



ESMA issues guidance on 'undue cost' requirement for UCITS and AIFs

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INTRODUCTION

On 4 June 2020, ESMA published a Supervisory Briefing with non-binding guidance for national regulators (**NCA**s) supervising UCITS managers and AIFMs' compliance with the obligation not to charge undue costs to investors. The Supervisory Briefing forms part of ESMA's response to the issues identified in its 2019 and 2020 Annual Reports on performance and EU retail fund costs, including the disproportionately negative impact of ongoing costs on fund performance and returns for retail investors. While fee compression has been the dominant trend over recent years, with the exponential rise of lower cost, mass market passive products and growing disintermediation of distribution, ESMA clearly sees a need for further intervention to accelerate progress. The themes and expectations around robust cost control in this Supervisory Briefing share some overlap with the value for money outcomes which were a prominent feature in the FCA's Asset Management Review.

Although addressed to NCAs, we would recommend that managers of UCITS and AIFs pay close attention to the clear articulation of supervisory expectations, which we anticipate will feature in the Central Bank's engagement on new and existing fund products. An early and proactive approach is recommended so that Boards and fund management companies are well positioned.

PRICING PROCESS

In its Supervisory Briefing, ESMA tells NCAs to supervise compliance with the obligation not to charge undue costs by requiring management companies to develop clear and well-documented pricing processes that set out who is responsible for determining and reviewing costs, how conflicts of interest will be managed in the best interest of investors, and which address the following detailed elements:



NEXT STEPS

The Supervisory Briefing recommends that NCAs review the pricing processes of management companies on a case-by-case basis:

- at fund authorisation stage;
- through off-site supervision;
- during on-site inspections;
- at post-authorisation approval of material changes to the fund;
- during thematic inspections; or
- when assessing investor complaints.

UCITS managers and AIFMs should adopt, or review existing, pricing processes and procedures to ensure implementation and documentation of a pricing process which takes account of the recommended elements discussed above and further detailed in ESMA's Supervisory Briefing.

CONTACT US

For further information, please contact any member of the Asset Management and Investment Fund team or your usual William Fry contact.



Patricia Taylor

PARTNER

+353 1 639 5222

patricia.taylor@williamfry.com



John Aherne

PARTNER

+353 1 639 5321

john.aherne@williamfry.com

WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

T: +353 1 639 5000 | E: info@williamfry.com

williamfry.com