




# AFG Recommendations for Distribution Agreements

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AFG Recommendations for Distribution Agreements  
Prepared by the Standing Committee on Infrastructure and Services Providers,  
in conjunction with Eurogroup  
AFG - 31 rue de Miromesnil 75008 Paris, France  
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Introduction	p.4
Recommendation 1: List of information that may be included in placement/distribution agreements	p.8
Recommendation 2: Standard technical annexes for placement/distribution agreements	p.13
Annex A: Distributor scope of activity and reference(s)	p.14
Annex B: List of funds	p.15
Annex C: Fee schedule/remuneration	p.16
Annex D: Entry/exit fee schedule	p.18
Annex E: Process for placing and/or centralising subscription/redemption instructions	p.19

# Introduction

## What is the purpose of these recommendations?

The French Asset Management Association (AFG - Association Française de la Gestion Financière) and the French Association of Securities Professionals (AFTI - Association Française des Professionnels des Titres) made **20 recommendations**<sup>1</sup> to facilitate and improve the distribution and marketing of investment funds. These recommendations form part of a study led by Eurogroup on **fund distribution in France and Europe**.

The recommendations are designed to help:

- > **scale up and standardise the subscription/redemption (S/R) process** for fund units;
- > identify and reinforce the **sharing of responsibilities** between producers and distributors;
- > enhance the **information provided to investors**;
- > promote the **direct placement of orders for** fund units, at both national and European levels.

Among the measures selected to achieve these goals, **Recommendation 18** called for a **“framework” distribution agreement** to make it easier for fund producers and distributors to prepare such agreements.

The AFG therefore set up a working group that is now publishing its recommendations in this industry guide.

## Goals

Users should be able to use the framework to **quickly locate the standardised information** (which will facilitate integration in management systems) required to automatically:

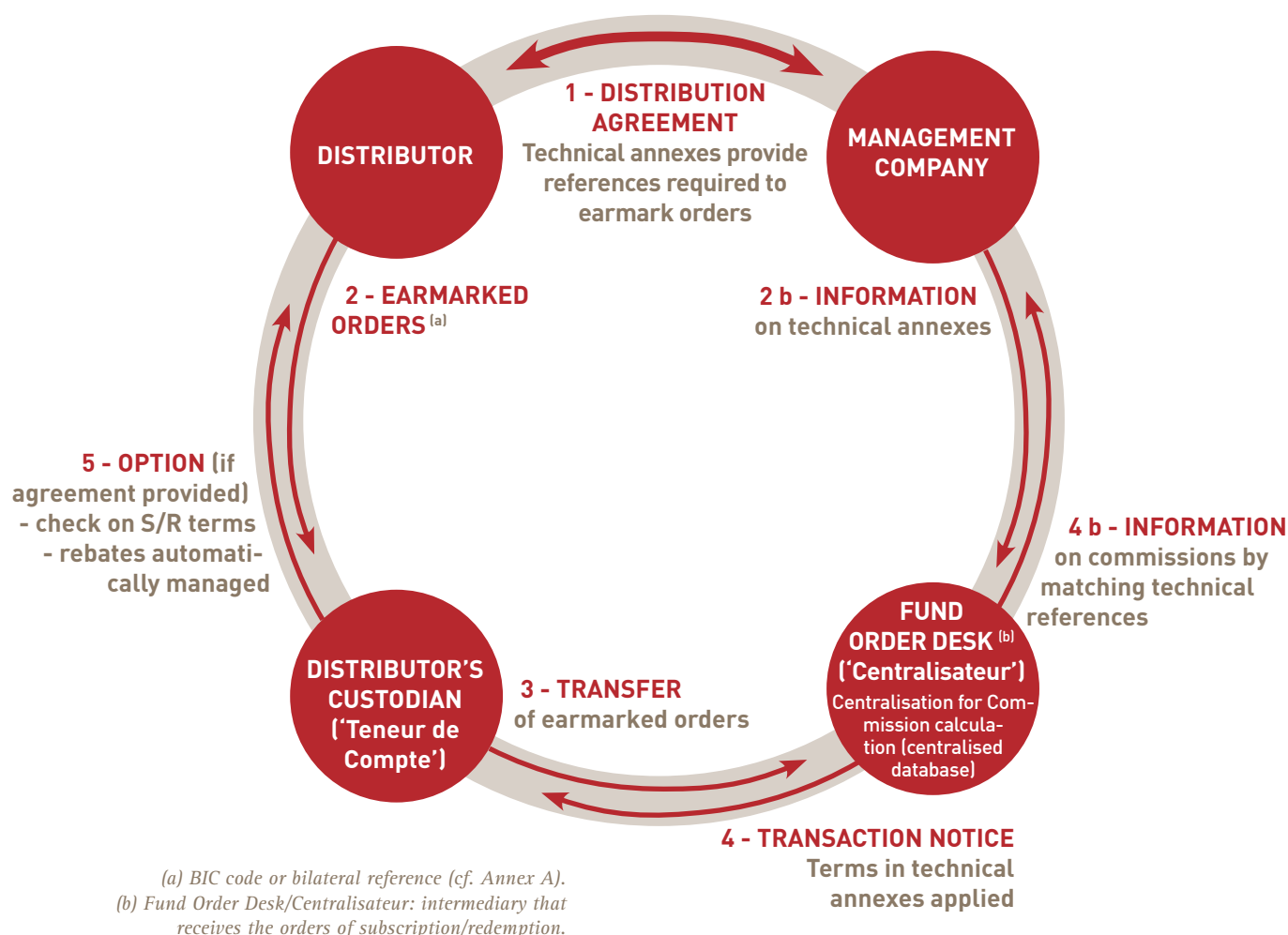
- **route S/R orders** through order earmarking<sup>2</sup>;
- calculate the **remuneration paid to distributors** through the structured management of distribution terms and conditions.

