



European Securities and  
Markets Authority

# Response Form to the Consultation Paper

Implementing technical standards under Regulation (EU) 2019/1156



## 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 **30/06/2020**.

All contributions should be submitted online at [www.esma.europa.eu](http://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](http://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](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## **Who should read this paper**

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EUSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECAs, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECAs and their associations..

## General information about respondent

Name of the company / organisation	BlackRock
Activity	Investment Services
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_PFG\_1>

We welcome the work taken forward by ESMA in this area: the development of a centralised portal outlining the cross border requirements and fees for NCAs when asset managers are marketing across the EU is a much needed resource. Currently, the information we need is often difficult to find or not complete, resulting in cost and time for asset managers to fully understand the requirements from external advisors in order to remain compliant when marketing cross border. In our own experience, our compliance process requires completion of an annual review of all requirements of local jurisdictions with local counsel. This is a large and costly annual project resulting circa EUR 30,000 - 40,000 in fees and also requires an internal resource to manage. We also seek local counsel opinion when entering a new market for the first time or if it has been some time since we have registered a fund in a particular market as we cannot fully rely on the currently available information on NCAs' websites (average cost is EUR 5,000).

In relation to reliance on NCA's information, asset managers would benefit from a commitment from regulators that website disclosure, in whatever format is decided, is complete and updated as soon as any changes are made. We also believe it would be worth exploring the development of an alert mechanism whereby asset managers can be notified when information has been updated for a particular jurisdiction.

<ESMA\_COMMENT\_PFG\_1>



## Questions

**Q1** : Do you agree that the information to be published should concern not only requirements applicable specifically to the marketing of investment funds, but should also encompass a general statement relating to the potential application of other bodies of law applicable within the concerned jurisdiction, such as rules on the protection of consumers in general? If so, do you agree that this general statement could take the form of a general disclaimer which refers to a non-exhaustive list of relevant bodies of law?

<ESMA\_QUESTION\_PFG\_1>

Agreed. We would suggest that the information published includes details on all marketing options within the jurisdiction for UCITS and AIFs such as private placement, unsolicited requests/reverse solicitation, ELTIF and retail options for AIFs etc.

We would therefore also suggest that any type of information that will impact the marketing of a UCITS or AIF in a jurisdiction including tax reporting should be made available in the list of relevant bodies of law in the general disclaimer. Another area to be included would be any detail in relation to steps which need to be taken such as pre-approval in relation to marketing materials, local language requirements and if there are any significant local deviations from the standards laid down in MiFID II.

We would suggest that a link is provided to any relevant listed bodies of law and regulation and that the law and regulation are available in an internationally recognised financial language.

For example, in Belgium it is possible to market UCITS to professional investors by private placement only without registration with the local regulator. This is an example of the type of additional marketing information that should be readily available. One point to note is the reason to use private placement in Belgium, it is driven by tax requirements and charges and a link to relevant tax requirements would also be beneficial noting that NCAs do not typically set the tax policy.

<ESMA\_QUESTION\_PFG\_1>

**Q2** : Do you agree with the proposed approach regarding the format of the publications to be made by NCAs on their websites in respect of marketing requirements for UCITS and AIFs? If not, please provide alternative suggestions.

<ESMA\_QUESTION\_PFG\_2>

Agreed. We suggest that the ongoing requirements in relation to marketing in a jurisdiction are set out in the publication on the marketing requirements. This should include full guidance on what information must be notified to the local regulator and within what time periods. For example, in Slovakia it is necessary to publish NAV figures of the UCITS marketing in the jurisdiction on a bi-weekly basis.

More generally, additional guidance on the types of document updates and information changes that must be notified to the local regulator on an ongoing basis would be necessary also for both UCITS and AIFs. Further detail is provided in the answer to question 3.

<ESMA\_QUESTION\_PFG\_2>

**Q3** : Do you agree with the approach taken regarding the main characteristics of the summary of marketing requirements that NCAs shall publish on their websites? If not,

please provide details on the elements that you would favour including in the text or in table.

<ESMA\_QUESTION\_PFG\_3>

We recommend that a prescribed summary table should be provided to each local jurisdiction as outlined below. This would give a clear overview of the main requirements and annex II would provide the full detail. See our suggested table formats below.

**UCITS**

Question	Detail
<ul style="list-style-type: none"> <li>• what facilities need to be maintained by the manager/ fund. Is a local paying agent/tax collection agent or representative required ?</li> </ul>	
<ul style="list-style-type: none"> <li>• What documents are required to be translated and in which languages?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is there a country supplement or specific disclosure requirement necessary in the prospectus?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are there any regulatory reporting requirements, please provide high level detail?</li> </ul>	
<ul style="list-style-type: none"> <li>• Please confirm whether local publication and in what format is required for any of the below documents:</li> <li>• Shareholder mailing</li> <li>• AGM/EGM</li> <li>• Reports and Accounts</li> <li>• Prospectus</li> <li>• Prices</li> <li>• Any other documents</li> </ul>	
<ul style="list-style-type: none"> <li>• Please confirm what documents /information should be notified in relation to ongoing UCITS obligations.</li> <li>• Prospectus</li> <li>• Reports and accounts</li> <li>• Share holder mailings (includes name changes, closures etc)</li> <li>• AGMs/EGM</li> <li>• Updates to legal documents i.e. articles of association</li> </ul>	

