of a part of the custody fees does not, for these ISPs, fall into the category of appropriate fees that enable or are necessary for the provision of investment services. In fact, as mentioned in paragraph 45 of the CESR document: Inducements: Report on good and poor practices of 19 April 2010, *"it is likely that all items considered as eligible for the proper fees regime must be paid by the investment firm to the third party. Otherwise, it would be difficult for the nature of the payment (received by the investment firm), to meet the requirement of the absence of any potential conflict with the best interests of the client".*

The AMF's position on such fees is as follows.

Position

As regards the transfer of a part of the custody fees, the AMF notes that, in some cases, a distributor that provides the service of portfolio management, or of reception and transmission of orders, takes responsibility, either jointly or alone on behalf of the Custody account-keeper, for the due diligence vis-à-vis clients that would otherwise have to be carried out by the Custody account-keeper, such as, know-your-client checks and updating this information, or the forwarding to the client of the information the Custody account-keeper is required to provide (transaction confirmations and portfolio statements).

Thus, the position adopted in this regard is that, under certain conditions, the transfer by the Custody account-keeper to the distributor would be a sharing of the fees received in respect of Custody account-keeper in line with the breakdown of the associated tasks. These conditions are as follows: the level, allocation and frequency of the custody fees between the Custody account-keeper and the distributor must have been agreed with the client prior to the provision of the services, and the nature of the tasks carried out by the distributor on behalf of the Custody account-keeper must be detailed and specified in an agreement between the two institutions, as well as in the corresponding invoicing.

This payment to the ISP providing the service of portfolio management on behalf of third parties must not, furthermore, offset the ban on receiving turnover fees, or on any other commission or fees referred to in Article 314-30 of the AMF General Regulation.

Under these conditions, the transfer of the Custody account-keeper's custody fees to the distributor would fall under the category of fees received from a third party on behalf of the client.

Position

When the Custody account-keeper and the ISP providing the service of portfolio management are one and the same entity or belong to the same group, the Custody account-keeper must be able to justify the total fee structure in place, whether or not part of the fee is paid to the ISP providing the service of portfolio management. To this end, the fee structure in place should be similar to that used for the financial instruments acquired by clients outside the scope of the provision of the service of portfolio management (notably in the context of execution services). Any difference in fee structure should be duly justified and the fee structure should not be significantly higher (the AMF considers that a significantly higher fee structure can never be justified). The Custody account-keeper must provide the AMF with justifications for this fee structure.

A similar position applies irrespective of the investment or ancillary service provided as a bundle with the service of portfolio management.

[31] See also paragraphs 90 *et seq.* of ESMA's Guidelines on certain aspects of the MiFID II suitability requirements (ESMA35-43-1163).

Position

Finally, the services in kind (staff training, marketing materials, technical assistance, etc.) provided by financial instrument manufacturers to their service providers may, under certain conditions referred to in Article 314-20 5° of the AMF General Regulation, constitute acceptable minor non-monetary benefits. These conditions are as follows:

- **Their purpose must be to enhance the quality of the service provided to a client; and**
- **They not must, having regard to the total level of benefits provided by one entity or group of entities, be of a scale and nature that are likely to impair compliance with the service provider's duty to act in the best interest of the client.**

The AMF considers that training provided and financed by a financial instrument manufacturer under inappropriate conditions (luxurious trips or seminars, invitations to activities unrelated to the needs of the training course, etc.) will generally be considered not to meet the requisite condition of absence of conflicts of interest and enhancement of the quality of the service provided.

The AMF points out that, pursuant to Article 314-30 of the AMF General Regulation and in line with the timeline it stipulates, ISPs providing the service of portfolio management will no longer be authorised to collect turnover fees or any other commissions or fees when carrying out transactions on financial instruments.

The AMF also recalls the requirement applicable to ISPs providing the service of portfolio management set out in Article 54 (11) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 in relation to switching investments (notably through the sale of a financial instrument and the purchase of another financial instrument), whereby service providers *"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"*[32].

