



European Securities and
Markets Authority

Consultation Paper

Guidelines on certain aspects of the MiFID II remuneration requirements



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- **respond to the question stated;**
- **indicate the specific question to which the comment relates;**
- **contain a clear rationale; and**
- **describe any alternatives ESMA should consider.**

ESMA will consider all comments received by **19 October 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be subject to a request for public access to documents and disclosed in accordance with the relevant applicable framework. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This paper is primarily of interest to competent authorities and investment firms that are subject to Directive 2014/65/EU of the European Parliament and of the Council (MiFID II). In particular, this paper is addressed to investment firms and credit institutions providing investment services and activities, investment firms and credit institutions when selling structured deposits, UCITS management companies and external Alternative Investment Fund Managers (AIFMs) when providing investment services and activities in accordance with the UCITS Directive¹ and the AIFMD². This paper is also important for consumer groups, investors and trade associations, because the guidelines seek to implement enhanced provisions to ensure investor protection, with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.



Table of Contents

1	Executive Summary	5
2	Background	6
3	Annexes	13
3.1	Annex I - Summary of questions.....	13
3.2	Annex II - Cost-benefit analysis.....	15
3.3	Annex III - Guidelines	18
3.4	Annex IV - Correlation table between the 'new' draft guidelines and the 2013 guidelines	33

1 Executive Summary

Reasons for publication

In accordance with Article 16(2) of the ESMA Regulation, this paper sets out for consultation draft ESMA guidelines on certain aspects of the MiFID II remuneration requirements.

The remuneration of staff involved in the provision of investment and ancillary services and activities or selling or advising on structured deposits to clients is a crucial investor protection issue.

The purpose of these draft guidelines is to enhance clarity and foster convergence in the implementation of certain aspects of the new MiFID II remuneration requirements, replacing the existing ESMA guidelines on the same topic, issued in 2013³. This Consultation Paper builds on the text of the 2013 guidelines, which have been substantially confirmed (albeit clarified and refined where necessary). In addition, it takes into account new requirements under MiFID II and the results of supervisory activities conducted by national competent authorities (NCAs) on the topic.

By pursuing the objective of ensuring a consistent and harmonised application of the remuneration requirements, the proposed guidelines will make sure that the objectives of MiFID II can be efficiently achieved. ESMA believes that the implementation of these guidelines should strengthen investor protection – a key objective for ESMA.

Contents

Section 2 explains the background of the proposals.

Annex I lists all the questions set out in the consultation paper; Annex II contains the cost-benefit analysis; Annex III contains the full text of the draft guidelines; Annex IV provides for a correlation table between the “new” draft guidelines and the original ones.

Next Steps

ESMA will consider the responses it receives to this consultation paper and expects to publish a final report, and final guidelines, by end of Q1 2022.

³ ESMA/2013/606.

2 Background

Overview

1. The remuneration of staff involved in the provision of investment services to clients is a crucial investor protection issue. While MiFID I did not contain specific requirements on remuneration, it set out the obligations on firms in respect of conflicts of interest⁴ and conduct of business obligations when providing investment and/or ancillary services.⁵
2. In October 2013, ESMA published guidelines on remuneration policies and practices (MiFID) (hereafter the “2013 guidelines”).⁶ The purpose of the guidelines was to enhance clarity and foster convergence in relation to the existing MiFID I conflicts of interest and conduct of business requirements in the area of remuneration. The guidelines focus mainly on the governance and design (criteria) of the remuneration policies and practices as well as on the risks that they can create and how to control them.
3. The importance of the topic of remuneration is highlighted in MiFID II which now contains specific remuneration requirements that, notably, include some of the recommendations set out in the 2013 guidelines.
4. Firstly, Article 9(3)(c) of MiFID II introduces a new, explicit requirement on the management bodies of investment firms to define, approve and oversee a remuneration policy of persons involved in the provision of services to clients. Such remuneration policy shall be aimed at encouraging responsible business conduct, fair treatment of clients as well as avoiding conflicts of interest in the relationships with clients.
5. MiFID II also highlights the issues related to remuneration in the organisational requirements applicable to firms by requiring them to take all appropriate steps to identify and to prevent or manage conflicts of interest, including those caused by the firm’s own remuneration and other incentive structures (Article 23(1) of MiFID II).
6. In addition to these broadly framed organisational requirements, MiFID II also tackles the topic of remuneration in its conduct of business rules: Article 24(10) of MiFID II provides that an investment firm shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients and that, in particular, it should not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the investment firm could offer a different financial instrument which would better meet that client’s needs.

⁴ Articles 13(3) and 18 of MiFID I and Articles 21, 22 and 23 of the MiFID I Implementing Directive.

⁵ Article 19 of MiFID I.

⁶ ESMA/2013/606.

