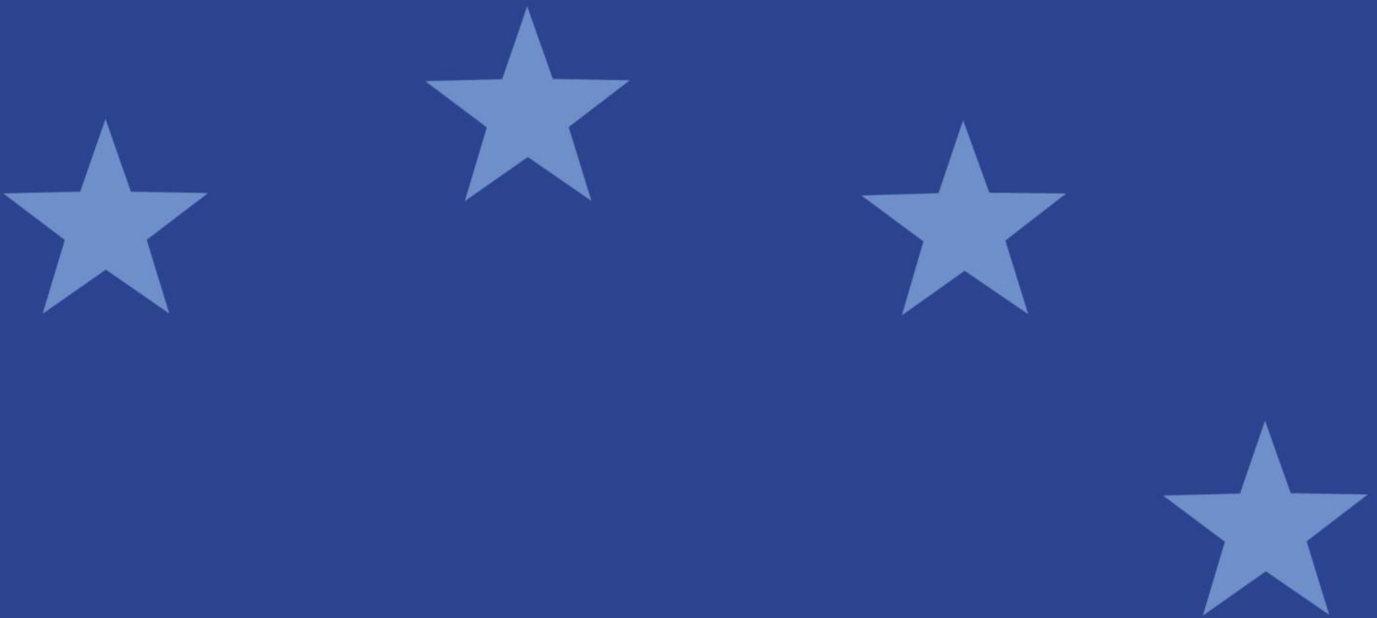
Response Form to the Consultation Paper

Guidelines on performance fees in UCITS



16 July 2019 ESMA

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 **31/10/2019.**

All contributions should be submitted online at 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 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 under the heading Legal Notice.

Who should read this paper

This document will be of interest to asset managers managing retail funds and their trade associations, as well as institutional and retail investors investing into such funds and their associations.

General information about respondent

Name of the company / organisation	Irish Funds
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Ireland

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_PFG_1>

[The Irish Funds Industry Association (**Irish Funds**) is the representative body for the international investment fund community in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland.

Ireland is a leading centre for the domiciliation, management and administration of collective investment vehicles, with industry companies providing services to collective investment vehicles with assets totalling in excess of €4.7 trillion. The funds industry is highly regulated and the ability to provide a well-regulated environment for investment funds and investment fund services is a substantial and proven part of Ireland's international financial services offering.

We welcome the opportunity to provide comment on the consultation on guidelines on performance fees in UCITS (**Guidelines**). Set out below in this introductory section are observations on matters which we believe to be pertinent to the drafting of the Guidelines and which are not incorporated in responses to any of the specific questions set out in the Consultation Paper.

