.BVI

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BVI Position on draft guidelines on sound remuneration policies under the UCITS Directive and AIFMD (2015/ESMA/1172)

BVI[1] gladly takes the opportunity to present its views on ESMA's consultation paper regarding draft Guidelines on sound remuneration policies under the UCITS Directive and AIFMD.

Developing guidelines on sound remuneration policies is an essential element of the implementation of the Directive 2014/91/EU (hereafter: the UCITS V Directive). BVI would like to express its full support for this project. This is an important initiative for enhancing investors' protection and strengthening investors' confidence in UCITS. Remuneration policies and practices in the financial sector should be consistent with and promote sound and effective risk management. In this context, we would like to draw ESMA's attention to our key issues and concerns before turning to detailed remarks on the questions for consultation.

I. Key issues

1. Alignment of remuneration requirements under the AIFMD, UCITS Directive and MiFID

We recognise that the co-legislators stated the need that ESMA shall include in its guidelines on remuneration policies provisions on how different sectoral remuneration principles are to be applied where employees or other categories of personnel perform services subject to different sectoral remuneration principles. Our members are offering as investment management companies services and products under the Directive 2011/61/EU (hereafter: AIFMD), the Directive 2009/65/EU (hereafter: UCITS Directive) and the Directive 2014/65/EU (hereafter: MiFID) and are legally required to comply with the different sets of rules with regard to remuneration. This leads to major difficulties in the current practical application of these different provisions, since management services in an entity are generally structured according to the expertise of specialised management teams.

Therefore, we would like expressly to support the ESMA's choice to align its Guidelines for the remuneration of UCITS managers with the corresponding ones for AIFMs. It is important that consistent remuneration requirements apply for investment management companies which manage both UCITS and AIF simultaneously. We particularly welcome ESMA's interpretation of the principle of proportionality with the possibility of neutralisation of certain remuneration requirements for the whole investment management companies or identified staff complies with the current legal requirements. It is important to maintain the risk-focused and principle-based approach in the asset management area.

Moreover, we are in favour of the approach that only the AIFMD/UCITS remuneration guidelines should apply or should be qualified as more effective for aligning the interest of the relevant individuals with those of the clients of MiFID services of individual portfolio management or non-core services such as investment advice.

[1] BVI represents the interests of the German investment fund and asset management industry. Its 91 members manage assets of approximately of EUR 2.6 trillion in UCITS, AIFs and assets outside investment funds. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

2. Group context – application of remuneration requirements of the CRD

Some of our members will also be affected by the new proposals in the group context. We would like to highlight that the remuneration rules of the CRD do not apply for subsidiaries not subject to the CRD such as management companies in the meaning of the AIFMD or the UCITS Directive. Therefore, the CRD remuneration requirements are not suitable to qualify as sectoral remuneration principles which should ESMA taking into account in establishing remuneration guidelines. Management companies with a licence as AIFM or UCITS manager do not perform services subject to the CRD, not even if they are part of a banking group. We strongly disagree with the proposals provided by EBA in its consultation paper on remuneration guidelines under the CRD that certain staff members of subsidiaries not subject to the CRD which might have a material impact on the consolidated risk profile of the parent banking institution should be required to fulfil the CRD remuneration requirements. Therefore, we also strongly disagree with ESMA's proposal to implement requirements for subsidiaries not subject to the CRD such as management companies which are in line with this fundamentally incorrect group approach presented by EBA.

In our view, in the group context only one question is relevant: How could the parent institution in a banking group ensure that subsidiaries are not subject to the CRD implement remuneration policies which are consistent with the CRD remuneration requirements? ESMA itself has expressed in its Questions and Answers under the AIFMD that the CRD remuneration rules are equally as effective as those applicable under the AIFMD remuneration guidelines. We share this view. Therefore, there is no need to discuss which of the different remuneration requirements are deemed more effective for achieving the outcomes of risk taking and aligning the interest of the relevant individuals with those of the investors in the funds they manage.

