

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR TO THE INDUSTRY ON THE IMPLEMENTATION OF THE ESMA GUIDELINES ON SOUND REMUNERATION POLICIES UNDER THE UCITS DIRECTIVE AND THE AIFMD

This Circular describes the MFSA's approach to the implementation of the Guidelines on Sound Remuneration Policies under UCITS [ESMA/2016/575] and the Guidelines on Sound Remuneration Policies under the AIFMD [ESMA/2016/579] published on 14 October 2016¹.

Market participants, in particular, directors, compliance officers and identified staff² of UCITS Management Companies and AIFMs³ are encouraged to take due note of the contents of this Circular, the applicable timeframes and key dates outlined herein.

(1) Introduction

Article 13, Article 22(2)(e) and (f) and Annex II of the [AIFM Directive](#) introduce remuneration provisions with the aim of ensuring that remuneration and incentive structures in AIFMs (and self-managed AIFs) do not induce excessive risk-taking and are disclosed appropriately. Similar provisions have also been introduced regulating remuneration in Articles 14a and 14b applicable to UCITS Management Companies (and self-managed UCITS) pursuant to the [UCITS V Directive](#).

On 14 October 2016 ESMA published two sets of Guidelines; [the Guidelines on Sound Remuneration under UCITS \[ESMA/2016/575\]](#) and the [Guidelines on Sound Remuneration under the AIFMD \[ESMA/2016/579\]](#)⁴ (“the ESMA Remuneration Guidelines”). The ESMA Remuneration Guidelines supplement the provisions of the respective Level 1 texts and provide more clarity as to the application of the remuneration principles contained therein.

¹ ESMA's final report on the Remuneration Guidelines was published on 31 March 2016.

² Staff whose professional activities might have a material impact on the risk profile as further defined in the Remuneration Guidelines.

³ Unless otherwise specified, reference to AIFM and UCITS Management Companies in this Circular includes self-managed AIFs and self-managed UCITS respectively.

⁴ These Guidelines amend the previously issued Guidelines on sound remuneration policies under the AIFMD (ESMA/2013/232).

(2) The MFSA's Approach

The MFSA had transposed the provisions outlined in Section (1) of this Circular in the Rulebooks as indicated hereunder:

Remuneration Provisions in the AIFM Directive

- Article 13

Transposed in [i] SLC 3.05 and SLC 3.06 of Part BIII of the ISRs for ISPs (for AIFMs) and [ii] SLC 8.68 and SLC 8.69 of Part B of the ISRs for AIFs (for self-managed AIFs).

- Article 22(2)(e) and (f)

Transposed in [i] SLC 2.02 (e) and (f) of Appendix 13 to Part B of the ISRs for ISPs (for AIFMs) and [ii] SLC 2.02 (e) and (f) of Appendix 8 to Part B of the ISRs for AIFs (for self-managed AIFs).

- Annex II

Transposed in [i] Appendix 12 to Part B of the ISRs for ISPs (for AIFMs) and [ii] Appendix 7 to Part B of the ISRs for AIFs (for self-managed AIFs).

Remuneration Provisions in the UCITS Directive

- Article 14a

Transposed in [i] SLC 3.52 – 3.55 of Part BII of the ISRs for ISPs (for UCITS Management Companies) and [ii] SLC 8.01 – 8.04 of Appendix VIII to Part B of the ISRs for Retail Collective Investment Schemes (for self-managed UCITS).

- Article 14b

Transposed in [i] SLC 3.56 – 3.60 of Part BII of the ISRs for ISPs (for UCITS Management Companies) and [ii] SLC 8.05 – 8.09 of Appendix VIII to Part B of the ISRs for Retail Collective Investment Schemes (for self-managed UCITS).

Provisions of the ESMA Remuneration Guidelines

Appendix 12 to Part B of the ISRs for ISPs and Appendix 7 to Part B of the ISRs for AIFs also implement the *Guidelines on sound remuneration policies under the AIFMD (ESMA/2013/232)* which have now been amended with the publication of the ESMA Remuneration Guidelines.

Following the publication of the ESMA Remuneration Guidelines, the MFSA commenced a process of assessing the current regulatory framework on remuneration. This has also been supplemented by the regulatory experience to date, including the outcome of its [thematic review on compliance with the remuneration provisions in terms of the AIFM Directive](#).

The MFSA confirmed to ESMA its intention to comply with both these ESMA Remuneration Guidelines⁵. For this purpose the attention of the financial services industry is being brought to the following regulatory changes:

- (a) the deletion of SLC 2.02 to SLC 12.02 of Appendix 12 to Part B of the ISRs for ISPs;
- (b) the addition of a cross reference to the Remuneration Guidelines in their entirety in Part BII and BIII of the ISRs for ISPs, Part B of the ISRs for AIFs and Appendix VIII to Part B of the ISRs for Retail Collective Investment Schemes;
- (c) the revision of Q&A 1, 63 and 64 of the FAQ on the AIFMD issued by the MFSA; and
- (d) the introduction of new Guidance Notes on the Application of the Proportionality Principle in relation to the ESMA Guidelines on Sound Remuneration Policies under the UCITS Directive and the AIFMD.

The changes outlined above apply with immediate effect as from the date of this Circular. The financial services industry is hereby requested to familiarise itself with the new requirements and the transitional period explained therein.

Any amendments to the Rulebooks following the Authority's Consultations on the Proposed Revised Rulebooks applicable to Collective Investment Schemes issued on 23 November and 27 December 2016 will be communicated to the industry under separate cover.

(3) Contacts

Any queries or requests for clarifications on the contents of this Circular should be addressed to the Securities and Markets Supervision Unit by email on su@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
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⁵ This supersedes the MFSA's position to implement the previous ESMA guidelines without incorporating paragraph 18 and the reference to staff of delegates in the definition of identified staff.