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COMMENT LETTER

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ICI Global Responds to European Commission Consultation on Remuneration Under CRD IV (pdf)

1Case Id: 2ef1490d-c02c-4f6c-ac31-79d84ff5fac2 Date: 14/01/2016 19:37:05 Public consultation on impacts of maximum remuneration ratio under Capital Requirements Directive 2013/36/EU (CRD IV), and overall efficiency of CRD IV remuneration rules Fields marked with * are mandatory. INTRODUCTION Preliminary Remark: The following questionnaire has been drafted by the Services of the Directorate General Justice and Consumers in order to collect views on the possible impact of the maximum ratio between variable to fixed remuneration, set by the Capital Requirements Directive 2013/36/EU (CRD IV), on competitiveness, financial stability, and staff in non-EEA countries. It also seeks views on the overall efficiency of the remuneration provisions of CRD IV and Regulation (EU) No 575/2013 (CRR). This document does not reflect the views of the European Commission and will not prejudice its future decisions, if any, on further measures concerning remuneration rules for credit institutions and investment firms. On 26 June 2013, the new regulatory and capital requirements package for banks and investment firms was adopted ("the package"). The package is made up of a Regulation (EU) No 575/2013[1] (CRR) and a Directive 2013/36/EU[2] (CRD IV). The package lays down re-enforced principles and rules for remuneration policies of institutions. These implement international principles and standards at Union level. They aim at aligning remuneration policies with the risk appetite, values and long-term interest of credit institutions and investment firms, in order to remedy regulatory loopholes, which induced a number of managers, especially before the financial crisis, to an excessive risk-taking approach. In CRD IV, rules on remuneration are set out in Articles 74 to 76, Articles 92 to 96, Article 104, Article 109, Article 162(3) and in recitals 62 to 69. In CRR, Article 450 and recital 97 cover rules on remuneration. One of the novelties in the package was the introduction of a rule in Article 94(1)(g) of CRD IV according to which the variable remuneration of institutions' staff whose professional activities have a material impact on their employer's risk profile ("Identified Staff") cannot exceed 100% (or 200% with shareholders' approval) of the fixed remuneration, hereafter referred to as the "Maximum Ratio Rule". The Maximum Ratio Rule aims at avoiding excessive risk taking by Identified Staff. 2Further details on CRD remuneration rules, including the Maximum Ratio Rule, can be found in the Consultation Paper that was recently published by the European Banking Authority ("EBA") on the draft revised guidelines on remuneration[3]. The Regulatory Technical Standards (RTS) on Identified Staff[4] set the criteria on the basis of which institutions must identify the staff to whom CRD remuneration rules, including the Maximum Ratio Rule apply. The Commission is called upon to review and report on the application and the impact of the remuneration

rules in Directive 2013/36/EU and Regulation (EU) No 575/2013 by 30 June 2016. More specifically, Article 161 (2) CRD IV provides that "by 30 June 2016, the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council, together with a legislative proposal if appropriate, on the provisions on remuneration in this Directive and in Regulation (EU) No 575/2013, following a review thereof, taking into account international developments and with particular regard to: (a) their efficiency, implementation and enforcement, including the identification of any lacunae arising from the application of the principle of proportionality to those provisions; (b) the impact of compliance with the principle in Article 94(1)(g) in respect of: (i) competitiveness and financial stability; and (ii) any staff working effectively and physically in subsidiaries established outside the EEA of parent institutions established within the EEA. That review shall consider, in particular, whether the principle set out in Article 94(1)(g) should continue to apply to any staff covered by point (b)(ii) of the first subparagraph." The purpose of this consultation is firstly to obtain information and views from stakeholders on paragraph (b) of Article 161(2) CRD IV, namely on the possible impact of the Maximum Ratio Rule on: (i) competitiveness, (ii) financial stability, and (iii) staff in non-EEA countries. Secondly, it seeks stakeholders' views on the overall efficiency of the remuneration provisions of CRD and CRR. The responses will be taken into account in the Commission’s assessment and report required under Article 161(2) CRD IV, in parallel with information received from EBA, the results of an independent external study carried out for the Commission and other information available. Please note that this consultation is not intended to duplicate the work carried out by the external contractor with whom the Commission services are working (the contract was awarded to IFF - Institut für Finanzdienstleistungen e.V. after an open call for tender – Ref No. JUST/2015/MARK/PR/CIVI/0001), nor the work carried out by EBA with respect to its future Remuneration Guidelines. Views that stakeholders would have already expressed with regard to the aspects covered by this consultation, either in the context of the survey carried out by the external contractor, or in the context of EBA's consultation on its draft Guidelines, which ran from 4 March until 4 June 2015, will be analysed and taken into account in the external contractor’s report. Thus, stakeholders are encouraged not to duplicate comments and arguments already submitted, and limit their responses to any additional new observations and evidence they can provide specifically on the points covered by this consultation. Responses to this consultation should be concise, focused specifically on the questions raised and contain as many concrete, factual and verifiable elements as possible. The deadline for submitting the responses is 14 January 2016. All answers to the questionnaire should be submitted online. For any further queries please contact us by e-mail: JUST-A3@ec.europa.eu 3For any further queries please contact us by e-mail: JUST-A3@ec.europa.eu [1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 [2] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338–436.
[3]https://www.eba.europa.eu/documents/10180/1002374/EBA-CP-2015-03+(CP+on+GLs+on+Sound+Remuneration+Policies).pdf [4] Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile 1. IDENTITY OF THE RESPONDENT *Please provide the name of your organisation/company/public authority or your name if you reply as an individual 100