Models Flexibility

The Irish Funds industry broadly welcomes these new principles-based Guidelines. We support their underlying objectives and feel they will have a positive impact in terms of both investor protection and aligning stakeholder interests.

UCITS attract investors with differing levels of sophistication and tolerances to risk and reward. Therefore, management companies need to be able to establish UCITS products that meet the needs of its broad investor base. Restricting model flexibility could have the unintended consequence of causing a divergence in the interests of the management company and investor. The final Guidelines should allow the management company to be able to tailor its performance fee model in line with the fund's investment objectives, strategy and policy, with the disclosure requirements providing the necessary transparency for investors in terms of the performance fee model and its calculation methodology.

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Additionally, as UCITS are retail funds often having tens of thousands of investors, it is not possible to create a performance fee model tailored for each individual investor. The number and complexities of the calculations required would also potentially create a significant level of operational risk. We would submit that there needs to be flexibility around the models while also providing a robust, intelligible and easily verifiable methodology with minimal operational risk.

One area requiring clarification, and illustrating the need for model flexibility, is the application of Guideline 1, paragraph 12, which provides that the fee calculation method should be designed to ensure that performance fees are always proportionate to the actual investment performance of the fund and that "artificial increases resulting from new subscriptions should not be taken into account when calculating fund performance". We believe this shouldn't apply where funds use the "per unit" methodology (formula below).

Formula:

Outperformance per unit x Number of units at end of performance fee period x Performance fee rate.

This is a widely used performance fee methodology but contradicts this proposed Guideline as the performance fee increases as the number of units increases (with the outperformance per unit remaining constant). If Guideline 1, paragraph 12 was implemented as is, it would constitute a sea change for UCITS which charge performance fees and is likely to require widespread modifications to performance fee methodologies. An alternative is to use the "reference asset" methodology which shifts the focus of the performance fee calculation (and accrual) to a Profit and Loss (**PnL**) concept but this can be more difficult from an administration perspective and could therefore lead to calculation errors. Overall, there needs to be a balance between the competing goals of transparency, cost, the pursuit of an individual performance fee methodology and reduction of calculation error risk.

The following is an illustrative example which compares the "per unit" methodology with the "reference asset" methodology. This illustrates the marginal effect on performance fees between the two methodologies.

Performance fee rate	20%		
Monthly Performance	1%	Equivalent to an annual figure of	12.68%
Monthly increase in units	2%	Equivalent to an annual figure of	26.82%

	1	2	3	4	5	6	7	8	9	10	11	12
Opening GAV	1,000,000	1,030,200	1,061,271	1,093,237	1,126,123	1,159,956	1,194,761	1,230,565	1,267,397	1,305,286	1,344,261	1,384,351
Net Subscriptions	20,000	20,563	21,142	21,737	22,348	22,976	23,621	24,284	24,965	25,665	26,384	27,123
Monthly performance	10,200	10,508	10,824	11,150	11,485	11,829	12,184	12,548	12,924	13,310	13,706	14,115
Perf Fee Accrl (per unit method)	(2,040)	(4,174)	(6,406)	(8,738)	(11,175)	(13,720)	(16,376)	(19,148)	(22,039)	(25,053)	(28,195)	(31,469)
Closing NAV	1,028,160	1,057,097	1,086,831	1,117,385	1,148,781	1,181,041	1,214,189	1,248,250	1,283,247	1,319,207	1,356,156	1,394,120
Opening units	100,000	102,000	104,040	106,121	108,243	110,408	112,616	114,869	117,166	119,509	121,899	124,337
Closing units	102,000	104,040	106,121	108,243	110,408	112,616	114,869	117,166	119,509	121,899	124,337	126,824
Closing NAV per share	10.080	10.160	10.241	10.323	10.405	10.487	10.570	10.654	10.738	10.822	10.907	10.993
Performance fee earned: per unit method												31,469.45
Reference Asset Model performance fee			Total of Monthly Performance in period			144,782						28,956.43
											"Artificial increase" due to impact of subscriptions	2,513.02
											"Artificial increase" as a % of closing NAV	0.180%

Unhedged Share Classes

We would recommend that the Guidelines incorporate provisions regarding the calculation and disclosure of performance fees based on a HWM model for an unhedged share class denominated in a currency different to the base currency of the UCITS such that the performance fee in an unhedged share class, denominated in a currency other than the base currency of the UCITS, can be based on the performance expressed in either the base currency or the currency of the share class.

