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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**

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| Name of the company / organisation | Association Française de la Gestion Financière,AFG |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | France |

**Introduction**

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

<ESMA\_COMMENT\_PFG\_1>

The Association Française de la Gestion financière (AFG, ID n°: 59 75 67 91 80-97) is grateful for the opportunity to answer to the ESMA Consultation paper concerning implementing technical standards under Regulation (EU) 2019/1156.

 The AFG would like to thank ESMA for its efforts to implement the (EU) 2019/1156 regulation as well as possible in consultation with the professional bodies..

AFG wishes to highlight some important points:

* We think that similar templates should be provided for pre-marketing and denotification rules:

- As the cross-border Directive and Regulation do not harmonise them at all yet for UCITS;

- And that for AIFs, the Directive lets the degree of harmonization at a very limited level: it only sets requirements on the AIF manager to inform NCAs on the way it intends in practice to launch pre-marketing in the relevant jurisdiction, but it does not put at all any onus on the host NCA to disclose ex ante (and on an ongoing basis) its pre-marketing requirements.

- Therefore, we wish ESMA to provide also templates for local pre-marketing and denotification rules, applicable both for AIFs and UCITS, to be disclosed by NCAs.

* In accordance with our answer to question 2, we are very keen to have standardised information on the regulatory obligations and costs imposed on management companies for the crossborder marketing of their funds.

<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>

Yes, we agree that the competent national authorities should publish on their websites all the rules applicable to the national (if it is national law this should be highlighted) and cross-border marketing of investment funds. It is important that the body of rules published should be as complete as possible so that investment companies can have access to all the marketing rules on the same internet portal. Therefore, national competent authorities should, in addition to the specific rules applicable to the marketing of investment funds, make reference to other more general bodies of national law which may be applicable to the marketing of investment funds (such as consumer law applicable in a country where funds are marketed to retail clients).

We also agree that general national laws also applicable to the marketing of investment funds (such as consumer law texts) may be subject to a general disclaimer on competent national authorities’ websites with cross-references. These cross-references will nevertheless always have to be kept up to date so as not to mislead management companies into applying old texts.

On the other hand, if references are made to general national laws also applicable to the marketing of investment funds they should be as exhaustive as possible. Otherwise, investment companies will still have to conduct numerous searches through other channels and the idea of keeping a register of all the rules applicable to investment funds would lose some of its value.

For information, specific national requirements may apply to the marketing of funds in certain countries. They are therefore not generalised at European level and some management companies may not be aware of them. It would therefore be useful to publish them so that management companies are aware of them before marketing funds in these countries.

For example, in Italy, the marketing of any ETF implies to introduce this ETF in the Italian Stock Exchange. Such a requirement must be known to the management companies before it markets its fund in Italy. The cost of such a requirement is also a parameter to be taken into account by the management companies. Here, the Italian NCA could disclose this requirement and refer to the Italian Stock Exchange website for more information. This last paragraph is of course also to be referred to question 4 of this consultation concerning fees.

<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>

 It is necessary to have templates with a form imposed on all competent national authorities. In this way, investment companies will not have to deal with 27 different templates. This is important in order to create both human and IT automation.

These templates need to be:

* Precise enough,
* Exhaustive,
* Comparable from one NCA to another,
* And ultimately, usable.

Therefore, these templates must be made more elaborated in their structure, by proposing sections – and possibly sub-sections – in which fund managers could jump in, to find rapidly the specific piece of information that it needs, related to the specific *nature* of information it needs : we need further detailed standardization. And thus, we should avoid too high-level information, which would allow just NCAs to pretend they have “ticked the box” without bringing any added value to fund managers (e.g. we should avoid having sentences from NCAs saying just: “For more information, please contact the NCA (…)”.

We are therefore proposing ESMA to find inspiration from existing matrices currently provided – on a fee basis – by private providers, such as global audit firms, global consultancy firms or global law firms. If provided by ESMA to be replicated at Member State level by each NCA, it would facilitate the export of funds across the EEA along with.

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| You will find below our template proposal, base on the current matrix examples taken out from matrices that various audit firms, consultancy firms and law firms provided to us :* Overview
 |
| * Investment fund market & distribution
 |
| * Fund Regulatory framework
 |
| * The Supervisory Authority
 |
| * Other useful links
 |
| * Exhaustive applicable Laws and regulations applicable to foreign funds
 |
|  |
| * (Public) Distribution vs Private placement
 |
| * Per categories of Investors and type fund (UCITS/ Open-ended and close-ended FIA/Other foreign Funds)
 |
| * Distribution activity & authorization/approval needed per investor category
 |
| * Pre marketing rules
* Definition of the activities considered as distribution
 |
|  |
| * AIFMD and UCITS Marketing Passport (for UCITS vs FIA)
 |
| * Regulatory notification fees
 |
| * Contents of notification file
 |
| * Local agent(s) requirements and responsibilities
 |
| * Partial registration
 |
| * Miscellaneous
 |
|  |
| * Registration Application Maintenance
 |
| * Document updates requirements
 |
| * Regulatory maintenance fees
 |
| * Local Financial, Regulatory, Statistical & Tax reporting requirements
 |
| * Other important information
 |
| * Publication requirements and related language requirements (NAV/Investor notification in case of changes, General meetings or distribution of dividend)
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| * Deregistration process
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| * Termination of commercialisation of the vehicle
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| * Deregistration of Sub-funds
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* Marketing material
* Key requirements
* Key informations

