

Wednesday, 15 April 2020

## ESMA guidelines on performance fees

**While the ESMA guidelines on performance fees are a useful exercise to enhance European convergence, they are overly restrictive in setting a five-year reference period**

On 20 March 2020, the European Securities and Markets Authority (ESMA) issued its [Guidelines on performance fees](#) in UCITS and certain types of AIFs.

The *Association Française de la Gestion Financière* (French Asset Management Association - AFG) and its members have always given full support to all efforts to enhance supervisory convergence in Europe. We have been extensively involved in the discussions relating to best practice in performance fee calculation.

France has an impeccable record when it comes to codifying and implementing the principles of the International Organisation of Securities Commissions (IOSCO) (August 2016). It has also issued its own set of industry standards with the publication in November 2018 of the [AFG-AFTI Guide](#) to performance fees for UCITS and retail investment funds. With this in mind, the AFG considers that, for the most part, the ESMA guidelines provide useful indications to ensure that the models used in different European countries fulfil the objective of aligning the interests of fund managers and investors, in line with the IOSCO recommendations.

However, **the ESMA guidelines go too far by imposing one model based on a reference period of at least five years**, without any real prior assessment of the impact at European level.

This model is currently imposed in just one European Union member state and is not included in the IOSCO recommendations. By imposing such a time horizon without making any distinction in terms of asset class, strategy or recommended holding period, there is a risk of jeopardizing the models already tried and tested in other European countries such as France, and of probably inciting the fund managers in these countries to discard such models and apply higher fixed fees instead. Yet, perpetuating a viable fee model in which performance fees can be applied should, in our opinion, be one of the main objectives of this whole exercise as it makes possible to further align the interests of asset management companies and investors by sharing out the profits when funds perform well or by charging lower fixed fees when they do not.

Therefore, in the AFG's opinion, depriving investors who subscribe in a fund of a choice between, for example, a share class that is subject to performance fees and another that carries only fixed fees which are higher and charged systematically regardless of market conditions, runs counter to their interests. We must bear in mind that variable fees work to investors' advantage in a market downturn.

In France, at the end of 2017, performance fees accounted for 8% of the total management fees charged by fund managers who were offering at least one share class that carried a performance fee. This percentage had fallen to 3% at the end of 2018, corresponding to a 65% decrease in the variable fees charged.

The ESMA guidelines are not immediately applicable. The national competent authorities will have two months from the publication of the translated versions of the guidelines in all the European Union languages to notify ESMA of their intention to comply or to not comply with them.

In light of the arguments set out above, **the AFG is exceptionally calling for the partial application of these guidelines, i.e. compliance with most of its provisions, but asks that the application of a reference period of at least five years be optional rather than mandatory.**

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The *Association Française de la Gestion Financière* (French Asset Management Association - AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These players manage more than €4,000 billion worth of assets, i.e. a quarter of the asset management market in continental Europe.

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