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| Response Form to the Consultation Paper  |
| Implementing technical standards under Regulation (EU) 2019/1156  |

**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 **30/06/2020.**

All contributions should be submitted online at [www.esma.europa.eu](http://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](http://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](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EUSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECAs, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECAs and their associations..

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Alternative Investment Management Association |
| Activity | Other Financial service providers |
| Are you representing an association? |[x]
| Country/Region | Europe |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_PFG\_1>

The Alternative Investment Management Association Limited (AIMA) appreciates the opportunity to comment on the European Securities and Markets Authority’s (ESMA) consultation on the draft implementing technical standards under the Regulation on cross-border distribution of funds (‘draft ITS’). AIMA members welcome the draft ITS as a positive step in ESMA’s ambition to remove existing barriers and enhancing the protection of investors.

We believe that the draft ITS create greater levels of efficiency and transparency and will provide a useful oversight of information regarding the applicable national laws, regulations and administrative provisions governing marketing requirements for Alternative Investment Funds (‘AIFs’) and for Undertakings for the Collective Investment in Transferable Securities (‘UCITS’) as well as the fees and charges National Competent Authorities (‘NCAs’) can levy in carrying out its duties.

We do, however, have a few suggestions that we believe should be addressed so as to ensure that the correct information is gathered by NCAs and that this is presented in the most helpful and transparent way possible.

<ESMA\_COMMENT\_PFG\_1>

**Questions**

1. : Do you agree that the information to be published should concern not only requirements applicable specifically to the marketing of investment funds, but should also encompass a general statement relating to the potential application of other bodies of law applicable within the concerned jurisdiction, such as rules on the protection of consumers in general? If so, do you agree that this general statement could take the form of a general disclaimer which refers to a non-exhaustive list of relevant bodies of law?

<ESMA\_QUESTION\_PFG\_1>

We support ESMA’s proposal that NCAs should not only publish requirements applicable to the marketing of investment funds, but also publish a general statement relating to the (potential) application of other relevant bodies of law applicable within the concerned jurisdiction.

However, rather than publishing a general disclaimer which refers to a non-exhaustive list of relevant bodies of law, we believe it would be helpful to include hyperlinks to the relevant bodies’ websites. To ensure that market participants are consulting the correct and applicable rules issued by the relevant body, these hyperlinks should direct users to the relevant applicable rules rather than to the homepage of the relevant body. This would have the benefit of avoiding any (potential) misunderstandings that may arise on which rules apply with regards to the marketing of investment funds.

<ESMA\_QUESTION\_PFG\_1>

1. : Do you agree with the proposed approach regarding the format of the publications to be made by NCAs on their websites in respect of marketing requirements for UCITS and AIFs? If not, please provide alternative suggestions.

<ESMA\_QUESTION\_PFG\_2>

Although we are cognisant of the differences between the structures of marketing requirements between Member States, to ensure full harmonisation between NCAs we believe that a standard format used by all NCAs would be easier to navigate for market participants and would avoid any (potential) confusion that may arise between the presentation of the marketing requirements applicable within each Member State.

In addition, we believe that the inclusion of hyperlinks to the applicable national laws, regulations and administrative provisions governing the marketing requirements for AIFs and UCITs in the standardised form would provide even greater clarity and ensures that market participants are directly accessing the relevant applicable rules.

<ESMA\_QUESTION\_PFG\_2>

1. : Do you agree with the approach taken regarding the main characteristics of the summary of marketing requirements that NCAs shall publish on their websites? If not, please provide details on the elements that you would favour including in the text or in table.

<ESMA\_QUESTION\_PFG\_3>

We support the creation of a summary that provides a broad overview of the applicable marketing requirements in a clear and concise manner. We do believe, however, that a standardised format and structure of this summary document amongst NCAs would provide greater benefits to market participants as the key marketing requirements would be more easily identifiable. By not using a standard format amongst Member States, there is the possibility that some NCAs may decide not to include information that other NCAs might consider to be of importance and relevance.