For Custody account-keepers, these charges, which form an integral part of the fees payable by the client for the service provided, will be brought to the client's attention, pursuant to Article 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, and the agreement concluded with the client must authorise them to deduct these charges from the client's account.

Application of regulatory provisions and AMF positions on entry and exit fees, and turnover fees

Taking into account the positions set out above, as well as the Article 314-30 of the AMF General Regulation[33], the table below summarises the regime applicable to transfer fees, and entry and exit fees and how this will change over time depending on the nature of the investment service provided by the person receiving these fees.

[32] See also paragraphs 90 *et seq.* of ESMA's Guidelines on certain aspects of the MiFID II suitability requirements (ESMA35-43-1163).

[33] "II. An investment services provider providing the service of portfolio management on behalf of third parties, including where it manages the portfolio by delegation, may no longer receive turnover fees or any other commission or fees in respect of transactions in financial instruments:
- from 1 January 2027 for management mandates entered into on or after that date;
- from 1 January 2028 for management mandates entered into before 1 January 2027."

	Services of reception and transmission of orders, and of investment advice	**Service of portfolio management**
Ban for group CIUs	No	Applicable
Ban for other financial instruments	No	Applicable
Conditions relating to the agreement between the client and the service provider and the agreement between the client and the custodian-account keeper	Applicable	N/A (ban on receiving turnover fees, or any other commissions or fees for transactions in financial instruments)

2 DISCLOSURE TO CLIENTS OF PAYMENTS OR BENEFITS RECEIVED FROM THIRD PARTIES PURSUANT TO ARTICLE 314-17 OF THE AMF GENERAL REGULATION

Article 314-17 of the AMF General Regulation specifies the information that the service provider must provide to the client about the payments or benefits received from a third party, except in the case of the service of investment advice on an independent basis or of portfolio management.

This article provides that where more firms are involved in a distribution channel, each service provider providing an investment or ancillary service shall comply with its disclosure obligations to its own clients.

Information to be provided *ex ante*.

Prior to the provision of the investment or ancillary service in question, the service provider provides the client with the following information:

- information on the existence, nature and amount[34] of the payment or benefit in question, bearing in mind that:
    - minor non-monetary benefits can be described generically;
    - other non-monetary benefits received in connection with the investment service provided to the client must be valued;
    - this information must be disclosed separately.
- where the service provider is unable to determine the exact amount of the payment or benefit received, information on the calculation method used to determine this amount. Once the service has been provided, the service provider will provide the client with information about the exact amount of the payment or benefit received.

Information to be provided *ex post*

At least once a year and for as long as the service provider receives ongoing fees, commissions or benefits in connection with

[34] An AMF Enforcement Committee decision of 21 September 2012 (SAN-2012-15) found that information about the possibility of an ISP paying fees is not sufficient. The information given to the client stated only that the ISP was "likely to receive rebates in respect of certain investments made on behalf of its clients".

the provision of an investment or ancillary service to a client, the service provider provides the client with individualised information on the actual amount of the payment(s) or benefit(s) received.

Information about minor non-monetary benefits can, however, be described generically.

In addition, when applying these *ex-ante* and *ex-post* information obligations, the service provider must take account of the provisions on costs and related charges set out in the regulations[35].

These provisions stipulate that the service provider must aggregate all the costs and related charges associated with the provision of one or more investment/ancillary service(s)[36]. In this respect, payments from third parties received by the service provider in connection with the service provided to a client must be disclosed separately, and the aggregated costs and charges are added up and expressed as an absolute amount and as a percentage. In other words, the information relating to benefits and fees, where their cost is borne by the client, now appears clearly in the information required under the provisions on related costs and charges[37].

