



26 September 2012

Verena Ross
Executive Director
European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

Andrew Procter
Deutsche Bank AG
Winchester House
1 Great Winchester Street
London EC2N 2DB

Tel: +44 20 7545 8000

Direct Tel +44 20 7545 1903
Direct Fax +44 20 7547 4179

Dear Ms. Ross,

DB response to ESMA consultation on Guidelines on sound remuneration policies under the Alternative Investment Fund Managers Directive (AIFMD)

Deutsche Bank welcomes the opportunity to comment on ESMA's draft guidelines. We fully support the intention to ensure that the Financial Stability Board's Principles and Standards for Sound Compensation and long-term risk-alignment are embedded across financial services. We also welcome that the AIFMD reflects the need for specific rules to be applied on a proportionate basis, based on an organisation's scale and type of operation.

The AIFMD will capture not only a wide range of asset management firms with multiple types of funds under management but also, as in the case of DB, broader groups with AIFs operating within their structure. We welcome ESMA's specification of factors that should be taken into account when AIFs determine how the proportionality principle applies to them in practice, but suggest some changes to allow this broader context to be taken into account.

In particular, we believe that if a firm meets one set of remuneration requirements through a group-wide policy which captures subsidiaries at the group level then - to the extent that the requirements overlap - further sector-specific remuneration requirements should be broadly deemed to have been met. This would of course be subject to the competent authority satisfying itself that asset management or other relevant divisions are adequately covered by the group-wide policy. This is an important principle not only for the purposes of AIFMD, but also the proposed MiFID and eventual UCITS guidelines on remuneration.

In order to make this principle explicit in the Guidelines, we suggest changes in response to some of the consultation questions in the attached Annex. We also suggest further adjustments to take account of features specific to asset management incentive structures. Where we have not answered questions, we consider the Guidelines broadly reflect CRD III.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'AP', with a long horizontal stroke extending to the right.

Andrew Procter

Global Head of Government and
Regulatory Affairs



Annex 1: detailed comments on draft guidelines on remuneration under AIFMD

IV. Scope of the Guidelines

Q2: Do you agree with the above considerations on the scope of the Guidelines? In particular, do you agree with the clarifications on what should be considered as a remuneration falling into scope and what should be considered an ancillary payment or benefit falling outside the scope of the Guidelines? If not, please state the reasons for your answer and also suggest an alternative approach.

Q3: Do you see any benefit in setting a quantitative or qualitative threshold at which the portion of the payment made by the AIF exceeding the pro-rata investment return for the investment made by the relevant staff members is transformed into carried interest? If yes, please make suggestions on the threshold to be used.

Q6: Do you consider that payments made directly by the AIF to the AIFM as a whole (e.g. payment of a performance fee or carried interest) shall be considered as payments made to the benefit of the relevant categories of staff of the AIFM and, therefore, fall under the scope of the AIFMD remuneration rules (and, therefore, of these Guidelines)?

We broadly agree with the scope of the Guidelines but believe that the treatment of payments of performance fees or carried interest merits further consideration to adjust for different types of carried interest schemes. As the current draft AIFMD Guidelines recognize, incentive payments which are designed to align AIF manager and staff members' long-term interests with investors' can be judged as fulfilling the aims of the AIFMD remuneration requirements and should fall out of the scope of the Guidelines. However, this currently only applies to schemes which constitute a pro-rata return on investments made by staff members into the AIF. The Guidelines should recognize that the principle of long-term risk-alignment can be met with other types of carried interest vehicles. For example, for a specific performance target agreed with investors, which materializes only if performance hits a certain level and at the end of the AIF's lifetime. These payments cannot be adjusted incrementally through clawbacks in the same way as other types of instruments and it is not possible to calculate them as part of the annual variable remuneration under the specific requirements. At the very least, carried interest vehicles structured in a way which aligns the interests of staff with those of an AIF's investors in this way should be subject only to the general requirements on risk alignment.

We do not see any benefit in setting a quantitative or qualitative threshold at which the portion of the payment made by the AIF exceeding the pro-rata investment return for investments made by staff members is transformed into carried interest. This potentially confuses two discrete mechanisms for remuneration: returns on investments by staff members and a specific performance fee under carried interest. Not all AIFs use both, or indeed either, mechanism.

Q4: Do you agree that the AIFMD remuneration principles should not apply to fees and commissions received by intermediaries and external service providers in case of outsourced activities?