Prospectus Disclosure of the Performance Fee Model – Worked Examples

Guideline 5, paragraph 27, provides that the Prospectus should include concrete examples of how the performance fee will be calculated to provide investors with a better understanding of the model. Whilst we agree that there should be a comprehensive and intelligible description of the performance fee calculation method in the Prospectus, we are of the view that the inclusion of specific examples in the formal offering document of the Fund could be misleading, as it would be difficult to include a variety of possible outcomes without the examples potentially becoming confusing. The management company may be at risk of misleading investors if all or most outcome permutations are not included. We are of the view that the proposed provision while well intended has the potential to be confusing.

Verification by Depositary

IOSCO's Good Practice 3 includes a provision that the calculation of the performance fee should be verifiable and not open to the possibility of manipulation. In Ireland UCITS depositaries are required to verify all performance fee calculations on crystallisation and before payment (or regardless of whether payment is made). We consider this to be a good practice and in the interests of investors and submit that it be included in the Guidelines.

Regulatory Alignment

We would highlight that various NCAs have already consulted on performance fee methodologies in the last year or so and have subsequently implemented new performance fee regimes, including in Ireland and Germany. It is important that any new ESMA proposals seek to take close account of these revised regimes and that ESMA implements any new requirements in a maximum harmonisation manner. For example, the current ESMA proposals envisage some features that differ to regimes recently overhauled. Maximum harmonisation is critical in order to avoid the creation of a dysfunctional and fragmented single market, particularly given that many UCITS are offered for sale on a cross-border basis.

Definitions

We suggest that the definitions section be addressed in the final Guidelines, in particular the below;

The term "reversal rate" (Guideline 1, section 14) should be defined in Part 2.

"crystallisation frequency" should replace "crystallisation period".

"performance reference period" should be defined more clearly as this is a new concept in some jurisdictions.]

<ESMA_COMMENT_PFG_1>

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Questions

Q1 : Do you agree that greater standardisation in the field of funds' performance fees is desirable? What should be the goal of standardisation?

<ESMA_QUESTION_PFG_1>
[Yes, we agree that greater standardisation in the field of funds' performance fees is most desirable. The principal goal of greater standardisation in relation to performance fees should be to enhance the UCITS brand by ensuring that investors and prospective investors can have the confidence in a common understanding of performance fee regimes regardless of the domicile of a particular UCITS. This is of particular importance in the context of the objective of better facilitating the cross-border distribution of UCITS both within the EEA and beyond.

However, we wish to point to the importance of the Guidelines not becoming overly prescriptive and allowing model flexibility given that certain funds or classes will target institutional investors who would have a greater level of sophistication, and/or risk appetite and understanding of performance fee models.

The purpose of standardisation is well set out in Section 3, paragraph 5 of the draft Guidelines.]
<ESMA_QUESTION_PFG_1>

Q2 : Are there any obstacles to standardisation that could be removed by regulatory action? Please elaborate.

<ESMA_QUESTION_PFG_2>
[Standardisation in an area such as performance fees needs to be introduced and implemented on a basis which ensures a "level playing field", the elimination of national restrictions in performance fee models and barriers to the cross-border marketability of UCITS funds.]
<ESMA_QUESTION_PFG_2>

Q3 : What should be taken into consideration when assessing consistency between the index used to calculate the performance fees and the investment objectives, strategy and policy of the fund? Are there any specific indicators which should be considered (e.g.: historical volatility, asset allocation composition, etc.) to ensure this consistency? Please provide examples and give reasons for your answer.

<ESMA_QUESTION_PFG_3>
[We agree with the requirement, for funds which use a benchmark-based performance fee, to assess the consistency between the index used and the investment objectives, strategy and policy of the fund. There are many criteria which can be taken into account in making the assessment but ultimately it should be a decision for the management company as to the most appropriate factors for the specific fund or class, rather than prescribing specific indicators in the Guidelines which must or should be considered. Indicators could be included in the guidance as examples of items the management company could consider. These should be examples only and not a "minimum" list of factors.

