



## Alternative Investment Management Association

European Securities and Markets Authority (ESMA)  
103 Rue de Grenelle  
75007 Paris  
France

**Submitted electronically via the ESMA website**

7 December 2012

Dear Sirs,

### **AIMA's response to the ESMA guidelines on remuneration policies and practices ('MiFID')**

The Alternative Investment Management Association ('AIMA')<sup>1</sup> appreciates the opportunity to comment on the European Securities and Markets Authority's ('ESMA') consultation paper entitled "Guidelines on remuneration policies and practices (MiFID)" (the 'Consultation Paper').<sup>2</sup>

AIMA would like to stress the need for consistency between the draft guidelines contained in the Consultation Paper (the 'MiFID Guidelines') and other remuneration guidelines in the asset management sector. Many asset managers will soon be within the scope of several directives and subject to numerous sets of guidelines. These various remuneration guidelines will also have to be implemented at different times, increasing the complexity. It is therefore imperative that ESMA creates sets of remuneration guidelines under the various European asset management directives which are consistent.

### **Proportionality**

ESMA states in the Consultation Paper that:

"when referring to organisational requirements, these guidelines should be read together with the proportionality principle as set out in Article 22 of the MiFID Implementing Directive.<sup>3</sup> This will give firms the necessary flexibility to comply with the guidelines according to the nature, scale and complexity of their business. For example, the guidelines on controls are applicable to small firms as we expect them to have appropriate and proportionate controls."<sup>4</sup>

AIMA believes that the principle of proportionality should be taken into account with respect to all of the provisions of the MiFID Guidelines, and not just in relation to the organisational requirements. AIMA would also suggest that the proportionality principle should be contained within the text of the MiFID Guidelines and that the MiFID Guidelines should state that, in some circumstances, entities covered by the MiFID Guidelines may have regard for each of the guidelines and decide that, subject to the requirements of their home Member State regulator, certain guidelines should apply to a minimal extent or, in appropriate cases, not at all. Each of the Level 1 text of the AIFMD, the UCITS directive and the CRD III clearly permit such an approach,<sup>5</sup> and so it would be inconsistent with the other applicable legislation in this area not to allow this.

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<sup>1</sup> AIMA is the trade body for the hedge fund industry globally; our membership represents all constituencies within the sector – including hedge fund managers, fund of hedge funds managers, prime brokers, fund administrators, accountants and lawyers. Our membership comprises over 1,300 corporate bodies in over 40 countries.

<sup>2</sup> ESMA/2012/570 (September 2012).

<sup>3</sup> Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

<sup>4</sup> See Para 34 of the Consultation Paper.

<sup>5</sup> See Article 13 of the AIFMD, Article 14(a)(4) of the UCITS V Directive and Annex V, (1)(11)(23) of the CRD III.

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### **Individual members of staff within a group structure**

In the near future, many group structures will include entities that are licensed as AIFMs, entities that are UCITS management companies and entities that are authorised as MiFID firms. There are likely to be circumstances in which a member of the “relevant staff” of a MiFID investment firm is also a member of the “identified staff” of an AIFM affiliate (under the AIFMD).

Example 1: A line manager of a MiFID investment firm who oversees the sales forces in both the MiFID investment firm and its AIFM sister company.

Example 2: An AIFM (which is not within the scope of the MiFID Guidelines)<sup>6</sup> is a subsidiary of a MiFID investment firm; the professional activities of a director of the AIFM pose sufficient risk to the consolidation group that he is deemed to be relevant staff of the MiFID investment firm, even though he is not an officer of the MiFID investment firm.

In cases such as these, only one set of rules should apply in respect of the relevant individual, and the group’s parent institution should be able to determine which set of rules is most appropriate. The MiFID Guidelines do not address this point in respect of individuals “wearing two hats”. We suggest a further paragraph for the final MiFID Guidelines as follows:

“If an individual is relevant staff in respect of two or more entities affiliated with each other, the parent institution may decide to apply only one set of sectoral rules to the remuneration of that member of relevant staff, taking into account the risks his activities pose to the entities separately and together.”

In addition to the general comments above, we have provided in Annex 1 responses to a few of the specific questions posed in the Consultation Paper.

We hope you find our comments useful and would be more than happy to answer any questions you have in relation to this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is written over a light blue circular stamp.

Jiří Król  
Director of Government & Regulatory Affairs

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<sup>6</sup> I.e. it is an AIFM which is not carrying out the activities listed within Article 6(4) of the AIFMD.



## **Annex 1**

### **AIMA's responses to the questions posed in ESMA's Consultation Paper**

**Q4 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.**

AIMA considers that it would not be beneficial to restrict the ratio of fixed to variable remuneration. There is clearly a balance to be struck in this area: fixed remuneration should be sufficiently high that, whatever the role, relevant staff should not be incentivized to take undue risks. However, the overall fixed remuneration should be kept reasonably low in order to ensure that the firm has sufficiently low fixed costs to be able to survive through tough market conditions. Setting limits on ratios will create undue pressure both on the level of fixed remuneration and the level of variable remuneration.

**Q12 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.**

AIMA considers that whilst it would be reasonable for the compliance function to be consulted prior to implementation of remuneration policies and practices, involving them in the design process would not be necessary. This is not an area of their expertise and the design of the policies and procedures should be left to those who are sufficiently experienced in these areas.

**Q14 If you think some of these features may be compatible with MiFID rules, please describe for each of (a), (b), (c) and (d) in Annex I above which specific requirements (i.e. stronger controls, etc) they should be subject to.**

It is very common for marketers and managers to be on an accelerated payment arrangements and it is not necessarily a bad thing, provided that it is not extreme (such as in example D2) and is not encouraging one product over another etc. Many managers have systems in place which mean that a portfolio manager's share of performance increases over a given performance threshold. This is usually in line with clients' target performance and therefore their best interests.