

## PRESS RELEASE

### ESMA publishes UCITS remuneration guidelines

The European Securities and Markets Authority (ESMA) has published its final [Guidelines on sound remuneration policies under the UCITS Directive and AIFMD](#). ESMA has also [written](#) to the European Commission, European Council and European Parliament on the proportionality principle and remuneration rules in the financial sector.

#### UCITS Remuneration Guidelines

The UCITS Remuneration Guidelines provide clarity on the requirements under the UCITS Directive for management companies when establishing and applying a remuneration policy for key staff. The Guidelines will ensure a convergent application of these provisions and provide guidance on the governance of remuneration, requirements on risk alignment and disclosure. The Guidelines will apply to UCITS management companies and national competent authorities from 1 January 2017.

#### Proportionality Issue

ESMA, while finalising its UCITS Remuneration Guidelines, had to balance the alignment with the AIFMD Remuneration Guidelines and the obligation to closely cooperate with the European Banking Authority (EBA) in order to ensure consistency with requirements developed for other financial services sectors, in particular credit institutions and investment firms.

The UCITS Directive prescribes that proportionality shall apply to the full set of remuneration principles set out under this Directive. However, the Guidelines do not include guidance on the possibility of dis-applying certain specific requirements on the pay-out process. This follows recent work and legal analysis, including the EBA's Guidelines under CRD IV, which have called into question the existing understanding that the proportionality provisions as set out under the UCITS Directive and AIFMD may lead to a result:

- a) where – under specific circumstances – the requirements on the pay-out process i.e. the requirements on variable remuneration in instruments, retention, deferral and ex post incorporation of risk for variable remuneration are not applied; or
- b) where it is possible to apply lower thresholds whenever minimum quantitative thresholds are set for the pay-out requirements e.g. the requirement to defer at least 40% of variable remuneration.

ESMA considers that these scenarios should remain possible in certain situations and, in its letter to the European institutions, suggests that further legal clarity on this possibility could be beneficial to all the interested parties. Legislative changes in the relevant asset management legislation could be one way to further clarify the applicable regulatory framework.

ESMA believes that it would be inappropriate for the following fund managers to be subject in all circumstances to the requirements on the pay-out process:

- i) smaller fund managers (in terms of balance sheet or size of assets under management);
- ii) fund managers with simpler internal organisation or nature of activities; or
- iii) fund managers whose scope and complexity of activities is more limited.

ESMA also considers that it would be disproportionate to apply the requirements to relatively small amounts of variable remuneration and to apply certain requirements to certain staff when this would not result in an effective alignment of interests between the staff and the investors in the funds.

### **AIFMD Remuneration Guidelines**

The amended AIFMD guidelines will come into force on 1 January 2017. The amendment to the AIFMD guidelines relates to the section of these guidelines dealing with the application of the remuneration rules in a group context and is intended to acknowledge the potential outreach of the CRD rules in a banking group.

The current AIFMD Guidelines will not be amended to bring them into line with the UCITS Guidelines pending clarification on the application of the proportionality principle.



## **Next Steps**

The Guidelines in Annexes III and IV will be translated into the official languages of the European Union and the final texts published on the ESMA website. The deadline for compliance notifications will be two months after the publication of the translations.

## Notes for editors

1. [2016/411 Final Report – Guidelines on sound remuneration policies under the UCITS Directive and AIFMD.](#)
2. [2016/412 Letter to European Commission, European Council and European Parliament on the Proportionality principle and remuneration rules in the financial sector.](#)
3. The UCITS Directive sets out a detailed, harmonised framework for investment funds that can be sold to retail investors throughout the EU. The AIFMD applies to managers of non-UCITS funds e.g. hedge funds, private equity funds, and real estate funds. The UCITS Directive and AIFMD form a comprehensive set of rules for fund management activities in the EU.
4. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets. The mission is based on the three objectives of:
  - investor protection;
  - orderly markets; and
  - financial stability.

It achieves these objectives through four activities:

1. assessing risks to investors, markets and financial stability;
  2. completing a single rulebook for EU financial markets;
  3. promoting supervisory convergence; and
  4. directly supervising specific financial entities.
5. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with NCAs and securities markets regulators, in particular the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA).

Further information:

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