

French [Routes & Opportunities] Garden

**FROG report of the Autorité des Marchés Financiers
and the Association Française de la Gestion financière**



FROG

**French Routes and
Opportunities Garden**

“7 extra reasons to go through Paris”

**CHOOSE > BENEFIT > DEVELOP > APPLY > MANAGE >
OFFER > DECIDE**

Innovations for players > Innovations for investors

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| Innovation for players | |
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FROG: a new phase in the development of French asset management

Drawing on its diversity, 627¹ authorised management companies in France, and tens of thousands of professionals working in the sector, French asset management is one of the spearheads of the country's financial industry.

Recognised for its highly sought-after expertise - as evidenced notably by the number of French professionals recruited by foreign firms - French asset management has established its expertise and reputation internationally.

Comprehensive and scalable, to-date a range in excess of 11,000 French investment funds can ably meet all the savings and investment needs of both retail and professional investors and which contributes actively to the financing of the local and European economy.

The French asset management industry is also evolving within a field of expertise that benefits from a high level of investor security. This legal security has already been demonstrated before the highest courts (e.g., on the matter of asset restitution by depositaries). This sound and favourable regulatory basis enables the regulator to provide truly responsive authorisation processes (e.g., on average to authorise an investment fund in France takes 17 days).

In a country with a high savings rate, the AMF first sought to establish the sound environment of a regulated market and therewith enabled French investors to invest in investment funds subject to both the necessary due diligence and supervision for their proper protection. The regulator then set about building and strengthening the European single rule book, defending (notably since 2008) a number of points of French regulatory doctrine that have inspired a significant part of the harmonisation of rules within the European Union.

Thanks to this harmonisation of rules at the European level, in the face of the need to find new sources of growth in the distribution of French investments funds, and the phenomena of internationalisation and digitalisation of financial services, the conditions for a joint action between the French asset management industry, represented by the AFG (French management association), and the competent regulator in the area, the AMF (French financial markets authority), came together.

With a highly operational purpose, a joint group between the AMF and the AFG, , was born of this common strategic ambition for the Paris financial marketplace: to offer both French and foreign players a choice to domicile their investment funds in France under optimal conditions for their international development.

This joint working group, called "FROG" for *French Routes & Opportunities Garden*, also aims to further reinforce the 'hub' that the Paris financial marketplace is today able to provide.

Given the result of the British referendum on the European Union, certain players across the Channel could consider the total or partial relocation of their activities to continental Europe. This one-off context places the Paris financial centre in a new position. The attractiveness, ,excellent amenities and conditions afforded by the French asset management ecosystem (represented by its regulator, management companies, depositaries, intermediaries, and financial services providers), will allow players to continue to benefit from marketing and cross-border management mechanisms provided for in the texts of the European Union (passport).

FROG thus foresaw a new momentum of competitiveness for the Paris financial centre. In this environment that players domiciled in France, or those who are making the choice to domicile part of their activities in France, will be able to benefit from the best technological subscription and redemption channels for their funds ("Routes"), as well as strong regulation calibrated on players' actual operating practices, all at an international level ("Opportunities").

With proactive communication, in the form of resources and actions already set in motion by this market united around its values, its sound regulatory framework ("French Garden"), and its broad fields of expertise, it also marks the beginning of a new phase in the development of French asset management.

¹ At 31/12/2015

FROG group's work organisation and conclusions: regulatory innovation, players' commitment, and new service development.

The outcome of the first series of meetings of the FROG project that took place in the first and second quarters of 2016 unveiled several regulatory innovations that aim to develop flows between French players and international investors.

It is in this way that the work undertaken in the FROG group will henceforth allow asset management players and/or investors to:

CHOOSE from a complete, unique catalogue of fund subscription solutions

> **Innovation for investors**

BENEFIT from a governance charter dedicated to investment funds

> **Innovation for players & investors**

DEVELOP one's activities by having expanded delegation possibilities

> **Innovation for players**

APPLY adapted rules for the communication of management fees

> **Innovation for players**

MANAGE in the best way one's investment strategy, in line with the market conditions and in the best interest of holders thanks to an enhanced range of liquidity management tools

> **Innovation for players**

OFFER new pre-marketing possibilities

> **Innovation for players & investors**

DECIDE on the absence or use of fund classification

> **Innovation for players**

With Didier Le Menestrel as chairman, and who is in charge of steering the FROG project's central committee, three sub working groups, led by the AMF, were formed from the AFG's staff and a panel of players representing the asset management ecosystem.

The first, FROG Technology, was tasked with the technical questions on investment fund distribution channels (subscriptions and redemptions).

The second, FROG Expertise, led by the AMF, explored the legal structures of funds as well as the rules on commercial practices and communication of fund information.

The third, FROG Communication, led by the AFG, explored the needs in terms of communication supporting the Paris financial Centre, and proposed a communication action plan.

The conclusions of FROG Technology and FROG Expertise, including measures taken by these subgroups, are described below.

The conclusions of FROG Communication will take the form of communication actions by the AFG.

The results of the “FROG Technology” working subgroup

FROG Technology was in charge of technical questions about the distribution channels (subscription/redemption models) of investment funds.

1. Extra #1

CHOOSE from a complete, unique catalogue of fund subscription solutions

> Innovation for investors

Theme: fund subscription/redemption methods

The French catalogue: offer investors a complete fund subscription catalogue: the “intermediated order” model, the “direct order to centralising agent” model, the “transfer agent” (TA) model, and the Euronext’s NAV trading facility (Euronext Fund Service Paris).

All subscription/redemption models are now possible in France.

The discussions that drove the FROG Technology subworking group particularly aimed at allowing players domiciled in France to offer subscription solutions in response to all foreign investor practices in this field and therefore to be better connected to other major international markets.

Two operational fund subscription and redemption models currently coexist in Europe: the “register” or “transfer agent” model and the “intermediated” model. Operationally, in an environment mostly intermediated by central securities depositories the French fund subscription/redemption model provides a highly secure subscription solution that is often less expensive than the “register” model, used in certain other countries of the European Union, where record keeping and the receipt of fund unit or share subscription/redemption orders are ensured by a transfer agent.

Nevertheless, this intermediated subscription/redemption model is sometimes perceived as more restrictive, since, to transmit orders, it requires going through a custody account keeper that is a direct or indirect participant in the ESES² France system. In the first place, the intermediated system is suitable for fund domestic distribution models, but is sometimes less suitable for fund distribution abroad where investors are not always aware of this technologically advanced model.

Conversely, up to now, the “transfer agent” (TA) system has developed considerably in the international distribution of investment funds, mainly due to the demand of international investors in search of simplicity.

Several developments have helped to further open up the intermediated model in order to favour the international distribution of French funds from an operational perspective. For example, the possibility under the French regulatory framework of using “direct orders”, transmitted directly to the centralising agent, meets the requirements of certain types of foreign investors.

However, it appears that a number of legislative or operational adjustments were outstanding in order to allow the Paris financial Centre to offer a complete catalogue for cross-border distribution of investment funds.

The FROG Technology subgroup then focused on this priority to offer foreign investors a complete catalogue adapted to any type of international practices regarding subscription and redemption of French investment funds.

The different subscription models are described in the Appendix 1.

- **First possibility of the French catalogue: invest through an intermediated order**

The operational organisation of the international distribution of investment funds is first of all based on an intermediated distribution method put in place initially, for the French domestic market, which is an established, deep market.

