

AMF position n° 2013-02
Collecting “know your client” information

Reference texts: articles 314-44, 314-46, 314-47, 314-51 to 314-53 and 325-7 of the AMF General Regulation

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1. Context

In their work, professionals often use questionnaires to collect the information required to assess whether the investment service proposed to the client is suitable or appropriate.

An analysis of the practices observed on the market and the complaints received has led the ACP and the AMF to clarify their expectations in terms of collecting “know your client” information.

This work concluded with an AMF Position intended for investment services providers and financial investment advisers, hereinafter referred to as “Providers”, and an ACP Recommendation destined for insurance organisations and insurance intermediaries. This work was carried out in close collaboration with the Commission Nationale Informatique et Libertés in order to guarantee compliance with the principles of the amended Act of 6 January, hereinafter referred to as the “Data Protection Act”.

2. Reminder of the regulatory framework

2.1. General provisions

The obligations of Providers as regards knowledge of clients and the information collected vary according to the investment service provided, the financial investment advice¹ given, hereinafter “Advice”, and, as the case may be, the categorisation of the clients.

2.1.1. For investment advice and portfolio management services² as well as Advice activity³

¹ As regards financial investment advisers, this Position applies when they provide an advice activity referred to in article L. 541-1 of the Monetary and Financial Code, including investment advice, advice pertaining to the provision of investment services, and advice pertaining to the execution of transactions in miscellaneous property.

² Cf. article L. 533-13 I of the Monetary and Financial Code.

³ Cf. article L. 541-8-1 4° of the Monetary and Financial Code.

- a) Common provisions that apply to investment services Providers and financial investment advisers

Providers shall enquire about the clients' knowledge and experience of investment as well as their financial situation and their investment objectives.

- b) Special provisions that apply to investment services Providers

Investment services Providers shall ensure⁴ that:

- The service matches the clients' investment objectives;
- The clients are financially capable of coping with any risk related to the recommended transaction or the portfolio management service provided, which shall be compatible with their investment objectives;
- The clients possess the necessary experience and knowledge to understand the risks inherent to the recommended transaction or the portfolio management service provided.

Where the investment advice service is provided to professional clients as defined in article L.533-16 of the Monetary and Financial Code, investment services Providers may assume that these clients are financially capable of coping with any risk related to the investment envisioned.⁵

2.1.2. For other investment services

Investment services Providers shall collect information from their clients about these clients' knowledge and experience of investment⁶ in order to ensure that the clients possess a sufficient level of experience and knowledge to understand the risks inherent to the service provided or the product proposed.

2.1.3 .For all investment services

Investment services Providers are entitled to assume that as regards the instruments, transactions and services for which the client is categorised as a professional, said client possesses the necessary experience and knowledge to understand the risks inherent to these instruments, transactions and services.⁷

2.1.4. Provisions specific to order-execution only services⁸

For order reception and transmission services and order execution services on behalf of third parties, investment services Providers may provide this service without collecting the information referred to in 2.1.2 when the following conditions are fulfilled:

- the service relates to non-complex financial instruments;
- the service is provided at the initiative of the client, most notably potential clients;
- the investment services Provider has informed the client beforehand that it is not compelled to assess the suitability of the service or the financial instrument;
- the investment services Provider has taken all reasonable measures to prevent conflicts of interest from harming clients' interests.

2.2. Provisions relating to the information collection methods

2.2.1. On the collection and updating of information by investment services Providers

⁴ Cf. article 314-44 of the AMF General Regulation.

⁵ Cf. article 314-45 of the AMF General Regulation.

⁶ Cf. article L. 533-13 II of the Monetary and Financial Code.

⁷ Cf. article 314-54 of the AMF General Regulation.

⁸ Cf. articles L. 533-13 III of the Monetary and Financial Code and 314-55 to 314-57 of the AMF General Regulation.

Investment services Providers shall collect all the information required for them to know their clients in order to provide them with a suitable or appropriate investment service.⁹

2.2.2. On the traceability of the due diligence performed by investment services Providers and financial investment advisers.

Investment services Providers shall keep a record of any service that they provide and of any transaction that they carry out in order to allow the Autorité des Marchés Financiers to verify compliance with the obligations incumbent upon them, in particular their obligations towards clients, most notably potential clients.¹⁰

In a written report, financial investment advisers shall formalise the advice given to the client, justifying the various proposals, their advantages and the risks associated with them.¹¹

2.3. Provisions relating to the content of information to be collected by investment services Providers

An investment services Provider shall be entitled to rely on the information provided by its clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.¹²

2.3.1. For portfolio management or investment advice services

Investment services Providers shall collect information, where such information is relevant, on the client's financial situation, including the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments,¹³ as well as information on the client's investment objectives, including 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.¹⁴

2.3.2. For all investment services¹⁵

To assess a retail client's level of knowledge and experience required to understand the risks inherent to the financial instrument or investment service proposed, investment services Providers shall collect the following information:

- the types of service, transaction and financial instrument with which the client is familiar;
- the nature, quantity, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
- the client's level of education, and profession or relevant professional experience.

