

Stockholm, 19 October 2021

SSMA's response to the European Securities and Markets Authority's (ESMA) Consultation Paper to Guidelines on certain aspects of the MiFID II remuneration requirements

The Swedish Securities Markets Association ("SSMA") welcomes the opportunity to provide comments to ESMA's consultation on guidelines on certain aspects of the MiFID II remuneration requirements. We limit our response to the following general remark.

Need for a Horizontal Approach to EU-rules on Remuneration of Staff

The SSMA's members are very concerned with the large numbers of EU rules and regulations applicable to remuneration of staff. It is very important that the EU legislators and ESMA take into consideration that many financial institutions are suppliers of numerous services which require different types of licenses and therefore are required to follow several of rules regarding remuneration of staff at the same time. This situation leads to practical problems and administrative burdens, in particular for smaller financial institutions where the services provided by an individual staff member may be subject to different pieces of EU-legislation. It furthermore makes it challenging for larger groups of companies to have equal treatment of staff in their different subsidiaries.

Following is a (non-exhaustive) list of EU level rules regarding remuneration requirements that are applicable to financial institutions:

- Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms
- Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector
- Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers
- Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms
- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
- Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions
- Directive (EU) 2017/828 of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement



- Directive (EU) 2019/2034 of the European Parliament and of the Council on the prudential supervision of investment firms
- Commission Delegated Regulation (EU) No 231/2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
- Commission Delegated Regulation (EU) 2015/35 supplementing Directive 2009/138/EC of the European Parliament and the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
- Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms
- ESMA/2013/232 Guidelines on sound remuneration policies under the AIFMD
- ESMA/2013/606 Guidelines on remuneration policies and practices (MiFID)
- ESMA/2016/575 Guidelines on sound remuneration policies under the UCITS Directive
- EBA/GL/2015/22 Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013
- EIOPA-BoS-14/253 Guidelines on system of governance

Having a large number of different but parallel legal frameworks increases the regulatory risk in general as well as the risk of contradictory rules. It furthermore puts an unnecessary burden on the institutions active in the financial markets who must comply with this cluster of different rules, which, in turn, increases the institutions' operational risk. The SSMA assumes that the situation also makes it challenging for national competent authorities to conduct an effective supervision in the area of remuneration.

The SSMA wants to underline that the purpose behind the remuneration requirements is generally the same regardless of what type financial institution is in question (e.g., bank, investment firm, fund manager, alternative investment fund manager, etc.). Therefore, the (theoretical) benefits received from having *different* regulations for *different* types of institutions are limited.

Based on the above, the SSMA proposes that a horizontal approach to EU-rules on remuneration of staff is taken by EU legislators and ESMA with an aim at ensuring a more harmonised legal environment. Divergent rules for specific sectors should only be acceptable where this can be motivated from a cost/benefit perspective.
