

Response to the European Banking Authority's Consultation on the Draft Guidelines on Sound Remuneration Policies under Directive (EU) 2019/2034

ICI Global¹ appreciates the opportunity to provide feedback on the European Banking Authority's (EBA's) consultation on the draft guidelines on sound remuneration policies under Directive (EU) 2019/2034, referred to as the Investment Firms Directive (IFD). Many of our member firms are part of regulated fund complexes with operations around the globe, which include UCITS that receive portfolio management services from MiFID-licensed firms subject to the IFD.

Question 1: Are the subject matter, scope and definitions appropriate and sufficiently clear?

Date of Application of Remuneration Structure Requirements

The date of the application of the remuneration structure requirements under IFD is not clear. The draft guidelines state that the guidelines apply from June 26, 2021, but further include transitional provisions specifying that: (1) investment firms should implement any adjustments of their remuneration policies by December 31, 2021 (where shareholders approvals are required for such revisions, approvals should be requested by June 30, 2022); and (2) the remuneration policy should be applied in line with the guidelines for the performance year beginning after December 31, 2021. The draft guidelines do not specify the date on which the remuneration structure requirements (e.g., the payout process rules and related provisions) apply, and the EBA has not otherwise provided clarity on this point.² It is therefore unclear whether firms are required to apply the remuneration structure requirements by June 26, 2021 (e.g., the current performance year) or whether the remuneration structure requirements are subject to the transitional provisions and do not apply until January 1, 2022.

We request that the EBA provide much-needed clarity regarding the application of the transitional provisions to the remuneration structure requirements. This could be done by revising paragraphs 10 and 11 of the draft guidelines to read as follows (new language in italics):

10. These guidelines, and the remuneration requirements under Directive 2019/34/EU to which they relate, apply from 26 June 2021 (TBC).

11. Investment firms should implement any adjustments of their remuneration policies that are necessary to comply with these guidelines, *and the remuneration requirements of Directive 2019/34/EU to which they relate*, by 31.12.2021 and update the required documentation accordingly. Where shareholder approvals are required for such revisions, approvals should be

¹ ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$38.1 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Brussels, Hong Kong, and Washington, DC.

² Article 67 of the IFD requires Member States to adopt and apply measures necessary to comply with the IFD by June 26, 2021.

requested before 30.06.2022. The remuneration policy should be applied in line with these guidelines for the performance year starting after 31 December 2021.

Retention Bonus Definition

The draft guidelines, in section 8.4, outline requirements with which investment firms need to comply with respect to the awarding of retention bonuses and, in paragraph 9, define the term “retention bonus” as “variable remuneration awarded on the condition that staff stay in the investment firm for a predefined period of time.” In our view, this definition may be interpreted to include certain payments that are not intended to be within scope, such as deferred compensation grants (i.e., compensation granted as the deferred portion of an annual bonus). For the avoidance of doubt, we recommend that the definition of “retention bonus” be amended to read as follows, “means variable remuneration awarded solely or principally on the condition that staff remain at the investment firm for a predefined period of time and, for the avoidance of doubt, does not include awards granted as deferral of variable remuneration earned by reference to performance already undertaken at the investment firm.”

Question 2: Is the section on gender neutral remuneration policies sufficiently clear?

Paragraph 26 of the draft guidelines requires investment firms to “document job descriptions for all their staff members and determine which positions are considered as equal or of equal value per unit of measurement or time rate, taking into account at least the type of activities, tasks and responsibilities assigned to the position or staff member,” to monitor that gender neutral remuneration policies are applied. Paragraph 27 of the draft guidelines further provides that investment firms “may consider in a gender neutral manner additional aspects when determining the value of work and pay and clearly document how such aspects are applied,” specifying certain aspects that may be included.

The documentation requirements outlined in paragraphs 26 and 27 go further than what is required under the recently adopted CRD V remuneration guidelines that also include provisions regarding gender neutrality. Depending on how these provisions are applied, complying with them may be overly onerous and time consuming. In our view, prescriptive documentation requirements are neither necessary nor dispositive for purposes of ensuring that gender neutral remuneration policies are applied; rather, firms should retain flexibility in determining how best to document that a gender neutral remuneration policy is being applied. We recommend that the EBA revise paragraphs 26 and 27 to clarify that an investment firm has the discretion to determine how best to document its compliance with this requirement.

Question 3: Is the section on the remuneration committee sufficiently clear?

Gender Balance

Article 33 of the IFD provides that the “remuneration committee shall be gender balanced and shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.” We support this principle and recognize the benefits that it brings but believe that further clarification is needed regarding the requirements for gender balance and independence to ensure that investment firms are able to address these requirements in a pragmatic manner that is not unduly burdensome.

Paragraph 50 of the draft guidelines, in line with Article 33(1) of the IFD, requires the remuneration committee to be gender balanced. We request that the EBA recognize that, in practice, investment firms may at times be constrained in the selection of committee members and

that strict gender balance may not be practical at all times. We therefore recommend that the EBA add a sentence to paragraph 50 clarifying that the expectation is for investment firms to use their best efforts to have a gender balanced remuneration committee over time.

Independent Members

Paragraph 51 of the draft guidelines requires that “the chair and the majority of the remuneration committee should qualify as independent” and that “where there are not a sufficient number of independent members, investment firms should implement other measures to limit conflicts of interest in decisions on remuneration issues.” The IFD does not specify that the chair and a majority of members must be independent but rather requires the remuneration committee to exercise competent and independent judgement in the performance of their duties. We believe that this provision can be read to permit investment firms to comply with this obligation not only through the committee’s composition but also by taking equivalent or alternative measures to avoid conflicts of interest. We therefore request that the EBA include the following sentence at the end of paragraph 51, “If, in the investment firm’s determination, having a remuneration committee with an independent chair and/or comprised of a majority of independent members is neither applicable due to the nature of the firm nor appropriate, the investment firm may take alternate or equivalent measures to avoid conflicts of interest.”

Question 4: Are the guidelines on the application of the requirements in a group context sufficiently clear?

Article 25 of the IFD requires Member States to ensure that the requirements of the IFD are applied on an individual and consolidated basis, and the draft remuneration guidelines make clear in paragraph 69 that investment firms must comply with the IFD’s remuneration requirements, including the applicable regulatory technical standards on an individual basis and, where applicable, on a consolidated basis. It is not clear, however, how the consolidation requirement applies to subsidiaries within a regulatory consolidation group that are themselves subject to sectoral legislation that includes specific remuneration requirements (i.e., UCITS and AIFMD).

Unlike the recently adopted CRD V, the IFD does not contain specific wording that allows subsidiaries subject to sectoral legislation to switch off the application of some of the IFD remuneration rules on a consolidated basis and instead apply the sectoral requirements. Paragraph 70 of the draft remuneration guidelines provides some guidance, stating that the “specific remuneration requirements of subsidiaries should be taken into account,” but it does not further make clear whether entities subject to sectoral remuneration requirements may apply only those requirements. We recommend that the EBA make explicit that subsidiaries of investment firms that are subject to sectoral remuneration requirements are able to apply those sectoral requirements with respect to the staff of the subsidiary (provided they do not otherwise provide services to the investment firm) and are not required to apply the requirements of the IFD, other than any requirements explicitly specified by the EBA.