2.4. Provisions relating to the use of information

For portfolio management or investment advice services and Advice activities,¹⁶ Providers shall refrain from providing the service or the activity if the client does not provide the information required by the regulations.¹⁷

For other investment services, when the client does not supply the information required or when, on the basis of the information supplied, the investment services Provider considers that the investment service

⁹ Cf. article L. 533-13 of the Monetary and Financial Code.

¹⁰ Cf. article L. 533-10 (5) of the Monetary and Financial Code.

¹¹ Cf. article 325-7 of the AMF General Regulation.

¹² Cf. article 314-53 of the AMF General Regulation.

¹³ Cf. article 314-46 of the AMF General Regulation.

¹⁴ Cf. article 314-47 of the AMF General Regulation.

¹⁵ Cf. article 314-51 of the AMF General Regulation.

¹⁶ Cf. article L.541-1 I of the Monetary and Financial Code.

¹⁷ Cf. articles L. 533-13 I and L. 541-8-1 4° of the Monetary and Financial Code.

or product proposed or requested by the client is not suitable, it shall warn the client about the unsuitability of the service or the financial instrument.

2.5. Provisions relating to the Data Protection Act

Providers are reminded that they must respect the principle of relevance and proportionality of the data collected to the end purpose of processing in order to guarantee compliance with the principles of the amended Data Protection Act of 6 January 1978. These principles – which fall within the scope of competence of the Commission Nationale de l'Informatique et des Libertés (CNIL) – shall be analysed in light of the nature of the products subscribed, the transactions made and the characteristics of the client. The persons whose data are collected must be informed in a clear and understandable manner of:

- the identity of the person responsible for processing;
- the purpose of the processing, avoiding excessively generic wording;
- the mandatory or optional nature of responses and the consequences of failure to respond;
- the recipients of this information;
- their rights to access, opposition and rectification;
- where applicable, the existence of data transfers outside the European Union, ensuring compliance with the rules governing such transfers.

3. Scope of the Position

This Position applies to financial investment advisers when they dispense the Advice referred to in 4^o of I of article L. 541-8-1 of the Monetary and Financial Code, and to investment services Providers¹⁸ when they provide retail clients with services of investment advice, portfolio management, order reception and transmission, and order execution on behalf of third parties.¹⁹ Where relevant, it may however also apply to professional clients.²⁰

The Position applies to the provision of investment services whether they are provided with the physical presence of the parties or by distance selling.

4. Positions

Providers shall apply these positions keeping in mind the nature of their activity, the investment services or Advice activity that they provide, and the clientele to whom they are addressed or are likely to be addressed.²¹

In order to provide a suitable and appropriate service to their clients²² and in accordance with the provisions of articles L. 533-13 and L. 541-8-1 of the Monetary and Financial Code, Providers shall:

4.1. On the collection methods and traceability of information

¹⁸ Cf. article 314-1 of the AMF General Regulation.

¹⁹ The Position does not apply in cases of order-execution only, under the conditions of article L. 533-13 III of the Monetary and Financial Code.

²⁰ Providers are reminded that even when they provide an investment advice or portfolio management service to a professional client, investment services Providers must ensure that the transaction that they envision recommending or the portfolio management service that they intend to provide meets the investment objectives of the client.

²¹ For portfolio management and investment advice services provided by an investment services Provider, it is reminded that AMF Position n° 2012-13, which integrates the ESMA orientations regarding MiFID requirements pertaining to the suitability of financial products and services proposed to clients (ESMA/2012/387), specifies which elements should be taken into account in order to apply the principle of proportionality.

²² In the Position this term covers both existing and potential clients (prospects).

4.1.1. Inform the client that the data is collected in his own interest and with the purpose of providing a suitable or appropriate investment service or Advice.

4.1.2. Collect information from the client by means of clear, precise and understandable questions. An appropriate decision tree, for example in the form of a logical question structure, may enable proportionate questioning.

4.1.3. With a view to improving the quality of information collected:

- Draw the client’s attention to the fact that the provision of complete, truthful information is an indispensable condition for the provision of high-quality Advice or investment services;
- Help the client throughout the assessment process, providing him with the information required for him to understand the questions and their purpose;
- Ask the client to make any necessary changes when the information supplied is manifestly inconsistent or incomplete.