II. Specific comments

We would like to answer ESMA's questions as follows:

Q1: *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:*

1) *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:*
   a) compliance impacts and costs (one-off and ongoing costs, encompassing technological/ IT costs and human resources), and
   b) any type of practical 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).
2) *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:*
   a) deferral arrangements (in particular, a minimum deferral period of three years);
   b) retention;
   c) the pay out in instruments; and
   d) malus (with respect to the deferred variable remuneration).

Wherever possible, the estimated impact and costs of these changes 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.

We broadly support the proposed interpretation of the proportionality principle which is in line with the remuneration requirements under the AIFMD. Such a risk-focused and principle based approach with the use of neutralisation of certain remuneration requirements for the investment management company or identified staff is in line with the current legal requirements. We share ESMA's view that the wording of Article 14b of the UCITS V Directive means that the application of proportionality could lead a UCITS to disapply certain of the remuneration principles. In addition to the referenced wording, according to Article 14a paragraph 4 of the UCITS V Directive and Article 13 paragraph 2 of the AIFMD, ESMA's guidelines shall take into account the principles on sound remuneration policies set out in the Commission's Recommendation 2009/384/EC of 30 April 2009 (hereafter: the Recommendation). According to the Recommendation, a risk-focused remuneration policy should be adopted which is consistent with effective risk management and does not entail excessive risk exposure (cf. recital 12 of the Recommendation). In detail, according to Section II No. 4.3, 4.4 and 4.6 of the Recommendation, deferral arrangements, the pay out in instruments and malus arrangements should only apply to entities, where a significant bonus is awarded. Therefore, the proposed possibility of using 'neutralisation' is in line with the Recommendation and the UCITS V Directive.

However, changing the interpretation of the principle of proportionality would mean that a different approach would have to be applied by management companies meaning that they are obliged to change their remuneration principles fundamentally which involves additional and avoidable costs. In detail:

1. General impact and costs

In general, our members anticipate the following changes in the case of changing the interpretation of the principle of proportionality:

- Adjusting the content of the remuneration policies (such as changing the scope of the remuneration policy with regard to the identified staff and the payout process)
- Implementation of a payout process for parts of the bonus (such as deferral arrangements, pay out in instruments, application of malus) including software adaption for the payout process and adjusting the accounting systems (such as implementation of different payment methods and new employees' accounts, monitoring of the deferral arrangements, initiation of subsequent payments)
- In cases where a payout process is partially in place, changing the implemented processes for salary payments (such as changing the calculation process for the deferred part of the bonus and the timeline of the deferred period)
- Adjusting the employment contracts of the identified staff, including conduct of negotiations with the employees
- Informing – where applicable - the workers council ("Betriebsrat") and requiring the consent of the worker council (including complying with the requirements of the Equal Treatment Law); in practice, there are open questions what happens if the works council fails to give its approval under employment legislation or collective agreements (e.g. consent for malus agreements).
- Clarification of legal issues by internal/external lawyers
- Hiring external service providers for the implementation of the new requirements

Overall, the cost impact is significant. This means that asset managers are forced to create at least than one new position for the administration of remuneration policies and to pay legal and consulting fees. Moreover, asset managers are concerned about legal actions against them relating to the payment of discretionary or variable compensation for previous years.

2. Impact and costs for management companies that also hold an AIFMD licence

A different approach in the application of the proportionality principle on management companies that also hold an AIFMD licence and benefit from the disapplication of certain of the remuneration rules under the AIFMD Remuneration Guidelines is not feasible. This is all the more the case, because most of our members which manage both UCITS and AIF have already implemented the AIFMD remuneration policies for all personnel in the investment management company. This means, in particular, that management companies would have the following administrative burden with regard to the contentious issues:

- **Deferral arrangements**

The administration of a new proportionality approach regarding the deferral arrangements is increasingly complex. This involves less transparency in the procedures of the identified staff for which the deferral arrangements shall apply. The question therefore arises whether such a system is designed to create positive and risk-oriented incentives.