2.1 European doctrine

The CESR report of 19 April 2010 clarifies the following points:

- Generic information (such as "the investment services provider may or will receive benefits or fees") is insufficient;

- the information provided must enable the recipient client to relate the information received to the investment or ancillary service being provided to them, as well to the specific type of financial instrument to which it pertains. It must enable the client to understand how the firm is encouraged to act in a particular way;

- this information must be communicated before the service is provided in order that the client can make an informed investment decision;

- ad hoc payments must be clearly distinguished from recurring payments;

- the information on the level of rebates expressed as a percentage (when the amount of the inducements or fees cannot be established) must clearly indicate the base for this percentage;

- the communication of fragmented information in different documents transmitted at different times in the relationship with the client does not enable the client to form a clear idea of the fee or benefit: cross-references between different documents should be avoided;

- the information may vary according to the category of client: it should be borne in mind that the application of the principle laid down by the inducements and fees regime whereby all information communicated to clients must be correct, clear and not misleading, may lead to the transmission of different information for different client categories.

Position

The AMF considers that service providers should apply the practices encouraged by CESR.

[35] Article D. 533-15 3° of the Monetary and Financial Code and Article 50 of Commission Delegated Regulation (EU) 2014/565 of 25 April 2016.
[36] Article 50 (2) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.
[37] See question and answer 13 in section 9 of ESMA's Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics (ESMA35-43-349).

2.2 AMF positions and recommendations

2.2.1 Timing of the disclosure

Position

Pursuant to Article 314-17 of the AMF General Regulation, the disclosure of information relating to the fees received from third parties is required prior to the provision of each investment or ancillary service.
However, the AMF considers that service providers may dispense with this disclosure if the service is of the same nature and concerns the same type of financial instrument as a service provided shortly beforehand. Recital 69 of Commission Delegated Regulation (EU) 2017/565 provides that:
"in cases where an investment firm is required to provide information to a client before the provision of a service, each transaction in respect of the same type of financial instrument should not be considered as the provision of a new or different service."

As regards the fees received from third parties in connection with the provision of a service of investment advice on a non-independent basis, the event giving rise to the receipt of such fees is the execution of the transaction through the provision of the service of reception and transmission of orders, or the execution of orders on behalf of third parties (by the advisor or by a third party). Consequently, it is one of these investment services, and not the advice service, that must be considered, within the meaning of Article L. 533-12-4 of the Monetary and Financial Code[38], as the "service in question" for the provision of information to the client, which must take place before this service is provided. Further, the AMF considers that the fees to be received should be disclosed at the time the service of investment advice is provided, which will be prior to the provision of reception and transmission of order, or execution service on behalf of third parties.

In addition, the communication of information via trade confirmations is not sufficient to meet the requirements of the aforementioned Article 314-17, which stipulates that the client must be informed before the service is provided.

2.2.2 Information quality and support

Article 314-17 of the AMF General Regulation stipulates that information on fees must be 'provided' to clients and not simply made available to them.

Fees received from third parties when distributing savings products[39]

Recommendation

In the interests of clarity in the information provided to the client, and insofar as the disclosure obligations in terms of inducements and fees must take account of the disclosure obligations in terms of related costs and charges, the AMF recommends that information on the fees received from third parties be provided to clients in the same document as the one informing them of the related costs and charges that they will incur[40].

When a service provider provides the client with a service of investment advice, the AMF recommends that the document on related costs and charges, including fees received from third parties, be sent to the client at the same time as the suitability statement.

When a service provider provides the client with a service of investment advice, information about the fees received from

[38] Or the 'relevant service' for the Financial investment advisers referred to in Article 325-16 of the AMF General Regulation.
[39] Within the meaning of AMF Position DOC 2012-08 §3° on placement services and marketing of financial instruments: UCITSs, AIFs or structured debt securities issued by credit institutions or investment firms in the European Economic Area.
[40] It should be noted that, pursuant to Article 50.2 of Delegated Regulation (EU) 2017/565 and Article 325-14 of the AMF General Regulation, service providers are now required, as part of their obligations to disclose costs and fees, to provide clients with information on the payments received from third parties. The AMF therefore recommends that this disclosure should also be used to satisfy the obligation to provide information to the client on any fees received from third parties.

third parties may be included in the suitability statement.