Q5: Notwithstanding the fact that the provisions of the AIFMD seem to limit the scope of the principles of remuneration to those payments made by the AIFM or the AIF to the benefit of certain categories of staff of the AIFM, do you consider that the AIFMD remuneration principles (and, therefore, these Guidelines) should also apply to any payment made by the AIFM or the AIF to any entity to whom an activity has been delegated by the AIFM (e.g. to the remuneration of a delegated investment manager)?

We agree with the current drafting that those carrying out outsourced or delegated activities should not be subject to the Guidelines. First, paying others for services provided is a very different activity to determining employee pay and should be treated as such. Second, these outside entities may already be subject to other, sector-specific remuneration guidelines, such as CRD III under a group-wide remuneration policy or, once finalised, the MiFID guidelines recently proposed by ESMA. We support the intention to apply the FSB's principles for sound compensation practices across the financial sector in a proportionate manner, but attaching employee remuneration restrictions to service agreements is not an appropriate method to achieve this.



IV.II. Which entities and which staff to be identified?

Q7: Do you agree with the categories of staff identified above which should be subject to the remuneration principles set out in the Guidelines? If not, please state the reasons for your answer and also suggest an alternative approach.

The categories of staff outlined in the draft Guidelines are consistent with CRD III. For institutions which apply those or other sector-specific remuneration requirements on a group-wide basis, we strongly recommend that this be taken into account. As with the recognition that an AIFM need not set up a Remuneration Committee if there is one at group level which covers the divisions where AIFs operate, a similar dispensation should be made for the identification of "risk takers" / Identified Staff. If an institution is required to consider its entire employee population during the identification process then there should be no need for a separate approach for an AM subsidiary or division. This is also subject to the regulator satisfying itself that the process for identification and number of staff identified is appropriate to the institution's risk profile and activities.

V. Proportionality principle

Q9: Do you agree with the clarifications proposed above for the application of the proportionality principle in relation to the different criteria (i.e. size, internal organisation and nature, scope and complexity of activities)? If not, please state the reasons for your answer and also suggest an alternative approach.

We agree with the clarifications of the application of the proportionality principle, both in general and the specific criteria. Internal organisation should not only cover the wider legal structure of the AIFM or AIF, but also the wider group structure in which it operates. It should consider whether the wider group policy, governance and practices already apply remuneration requirements in line with the Guidelines to divisions that include AIFs.

We believe that this is important in order to ensure that where parent companies are subject to multiple sector-specific remuneration requirements (MiFID for investment firms, UCITS for asset managers, CRD III for credit institutions) this does not place them at a competitive disadvantage, undermine group-level governance and reporting, or subject Identified Staff across the group to different specific requirements where it is unwarranted.

VI. AIFMs being part of a group

Q12: Do you agree that there is a need for consistency in the potential application of different requirements for AIFMs which belong to a group subject to other principles?

Q13: Do you agree that the proposed alignment of the CRD and AIFMD remuneration provisions will reduce the existence of any conflicting remuneration requirements at group level for AIFMs whose parent companies are credit institutions subject to the CRD? If not, please state the reasons for your answer and provide quantitative details on any additional costs implied by the proposed approach.

We agree that there is a need for consistency for AIFMs which belong to a group. To this end, we support the alignment of the Guidelines with those under CRD III, coupled with clear principles around proportionality. However, as drafted, the Guidelines do not currently make clear that, where one set of sector-specific requirements are applied to a firm's entire operations, covering all divisions with AIFs, then the AIFMs in question can be deemed to have complied. In the interests of ensuring a common supervisory approach across the EU, and providing market participants with legal and practical certainty, this should be clarified and explicitly stated.

Currently, Section VI suggests that the CRD III principles apply only at a parent level. This is not the case for an organisation such as DB, where CRD III has applied across the whole group since it came into force in 2011. This includes adherence by our Asset Management business to all of the specific measures included in the Guidelines, in particular: the identification of "risk takers" or Identified Staff, the application of the deferral requirements (including the use of equity instruments) to this population, and the collective disclosure of compensation data. Furthermore, DB understands that the type and degree of risk is different in Asset Management (compared to wholesale banking) and our risk adjustment measures and compensation policies reflect this.



