EBA consults on Draft Guidelines on sound remuneration policies under the Investment Firms Directive

The European Banking Authority (**EBA**) is seeking responses to its consultation paper EBA/CP/2020/26 on Draft Guidelines on sound remuneration policies under the Investment Firms Directive (Draft Guidelines).

Investment firms and other interested parties have until 17 March 2021 to respond to the consultation.

Investment firms should review the Draft Guidelines, confirm whether they will fall within their scope and if so identify any required enhancements to current arrangements in time for expected June 2021 implementation.

In-scope firms

Financial institutions that qualify as MiFID investment firms but not as small and non-interconnected investment firms under the Investment Firms Directive (EU) 2019/2034 (**IFD**) are in scope. The Draft Guidelines will apply on an individual and consolidated basis. Class 1 and "Class 1 minus" firms will remain subject to the remuneration regime under CRDV/CRR.

Background

The IFD mandates the EBA, in consultation with ESMA, to issue guidelines on the gender neutral remuneration policies for investment firms and within two years of the date of publication of the Draft Guidelines, to issue a report based on the information collected by competent authorities.

It is a requirement under IFD that investment firms have "*remuneration policies and practices that are consistent with and promote sound and effective risk management*". These remuneration policies and practices are required to be gender neutral and must be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.

Proposals

- The Draft Guidelines differentiate between requirements applicable to all staff and identified staff, the latter being more stringent due to the higher impact on the risk profile of the firm.
- The intention of the Draft Guidelines encourage transparency of the remuneration policy and practices to set appropriate incentives for long-term oriented and prudent risk taking and note that implementation of such policy is the responsibility of the management body and/or the remuneration committee.
- Emphasis is placed on the gender neutral aspect of such remuneration policies in line with the principle of equal pay for male and female workers for equal work or work of equal value.
- The Draft Guidelines highlight the requirement for investment firms to have a sound capital basis noting the direct and indirect influence that remuneration payments can have on investment firms' capital base and liquidity.

- The Draft Guidelines also provide guidance on the risk alignment of the investment firm, the payout process, State Aid and government support and the supervisory review by competent authorities.

The Draft Guidelines consist of six titles:

i. **Requirements regarding remuneration policies –** which deals with remuneration policies for all staff, the governance of remuneration, remuneration policies and governance of remuneration in a group context, proportionality, the identification process and capital base.

ii. **Requirements regarding the structure of remuneration –** this section addresses categories of remuneration, particular cases of remuneration components, exceptional remuneration components and prohibitions.

iii. **Remuneration of specific functions –** this focuses on the remuneration of members of the management and supervisory function of the management body and remuneration of control functions.

iv. **Remuneration policy, award and payout of variable remuneration for identified staff –** which deals with the remuneration policy for identified staff, the risk alignment process and the payout process for variable remuneration.

v. **Investment firms that benefit from government intervention –** this section focuses on State support and remuneration.

vi. **Requirements for competent authorities –** the final part of the consultation is relevant to national regulators and deals with remuneration policies and practices, disclosures and the colleges of supervisors.

The Draft Guidelines are based on the 2015 EBA Guidelines on remuneration policies for credit institutions and investment firms and are aligned with the guidelines on remuneration policies under CRDIV.

Next steps

Investment Firms will be conscious of the need to review their existing remuneration policy against the proposals in the Draft Guidelines and to make any submissions to the EBA ahead of the 17 March 2021 deadline.

Our dedicated IFD/IFR webpage hosts additional information and guidance on the implementation of the new prudential framework for investment firms.

For further information or assistance in responding to the consultation, contact Keavy Ryan, Corporate and Incentives Partner, Patrick Brandt, Financial Regulation Partner and Sinéad Prunty, Financial Regulation Knowledge Lawyer.

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