We note that the draft Guideline says that the benchmark must be appropriate for the investment strategy and goes onto say by way of example that it would not be appropriate for a long-equity fund to have a money market rate benchmark. We would disagree with the example given. A benchmark should be able to represent the alternative investment options for an investor (for example, if an investor would have put their cash in a bank account, then a money market benchmark is an appropriate measure against which performance may be measured). In this regard, we have seen UCITS which offer investors a range of performance fee classes within a single sub-fund, with performance fees capable of being assessed against (a) outperformance of a market based benchmark, (b) outperformance of a money market / EONIA rate or (c) outperformance of a high water mark. We believe that this is entirely appropriate and that investors should not see their choices constrained by obliging the UCITS to only offer a market-based benchmark.

In this regard, we believe that it does not make sense to suggest that a benchmark is not required in certain cases (as would appear to be the case from the footnote to Guideline 1, paragraph 11(a)) and then go on to suggest that a money market rate benchmark is inappropriate in certain cases. If including no benchmark is an option, then including any benchmark has to be seen as a positive for investors. In other words, if the final Guidance was to preclude money market benchmarks for certain funds, the management company could respond by determining not to have any benchmark at all, which would be a worse outcome for investors.]
<ESMA_QUESTION_PFG_3>

Q4 : What is the anticipated impact of the introduction of Guideline 3? Do you agree with setting a minimum crystallisation period of one year? Do you think this could help better aligning the interests of fund managers and investors? Please provide examples.

<ESMA_QUESTION_PFG_4>
[We agree that one year is not unreasonable. Irish UCITS in existence on 31 May 2019 crystallising performance fees and paying on a more regular basis than one year must transition to this standard by 30 November 2020.

We would recommend that clarification be made that the crystallisation and payment of a performance fee upon the following types of events be excluded from the proposed annual crystallisation/payment constraint:

a) the redemption of shares by an investor;
b) fund mergers and liquidations;
c) change of investment manager;

Consideration should also be given as to how new share classes launched within the year align with the general crystallisation of fees in the fund. We would suggest that share classes that are launched 3 months or more before the fund's year end should be permitted to have their performance fees crystallised at the time of the next crystallisation date. For example, if a new share class launched on 30 September 2019 for a fund with a 31 December 2019 crystallisation date, we would suggest an initial period of 3 months before the performance fee on that class should crystallise on 31 December 2019. For share classes launched after this date their first crystallisation date would be 31 December 2020.

While the question asks specifically about a minimum crystallisation period of one year, the ESMA proposal indicates that the crystallisation period should in principle be linked to the recommended holding period of the fund and the fee charged to each investor when exiting the fund. Charging a fee in such a manner would represent a significant administrative burden and level of risk. Even if not requiring the tailoring of the fee payment to the individual investor, we would not agree with the proposed link of the crystallisation period to the recommended holding period, as the recommended holding period may not reflect the reality of the actual holding period of the investor, with certain investor markets traditionally having a much higher trading frequency than others.

Moreover, tying the performance period to the suggested holding period of investors would be likely to result in performance periods of greater than one year, more likely to be 3 years, which would be problematic as holding periods may start at different times for each investor in the Fund as they may subscribe for shares at different times. We suggest that UCITS should be able to set a crystallisation period of one year. This is clear and easy for investors to understand – it also ties to annual performance reviews that investors are likely to undertake or receive as regards their individual investments. Properly implemented, Guideline 2 should be adequate to align the interests of fund managers and investors supported by the disclosure requirements in Guideline 5.

We would note that there may be times where the management company chooses to have a crystallisation period that does not coincide with financial or calendar year ends. This flexibility may be important and should be appropriately justified.