This applies particularly for identified staff receiving only a low amount of variable remuneration (e.g. up to 50.000 Euro). Even in these cases, investment management companies would be required to deferral parts of the bonus. Such measures are not associated with positive behavioural steering effects. Rather, the low amount of variable remuneration as such is in itself already an incentive not to take high risks.

In practice, some of our members have implemented a de minimis threshold for applying the requirements for identified staff. Any restriction of the proportionality principle would not allow for such thresholds. This would only result in low paid employees being subject to the remuneration requirements for risk takers. On the other hand, such thresholds are able to avoid the disproportionate amount of administrative work caused by e.g. deferring 40 % of a variable remuneration award of 15,000 Euro over three years (€ 2,000 in years 1, 2 and 3, with 50 % of this in instruments). However, a more critical result of prohibiting a threshold will be the reduced possibility to retain lower paid employees who are now subject to these requirements. This is envisaged to be the most important remuneration issue for smaller investment management companies.

- **The pay out in instruments**

The pay out in instruments would lead to the situation that a substantial portion of the variable remuneration shall consist of units of the UCITS concerned, equivalent ownership interests, share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the above-mentioned instruments. BVI understands that the purpose of remunerating staff in instruments is to align the staff's interest with those of the investors in the UCITS. BVI is, however, not certain that this alignment can be achieved in the best interest of both parties if there is a requirement to pay out a substantial portion of the variable remuneration component to all identified staff members through UCITS participation. Such remuneration will create new conflicts of interest which will have to be carefully

managed and can only be mitigated with a flexible application of the Guidelines. For example, managers may be reluctant to manage funds in markets which were currently out of favour or underperforming but which are strategically important for the overall asset allocation of UCITS investors.

From a practical point, it is also difficult to envisage how this will operate in practice where single employees often provide services regarding multiple AIFs, multiple UCITS and multiple separate accounts.

However, in applying the proposed pay-out process in instruments described under paragraph 151 of the draft Guidelines according to which such requirement would only be applicable if the net asset value of one managed UCITS is greater than 50 % of the total AuM of all managed UCITS, the obligation to pay out in instruments could reduce the effort of investment management companies with a bigger portfolio (please also see our answer to question 8).

- **Malus or claw back arrangements**

First of all, the current requirements under the AIFMD and the UCTIS V Directive provide a flexible approach in using malus or claw back policies. Both are forms of ex-post risk adjustment. However, there is no obligation to implement either malus or claw back clauses. Already today, the investment management company adjusts remuneration of the staff member identified as risk takers by means of both malus and claw back clauses as an ex-post risk adjustment instrument (cf. Annex II paragraph 1o of the AIFMD or Art. 14b paragraph 1o of the UCITS Directive). This approach has proven to be reliable and offers maximum flexibility in the choice of malus or clawback clauses.

However, when applying a restricted principle of proportionality, the application of malus or claw back arrangements must be individually agreed between the investment management company and the identified staff members. Moreover, such measures must be part of a decision-making tool to obtain the necessary acceptance by employees. Malus and claw back arrangements will influence payroll-accounting, in particular the calculation of income tax. These practical consequences are not foreseeable yet.

Most of the amounts of the payments which would fall under malus or claw back arrangements would be very small. Therefore, it is questionable whether the objective of avoiding a shortfall can be achieved.

Q2: *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.*

Yes, we agree with the proposal to set out a definition of “performance fees” and with the proposed definition. However, we agree to the proposed definition only in the context of the remuneration requirements set out in Article 14b paragraph 3 of the UCITS V Directive.

Q3: *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 UCITS V Level 1 text? If yes, please provide details and suggest how the definition of ‘supervisory function’ should be amended in the UCITS Remuneration Guidelines.*

No, we see no overlap between the definitions.

