European Securities and Markets Authority

Reply form for the Guidelines on sound remuneration policies under the UCITS Directive and AIFMD

23 July 2015

European Securities and Markets Authority

Date: 23 July 2015
2015/ESMA/1210

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper "Guidelines on sound remuneration policies under the UCITS Directive and AIFMD", published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type < ESMA_QUESTION_UCITS_V_AIMFD_REM_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ UCITS_V_AIMFD_REM_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_ UCITS_V_AIMFD_REM_XXXX_REPLYFORM or

ESMA_ UCITS_V_AIMFD_REM_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

Deadline

Responses must reach us by **23 October 2015.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input/Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	CFA Institute
Activity	Other Financial service providers
Are you representing an association?	☒
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_UCITS_V_AIMFD_REM_1>
CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal of the Institute is to create an environment where investors' interests come first, markets function at their best, and economies grow.

CFA Institute has more than 129,000 members in 145 countries and territories, including 123,000 Chartered Financial Analyst charter-holders, and 146 member societies.
<ESMA_COMMENT_UCITS_V_AIMFD_REM_1>

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. **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 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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_1>
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<ESMA_QUESTION_UCITS_V_AIMFD_REM_1>

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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_2>
CFA Institute believes that it is important to set out a common definition of "performance fees" in order to ensure consistent application of the UCITS remuneration rules in Europe. In accordance with ESMA, CFA Institute supports the use of the definition of "performance fees" as set out in the IOSCO Final Report in order to ensure regulatory consistency across the globe.
<ESMA_QUESTION_UCITS_V_AIMFD_REM_2>

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 UCTS V Level 1 text? If yes, please provide details and suggest how the definition of 'supervisory function' should be amended in the UCITS V Guidelines.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_3>
CFA Institute supports further alignment of financial services legislation and the relevant definitions in the EU. We note that the definition of "management body" makes direct reference to an *'ultimate decision-making authority'*, while "supervisory function" refers to persons/a body/bodies *'responsible for the supervision of the management company's senior management'*.

Accordingly, CFA Institute considers that the two definitions allude to different groups of people within the company, i.e. the decision-makers themselves and the supervisors of the decision-makers.
<ESMA_QUESTION_UCITS_V_AIMFD_REM_3>

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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_4>
CFA Institute conducted a member survey on remuneration practices among our members in Europe, the Americas, and in Asia. The survey was open to our members who are investment management professionals working in particular in the funds industry. The member survey was open for two weeks in September and October 2015. In total 373 responses were received. 22% of the responses were from our members in the EU and 13% from our non-EU members in the Europe, Middle East and Africa region.

The responses to our survey indicated that both practices are common. Respondents were approximately evenly split between those that work in firms using a common trading desk, and those that separate their service operations.

In the open comment section, one of our members noted that the *"UCITS product is just one fund of a few different funds managed by the same traders/PMs"*. Another highlighted that *"a common trading desk executes the trades instructed by almost all portfolio managers. Some portfolio managers execute their trades independently."* One of the respondents noted that *"there are different trading desks by asset class and region, but not by regulatory framework"*.

Some members highlighted that alternative investment funds were separated, "*but the same dealing desk was active for both UCITS and individual mandates (institutionals and high-net-worth individuals). The dealing desk was segmented between equities and fixed income. FX was dealt via the dealing desk of the group's bank"*. Other respondents noted that a separate sales desk is used for unlisted special funds and alternative funds.
<ESMA_QUESTION_UCITS_V_AIMFD_REM_4>

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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_5>
CFA Institute conducted a member survey on remuneration practices. According to the survey respondents, the 'pro rata' approach would raise several operational challenges.

The main difficulty would be an objective determination of what constitutes time spent in service. For example, research could be classified as benefitting both UCITS and AIFs, as could some more common, recurrent duties. Many respondents also noted that sometimes the work on different funds and portfolios is in practice run in tandem. According to one member, for example, *"a person may run an investment strategy that then is "wrapped" into different structure (UCITS, AIFMD, etc). There is no objective way of knowing how much time is put into each separate structure"*.

It would be challenging to determine the man-hours spent in each practice. Several of our members wondered what the split would be based on: average time spent, estimated time spent, or actual time spent in performing certain activities. The challenges in determining the time and making the calculations could thus be measured rather subjectively in the absence of highly objective criteria that would be the same for all firms.

The time spent in each service would also be difficult to verify or supervise without imposing costly administrative burdens, as the levels indicated by the staff could be inaccurate. Supervision and enforcement of the timekeeping would thus be challenging.

As an alternative, CFA Institute suggests that the other option proposed by ESMA, according to which management companies could choose the most appropriate sectoral remuneration rules to apply, would be more effective, practical, and easier to implement and supervise (please see our response to question 6 of the consultation for further information).
<ESMA_QUESTION_UCITS_V_AIMFD_REM_5>

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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_6>
CFA Institute would be in favour of this 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.

As noted in our response to question 5 of this consultation paper, we do not find the 'pro rata' approach workable in practice.
<ESMA_QUESTION_UCITS_V_AIMFD_REM_6>

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.

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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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_8>
CFA Institute agrees that it is appropriate to look at the size of a given UCITS fund relative to the total UCITS assets under management (AUM) by the firm, for the purposes of determining the relevant variable remuneration provisions. Statistically, this approach is likely to favour firms with a bigger portfolio of UCITS AUM (such that any individual UCITS is more likely to account for a smaller proportion of the overall UCITS AUM, reducing the likelihood that an individual fund will exceed the 50% threshold of total UCITS AUM, which would then trigger the variable remuneration provisions).

Nonetheless, we do not see a better alternative. For example, a numerical threshold (e.g. fund size in monetary terms) could likely be circumvented, for example by splitting funds in two when they approach a certain size, in order to avoid breaching whatever threshold is set. Accordingly, we do not foresee any alternative approach that would better address the issue.
<ESMA_QUESTION_UCITS_V_AIMFD_REM_8>

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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_9>
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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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_10>
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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.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_11>
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