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1. The recommendations are posted on our website at [www.afg.asso.fr](http://www.afg.asso.fr).

2. 'Order earmarking' is a way of marking the orders in a distinctive way to identify the distributors. This is what we call 'marquage des ordres' in French.

## Illustration in the context of conventional distribution arrangements



## What makes up the framework?

The framework comprises a standard base and modular components, including:

**1. An itemised list of information that may be included in distribution agreements.**

This list reviews the main clauses that typically appear in this kind of agreement. It is by no means exhaustive or mandatory. Management company must adapt it to suit their needs, while complying with legal and regulatory requirements.

**2. BUT ALSO, and more importantly, a set of standard technical annexes for inclusion in distribution agreements.**

These annexes, which are provided as an illustration, include the minimum information needed to automate the order placement process (*cf. order earmarking, etc.*).

AFG was guided in its approach by the following ideas:

- **AFG is not issuing an opinion** on the standard order of clauses in distribution agreements.
- The examples are designed to provide a **toolbox** to help management companies and their partners, notably by highlighting key points that it is advisable to include in this type of agreement.
- This document is designed to provide **assistance in understanding and negotiating this type of agreement.**

## Who are these recommendations intended for?

- > First and foremost, **management companies** drawing up distribution agreements:
  - who will benefit from an enhanced S/R process for fund units;
  - and receive regular information on stocks and flows of fund units, and on distributor commissions.
- > Their marketing partners, **i.e. distributors**:
  - who will find it easier to place orders;
  - and be able to establish a system for processing or checking their commissions, either directly or potentially via their custodian.
- > **Fund Order Desk/ Centralisateur** :
  - who will find that order earmarking facilitates the order response process (application of entry/exit fees);
  - and be able to more easily centralise marketing terms and conditions and so automatically calculate commissions on behalf of client management companies.
- > **Distributors' custodians**:
  - who will find that order earmarking makes it easier to automate order placement;
  - and might, under optimal arrangements, be able to offer customers automated management and monitoring of commissions owing.

## **Notice**

This version of the recommendations does not include changes that may be required under the new regulations in force since 1 November 2007 as a result of the Markets in Financial Instruments Directive (MiFID).

The working group will meet again to consider how to incorporate these regulatory changes, particularly those arising from the Delmas Marsalet Report and MiFID, which may affect the current legal framework.

**However, these modifications do not affect the technical annexes presented below.**

## **Recommendation 1:**

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### List of information that **may** be included in placement/distribution agreements

AFG RECOMMENDS that placement/distribution agreements include clauses covering the following information:

#### **1. Description of the parties**

This information is used to ensure that the other party is duly authorised to carry on its business and has the necessary authority to sign the agreement. Such information might include administrative authorisations, corporate name, company registration number and address. In particular, this section is used to make sure that the relevant party has distributor status.

#### **2. Introduction**

Overview of the activities and purpose of the parties, notably the type of customer served by the distributor.

This section is non-mandatory. In the event of problems, it can be used to help understand the intentions of the producer and of the distributor (example: the fact that the management company has agreed to work with the distributor because it is part of the same group).