Q4: *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.*

Our members are asset managers providing management services to collective investment undertakings such as UCITS or AIF. Most of them are investment management companies within the meaning of the UCITS Directive or the AIFMD which are offering services and products under the AIFMD, the UCITS Directive and the MiFID and are legally required to comply with the different sets of rules with regard to remuneration set out in these Directives.

Other members are investment firms which directly fall within the scope of the Directive 2013/36/EU (hereafter: the CRD) and the future guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 presented by EBA in its consultation paper (Ref.: EBA/CP/2015/03) because they provide only investment services such as portfolio management or investment advice required by the MiFID.

In our view, it is important to clarify that the scope of the proposed ESMA guidelines on remuneration under the UCITS Directive only covers the application of different sectoral rules for services provided by management companies within the meaning of the UCITS Directive. To be clearly distinguished from these services are the questions to what extent remuneration requirements shall apply to investment firms providing direct MiFID services (outside the scope of the AIFMD or UCITS Directive - please see our comments below under No 2) and whether and to which extent the parent institution in a banking group shall ensure that subsidiaries not subject to the CRD such as AIFMD or the UCITS management companies implement remuneration policies which are consistent with the CRD remuneration requirements (please see our comments below under No 3). In detail:

1. Services provided by AIFMD or the UCITS management companies

Management companies are subject to different sectoral remuneration requirements:

- Management companies licenced as AIF managers fall under the remuneration requirements set out in Article 13 and Annex II AIFMD and under the ESMA guidelines on sound remuneration policies under the AIFMD (Ref.: ESMA/2013/232).

- Management companies licenced as UCITS managers fall under the remuneration requirements set out in Article 14a and 14b of the UCITS V Directive and under the proposed ESMA guidelines on sound remuneration policies under the UCITS Directive.

- UCITS management companies or AIFM providing MiFID services of individual portfolio management or non-core services such as investment advice (within the meaning of Article 6 paragraph 3a and b of the UCITS Directive and Article 6 paragraph 4a and b of the AIFMD) are required to comply also with the MiFID remuneration rules stated by ESMA in its guidelines on remuneration policies and practices (MiFID) (Ref: ESMA/2013/606).

It is a common practice that all of these services are provided jointly within an entity by specialised management teams. Thus, it is very common for management companies to have management teams for e.g. European corporate bonds, North American or South-East Asian equities which then provide their services to all AIF, UCITS and mandate portfolios focusing on these markets. In Germany, in principle, there are no employees who only provide services separately by legal product form AIF and UCITS. Therefore, in most situations the affected employees are remunerated according to AIFMD, UCITS and MiFID rules. Applying all these rules within one employment contract is barely possible.

Therefore, we expressly support the ESMA's choice to align the Guidelines for the remuneration of both UCITS and AIF managers. It is important that consistent remuneration requirements apply to investment management companies which manage both UCITS and AIF. Moreover, we are in favour of the approach that only the AIFMD/UCITS remuneration guidelines should apply or should be qualified as more effective for aligning the interest of the relevant individuals with those of the clients of MiFID services of individual portfolio management or non-core services such as investment advice (please also see our answer to question 5 and 7).

Finally, with regard to the question, according to the current supervisory practice in Germany, the fund management covers the organisational unit or persons who make investment decisions for the investment asset pools. If the "trading desk" is given scope for decision-making when placing orders on behalf of the investment asset pools, it may be attributed to the fund management unit too. However, not every management company has its own trading desk. In these cases, the orders for transactions will be forwarded to brokers for execution.

2. Services provided by MiFID investment firms

To be distinguished from the services provided by a management company above mentioned under No 1) are the portfolio management services provided by investment firms which directly fall within the scope of the CRD because they provide investment services required by the MiFID such as portfolio management, investment advice or execution of orders on behalf of clients. They are required to comply also with the MiFID remuneration rules stated by ESMA in its guidelines on remuneration policies and practices (MiFID) (Ref: ESMA/2013/606).