How it works: for subscription to a fund, French investors contact their bank, which receives the order and forwards it to the centralising agent. The centralisation of order intake is thus ensured by the centralising agent. Orders are submitted to it through a custody account keeper (the bank), which therefore serves as the investor’s contact in this operational chain.

On the issue side, each French fund has an issuer account in Euroclear France that delegates to a financial intermediary – often a depository bank (the issuer account keeper) – the management of a quasi-issuer account allowing this intermediary to issue or redeem the fund’s units.

² Euroclear Settlement of Euronext Securities

This chain – from the custody account keeper to Euroclear France – is highly integrated and benefits from a highly efficient automatic order routing system. It should be noted that the vast majority of funds are eligible for this order routing platform put in place by Euroclear France.

Benefiting from a technological advance that takes on its full meaning within the context of the entry into force of the Regulation (EU) 909/2014 (“CSD Regulation”), the French intermediated model presents the following characteristics and benefits:

- It is built for both domestic and international distribution;
- The centralised solution around which it is built offers a harmonised, standardised, secure operating method for all French funds;
- It offers a full range of services, from the automation of order routing to the settlement and custody of UCI units;
- It allows players to enjoy the benefits offered by the Target2 Securities (T2S) platform, namely greater efficiency in the settlement of cross-border transactions as well as new opportunities for companies seeking liquidity and funding;
- It also offers detailed knowledge of liabilities and distributors with order marking/flagging solutions adapted to the needs of the management companies and international distribution as well as the possibility of using holder identification through a CSD (TPI service);
- And lastly, it offers an open architecture capable of quickly adapting to and integrating market trends and to regulatory changes (for example, collateral management, entry into force of CSDR, etc.).

The implementation of the CSD Regulations in Europe constitutes additional protection for players, whether they are intermediaries or issuers, by reinforcing the controls on the fundamental duties of a central securities depository to serve and secure the operation of its markets.

Sometimes ‘mistaken’ as purely domestic, this “intermediated order” model is also geared towards the international market. It creates links with:

- Foreign distribution platforms (Euroclear Bank/Clearstream Banking Luxembourg, etc.);
- Member non-domestic financial intermediaries of Euroclear France;
- The integration of international standards such as ISO 20022 messaging for the routing of orders.

As such, the intermediated model offers international investors different solutions to invest in French funds.

- The first is to go through a domestic financial intermediary who is a Euroclear France participant.
- The second is to go through a non-domestic financial intermediary who is a Euroclear France participant (Euroclear France may have non-domestic members according to the conditions defined in its operating rules).
- The third is operable through ICSDs, Euroclear Bank, and Clearstream Banking Luxembourg, participants of Euroclear France. This solution is used by international investors using the services of financial intermediaries that are participants of these distribution platforms.

Nevertheless, despite its many advantages, this French model requires the systematic use of an intermediary and differs from a direct model, which is more expensive, but often better adapted to the operational practices of certain international investor categories.

The FROG Technology group thus explored the needs of certain foreign investors to supplement the French scheme with an alternative offering consisting of direct orders including the “register” or “transfer agent” model, for which a legislative change was recently made in France (see below “registered intermediary”).

▪ **Second and third possibilities of the French catalogue: non-intermediated orders**

FROG Technology’s work highlighted the need to offer different non-intermediated subscription and redemption models from Paris.

To further open up the French international distribution system and meet the demands expressed by certain investor categories, the AMF’s General Regulation was already modified in 2011³ to permit the placement of direct orders, i.e., the transmission of subscription and redemption orders directly to the centralising agent without going through a custody account keeper participating in Euroclear France.

As yet little used, in the light of the practices of French players and certain legal uncertainties, the FROG Technology group endeavoured to bring the entire ecosystem concerned (legislature, regulator, management companies, depositaries, central securities depository) together to exclude any legal loopholes then formalise and

³ Following the AMF’s report of 26 July 2010, the outcome of the “Market committee on the current state and prospects of the regulation of asset management in connection with the transposition of the UCITS IV directive”.

start production on an operational offering notably for foreign investors wishing to invest in French funds via a direct order.

The AMF's General Regulation thus authorises the use of direct orders to a centralising agent, without any obligation for investors to forward their orders through a custody account keeper participating in ESES France. The placement of direct orders then requires, for the management company, the signing of an addendum to the depositary/centralising agent agreement.

This possibility offered by the French regulations finds even more legitimacy in a context marked by evolving technologies and the increased importance of digital distribution models (digitalisation phenomenon) where direct orders could grow considerably.

Given this situation and thanks to the possibilities offered by the regulations, the FROG Technology group helped define the scope and develop the offerings of two types of non-intermediated orders that may be offered to foreign investors: direct order to the centralising agent and register order, i.e., via a registered account opened in the fund's register ("transfer agent").

✓ **Second possibility: direct order to centralising agent**

How it works: foreign investors, who have a securities and cash account with their bank, place the subscription/redemption order directly with the fund's centralising agent, without going through an intermediary. The foreign investors then simply instruct their bank to carry out the settlement.

In this case, amendments to the agreements are made, in accordance with article 422-47 of the AMF's GR, between the centralising agents and the management companies to specify the conditions for acceptance and settlement of direct orders and agree on the subscriber KYC (Know Your Customer) due diligence measures.

This settlement scheme is eventually done through the Euroclear France systems, without any obligation for foreign investors to open an account in Euroclear France; this obligation lies with its account-keeping intermediary.

✓ **Third possibility: ("transfer agent") register order, via a registered account opened in the fund's register**

How it works: foreign investors place the subscription/redemption order with the fund's registrar, without going through their intermediary. Foreign investors then have a securities account in the fund's register and a cash account at their local bank. The settlement or payment is then done through the cash account at their bank.

Here, a bilateral agreement must be provided for between the management company and its client, to roll the risk of default up to the end client and a contract between the registrar and the management company to specify the conditions for acceptance and settlement of orders with the registrar and agree on the subscriber KYC due diligence measures.

To further improve the flexibility of the latter scheme, it was desirable to expand the register to an intermediated model.

The direct registration of the intermediary in the fund's register required a legislative change.

For foreign investors, the subscription of French UCI units or shares involved opening a securities account in France.

The Government made it possible, through an amendment to the draft Sapin 2 Law, to expand the "registered intermediary" scheme, in existence since 2001, for listed equities and bonds, to investment funds. This expansion allows an intermediary, called a "registered intermediary" in French (nominee), to open a securities account in its name for the recording of fund units held on behalf of one or more foreign investors.

The "register" model in France will be improved, thanks in particular to this amendment to the draft Sapin 2 law.

The FROG Technology group also helped establish momentum for developing commercial offerings that will now be able to be put into production by French depositaries and be added to the register and added to the French asset management professionals' knowledge base of. Special training courses, provided by depositaries, allowing managers and more specifically French management companies' and distributors' sales teams to master the entire catalogue, have been developed and are now available to fund distributors.

Over and above these new offerings now available on the Paris financial Centre, other projects are still under development with certain infrastructures and players domiciled in Paris. Among them, the initiative developed by

Euronext for the admission of fund units for trading on regulated markets and multilateral trading facilities at their net asset value typically illustrates the dynamic nature of the French market in terms of development of funds abroad.

▪ **A changing financial Centre: creation of the Euronext net asset value fund platform**

Based on its experience with the development of fund units in the Netherlands since 2007, Euronext Paris is about to launch a new service in France for management companies: Euronext Fund Service Paris. Euronext Fund Service Paris is a new complementary, cross-border subscription channel on Euronext Paris.

