Response Form to the Consultation Paper

Guidelines on performance fees in UCITS

16 July 2019 ESMA

Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **31/10/2019.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_PFG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_PFG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_PFG_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on Position limits and position management in commodities derivatives").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice.

Who should read this paper

This document will be of interest to asset managers managing retail funds and their trade associations, as well as institutional and retail investors investing into such funds and their associations.

General information about respondent

Name of the company / organisation	Belgian Asset Managers Association (BEAMA)
Activity	Other Financial service providers
Are you representing an association?	☒
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_PFG_1>

BEAMA welcomes the opportunity to respond to ESMA's consultation paper on performance fees guidelines in UCITS

BEAMA vzw|asbl, Belgian Asset Managers Association, is the acronym of the vzw|asbl « Belgische Vereniging van Asset Managers Association belge des Asset Managers ». BEAMA has 111 members (57 effective members - 54 associated members), representing €287 billion in assets under management as at the end of 2018.

BEAMA vzw|asbl is a member of Febelfin vzw|asbl, the Belgian Federation of the financial sector, as well as of EFAMA, the European Fund and Asset Management Association.

<ESMA_COMMENT_PFG_1>

Questions

Q1 : Do you agree that greater standardisation in the field of funds' performance fees is desirable? What should be the goal of standardisation?

<ESMA_QUESTION_PFG_1>
BEAMA welcomes the standardisation and harmonisation of performance fee calculation methods in general.

The advantage of the future Guidelines for the end investors is that they will obtain more information about the functioning of performance fee models, including the calculation methods. Such information should be clearly disclosed in the fund's prospectus.

The future final Guidelines will focus on retail clients. Would it be possible to admit a methodology for institutional share classes?
<ESMA_QUESTION_PFG_1>

Q2 : Are there any obstacles to standardisation that could be removed by regulatory action? Please elaborate.

<ESMA_QUESTION_PFG_2>
BEAMA underlines the importance to avoid gold-plating by National Competent Authorites by introducing the future Guidelines.
<ESMA_QUESTION_PFG_2>

Q3 : What should be taken into consideration when assessing consistency between the index used to calculate the performance fees and the investment objectives, strategy and policy of the fund? Are there any specific indicators which should be considered (eg: historical volatility, asset allocation composition, etc.) to ensure this consistency? Please provide examples and give reasons for your answer.

<ESMA_QUESTION_PFG_3>
BEAMA advocates the principle of consistency between the index provided and the investment policy.

Where a UCITS references an index for the sole purpose of measuring its performance fees against it, that UCITS should not be understood as being managed according to that same index. An index can be used to calculate a performance fee (e.g. Eonia + 1% for a plain vanilla equity fund). Such an index should not be used to determine the absolute return funds risk / reward profile, nor as a benchmark for the investment objectives and strategy chosen (risk of misleading investors).

It is necessary to make a clear distinction between those 2 types of indices (for the calculation of the performance fee vs. investment policy).
Where a fund's strategy offers some form of beta exposure to an underlying asset class, any performance fee should be levied off a benchmark that is consistent with

the fund’s risk/reward profile and thus aligned with its investment objectives and strategy.

Information about the use of indices for internal purposes, in particular for the calculation of performance fees, should be disclosed in the fund’s prospectus or on web pages.
<ESMA_QUESTION_PFG_3>

Q4 : What is the anticipated impact of the introduction of Guideline 3? Do you agree with setting a minimum crystallisation period of one year? Do you think this could help better aligning the interests of fund managers and investors? Please provide examples.

<ESMA_QUESTION_PFG_4>
- BEAMA would suggest to clarify the notion of “crystallisation period”.
- BEAMA would suggest that the final Guidelines refer to “crystallisation frequency” in stead of “crystallisation period”.
- BEAMA would suggest to clarify the case of new share classes launched in the interim between one crystallisation date and the next.
- The future Guidelines should reflect that performance fees also crystallise when investors in a share class choose to redeem, as well as in exceptional circumstances for a variety of purely technical reasons, as for instance, with the launch of new share classes, with fund mergers, liquidations, or other corporate actions. In the latter cases, shorter crystallisation frequencies should be justified, provided they are truly exceptional and disclosed in advance to end-investors for these to be treated fairly.
- BEAMA is not in favour of the proposal to link the duration of the crystallisation frequency with the recommended holding period for a given share class.

<ESMA_QUESTION_PFG_4>

Q5 : Are there any other models or methodologies currently employed that, in your view, should be exempted from this requirement? For example, do you think that the requirement of a minimum crystallisation period of 12 months should also apply to HWM models? Please provide examples on how these models achieve the objectives pursued by Guideline 3.

<ESMA_QUESTION_PFG_5>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PFG_5>

Q6 : In your view, should performance fees be charged only when the fund has achieved absolute positive performance? What expected financial impact (e.g. increase or decrease of the manager’s remuneration or increase or decrease of the financial return for investors) would the proposed Guideline 4 have for you/the stakeholder(s) you represent? Are there models or methodologies currently employed where the approach set out in Guideline 4 would not be appropriate?

