

European Securities and Markets Authority (ESMA)

Via online submission

Vienna, September 28, 2012

Response: Consultation Paper on Sound Remuneration Policies under the AIFMD

VÖIG¹ appreciates the opportunity to provide comments on the ESMA Consultation paper on Guidelines on sound remuneration policies under the AIFMD (the “Consultation Paper”):

I. General remarks

VÖIG supports the general aim that remuneration policies and practices shall be consistent with and promote sound and effective risk management and shall not encourage excessive risk taking. However VÖIG has a number of general concerns regarding the proposed Guidelines:

1. Consistency with other remuneration guidelines

VÖIG would like to stress the need for consistency between the proposed Guidelines and other remuneration guidelines. VÖIG members will in the future be falling under the scope of several directives, as they will be holding licenses as AIFM, as UCITS Management Companies and possibly as MiFID firms. They will act as management companies of investment funds and also perform investment services of individual portfolio management or non-core services. Many of them are also part of financial groups, thus falling as group companies under the CRD requirements or relevant requirements for insurance groups or pension groups.

Consequently, VÖIG members will have to apply at least four sets of remuneration guidelines, namely the guidelines to be issued by ESMA under AIFMD, guidelines to be issued by ESMA under MiFID, guidelines to be issued by ESMA under UCITS V and the existing CEBS Guidelines (to be modified by EBA). These sets of remuneration guidelines will also have to be implemented at different times, increasing the complexity.

¹ Die Vereinigung Österreichischer Investmentgesellschaften (VÖIG) ist die Austrian Association of Investment Fund Management Companies and represents through its members around EUR 144 bn in Assets under Management in approximately 2200 funds. For further information, see www.voeig.at.

It is crucial that consistency be ensured between the different guidelines while leaving enough room to take the specificities of the different business models into account. The guidelines should be consistent but not identical.

2. Structure of the Guidelines: Application to entire staff of AIFM

VÖIG is concerned with the distinction between general and specific requirements for risk alignment in the structure of the Guidelines. The proposed distinction contradicts the legal requirements in Article 13 and Annex II of the AIFMD. According to Recital 24 and Article 13(1) of the AIFMD, AIFMs shall determine remuneration policies and practices only for those categories of staff stated in Annex II and whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage. In particular, there are no requirements for the proposed approach that some of the principles stated in Annex II of the AIFMD should apply to AIFMs and their staff as a whole or only to Identified Staff. The current ESMA proposal would lead to the situation that the proposed general requirements for risk alignment would also apply to those categories of staff whose activities have no connection with the risk profile of the AIFM or the AIFs (such as caretakers, secretaries etc.).

II. Specific remarks

VÖIG wants to make some further, rather detailed comments by answering the specific questions laid out as follows:

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)?

VÖIG considers that the AIFMD remuneration principles and these Guidelines should not apply to payments made by the AIFM or the AIF to an entity to whom an activity has been delegated by the AIFM. Several reasons can be raised against such an extension of the application of the principles and Guidelines:

First of all, the scope of the AIFMD is limited to those payments by the AIFM or the AIF to the benefit of certain categories of staff of the AIFM. The scope of application of the Level 1 text should be respected and not extended.

Secondly, the aim of the AIFM remuneration principles is to address an individual's remuneration, not fees paid between two legal entities for services rendered.

Furthermore, it is not necessary to extend the application of the AIFMD Level 1 to payments not covered by the Level in order to achieve the legislative aim of promotion of sound and effective risk management. The entities receiving the delegation of portfolio management by the AIFM will in most cases already be subject to remuneration requirements, such as the requirements under MiFID. Other functions which can be delegated, such as administration, have no material impact on the risk profile of the AIFM or the AIF they manage.

Last, these fees are already fully disclosed to potential and existing investors in the prospectus or offering documentation as well as the financial report of the AIFs.

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)?*

VÖIG considers that the distinction should be underlined between a management fee paid by the AIF to the AIFM as Management Company on the one hand and remuneration paid to individual staff members on the other hand.

The management fee paid by an AIF to the AIFM constitutes parts of the revenue of the AIFM. The management fee will cover various services, such as portfolio and risk management but also administrative services and distribution. From all revenues the AIFM receives costs and expenses must be deducted, such as rent, salaries, social security charges, costs for IT equipment etc.

An employee of the AIFM on the other hand will receive one monthly salary for different product lines on which he works. A compliance officer, for example, will receive one salary for compliance work performed for different AIFs, UCITS and in connection with individual portfolios managed by the AIFM. Given this setup, it is impossible to consider payments made by an AIF to the AIFM as payments made to the benefit of certain categories of staff. The AIFMD remuneration principles and therefore also these Guidelines have as scope remuneration staff members of the AIFM receive. They shall not have as scope a management fee which an AIFM receives and shall not be extended thereto.

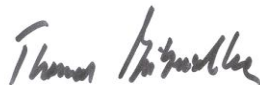
III. Timing of entry into force of these Guidelines

VÖIG suggests that the proposed date of entry into force of these Guidelines on 22 July 2013 should be complemented by a provision allowing for a phased introduction of these Guidelines with each AIFM.

In case you have any further questions, please do not hesitate to contact us.

Best regards

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