Its objective is to allow open-ended funds to be admitted to the Euronext trading system. Thanks to this new offering, open-ended funds will be able to be listed on the stock exchange, subscribed, and redeemed easily on the Euronext trading system, at the net asset value.

The Euronext Fund Service Paris system will be accessible to both UCITS and alternative funds, for their existing or newly created units and for any type of investment strategy. It will allow management companies to improve the visibility of their units by giving them access to a broad base of investors through member brokers connected to Euronext Fund Service Paris.

This additional subscription channel will allow users to gain visibility and has advantages in terms of transparency, since the trading is done on a secure organised market, under the supervision of Euronext and the AMF.

The main characteristics of Euronext Fund Service Paris will be:

- Trade at net asset value⁴;
- The creation of a repository of fund securities⁵
- A “Fund Agent” (the Transfer Agent designated by the management company) will receive orders as it does today in the existing models and will carry out netting at the end of the trading session;

This offer, which is expected in 2017, also provides for a simple listing procedure accessible to all. Admission within three working days will be ensured upon receipt of the required documents by Euronext Paris.

Investors will thus go through their usual broker to trade on a market (for example, for equities or ETFs) to place their subscription and redemption orders for funds listed on Euronext Paris.

This channel will provide easier access to French funds, in particular for foreign investors.

For asset management firms, Euronext Fund Service Paris will provide access to a collection channel that complements their internal or external distribution network. This will also provide asset managers with more visibility with regard to foreign investors and respond to process standardisation problems encountered by certain FinTechs.

Conclusion of the FROG Technology group

In order to invest in French funds, The subscription mechanisms for French UCI now offer all the possible subscription combinations that domestic and foreign investors could want: “intermediated” order, “direct to the centralising agent” order, and “register” (TA) order.

Alongside these fund subscription and redemption mechanisms other initiatives are underway to provide for a changing market, including that of Euronext Paris, which, with its highly advanced project dedicated to funds, provides an additional distribution channel to French players and foreign investors wishing to invest in French asset management.

⁴ including costs possibly provided for in the fund's regulations (swing price, subscription fees, etc.),

⁵ Fund securities will be published each day, like any security eligible for trading on Euronext. This repository of securities will be published in the future “Masterfile Funds” file specifically dedicated to the fund. The file will contain both statistical data and market data but also data about trading cycles

In summary, what is new about Extra #1 of FROG Technology?

- Legislative change for the registered intermediary
- Development of a “transfer agent” (TA) commercial offering by French depositories
- Training of management professionals in subscription/redemption modes by depositories (trained in the various existing models and various offerings from depositories)
- A new service offering with Euronext Fund Service Paris

What are the Paris financial Centre’s competitive advantages?

- Unparalleled complete catalogue of fund subscription/redemption modes, adapted to all practices of international investors
- Technological advance of Euroclear France’s secure model, particularly in the context of the CSD Regulation
- Listing of funds at net asset value

The results of the “FROG Expertise” working subgroup

Led by the AMF, FROG Expertise explored the legal structures of funds as well as the rules on commercial practices and communication.

2. Extra #2

BENEFIT from a governance charter dedicated to investment funds

> Innovation for players and investors

Theme: fund governance

Governance is key for the competitiveness of French investment funds on the international scene. Foreign investors are particularly used to investor advisory committees or boards of directors, which ensure that the interests of holders are respected and contribute to the control of the management company's activity on the fund through greater transparency of the information to which they have access, the skills of its members and their ethical qualities.

The French law has a complete range of legal structures of investment vehicles, with or without legal personality. While the very status of French SICAV (open-ended investment company) means that they have a board of directors, this is not the case with common funds (French FCP). Certain common funds have established advisory committees that do not interfere with financial management decisions.

In addition, the common fund is the investment vehicle structure model favoured by management companies, ahead of French SICAV. The common fund combines a relatively low set-up and launch cost with great speed and ease of creation. It is also known for its flexibility. Many French funds, AIF or UCITS, are thus common funds. The subgroup is reflecting on the appropriateness of longer-term legislative changes regarding funds open to institutional investors, particularly allowing the French limited partnerships (SLPs) model to be extended to common funds to make them more competitive.

Pending the completion of this work, immediate and medium-term actions emerged from the FROG Expertise working group, especially the transformation of common funds into French SICAV. It is thus proposed to allow funds to maintain their past performance since launch (track record) as well as to retain their ISIN code (even in the case of a change of the legal status). Thanks to this transformation, investors are able to gain access to governance bodies led by a board of directors, in addition to advisory committees.

Beyond the importance they attach to the governance structure, whether a board of directors or management board, a supervisory committee, or an advisory committee, investors now wish these structures to work in an agile, effective, inexpensive way: electronic meeting notices to directors⁶ or committee members are appreciated, including the possibility of remote operation of the board⁷. Information documents must also be in English⁸. It should be noted that all these arrangements are already provided for French SICAVs.

The AFG has also rallied the market so as to publish a governance charter or guide by the end of this year, which could be along the lines of the “label” created by the market for French SICAV. By definition, the monitoring of all the criteria and recommendations of this guide would be made optional. These criteria would gather requirements on the following themes:

- the definition of the term “independence” with regard to members of the governance structure,
- the minimum number of independent members required within the collective body,
- multiple offices,
- the number of annual meetings of this body.

The arrangements relating to the proposed immediate measure and the governance charter are described in [Appendix 2](#).

⁶ Article L.225-36-1 of the French commercial code applicable to public limited companies (*sociétés anonymes*).

⁷ It is not necessary for a company's directors to meet at the same location to deliberate, unless otherwise stipulated in the articles of association and on the condition that the company's by-laws provide for this according to Article L.225-37 of the French commercial code. The only decisions that must be taken in a physical meeting are those approving the annual financial statements and the management report.

⁸ Article 411-105 of the AMF's General Regulation regarding UCITS and article 422-66 of the AMF's General Regulation regarding AIF.

In summary, what is new with the Extra #2 of FROG Expertise?

- Change in the governance of French funds for stronger protection of investor interests

What is the Paris financial Centre's competitive advantage?

- In a constant legislative framework, players would be able to transform more easily their common funds into French SICAV (open-ended investment company) and thus satisfying a fundamental demand from investors for improved governance practices

3. Extra #3

DEVELOP one's activities through expanded delegation possibilities

> Innovation for players

Theme: asset management delegation

The Paris financial Centre wishes to underline its status as asset management hub. This development was also identified as key for the attractiveness of the marketplace, which also offers advantages implicit to opening up to foreign management companies. In particular, French investment funds or French management companies could thrive on the specific expertise of managers based abroad, and vice versa, while ensuring an equivalent level of protection for investors.

The rules governing delegation were defined within the UCITS and AIFM Directives, however interpretations of this framework differ depending on the jurisdictions within the European Union. Until recently, the AMF's position stems from a strict approach: to support the fabric of French expertise, the capacities, autonomy, and the structure of its market, as well as the wealth of diversity of its players – some entrepreneurial, others backed by large groups. Overall, a comprehensive market with a strong identity and substantial resources.

In France, delegated companies must be authorised for collective management, except in the special case of an AIF open to professional investors managed by an asset management company authorised under the AIFM directive⁹. In addition, the delegator must implement measures to effectively check the delegate's activity at any time and maintain the resources and expertise necessary to ensure effective control¹⁰.