Position

The use of the Internet to communicate information to clients on costs and related charges, including information on benefits and fees, is subject to the conditions set forth in question and answer 3 of section 15 of the document: Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics.

With regard to orders for financial instruments placed by telephone, ISPs must abide by the provisions of Article D. 533-15 I 3° of the Monetary and Financial Code.

Fees received from third parties in respect of financial instrument placement operations, excluding savings products[41]

Position

The AMF considers that the fees received from third parties for placing financial instruments other than savings products (hereinafter "placement fees") are not borne by the client to whom the ISP provides the services of investment advice, reception and transmission of orders on behalf of third parties, or the execution of orders on behalf of third parties. Therefore, information about these placement fees is not disclosed to the client under Article 50.2 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016. However, it is communicated to the client under the inducements and fees regime.

If the service provided consists of simply receiving and transmitting orders or executing orders on behalf of third parties:

- **for retail clients, the information on the amount or the calculation method must be communicated to these clients separately from the information required in respect of the related costs and charges;**
- **for professional clients within the meaning of Article L. 533-16 of the Monetary and Financial Code, the AMF considers, in accordance with recital 86[42] of the MiFID II Directive, that ISPs may disclose information on the placement fees received from third parties to professional clients in the form of ranges that are of a reasonable size so as not to impair due investor information. For these clients, where the placement is the subject of the publication of a prospectus pursuant to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017, the AMF considers that the issuer disseminating the prospectus relating to the transaction must satisfy the obligation to disclose fees to investors.**

If the service provided consists of investment advice, as the ISP can influence the decision taken by the investor, the exact amount or method for calculating the placement fees must be disclosed to professional or retail clients.

2.2.3 In summary:

Whether or not there is a prospectus	Investment services	Retail clients	Professional clients
Placement of financial instruments without prospectus	**RTO or execution of orders on behalf of third-parties**	Exact amount (or calculation method)	Ranges can be used
	Investment advice	Exact amount (or calculation method)	Exact amount (or calculation method)
Placement of financial Instruments with prospectus	**RTO or execution of orders on behalf of third-parties**	Exact amount (or calculation method)	Dissemination via prospectus
	Investment advice	Exact amount (or calculation method)	Exact amount (or calculation method)

[41] Within the meaning of AMF Position DOC 2012-08 §3° on placement services and marketing of financial instruments: UCITSs, AIFs or structured debt securities issued by credit institutions or investment firms in the European Economic Area.

[42] "(...) Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties) (....).".

3 ENHANCING THE QUALITY OF CLIENT SERVICE AND THE ABILITY TO ACT IN THE CLIENT'S BEST INTERESTS

Article 314-14 of the AMF General Regulation sets out three cumulative conditions that must be met for a fee, commission or non-monetary benefit to be deemed to be designed to enhance the quality of the investment or ancillary service:

1) An additional or higher level service is provided to the client, proportional to the inducement received;

2) It does not directly benefit the service provider, one or more of its shareholders or any member of its staff, without the client deriving any tangible benefit;

3) In the case of an inducement received on an ongoing basis, this is justified by the ongoing provision of a service to the client.

The provision of the service to the client must not be altered by the fee, commission or non-monetary benefit received.

In addition, Article 314-16 of the AMF General Regulation requires service providers to keep supporting documents that demonstrate that any fees, commissions or non-monetary benefits they have received are designed to enhance the quality of the service provided to the client, i.e.:

- an internal list of all fees, commissions or non-monetary benefits received from third parties in connection with the provision of investment or ancillary services; and

- by recording the manner in which any fees, commissions or non-monetary benefits received, or which it is designed to enhance the quality of the services provided to the relevant clients and the steps taken to comply with its obligation to act honestly, fairly and professionally in the best interests of clients.

