

MEMO# 29192

July 23, 2015

ESMA Consultation on UCITS Remuneration Guidelines

[29192]

July 23, 2015

TO: ICI GLOBAL REGULATED FUNDS COMMITTEE No. 40-15
INTERNATIONAL COMMITTEE No. 39-15 RE: ESMA CONSULTATION ON UCITS
REMUNERATION GUIDELINES

On 23 July, the European Securities and Markets Authority (ESMA) launched a consultation on proposed Guidelines on sound remuneration policies under the UCITS V Directive (with an amendment to one provision of the AIFMD remuneration guidelines). [\[1\]](#) The Guidelines are intended to clarify the UCITS Directive's provisions on establishing and applying a remuneration policy for certain staff categories and to ensure a convergent application of the remuneration provisions. The Guidelines, which will apply to UCITS management companies and national competent authorities, will provide guidance on issues such as proportionality, governance of remuneration, requirements on risk alignment and disclosure.

Comments are due by 23 October and ESMA aims to finalise and publish the UCITS Remuneration Guidelines and a final report by Q1 2016, ahead of the March 18 transposition deadline for the UCITS V Directive.

We will provide a more detailed memorandum, along with details for a member call, at a later date.

Proposals

The draft Guidelines are based on the remuneration guidelines already issued under the AIFMD, and ESMA has departed from them only if and when strictly necessary. However, ESMA also considered the provisions of the European Banking Authority consultation paper on remuneration published in March 2015.

The consultation includes an examination of the issue of proportionality in the application of the UCITS remuneration policies, including the possibility to disapply certain of the provisions in exceptional circumstances, in line with the AIFMD approach.

The key elements of the guidelines include:

- Management companies as part of a group – the guidelines clarify that in a group context, non-UCITS sectoral prudential supervisors of group entities may deem certain staff of the UCITS management company which is part of that group to be identified staff for the purpose of their sectoral remuneration rules;
- Definition of performance fees – sets out a common definition of performance fees based on the IOSCO Final report on elements of international regulatory standards on fees and expenses of investment funds;
- Application of different sectoral rules – includes proposals on how different rules, such as those set out in the AIFMD and in the CRD IV, should apply where employees or other categories of personnel perform services subject to different sectoral remuneration principles;
- Application of the rules to delegates – sets out proposals to prevent management companies circumventing the remuneration rules through the delegation of activities to external service providers; and
- Payment in instruments – provides guidance on how to comply with the rules on the payment of variable remuneration in instruments under the UCITS Directive.

AIFMD Remuneration Guidelines Revision

The consultation also proposes a revision of the AIFMD Remuneration Guidelines by clarifying that in a group context, non-AIFM sectoral prudential supervisors of group entities may deem certain staff of an AIFM in that group to be identified staff for the purpose of their sectoral remuneration rules.

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

endnotes

[1] The Consultation is available at <http://www.esma.europa.eu/news/ESMA-consults-UCITS-remuneration-guidelines?t=326&only=home>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.