7. It is worth noting that, in addition to the MiFID II specific requirements relating to remuneration, the conflicts of interest and conduct of business obligations nonetheless continue to apply to firms' remuneration policies and practices.
8. In December 2014, ESMA provided technical advice to incorporate some of the content of the 2013 guidelines in the MiFID II delegated acts. Following the ESMA advice the topic of remuneration has been addressed in Articles 2(5), 27 (mostly) and 34 of the MiFID II Delegated Regulation.
9. The MiFID II remuneration framework is thus now mainly set out in Article 27 of the MiFID II Delegated Regulation as well as, on the one hand, regarding the conflicts of interest requirements, in Articles 16(3) and 23 of MiFID II and Article 34 of the MiFID II Delegated Regulation and, on the other hand, regarding the conduct of business rules, in Article 24 of MiFID II. In addition, the governance requirements applicable in the area of remuneration are set out in Article 9(3) of MiFID II.
10. The need to enhance clarity and to foster convergence on some of the above-mentioned aspects has triggered the review and update of the 2013 guidelines.
11. In addition, ESMA also aims to:
 - take into account the results of supervisory activities conducted by national competent authorities (NCAs) on the implementation of the remuneration requirements (including the implementation by firms of the 2013 guidelines); and
 - provide additional detail on some aspects that were already covered under the 2013 guidelines.

General approach followed for the review of the 2013 guidelines

12. MiFID II has highlighted the importance of the topic of remuneration by introducing in the MiFID II framework new and specific requirements relating to remuneration policies and practices. However, a large part of these new requirements comes directly from the 2013 guidelines. For this reason, ESMA has chosen to build upon the text of the 2013 guidelines, which have been substantially confirmed (albeit clarified, refined and supplemented where necessary).
13. ESMA notes that, in order to avoid any unnecessary repetitions, it has deleted from the 2013 guidelines the ones that have been incorporated directly in the MiFID II framework or that have become unnecessary (for instance, guideline 8 on competent authorities' supervision and enforcement of remuneration policies and practices). ESMA however notes that the remaining guidelines have been generally confirmed, as they still provide a valuable contribution in terms of practical examples and clarification on how the requirements should be applied in practice.



14. Taking into considerations all the above, the guidelines have been reorganised and divided in the following sections:
 - I. Design of remuneration policies and practices
 - II. Governance
 - III. Controlling risks that remuneration policies and practices create
15. In order to facilitate the reading of the document, a correlation table between the proposed guidelines and the 2013 guidelines has been set out in Annex IV.

Guidelines on certain aspects of the MiFID II remuneration requirements

Guideline 1 – Design of remuneration policies and practices

16. Section V.I. of the 2013 guidelines – which relates to both governance and design aspects of the remuneration policies and practices - has been split into two different guidelines in the new version. Guideline 1 of the new guidelines relates exclusively to the design of the remuneration policies and practices whilst Guideline 2 focuses on governance aspects.
 17. A large part of Section V.I. of the 2013 guidelines is now incorporated into the MiFID II framework. For instance, the principles developed in paragraph 13 of the 2013 guidelines are now incorporated in Articles 23(1) and 24(10) of MiFID II as well as Article 27(1) of the MiFID II Delegated Regulation. Other parts of Section V.I. of the 2013 guidelines are also now reflected in Level 1 or Level 2 of the MiFID II framework: for instance, paragraphs 14 and 15 of the 2013 guidelines are now incorporated, respectively, in Article 27(1) of the MiFID II Delegated Regulation and Article 24(10) of MiFID II; the first part of paragraph 17 of the 2013 guidelines is reflected in Article 27(4) of the MiFID II Delegated Regulation, etc.
 18. This is reflected in guideline 1 of the new guidelines as the parts which are now Level 1 or Level 2 requirements have been deleted and the remaining paragraphs have been reorganised accordingly.
 19. Consequently, the first part of paragraph 19 of the 2013 guidelines has been promoted to the status of general guideline and amended slightly to reflect that firms should define appropriate criteria to align the interests of the relevant persons or the firms and that of the clients in respect of all types of remuneration, not just variable remuneration. This idea is, incidentally, further developed in newly added paragraph 25 of the new guidelines regarding career progression (as career progression may have an impact on fixed remuneration and is therefore relevant to these guidelines).
- Q1: Do you agree that career progression is likely to have an impact on fixed remuneration and that, consequently, firms should define appropriate criteria to align the interests of the relevant persons or the firms and that of the clients in respect of all types of remuneration (not just in respect of variable remuneration)? Please also state the reasons for your answer.**
- Q2: Do you agree with the suggested approach on career progression? Please also state the reasons for your answer.**
20. The second sentence in general guideline 1 is new and focuses on variable remuneration. This new sentence explicitly introduces the principle of ex-post adjustment of variable remuneration in the new guidelines. This principle was already present in the 2013 guidelines in the form of good practices as well as, implicitly, in paragraph 13 of the 2013 guidelines (which already set out that clients' interests should not be impaired by the firm's remuneration policies and practices in the short, medium but also long

term⁷). In order to align the interests of relevant persons or the firms with the interests of clients on a long term basis, in addition to the deferral of variable remuneration, it is important that firms also consider the possibility to adjust remuneration previously awarded through ex-post adjustment criteria. This principle is further developed in newly added parts of the supporting guidelines (paragraphs 26 to 29 of the new guidelines) in the new guidelines.