3.1 European doctrine

The CESR report of 19 April 2010 sets out the following main points relating to the marketing and indirect distribution of financial instruments:

- for transactions involving the distribution of structured products, it clarifies that fees based on discounts (the service provider buys the financial instrument from the manufacturer at a lower price than that at which it will resell it to the client) must be considered as a benefit and examined in the light of the fees received from third parties.
- It clarifies that the argument whereby the payment covers costs that would otherwise be charged to the client is not sufficient to justify enhancing the service provided to the client, since it is likely that the client will end up paying the costs regardless of whether they are charged directly or indirectly.

Finally, the CESR recommendation report of May 2007, in example VIII of paragraph 3, states that it is unlikely that a service provider that has entered into an agreement with a manufacturer of financial instruments that includes a clause making the payment of fees largely dependent on achieving a volume target will comply with its obligation to act in the best interests of clients.

Position

The AMF considers that service providers should apply the practices encouraged by CESR.

3.2 AMF positions and recommendations

3.2.1 General considerations

As indicated at the beginning of paragraph 3 of this document, four conditions are necessary for fees to be deemed to be designed to enhance the quality of the service in question, including the condition that the fees must be justified by the provision of an additional or higher level service, proportional to the inducement received.

An additional or higher level of service may be considered to be provided where[43]:

- Non-independent investment advice is provided on a wide range of suitable financial instruments and access is provided to this wide range of suitable financial instruments, including where this advice or access relates to an appropriate number of financial instruments from third-party manufacturers having no close links with the investment service provider;

- Non-independent investment advice is provided, combined with either: (i) an offer to the client, at least on an annual basis, to assess the suitability of the financial instruments in which the client has invested; or (ii), another ongoing service that is likely to be of value to the client, such as advice about the suggested optimal allocation of the client's assets;

- Access is provided, 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: (i) either the provision of added-value tools, such as objective information tools helping the client to take investment decisions or enabling the client to monitor, model and adjust the range of financial instruments in which they have invested; or (ii) the provision of periodic reports of the performance and costs and charges associated with the financial instruments.

Position

The AMF will take a restrictive view of the notion of additional service provided to the client to justify the receipt of such fees. In particular, it will ensure that the provision of these services is effective and, where appropriate, regular, that the client is informed of them, that they are at least proportionate to the fees received and that they go beyond strictly regulatory obligations.

The AMF also considers that, if the reverse is not possible, it is possible to justify the legitimacy of fees received on a one-off basis by an ongoing enhancement to the service.

3.2.2 Enhancing client service and the obligation to act in the best interests of clients when providing investment advice (on a non-independent basis)

Fees received on an ongoing basis

It should be recalled that, in order to be legitimate, such ongoing fees must be accompanied by an enhancement to the service over the same period, as mentioned in Article 314-14 3° of the AMF General Regulation.

As a result, fees for advice services can only be received on an ongoing basis if this advice is accompanied by:

- Either an offer to the client, at least on an annual basis, to assess the ongoing suitability of the financial instruments in which the client has invested[44];
- Or another ongoing service that is likely to be of value to the client, such as advice about the suggested optimal allocation of the client's assets[45].

[43] Article 314-14, 1°, a) to c) of the AMF General Regulation.
[44] Article 314-14, 1°, b) of the AMF General Regulation.
[45] Article 314-14, 1°, c) of the AMF General Regulation.

However, it should be recalled that, pursuant to Article 54.11 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 for ISPs and Article 325-8 X of the AMF General Regulation for Financial investment advisers, when providing investment advice or 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, investment firms 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.

Position

In the case of funds for which redemptions are blocked[46] for several years, there is no scope for long-term advice on the ongoing suitability of the product to the client's situation.

Consequently, such fees can only be considered legitimate if they can be construed as instalments of a single fee in connection with the advice service originally provided, which means that they must be presented to the client in this way[47]. Otherwise, such fees must comply with the criteria of enhancing the quality of the advice service set out in Article 314-14 of the AMF General Regulation.