These investment firms are also fund managers when they provide management services to collective investment undertakings such as UCITS or AIF by means of outsourcing agreements with regard to the full portfolio management of these investment funds or the management of certain segments (such as European corporate bonds, North American or South-East Asian equities) in which an investment fund is invested.

In most cases, these investment firms are not considered as significant institutions due to their remuneration structure and the nature, scale, complexity, risk content and international scope of their business activities. They therefore use 'neutralisations' of certain remuneration requirements under the previous CEBS guidelines on remuneration (CRD requirements) for the whole institution or identified staff receiving only a low amount of variable remuneration.

While the services provided by such investment firms are comparable to the services provided by management companies within the meaning of the AIFMD or UCITS Directive, it is important that also an equal remuneration regime applies to these investment firms, including the possibility that under the

application of the proportionality principle an investment firm may choose to disapply certain remuneration principles. Moreover, we are in favour of the approach that only one set of remuneration guidelines should apply to these investment firms (without a separate application of ESMA's MiFID guidelines on remuneration policies and practices). However, this is not a question of the presented ESMA guidelines. In particular, there is a need for a close cooperation between ESMA and EBA in drafting the future guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 presented by EBA in its consultation paper (Ref.: EBA/CP/2015/03).

3. Group context

Firstly, we would like to highlight that the remuneration rules of the CRD do not apply for subsidiaries not subject to the CRD such as management companies within the meaning of the AIFMD or the UCITS Directive. Therefore, the CRD remuneration requirements are not suitable to qualify as sectoral remuneration principles which ESMA should be taking into account in establishing remuneration guidelines. AIF or UCITS management companies neither perform services subject to the CRD, nor are they part of a banking group. There is only one relevant question: How can the parent institution in a banking group ensure that the subsidiaries implement remuneration policies which are consistent with the CRD remuneration requirements?

Therefore, we strongly disagree with the proposals provided by EBA in its consultation paper on remuneration guidelines under the CRD that certain staff members of subsidiaries not subject to the CRD which might have a material impact on the consolidated risk profile of the parent banking institution should also be required to fulfil the CRD remuneration requirements. In this context, we also strongly disagree with ESMA's proposal to implement requirements for subsidiaries not subject to the CRD such as management companies. Moreover, the proposed example described under paragraph 27 of the consultation paper that a UCITS management company is the parent company of an investment firm for which the CRD requirements apply does not exist in German practice. **All in all, we urge ESMA to delete all references to the CRD remuneration requirements in section 9 (Guidelines on the application of different sectoral rules).** In detail:

a) EBA's proposal for subsidiaries not subject to the CRD is not compatible with the requirements of the CRD IV. According Article 75 of the CRD, EBA shall issue guidelines on sound remuneration policies which comply with the principles set out in Articles 92 to 95 of the CRD. With regard to Article 92 of the CRD, the application of the remuneration requirements shall be ensured by competent authorities for institutions at group, parent company and subsidiary levels, including those established in offshore financial centres. With regard to Article 3 paragraph 1 (3) of the CRD IV with reference to Article 4 paragraph 1 (3) of Regulation (EU) No 575/2013, "institutions" are defined as credit institutions or investment firms. This does not include investment management companies in the meaning of the AIFMD or UCITS Directive. Therefore, the EBA remuneration guidelines could only apply to staff of institutions.