To ensure legal and practical certainty and a consistent supervisory approach, the Guidelines should explicitly state that groups who apply CRD III (or other sector-specific remuneration requirements) on a group-wide basis need only ensure that the group-wide policy, governance and practices incorporate other sector-specific requirements where they are significantly different. This should be the case for Remuneration Committees, broader governance and disclosure requirements, and general and specific risk-alignment requirements. A detailed and thorough identification process across the whole group will identify all risk takers and also the senior employees responsible for the associated control functions. This will aid the competent authority to satisfy itself with the methodology and outcomes on a group-wide basis.

It is essential that this principle is clarified at this stage, before further sector-specific remuneration requirements are introduced, covering MiFID investment firms and UCITS.

VIII. Governance of remuneration

Q17: Do you agree with the proposed split of competences between the members of the management function and those of the supervisory function? If not, please provide explanations.

Q18: Do you agree with the guidelines above on the shareholders' involvement in the remuneration of the AIFM?

Q19: Do you agree with the criteria above for determining whether or not a RemCo has to be set up? If not, please provide explanations and alternative criteria.

Q20: Do you agree that in assessing whether or not an AIFM is significant, consideration should be given to the cumulative presence of a significant size, internal organisation and nature, scope and complexity of the AIFM's activities? If not, please provide explanations and alternative criteria.

Q28: Do you agree with the above criteria on the remuneration of the control functions? If not, please provide explanations.

The Guidelines do in places acknowledge existing governance requirements placed upon a parent credit institution. For instance, paragraph 74 helpfully states that a Remuneration Committee is not required for "AIFMs which are a subsidiary of a credit institution which is obliged to set up a RemCo which performs its tasks and duties for the whole group". This is a welcome and sensible approach but the Guidelines should go further and adopt the same position in all areas of governance to avoid confusion. One way to achieve this would be to include under "internal organisation" in Section VII (guidelines on proportionality principle) the wider group structure in which AIFs and AIFMs operate and to explicitly state that the proportionality principle applies to the whole of Section X (guidelines on governance of remuneration).

X. Specific requirements on risk alignment

Q41: Do you agree with the guidance on the different components to be considered in relation with the deferral schedule for the variable remuneration? If not, please provide explanations and alternative guidance.

Q42: Do you agree with the types of instruments composing the variable remuneration which have been identified by ESMA? If not, please provide explanations.

The components to be considered with the deferral schedule are consistent with CRD III. For this and for the types of instruments identified in the draft Guidelines, we recommend an explicit recognition that these can be met if the asset management divisions include Identified Staff subject to similar specific risk-alignment requirements as a group-wide remuneration policy applying CRDIII (or other sector-specific requirements). Under CRD III, the appropriate senior managers and risk takers in the asset management division are already required to defer a minimum of 40%-60% of variable awards for Identified Staff and at least 50% of the deferred award must be in shares or share-linked instruments. Linking their remuneration to the organisation's share price ensures they act in the best interests of shareholders and investors. We therefore recommend that it should be clarified that Identified Staff already subject to CRD III rules

addressing the use of deferred awards and instruments would also be in compliance with these specific guidelines.



With the exception of where it is required by other jurisdictions, DB does not currently provide as part of employees' remuneration shares or units from funds they manage. Indeed, for some specific types of funds this is prohibited, such as German Spezialfonds - which are not open to individual investors - and closed-end funds. Instead, as part of a group-wide remuneration policy, non-cash instruments are DB shares. The Guidelines should explicitly recognise that group shares are an appropriate instrument. At the moment, it only recognises that this might be necessary where particular legal structures do not allow remuneration through shares in the AIF. Given the diversity of AIFs, shares in the funds may not always be the best method to align risks, for example, in passive funds. Therefore, the Guidelines should not imply that this form of remuneration should be the rule, rather than the exception.

XI. Disclosure

Q49: Do you consider appropriate to require AIFMs to apply the same level of internal disclosure of remuneration as they apply to their external disclosure? Please state the reasons of your answer.

In line with our comments above, the Guidelines should clarify that disclosure requirements would be met when they already apply on a group-wide basis under CRD III. This requires firms to disclose by business line and broken down into aggregated numbers the variable and total remuneration for Identified Staff across the group in the annual remuneration report. As long as the asset management division is suitably subject to the group-wide remuneration requirements, this should suffice to meet the AIFM remuneration disclosure requirements. One area where the Guidelines could be clearer is in specifying that disclosure for each AIF is not necessary where it is part of a group-wide annual remuneration report. This is particularly important for confidentiality and data protection, as some AIFs have only two or three fund managers.