<ul style="list-style-type: none"> <li>• Any document update – please provide information</li> <li>• Any other information update – please provide information</li> </ul> <p>How long should the above documents remain on Management Company website?</p>	
•	

**AIFMD**

Question	Detail
<ul style="list-style-type: none"> <li>• Is it possible to market an AIF to retail investors under Article 43?</li> </ul>	
<ul style="list-style-type: none"> <li>• What facilities need to be maintained by the manager/ fund. Is a local paying agent/tax collection agent or representative required when targeting retail investors ?</li> </ul>	
<ul style="list-style-type: none"> <li>• What information/documentation must be provided for targeting retail investors?</li> </ul>	
<ul style="list-style-type: none"> <li>• What documents are required to be translated and in which languages?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is a country supplement or specific disclosure requirement necessary in the prospectus?</li> </ul>	
<p>Are there any regulatory reporting requirements beyond those in Annex IV AIFMD, please provide high level detail?</p>	
<ul style="list-style-type: none"> <li>• Please confirm what documents /information should be notified in relation to ongoing AIF obligations. <ul style="list-style-type: none"> <li>• Prospectus</li> <li>• Reports and accounts</li> <li>• Share holder mailings (includes name changes, closures etc)</li> <li>• Updates to legal documents i.e. articles of association</li> <li>• Any other document update – please provide list of documents</li> <li>• Any other information update – please provide list of information</li> </ul> </li> </ul>	



<ul style="list-style-type: none"> <li>• In respect of offshore AIFs is article 36 /42 transposed in your jurisdiction?</li> <li>• What is the time line for approval?</li> <li>• Please provide list of information/documentation that must be provided as part of application for article 36/42?</li> </ul>	
---	--

<ESMA\_QUESTION\_PFG\_3>

**Q4** : Do you agree with the approach taken with respect to the scope of regulatory the fees and charges to be published by NCAs on their websites?

<ESMA\_QUESTION\_PFG\_4>

Yes we agree with the approach taken with respect to the scope of regulatory fees and charges to be published by NCAs on their websites. This is a much needed resource. Currently, the information in relation to fees can be either difficult to find or the methodology is difficult to understand across the various regulators. This can result in cost and time for asset managers to completely understand the full regulatory fees for particular markets from external advisors in order to understand the full cost of cross border marketing.

<ESMA\_QUESTION\_PFG\_4>

**Q5** : Do you agree that the publication to be made by NCAs under this ITS should be made in the form of a table? If not, do you have any alternative suggestion on the format of the publication on regulatory fees and charges?

<ESMA\_QUESTION\_PFG\_5>

We agree that the table format the best approach as it is an easily digestible format as long as the fees are divided into relevant sections and given clear guidelines i.e. initial , ongoing, other etc. Further detail is provided in question 7. We would suggest that all fees should be recorded in the same base currency if possible. i.e. EURO

<ESMA\_QUESTION\_PFG\_5>

**Q6** : Do you agree that NCAs have the option to supplement the tables setting out the details of the fees and charges with a full text providing detailed information on the fees and the fee calculation, if a table would risk giving incomplete or misleading information?

<ESMA\_QUESTION\_PFG\_6>

We do agree, the only additional comment in this regard would be in relation to the details around fee calculation and ensuring that the detail on methodology for calculation is clear and concise. Fee calculation detail has been provided on websites to date for some jurisdictions but is difficult to follow in some cases e.g. Denmark

<ESMA\_QUESTION\_PFG\_6>

**Q7** : Do you agree with the content of the table? Do you think any other information should be published by NCAs in relation to the regulatory fees and charges?

<ESMA\_QUESTION\_PFG\_7>

We propose including some additional fields :

- Split fees into initial, ongoing and other fees (for example in Germany there is a deregistration fee)
- Include a note in the table on where fees are expected to be changed periodically and if so how often and when and detail expected invoicing format. This is an important point to allow fees to be paid promptly (for example in Belgium there is a link to the website and no invoice provided)
- Include detail on whether initial fee must be paid at time of registration submission or will invoice be sent thereafter
- For annual fees, provide detail on when these annual fees are expected at the same time of the year regardless of time of initial registration or dependent on timing of initial registration

<ESMA\_QUESTION\_PFG\_7>

**Q8** : Please specify the use you would make of the information to be contained in the central database listing UCITS and AIFs marketed on a cross-border basis. Do you have any suggestion regarding the format of this central database?

<ESMA\_QUESTION\_PFG\_8>

Currently not all regulators have a register available listing all funds in their jurisdictions and where it is available the register is not always up to date. This can cause discrepancies between the manager's internal records and what is reflected at the local regulator. Having a centralised source which list all registrations across Europe would allow for ease of periodic checking of internal registrations against local regulators to ensure necessary updates are shared with local regulators to remain compliant at all times. We would suggest that the ESMA database allows asset managers to export this information into a usable excel report so that asset managers can use it when reconciling with their own data. BlackRock record all registrations in the Aladdin System, if an example is needed on a suggested format / structure for recording registrations please reach out and we can provide detail.

<ESMA\_QUESTION\_PFG\_8>