

16 June 2022

ESMA Reports on Supervision of Costs and Fees in Investment Funds

1.0 Background

Reference is made to the [Final Report](#) issued by the European Securities and Markets Authority ('ESMA') on 31 May 2022, on the Common Supervisory Action ('CSA') on costs and fees for investment funds, that was carried out with National Competent Authorities ('NCAs') during 2021.

2.0 Overview

The 2021 CSA was aimed to assess, foster and enforce the compliance of supervised entities with key cost-related provisions in the UCITS framework, in particular the obligation of not charging investors with undue costs. NCAs were asked to report to ESMA on the CSA results in their Member State by 31 December 2021. Following the completion of the CSA, ESMA assessed the impact of the exercise on any type of follow-up actions envisaged/taken by NCAs.

The report sets out ESMA's analysis and conclusions on the CSA exercise and presents ESMA's views on the various findings, including:

- i. Suggestions for further improvements by supervised entities on the application of the ESMA [supervisory briefing on the supervision of costs in UCITS and AIFs](#), particularly the importance for all UCITS managers to have in place a structured and formalised pricing process;
- ii. The importance of performing an independent analysis of the fee structures once those have been established. Where portfolio managers i.e. delegates, exercise significant influence or even decide the level of costs; ESMA highlights that it should be avoided to over-rely on the assessment made by the delegate portfolio manager;
- iii. The importance of ensuring that the notion of undue cost should be primarily assessed against what should be considered the best interest of the fund and its investors;
- iv. The importance of ensuring that investors are adequately compensated in all cases where they were charged with undue costs or fees, and also in cases where there were calculation errors that resulted in a financial detriment for investors, and;

- v. Stricter follow up measures by NCAs in relation to instances where there is a lack of policies and procedures on Efficient Portfolio Management Techniques (“**EPM**”) and lack of clear disclosures as required under the ESMA Guidelines on ETFs and other UCITS issues; and

The Report also delves into the follow-up actions envisaged by NCAs and the main lessons learnt.

3.0 Next Steps

ESMA and the NCAs will keep monitoring how the recommendations in ESMA’s report have been implemented by all UCITS Managers and enforcement action may be taken in the case of non-compliance with key cost related provisions in the UCITS framework.

UCITS Managers are expected to ongoingly take into account the contents of ESMA’s report dated 31 May 2022, the supervisory briefing on the supervision of costs in UCITS and AIFs and the [MFSA’s Circular](#) dated 11 April 2022 when fulfilling their respective obligations relating to costs and fees of the funds that they manage.

4.0 Contacts

Should you have any queries relating to the above, kindly contact the Authority on funds@mfsa.mt.