



## **Guidelines on remuneration policies and practices in MiFID. July 2013.**

ESMA has published, on the 11 June 2013, the final report with the Guidelines on policies and practices in MiFID. This final report contains: first, an analysis of the responses (including the ESMA Stakeholder Committee advice) to the previous public consultation paper that took place from September to December 2012; second, a description of any material change to the technical proposals set out in the consultation paper, (or the confirmation that there have been no material changes) and the reasons to adopt in each case a viewpoint; and third, the full text of the final Guidelines.

The Guidelines will apply, on one hand, to investment firms, credit institutions when providing investment services, Undertaking Collective Investment in Transferable Securities (UCITs) and Alternative Investment Funds (AIFs) management companies when they are providing the investment services of individual portfolio management and, on the other hand, the competent authorities.

The document has clarified some basic definitions for its good understanding not included in the consultation paper. Relevant person is the employee (or tied agent) of the investment firm whose performance can have a material impact on the service provided and/or corporate behaviour of the firm and whose remuneration may create inappropriate incentives to act against the best interest of their clients. Remuneration is all form of payments or benefits provided directly or indirectly by firms to relevant persons, it can be either financial or cash. Quantitative criteria is primarily numeric or financial data used to determine the remuneration of a relevant person, for example, sales volumes or targets for new clients. Qualitative criteria is data used to assess the quality of the relevant person's performance and/or service to the client, it can also refer to numeric or financial data, for example, number of complaints over a large timescale.

The purpose of the Guidelines is to ensure that investment firms (forward firms) remuneration policies and practices comply with the conflict of interest requirements set out in articles 13.1 and 18 of MiFID and with the conduct of business rules set out in article 19 of MiFID. The guidelines are divided into the following sections:

### **1. Governance and design of remuneration policies and practices in the context of the MiFID conduct of business and conflicts of interest requirements.**

Firms should take into account conflict of interest risks and the management of those risks as well as the conduct of business rules to ensure that clients' interests are not impaired.

The design should not create incentives that may lead relevant persons to favour their own interest, or the firm's interest with the potential detriment of clients.

The direct link between remuneration and the sale of a specific financial instrument or of a specific category of financial instrument is a situation in which the firms could unlikely demonstrate compliance with MiFID.

The remuneration design should consider all relevant factors, such as the role performed by relevant persons, the type of products offered, and the methods of distribution (advised or non-advised, face-to-face or through telecommunications, etc).

The ratio between fixed and variable components should be appropriate in order to take into account the best interest of their clients. Flexible policies should allow, where appropriate, the possibility to pay no variable remuneration at all. A high variable remuneration based on quantitative criteria can increase the relevant person's focus on short-term gains rather than the client's best interest. The variable remuneration can not be determined taking into account only sales volumes and should consider qualitative criteria such as the compliance of the conduct of business, in particular, the review of the suitability of instruments sold by relevant persons to clients.

Firms should have written remuneration policies, approved by senior Management (or supervisory function after taking advice from the compliance function) and periodically reviewed. Senior management should be responsible for the implementation of the remuneration policies.

Remuneration policies should adopt and maintain measures enabling them to effectively identify where the relevant person fail or not to act in the best interests of the client and to take remedial action.

Relevant persons should be informed, at the outset, of the criteria that will be used to determine the amount of their remuneration, and the steps and timing of their reviews. The criteria should be accessible, understandable and recorded.

Firms should avoid creating unnecessarily complex policy designs that may create risks that may be difficult to manage. Appendix I of the guidelines sets out illustrative examples of this type of policies.

Policies should be taken into account regarding the launch of new products or services and the risks the distribution of those products or services poses.

## **2. Controlling risks that remuneration policies and practices create.**

Firms should set up adequate controls for compliance with their policies and practices to ensure that they deliver the intended outcomes. Those controls should be implemented throughout the firm, be subject to periodic review and should include assessing the quality of the service provided to the client, for example, monitoring calls for telephone sales, sampling of advice and client portfolios provided to check suitability.

Where potential or actual detriment might arise as a result of specific features in remuneration policies, firms should review and/or amend these features and set up controls and reporting mechanisms for taking appropriate action to mitigate this risk.

Firms should ensure that they have reporting lines in place across the firm or Group to assist in escalating issues involving risk of non-compliance with the MiFID.

The compliance function should be involved in the design process of remuneration policies: will verify that firms comply with MiFID requirements and will have access to all relevant documents. Persons engaged in control functions should be independent from the Business units they oversee and be compensated in accordance with the achievements of the objectives linked to their functions, independent of the performance of the business areas they control.

Remuneration policies should also benefit from the support of senior management or the supervisory function so that necessary steps can be taken to ensure that relevant persons effectively comply with the policies and procedures.

When outsourcing the provision of investment services, firms should have in mind the best interest of the client. When a firm is seeking to use another firm for the provision of services it should check that the other firm's remuneration policies follow an approach consistent with these Guidelines.

### **3. Competent authorities's supervision and enforcement of remuneration policies and practices.**

When competent authorities, through their supervisory activity, find evidence of poor practice in breach of MiFID in relation to these guidelines, they should consider the appropriate action to take. Competent authorities should review how firms plan to meet, implement and maintain their remuneration policies and practices, and how appropriate action is taken to ensure the best interests of the clients.

These guidelines will now be translated into all EU languages and will enter into force two months after the publication of the translations in ESMA's webpage.

If you want to read the final report that contains the Guidelines on remuneration policies and practices (MiFID), please, do click on:  
[http://www.esma.europa.eu/system/files/2013-606\\_final\\_report\\_guidelines\\_on\\_remuneration\\_policies\\_and\\_practices\\_mifid.pdf](http://www.esma.europa.eu/system/files/2013-606_final_report_guidelines_on_remuneration_policies_and_practices_mifid.pdf)