ESMA - Risposta consultazione sulle commissioni di incentivo

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Introduction

We support and appreciate the consultation paper on performance fee that recognizes that properly structured performance fees create a very clear alignment between the final investors' goals and the investment manager's incentives. The Guidelines could improve the level playing field and the existing practices by eliminating possible distortions, considering the great importance of fund's cross border distribution. With an enhanced level of disclosure on fees and a convergency in the regulatory oversight over the modelling of the performance fee, investors would have a better understanding and choice regarding fee structures and levels.

We believe that the proposed guidelines are going to the desired direction as they recognize a variety of performance fee models considering the nature of the investment objective, strategy and policy of the fund and investors' preferences. The convergency in defining the key elements based on a principle approach is much appreciated.

As ESMA might know, around 67% of domiciliated funds in Italy have a performance fee structure. The current national regulation, based on the IOSCO Good practices for Fees and Expenses of Collective Investment Schemes (IOSCO Best practices), is broadly reflected in the current drafting Guidelines, however, we see merit in further reflections and clarifications on some fundamental issues and definitions that could lead to some side effects.

Here below our principal remarks, better explained through the response.

Where a **Benchmark or a Hurdle rate model** is used, **we totally agree in setting a minimum crystallisation period of one year**, during which positive performance is offset by under or negative performance, granting the right balance between the need to measure a performance over a relevant and long-enough time period, as well as the request to reward outperformance in a frequent manner. **The catch-up of underperformance/loss over a period longer than one-year is not an effective tool for aligning the economic interest of asset manager and investors alike.**

For a High-Water Mark (HWM) model, where the compensation between over and underperformance is embedded in the model itself for the entire life of the fund, **minimum crystallisation period is not relevant**. It would therefore be useful to clarify what HWM model is and consider this model distinct from practices that combine a Benchmark or a Hurdle rate model with other condition to be met before the performance fee could be charged (for example a previous higher NAV or High of High, named sometimes also as HWM).

We also invite ESMA to clearly acknowledge that the **calculation of performance fee could be made on the position of each single investor,** based on his/her own dates of subscription and redemption.

Furthermore, we believe that in the management of funds which aim to reflect the risk and reward profile of some pre-determined segments of the capital market represented by benchmarks (market funds) **the possibility to withdraw performance fee also with relative positive performance should be recognised.** In line with its mandate, disclosed to investors, the manager moves dynamically around the benchmark to improve the relationship between risk and return. The manager's ability to mitigate losses in negative market phases, such as in times of crisis, or in markets with negative yields, is an added value of active asset management and it should be possible to reward it.

For a well-designed performance fee structure aligning asset manager and investor’s needs, a variety of performance fee models should be acknowledged in the final Guidelines. Under the principle of consistency with the investment objective and strategy of the fund, **flexibility in the combination of different elements should (continue to) be granted to asset managers**.

The setting of any further layer would then be appropriately assessed to avoid unduly "changes" of well-functioning mechanisms. Pending the final decision, the impact of the Guidelines could be high also for management companies that already apply some standards[1] in line with IOSCO Best practices. **Reducing the modelling choice or defining one-size fits all approach would negatively impact asset management fee models with no added benefit.**

Scarica la versione integrale della risposta alla consultazione [2].

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[1] Please see Bank of Italy “Regolamento sulla gestione collettiva del risparmio”, Title V, Chapter I, Section II, Paragraph 3.3.1.1.

Risposta al documento di consultazione recante "Guidelines on performance fees in UCITS"