Nevertheless, it is clear that management teams, whether they are French or foreign, rarely possess all the sectorial or regional expertise and all the management styles and methods. Given the internationalisation of asset management, the FROG group proposed to change the French position, in accordance with European law and in view of certain practices observed abroad.

This development will be twofold.

On the one hand, it aims to allow French asset management companies to delegate the financial management of their collective investments not only to asset management companies authorised to manage AIF¹¹ and UCITS, as is already the case, but also to other entities authorised to provide the discretionary portfolio management services within the meaning of the "Markets in Financial Instruments" directive (MiFID).

On the other hand, and on the basis of strengthened controls and risk management (particularly, in some cases, by establishing independent risk control), it is proposed to allow the delegating company to delegate all financial management since it would maintain the essential functions internally risk control.

These developments fit into a common approach for the AMF and the market, across the entire FROG Expertise group.

The arrangements for this change in the AMF's General Regulation and its guide to preparing the programme of activity of asset management companies and self-managed collective investments are described in [Appendix3](#).

Professionals have been consulted on these various arrangements.

In summary, what is new with the Extra #3 of FROG Expertise?

- Change allowing investors to benefit from the best expertise of management styles and methods
- Change allowing French players to expand the range of investment strategies that they offer, through greater flexibility in the organisation of management

What is the Paris financial Centre's competitive advantage?

- Paris, the financial expertise management hub

⁹The entire doctrine on management delegation appears in AMF Position/Recommendation no. 2012-19 - Guide to preparing the programme of activity of asset management companies and self-managed collective investments.

¹⁰ AMF General Regulation, Articles 313-77 and 318-58.

¹¹ Whether such AIF are above or below the AIFM thresholds.

4. Extra #4

APPLY adapted rules for the communication of management fees

> Innovation for players

Theme: fee disclosure

What is it about?

In general, French management companies publish a single rate of management fees charged to the UCITS in the prospectus, which includes both management fees corresponding to the management company's remuneration for financial management and external fees incurred by the management company corresponding particularly to statutory auditor fees, custodian fees, etc. Management companies generally do not distinguish between these two categories of fees in prospectuses, while the regulations applicable to French UCITS allow them to opt for a breakdown. As a result of this difference in presentation, management fees remunerating the financial management done by the management company of French UCITS previously could have appeared higher than those for UCITS of other countries, particularly within the European Union.

After consulting with stakeholders (representatives of management firms and investors), the AMF proposed:

- a change in the presentation of management fees in the prospectus of a UCITS;
- as well as a change in the investor notification rules in case of an increase in these fees.

For the sake of harmonisation of prospectuses, it was decided that these changes should be applied to AIFs for which the presentation of fees is identical to that of UCITS, namely retail investment funds, funds of alternative funds, retail professional funds, employee savings funds, and specialised professional funds.

Note that these changes are compatible with EU Regulation no. 1286/2014 of 26 November 2014 (PRIIPs regulation) as well as Directive 2014/65/EU of 15 May 2014 (MiFID II).

The changes considered in the presentation of management fees within the fee table provided for in the prospectus of UCITS and certain AIFs involves distinguishing between the so-called external management costs (statutory auditor fees, custodian fees, lawyers etc.) and "financial management fees", preparing an exhaustive list of financial management fees and external administrative fees, as well as extending the types of fees that may be outside the scope of the sections of fees indicated in the fee table (see details in the Appendix 4).

With regard to changes in the investor notification rules, in the case of an increase in external administrative fees, and in order to encourage management firms to disclose external administrative fees in the prospectus of UCITS and certain AIFs (through a segmented presentation of management fees), the AMF proposed relaxing the notification procedures in case of an increase in external administrative fees.

Details concerning adapted rules in the communication of management fees are described in [Appendix 4](#).

The changes that will be made in instructions DOC-2011-19, DOC-2011-20, DOC-2011-21, and DOC-2012-06 as well as in the Guide to the regulatory documents governing collective investments schemes (position/recommendation DOC-2011-05) appear in appendices 1, 2, and 3 to this note.

In summary, what is new with the Extra #4 of FROG Expertise?

- The possibility to split into two sections, financial management fees and administrative fees, taking into account international practices

What are the Paris financial Centre's competitive advantages?

- Better comparability of French funds on international platforms
- Tools for players: segmented information, comprehensive lists of financial management fees and external administrative fees

5. Extra #5

MANAGE one's investment strategy in the best way, in line with the market conditions and in the best interest of holders thanks to an enhanced range of liquidity management tools

> Innovation for players

Theme: liquidity risk management

Liquidity risk management is a key factor for competitiveness of "open" investment funds, some of which offer frequent redemption dates – daily or weekly according to their investment strategy.

This is the case particularly with numerous UCITS, which could be at a disadvantage in the event of an unforeseen serious liquidity crisis, given that they are obliged to honour redemption requests, except in case of suspension, which is not necessarily the case for the assets that they contain and whose sale depends on the supply and demand mechanism in the financial markets. This is also the case with AIFs, depending on the developed investment strategy.

Thus, if the liquidity risk materialises, an investment fund may be forced to sell its assets immediately under unfavourable conditions, notably in terms of price, or sell only the liquid portion of its assets, leading to a deformation of the portfolio, from the perspective of the average liquidity and its composition, in the light of the pursued investment strategy.

The ability, for the asset manager, to cap redemptions under exceptional circumstances, if the prospectus so provides and in compliance with regulatory requirements, could thus make it possible to avoid such a situation and space out redemption requests from holders and the necessary asset sales to honour them, without completely locking up the funds. FROG Expertise thus proposed, in case of a liquidity crisis, to permit the preservation of the value of portfolios, the investment objective of funds, and, more generally, protect the interest of all investors.

In order to be made available to management companies and their funds, this new liquidity tool requires a legislative revision, currently under way as part of the Sapin 2 bill.

The practical arrangements for this legislative change will need to be provided for within the AMF's General Regulation. The discussions on the subject are described in [Appendix 5](#). In addition and in parallel, the AMF is working on a practical guide on all liquidity management tools, available to asset management companies.

In summary, what is new with the Extra #5 of FROG Expertise?

- Redemption gates under exceptional circumstances allowing management companies to better manage the liquidity of their funds in the interest of investors

What is the Paris financial Centre's competitive advantage?

- French funds benefit from an enhanced range of liquidity management tools, thanks to the addition of the redemption gates mechanism

6. Extra #6

OFFER new pre-marketing possibilities

> Innovation for players & investors

Theme: marketing methods

The work of FROG Expertise aimed to increase the visibility and the distribution of French funds abroad, seeking in particular to replicate certain practices used in other countries, without calling investor protection into question.

Having observed certain practices deemed acceptable in other member States in view of the AMF's protective mission, proposals were made to clarify the scope of the definition of act of marketing in France of UCITS or AIF units or shares.

Before launching their funds, certain managers, and especially in the field of private equity, expressed a need to exchange views with potential investors in order to assess the level of interest in investment funds in their seed phase. To do this, they previously had to comply with a number of rules specifying the type of exchanges likely to be reclassified as acts of marketing.

To allow optimal growth internationally, on the basis of common practices in other countries and with complete legal certainty, the AMF wished to introduce the concept of pre-marketing into its scheme/scope and accordingly revise its definition of the marketing activities in France with regard to UCITS or AIF units or shares.

