

**MEMO# 29815**

April 7, 2016

## **ESMA UCITS and AIFMD Final Remuneration Guidelines**

[29815]

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TO: ICI GLOBAL REGULATED FUNDS COMMITTEE No. 24-16  
INTERNATIONAL COMMITTEE No. 22-16 RE: ESMA UCITS AND AIFMD FINAL REMUNERATION GUIDELINES

On 31 March the European Securities and Markets Authority (ESMA) published final guidelines on sound remuneration policies under the UCITS Directive and AIFMD, following its consultation from the summer. [\[1\]](#) At the same time, ESMA sent and made public a letter to the European Commission, European Council and European Parliament on the proportionality principle and remuneration rules in the financial sector.

The guidelines will apply to UCITS and AIF management companies and national competent authorities from January 1, 2017. Regulators will have two months after the publication of the translations to notify ESMA whether it will comply or not with the guidelines.

### **Proportionality**

In its consultation, ESMA proposed to implement for UCITS the same proportionality regime adopted under the AIFMD, which included the possibility of dis-applying certain provisions in exceptional circumstances. Disappointingly, the final guidelines do not include guidance on the possibility of dis-applying certain specific requirements on the pay-out process, and instead remain silent on this point. ESMA explained that, while ESMA believes that dis-application should remain possible in certain situations, recent work and legal analysis, including the European Banking Authority's (EBA) CRD IV guidelines, have called into question the existing understanding of proportionality. In its letter to the EU institutions, ESMA provides arguments supporting the position it took in the proposed guidelines and states that legislative changes could be one way to clarify the applicable regulatory framework and ensure consistent application of the remuneration requirements.

### **Management Companies Being Part of a Group**

The UCITS guidelines include provisions dealing with the application of the remuneration

rules in a group context; the changes to the AIFMD guidelines address this same issue and mirror those in the UCITS guidelines. The final guidelines specify that the guidelines apply in any case to any UCITS or AIFM, as applicable, including those that are subsidiaries of a credit institution. However, they further provide that it may be the case that in a group context, non-UCITS or non-AIFM sectoral prudential rules applying to group entities may lead certain staff of the UCITS or AIFM that is part of that group to be “identified staff” for the purpose of those sectoral remuneration rules. This language was slightly revised following concerns by industry, including, ICI Global, that the prudential supervisors could overreach in including employees within the definition of identified staff.

## Next Steps

After the publication of the final texts of the UCITS and AIFMD guidelines in the official languages, Member States will have two months to comply with the guidelines or explain any non-compliance.

We continue to engage with EU regulators and policymakers on this important issue.

Eva M. Mykolenko  
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## endnotes

[1] The final guidelines and letter are available [here](#). See [Memo](#) No. 29452, dated October 28, 2015, for a link to our comment letter on the consultation.

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