#### **3. Purpose**

Make it clear that the contract is strictly a placement/distribution agreement and should under no circumstances be treated as another type of contract, particularly a solicitation agreement.

This clause sets out the overall nature of the agreement, i.e. that one party will place/distribute funds managed by the other party. (It may be that the management company provides only financial management services for the funds, in which case the clause should stipulate that the management company is authorised to market the funds and to appoint sub-distributors.)

For example, this section could detail:

- Authorised distribution channels, such as bank branch (or bank agencies) networks, personal financial planners, data transmission systems, platforms, etc.
- Geographical sectors (e.g. France/international)



- Types of funds (where applicable)
- List of affected funds (or include this in the annexes). It is advisable to detail the procedures for amending the list (new funds, fund mergers, etc.)

The clause may also include authorisation for the distributor to distribute directly or indirectly via sub-distributors or other intermediaries.

This clause could also indicate that both parties are authorised, under the regulations applicable to them, to satisfy the requirements set out in the agreement and that they undertake to comply with these regulations.

#### **4. Internal reference**

Order earmarking reference used to identify the distributor.

See *Annex A*.

#### **5. Confidentiality (clause not mandatory)**

Ideally, the agreement should state that the parties undertake not to divulge or use the information arising from the agreement or from their contractual relations for purposes other than those directly linked to implementation of the agreement.

In the event of sub-contracting arrangements:

- Include provision for sending such information as is strictly necessary to the sub-contractor.
- Include provision for imposing confidentiality requirements on sub-contractors. In this case, it is advisable to reiterate in the liability clause (*see below*) that the distributor will be liable if one of its sub-contractors breaches the confidentiality requirements.

-> The scope of this clause will vary and should be adapted to suit the situation.

It should be stipulated, however, that this clause is not effective against disclosure regulations, notably in the case of inspections or as part of fee transparency requirements.

#### **6. Exclusivity (strategic decision by the company)**

This clause indicates whether the distributor has exclusive rights (general, over a given geographical area, etc.). If the clause is not included, exclusivity will not be assumed. In the event of a dispute, a judge will seek to interpret the agreement by considering the information contained in the document, and particularly in the introduction section, if it presents the parties' intentions sufficiently clearly.

#### **7. Territoriality**

Used to stipulate the territorial scope of the agreement.

This clause is especially useful because it shows whether foreign distribution is permitted, which means the distributor is required to abide by the applicable marketing rules in the target country.

## **8. Entire agreement – severability (clause not mandatory)**

These provisions are optional. Their content may be freely determined and should be adjusted to reflect the situation. They are designed to provide guidance in interpreting the agreement. Their main function is to ensure that the agreement is upheld or rendered null and void if one of the clauses becomes unenforceable.

## **9. Assignment (clause not mandatory)**

This clause is not to be confused with the appointment of a sub-distributor by the distributor.

If the agreement does not contain a clause that specifically authorises assignment, neither party may assign the agreement without the other's assent. In this case, the agreement will have to be amended.

Special case: if one of the parties, such as the distributor, is taken over by another entity, the agreement is automatically assigned to the acquiring company (unless it is specifically stated that the agreement has been entered into *intuitu personae*).

To avoid problems, it is sensible to include a provision that:

- prohibits outright the agreement from being assigned (including in the event of a merger);
- or requires the other party to give prior approval before the agreement is assigned (including in the event of a merger);
- or requires the other party to receive prior notification before the agreement is assigned (including in the event of a merger).

In the event that the agreement is terminated owing to assignment, it is advisable to determine the procedures for maintaining remuneration arrangements, if appropriate.

## **10. Remuneration and billing** (See Annex C)

Indicate which VAT regime (i.e. exemption) applies according to current regulations. Under French regulations, placement commissions are VAT exempt, and the provider does not have a taxation option (DLF Instruction 3L-3-05).

## **11. Process for placing and/or centralising orders** (See Annex E)

## **12. Obligations of the parties**

In particular, this section should provide details, for illustration purposes, of the obligations placed upon:

a) Management company:

- supply funds that are regulation-compliant,
  - supply regulatory information, such as the prospectus, brochures, an annual report, notification of fund changes, and product specifications if these are required under the regulations. Include a reference to the annex that details the arrangements for supplying such information.
-

## b) Distributor:

- distribute products in accordance with regulations:
  - In France: statutory requirements, AMF General Regulation, codes of business conduct covering compliance with know-your-customer requirements, compliance with prospectus targets;
  - Fighting money laundering and terrorist financing: indicate that the distributor has made a contractual commitment to abide by anti-laundering rules even if not so required under applicable regulations;
  - Comply with rules on *late trading and market timing*;
  - Comply with local rules depending on the territorial scope of distribution;
  - Provide unitholders with regulatory information from the management company, such as brochures or notification of product changes.
- include specific obligations for the distributor (particularly disclosure procedures) in the event that sub-distributors and other intermediaries are used or if the product is distributed by specific means, such as by internet or via a platform.