character(s) maximum ICI Global * Is your organisation registered in the Transparency Register of the European Commission? Yes No Not applicable - I am not an organisation * If your organisation is registered in the Transparency Register, please provide the registration number 100 character(s) maximum 296711210890-30 *Where are you based? Austria Belgium Bulgaria Croatia Cyprus Czech Republic Denmark Estonia Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Malta Netherlands Poland Portugal Romania Slovakia Slovenia Spain Sweden UK 4Slovenia Spain Sweden UK Switzerland Lichtenstein Iceland Norway North America Asia Other Contact email address: The information you provide here is for administrative purposes only and will not be published 50 character(s) maximum patrice@iciglobal.org You are responding to this questionnaire as: *Credit institution established in the EEA established outside the EEA not a credit institution * Investment firm established in the EEA established outside the EEA not investment firm *Financial institution as defined in Art 4(1)(26) CRR asset management company other than an asset management company not a financial institution as defined in Art 4(1)(26) CRR * Individual staff member who is 'Identified Staff' under CRD other individual not an individual *Other Not applicable Civil society organisation Industry representation organisation Employee representation organisation Public authority Other 5Important notice on the publication of responses *Contributions received are intended for publication on the Commission’s website. Do you agree to your contribution being published? (see)specific privacy statement Yes, I agree to my response being published under the name I indicate (name of your organisation/company/public authority or your name if you reply as an individual) No, I do not want my response to be published 2. MAXIMUM RATIO RULE 2.1 IMPACT OF THE MAXIMUM RATIO RULE ON COMPETITIVENESS 2.1.1 The Maximum Ratio Rule applies to credit institutions and investment firms as defined in CRD in the EEA, as well as (indirectly) to their subsidiaries within the scope of prudential consolidation (including subsidiaries outside the EEA and asset management subsidiaries). Please indicate for which of the aforementioned type(s) of undertaking(s) your answer to the below question applies. My answer below applies to (multiple answers possible): Credit institutions established in the EEA (directly subject to the Maximum Ratio Rule) Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule) Non-EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level) EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level), such as asset management companies or other types of financial institutions *2.1.2 What impact, if any, of compliance with the Maximum Ratio Rule have you observed on Please provide as much as possiblethe of the undertakings concerned?COMPETITIVENESS factual, concrete and verifiable elements that support your answer. If you ticked more than one box above, please make sure to distinguish as relevant. 5000 character(s) maximum ICI Global member firms* report increasing difficulty in managing the growing complexity and highly prescriptive nature of remuneration requirements in the EU, particularly for fund managers that are part of banking groups. The EBA’s final CRD IV remuneration guidelines issued 21 December 2015 provide that the Maximum Ratio Rule must be applied to all “identified staff,” including such staff within subsidiaries that are not themselves subject to CRD IV, such UCITS and AIF managers even though they are expressly and already subject to remuneration frameworks very similar to CRD IV but adjusted to the specificity of investment fund management. We believe that such an approach will have a huge detrimental impact on the competitiveness, both within and 6outside of the EU, of UCITS and AIF managers that are subsidiaries of CRD IV institutions. Applying the Maximum Ratio Rule to certain UCITS and AIF managers will result in a significant imbalance in the fund management industry between fund managers that are subject to the Maximum Ratio Rule and fund managers that are subject to similar rules

