



## Asset Management & Investment Funds Update

April 2022

### ESMA Finalises Update of MiFID Remuneration Guidelines

On 31 March 2022, ESMA published an updated version of its 2013 MiFID remuneration guidelines (2013 guidelines) which will replace those guidelines and clarify MiFID II remuneration requirements including the:

- **requirement to adopt a remuneration policy** for staff involved in the provision of services to clients which should encourage responsible business conduct, fair treatment of clients and avoid conflicts of interest in client relationships (such requirements are largely based on the 2013 guidelines)
- **conflicts of interest requirements** in relation to remuneration which necessitate the identification and prevention or management of conflicts of interest including those caused by the firm's own remuneration and other incentive structures
- **conduct of business requirements** to ensure firms do not remunerate or assess the performance of staff in a way that conflicts with the duty to act in the best interest of clients and in particular that remuneration arrangements do not provide an incentive to recommend a particular financial instrument to a retail client when an alternative would better suit the client's needs.

The Guidelines are applicable to MiFID firms including UCITS managers and AIFMS with MiFID top-up licences. As a result, in-scope fund managers will be subject to dual remuneration obligations under MiFID, in respect of their MiFID services, and, as applicable, the UCITS and AIFMD regimes, in respect of their collective portfolio management services. In terms of impacted staff, the scope of the Guidelines tracks the scope of the MiFID II remuneration rules which are applicable to a firm's employees as well as any secondees and employees of its delegates involved in the provision of investment services.

As compared to the 2013 guidelines, the updates include:

- the removal of guidelines which have now been incorporated in the MiFID II framework or deemed unnecessary as a result of that process and retention of those 2013 guidelines which were substantially confirmed
- the reorganisation of the guidelines into three sections (i) design of remuneration policies and practices; (ii) governance; and (iii) controlling risks that remuneration policies and practices create
  - section (i) includes guidance on defining appropriate qualitative and quantitative criteria for aligning the interests of relevant persons and clients including in relation to career progression (criteria for which should not encourage actions in conflict with the interests of clients), the use of ex-post adjustments of variable remuneration and linking variable remuneration to product returns, guidance on the remuneration for control functions and management and addressing the conflicts of interest which may arise from their roles in the design and oversight of the firm's remuneration policy and certain good practices have been elevated to supporting guidelines

- section (ii) includes new guidance on the requirement for periodic and ad hoc review of the remuneration policy and expanded guidance on the need for policy designers to have access to relevant documents
- section (iii) includes new guidelines which were previously good practices (in the 2013 guidelines), reflects NCAs' relevant supervisory experiences and sets out new examples of poor practices

The Guidelines will come into effect six months after the publication of the translated versions on ESMA's website.

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