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AFG comments on the ESMA Consultation paper Guidelines on remuneration policies and practices (MIFID)

AFG appreciates the opportunity to provide comments on the ESMA Consultation paper on Guidelines on remuneration policies and practices (MIFID) to make sure that they take into account conflicts of interest that arise in the provision of services to their clients.

Please find below AFG comments on the ESMA Consultation paper.

General comments

Asset management is currently well regulated and tightly supervised: asset managers and products are regulated by several directives as UCITS, MIFID, AIFM, and Prospectus¹. AFG considers that such rules manage well potential risks. Misselling risk, in particular, is currently managed by MIFID. When selling any financial instrument, an investment firm has to ensure appropriateness between client's needs and product's characteristics.

We understand that certain remuneration policies could introduce conflicts of interest, but, because there are rules to regulate sales of products, guidelines to regulate salespersons' remunerations should be flexible and proportional/suitable to activities of investment firms.

These guidelines should only apply on remuneration policies of firms providing investment service to final client.

Other conflict of interest originating from business relationships existing between relevant intermediaries firms are managed (or will be managed with MIFID II) by inducement and transparency MIFID rules.

As a consequence, AFG requests that these guidelines only apply on investment firms and credit institutions which manage the direct relationship with the final client, i.e. employing client-facing front line staff.

MIFID rules deal with investment services. So, such guidelines should only apply to investment firms or credit institutions providing investment services to the final client.

But, financial products are also sold for example within insurance packages. To ensure a level playing field, such Remuneration rules should also apply to all non MIFID firms selling saving products. So, **AFG would request Esma publishes such guidelines in the context of PRIPs** and not only MIFID.

Moreover, because remuneration policies are crucial point concerning competitiveness, such rules should be applied in a same way at European level. To ensure a European level playing field, we suggest Esma not to accept non harmonized implementations.

Moreover, these remuneration policy guidelines should be simplified in case of services provided to professional clients. Relationships with professional clients are long term relationships and often imply huge financial assets under management for the investment firms. Moreover, professional clients investigate and control products providers before investing. They also have ability and skill to understand products risks and advantages. In this case, interests of clients on the long run are always fully taken into account by investment firm. The unique guideline for remuneration policy in case of professional clients should be to align its principles with effective conflict of interest management. For example, it makes no sense to strictly regulate remuneration policies adopted for launch of new products in case of professional clients. Different channels are used to sell products to professional clients and to non-professional clients.

Page 33, Esma explains "these guidelines do not reflect absolute obligations". AFG would like such explanation to be more explicit to ensure a level playing field.

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Detailed comments

Q1: AFG fully agrees that firms' remuneration policies and practices should be aligned with effective conflict of interest management duties and business risk management obligations (such as to act in the best interest of the client).

But, to avoid misselling and remunerations or practices which could be potentially to the detriment of clients, it is clear that it should only apply on firms providing investment services to the final client when selling a financial product.

In fact, **such rules must concern only firms employing final client-facing front line staff.**

Such concerned firms should so determine relevant persons and adapt their remuneration policies.

Moreover, financial products are also sold within insurance package, for example. To ensure a level playing field, such rules should also apply to non MIFID firms selling saving products. So, **AFG would request Esma publishes such guidelines in the context of PRIPs** and not only MIFID.

Q2: AFG agrees with Esma proposal to adapt remuneration policies and practices regarding selling context (type of products, distribution channel, investment services provided). But we would request to **let firms free to implement such flexibility regarding their own situation** because remuneration policies and practices are a crucial point of business models for firms selling investment/financial products.

Moreover, remuneration policies should be simplified in case of professional clients. The unique guideline for remuneration policy in case of professional clients should be to align its principles with effective conflict of interest management. For example, remuneration policies adopted for launch of new products shouldn't be regulated in case of professional clients. Different channels are used to sell products to professional clients and to non-professional clients.

Q3 & Q4 general comments: AFG would like to stress the need of coherence/coordination between these guidelines and AIFMD or UCITS V rules for remuneration policies, even if

relevant persons could be different. Discussions are in progress, so Esma should wait for analyses for remuneration policies under AIFMD and UCITS V before advising specific rules under MIFID.

Moreover, too strict remuneration policies could also create a non-level playing field. Remuneration policies are actually crucial point concerning competitiveness of investment firms.

Q3: AFG fully agrees with the proposal to ensure that the fixed and variable components of the total remuneration are appropriately balanced when designing remuneration policies of relevant persons. However, the possibility to pay or not a variable remuneration could depend on the contract of employment (§ 45). Moreover, if the variable component of the remuneration is very low compared to the fixed component, there is no need to put some specific constraints.

Q4: AFG wonder how these guidelines could be practically implemented. But, we agree that the variable component of remuneration couldn't be based on the sale of a unique product. Moreover, variable components could not be too significant compared to fixed components of remuneration, in order not to create incentives leading relevant persons to favor their own interest to the detriment of clients.

Q5: AFG agrees with the Esma proposal to introduce non-financial criteria (qualitative) to assess the performance of relevant persons. But, such remuneration practice should be balanced. For example, the performance of relevant persons can't be based mostly on compliance. Because it's a crucial point for relevant firm, financial criteria have to stay principal criteria to assess performance of sale staff.

However, AFG wonders on the Esma proposal to introduce measures promptly identifying where relevant persons fail to act in the best interest of the client (§ 48). We are not sure that such proposal is technically possible.

Q6 & Q7: AFG fully agrees with the implication of senior management, and eventually of supervisory function, in the design of remuneration policy. Senior management could, for example, validate all variable remuneration frameworks.

Q8: AFG agrees with the fact that the organizational measures adopted for the launch of new products or services should take into account remuneration policy. Like all sales, new products should be sold in the best interest of the client. KYC and appropriateness policies allow distribution process to avoid misselling, even with new products. Moreover, remuneration policies should not restrain introduction of new products and innovation, which could be more appropriate to client interest. Such guidelines shouldn't ban remuneration partly based on sales.

Q9: AFG agrees with Esma proposal to appropriately document how distribution of new products or services complies with the firm's remuneration policy. However such information couldn't be disclosed to clients. Because they are a crucial point concerning competitiveness, remuneration policies should stay more or less confidential.

Q10 & Q11: Regarding the periodic review of remuneration policies, AFG supports the idea that identification of conduct of business or conflict of interest incidents could be used to improve policies. But we wonder on the articulation between such guidelines and guidelines

on services appropriateness. As we understand, guidelines on appropriateness should avoid mismatching between products and client's needs. Guidelines on remuneration policies should avoid incentives influencing relevant person to sell a non-adequate product because of remuneration.

Q12: AFG fully disagrees with the Esma proposal to involve the compliance function in the design of remuneration policies and practices. Remuneration policies should be decided by senior management and/or supervisory function. Compliance function should only check that remuneration policies comply with regulation. Compliance function has no operational role.

Q13 & Q14: AFG's point of view is that such situation could be improved if the variable component of the remuneration is also based on non-financial criteria. Moreover, relevant persons have first to apply appropriateness or suitability policies when they sell a product (except in execution only, but in this case it is the choice of the client). So, conflict of interest may exist only when needs of client should be served by different products. Remuneration policy should so be based on a fair panel of products and not on a unique product.

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Sincerely yours,

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