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Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
Costs and fees

Subject Matter
ESMA’s guidelines on performance fees in UCITS and certain types of AIFs

Question
How should the performance reference period be set in case of a merger where the receiving AIF is a newly established fund with no performance history and it is in effect a continuation of the merging AIF?

ESMA Answer

28-05-2021

Original language

[ESMA 34-32-352 AIFMD Q&A, Section 15, 6]

Based on the scope section of the guidelines, “In case Member States allow AIFMs to market to retail investors in their territory units or shares of AIFs they manage in accordance with Article 43 of the AIFMD, the guidelines also apply to AIFMs of those AIFs, except for: (a) closed-ended AIFs; and (b) open-ended AIFs that are EuVECAs (or other types of venture capital AIFs), EuSEFs, private equity AIFs or real estate AIFs”.

In order to ensure that the merger is not conducted with the aim of resetting the performance reference period[1], in the case of a merger where the receiving AIF is a newly established fund with no performance history and the competent authority of the receiving AIF assesses that the merger does not substantially change the AIF’s investment policy, the performance reference period of the merging AIF should continue applying in the receiving AIF.

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[1] 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”.