IF NECESSARY, stipulate that the distributor is liable for the actions of its sub-distributors.

## c) Advertising literature

- Choose whether to make provision for the distributor to create and use its own advertising literature.
- If the distributor is allowed to prepare advertising literature:
  - > Choose whether to include a requirement for the producer to approve the literature if so requested by the distributor.

**NOTE:** If the producer approves advertising literature prepared by the distributor, then the producer naturally shares liability with the distributor for the content of such documents.

Conversely, if the distributor prepares advertising literature that is not approved by the management company, then the company may not be held liable.

It may be worth referring to the charter of best practice for marketing financial products (*currently at the drafting stage*).

## 13. Liability

Indicate that, given the distributor's special obligations, notably as regards disclosure requirements, in the event that one or more sub-distributors and/or other intermediaries are involved, the distributor is liable for the actions of sub-distributors and other intermediaries.

Similarly, if the distributor uses platforms or a website for which it is not itself responsible, it may be advisable to stipulate that the distributor is required to ensure that such platforms or websites satisfy the obligations contained in the distribution agreement.

Options for providing notification about a new sub-distributor:

- either by simply notifying the management company (principle and procedure);
- or through prior approval by the management company (principle and procedures).

#### **14. Term / Entry into force**

- Such agreements will normally be open-ended.
- Provide for the option of terminating the agreement in the event that one party is negligent.
- Provide for appropriate notice depending on the situation (none or reduced in the event of negligence).

#### **15. Revisions**

Specify whether the agreement and its annexes are subject to the same revision procedures.

#### **16. Procedures for terminating and suspending the agreement**

As applicable, detail separate procedures to follow:

- When the agreement comes to an end;
- In the event of a dispute.

Details could, for example, be provided for these areas:

- contractual obligations of the parties during the termination period:
  - notice,
  - compensation,
  - continuity of remuneration arrangements.

#### **17. Address for service (clause not mandatory)**

Used to indicate the address to which notifications should be sent. This clause is useful particularly if the address is different from the one given in the description of the parties.

#### **18. Applicable law and jurisdiction**

Stipulates which jurisdiction is competent and which law applies in the event of a dispute.

## **Recommendation 2:**

### Standard technical annexes for placement/distribution agreements

AFG recommends that placement/distribution agreements include the following annexes, which form an integral part of such agreements:

- A. Distributor scope of activity and reference(s)**
- B. List of funds**
- C. Fee schedule/remuneration**
- D. Entry/exit fee schedule**
- E. Process for placing and/or centralising subscription/redemption (S/R) instructions**
- F. List of required documents (e.g. AUM statements)**
- G. Procedures for obtaining product information**

However, AFG proposes standardising only Annexes A to E, given the nature of these documents (*see below*).

## Annex A

### Distributor scope of activity and reference(s)

This annex provides the earmarking reference that distributors must supply when sending S/R instructions. The reference should be one of the data items included in the S/R instructions routed to the Fund Order Desk/Centralisateur.

This reference may be:

- The distributor's BIC1 Code  
and/or
- One or more bilateral references agreed on by the distributor and the management company.

If the agreement provides for several references, Annex A should specify the scope of activity that corresponds to each reference.

Example:

- Reference 1: S/R instructions (units of account)
- Reference 2: S/R instructions (proprietary trading)<sup>3</sup>
- Reference 3: S/R instructions (management mandates)
- ...

#### Sample Annex A

Annex A  
DISTRIBUTOR SCOPE OF ACTIVITY AND REFERENCE(S)

**SAMPLE**

Earmarking reference	Corresponding scope of activity
Bilateral reference and/or BIC 1 Code	S/R instructions (source)
...	...

<sup>3</sup> Transactions for own account

## **Annex B**

### **List of funds**

Make sure at least the following information is provided for each product:

- ISIN code
- Entry fees and minimum threshold
- Exit fees and minimum threshold
- Remuneration

Annex B sets out the fees and remuneration arrangements for each product. If the agreement provides for several earmarking references (*see Annex A*), it is recommended that a separate list be provided for each earmarking reference, so that the arrangements for each reference can be specified.