but adjusted to the fund management sector, leading to a dual regime and un-level playing field. Such a regime will seriously distort competition among fund managers. Further, global competitiveness of European asset management subsidiaries would be severely damaged. Indeed, for UCITS and AIF managers subject to the Maximum Ratio Rule, we have clear indications that there would be a significant negative impact both with respect to a firm's financial operations and the quality of talent that such a fund manager can attract and retain. In order to pay its staff a globally competitive level of remuneration, a fund manager subject to the Maximum Ratio Rule may need to pay a contractually higher level of fixed remuneration, which would constrain a firm's ability to manage its expenses in unfavorable market conditions. This would have the counterproductive effect of decreasing the firm's flexibility and financial soundness. Additionally, the inability of a fund manager subject to the Maximum Ratio Rule to compensate staff that qualifies as identified staff in the same manner, and perhaps at the same total level, as fund management staff that is subject to similar, but adjusted, sectoral rules could dissuade talented and skilled individuals from accepting employment at such a firm. This could ultimately hurt not only the competitiveness of such firms, but also the interests of their clients – retail and institutional European investors – who would then not have access to some of the best fund managers. Similarly, fund managers, particularly those located outside of the EU, are not attracted to managing UCITS or other European funds because they do not want to have to engage in the complexity and burdens of the EU remuneration rules compared to the more appropriate requirements in other jurisdictions. *The international arm of the Investment Company Institute, ICI Global serves a fund membership that includes regulated funds publicly offered to investors in jurisdictions worldwide, with combined assets of US$19.4 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC. 2.2 IMPACT OF THE MAXIMUM RATIO RULE ON FINANCIAL STABILITY *2.2.1 The Maximum Ratio Rule applies to credit institutions and investment firms as defined in CRD in the EEA, as well as (indirectly) to their subsidiaries within the scope of prudential consolidation (including subsidiaries outside the EEA and asset management subsidiaries). Please indicate for 7which of the aforementioned type(s) of undertaking(s) your answer to the below question applies. My answer below applies to (multiple answers possible): Credit institutions established in the EEA (directly subject to the Maximum Ratio Rule) Investment firms as defined in Art 4(1)(2) CRR established in the EEA (directly subject to the Maximum Ratio Rule) Non-EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level) EEA subsidiaries of EEA parent covered by CRD (indirectly subject to the Maximum Ratio Rule through the application at group level), such as asset management companies or other types of financial institutions *2.2.2 What impact, if any, of compliance with the Maximum Ratio Rule have you observed on F Please provide as much as possible factual, concrete and verifiable?INANCIAL STABILITY elements that support your answer. If you ticked more than one box above, please make sure to distinguish as relevant. 5000 character(s) maximum The EBA's final CRD IV remuneration guidelines issued 21 December 2015 provide that the Maximum Ratio Rule must be applied to all "identified staff," including such staff within subsidiaries that are not themselves subject to CRD IV, such UCITS and AIF managers, even though they are expressly already subject to remuneration frameworks very similar to CRD IV, but adjusted to the specificity of investment fund management. In our view, imposing the Maximum Ratio Rule on UCITS and/or AIF that are subsidiaries of CRD IV firms is not only unnecessary, but also risks undermining financial stability in the asset management sector in Europe. All UCITS and AIF

