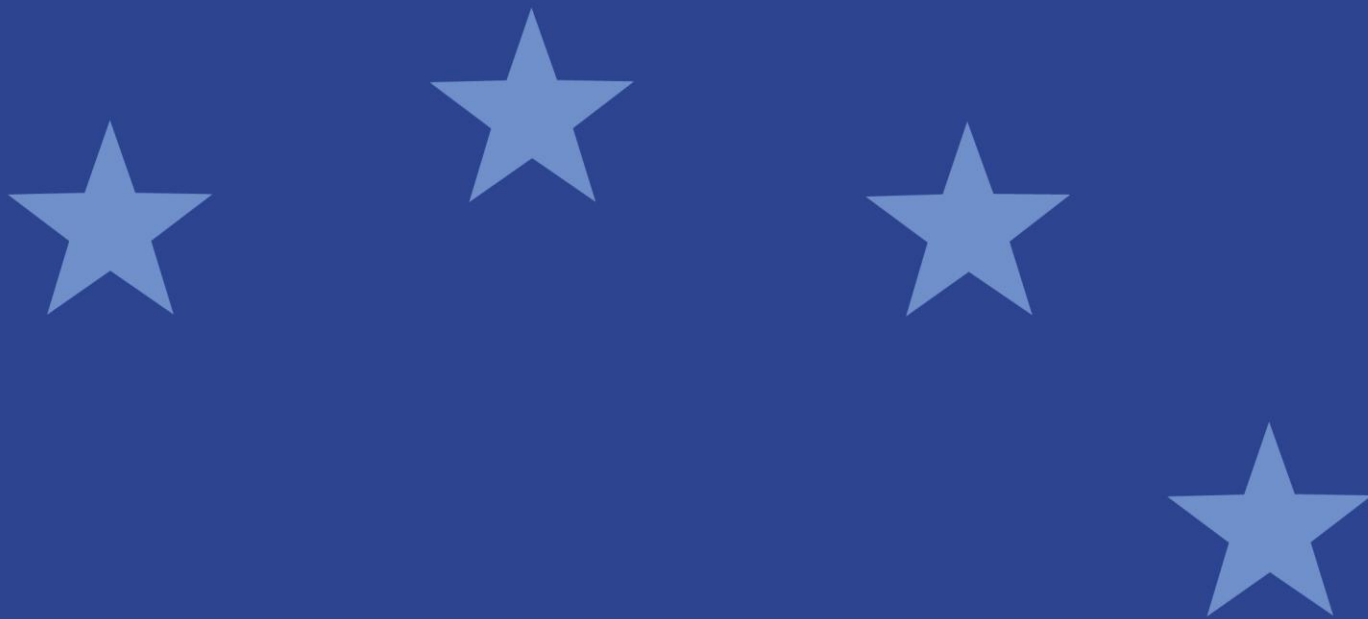




European Securities and
Markets Authority

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



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	AFG
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	France

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_UCITS_V_AIMFD_REM_1>

The Association Française de Gestion has considered carefully the European Securities and Markets Authority's Consultation Paper on Guidelines on Sound Remuneration Policies under the UCITS Directive and AIFMD, and is pleased to provide its answer herein.

AFG fully supports ESMA's initiative to align the UCITS remuneration guidelines as closely as possible to the AIFMD remuneration guidelines in order to promote sound compensation practice, as well as ESMA's efforts to harmonize remuneration rules across national regulatory frameworks in the EU's asset management industry.

In particular, AFG appreciates that the proposed UCITS guidelines, are well leveraging on the February 2013-released AIFMD remuneration guidelines, thus reflecting a regulatory design with a long-term perspective, capitalising on seasoned earlier rules.

However, AFG notes that ESMA is considering extending significantly the scope of its rules to encompass "ancillary services" performed under a UCITS (respectively, AIFM) licence, notably mandates management, the practical consequences of which must be addressed with sufficient flexibility to maintain and foster the competitiveness of the EU asset management industry.

