

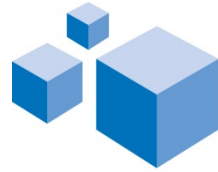
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Distribution Agreements

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Points to consider

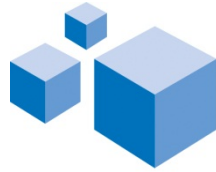
October 2015



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WHO APPOINTS THE DISTRIBUTOR?

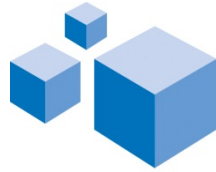
- Fund/AIF
- Fund manager/AIFM
- Does the fund manager/AIFM have power to appoint the distributor?



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AIFMD

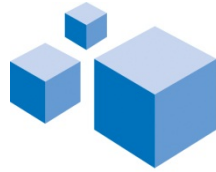
- AIFMD definition of marketing: “direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with a registered office in the Union”
- Note that this includes indirect marketing
- AIFMD and prior disclosure to potential investors
- AIFMD notification or authorisation



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DOCUMENTATION

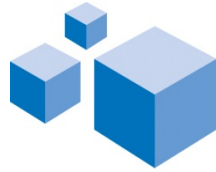
- The appointing party must supply accurate and up-to-date documents and information
- The distributor may only use documents and information provided to it
- The distributor cannot accept subscriptions or bind the fund



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REGULATION

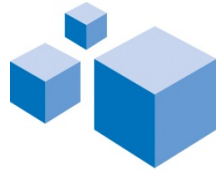
- Each party must comply with all relevant rules, regulation and legislation which are relevant to it
- Differing rules may apply in different jurisdictions
- Consider FCA rules
- Consider AIFMD or UCITS requirements
- Consider relevance of MiFID



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TO WHOM IS THE PRODUCT BEING SOLD?

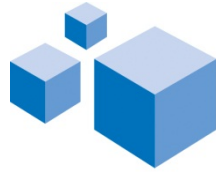
- Are retail customers allowed or prohibited?
- Ensure that the recipients of marketing information will be correctly identified and categorised
- Identity those whom the distributor may approach
- Is the appointment of the distributor exclusive?
- Set out who may approach which potential investor



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WHAT PRODUCT IS BEING SOLD?

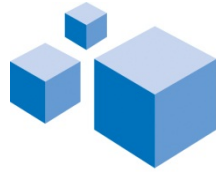
- Identify and document clearly what product is being distributed
- Ensure the party appointing the distributor is able to make the appointment
- Make it clear that the distributor cannot accept or refuse subscriptions or redemptions
- Make it clear who can accept or refuse subscriptions or redemptions and why
- Note the relevant powers of any third party eg fund directors



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CAPACITY

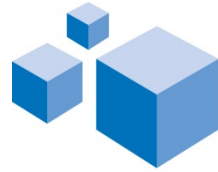
- Will a set amount of capacity be granted to the distributor?
- Consider whether any time limit(s) be set on capacity
- Set out how capacity may be met and/or re-offered if redemptions are made
- Be clear whether fee levels are linked to capacity being used up



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FEES

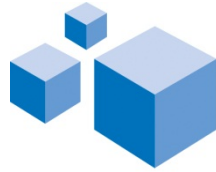
- Fees are often linked to success
- Fees may be agreed on a ratcheting basis
- Will fees be paid on an investment which is redeemed, then made again?
- Set out the timing of fee payments
- When will fees cease to be paid?



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LIABILITY

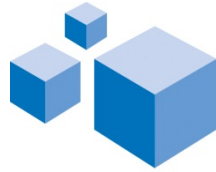
- Consider the distributor approaching a person who is not suitable to invest
- Consider the supply of incorrect information by the appointing party



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CONFIDENTIALITY

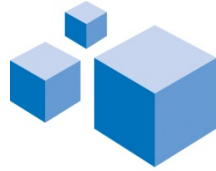
- Information on the investment strategy may become known to the distributor in detail and should be protected
- Client information should remain confidential
- Information exchanged to enable the parties to complete their duties should not be used for any other purpose
- Some matters should remain confidential after termination



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SIDE LETTERS AND FAVOURABLE TERMS

- Are more favourable terms being granted by the fund or the fund manager?
- Do they have the power to grant these terms?
- All shareholders in them same class of share may need to be treated equally under the laws of the fund's jurisdiction
- The FCA has rules on side letters
- Consider AIFMD and side letters



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