Introduction

Please make your introductory comments below, if any

In 2017 the Norwegian Fund and Asset Management Association (NFAMA) established a Norwegian industry standard for retail funds with performance fee structures. Fund that comply with this industry standard may expect the fund rules to be approved by the FSA in Norway. The recommended principles are to a large extent complient with the proposal from ESMA, but we do have some remarks to the proposed Guidelines, which is commented under the questions concerned.

Questions

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

As there is no common regulation in the field of funds' performance fee, the NFAMA is positive to the initiative from ESMA. The purpose of the guidelines should be to facilitiate a minimum level of harmonisation in EU and the EEA. We would like to emphasize the importance of maintaining a certain level of flexibility regarding the design of the specific fee structures, given that the fundamental target of aligning the interest of investor and asset manager is in place.

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

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 (eg: historical volatility, asset allocation composition, etc.) to ensure this consistency? Please provide examples and give reasons for your answer.

For a fund with relative reference the index used as a benchmark should reflect the same investment universe as the fund's investment universe. It is our opinion that the index should be fully investable at a moderate cost, and it should be a prerequisite for using a benchmark that it is based on well known methodology that is both relieable and independent of the Asset Management Company. We think historical data like volatility should be used with care as an indicator as the fund's aim is to outperform the index, not to copy it.

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.

As the aligning of the interest of fund managers and investors is crucial to a well-working performance fee structure, NFAMA share the view that the performance fee

should be accrued at all times the NAV is set, and that the crystallisation period should be of a certain length to avoid randomness. In the NFAMA industry standard 12 months is used as the crystallisation period, based on the same arguments that are outlined by ESMA.

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.

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?

We strongly disagree with the proposal that performance fee, in case of a benchmark model, should only be charged when the fund has achived positive performance. For a fund using a relative reference, the aim is to outperform the market regardless of whether the market is up or down. In our view, a performance fee model based on relative reference that is prevented from charging performance fee because the absolute performance is negative, will not work in practice. Such a model will be contradictory to the principles, on which the fee model is based upon. If it is required that performance fee only can be charged if absolute positive performance, it will to a large extent have the same effect as prohibiting a relative reference model. We would therefore strongly recommend not to use absolute returns as a tool to measure the performance of a fund with relative reference.

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.

As we agree that information to retail clients is essential, we believe that measures to ensure proper disclosure on this subject should be taken. In NFAMA's industry standard it is recommended that such information should be clearly stated to make sure all investors are aware.

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.

If all previous periods should be taken into account in a performance fee model you could risk that the HWM (or any other equivalent mechanism) will seemingly be unachievable in a foreseeable future. This may give investors the opinion that the asset manager will not have the requested incentives, and thereby not lead to alignment of the interest of investors and fund manger. Under such conditions it is the view of NFAMA that it would be in the interest of both investors and asset manager to reset the mechanism. In our view the recommended holding period could be a guidance to the length of such a performance reference period, but at should not be directly linked to such a period, as the investment horizon for the individual investor may differ substantially. We like to stress that in our opinion there is no given answer to this question.

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.

See answer on Q8

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.

Se answer on Q8

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.

In our view, the crystallisation period, which we recommended to be 12 months, would in most cases be to short to be used as a performance reference period. This is based on the principle that in order to align the interest of investors and asset managers this period needs to be longer than the crystallisation period.

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?

In our opinion new funds established after the day of application date of the guidelines should comply with these requirements from day one. For existing funds with models that do not fully comply with this guidelines, our understanding is that individual national decisions must be made, as these models are previously approved by national financial supervisionarie, and the legal authority for the adaption of these guidelines is not obvious to us.

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.

The focus should in our opinion be whether the investment fund concerned is targeting a retail market or not, and not if it is UCITS or AIF, as long as the investment fund in question is regulated in accordance with the national act on securities funds. To an investor in the retail segment the latter is subordinated, and hence, it is the view of NFAMA that these guidelines should apply to all investment funds targeting the retail market, as this will ensure equivalent levels of investor protection. This can for instance be made operational by defining investment funds with minimum subscription amount under a cerain level as targeted towards the retail market.

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.

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.

As stated in our industry standard, NFAMA's opinion is that funds that pursue an absolute performance should use a hurdle rate. We also believe that there should be consistency between a fund's strategy and the benchmark chosen as reference in a model with relative reference

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.

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.

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.

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.