ASSOGESTIONI
associazione del risparmio gestito

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ESMA
European Securities and
Market Authority
103 Rue de Grenelle
75007 Paris

Our ref. n.624/12

Reply to ESMA's guidelines on remuneration policies and practices (MiFID)

Assogestioni, the Italian association of asset management industry, welcomes the opportunity to comment on the consultation "Guidelines on remuneration policies and practices (MiFID)".

Generally speaking we agree with the content of the document and, in particular with the purpose of ensuring that remuneration policies and practices do not create risk of conflict of interest and conduct of business. We also agree with the fact that the guidelines should be applied in a proportionate manner, given the wide range of actors in the investment services sector and the differences in size.

Considering that we are generally in accord with the document we prefer to provide you with specific considerations on some aspects that we would like to underline, rather than answering specific questions.

1. Consistency with other remuneration policy. First, we would like to stress the need for consistency between the proposed guidelines on remuneration policies and practices (MiFID) and other remuneration guidelines. As ESMA explicitly states, the proposed guidelines shall not only be applicable to investment firms (as defined in Article 4(1) (1) of MiFID) but also to UCITS management companies and external AIFMs when they are providing the investment services of individual portfolio management or non-core services. Therefore, it is crucial that consistency be ensured between guidelines to be issued by ESMA under AIFMD, guidelines to be issued by ESMA under UCITS V and the existing CEBS guidelines, while leaving enough leeway to take the specificities of the different business models into account.

2. Scope of the guidelines. With regard to the specific content of the document, it appears necessary to give some clarifications regarding the scope of the guidelines. In fact, while the title of the text suggests the idea that the guidelines are addressed

to the entire range of the investment services, it seems that the regulation provided in the paper is only suited for certain investment services, and in particular for those related with the selling of financial products to retail/professional clients. It is not clear, for example, how guidelines should apply to individual portfolio management.
Furthermore, ESMA provides that the guidelines should cover a large number of persons, including all persons involved in the provision of investment and/or ancillary services, and not only to "Relevant Persons". We ask ESMA to clarify which rules will apply to all persons and which rules are only targeted to the "Relevant Person". As we mentioned, the rules provided by ESMA are suited for the staff employed in the selling activity and not for other categories of staff. In this context, we would appreciate a clarification that the Guidelines should only apply to firms providing investment services to the final client when selling a financial product, and that, within the firm, the specific rules of the guidelines should only apply to those categories of staff that have a direct contact with the client in the selling process.
ESMA states that these guidelines should also apply to any entity or person providing services to firms on the basis of outsourcing arrangements or as tied agent (paragraph 10). We deem that these two cases, outsourcing entity and tied agent, should not be treated in the same manner. In particular we think that only the tied agent – that is under the full and unconditional responsibility of the firm on whose behalf it acts – could be in the scope of these guidelines.

3. Controlling risk that remuneration policies and practices create. We generally agree with the fact that firms should set up adequate controls for compliance with the MiFID conflict of interest and conduct of business requirements. We have some concerns, however, with the specific requirements of paragraph 67 that imposes, for example, monitoring calls for telephone sales, given that this kind of control could conflict with the national rules on employment. Furthermore, we consider that the controls should be primary based on the results of the questionnaires received by the clients or on the claim processes, and should not be directly based on the activity performed by the employee of the firm. The type of control required by the guidelines seems to be too onerous for the firm given the large client base. The concept of "quality of the service", which is related to the concept of "customer satisfaction" is not easy to apply in practices as it is difficult to evaluate.

4. Illustrative examples of remuneration policies and practices that create conflicts that may be difficult to manage. With regard to the illustrative examples provided in Annex I, we consider that the policies and practices followed by the industry are to a large extent already in line with the practices suggested by ESMA. However, in our opinion, it is not worth considering those examples as prohibiting a specific remuneration scheme rather than another. In fact the remuneration provided to the staff and its compliance with the conflict of interest and conduct of business rules should be analyzed case by case considering all the circumstances of the concrete situation and should not be fixed by the guidelines, in such a way that

may pose limits without really strengthening the investor protection.

We hope that our observations will be of help and remain at your disposal for any clarification on the comments made in this response.

Yours sincerely

The Director General