<ESMA_QUESTION_PFG_6>

BEAMA is not in favour of the principle of the limited possibility to charge a performance fee as stated in Guideline 4, i.e. only in case of an absolute positive performance of NAV. If outperformance in relation to a given index is expressly foreseen as part of a fund's investment objectives and strategy, then any positive relative performance vis-à-vis that index (even when the NAV is on the decline) could also be rewarded to the management company.
<ESMA_QUESTION_PFG_6>

Q7 : If the performance fee model that you currently use provides for performance fees to be payable in times of negative returns, is a prominent warning on this provided to investors in the legal and marketing documents of the fund? If not, should this be provided? Please give examples for your answer and details on how the best interests of investors are safeguarded.

<ESMA_QUESTION_PFG_7>
Relative positive performance fees should be disclosed in legal documents (in the UCITS prospectus and not in the KIID) and in marketing documents, providing information about the functioning of performance fee models.
<ESMA_QUESTION_PFG_7>

Q8 : What are your views on setting a performance reference period for the purpose of resetting the HWM? What should be taken into account when setting the performance reference period? Should this period be defined, for example, based on the whole life of the fund (starting from the fund's inception date), the recommended holding period of the investor or the investment horizon as stated in the prospectus? Please provide examples and reasons for your answer.

<ESMA_QUESTION_PFG_8>
It should be made clear that the performance reference periods differ from the holding period, especially in view of an individual investor whose investment horizon may de facto be substantially different form the one recommended in the disclosure documents.
<ESMA_QUESTION_PFG_8>

Q9 : Alternatively, would it be possible to envisage predefined time horizons for the purpose of resetting the HWM, such as 3 or 5 years? Please provide examples and details on what you think would be the best practice in order to better align the interests of fund managers and investors.

<ESMA_QUESTION_PFG_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PFG_9>

Q10 : How long do you think the performance reference period should be for performance fee models based on a benchmark index? What should be taken into account when setting the performance reference period for a performance fee benchmark model? Would it be possible to envisage predefined time horizons for the purpose of resetting the performance fee based on a benchmark, such as 3 or 5 years?

Please provide examples and details on what you think would be the best practice in order to better align the interests of fund managers and investors.

<ESMA_QUESTION_PFG_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PFG_10>

Q11 : Alternatively, do you think the performance reference period should coincide with the minimum crystallisation period or should it be longer/shorter? Please provide examples and reasons for your answer.

<ESMA_QUESTION_PFG_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PFG_11>

Q12 : What are your views on when the Guidelines should become applicable? How much time would managers require to adapt existing fee mechanisms to comply with the requirements of these Guidelines?

<ESMA_QUESTION_PFG_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PFG_12>

Q13 : Do you consider that the principles set out in the Guidelines should be applied also to AIFs marketed to retail investors in order to ensure equivalent standards in retail investor protection? Please provide reasons.

<ESMA_QUESTION_PFG_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PFG_13>

Q14 : Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits as regards the consistency between the performance fees model and the fund's investment objective? What other types of costs or benefits would you consider in this context? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_14>
Costs derived from the implementation of the future final Guidelines, in the form of compliance and legal work, should not be prohibitive.
<ESMA_QUESTION_PFG_14>

Q15 : In relation to Guideline 2, do you think that models of performance fee without a hurdle rate, or with a hurdle rate not linked to the investment objective (but clearly stated in the offering documents), should be permissible? For example, do you think that equity funds with a performance fee linked to EONIA, or a performance fee which is accrued as long as there are positive returns, should be allowed? Please give examples and reasons for your answer.

<ESMA_QUESTION_PFG_15>

TYPE YOUR TEXT HERE
<ESMA_QUESTION_PFG_15>

Q16 : What additional costs and benefits would compliance with the proposed Guideline bring to you/the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_16>
Costs derived from the implementation of the future final Guidelines, in the form of compliance and legal work, should not be prohibitive.
<ESMA_QUESTION_PFG_16>

Q17 : What is the anticipated impact from the introduction of this proposed Guideline? Are there models or methodologies currently employed where this Guideline would not be appropriate? If so, please provide examples of these and details of how the best interests of investors are safeguarded.

<ESMA_QUESTION_PFG_17>
BEAMA is not in favour of the principle of the limited possibility to charge a performance fee as stated in Guideline 4, i.e. only in case of an absolute positive performance of NAV. If outperformance in relation to a given index is expressly foreseen as part of a fund's investment objectives and strategy, then any positive relative performance vis-à-vis that index (even when the NAV is on the decline) could also be granted to the management company.
<ESMA_QUESTION_PFG_17>

Q18 : What additional costs and benefits would compliance with the proposed Guideline bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_18>
Costs derived from the implementation of the future final Guidelines, in the form of compliance and legal work, should not be prohibitive.
<ESMA_QUESTION_PFG_18>

Q19 : Which other types of costs or benefits would you consider in the disclosure of the performance fees model? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_19>
Costs derived from the implementation of the future final Guidelines, in the form of compliance and legal work, should not be prohibitive.
<ESMA_QUESTION_PFG_19>