

## Regulatory News Alert

### ESMA Q&As on UCITS Directive - Clarification on KIID-related disclosures

24 September 2019

#### Context and objectives

Following the publication of ESMA's Q&A on the UCITS KIID benchmark and past performance obligations (hereafter "Q&A") in March 2019, EFAMA requested ESMA to provide further clarification specifically on the **KIID-related disclosures as regards the use of benchmarks in UCITS**.

The request for clarification relates to Answer 8b of the Q&A, which focuses on Article 7(1) (d) of Commission Regulation (EU) No 583/2010 regarding **benchmark disclosure requirements**. EFAMA issued several reservations, as outlined below. EFAMA met with ESMA on 5 September 2019 to discuss these points:

- Gradualism/proportionality in the usage of benchmarks
- Disclosure of performance fees
- Review the list of Benchmark examples
- Next steps - Transition from UCITS KIIDs to PRIIPs KIDs.

ESMA reiterated its position that this Q&A is intended as a contribution to **increasing transparency** around the **use of benchmarks for end-investors**, particularly in light of the recent **closet-indexing scandal**, the work of certain National Competent Authorities (hereafter "NCAs") and arguments raised by Better Finance in its 2018 press release on the subject.

#### Gradual/proportionate approach given the potential variety of indices with no relevance on the advertised strategy

The examples provided in Answer 8b of the Q&A have been discussed by the NCAs who collectively deemed that all uses of benchmarks would have an impact on the UCITS investment policy. Any **indicator/comparator used for internal remuneration purposes** deserves to be disclosed in the **"past performance" section of the KIID** on the basis that it will, either directly or indirectly, affect the investment policy.

Given the diversity of available indices, the importance of applying a **gradual/proportional approach** is key. Otherwise, the result may be that the investors themselves will need determine which of the disclosed indices may be the most representative of the fund's strategy.

Therefore, EFAMA has suggested that detailed disclosures on the use of indicators for internal purposes could be referenced in other literature rather than in the KIID, for example through the creation of dedicated clarifications, appendices to the prospectus or providing relevant updates on the asset managers' websites. This suggestion would certainly meet and mitigate the concerns raised by investor groups.

## Disclosure of Performance fees

EFAMA clarified that unlike for Money Market Funds, there may exist **absolute or total return funds** that would not consider disclosing a benchmark or indicator as this would not necessarily assist with the **definition of the fund's investment strategy**, which, in such cases, is entrusted to the manager's discretion. Disclosing a performance fee according to the strict letter of the Q&As would risk blurring the **substantial difference between an MMF and absolute/total return UCITS**. ESMA did not raise particular objections to this point.

## Review the list of benchmark examples

**EFAMA has also agreed to offer examples of anonymised UCITS KIIDs & prospectuses**, to help demonstrate why the provision of open-ended lists of examples as detailed in Answer 8b would not be workable. Based on these specific examples, ESMA could then consider releasing **additional guidance on the practical implementation of certain Q&As**, after discussion with the NCAs.

## Next steps

ESMA is currently running a consultation on a **set of final guidelines on performance fees**, which will end on 31 October 2019. Subsequently, EFAMA has proposed to **reiterate its arguments in relation to the results of this consultation**.

ESMA is also planning to **transpose the UCITS KIID Regulation** and the related Q&As **into a revised PRIIPs framework**. Based on this transposition, EFAMA would look to reach a more appropriate outcome for the final PRIIPs KID framework anticipated in January 2022, which will supersede the current KIID Regulation and related UCITS Q&As.

We will continue to monitor the situation and inform you of the evolution and possible impact on your KIIDs.

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