

ESMA Updates Performance Fee Rules

The European Securities and Markets Authority (“ESMA”), the lead regulatory authority in the European Union, has recently published updated guidance in relation to the calculation of performance fees for both UCITS and AIFs this month. The updated guidance appears in the UCITS and AIFMD Q&A documents respectively. Firms would be advised to ensure that their related policies, as well as disclosures in the offering documents, reflect the updated guidance.

Background

ESMA has been keenly focussed on costs and charges in recent years in order to protect investors and boost confidence in European regulated financial products. In addition to related guidance, it also carried out a Common Supervisory Action (“CSA”) with national regulators including the Central Bank of Ireland (the “Central Bank”) on the topic and as a result of this a “Dear Chair” letter was issued to regulated market participants in Ireland requiring compliance with related rules and findings.

The Updated Guidance

The updated guidance consists of two Q&As for AIFs and the same two for UCITS, namely ESMA Q&A’s 2174, 2176, 2173 and 2175 respectively.

1. Additional Reference Indicator

The first new Q&A clarifies that where a manager applies an additional reference indicator to the performance fee model (e.g.: a hurdle rate on top of the High-Water Mark model) to a UCITS or AIF the minimum performance reference period

should be applied to the additional reference indicator but the manager is not required to apply the minimum performance reference period to the additional reference indicator. Appropriate disclosure should, however, be provided in the prospectus.

2. Fund of Funds Fees

The second new Q&A relates to charging performance fees on funds of funds (“FoF”) and clarifies that performance fees for the manager of the FoF could be considered as justified in certain circumstances where there is active management at the FOF level in terms of determining allocation.

How Clerkin Lynch Can Help

Clerkin Lynch’s asset management team have run a number of seminars focussing on issues relating to Costs and Charges and are well placed to give independent advice to firms on all aspects of compliance with related regulatory requirements at both a national and European level. We can provide related template policies and procedures or efficiently verify compliance by firms through our related checklists.



Mark Browne
Partner
email:
markbrowne@clerkinlynch.com
Phone: 01 611 4400



