

# ESMA\_QA\_2770

Status: Question Rejected

## **Additional Information**

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### **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%?