



European Securities and Markets Authority

ESMA CONSULTATION ON GUIDELINES ON REMUNERATION POLICIES AND PRACTICES (MIFID)

The Federation of Finnish Financial Services welcomes the opportunity to respond to the ESMA consultation on guidelines on remuneration policies and practices under the MiFID regime.

ESMA argues that remuneration policies are part of conflicts of interest within firms, and that remuneration practices and policies always have been part of being MiFID compliant. This means that company's remuneration policies already today should be MiFID compliant. Since this is the case it can be questioned if timing for additional guidance on this issue can be well argued; MiFID II is on its way and ESMA indicates already in this consultation that changes may be needed to proposed guidance after MiFID II has been implemented. There are several directives with requirements on remuneration so it is important that these are aligned on an EU level. It is always a burden for the financial industry when new guidance is given and it always brings new features even if aligned. In addition, the proposed guidelines include issues that would more suitably be regulated in the ESMA guidelines on certain aspects of the MiFID compliance function requirements, given in July 2012 (e.g. sections 27 to 31).

While alignment is needed, it should be also taken into account that CRD remuneration requirements serve a different purpose than the ones based on MiFID regime. CRD aims to ensure capital adequacy by regulating the remuneration of the management, whereas MiFID aims lie in avoiding conflicts of interests between the clients and the investment firm by regulating the remuneration of sales staff by the proposed guidelines.

The ESMA consultation paper in general argues for more detailed remuneration regulations in relation to incentive payments for products sold, and particularly for new products sold. What perhaps sometimes is neglected is that it is not in an investment firm's interest to construct inappropriate bonus schemes, to encourage unwanted behavior or to wrongly pay out large bonuses. Firms will thereby already have governance processes in place and normally allow for discretionary adjustments of bonus outcomes rather than apply strict mathematical (commission-style) bonus schemes with unintended outcomes.

The effective date after 60 days of publication of the final guidelines is too soon for the investment firms to be able to restructure their remuneration policies and practices.

ESMA should avoid giving overlapping guidelines. ESMA has, for example, just recently given a guideline on MiFID compliance function requirements and yet the proposed guidelines include detailed requirements for compliance function.



The examples 25 and 32 of good practices are problematic. Which client complaints should be taken into account in these cases? All of them, or only those that are considered valid and result in compensation? In addition, the example 32 creates additional requirements for the compliance function of the investment firms, although it has been stated in the consultation (page 12) that no additional requirements are created by the examples of good and poor practices. Referring to example 33, the investment firms should be able to set strategic aims and remunerate staff accordingly.

The Federation of Finnish Financial Services supports the views presented in the response of the European Banking Federation.

Question 1 Do you agree that firm's remuneration policies and practices should be aligned with effective conflicts of interest management duties and conduct of business risk management obligations so as not to create incentives that may lead relevant persons to favour their own interest, or the firm's interests, to the potential detriment of clients? Please also state the reasons for your answer.

Yes, but detailed regulation will not necessarily ensure this.

Question 2 Do you agree that, when designing remuneration policies and practices, firms should take into account factors such as the role performed by relevant persons, the type of products offered, and the methods of distribution? Please also state the reasons for your answer.

We agree that also non-financial factors should be taken into account when designing remuneration policies and practices. However, investment firms should be able to design their policies to serve their business models and assess how the structure best fulfills the customers' best interest. Also, the policies must allow managers to formulate factors deemed relevant by their subordinates. Having such processes too formalized with too much control function may be counterproductive by not allowing flexibility.

Question 3 Do you agree that when designing remuneration policies and practices firms should ensure that the fixed and variable components of the total remuneration are appropriately balanced?

No response at this stage.

Question 4 Do you agree that the ratio between the fixed and variable components of remuneration should therefore be appropriate in order to take into account the interests of the clients of the firm? Please also state the reasons for your answer

As stated above, the investment firms should be allowed to design their policies to serve their business model and assess how the structure best fulfills the customers' best interest. The guidance should not put any quantitative thresholds or require exact ratios between fixed and variable components but leave it to the investment firms' assessment.



Question 5 Do you agree that the performance of relevant persons should take account of non-financial (such as compliance with regulation and internal rules, market conduct standards, fair treatment of clients etc.), as well as financial, criteria? Please also state the reasons for your answer.

We do agree with ESMA that there should be both financial and non-financial criteria to grant remuneration to relevant people. It is important, however, to leave it to the investment firm to assess what is a good balance between these criteria as well as what criteria to use in different services and to different type of staff.

Question 6 Do you agree that the design of remuneration policies and practices should be approved by senior management or, where appropriate, the supervisory function after taking advice from the compliance function? Please also state the reasons for your answer.

The wording “after taking advice from the compliance function” should be broadened into “after taking advice from relevant control function” to ensure appropriateness for different control setups.

Question 7 Do you agree that senior management should be responsible for the implementation of remuneration policies and practices, and for preventing and dealing with any the risks that remuneration policies and practices can create? Please also state the reasons for your answer.

No response at this stage.

Question 8 Do you agree that the organisational measures adopted for the launch of new products or services should take into account the remuneration policies and practices and the risks that the new products or services may pose? Please also state the reasons for your answer.

The launch of a new product should not, in itself, trigger a requirement to review the remuneration practices or policies. The investment firm should instead do so when deemed necessary. This is not something that should be regulated, but rather left to organizational effectiveness.

Question 9 Do you agree that the process for assessing whether the remuneration features related to the distribution of new products or services comply with the firm’s remuneration policies and practices should be appropriately documented by firms? Please also state the reasons for your answer.

Adequate documentation is important and shall be ensured. However, in order not to create excessive administrative burden, the principle of proportionality should be applied. Moreover, the choice in respect of how to reach the documentation requirements should be left to the investment firms.

Question 10 Do you agree that firms should make use of management information to identify where potential conduct of business and conflict of interest risks might be occurring as a result of specific features in the remuneration policies and practices, and take corrective action as appropriate? Please also state the reasons for your answer.

Monitoring should be performed on risk-based approach. Therefore, the risk entailed to remunera-



tion should be considered in light with other business risks.

Question 11 Do you agree that firms should set up controls on the implementation of their remuneration policies and practices to ensure compliance with the MiFID conflicts of interest and conduct of business requirements, and that these controls should include assessing the quality of the service provided to the client? Please also state the reasons for your answer

The new dimension, assessing the quality of the service provided to the client, is best done by managers defining performance criteria appropriate for the position and respecting the values of the investment firm.

Question 12 Do you agree that the compliance function should be involved in the design process of remuneration policies and practices before they are applied to relevant staff? Please also state the reasons for your answer.

No response at this stage.

Questions 13 and 14 Questions relate to different payout models for selling products

It is important to ensure that remuneration models allow for flexibility by discretionary judgment. Too mathematical reward systems risk creating wrong incentives as well as wrong payouts. Assuming that an investment firm's starting point is not to pay out excessive bonuses, the firm will ensure proper governance models and remuneration policies allowing for flexibility and discretionary adjustments.

FEDERATION OF FINNISH FINANCIAL SERVICES

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