The annex also details the procedures for updating the table.

#### **Sample Annex B**

Annex B

LIST OF FUNDS COVERED BY THE AGREEMENT

*(Earmarking reference)*

**SAMPLE**

<b>ISIN code</b>	<b>Name</b>	<b>Remuneration schedule code (a)</b>	<b>Entry fee schedule code (b)</b>	<b>Exit fee schedule code (b)</b>	<b>Billing</b>
FR.....	Prospectus title	Schedule code A	Schedule code 1	Schedule code 2	Monthly
.....	.....	.....	.....	.....	.....

**(a)** : cf. Annex C

**(b)** : cf. Annex D

## **Annex C**

### **Fee schedule/remuneration**

#### **Definition of remuneration**

“Remuneration” refers to the financial consideration owed by the management company to the distributor for placement/distribution services.

The components of remuneration do not need to be detailed:

- Itemising them might be over-restrictive
- Entry fee waivers and/or rebates are clearly not a component of remuneration – they come within the scope of order placement procedures.

#### **Information to include in Annex C**

The following information should be provided for each set of remuneration arrangements described in Annex B:

- Distribution/placement commission (calculation formula and example)
- Assessment base (calculation formula and example)
- How often it is calculated
- Rate
- Minimum threshold
- Charges and taxes (gross or not)
- Applicable currency and exchange rate benchmark, if applicable.

Billing and payment terms should also be detailed for each set of remuneration arrangements.

#### **Billing procedures**

To clarify the billing procedures, the following should be included and described:

- Frequency
- Payment period
- Required supporting documentation
- Process (e.g.: calculation by distributor, validation by management company, bill issued by distributor).



**Payment procedures**

To clarify the payment procedures, the following should be included and described:

- Payment threshold (amount above which the commission will be paid)
- Frequency
- Payment period and penalties
- Currency
- Settlement method
- Specific requirements in the event of termination<sup>4</sup>: calculation formula and time requirements.

**Sample Annex C**

Annex C  
 REMUNERATION SCHEDULE CODES PROVIDED FOR BY THE AGREEMENT

**SAMPLE**

NB: Specific remuneration formulas (where foreign currencies are used, for example) may require the following table to be extended.

Remuneration schedule code	Assessment base	Basic rate	Calculation	Calculation frequency	Payment frequency	Payment threshold (if any)
Code A	<i>or formula</i>	x%	<i>formula</i>	...	...	...
Code B	...	y%	...			
Code C		z%				
.....		...				

<sup>4</sup> Termination procedures are a separate issue/covered in a separate clause.

## **ANNEX D**

### **Entry/exit fee schedules**

#### **Sample Annex D**

ANNEX D

ENTRY/EXIT FEE SCHEDULE CODES PROVIDED FOR BY THE AGREEMENT

**SAMPLE**

NB: Format to be adapted to suit the number of thresholds specified in the prospectus.

Entry/exit fee schedule code	Entry fees		Exit fees	
	Rate (a)	Threshold(s)	Rate (a)	Payment Threshold(s)
Code 1	x%	/ subscription amount	x'%	/ subscription amount
Code 2	y%	.....	y'%	.....
Code 3	z%	.....	z'%	
.....	....	.....	....	

**(a)** If possible, show the rate as a percentage of the entry fee indicated in the prospectus. For example a rate of "60%" means that if the prospectus entry fee is 3%, the distributor will pay 60% of that, or 1.8%.

## **ANNEX E**

### **Process for placing and/or centralising subscription/redemption (S/R) instructions**

NB: The industry rules for placing S/R instructions are the reference in this regard and must be followed by all participants. The prospectus will describe the procedures for placing S/R instructions.

#### **Sample Annex E**

#### ANNEX E PLACING AND/OR CENTRALISING S/R INSTRUCTIONS

AFG recommends that Annex E should specify:

- On which days S/R instructions may be transmitted
- Cut-off times (prospectus or contractual requirements)
- Authorised routing systems
- Contact details of the person in charge at the entity to which the instructions are sent:
  - phone number
  - fax number
  - email address
  - name(s)
- Order confirmation requirements
- Information that should be included in each S/R instruction, such as (illustration):
  - the order reference number, i.e. the unique reference number assigned to the order by the customer
  - earmarking reference
  - fund code (subscription or redemption)
  - the amount or number of units covered by the order
  - side of the market

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