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Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
Costs and fees

Subject Matter
Timeline of the application of the performance reference period

Question
Paragraphs 40) and 41) of the Guidelines on performance fees recommend that the length of the performance reference period (if this is shorter than the whole life of the fund) should be set equal to at least 5 years. How should the performance reference period be set for the first time in light of the application date of the guidelines?

ESMA Answer

30-03-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 2a] & [ESMA 34-32-352 AIFMD Q&A, Section 15, 2]

Managers of any funds already compliant with paragraphs 40)[1] and 41)[2] of the Guidelines on performance fees before the application date of the guidelines should look at the past 5 years/whole life of the fund for the purpose of setting the performance reference period[3] (i.e. they should not reset the performance reference period after the application date of the guidelines).

In all the other cases, managers should apply the performance reference period starting from the beginning of the financial year following 6 months from the application date of the Guidelines (i.e. the performance reference period should start at the beginning of the financial year following 5 July 2021; by way of example, if the financial year of the fund starts on 1 September 2021, the period 1 September 2021 – 1 September 2022 should be considered as the first year of the performance reference period).

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[1] Paragraph 40) of the Guidelines on performance fees states that “In case the fund employs a performance fee model based on a benchmark index, it should be ensured that any underperformance of the fund compared to the benchmark is clawed back before any performance fee becomes payable. To this purpose, the length of the performance reference period, if this is shorter than the whole life of the fund, should be set equal to at least 5 years.”

[2] Paragraph 41) of the Guidelines on performance fees states that “Where a fund utilises a HWM model, a performance fee should be payable only where, during the performance reference period, the new HWM exceeds the last HWM. The starting point to be considered in the calculations should be the initial offering price per share. For the HWM model, in case the performance reference period is shorter than the whole life of the fund, the performance reference period should be set equal to at least five years on a rolling basis. In this case, performance fee may only be claimed if the outperformance exceeds any underperformances during the previous five years and performance fees should not crystallise more than once a year”.

[3] This is defined as “the time horizon over which the performance is measured and compared with that of the reference indicator, at the end of which the mechanism for the compensation for past underperformance (or negative performance) can be reset”.