We would also suggest that "crystallisation period" is reworded to "crystallisation frequency" which may be clearer to investors and avoids confusion with "performance reference period".]
<ESMA_QUESTION_PFG_4>

Q5 : Are there any other models or methodologies currently employed that, in your view, should be exempted from this requirement? For example, do you think that the requirement of a minimum crystallisation period of 12 months should also apply to HWM models? Please provide examples on how these models achieve the objectives pursued by Guideline 3.

<ESMA_QUESTION_PFG_5>
[The Central Bank of Ireland currently permits two base performance fee model types namely:

a) achievement of a new high NAV over the lifetime of the UCITS (HWM model); or
b) the out performance of an index (benchmark index model).

Both models are subject to the constraint of generally no more frequent than annual crystallisation and payment of performance fees as per the response to question 4.]
<ESMA_QUESTION_PFG_5>

Q6 : In your view, should performance fees be charged only when the fund has achieved absolute positive performance? What expected financial impact (e.g. increase or decrease of the manager's remuneration or increase or decrease of the financial return for investors) would the proposed Guideline 4 have for you/the stakeholder(s) you represent? Are there models or methodologies currently employed where the approach set out in Guideline 4 would not be appropriate?

<ESMA_QUESTION_PFG_6>
[In our view, performance fees based on a benchmark index model should be capable of being charged where the UCITS fund has achieved the required positive performance as against the benchmark (relative performance) notwithstanding that its NAV may have declined over the relevant period (negative return). Indeed, it is our experience that this is a very common feature of this model. It is entirely reasonable and legitimate that a manager be rewarded for their outperformance of an index, when that is the clearly stated objective of the model, even if the overall returns are "negative". Conversely, where the NAV of a UCITS increases over the period, if the required outperformance as against the index has not been achieved, no performance fee is payable to the manager. In Ireland, although any underperformance of the index must be cleared before a performance fee becomes due in subsequent periods, there is no requirement that not only must the manager outperform the index, but that positive returns be achieved.

Furthermore, consideration needs to be given to the fact that an asset portfolio is part of a wider asset allocation strategy where preservation of capital in down markets is a critical component of such asset allocation strategies. Inclusion of an "absolute positive performance" provision could act as a potential distraction for management companies pursuing a long-term investment strategy. Undue focus on short-term measures potentially moves the incentive to the management company away from being fully aligned with the fund objective and policy.]
<ESMA_QUESTION_PFG_6>

Q7 : If the performance fee model that you currently use provides for performance fees to be payable in times of negative returns, is a prominent warning on this provided to investors in the legal and marketing documents of the fund? If not, should this be provided? Please give examples for your answer and details on how the best interests of investors are safeguarded.

<ESMA_QUESTION_PFG_7>
[Although it will be clear from the description of benchmark index models in the Prospectus that the performance fee is based on outperformance of an index (rather than increase in NAV/positive return), we would agree with the appropriateness of a requirement for a risk warning to be included in the Prospectus.]
<ESMA_QUESTION_PFG_7>

Q8 : What are your views on setting a performance reference period for the purpose of resetting the HWM? What should be taken into account when setting the performance reference period? Should this period be defined, for example, based on the whole life of the fund (starting from the fund's inception date), the recommended holding period of the investor or the investment horizon as stated in the prospectus? Please provide examples and reasons for your answer.

<ESMA_QUESTION_PFG_8>
[In order to assess the appropriateness of the performance fee method and alignment with the investment objectives and strategy of the fund, all the components of the calculation method need to be examined in aggregate. Maintaining flexibility for the management company to set different reference periods (together with the other method criteria) for different funds provides increased scope for management companies to define the method appropriate to the different

characteristics of the fund or investor base, i.e. asset class, recommended holding period, actual holding periods or investor turnover, investor type (retail vs institutional). We would, however, support ESMA setting a minimum reference period within their Guidelines giving due consideration to the points below.