*Further, AFG takes the opportunity of this consultation to include, **in Appendix 1** to this answer to the UCITS remuneration guidelines proposal, a few other **important points**, which it would like to respectfully bring to ESMA's attention, so that they can be addressed at ESMA's earliest convenience. Notably, **AFG respectfully suggests** that the proposal by ESMA to use the **recommended holding period**, as the reference **for deferral length**, is likely to **have strongly undesired effects**.*

<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:**
 - 1. compliance impacts and costs (one-off and ongoing costs, encompassing technological/IT costs and human resources), and**
 - 2. difficulties in applying in any circumstances the remuneration principles that could otherwise be disappplied 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:**
 - 1. deferral arrangements (in particular, a minimum deferral period of three years);**
 - 2. retention;**
 - 3. the pay out in instruments; and**
 - 4. 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_AIFMD_REM_1>

AFG welcomes ESMA's confirmation that proportionality –as defined in numerous pieces of EU legislation- is indeed a key principle of the EU's regulatory framework, which is crucial to maintaining both:

- fairness - through a level-playing field between small/simple and large/complex players; and
- competitiveness – avoiding to unduly saddle EU firms with the administrative costs¹ of systematic requirements, when these have no demonstrated economic utility.

AFG observes that in the proposed UCITS/AIFMD remuneration guidelines, proportionality is clearly defined (para 21 to 29 of the proposed UCITS remuneration guidelines, and 23 to 31 of the AIFMD guidelines, as well as in their respective Annex IIs).

Overall, a careful reading of the regulations leads us to observe that there are two areas of proportionality:

- *general proportionality* on pay-out process requirements (ie on deferral, instruments, retention, malus/claw-back) and on remuneration committee;
- *specific proportionality* on identification of staff and the implementation of the pay-out process requirements to them.

Thus, a **key cost-driver** for the EU asset management industry is the **scope of the pay-out process requirements**, which in practice, has been addressed by several national regulators in the EU via a “de minimis” threshold, ie a *specific proportionality* approach. Identified Staff should be subject to the pay-out requirements only if it is economically meaningful to them, ie if there is real long term alignment of interest. In other words, it is only when their variable remuneration is high enough to be spread over at least three years, ie when it is higher than the **de minimis threshold**, that such Staff should be subject to the pay-out process requirements. Otherwise, administrative costs would be significantly¹ burdened, to no avail.

AFG believes the de minimis threshold should be an absolute amount, standard EU wide².

AFG believes that using a percentage of fixed salary as a de minimis threshold, is not as efficient, as it will :

- “catch” staff with low total compensation, for whom deferral over three years is not economically meaningful, and
- be a source of unnecessary -and thus, competitiveness-harming- administrative costs¹.

AFG is aware that the outright waiving of the requirement to apply the pay-out process to small/simpler firms on the basis of their nature, internal organisation, scope, complexity of activity (ie the *general proportionality* approach) and not on the basis of the actual level of variable remuneration of Identified Staff (ie the *specific proportionality* approach), need be implemented with due care and consistent rules, to maintain a level-playing field.

In this respect, AFG observes that in article 3 of AIFMD, there is full exemption from the directive for asset managers either:

- with less than 100 million euros of assets under management in AIF(s), or
- with less than 500 million euros of assets under management in AIF(s), when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

As a result, in AIFMD, the “*general proportionality*” applies as a second round of exemption possibility, when based on size. To the contrary, UCITS directive offers no such size-based exemption, resulting in size not being considered a relevant criteria for exemption. This results in UCITS being explicitly a more demanding standard than AIFMD so far as remuneration regulation is concerned, whilst the very specificity of the UCITS framework is that it is already more restrictively regulated and more prescriptively protective as regards clients’ risk exposures, than the AIF framework.