managers are separately subject to sector specific remuneration requirements that contain substantive remuneration requirements elaborated specifically in consideration of the nature of the fund management industry. The risks that a bonus cap and the particular requirements of the CRD IV remuneration provisions are addressing are fundamentally different from those found in fund management. Indeed, that is precisely why a proposed bonus cap for UCITS managers was rejected by a vote of the European Parliament. Such a bonus cap was never part of the Commission's UCITS proposal, nor did it attract support in the Council. There were sound reasons for rejecting the idea of a bonus cap for fund managers; all of which, regrettably, the EBA has failed to consider. Unlike bank or other CRD IV firm staff, UCITS and AIF manager staff act in an agency capacity and do not have the ability to engage in institution-threatening risk-taking. Moreover, UCITS managers in particular are significantly constrained by the investment restrictions and other requirements of the UCITS Directive and are therefore not capable of the "excessive risk-taking" that is meant to be caught by the CRD IV rules. For these reasons, we believe that only the UCITS and AIF requirements should be applied uniformly to all UCITS and AIF managers respectively. There is no evidence-based analysis to support that CRD IV remuneration rules are superior to UCITS V and/or the AIFMD when it is a question of combatting excessive risk-taking or conflicts of interests 8in the asset management sector. Worryingly, imposition of a bonus cap on bank-owned fund managers would have a perverse outcome in terms of the stability of these institutions. The likely outcome of such a cap, as has been demonstrated to be the case in banks in the EU, would be a significant increase in the fixed portion of salaries of significant staff in asset management firms. In times of market stress, the impact of the Rule would severely reduce the firm's ability to manage expenses by limiting the flexibility firms currently have to adjust the level of variable remuneration to respond to market conditions. Instead of generating revenue and profits, these entities may weigh on the group, surely a counterproductive outcome from the point of view of financial stability. Two prudential regulators in Europe acknowledged the negative impact of this policy. We are aware of no impact assessment or evidence-based analysis by the EBA or indeed any other European institution that would support the assertion that applying the Maximum Ratio Rule to asset management subsidiaries would increase financial stability. As noted above, the likely impact is that financial stability in the sector would be undermined. Further, applying the Rule to staff of AIF and UCITS managers may serve to weaken the alignment of incentives between these fund managers and their clients. In summary, it is clear that the risks that may arise from UCITS or AIF managers are much better, and more appropriately, addressed by sectoral legislation that recognizes the fundamental distinction between the agency nature of the fund management business and the principal nature of banking. 2.3 IMPACT OF THE MAXIMUM RATIO RULE ON STAFF WORKING OUTSIDE THE EEA *What impact, if any, of compliance with the Maximum Ratio Rule have you observed on staff of parentworking effectively and physically in subsidiaries established outside the EEA institutions established within the EEA? 5000 character(s) maximum No response. 93. EFFICIENCY OF THE OVERALL CRR AND CRD IV REMUNERATION PROVISIONS * In CRD IV, rules on remuneration are set out in Articles 74 to 76, Articles 92 to 96, Article 104, Article 109 and Article 162(3), and in recitals 62 to 69. In CRR, Article 450 and recital 97 cover rules on remuneration. The objective of the remuneration rules is to avoid that remuneration policies encourage excessive risk-taking behaviour and thus undermine sound and effective risk management of credit institutions and investment firms. They aim at aligning remuneration policies with the risk appetite, values and long-term interest of credit institutions and investment firms, in order to remedy regulatory loopholes, which enduced a number of managers, especially before the crisis, to an excessive risk-raking approach. The ultimate goal is to protect and foster financial stability within the Union. 3.1 Against this background, how would you assess the efficiency of the

