ESMA_QA_2770

Submission Date
12/02/2026

Status: Question Rejected

Additional Information

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

Level 2 Regulation
UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Level 3 Regulation
Performance Fees - Guidelines on performance fees in UCITS and certain types of AIFs - ESMA34-39-968

Topic
Costs and fees

Historic Question Reference
ESMA_QA_774

Additional Legal Reference
Guidelines on performance fees in UCITS and certain types of AIFs - 05/11/2020 | ESMA34-39-992 EN - paragraph 29

Subject Matter
interpretation of the condition "... as long as this would be in the investor's best interest (i.e. it would result in the investor paying less fees)."

Question
May I ask you for further clarification of your answer to ESMA_QA_774.

Q1 :
The example in your answer shows the very specific example of deducting the performance fee from excess
performance before calculating the performance fee. The example is not the the normal calculation described
in the first bullet point where the performance fee is not deducted from excess performance for calculating
the performance fee. Correct?

Q2:
The normal calculation described in the first bullet point where the performance fee is not deducted from
excess performance for calculating the performance fee means that also a possible performance fee accrued
until the day before (D-1) is not deducted from excess performance because otherwise the mathematical
incorrectness which I described in my question still exists for the current performance fee calculation period
(usually the fiscal year of the fund) with the false result just not including the false effect for the day of
calculation (D). Correct?

Q3

In your answer you formulated the example where the performance fee is deducted from excess performance
for the calculation of the performance fee as follows:
EXAMPLE: According to the prospectus, the Management Company will receive a performance fee, equivalent
to 9% of the positive net earnings of the fund.
However, as you showed in your mathematical expression the actual, resulting performance fee is not 9% but
8,26%. As I mentioned in my question normal business as well as legal understanding of "x% of something"
always means that the result of x% is not deducted from the something before calculating the "final" x%.
Wouldn't the a.m. wording of the example be the right description for the performance fee calculation
without deducting the performance fee from the earnings before calculating it; and the correct wording for
the mathematical expression you showed rather be for example the Management Company will receive a
performance fee, equivalent to 9% of the positive net earnings of the fund after that performance fee is
deducted from the net earnings so that the actual performance fee is 8,26%?