Thus, AFG believes that:

- (i) A **de-minimis threshold** (“*specific proportionality*”) should be applied EU-wide at a reasonable level (as is the case currently in many jurisdictions), which would better protect both small/simple and large/complex firms, and would leverage on EU regulation's time-tested³ & approved principle of proportionality.
- (ii) However, *general proportionality* remains useful to avoid the cost of a remuneration committee⁴ where it can be avoided by a firm, based on its nature, internal organisation, scope, complexity of activity.

³ It was crucially set out in the EU's 2010 CEBS Remuneration Guidelines !

⁴ See Appendix 3

(iii) As is, in practice, the case in the AIFMD, a blanket exemption of the remuneration requirements for firms with less than 100 million € of Assets under Management should be provided for, for the sake of consistency, simplicity and competitiveness of the EU.

¹ See Appendices 2 & 3

² AFG's reply to EBA CP on its revised remuneration guidelines earlier in June on the topic was the following: « *Concretely, we note that national competent authorities have addressed the materiality / proportionality issue (ie defining a threshold of variable remuneration below which deferral, instruments, maluses and claw backs would not be required), in a very heterogeneous manner across the EU, creating unnecessary costs, complexity, and barriers to the proper functioning of the EU internal market.*

AFG recommends that –via the guidelines- a single, absolute amount of variable remuneration be applied EU-wide, at a medium level between the various current national practices, noting that 167,000€ is currently used in the UK's Remuneration Code. It would improve the level-playing field across the EU, while remaining usefully simple and cost-effective.»

³ It was crucially set out in the EU's 2010 CEBS Remuneration Guidelines !

⁴ See Appendix 3

<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>

The first three paragraphs in the proposed definition are clear and adapted.

However, AFG notes that the last sentence, “*Performance fees are payments made directly by the management company or the UCITS itself for the benefit of identified staff*”, needs to be rephrased to be made more specific. In particular, it should not encompass all “payments”, otherwise, any variable remuneration paid to identified staff could potentially be construed as performance fees.

Thus, we suggest ESMA clarifies that the definition relates to payments linked to portfolios' performance made by the clients to the management company or the UCITS itself, hence we suggest the following wording:

“Performance fees are portfolio performance-related payments made by the clients to the management company or the UCITS itself, which may be taken into account as one of several criteria of performance assessment of the identified staff.”

<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 UCITS 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>

The proposed definition is clear and adapted.

<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>

AFG has been provided with several examples from its members, as its membership comprises several large and smaller bank-owned or insurer-owned asset managers.

First, in all cases where asset management companies have both a UCITS and an AIFM licence, it will be quite frequent that investment management staff, control functions, and senior management are identified staff under both licences. Hence, the native, “built-in” commonality between the two remuneration regulation frameworks that ESMA is proposing, is very welcomed by AFG.

For bank-owned asset managers, asset management entities often form a non-material business unit (ie represents less than 2% of the internal capital of the bank). As a result, in many cases, per EBA’s RTS of 4 March 2014 on Material Risk Takers, the staff of such asset management subsidiaries of banks will not be considered identified staff of their bank parent.

In addition to the above, parent credit institutions of asset management companies often consider that only a very few number of their asset management staff (ie often, only the CEO of the asset management entity), has an impact on the risk profile of the banking group. As a result, the choice between “pro-rata” or “most effective framework”, as proposed by ESMA, is in line with industry participants’ expectations (as further explained in answers to the questions 5 and 6 below).

<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>

AFG believes that implementing a pro-rata approach could be feasible and in certain specific instances, helpful, so long as:

1. this approach remains optional (ie the answer to this question is linked to question 6 below).
2. such option remains fully flexible, ie, there is no mandatory choice of either one or the other rule for all staff, and firms can elect any combination suiting their particular organisation (with of course, due justification given to their remuneration committees and supervisors).

Indeed, under the current regulatory proposal, it seems likely that this approach would be resorted to for very specific –and probably rare- cases within a firm. In general, most firms would prefer apply the “equivalence of framework” approach, and resort by exception, to the pro-rata approach.