Inducement fees with threshold effects

Inducement fees with a threshold effect are fees that rise significantly when a certain volume of purchases or subscriptions is reached, and which therefore do not rise linearly based on the volume purchased/subscribed.

Position

Like the CESR, the AMF considers that a service provider providing investment advice to investors that enters into a distribution agreement with an issuer or manufacturer of products that includes an inducement fee with a threshold effect will be presumed not to be acting in the best interests of its clients and will have to be able to prove that it acted in the best interests of its clients.

3.2.3 Enhancing client service for the reception and transmission, and execution of orders on behalf of third parties in terms of fees received on an ongoing basis

It should be recalled that, in order to be legitimate, such ongoing fees received as a result of a service of reception and transmission of orders or of execution of orders on behalf of third parties must be accompanied by an enhancement in the service over the same period, as mentioned in Article 314-14 3° of the AMF General Regulation.

Position

Accordingly, the AMF considers that, in connection with the provision of an order execution service on behalf of a third party, or the reception and transmission of orders not preceded by an advice service, the receipt of fees from issuers or manufacturers of financial instruments accrued by their intermediaries for the entire time that they are held by their clients is authorised in only three instances[48]:

- **In the case of a client who usually receives a service of investment advice from their ISP and who is offered an ongoing service to ensure the suitability of their investments across their entire portfolio, regardless of how the financial instruments in the portfolio were acquired: the AMF considers that the ISP's practice of receiving recurring fees over time for financial instruments that the client has acquired via the service of reception and transmission of orders or order execution on behalf of third parties (e.g. via the ISP's automatic order routing platform) is legitimate when the ISP meets the conditions set out in paragraph 1 of section 3.2.2 of this**

[46] For example, for tax reasons.

[47] Except in the case of private equity funds, for which the fee items must be presented in accordance with the terms set out in the Monetary and Financial Code.

[48] In the first two instances, the ISP has, in accordance with Article 314-14 of the AMF General Regulation, during the service of reception and transmission of orders or execution of orders on behalf of third parties, provided 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 financial instruments from third-party manufacturers having no close links with the ISP.

document.

- **In addition, if an ISP receives ongoing fees for providing a service of reception and transmission of orders or of execution of orders, this is considered legitimate if it is accompanied by the ongoing provision of one or more value-added tools, such as an objective information tool to help clients to make investment decisions or to enable them to monitor, evaluate and adapt the range of financial instruments in which they have invested, or the provision of periodic reports on the performance of financial instruments and the related costs and charges.**

Finally, the ongoing receipt of fees may be considered to be the payment in instalments of a single fee due in respect of a single service provided at the time of the transmission or execution of a client's order, provided that it has been presented to the client in this way.

It should be noted, however, that when the investment period is not known in advance (e.g. for UCITSs or AIFs that are neither structured funds nor private equity funds), it will be impossible to calculate a total fee.

Furthermore, when this period is particularly long, this fee, because of its high level (in particular when it exceeds the maximum amount stipulated for entry fees in the contractual documentation for the product marketed), can hardly be considered as meeting the condition of enhancing the service provided to the client, without any additional service being provided to the latter.

The AMF's position in such cases is that such fees should be treated as follows:

- **the cumulative sum of the ongoing fees, up to the maximum entry fee, must be presented as payment in instalments of the fee for a one-off service[49];**
- **the share of the fees that exceeds this amount is only considered legitimate under the conditions set out in the first paragraph of section 3.2.2 of this document.**

Recommendation

The AMF also recommends that when a client enters into a relationship with an ISP that provides a service of reception and transmission of orders or of order execution on behalf of a third party, the ISP should inform the client whether the one-off service provided as part of these services is supplemented by a service extending over the term of the investment and giving rise to a fee over that same term.

[49] Except in the case of private equity funds, for which the fee items must be presented in accordance with the terms set out in the Monetary and Financial Code.