following remuneration rules of CRD IV and CRR? Please always back up your views with specific evidence: 3.1.1 The requirement set out in Article 94(1)(a) CRD that the is basedassessment of performance on a combination of the individual's performance (taking into account financial and non-financial criteria), the performance of the business unit concerned and of the overall results of the institution; the requirement set out in Article 94(1)(b) CRD that the assessment of the performance is set in a multi-year framework 3000 character(s) maximum No response. *3.1.2 The requirement set out in Article 94(1)(m) CRD to at least 40% of the variable defer remuneration. 3000 character(s) maximum CRD IV, UCITS V, and the AIFMD each have a 40% deferral requirement for at least 3-5 years in the case of CRD IV and AIFMD, and at least 3 years in the case of UCITS V. However, the specific CRD IV language regarding setting the appropriate deferral period is appropriate for CRD IV institutions, namely banks, and does not capture the uniqueness and nuances of the fund management business. The UCITS V and AIFMD remuneration rules adopted by the European co-legislators contain provisions regarding deferral periods that appropriately account for the fund strategy, risk, and lifecycle. UCITS and AIF subsidiaries should therefore only be subject to UCITS V and/or AIFMD remuneration rules that have been adopted by the co-legislators with the 10 specificity of this sector in mind. We may provide many concrete examples of funds with a strategy or recommended holding period which will make a deferral period of 3 to 5 years particularly inefficient, if not counterproductive. *3.1.3 The requirement set out in Article 94(1)(l) CRD to at least 50% of variable pay out remuneration in , whereby there will be a balance of shares or equivalent ownershipinstruments interests, subject to the legal structure of the institution concerned or share-linked instruments or equivalent non-cash instruments, in the case of a non-listed institution, and where possible other instruments adequately reflecting credit quality of the institution as a going concern. 3000 character(s) maximum CRD IV requires that covered institutions pay at least 50% of bonus in instruments; i.e., in shares or equivalent ownership interests of the CRD IV firm. This requirement is inconsistent with the requirements under UCITS and AIF for payment in units of the UCITS/AIF or equivalent ownership interests or non-cash equivalents. In this case, the EBA appropriately recognized in the CRD IV remuneration guidelines that paying 50% of bonuses in CRD IV firm shares would not align asset management staff interests with fund investors’ interests, but rather would misalign incentives and interests, and that the UCITS/AIF requirements should govern. This is the right approach as UCITS V and AIFMD have been adopted by the European co-legislators with the specificity of the asset management sector in mind. We reiterate that we regret that the EBA did not adopt the same approach with respect to the Maximum Ratio Rule. *3.1.4 The requirement set out in Article 94(1)(n) CRD that up to 100% of the variable remuneration is subject to .malus and claw back 3000 character(s) maximum CRD IV, UCITS V, and AIFMD each have provisions regarding malus and clawback. Similar to the provisions on deferral above, the CRD IV provisions – which reference the financial situation of the CRD IV firm as a whole, rather than being more tailored to the situation of the fund manager or UCITS/AIF – are not appropriate for staff of a UCITS or AIF manager. UCITS and AIF management subsidiaries should therefore only be subject to UCITS V and/or AIFMD remuneration rules that have been adopted by the co-legislators with the specificity of this sector in mind. In practice, ICI Global member firms report increasing difficulty in managing the growing complexity and highly prescriptive nature of remuneration requirements in the EU, particularly for fund managers that are part of banking groups. There is a great deal of dissatisfaction with clawback arrangements that can affect the pay of fund management staff that are punished for failures in other parts of the banking group, over which they have no control. 11 *3.1.5 The requirements set out in Articles 94(1)(f) and 94(1)(g) that fixed and variable components of remuneration are appropriately balanced; that the fixed component should represent a sufficiently high proportion of the total remuneration to

allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component; and that the variable remuneration cannot exceed 100% (or 200% with shareholders' approval) of the fixed remuneration. 3000 character(s) maximum See responses to 2.1.2 and 2.2.2. *3.1.6 The requirement for significant institutions to establish a (Article 95 remuneration committee CRD) as well as a (Article 76 CRD) which shall assist in the establishment of sound risk committee remuneration policies and practices. 3000 character(s) maximum No response. *3.1.7 The requirements set out in Article 96 CRD and Article 450 CRR on the con public disclosure cerning remuneration policy and practices. 3000 character(s) maximum No response. *3.2 How would you assess the overall efficiency of the remuneration rules of CRD IV and CRR collectively? Also, please indicate whether you have identified any lacunae in the existing rules. Please back up your views with specific evidence. 5000 character(s) maximum We regret that the Commission is looking at CRD IV and CRR collectively but in isolation. CRD IV remuneration rules are part of a broader framework for remuneration in financial services in Europe. Indeed, UCITS V and/or AIFMD appropriately cover fund managers with similar rules but adjusted to the distinct nature of this sector. As a result, there is in Europe a comprehensive, consistent, and strict framework for remuneration for fund managers. This framework is being comprehensively applied by prudential and 12 securities markets regulators. Appropriate cooperation is already in place and practiced bilaterally or multilaterally in all Member States where different sectors are supervised by different authorities. There is no need to impose pieces of the CRD IV and CRR framework which have been elaborated for this particular sector onto UCITS and /or AIF managers. This would, in our view, hinder the overall efficiency of the European framework for financial services remuneration. In addition, we continue to maintain that the interpretation of proportionality implemented in the AIFMD remuneration guidelines and proposed in the ESMA consultation paper on sound remuneration policies under the UCITS Directive and AIFMD is correct from both a legal and policy perspective. Contact JUST-A3@ec.europa.eu

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