Hence, AFG welcomes the proposed flexibility of the rules, which will give more ability to best answer various possible cases. This contributes to EU’s competitiveness.

However, if the optionality and flexibility were not granted, AFG wants to make clear that the administrative burden of computing pro rata remuneration for a large number of staff would quickly prove highly costly, burdensome and altogether impractical¹.

¹ See Appendices 2 & 3

<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_AIFMD_REM_6>

Yes, we welcome this alternative approach which reflects a clear subsidiarity principle in applicable frameworks. In other words, thanks to this proposed approach, CRD 4 or AIFMD/UCITS V frameworks can be applied in a mutually exclusive manner to each individual, allowing for better consistency of -and more holistic implementation in- each framework.

For the sake of flexibility, this optionality should remain at the convenience / discretion of the firms (see answer to question 5).

Generally speaking, the consistency resulting from more subsidiarity would clearly foster effective supervision by both the remuneration committees and the regulatory supervisors, and also more robust and coherent strategies / business models for firms.

AFG welcomes the fact that this subsidiarity principle is stated many times in the proposed guidelines: notably, in §139 of proposed UCITS guideline, (§135 of AIFM guidelines); and in §34 of UCITS guideline, as well as in § 29 of ESMA's UCITS CP and in § 63 and 39 of EBA consultation⁵.

We welcome the proposal that the criterion of eligibility of an individual to one or the other framework is its ability to most effectively align interest and discourage excessive risk taking.

We note, though, that it will be difficult to consider that CRD 4 is more effective than UCITS 5 or AIFMD, in terms of alignment of interest (e.g., because of the bonus cap). It strikes us also that indexation, disclosure, risk alignment and adjustment considerations, identification of staff, missions of remuneration committees, among other, will never be quite equivalent between:

- CRD 4 remuneration guidelines: primarily designed for banks and the “blanket / catch-all management” of their systemic risk via stringently risk-curbing remuneration rules; and
- UCITS/AIFMD remuneration guidelines: primarily designed for fund managers, who from day one, have a key commercial incentive in designing and promoting the most risk-effective incentive approach to convince their clients that their assets will be managed consistently within a pre-defined risk budget optimising their returns.

NB: Notwithstanding the above, we welcome, clearly for practical reasons, paragraph 16 of the proposed UCITS guidelines which postulates outright “equivalent effectiveness” between CRD4, UCITS V and AIFM remuneration regulations in the case of delegates, as it provides for cost-efficiency and simplicity without generating any particular risks.

<ESMA_QUESTION_UCITS_V_AIFMD_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.

<ESMA_QUESTION_UCITS_V_AIFMD_REM_7>

This question poses a number of issues.

⁵ EBA CP on its revised remuneration guidelines published in March 2015

First, it is a bit unclear to which ancillary services, the question refers to. For ease of reference, quotes of certain excerpts of regulations have been reminded in Appendix 4.

To clarify, AFG understands the following:

1. “Ancillary services” referred to in the question 7 above, are those investment services and activities (per Annex I section A of MIF directive), effected as ancillary services to a UCITS or AIFMD licence for UCITS or AIFMD funds management
2. The words “as applicable” mentioned in question 7 above, are meant **to exclude “non core services”** as follows:
 1. from article 6(3) of the UCITS Directive, non-core services defined as:
 - (i) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC
 - (ii) safekeeping and administration in relation to units of collective investment undertakings.
 2. from article 6(4) of the AIFMD, non-core services defined as :
 - (i) investment advice;
 - (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;
 - (iii) reception and transmission of orders in relation to financial instruments.