During the development of the AMF's guide to UCITS and AIF marketing regimes in France (position 2014-04), it was anticipated that a clarification of the notion of "presentation" would be made later in order to avoid over broad interpretation, which could adversely affect professionals by limiting seed stages.

The work of the FROG Expertise group thus focused on this anticipated clarification. The AMF has accepted to supplement the system by providing a concrete response to the creation of the concept of pre-marketing in French law.

The UCITS and AIF marketing has now expanded the list of situations not constituting marketing activities in France to address notably the difficulties encountered by French management companies wishing to offer a new proposed AIF to investors in France. Other clarifications were also necessary so that certain situations would not trigger the application of marketing rules.

With regard to acts not constituting marketing in France, the clarifications covered several topics (explained in Appendix 6).

- The practice of management companies (or third parties acting on their behalf) to approach investors to assess their appetite prior to the launch of a UCITS or AIF;
- The participation of management companies in conferences or investor meetings without investors being solicited to invest in a specific product;
- Over-the-counter sales between investors (professional or non-professional);
- The purchase, sale, or subscription of (i) UCITS or AIF units or shares as part of the remuneration policy of the management company, (ii) UCITS or AIF units or shares for the benefit of the management team of the management company that manages them, its senior managers, or the management company itself, and (iii) carried interest units;
- The response by a management company to a call for tenders from an institutional investor for the establishment of a UCITS or AIF.

Reminders concerning the management company's obligations accompany this plan. It is reminded that these exceptions must not allow asset managers to avoid marketing and passport procedures when they are required and that the ISP, including during the pre-marketing phase, must act honestly, fairly, and professionally¹².

Also, although this system particularly addresses the practices of private equity, it remains applicable and relevant beyond this single segment of French asset management, for both AIFs and UCITS.

Details are described on [Appendix 6](#).

¹² Article L. 533-1 of the Monetary and Financial Code for French investment management companies and, with regard to foreign managers, the State provision on foreign management companies transposing, as appropriate, article 12, paragraph 1 a) of the AIFM directive or article 14, paragraph 1 a) of the UCITS directive.

In summary, what is new with the Extra #6 of FROG Expertise?

- Introduction of the notion of pre-marketing: regulatory change providing legal security to players

What is the Paris financial Centre's competitive advantage?

- Legal certainty for players in the launch of new funds: clarification of acts not constituting marketing in France.

7. Extra #7

DECIDE on the absence or use of fund classification

> Innovation for players

Theme: French fund classification

What is it about?

UCI classifications are a distinctive characteristic in France applicable since 1985. They concern both UCITS and certain alternative investment funds (AIF). In the absence of harmonisation of rules at the European level, particularly with regard to investor information, the initial objective was to ensure better information by differentiating vehicles on the basis of the primary nature of the investments made (equities, bonds, short term, etc.) and the geographical areas covered (France or foreign). Since their appearance in 1985, the classifications have changed many times.

Today, there are 11 possible classifications for AIFs and 10 for UCITS. A UCI for which a classification is provided must opt for one of them. The classifications do not aim to restrict the manager, as the investment rules of a UCI are freely set by the management company during the creation of the UCI or its modification during its life. The only constraints are therefore those resulting from the Monetary and Financial Code. The fund's strategy having been determined, the manager adopts the classification that corresponds to it. The choice of a classification is therefore done only on the basis of the constraints that the manager has set.¹³ Note that private equity investment funds (FCPR/FCPI/FIP), FPCI, OT, OPCI, SCPI, and SLP are not affected.

However, the UCITS directive does not require the indication of a classification within the regulatory documentation of UCITS and particularly within the key investor information document ("KIID"). Similarly, directive 2011/61/EU on alternative fund managers (AIFM directive) is silent on this point. Lastly, Regulation (EU) no. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (the "PRIIPs" Regulation) and the future key information document resulting from this text, which will be applicable particularly to all collective management vehicles (excluding any transitional provisions), do not provide for the use of a classification either.

The AMF has questioned this specifically French feature for two reasons: firstly because the content of these classifications was deemed to be overly precise and prescriptive when compared to other existing classifications (from the private sector) used by the industry; and secondly considering that most of the funds had chosen to qualify as "alternative funds", this category had become too broad and therefore had progressively lost its meaning.

Besides, it is worth noting that foreign funds marketed in France are not required to use the classification without it compromising investors' information.

In this European context in which numerous management sector-specific texts or cross-disciplinary texts like "PRIIPs" have been added to the initial framework originally consisting of only the UCITS directive, the work of the "FROG Expertise" working group led the AMF to consider that it was now possible to call into question the requirement of this classification for managers.

As such, after consulting with stakeholders, the AMF decided to eliminate the fund classification requirement for French managers and make maintaining it optional, at the discretion of managers, with the exception of the "diversified" classification, which will be permanently eliminated within a year. The AMF has decided to allow management companies who so desire – for instance, for commercial reasons - to keep using the classifications, while taking into account that these would remain determined by the AMF.

This change in the rules is part of the consolidation of the European single rule book in the area of management sector texts and the objective of the "FROG Expertise" working group to provide the best development conditions to funds domiciled in France, which could be categorised particularly in online comparison tools.

Finally, the AMF will request from those UCIs that will have chosen to give up their AMF classification to categorise them according to the ECB classifications to facilitate the reporting process to the Banque de France. This ECB-based classification will be used by the AMF and the Banque de France for internal purposes only.

The arrangements for this regulatory change are described in [Appendix 7](#).

¹³ If the upstream choice of a classification by the manager results from investment rules freely defined during the creation of the UCI or its modification, the manager must be able to justify the fund's classification downstream. Thus, the manager must always respect the degree of asset exposure under the classification.

In summary, what is new with the Extra #7 of FROG Expertise?

- Regulatory change making the use of classifications, as defined in the French regulations, optional and no longer mandatory

What is the Paris financial Centre's competitive advantage?

- Option for French managers to rely on the classifications defined in the French regulations as a marketing pitch for their funds and an investor information tool



8. FROG group Conclusions

A market united, changes made, an enhanced ambition

Given the developments described in this report, and its immediate actions that have already taken effect, FROG has helped establish seven measures favourable to the development of French asset management.

In just a few months, after twenty meetings (plenary and technical) since February, the Paris financial Centre has managed to demonstrate, through its involvement in the FROG project, that it knew how to unite its strengths to better serve its interests internationally.

Accompanying the authority and beyond the regulatory changes made by the subgroup FROG Expertise (led by the AMF), the players representing French asset management also specified to their service providers and intermediaries the points requiring clarification for the proper development of the market.

FROG Technology allowed investment fund producers and those that handle subscriptions to better understand each other, learn their respective technical languages and vocabularies, and work together to implement the appropriate conditions for effective distribution internationally.

The FROG project was also an opportunity for traditional managers to rub shoulders with the new figures that form the French FinTech community and start discussions on innovation and new distribution models developing on-line in the field of financial services.

Comprehensive and agile, the Paris financial Centre will now be able to count on this new momentum stemming from the FROG project and the boom in new talent whom French players, or foreign players wishing to benefit from its advantages, will be able to target for ambitious partnerships.

At the very heart of this ecosystem, the regulator will thus ensure that the FROG project can continue its mission, by providing for the evolution of rules whenever it is fit to consider doing so, and by involving players in this dynamic project, conducive to the financing of the French and European economies. Targeted promotion actions and a communication action plan will increase the recognition of the Paris financial Centre's assets on an international level.

