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ESMA Publishes Guidelines on Performance Fees in UCITS and Certain Types of AIFs

On 03 April 2020 the European Securities and Markets Authority (ESMA) published the Guidelines on Performance Fees in UCITS and certain types of AIFs (hereunder referred to as the Guidelines) to ensure supervisory convergence of performance fee structures and the circumstances where performance fees may be charged, whilst ensuring that supervisory convergence with respect to performance fee models is achieved at EU Level and to prevent undue costs being charge to a Fund and its investors. The Guidelines follow a Consultation Paper issued by ESMA on 16 July 2019 and target UCITS and Alternative Investment Funds targeting retail investors.

The Guidelines provide comprehensive guidance to fund managers when designing performance fee models for the funds they manage, including the assessment of the consistency between the performance fee model and the fund's investment objective, policy and strategy, particularly when the fund is managed in reference to a benchmark.

In summary the Guidelines cover the following areas:

- i. The methodology for the calculation of the performance fee;
- ii. Consistency between the performance fee model and the fund's investment objectives, strategy and policy. The Investment Manager shall take into consideration performance measures and the portfolio composition;
- iii. The frequency for the crystallisation of the performance fee;
- iv. Negative performance (loss) recovery; and
- v. The methods of disclosure of the performance fee model.

The Guidelines will become applicable within two months from the date of publication of the guidelines on the ESMA website in all EU official languages and are available through the web-link:

https://www.esma.europa.eu/sites/default/files/library/esma_34-39-968_final_report_guidelines_on_performance_fees.pdf.

Investment Managers of funds with a performance fee existing before the date of application of these Guidelines should apply these guidelines in respect of those funds by the beginning of the full financial year following 6 months from the application date of the Guidelines. Otherwise, the Guidelines apply from the date of publication in all EU official languages.