Thus, we construe question 7 as relating exclusively to:

- the management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC
- management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis

AFG would like to remind⁶, that the remuneration regulation for UCITS and AIFMD are **tailored to collective portfolio management, and need to be more prescriptive** than for mandates management for instance, where clients are more informed, and more able to exert influence on the structure of fees and/or the remuneration of the portfolio managers. **This explains why ESMA’s June 2013 MIFID remuneration guidelines are rightly less prescriptive.**

Again, AFG welcomes the flexibility and sense of purpose of the rules, which give more ability to best answer various possible cases while seeking not to over-burden the industry, and thus contribute to EU’s competitiveness.

Further, AFG notes that mandatory implementation of the remuneration regulation for UCITS and AIFMD to mandates managers would likely prove difficult to justify from a regulatory perspective: indexation⁶, disclosure⁶ notably, would not be “straightforward” in terms of alignment of interest and market discipline.

However, AFG welcomes the flexibility and simplicity concerns that are embedded in ESMA’s consultation: notably, the ability to consider that regulatory frameworks can be considered “equivalent”, so that by subsidiarity, a single framework can be applied.

Hence, to answer precisely to this question 7, AFG considers that:

1. There should be no mandatory application of the UCITS/AIFMD rules to mandates managers.
2. For portfolio managers who are only mandates managers, the MIF remuneration guidelines should continue to apply, but asset managers should be allowed to elect that UCITS/AIFMD rules can be applied, considering these rules are generally more prescriptive, with due adaptations (eg for indexation and disclosure), under the supervision of their remuneration committees and regulators.

⁶ AFG notes that EFAMA’ approach is quite consistent in its answer to this ESMA consultation

3. For portfolio managers who are managing mandates and UCITS or AIFs, by subsidiarity (and as mentioned in question 5 and 6 above), asset managers should be given the flexibility to apply a single framework (namely UCITS/AIFMD, considering they are more prescriptive than MIF as mentioned in preceding point 2), if they elect to do so for such portfolio manager, or to apply a pro-rata approach, if they elect otherwise.

⁶ AFG notes that EFAMA' approach is quite consistent in its answer to this ESMA consultation

<ESMA_QUESTION_UCITS_V_AIMFD_REM_7>

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>

Indeed, small firms may be at a disadvantage in terms of requirements, as they will have, more often than large firms, UCITS-authorized portfolios representing more than half of their UCITS total assets.

In order to facilitate a fairer and more proportionate implementation of this rule to small firms, AFG would like to respectfully propose to ESMA that this requirement only applies to management companies with total AuM above 250M euros (ie. 500M euros AuM including leverage).

Given the ability of larger groups to opt-in, and use funds for risk alignment of remuneration, AFG believes the level-playing field would thus be maintained, as the use of instruments is primarily a strategic choice in asset management business models (cf answer to question 6 above), and a frequent market practice for asset management firms is to put forward to their clients the fact that their identified staff is –one way or another- co-investing in the funds managed.

AFG notes that AIFM remuneration guidelines would need to be adapted to reflect consistent calculation rules.

AFG also notes that in practice, funds often replicate strategies to which a team of alpha generators contribute. So, it's important that the basket of funds to be retained for payment in instruments of identified staff, can be defined with sufficient flexibility to reflect the underlying investment processes and to adapt to each firm's products strategy. This flexibility is necessary given the wide diversity of investment processes – which form one of the core know-how of the asset management industry.

Thus, AFG welcomes the greater flexibility implicitly given to the industry, to use a wide range of instruments, including "corporate instruments" (eg firms' share capital or firms' profits-indexed cash instruments) where it may seem more appropriate (eg for senior managers not directly managing funds, for instance).

<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>

We favour 1st January 2017 (ie 2017 performance year) for the date of application of the UCITS remuneration guidelines, in order to allow asset management companies to implement their remuneration policy over a full 12 months cycle (ie, usually starting in January).

As a result, only variable remunerations paid as from the first quarter of 2018 would be subject to the payout requirements.

