



**Financial Services
Commission**

Response to Consultation Paper

AIFM Remuneration Code

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Summary

The AIFM Remuneration Code Consultation Paper aimed to gauge industry responses to various aspects, potentially requiring revision, such as the amendment of certain figures, to ensure that these are in line with Gibraltar's business.

In respect of the remuneration aspects of AIFMD, the FSC has confirmed that it will comply with the ESMA Guidelines in order to ensure common, uniform and consistent application of the provisions on remuneration in Article 13, and Annex II of the AIFMD.

The Guidelines cover substantive areas such as the definitions of remuneration and identified staff, the concept of proportionality, the composition and role of remuneration committees, payments in units, shares or other instruments and disclosure.

The intention of the Remuneration Code is to provide a framework that will assist firms in interpreting the Guidelines. The general guidance on the Remuneration Code intends to offer clarification with respect to certain elements of interpretation of those Guidelines in Gibraltar. It is ultimately the AIFM's responsibility to assess appropriate application of the remuneration principles to its business and the FSC expects firms to be able to justify the rationale behind any application of the proportionality principle.

Basis of consultation

The Commission is committed to consulting in an open, transparent and accountable way and welcomes any comments and/or observations from the industry. We would like to thank those individuals and organisations who took the time to respond. As mentioned in the consultation paper, the FSC considered the various options in relation to the adoption of the ESMA Guidelines and concluded that the ESMA Guidelines should be adopted in full whilst also applying the AIFMD principles of proportionality to the Guidelines. To this end, the consultation paper aimed to gauge industry responses to various aspects which required a revision of, for example figures, so that these are in line with Gibraltar's business.

A total of 2 responses were received.

Outcome of consultation and summary of responses received

The consultation paper asked the following questions:

- Q1. Do you agree that a size threshold, based on an AIFM's net assets under management, provides a sound working presumption as to whether an AIFM may disapply certain remuneration requirements on the grounds of proportionality? Do you agree with the proposed thresholds in the attached, proposed paper?
- Q2. Do you agree with the proposed proportionality guidance? Are there other proportionality criteria on which we should also focus?
- Q3. In relation to the question of delegation of portfolio management, and the application of remuneration principles to such a delegate, are there other regulatory requirements or regimes that should be considered equally as effective?



- Q4. Do you believe that the FSC should follow this position? If not, how do you think the FSC should deviate from this position, for example, in relation to the minimum retention period, variable remuneration provisions, insofar as this is possible.

Respondent One expressed agreement with Q1 and Q2. In relation to Q3, this individual felt that there seemed to be more emphasis on delegation of portfolio management, although risk management can also be delegated. For Respondent One, risk management was said to be an increasingly complicated area which is not particularly well served in Gibraltar. Equal emphasis on delegation of risk management was suggested.

The FSC agrees that risk management is important. However, following discussions with industry and as a result of the applications that had been received by the FSC, at the time that the paper was written, the paper was produced with an emphasis on delegation of portfolio management. The FSC may revise this paper at a later date.

Respondent One made no comment in relation to Q4 and asked the following questions in relation to the content of the Guidance Note:

1. 4. "(inclusive of salaries and discretionary pension benefits)" – I assume this is not exhaustive and should include other benefits in kind, variable remuneration, bonuses etc?

The paper is meant to provide guidance and is, therefore, not exhaustive. The phrase "inclusive of salaries and discretionary pension benefits", should be read as and including other benefits in kind, variable remuneration, bonuses etc.

2. 14. a) (ii) ".....remuneration is no more than £500,000." – I assume that this is annually?

Annual remuneration is being referred to here; the paper has been duly amended.

Respondent Two responded in respect of the 'size range' at which certain provisions of the Code become applicable (there was a range published in the consultation document). Respondent Two would like to see the Gibraltar Code at least mirror the size proposed and agreed in the UK. This respondent felt that it could be unnecessarily disruptive to make our Code more prohibitive by reducing this size. In the event that a UK manager chooses to establish its AIFM operations in Gibraltar, Respondent Two would not want to see a scenario where, by virtue of the AIFM being in Gibraltar, the UK manager is subject to more prohibitive restrictions than would otherwise have been in place in the UK.

In order for these thresholds to meet the needs of Gibraltar's business, a proportionate threshold has been agreed upon. The FSC may review these thresholds, should the need arise.



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