b) To be distinguished from this question is the responsibility of a parent company to ensure group-wide consistency as stated in Article 109 of the CRD. However, the interpretation of Article 109 of the CRD is not subject of EBA's competence set out in Article 75 of the CRD. Moreover, according Article 109 of the CRD, the consolidating institution shall ensure that subsidiaries not subject to the CRD implement arrangements, processes and mechanisms in a consistent and well integrated manner. Contrary to EBA's statement under paragraph 66 of the consultation paper such subsidiar-

ies are not required to “apply” the group wide remuneration policies. The rule only seeks to ensure that subsidiaries which themselves are not subject to the CRD “implement” a remuneration policy. Because the remuneration policies under the CRD are consistent with the requirements under the AIFMD (or the UCITS Directive)[2], there is no need to extent their scope to the non-bank entities such as entities subject to the AIFMD or the UCITS Directive.

c) In addition, the application to subsidiaries then overrides the intention of the European legislator in explicitly excluding UCITS V and AIFMD from the bonus cap. Neither the AIFMD nor the UCITS Directive applies a bonus cap to AIFMs or UCITS management companies. In particular, UCITS V management firms were explicitly exempted from the bonus cap after thorough discussion in the European Parliament and among Member States. The reason why legislators rejected the bonus cap for UCITS was that they recognised that asset manager remuneration is aligned with the client’s experience as variable remuneration is linked to long term performance. Moreover, the European Parliament’s acknowledgment in UCITS V that bank remuneration policy (the prescriptive variable remuneration limit) is inappropriate for aligning risks within UCITS managers is indicative for the need to apply remuneration policies in a proportionate way to asset management firms falling under both CRD and AIFMD. The remuneration provisions in both AIFMD and UCITS Directive are in many other respects identical to the provisions of the CRD.

d) Furthermore, there is no direct link between the professional activities of investment management company staff and the solvency of the institution’s balance sheet as they do not trade on the own books of the company. Hence, there is no risk that remuneration policies and incentives have a direct link with the investment management company’s solvency. Therefore, fundamental differences exist between the business models of management companies and the banking and investment banking sector.

EBA refers also to any operational risks taken by the investment management company which could have a material impact on the group’s risk profile. However, such risks are very low. The reason is that both UCITS and AIF assets are segregated from the own assets of the management company and from other clients’ assets. Additionally, Investment management companies are required to measure, manage and monitor operational risks (including reputational risks). Investment management companies are obliged to cover operational risks (such as professional liability risks) through additional own funds (cf. Article 14 of the Delegated Regulation (EU) No 231/2013 of 19 December 2012). This requirement also minimizes the parent institution’s capital requirement for operational risks on a consolidated basis. Moreover, in practice, operational risks taken by an investment management company amount to about average 30,000 Euro per year and over a period of the last five years.[3] In our view, this amount does not have a material impact on any group’s risk profile on a consolidated basis.

e) An initial reference point for identification of staff may be the fact that staff’s professional activities have a material impact on the group’s risk profile on a consolidated basis. However, such a proposal is not likely to work in practice. This applies particularly to the proposal in paragraph 106 of the consultation paper presented by EBA that for subsidiaries not subject to the CRD the identification assessment should be performed by the consolidating institution based on information provided by the subsidiary.

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[2] Cf. ESMA’s Questions and Answers – Application of the AIFMD; Q&A 4 page. 6:

[3] Cf. BVI Operational Risk Database statistics on losses based operational risk occurances.

It should be noted, according to the remuneration requirements under the AIFMD and the UCITS Directive, that investment management companies are responsible to identify their staff, to define the basis on which staff are being paid and to negotiate wages. In this context they need to know the impact of their staff's responsibilities on the company's or managed funds' risk profiles. However, they are not able to identify the group's risk profile or whether their own staff have material impact on the group's risk profile on the consolidated basis. Therefore, they are not able to take into account staff's impact on group's risk profile.

