



**Financial Services
Commission**

Information page

Alternative Investment Fund Managers Directive Operating conditions for AIFMs - Remuneration

Issued :

28 February 2013





Table of Contents

Introduction.....	3
Relevant provisions in the AIFMD	3
Annex II of the AIFMD	3
Relevant provisions in Level 2	6
Application of technical standards	7
ESMA Remuneration Guidelines for AIFMD (ESMA/2013/201)	7

Financial Services Commission
PO Box 940, Suite 3, Ground Floor,
Atlantic Suites, Europort Avenue,
Gibraltar

Any advice or interpretation covered in this information page represents the views of the FSC as to its expectations of how the requirements of the AIFMD are to be complied with and/or how it fails to be applied. This however is not intended as a definitive interpretation of the AIFMD which is ultimately a matter for the courts to determine. The FSC does not provide, or purport to offer, legal advice.

Introduction

This information page has been prepared to assist AIFMs in complying with the remuneration requirements from the Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”) and by the supplementing Level 2 Delegated Regulation (“Level 2”). This information page only applies to authorised AIFMs.

Relevant provisions in the AIFMD

(Article 13 of the AIFMD)

1. Article 13 sets out the high level requirement in respect of remuneration. Authorised AIFMs must have remuneration policies and practices for staff whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage;
 - (a) for this purpose staff includes senior management, risk takers, those in control functions, and any employees whose total remuneration takes them into the same remuneration bracket as senior management and risk takers,
 - (b) the policies and practices must be consistent with and promote sound and effective risk management and must not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage, and
 - (c) an AIFM must determine its remuneration policies and practices in accordance with Annex II to the AIFMD.

Annex II of the AIFMD

2. For ease of reference Annex II of the AIFMD is reproduced below:
 - “1. When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of AIFs they manage, AIFMs shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:
 - (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage;
 - (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest;
 - (c) the management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- (f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;
- (g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;
- (h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AIFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks;
- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;
- (j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;
- (k) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- (m) subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instalments or equivalent non-cash instalments, unless the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, in which case the minimum of 50% does not apply.

The instalments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs. Member States or their competent authorities may place restrictions on the types and designs of those instalments or ban certain instalments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;

- (n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

The period referred to in this point shall be at least 3 to 5 years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount is deferred;

- (o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- (p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the AIFs it manages.

If the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of 5 years in the form of instalments defined in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point (m), subject to a 5 year retention period;

- (q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

- (r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Directive.

2. The principles set out above shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that they manage.

3. In relation to AIFMs that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not

perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.”

Relevant provisions in Level 2

(Article 33(2)(c) of Level 2)

3. In order to ensure the requisite degree of independence, AIFMs must remove any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities.

(Article 42(1)(d) of Level 2)

4. The remuneration of senior offices in the risk management function must be directly overseen by the remuneration committee, where such committee has been established.

(Article 43(1)(b) of Level 2)

5. The remuneration of those engaged in the performance of the risk management function must reflect the achievement of the objectives linked to the risk management function, independently of the performance of the business areas in which they are engaged.

(Article 60(2)(h) of Level 2)

6. Senior management is responsible for establishing and applying a remuneration policy in line with Annex II of the AIFMD (see section 2. above).

(Article 61(3)(d) of Level 2)

7. In reliance to the compliance function of the AIFMD, the AIFM must ensure that the method of determining the remuneration of a compliance officer and other persons in the compliance function do not affect their objectivity and are not likely to do so. This section will not apply to an AIFM if the AIFM can demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that the requirement is not proportionate and that its compliance function continues to be effective.

(Article 107 of Level 2)

8. AIFMs are required to provide an annual report on each AIF that it manages within 6 months of the financial year end of such AIF. With regards to remuneration, the annual report must contain the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the



AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF. AIFMs must specify whether or not the total remuneration relates to any of the following:

- (i) the total remuneration of the entire staff of the AIFM, this should also indicate the number of beneficiaries;
 - (ii) the total remuneration of those staff of the AIFM who are fully or partly involved in the activities of the AIF, this should also provide details of the number of beneficiaries;
 - (iii) the proportion of the total remuneration of the staff of the AIFM attributable to the AIF, this should also provide details of the number of the number of beneficiaries.
9. Where information is disclosed at the level of the AIFM, an allocation or breakdown must be provided in relation to each AIF, insofar as this information exists or is readily available. As part of this disclosure, a description of how the allocation or breakdown has been provided must be included.

Application of technical standards

10. Any technical standards adopted by the European Union Commission under Article 13(2) of the AIFMD shall also be applicable.

ESMA Remuneration Guidelines for AIFMD (ESMA/2013/201)

11. AIFMs should also consider ESMA final report on “Guidelines on sound remuneration policies under the AIFMD” (ESMA/2013/201) which can be found at the following link:
<http://www.esma.europa.eu/system/files/2013-201.pdf>