The AMF will thus bring FROG working group contributors together at least once a year to assess the effects of its action and measure its benefits for the Paris financial Centre ("FROG Record" meeting to begin in June 2017).

With the first phase of work complete, "FROG Record" will now extend at regular intervals the regulator's interest in defending the Paris financial Centre internationally, by assessing the benefits of the actions undertaken by the beneficiaries of a regulatory terrain adapted to their proper development.

The FROG project, at the heart of an international development economic platform, will have also provided seven extra reasons to foreign players that are considering France to choose the Paris financial Centre to intensify the development of their activities.

Teams from the following institutions contributed to the preparation of this report with the AMF:

Banque de France, Euroclear France, Euronext, Association française des professionnels des titres (AFTI), and Association Française de la Gestion financière (AFG).

APPENDICES



FROG

French Routes and
Opportunities Garden

APPENDIX 1 on Extra #1 “CHOOSE from a complete, unique catalogue of fund subscription solutions”

7 FAQs TO BETTER UNDERSTAND SUBSCRIPTION AND REDEMPTION

(1) Regardless of whether or not the intermediary is a Euroclear France member institution

| | Intermediary orders | Direct orders to centralising agent | Register orders (“Transfer Agent”) |
|---|--|---|---|
| With whom can investors place a subscription order? | Their usual intermediary (1) | Directly with the fund's centralising bank | With the fund's registrar |
| How many accounts do investors need to open? | Investors must have a securities account and a cash account with a financial intermediary (1) | | Investors must have a securities account with the fund's registrar and a cash account with their financial intermediary |
| How is the subscription order settled? | The investor settles the subscription order with a debit from the cash account held with their financial intermediary (1) | | By a transfer of funds to the fund's registrar |
| Form of ownership? | Bearer | Bearer or Registered | Registered |
| Where can investors find information about their investment? | From the distributor | | |
| How do investors receive any income they may earn? | Income is paid into the investor's cash account with a financial intermediary (1) | Income is sent to the investor by wire transfer | |
| Who sends the investor confirmation regarding order execution? | Their usual intermediary | The fund's centralising agent | The fund's registrar |

APPENDIX 2 on Extra #2 “BENEFIT from a governance charter dedicated to investment funds”

Transformation of a mutual fund into a French SICAV (open-ended investment company)

Article 19.3 of regulation 583/2010 provides that UCITS may change legal status without losing their track record. This possibility is extended to AIFs through a change in position/recommendation 2011-05 on the guide to the regulatory documents governing collective investments schemes.

Regarding the practical arrangements and provided that there is no significant change in the objective and investment policy of the AIF or UCITS, the following procedural elements are recalled:

- the transformation of a common fund into a French SICAV is formalised by the filing of a transfer record to be processed within 20 working days¹⁴
- the same ISIN code is kept.

Good governance criteria¹⁵

- Independence
 - o To be able to claim “good governance”, at least one-third of the collective body of the French SICAV established in the form of a public limited company must be independent members.
 - o Regarding the notion of “independence”, it is proposed that the member concerned must not have been an employee, senior manager of the management company or an entity of the group to which it belongs, one of its significant shareholders, or a major supplier or service provider of the management company, or, more generally, remunerated by one of these entities during the last three years before taking up the office”.
- Multiple mandates
It would be recommended to the members of the collective body to provide an annual update of their mandates held and to be careful not to commit to numerous boards in parallel.
- Recurrence of meetings
At least two meetings should be held during the year.

¹⁴ AMF instructions 2011-19 and 2011-20

¹⁵ Subject to their final validation

APPENDIX 3 on Extra #3 “DEVELOP one’s activities by having expanded delegation possibilities”

Expansion of the list of authorised delegates

The general regulation will be modified in order to permit the expansion of the list of professionals authorised to manage a collective investment by delegation to the following entities:

- asset management companies authorised only to provide the asset management service under the MiFID (which will lose their status as an asset management company and keep only the status as an investment firm as a result of the MiFID 2 transposition work);
- investment firms authorised under the MiFID to provide the asset management service;
- credit institutions authorised under directive 2006/48/EC and authorised to provide the asset management service under the MiFID;
- the equivalent entities of third countries.

In general, the other rules and obligations governing the use of delegation schemes remain, in particular:

- the obligation for the management company to inform the regulator before putting the delegation scheme in place;
- the absence of any obstruction to the AMF's proper supervision of the delegating management company;
- the necessary compliance with the principle of primacy of interests of holders, which implies that the delegating company can, at any time, give additional instructions to the delegate company and, where appropriate, terminate the delegation;
- the obligation for the delegator to select a capable, qualified delegate (according to a traceable selection process);
- the principle that the responsibility of the delegating management company is not affected by the fact that it has delegated all or part of the financial management or the risk management to a third party.

The particular requirements relating to the delegator’s ability to “control” its delegate

The content of position 2012-19 is modified to reinforce the control and more generally the function of risk management. To that end, in certain cases of financial management delegation, risk management requirements are provided for, based on the following principles:

- the establishment of a permanent independent risk management function in the hierarchical and functional plan of operational units, and
- adapted experience on the strategy, the underlying asset, and the necessary capacities (particularly in number of risk controllers) to ensure effective control.

APPENDIX 4 on Extra #4 “APPLY adapted rules for the communication of management fees”

1. Change in the presentation of management fees in the prospectus of UCITS and certain AIF

1.1 Regarding the clarification of the notions of “management fees” and “external management fees”

It was agreed, in the standard format for prospectuses for UCITS and certain AIFs (see AMF instructions), to:

- clarify the notion of “management fees” deducted for the financial management performed by the management company by substituting the expression “financial management fees” for the former; and
- revise the notion of “external management fees”, which can be confusing, by substituting the expression “external administrative fees” for the former.

The expression “management fees” will be used in the English version of the documents.

In addition, in the standard format for prospectuses of UCITS and certain AIF, the method for switching to the new manner of indicating fees provides for the following items to be added:

“The prospectus for [UCITS] created as of the [*publication date of this update of the instruction*] takes into account of the new terminology “management fees” and “external administrative fees” and the new numbering of the fee sections. The prospectus of [UCITS] existing before the [*publication date of this update of the instruction*] must be updated to incorporate this new terminology during the next modification of the prospectus and no later than [*1 year after the publication date of this update of the instruction*].”

1.2 Regarding the segmentation of management fees and external administrative fees into two separate sections

Where the management company chooses the option to break down¹⁶ management fees and external administrative fees, the AMF will allow to split these fees into two separate sections, which, as is currently the case, are presented in a single section (section no. 1).

Addition of details in the Guide to the regulatory documents governing collective investments schemes

It is also expected a specification within a new paragraph 1.3.9 in position/recommendation DOC-2011-05 entitled “Guide to the regulatory documents governing collective investments schemes” that a segmentation of management fees into two separate sections:

- obviously would not exempt the management company from acting in the interest of shareholders or unitholders where it selects its service providers; and
- would mean that a provision for external management fees (or external administrative fees) is funded each time the net asset value is calculated (and therefore spread over time), thus preventing them from being suddenly charged on a single net asset value, which would result in unfair treatment of investors¹⁷.

The addition of the following indications is also provided for: “*Management companies that outsource certain functions that they previously handled internally (legal activity, for example) and that were therefore included in the management company's management fees cannot outsource these functions without an equivalent decrease in the management fees.*”

1.3 Regarding the list of management fees and external administrative fees

It is expected the insertion of a table presenting **an exhaustive list** of financial management fees and external administrative fees into new paragraph 1.3.9 of position/recommendation DOC-2011-05. A footnote within the fee table presented in UCITS prospectuses would refer to position/recommendation DOC-2011-05.