On the other hand, the parent company knows the group's risk profile on consolidated basis but the risk takers of the investment management company which could have material impact on such a risk profile are unknown to the parent or non-existent (see above).

f) In this context, EBA's proposal using the criteria in Articles 3 and 4 of the RTS on identified staff to identify staff of the subsidiaries such as investment management companies not subject to the CRD exceeds the powers conferred on EBA by extending the RTS in the meaning of Article 94 paragraph 2 and Article 92 paragraph 2 of the CRD on subsidiaries not subject to the CRD. The scope of the RTS is limited to staff of institutions in the meaning of Article 92 paragraph 1 of the CRD subject to the CRD. As mentioned above, this does not include investment management companies in the meaning of the AIFMD or UCITS Directive.

   Moreover, it would be strange if a large UCITS management company acting purely as agent running funds with a low level of leverage was subject to the same level of requirements as a large bank, although they do not represent the same risk neither to the financial system nor to investors. In this respect we believe that the more qualitative criteria presented in ESMA's remuneration guidelines under the AIFMD and UCITS Directive rather than size-based criteria should be the deciding factor in determining the proportionate application of the remuneration rules for the process of identifying staff as risk takers.

g) Finally, extending the CRD IV pay rules (and in particular the variable pay cap) exclusively to non-CRD regulated entities that are subsidiaries of CRD IV groups would create competitive disadvantages and an unlevel playing field in these businesses or geographies where entities that are operating outside CRD IV groups (e.g. US parented asset managers) are not required to apply the same set of rules. Certainly with the number of entities and individuals affected by the CRD IV requirements expected to rise this is another area where, viewed in the context of the new limits to the proportionality principle proposed by EBA in its consultation paper, there will be significant cost .

Moreover, we request ESMA to delete paragraph 31 of the drafted UCITS Remuneration Guidelines as well as paragraph 33 of the drafted AIFMD Remuneration Guidelines and to maintain the current version of paragraph 33 of the AIFMD Remuneration Guidelines in the final remuneration guidelines under the AIFMD and UCITS Directive. According to ESMA's proposal it may be the case that in a group context, non-UCITS or non-AIF sectoral prudential supervisors of group entities may deem certain staff of the UCITS or AIF management company which is part of that group to be 'identified staff' for the purpose of their sectoral remuneration rules. This wording seems to suggest that it would be left to the discretion of the non-UCITS or non-AIF sectoral prudential supervisors of group entities' to decide which set of sectoral rules should prevail. This than would lead to the consequence that competent authorities in the banking or insurance area are also required to supervisor management companies subject to the AIFMD or the UCITS Directive. This clearly runs counter to the existing

supervisory system in the European Union. However, as mentioned above, such an approach is not necessary because the CRD remuneration requirements only apply to institutions which are not suitable to qualify as sectoral remuneration principles which should ESMA taking into account in establishing remuneration guidelines under the AIFMD or UCITS Directive.

Q5: *Do you consider that the proposed 'pro rata' approach would raise any operational difficulties? If yes, please explain why and provide an alternative solution.*

While management services in an entity are generally structured according based on specialised management teams (please see our answer to question 4), the proposed pro-rata approach is not practicable. Investment management companies do not assign the services provided under the AIFMD, the UCITS Directive or the MiFID to their staff members on a pro-rata basis.

Moreover, while ESMA proposes to align its Guidelines for the remuneration of UCITS managers with the corresponding ones for AIFMs, there is no need to differentiate between services provided under the AIFMD or services provided under the UCITS Directive on a pro-rata basis.

However, a decision which sectoral remuneration requirements should apply is only relevant in the case where investment management companies provide MiFID services in addition to management services under the AIFMD or the UCITS Directive. In these cases, however, it is not possible to distinguish whether the individuals provide services under the MiFID or the AIFMD/UCITS directive. In Germany there are no employees in a management company which only provide MiFID services. Therefore, it is easier to implement only the AIFMD/UCITS remuneration requirements. We are in favour of the approach that only the AIFMD/UCITS remuneration guidelines should apply, at least also in these cases where individuals devote the most part of their time to UCITS- or AIF-related activities. Alternatively, ESMA should clarify that the AIFMD and UCITS remuneration guidelines qualify as more effective for aligning the interest of the relevant individuals with those of the clients of MiFID services.