4.1.4. Ensure that the Advice or the investment service is suitable or appropriate to the client’s profile by updating, as and where necessary, the information collected:

- When the investment service or the Advice is provided to the client;
- When the Provider maintains a regular relationship with the client, by:
 - drawing the client’s attention to the fact that a change in his situation may influence the investment service or the Advice provided and must therefore be indicated to the Provider;
 - setting up procedures to determine the information that should be periodically updated. The frequency of updating of information collected may be variable and may depend, for example, on the client’s risk profile.

4.1.5. Guarantee the traceability of the information collected, by:

- Checking that the information collection document has been given to the client, or made available to him, for example in cases of distance selling;
- Ensuring that the collected information is kept and made accessible under the conditions referred to in article 313-49 of the AMF General Regulation.

4.2. On the content of information²³

4.2.1. Where relevant, collect information about the client’s family situation, asset position and professional situation. The relevance of the information should be analysed in light of the service to be provided and the characteristics of the client.

This information could include:

- Regarding the family situation, information on:
 - The client’s identity, tax residence, the matrimonial regime of the spouses, the identity and number of dependants (e.g. child, protected adult) and their age;
 - As the case may be, the spouse/civil partner (e.g. identity, age).
- Regarding the asset position, information on:
 - the client’s income (e.g. nature, amount and regularity) and, as the case may be, that of his spouse/civil partner;
 - the client’s current and, where applicable, future expenditure as well as factors likely to influence it;
 - the saving capacity;
 - the composition, liquidity and availability of assets, and the indicative value of assets (e.g. main residence, second home, saving and investment products);

²³ Providers are reminded that when they use the information, they must comply with the principles laid down by the amended Data Protection Act n° 78-17 of 6 January 1978.

- financial expenses (e.g. mortgage repayments);
- the proportion of assets that the client wishes to invest.
- Regarding the professional situation, information on:
 - The professional situation of the client and of his spouse/civil partner;
 - Where applicable, the projected date of retirement.

4.2.2 .Enquire about the client's knowledge and experience of financial matters by means of questions:

- That do not unduly demand self-assessment by the client;
- That distinguish theoretical knowledge from the holding of saving and investment products;
- That rely, inter alia, on:
 - information about present or past holding of saving or investment products and their management mode (e.g. direct management, discretionary management, advisory management);
 - the existence of previous gains or losses on the saving and investment products, and the client's reaction to these gains or losses.

4.2.3 .Determine the client's investment objectives and time horizon by:

- Proposing a list of investment objectives (e.g. preparing for retirement, transmission of capital upon death, constitution of precautionary savings, long-, medium- or short-term investment), explaining them and offering the possibility of prioritising them;
- Asking the client about the projected duration of the investment.

4.2.4 .Objectively determine the client's profile in light of the yield expected by the client and the risk level he is prepared to support, by:

- Drawing his attention to the fact that a high yield is likely to entail a high risk, where necessary using various investment evolution scenarios (yield, possibility of quantifying what the client is prepared to lose or gain, likelihood of occurrence, etc.);
- Explaining in a precise and understandable manner the various profiles and, where applicable, the technical and/or complex terms;
- For the most part, using questions related to the investment.

4.3. On the use of information

4.3.1. Identify and manage manifestly inconsistent and/or incomplete answers given by the client when the information is first collected and when it is updated, by:

- Setting up alert mechanisms during the information collection;
- Where necessary, drawing the client's attention to this situation (e.g. information about his financial situation, investment objectives and knowledge and experience of financial matters).

4.3.2. Use all the necessary information collected in order to determine the client's profile, in particular and where relevant, the risk that he is prepared to support.

4.3.3. Ensure that the persons in charge of assisting clients during the provision of an investment service or advice:

- Have sufficient knowledge to use the information collection tools and/or documents;
- When they are unable to provide an investment advice service, avoid guiding the client towards an order reception and transmission service or an order execution service on

behalf of third parties. If an investment services Provider does however provide the order reception and transmission service or order execution service, it must be able to demonstrate to the control authorities the reasons for this, explaining why the advice service was not provided further to the due diligence carried out, and to demonstrate that the order reception and transmission service or order execution service was provided at the request of the client.

4.4. On the resources and procedures put in place

4.4.1 .Implement the necessary resources and procedures to assure compliance with the client protection rules on collecting “know your client” information.

4.4.2. For the entities required to have an internal control system:

- In the internal control system, take due consideration of the methods for collection, management and use of the information supplied by the client as well as operation of the tool used;
- Be able to justify to the AMF the resources and procedures put in place for collecting “know your client” information.