¹⁶ As a reminder, this option is already offered by AMF instructions DOC-2011-19, DOC-2011-20, and DOC-2011-21.

¹⁷ Today, management fees are smoothed out over time on each net asset value. It is proposed here to specify that in case of segmentation of management fees and external administrative fees, external administrative fees must of course continue to be smoothed out over time.

| | |
|-------------------------------------|--|
| Financial management fees | <ul style="list-style-type: none"> - Fees related to the financial management of the UCI; - Fees related to the delegation of financial management; - Distribution fees (including retrocessions to third-party distributors). |
| External administrative fees | <ul style="list-style-type: none"> - Statutory auditing fees; - Fees related to the depositary; - Technical distribution fees (these do not refer to any retrocessions to third-party distributors that the management company could decide to pay but technical costs of distribution platforms, for example); - Fees related to account keepers; - Fees related to the delegation of administrative and accounting management; - Audit fees; - Tax fees; - Fees related to the registration of the UCI in other Member States (these are fees and taxes due to the host regulator and fees related to the appointment of a local correspondent, but not fees charged by advisers (lawyers, consultants, etc.) in the completion of marketing formalities with the local regulator in place of the investment management company); - Legal fees specific to the UCI; - Translation fees specific to the UCI; - Costs of a licence to the benchmark used by the UCI¹⁸. |

1.4 Regarding the extension of the types of fees that may be outside the scope of the fee sections mentioned in the table

Up to now, the standard format for the prospectus for UCITS, retail investment funds, funds of alternative funds, retail professional funds, employee savings funds, and specialised professional funds provided that “only contributions owed for the management of the UCITS pursuant to d) of 3° of point II of article L. 621-5-3 of the Monetary and Financial Code and exceptional legal costs related to the recovery of receivables (e.g., Lehman Brothers) may be outside the scope of the four fee sections” and must be mentioned below the fee table.

The work of FROG Expertise led to the proposal of leaving management companies the possibility of also removing from the scope of the fee sections presented in the table:

- taxes, levies, fees, and government duties related to the fund¹⁹, where such charges are exceptional and non-recurring;
- and, more broadly, “exceptional legal costs related to the recovery of receivables”, “exceptional and non-recurring costs for recovery of receivables (e.g., *Lehman*), or a procedure to assert a right (e.g., *class action procedure*)”.

2. Changes in investor notification rules in case of an increase in external administrative fees

In order to encourage management companies to disclose external administrative fees in the prospectus of UCITS and certain AIF²⁰ (through a segmented presentation of management fees), the work of FROG Expertise led the AMF to propose relaxing the notification procedures in case of an increase in external administrative fees.

¹⁸ For UCI reporting one.

¹⁹ The idea is to successively bring up the notions of taxes, levies, fees, and government duties in order to provide a global understanding of the notion of taxation and “tax” without any distinction between the precise legal classifications.

²⁰ UCITS, retail investment funds, funds of alternative funds, retail professional funds, and employee savings funds

The plan is therefore to:

- maintain the existing regulations in case of an increase in fees is decided by the management company (i.e., management fees and indirect charges related to investment in underlying UCI);
- consider – with the exception of UCITS and AIF with a money market and short-term money market classification²¹ – the introduction of an element of proportionality in case of an increase in external administrative fees: it is proposed to maintain the current regulations (special notification and possibility of exiting at no charge with 1 months' notice after notification) in case of a significant increase in these charges but change the investor notification methods in case of a non-significant increase in these charges (notification by any means without the possibility of exiting at no charge without 1 months' notice after notification). It could be considered that an increase is significant where it exceeds 10 basis points per calendar year.

The arrangements for putting new notification rules in place provide for the following changes:

- o **Notification by any means** (under the conditions of article 8 of instructions DOC-2011-19, DOC-2011-20, and DOC-2011-21) **is conditional on the new breakdown of management fees**

In the standard prospectus format, the following notice is added:

“Only [UCITS]²² that break down fees in the prospectus (management fees and external administrative fees) in force at [publication date of this update of the instruction] are eligible for the possibility of informing shareholders or unitholders [of the UCITS] by any means under the conditions provided for within the “fee increase” section of the table of article 8 of instruction [DOC-2011-19] (as a reminder: money market and short-term money market UCITS are not eligible for this possibility).”

- o **How will investors be informed that they may be informed by any means in case of an increase in external administrative fees?**

The standard prospectus for the UCITS or AIF concerned is supplemented as follows:

“The prospectus includes a clear indication that the UCITS will be likely to not inform its shareholders or unit holders in any particular way or offer them the possibility of obtaining the redemption of their shares or units at no charge in case of an increase in external administrative fees that would be less than or equal to 10 basis points per calendar year; the notification of shareholders or unit holders may then be done by any means (for example, on the website of the asset management company, in the section on the UCITS concerned). It is recalled that this notification must also be published prior to taking effect.”

- o **Case for existing UCITS or AIF**

The standard prospectus for the UCITS or AIF concerned is supplemented as follows:

Existing UCITS that decide to add this notice to their prospectus must inform their shareholders or unitholders in advance by way of a special notification and allow them the possibility of obtaining the redemption of their shares or units at no charge.”

Since it is a notification that is potentially intended to be made by a large number of players of the market, it seems important to us to consider a standard notification:

- based on the standard format for individual investor notifications appearing in the appendix to the instructions for UCITS, retail investment funds, and employee savings funds²³;
- that all players who wish to make this change must comply, the idea being to present the modifications made and their potential impact to investors in simple, intelligent, concise terms.

This standard notification template²⁴ could be sent to them by the AFG.

²¹ For which an increase, even small, could be significant, particularly in view of an environment of low or negative rates (the performance of some of these UCITS being already structurally negative).

²² Proposal for UCITS, adopted for FIVG, FPVG, funds of alternative funds, and employee savings funds

²³ For example, annex XII of 2011-19

²⁴ Appearing in the appendix.

APPENDIX 5 on Extra #5 “MANAGE one’s investment strategy in the best way, in line with the market conditions and in the best interest of holders thanks to an expanded range of liquidity management tools”

Beyond the legislative changes under way, the practical arrangements of the redemption capping mechanism (“gates”) will come under the AMF’s General Regulation and the doctrine. FROG Expertise identified and launched the following discussion areas relating to the key issues of this mechanism, listed for solely informational purposes and not intended to be exhaustive.

- Appropriate notification to holders
- The special nature of the liquidity conditions necessary for the activation of gates
- Fair treatment of holders
- Automatic postponement of unexecuted redemption requests
- Maximum duration of applicability of the redemption capping mechanism
- Gate triggering thresholds
- Possibility of partially honouring redemption requests above the gate triggering threshold

These various arrangements, once adopted, will be subject to consultation of professionals.



APPENDIX 6 on Extra #6 “OFFER new pre-marketing possibilities”

Regarding the practice of management companies (or third parties acting on their behalf) approaching investors to assess their appetite prior to the launch of a UCITS or AIF

The following limits are provided for:

- restriction to contacting 50 (i) professional investors or (ii) non-professional investors whose initial subscription is greater than or equal to 100,000 euros²⁵;
- the absence of provision of a subscription form and/or a document presenting definitive information about the fund's characteristics that would allow these investors to subscribe or undertake to subscribe for the units or shares of the UCITS or AIF;
- such a presentation of the project then prevents application of the “reverse solicitation” exception.

