

MEMO# 28949

May 1, 2015

European Banking Authority Consultation Paper on Draft Guidelines on Sound Remuneration Policies - Member Call on May 11th

[28949]

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TO: ICI GLOBAL REGULATED FUNDS COMMITTEE No. 16-15
INTERNATIONAL COMMITTEE No. 21-15 RE: EUROPEAN BANKING AUTHORITY
CONSULTATION PAPER ON DRAFT GUIDELINES ON SOUND REMUNERATION POLICIES -
MEMBER CALL ON MAY 11TH

The European Banking Authority (EBA) issued a consultation paper regarding revised guidance on the remuneration aspects of the Fourth Capital Requirements Directive (CRD IV), with comments due on June 4, 2015. [\[1\]](#) We will have a member call on Monday, May 11th at 1 pm London time (8 am US Eastern) to discuss the consultation and areas that we are considering addressing in a response. Please RSVP to Ruth Tadesse at rtadesse@ici.org if you are able to participate.

The dial in details are as follows:

From the U.S.: 1-800-369-1803

From outside the U.S.: 1-312-470-0120

Passcode: 30252

Institutions that are subject to CRD IV have to apply sound remuneration policies to all staff and specific requirements for the variable remuneration of staff whose professional activities have a material impact on the institutions' risk profile. Under CRD IV, the EBA is required to develop guidelines on remuneration policies for all staff as part of the institution's internal governance arrangements, as well as remuneration policies for identified staff.

Most relevantly and notably for investment firms, the EBA states that based on preliminary legal analysis of the remuneration principles, the approach to the application of the principle of proportionality has been changed compared to the 2010 CEBS Guidelines with respect to the possibility to "neutralize" some of those principles such as the deferral of variable remuneration, the pay out in instruments and the application of malus and

clawback. The EBA has taken the position that CRD IV does not provide for any explicit provision that allows for a waiver of provisions, and that the requirements have to be applied at least at the minimum thresholds set by the CRD IV.

In an effort to gain certainty on this issue, the EBA has asked the European Commission for its view on the application of the principle of proportionality and the Commission's interpretation is that the remuneration requirements must be applied without exemptions and exceptions to all institutions.

The EBA is seeking input from the industry on the types of situations that would justify the application of the proportionality principle to the remuneration provisions in an appropriate manner and extent and also on the impact of the application of these principles in full to all institutions (and in particular to small and non-complex institutions).

The consultation also discusses remuneration policies and group context. It provides that a consolidating institution must ensure that subsidiaries within the group that are not themselves subject to CRD IV apply the group-wide remuneration policies to all staff and the additional requirements to those staff member whose professional activities have a material impact on the group's risk profile. The EBA states additionally that, where specific CRD requirements conflict with sectorial requirements (e.g., those under AIFMD or UCITS), a firm's remuneration policy should set out for the identified staff which requirements should apply within the entity on an individual basis. The consultation seeks feedback on whether these guidelines on group context are appropriate and sufficiently clear.

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

endnotes

[1] The consultation is available at:
<http://www.eba.europa.eu/documents/10180/1002374/EBA-CP-2015-03+%28CP+on+GLs+on+Sound+Remuneration+Policies%29.pdf>

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