Not only this would be in line with ESMA's answer in its AIFMD Q&A document (Section I, Question 2) but moreover, it would impossible to do it earlier; indeed, a change in the UCITS remuneration policy needs to be approved by our national regulator and our board, then the staff representatives and the staff itself must be informed. This would prove impossible to achieve by end of 2015 to be implemented in 2016.

Nota Bene: We note an inconsistency between CP Para 36 and CP para 37: eventually, UCITS and individual portfolios should be proposed as an option in para 36 !

<ESMA_QUESTION_UCITS_V_AIMFD_REM_9>

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>

Please see appendices 2 and 3 for the estimates on costs.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_10>

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>

We note that one of the two options contains the other, so the benefits & costs analysis of option 2 is *de facto* a marginal analysis on top of option 1's.

The additional flexibility provided in option 2 is definitely welcome. Given the on-going consultation by EBA though, it remains unclear what exactly the CRD 4 requirements will imply. Thus, it's difficult to make a detailed costs and benefits analysis of CRD 4 application as opposed to AIFMD/UCITS application.

As indicated in answers to questions 4, 5 and 6 above, and subject to the conditions contained in these answers, we can reasonably consider, in spite of the remaining uncertainty on the CRD 4 remuneration guidelines, that option 2 allows to implement AIFMD/UCITS (which would likely be considered more effective in risk alignment by nature), without pro-rata, and as such is likely to be the best "trade-off" (ie vs. option 1) in terms of costs/benefits.

<ESMA_QUESTION_UCITS_V_AIMFD_REM_11>

Appendix 1: Other issues in the Consultative Paper, on which AFG wants to make the following comments

1. Definition of period of deferral

AFG notes that the recommended deferral is generally defined in the UCITS remuneration guidelines as the “holding period recommended to the investors”. Whilst AFG understands the general spirit of alignment of interest, AFG believes there is a strongly undesirable effect to this provision.

On the one hand, long-only equity funds for instance, tend to recommend long holding periods, which is strengthening the financing ability of the economy via the asset management industry, and is thus strongly desirable.

However, on the other hand, were the deferral period to be systematically and “one for one” aligned with the recommended holding period, given the **structural mismatch** of time horizons between the economy’s financing needs and an individual’s life span¹, we have here – paradoxically enough- a regulatory requirement in clear contradiction with its very objective. There will be a very strong incentive for firms to generate new UCITS products –preferably promised with higher risk & return-, over a short recommended holding period... AFG believes this simple, apparently inoffensive requirement is in fact, highly obnoxious.

As result, AFG recommends that the deferral period be not systematically and “one for one” aligned with the recommended holding period, and that **a maximum of five years of deferral be possible, so that there is no discouraging for the UCITS management industry of recommending longer holding periods, hence of supplying long term financing to the economy.**

2. Identified Staff definition including delegates

AFG would like to draw ESMA’s attention to the facts that many regulatory requirements applicable to “in-house” identified staff, are difficult to implement in a similar fashion to “delegates” identified staff, and first of all, the disclosure requirements. Yet the definition makes no difference between the two categories of identified staff.

AFG believes there should be a distinction in definitions between in-house and delegates identified staff, and that specific requirements applicable to delegates identified staff should be clarified.

3. Simplification of pay-out process

AFG would like to draw ESMA’s attention to a point it has made to EBA in its answer to the EBA Consultation on Remuneration Guidelines (4 March / 4 June 2015).

QUOTE

¹ cf. Keynes famous saying “in the long term, we are all dead”, which may well be playing a role in the current short term thinking our economies are struggling with...

→ Para 257, [...] the relinquishing of the former CEBS obligation to have the same ratio of instruments in the upfront and the deferred part of variable remuneration is welcome, but then **AFG encourages EBA to go one step further in the simplification process, and only require a minimum of 50% in instruments in the total variable remuneration, and a higher share of instruments in the deferral component than in the upfront component.**

This would enable to award deferrals fully in instruments, and thus allow for maximisation of the LT alignment of interests. Currently, the text makes it mandatory to have at least 50% of the upfront component of the variable remuneration in the form of instruments.