On this last point, it would be interesting for each NCA to draw up a good practice guide on its requirements for marketing materials. Indeed, the requirements of the NCAs on marketing materials are not the same according to the country.This is therefore very difficult to manage for investment firms today. |

Only once ESMA has determined a common template for all NCAs to use, a user-friendly option for NCAs to consider, and one promising to expedite access to information, would be to structure access to the relevant information through a “question tree”, whose answers will step-wise lead the prospective management company to discover all the information needed by responding to a series targeted questions. We reiterate that the latter approach should be optional for NCAs and pursuable only once ESMA has determined a common template.

Where disclosures need to be made in more than one language on an NCA’s website, it may be difficult for prospective management companies to find the relevant information. The opportunity of an appropriate “search tool” should be considered, allowing key word recognition (e.g. “fees”, “charges” or “cross-border activities”) in English. Notwithstanding this, we believe that NCAs should in any case offer an English version of their template and related information, saving prospective asset management companies a considerable amount of time and resources.

<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>

Yes, we agree with this approach. In connection with our answer above, this summary could refer to the full table of texts applicable to the marketing of the funds we have proposed, which would be published on the websites of the competent authorities.

<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>

 Yes, we agree that the competent national authorities should publish on their websites all existing regulatory fees and charges collected by them in relation to any cross-border activity within their jurisdiction, whether inwards or outwards.

If these fees or charges are called "taxes" in some countries (Belgium for example), they must also be published on the NCAs' website.

Finally, in addition to fees and charges or taxes and similar, it would be useful to mention on the regulator's website that in order to market funds in his country, fees may have to be paid. For example, if necessary, for the appointment of a tax agent or, or if recommended by the NCA of the country of marketing, to pay a law firm. Even if these fees are not charged by the NCA, it would be useful for management companies to know, in fine, how much it costs, in total, to market a fund in the country concerned.

We also agree that the competent national authorities should have the discretionary power to publish either the list of regulatory fees and charges or the calculation methodologies thereof where such methodologies exist. But, if the competent national authorities choose to publish the calculation methods, they should be clear and precise and should allow management companies to know in advance how much it will cost them to market their funds cross borders.

This is why NCAs, if they choose to publish a calculation method, must give numerical examples of the application of these methods.

In addition, it would also be useful for the NCAs to display the fees, if any, associated with the pre-marketing or denotification of funds.

To conclude, the NCAs must put, on their websites, the information necessary for the payment of the fees. For example:

- the payment contacts;

- the payment schedules

- the bank details for making the transfer and the reason for the transfer to be specified so that the regulator can identify the transfer.

We propose this because today, some NCAs do not issue invoices and management companies that do not pay spontaneously are exposed to reminders or administrative measures from the NCAs. This is difficult to manage, so having clear elements on the subject would make it possible to build a more secure automatic calculation and payment process.

<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 agree that the publication by NCAs under this ITS should be made in the form of a table with certain mandatory lines. The mandatory lines proposed in the consultation at point 24 of 4.2 seem appropriate.

<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>

We totally agree but this must not dispense NCAs to be as clear as possible in the table.

If the NCAs feel that they are not clear enough in the table, they can explain the lines by cross-referencing within the mandatory lines. These explanations should in no case be the subject of a large separate text without reference to the table as this could remove any usefulness of the table and thus any clarity in the publication of costs and fees charged by the NCAs.

<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 fully agree with the mandatory table lines proposed by the point 24 of this consultation.

<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>

We are in favour of the creation of such a database provided by ESMA that it includes the ISIN / LEI codes of the funds, that it is an official database that could be taken as a reference point and therefore enforceable against the co-contractors of the management companies and that it is constantly updated. This database must then have a legal value, in order to give legal safety [or certainty] for the players involved in the value chain. It would also be useful for investment companies to be involved in this project.

For example, one of the possible uses of an official and constantly updated crossborder fund marketing database is to settle the case of marketing platforms that sell to clients from countries in which the management companies has not marketed its fund. Indeed, marketing platforms are now absolving themselves of any responsibility for the marketing of funds in unauthorized countries by arguing with management companies that they do not have information on the countries of marketing. With such a database, a contractual clause could be inserted in the contracts with these platforms, referring to this database for the countries in which the marketing of funds is authorised. This would prevent the risk of funds misselling.

In addition to that, the Investment Managers will be able to match on a regular basis their own database of registration as per their internal system to ensure that both comply. This will enable the Investment Managers to strengthen this information provided either directly or through data providers to sub-distributors.

More generally, this database could be used by investment managers of funds or portfolios and / or investment advisers and / or clients themselves to check whether the fund they are about to invest in are registered or not in their country, preventing misselling.

<ESMA\_QUESTION\_PFG\_8>