Q6: *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.*

In principle, we favour 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 risk taking and ensuring risk alignment and apply them to all the staff performing services subject to different sectoral remuneration rules.

However, as described above (please see our answer to question 5), we only see the need for such an approach in the case where management companies provide MiFID services in addition to management services under the AIFMD or the UCITS Directive.

Moreover, with regard to the application of the CRD remuneration requirements in the group context, we refer to our answer to question 4. In this context, we would like to clarify that ESMA itself has expressed its views in its Questions and Answers under the AIFMD that the CRD remuneration rules are equally as effective as those applicable under the AIFMD remuneration guidelines. We share this view.

Therefore, there is no need to discuss which of these different remuneration requirements are deemed more effective for achieving the outcomes of risk taking and aligning the interest of the relevant individuals with those of the investors in the funds they manage.

Q7: *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.*

As described under questions 4 and 5, we are in favour of the approach that only the AIFMD/UCITS remuneration guidelines should apply or should be qualified as more effective for aligning the interest of the relevant individuals with those of the clients of MiFID services of individual portfolio management or non-core services such as investment advice.

However, we would like to draw ESMA's attention to a contradiction between its proposal in paragraph 30 of the consultation paper and the wording in paragraph 66 of the drafted guidelines. In our view, ESMA proposes that the performance of ancillary MiFID services by personnel of a UCITS management company or an AIFM should be subject to the remuneration principles under the UCITS Directive or AIFMD. However, according to the wording in paragraph 66 of the drafted guidelines such personnel should be subject to both, the remuneration principles under the UCITS Directive or AIFMD **and** the MiFID remuneration policies and practices. We therefore request ESMA to resolve this conflict.

Furthermore, there could be cases in other EU member states where an individual performs MiFID services on a full-time basis or the individual devotes the most part of its time to MiFID activities (i.e. performing UCITS- or AIF-related activities only marginally). In these cases, we recommend that only the MiFID remuneration requirements should apply.

Q8: *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.*

Yes, we 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. This proposal is pragmatic and would reduce the administrate burden for management companies because the pay out in instruments is only necessary if the net asset value of one managed UCITS is greater than 50 % of the total AuM of all managed UCITS. In fact, that would favour asset managers with a bigger portfolio. However, smaller UCITS management companies which manage only a small number of UCITS would benefit from the principle of proportionality and could neutralise the pay out in instruments at all for their identified staff.

Q9: *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.

While the proposed Guidelines are in line with the AIFMD remuneration guidelines, we see no need for major adjustments in the remuneration practice. In principle, we therefore agree with the proposed date of application of the guidelines in March 2016.

However, it should clarified that the UCITS management company should apply the guidelines for the calculation of payments relating to new awards of variable remuneration to their identified staff for performance periods following that in which the UCITS V Directive takes into force. So the regime on variable remuneration should apply only to full performance periods and should first apply to the first full performance period after the 18 March 2016.

An exception is made for the group context (if ESMA will no change its proposal for the application of the CRD remuneration requirements). The effort necessary to identify staff with a relevant impact of the group risk profile and to amend the remuneration agreements is not exactly foreseeable. Therefore, ESMA should definitely impose a specific transposition deadline in these cases. In particular, the proposed deadline for the new drafted AIFMD remuneration guidelines of two months after the date of publication by ESMA is not acceptable.

Q10: *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.*

We fully agree with the logic of aligning UCITS remuneration rules with the pre-existing ones under the AIFM Directive (and related ESMA Guidelines) underpinning the preferred Option 2 in the ESMA's cost/benefit analysis section. As mentioned in our introductory remarks, such alignment is a key step towards ensuring greater consistency for remuneration practices across the European asset management sector.

Q11: *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.*

For the reasons explained in our reply to questions 5 and 6 above, we agree with the rationale for supporting the preferred Option 2.

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