The following are observations on longer reference periods for ESMA's consideration:

a) the longer the reference period, the greater the likelihood of instances of 'performance fee free rides' and different experiences by otherwise similar investors.
b) a permanent HWM mechanism or a 3 to 5 year reset period can lead to increased risk exposure, especially if the fund's share price is well below the HWM. This could actually lead to misalignment with the fund's investment objectives incentivising the management company to take excess risk to recoup prior losses.
c) a HWM from inception or predefined one would also rule out the ability to reset the reference period in other circumstances, e.g. the replacement of a sub-investment manager who has incurred absolute losses on the fund. Without a reset or with a long reference period, this could also hinder the management company in appointment of a new manager. Therefore, from an economic point of view, the liquidation of such a fund and a new launch of a similar product might be the sensible measure for an asset manager. Such a measure is not necessarily in the interest of the investors, incurring liquidation cost and realisation of losses.
d) increased reference periods reduce the comparability of funds' performance and cost; funds may have outperformed over a 3 or 5 year period but not incurred performance fees, due to older historical losses.

Our expectation is that the performance reference period will be set at Sub-Fund level, as this would be the only feasible level for management companies to set at.

Clarity of definitions and the operational aspects of the "performance reference period" would be welcome as this is a new concept in some jurisdictions, so consideration should be given to this in the final Guidelines.]
<ESMA_QUESTION_PFG_8>

Q9 : Alternatively, would it be possible to envisage predefined time horizons for the purpose of resetting the HWM, such as 3 or 5 years? Please provide examples and details on what you think would be the best practice in order to better align the interests of fund managers and investors.

<ESMA_QUESTION_PFG_9>
[In line with the observations at Q8 above, we believe that ESMA should prescribe a minimum performance reference period for all funds but this should allow sufficient flexibility for management companies to align the performance fee method with the investment objectives.

Providing examples of criteria for the management company to consider, would be appropriate, (e.g. asset class, recommended holding period, average investor turnover, level of base management fee, percentage performance fee on outperformance, hurdle rate to be attained etc.)]
<ESMA_QUESTION_PFG_9>

Q10 : How long do you think the performance reference period should be for performance fee models based on a benchmark index? What should be taken into account when setting the performance reference period for a performance fee benchmark model? Would it be possible to envisage predefined time horizons for the purpose of resetting the performance fee based on a benchmark, such as 3 or 5 years? Please provide examples and details on what you think would be the best practice in order to better align the interests of fund managers and investors.

<ESMA_QUESTION_PFG_10>
[See response to Q9.]
<ESMA_QUESTION_PFG_10>

Q11 : Alternatively, do you think the performance reference period should coincide with the minimum crystallisation period or should it be longer/shorter? Please provide examples and reasons for your answer.

<ESMA_QUESTION_PFG_11>
[In our view, the minimum crystallisation period should be no longer than one year. As noted in the response to question 4, shorter crystallisation periods should be permissible in certain circumstance; redemptions, class launches, mergers and liquidations, and change of investment manager. A one-year crystallisation period also offers simplicity and clarity being fully aligned with the spirit of MiFID II, which has introduced a once a year report on all charges and costs.

We do not believe that a shorter reference period is in the interest of fair treatment of the investors. We would be of the view that ESMA should set the minimum performance reference period which does not need to coincide with the minimum crystallisation period.

Importantly, management companies should have the flexibility to allow them to set a longer performance reference period should that better align the interests of all stakeholders. Ultimately, consistency is critical and to strike a fair compromise between transparency, complexity, and equity.]
<ESMA_QUESTION_PFG_11>

Q12 : What are your views on when the Guidelines should become applicable? How much time would managers require to adapt existing fee mechanisms to comply with the requirements of these Guidelines?

<ESMA_QUESTION_PFG_12>
[We would submit that there should be a minimum 24-month transition period from the date of publication of the Guidelines to the effective date of application. Whilst this may seem a long period, bear in mind that some funds will have to recalibrate models to a year end basis. This will give management companies a sufficient time within which to make the necessary modifications to their performance fee models and make any necessary notifications to investors.

Depending on the application date of the Guidelines, the proposal that "existing UCITS operating a performance fee before the application date of the Guidelines should align their

procedures with the Guidelines within 12 months of application of the Guidelines" may create practical compliance issues for funds who may need to comply in the middle of an existing performance cycle. It is likely to create less practical issues for funds to have the transitional provision compliance date by reference to the last performance fee crystallisation date e.g. within 12 (or 24) months of the next occurring performance period following the publication of the Guidelines. There is little risk in adopting this approach as investors will already be aware of the basis on which a performance fee will be payable over the full term of the fund's performance period. It is difficult to see how this proposed approach could provide an opportunity to managers to perpetuate or increase the possibility of short-term gains due to random market factors.