UNQUOTE

AFG believes the same revised –simplified- approach should be applied to para 145 of AIFMD remuneration guidelines (and thus to the equivalent paragraph in the UCITS remuneration guidelines). Otherwise there is a mandatory loss of efficiency in the long term alignment effect of the implementation of instruments, and unnecessary additional administrative costs. As there is no downside of any sort, AFG believes it would be a nice “quick win” for everyone.

4. UCITS V disclosure

AFG notes that articles 69 and 78 of the UCITS directive have been amended by UCITS V, resulting in significant additional disclosures vs. those required in the currently proposed UCITS/AIFMD remuneration guidelines.

As a result, AFG respectfully suggests to ESMA to amend/provide further guidance in the proposed UCITS/AIFMD remuneration guidelines to ensure their comprehensiveness and consistency, as well as a clear set-out of the specificities recommended (and required) for the UCITS funds and their management companies.

Appendix 2: Estimates of costs linked to Pay-out Process

Pay out Process costs est.				
	<i>in €000s</i>	One-off	Recurring	Total 1st year
		<i>medium vs. large firms</i>	<i>medium vs. large firms</i>	<i>medium vs. large firms</i>
With specific* proportionality				
	Deferral	50-200	20-50	70-250
	Retention / Instruments	30-200	20-50	50-250
	Malus	30-60	20-30	50-90
	Total	110-460	60-130	170-590
Without specific* proportionality				
	Deferral	100-500	60-250	160-750
	Retention / Instruments	60-500	60-250	120-750
	Malus	40-150	40-100	80-250
	Total	200-1150	160-600	360-1750
* specific proportionality = de minimis threshold - see answer to question 1				

NB: “medium” firms have some 50bn € AuM; “large” firms have some 500bn € AuM

Appendix 3: Estimates of costs linked to Remuneration Committee

Remuneration Committee costs est.				
	<i>in €000s</i>	One-off	Recurring	Total 1st year
		<i>medium vs. large firms</i>	<i>medium vs. large firms</i>	<i>medium vs. large firms</i>
With general* proportionality				
		0-150	0-250	0-400
Without general* proportionality				
		80-150	150-250	230-400
* see definition in answer to question 1				

NB: “medium” firms have some 50bn € AuM; “large” firms have some 500bn € AuM

Appendix 4: Quotes of regulations for the purpose of answer to question 7

AIFMD article 6.4

4. By way of derogation from paragraph 2, Member States may authorise an external AIFM to provide the following services:

(a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;

(b) non-core services comprising:

(i) investment advice;

(ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;

(iii) reception and transmission of orders in relation to financial instruments.

UCITS article 6.3

3. By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of UCITS, the following services:

(a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC; and

(b) as non-core services:

(i) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;

(ii) safekeeping and administration in relation to units of collective investment undertakings.

Management companies shall not be authorised under this Directive to provide only the services referred to in this paragraph, or to provide non-core services without being authorised for the services referred to in point (a) of the first subparagraph.

MIF directive Annex I

ANNEX I

LIST OF SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS

Section A - Investment services and activities

- (1) Reception and transmission of orders in relation to one or more financial instruments.
- (2) Execution of orders on behalf of clients.
- (3) Dealing on own account.
- (4) Portfolio management.
- (5) Investment advice.
- (6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
- (7) Placing of financial instruments without a firm commitment basis
- (8) Operation of Multilateral Trading Facilities.

Section B - Ancillary services

- (1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
- (2) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- (3) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (4) Foreign exchange services where these are connected to the provision of investment services;

- (5) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
- (6) Services related to underwriting.
- (7) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under Section C – 5, 6, 7 and 10 - where these are connected to the provision of investment or ancillary services.

Section C - Financial Instruments

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- (6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;
- (7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences.
- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.