As mentioned previously, although we are aware of the differences in the structure of marketing requirements between NCAs, we believe the inclusion of certain minimum high-level guidance in the summary document, perhaps broken down in set categories – e.g., by fund type (e.g., AIFs vs UCITS) and type of investors (e.g., retail vs professional) – would enable market participants to find and access this information in a more efficient manner. <ESMA\_QUESTION\_PFG\_3>

1. : Do you agree with the approach taken with respect to the scope of regulatory the fees and charges to be published by NCAs on their websites?

<ESMA\_QUESTION\_PFG\_4>

We support the publication of the regulatory fees and charges levied by NCAs in relation to any cross-border activities within their jurisdiction, whether inwards or outwards. We also support ESMA’s view that NCAs should make it clear on their website that there are no other fees or charges other than those listed on their websites.

We do note, however, that to enhance full transparency of the fees and levies, as well as their calculation methodologies, NCAs should be encouraged to publish both. The regulatory fees and charges imposed by NCAs often differ between jurisdictions and market participants would appreciate greater insight into the calculation methodologies as questions arise as to how NCAs have calculated these. It is often unclear why these fees and levies differ greatly between Member States so we would strongly recommend NCAs to provide full transparency as to how these charges have been calculated.

<ESMA\_QUESTION\_PFG\_4>

1. : Do you agree that the publication to be made by NCAs under this ITS should be made in the form of a table? If not, do you have any alternative suggestion on the format of the publication on regulatory fees and charges?

<ESMA\_QUESTION\_PFG\_5>

We support the use of a table to provide an overview of the regulatory fees and charges levied by NCAs.

<ESMA\_QUESTION\_PFG\_5>

1. : Do you agree that NCAs have the option to supplement the tables setting out the details of the fees and charges with a full text providing detailed information on the fees and the fee calculation, if a table would risk giving incomplete or misleading information?

<ESMA\_QUESTION\_PFG\_6>

Although we support the inclusion in the draft ITS to provide NCAs with the option to supplement the table with additional, more detailed information, we note that under the current wording of the draft ITS it will be up to the NCAs’ discretion whether or not to supplement the table with further detailed information on the fees and charges if this information, in their opinion, cannot be summarised in a clear and concise manner. We would, therefore, ask ESMA to require NCAs to supplement the additional information regardless so as to pre-empt any possible confusion that may arise as, in practice, it may occur that NCAs and market participants differ as to what constitutes information that cannot be summarised in a table.

<ESMA\_QUESTION\_PFG\_6>

1. : Do you agree with the content of the table? Do you think any other information should be published by NCAs in relation to the regulatory fees and charges?

<ESMA\_QUESTION\_PFG\_7>

We support the inclusion of the information as suggested by ESMA. However, we would also ask NCAs to consider including the additional following information:

* A detailed breakdown of the fees into initial, ongoing and other fees;
* Information on whether the initial fee must be paid at or before time of registration with the NCA or if payment must be completed at a later stage;
* The periodicity of the fees with the inclusion of information when these fees are expected to change, the frequency of these potential changes and detailed information on the invoicing format. On the latter, we note that detailed information on the invoicing format will allow market participants to process payments of fees more easily.

<ESMA\_QUESTION\_PFG\_7>

1. : Please specify the use you would make of the information to be contained in the central database listing UCITS and AIFs marketed on a cross-border basis. Do you have any suggestion regarding the format of this central database?

<ESMA\_QUESTION\_PFG\_8>

Although we in principle support the creation and maintenance of a central database on cross-border marketing of AIFs and UCITS, we believe that the information that would be publicly accessible should be limited to only include the name of the AIF and UCITS, the name of the AIFM, EuSEF manager, EuVECA manager, or UCITS Management Company and the Member States in which the funds are marketed.

The inclusion of any potential other information may be justified for regulatory supervisory purposes but we believe this type of information should only be accessible to NCAs and ESMA so as to safeguard any commercially sensitive information from entering the public realm.

In addition, it would be of great benefit to have a centralised database which would be exportable into a usable format (e.g., Excel) as it would allow market participants to perform periodic checks of their internal registrations against the records of (individual) NCAs to ensure necessary updates are shared with NCAs. This would enable market participants to reconcile any potential discrepancies that would exist between the information held by NCAs and by market participants.

<ESMA\_QUESTION\_PFG\_8>