It would be helpful if ESMA confirmed that investor consent was not required for changes implemented by the management company pursuant to amended methodologies consistent with the Guidelines.]
<ESMA_QUESTION_PFG_12>

Q13 : Do you consider that the principles set out in the Guidelines should be applied also to AIFs marketed to retail investors in order to ensure equivalent standards in retail investor protection? Please provide reasons.

<ESMA_QUESTION_PFG_13>
[AIFs encompass a much broader asset class and investment strategy palette than UCITS funds including hedge, private equity, venture capital and real estate funds.

All UCITS funds must be considered to be suitable products for retail investors (which is not a defined term). Under AIFMD however, "retail clients" mean clients who are not MiFID "professional clients". Examples of the types of investors in AIFs, are investors who would not automatically be MiFID "per se" "professional clients" but would be sophisticated high net worth individuals and also corporate investors who are not regulated to operate in financial markets or whose main activity is not investing in financial instruments. The stringent conditions involved in becoming and remaining a MiFID opt-in professional client means that many sophisticated AIF investors fall within the definition of MiFID retail client. Some jurisdictions and regimes recognise a mid-type category of investors e.g. German semi—professional investors or non-MiFID professional investors to whom EuVECA-funds may be sold under Article 6 of the EuVECA Regulation (Regulation (EU) 345/2013). Whilst we do not object in principle to standardisation of performance fees across the same category of investor for the same fund type, for the above reasons we do not believe it would be appropriate to apply the final version of these Guidelines to AIFs in the absence of a separate, discrete public consultation in respect of retail AIFs.]
<ESMA_QUESTION_PFG_13>

Q14 : Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits as regards the consistency between the performance fees model and the fund's investment objective? What other types of costs or benefits would you consider in this context? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_14>
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<ESMA_QUESTION_PFG_14>

Q15 : In relation to Guideline 2, do you think that models of performance fee without a hurdle rate, or with a hurdle rate not linked to the investment objective (but clearly stated in the offering documents), should be permissible? For example, do you think that equity funds with a performance fee linked to EONIA, or a performance fee which is accrued as long as there are positive returns, should be allowed? Please give examples and reasons for your answer.

<ESMA_QUESTION_PFG_15>
[Consistent with the comments set out regarding question 3, funds with an absolute return objective may have, as part of their investment strategy, investments into equity investments. For such funds, comparing the funds' performance versus a money market index or hurdle rate may be appropriate. We are of the view that it is critical that the performance fee method needs to be consistent with the investment objective so that genuine outperformance is rewarded as well as ensuring alignment of interest between investor and management company alike.]
<ESMA_QUESTION_PFG_15>

Q16 : What additional costs and benefits would compliance with the proposed Guideline bring to you/the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_16>
[Minimum annual crystallisation/payment periods are already a feature of the Irish model.

However, the provision envisaged in Guideline 1, paragraph 12 which in essence requires a reference asset methodology would entail significant implementation cost as well as being challenging to explain to retail investors. This is noted further in the "Introduction" above.]
<ESMA_QUESTION_PFG_16>

Q17 : What is the anticipated impact from the introduction of this proposed Guideline? Are there models or methodologies currently employed where this Guideline would not be appropriate? If so, please provide examples of these and details of how the best interests of investors are safeguarded.

<ESMA_QUESTION_PFG_17>
[The existing regime in Ireland on negative loss recovery is consistent with this objective but we would note our response per question 6, in terms of clarifying absolute versus relative gains.]
<ESMA_QUESTION_PFG_17>

Q18 : What additional costs and benefits would compliance with the proposed Guideline bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_18>
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Q19 : Which other types of costs or benefits would you consider in the disclosure of the

performance fees model? Please provide quantitative figures, where available.

<ESMA_QUESTION_PFG_19>
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