Regarding the participation of management companies in conferences or investor meetings without investors being solicited to invest in a specific product

The following limits are provided for:

- participation in these conferences or meetings is reserved for professional investors (the situation of non-professional investors whose initial subscription is greater than or equal to 100,000 euros seems difficult to implement in this situation);
- the absence of solicitation of investors to invest in a UCITS or a specific AIF;
- the absence of any communication about a UCITS or AIF whose units or shares may be the subject of a subscription (to prevent the “reverse solicitation” mechanism from being brought up later during subscription).

Regarding over-the-counter sales between investors (professional or non-professional)

This situation could be considered where such a sale on the secondary market is not organised by the management company or by a third party (for example, a platform) to bypass the marketing rules (for example, subscription by an entity of the fund's units with the sole objective planned together with the investment management company to resell them²⁶).

Regarding the purchase, sale, or subscription of (i) UCITS or AIF units or shares as part of the remuneration policy of the management company, (ii) UCITS or AIF units or shares for the benefit of the management team of the management company that manages them, its senior managers, or the management company itself, and (iii) carried interest units

The subscription of carried interest units or fund units as part of the remuneration policy of the management company (pursuant to the AIFM and UCITS 5 directives) may be excluded from the definition of marketing of UCITS or AIF units or shares.

It is also provided that subscription of fund units or shares by the management team and the senior managers of the management company in charge of managing those funds, as well as by the management company itself, does not constitute an act of marketing²⁷.

Regarding the response by a management company to an institutional investor's call for tenders

The mere response by a management company to a call for tenders accompanied by specifications launched by a legal entity professional investor (an institutional) for the establishment of a UCITS or AIF does not constitute an act of marketing.

²⁵ This is the minimum initial subscription amount in units or shares of funds open to professional investors (for example, specialised professional funds or professional private equity investment funds).

²⁶ The FCA thus clarified: “For example, if the units or shares of an AIF are temporarily purchased by a third party (eg, an underwriter or placement agent) with the objective of distributing them to a wider investor base, this could be an indirect offering or placement when those units or shares are made available for purchase by investors, if the third party is acting at the initiative of, or on behalf of, the AIFM.” (<https://www.handbook.fca.org.uk/handbook/PERG/8/37.html>)

²⁷ However, the AIF proposes not going so far as to extend this safe harbour to subscriptions by the management company's shareholders.

APPENDIX 7 on Extra #7 “DECIDE on the absence or use of fund classification”

The operational implementation will require the modification of the AMF’s instructions relating to UCI affected by this reform.

The modification of these instructions must also be accompanied by educational documents for the attention of management companies to explain this reform to players and investors.

The general principle of the reform provides that AMF classifications may be maintained on an optional basis, according to the choice of the asset management company or investment fund, for each current or future fund.

Nevertheless, maintaining an AMF classification on a UCI involves maintaining the rules corresponding to this classification. No change in their definition or easing is being considered.

Future UCI without a classification will apply the limits that they will have set for themselves in their regulatory documentation, with the understanding that these limits may, where appropriate, incorporate all or some of the rules resulting from the AMF classifications. If the AMF classification is abandoned by an existing UCI, the instructions will provide for the arrangements for its implementation by the managers and the arrangements for notifying investors. In addition, the AMF will require UCI that have dropped their AMF classification to be categorised according to the ECB classification for the reporting needs of Banque de France. This categorisation according to the ECB nomenclature will be done only in the databases internal to the AMF and Banque de France.

Which classifications will be impacted? The current list of AMF classifications is as follows:

- ✓ French equities *
- ✓ Euro area country equities *
- ✓ EU country equities *
- ✓ International equities *
- ✓ Euro-denominated bonds and/or debt securities *
- ✓ International bonds and/or debt securities *
- ✓ Short-term money market
- ✓ Money market
- ✓ Funds of hedge funds *
- ✓ Formula funds
- ✓ Diversified **

As a reminder, there are classifications specific to FCPE (employee mutual funds), which will not be impacted:

- ✓ invested in listed and/or unlisted securities of the company
- ✓ invested in listed securities of the company
- ✓ invested in unlisted securities of the company
- ✓ at least one-third invested in listed securities of the company
- ✓ at least one-third invested in unlisted securities of the company
- ✓ at least one-third invested in listed and/or unlisted securities of the company

Only the classifications followed by an asterisk (*) in the current list of AMF classifications above will be made optional. The “money market” and “short-term money market” classifications, which are standardised at the European level, and the “formula fund” classification, which represents a legal category, will thus be maintained²⁸. The “fund of hedge funds” classification, which may apply to “funds of alternative funds²⁹”, “retail professional funds³⁰”, and “specialised professional funds³¹” is also made optional.

The “Diversified” classification will be permanently eliminated within a year (by the end of 2017).

²⁸ Article R. 214-28 of the Monetary and Financial Code for formula UCITS; Article R. 214-32-39 for retail formula investment funds.

²⁹ Article L. 214-139 *et seq.* of the French monetary and financial code.

³⁰ Article L. 214-143 *et seq.* of the French monetary and financial code.

³¹ Article L. 214-154 *et seq.* of the French monetary and financial code.

In summary, the situation will be as follows:

| Classification | Status |
|---|---|
| French equities | Eliminated/maintained optionally at manager's discretion) |
| Euro area country equities | Eliminated/maintained optionally at manager's discretion) |
| EU country equities | Eliminated/maintained optionally at manager's discretion) |
| International equities | Eliminated/maintained optionally at manager's discretion) |
| Euro-denominated bonds and/or debt securities | Eliminated/maintained optionally at manager's discretion) |
| International bonds and/or debt securities | Eliminated/maintained optionally at manager's discretion) |
| Short-term money market | Classification maintained |
| Money market | Classification maintained |
| Funds of hedge funds | Eliminated/maintained optionally at manager's discretion) |
| Formula funds | Classification maintained |
| Diversified | Permanent elimination within a year |

The management of the transition is envisaged as follows:

For future UCI, there is no impact since the constraints in the KIID and the prospectus will provide the guidelines and investment constraints that the manager has set.

For existing UCI wishing to drop their AMF classification, they will need to verify that the constraints related to the classification that they are about to eliminate from their regulatory documents are described in the prospectus and the KIID. Failing this, they will need to be mentioned at the time of elimination of the classification to ensure continuity in the investment rules. The dropping of the classification will need to be notified by any means (website, management report, etc.) prior to its implementation.

To the extent that the UCI would like to simultaneously change the management constraints that were applicable to it, the arrangements for holder notification and exit at no charge will apply in the same way as a normal change in the strategy or risk profile.

As a reminder, the following are provided for:

Special notification (letter) and an option to exit at no charge in the event of an absolute change in the exposure to one or more types of risk strictly greater than 20% of net assets; or

Notification by any means (website, management report, etc.) in the event of an absolute change in the exposure to one or more types of risk strictly less than 20% of net assets.

In addition to the rules mentioned above, investments funds referring to the "Diversified" classification within their regulatory documents will need to, where appropriate, eliminate this indication in their KIID during its annual update, as provided for in article 22 of Regulation (EU) no. 583/2010 of the Commission of 1 July 2010 and all of the fund's regulatory documents, no later than 31 December 2017.

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