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| 23 July 2015 |

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| Reply form for the  Guidelines on sound remuneration policies under the UCITS Directive and AIFMD |
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| Date: 23 July 2015  2015/ESMA/1210 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper “Guidelines on sound remuneration policies under the UCITS Directive and AIFMD”, published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type < ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* contain a clear rationale, including on any related costs and benefits; and
* describe any alternatives that ESMA should consider

**Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_ UCITS\_V\_AIMFD\_REM\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA\_ UCITS\_V\_AIMFD\_REM\_XXXX\_REPLYFORM or

ESMA\_ UCITS\_V\_AIMFD\_REM\_XXXX\_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

***Deadline***

Responses must reach us by **23 October 2015.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Click here to enter text. |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country/Region | Choose an item. |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_UCITS\_V\_AIMFD\_REM\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_UCITS\_V\_AIMFD\_REM\_1>

1. In this consultation paper ESMA proposes an approach on proportionality which is in line with the AIFMD Remuneration Guidelines and allows for the disapplication of certain requirements on an exceptional basis and taking into account specific facts. Notwithstanding this, ESMA is interested in assessing the impact from a general perspective and more precisely in terms of costs and administrative burden that a different approach would have on management companies. For this reason, management companies are invited to provide ESMA with information and data on the following aspects:
2. All management companies (i.e. those that hold a separate AIFMD licence and those that do not) are invited to provide details on the following:
   1. compliance impacts and costs (one-off and ongoing costs, encompassing technological/ IT costs and human resources), and
   2. difficulties in applying in any circumstances the remuneration principles that could otherwise be disapplied according to the provisions under Section 7.1 of the draft UCITS Remuneration Guidelines (Annex IV to this consultation paper).
3. Management companies that also hold an AIFMD licence and benefit from the disapplication of certain of the remuneration rules under the AIFMD Remuneration Guidelines are asked to provide an estimate of the compliance costs in absolute and relative terms and to identify impediments resulting from their nature, including their legal form, if they were required to apply, for the variable remuneration of identified staff:
   1. deferral arrangements (in particular, a minimum deferral period of three years);
   2. retention;
   3. the pay out in instruments; and
   4. malus (with respect to the deferred variable remuneration).

Wherever possible, the estimated impact and costs should be quantified, supported by a short explanation of the methodology applied for their estimation and provided separately, if possible, for the four listed aspects.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_1>

1. Do you agree with the proposal to set out a definition of “performance fees” and with the proposed definition? If not, please explain the reasons why and provide an alternative definition supported by a justification.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_2>

1. Do you see any overlap between the proposed definition of ‘supervisory function’ in the UCITS Remuneration Guidelines and the definition of ‘management body’ in the UCTS V Level 1 text? If yes, please provide details and suggest how the definition of ‘supervisory function’ should be amended in the UCITS V Guidelines.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_3>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_3>

1. Please explain how services subject to different sectoral remuneration principles are performed in practice. E.g. is there a common trading desk/an investment firm providing portfolio management services to UCITS, AIFs and/or individual portfolios of investments? Please provide details on how these services are operated.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_4>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_4>

1. Do you consider that the proposed ‘pro rata’ approach would raise any operational difficulties? If yes, please explain why and provide an alternative solution.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_5>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_5>

1. Do you favour also the proposed alternative approach according to which management companies could decide to voluntarily opt for the sectoral remuneration rules which are deemed more effective in terms of avoiding excessive risk taking and ensuring risk alignment and apply them to all the staff performing services subject to different sectoral remuneration rules? Please explain the reasons behind your answer.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_6>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_6>

1. Do you agree that the performance of ancillary services under Article 6(3) of the UCITS Directive or under Article 6(4) of the AIFMD by personnel of a management company or an AIFM should be subject to the remuneration principles under the UCITS Directive or AIFMD, as applicable? Or do you consider that that MiFID ancillary services do not represent portfolio/risk management types of activities (Annex I of the AIFMD) nor investment management activities (Annex II of the UCITS Directive) and should not be covered by the rules under Article 14b of the UCITS Directive and Annex II of the AIFMD which specifically refer to the UCITS/AIFs that a UCITS/AIFM manages? Please explain the reasons of your response.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_7>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_7>

1. Do you agree with the proposal to look at individual entities for the purpose of the payment in instruments of at least 50% of the variable remuneration or consider that it would risk favouring the asset managers with a bigger portfolio of UCITS assets under management? Should you disagree, please propose an alternative approach and provide an appropriate justification.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_8>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_8>

1. Do you consider that there is any specific need to include some transitional provisions relating to the date of application of the UCITS Remuneration Guidelines? If yes, please provide details on which sections of the guidelines would deserve any transitional provisions and explain the reasons why, also highlighting the additional costs implied by the proposed date of application. Please be as precise as possible in your answer in order for ESMA to assess the merit of your needs.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_9>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_9>

1. Do you agree with the assessment of costs and benefits above for the proposal on proportionality? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs that the proposal would imply.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_10>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_10>

1. Do you agree with the assessment of costs and benefits above for the proposal on the application of different sectoral rules to staff? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs that the proposal would imply.

<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_11>

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<ESMA\_QUESTION\_UCITS\_V\_AIMFD\_REM\_11>