Q3: Do you agree that, to align the interests of relevant persons or the firms with the interests of clients on a long term basis, firms should consider the possibility to adjust remuneration previously awarded through the use of ex-post adjustment criteria in their remuneration policies and practices (such as clawbacks and malus)? Please also state the reasons for your answer.

Q4: Do you agree with the suggested approach on ex-post adjustment criteria? Please also state the reasons for your answer.

21. Most of the remaining parts of Section V.I. of the 2013 guidelines have been confirmed as they are in line with NCAs' supervisory practices and still provide a valuable contribution in terms of how the requirements should be applied in practice.

22. In addition, the supporting guidelines have been further expanded (with the inclusion of new paragraphs) to address more explicitly and/or in more details certain aspects of the design of remuneration policies and practices which may not have been so explicitly developed in the 2013 guidelines (see, for instance, new supporting guidelines relating to ex-post adjustment of variable remuneration as mentioned above).

23. Further emphasis has also been put on the remuneration policies and practices for control functions and members of the management body or senior management through the addition of three new paragraphs (paragraphs 34 to 36). Those new paragraphs specify that firms should be particularly attentive when addressing additional conflicts of interests arising from the role that control functions, members of the management body and senior management have in the design and/or overseeing of the remuneration policies and practices of the firm.

Q5: Do you agree with the added focus and suggested approach on the remuneration policies and practices for control functions and members of the management body or senior management? Please also state the reasons for your answer.

24. Lastly, a couple of good practices have been deleted because they became supporting guidelines (thereby evidencing the bolstering of the requirements relating to remuneration policies and practices under MiFID II) or because they should not be considered as good practices anymore but as a requirement. Paragraph 24 of the new guidelines has been added to take into account NCAs' supervisory experience in respect of cross-selling practices.

⁷ Now in Article 27(1) of the MiFID II Delegated Regulation.

Q6: Do you believe that guideline 1 should be further amended and/or supplemented? Please also state the reasons for your answer.

Guideline 2 – Governance of remuneration policies and practices

25. Guideline 2 of the new guidelines focuses on the governance aspects of the MiFID II remuneration requirements. Governance aspects were previously addressed in Section V.I. of the 2013 guidelines.
26. It is now clear from Articles 9(3) of MiFID II and Article 27(3) of the MiFID II Delegated Regulation with whom lies the responsibility of the approval and day-to-day implementation of the remuneration policies and practices. Consequently, paragraph 21 of the 2013 guidelines has been deleted.
27. New general guideline 2 comes from paragraph 25 of the 2013 guidelines, which has been amended to add a reference to Article 9(3) of MiFID II which provides for the periodic review of the remuneration policy. General guideline 2 has been further expanded to stress that the remuneration policy should be reviewed (and amended, if necessary) upon the occurrence of certain *ad hoc* events (changes to the business activities or structure of the firm, if the remuneration policy does not operate as intended or if there is a residual risk of detriment to the firm's clients).

Q7: Do you agree that the remuneration policy should not only be reviewed on a periodic basis but also upon the occurrence of certain *ad hoc* events as described in new general guideline 2? Please also state the reasons for your answer.

28. Paragraphs 40 and 41 of the new guidelines make clear that the persons involved in the design, monitoring and review of the remuneration policy and procedures should be able to access all relevant documents and information useful to understand the background to and decisions that led to such remuneration policies and procedures, so that they may take informed decisions. Paragraph 41 is, however, not entirely new as it is based on paragraph 32 of the old guidelines which provides that the compliance function should have access to all relevant documents. This has been expanded and clarified in the new guidelines.

Q8: Do you agree that the persons involved in the design, monitoring and review of the remuneration policies and practices should have access to all relevant documents and information to understand the background to and decisions that led to such remuneration policies and procedures? Please also state the reasons for your answer.

29. Paragraph 42 of the new guidelines is just a minor clarification of Article 27(3) of the MiFID II Delegated Regulation: as the management body approves, after taking advice from the compliance function, the firm's remuneration policy, the same should apply to any amendments to such policy.

30. Finally, paragraph 44 of the 2013 guidelines has been moved from guideline 2 (*Controlling risks that remuneration policies and practices create*) in the 2013 guidelines to the section focusing on governance as it relates to reporting lines.

Q9: Do you believe that guideline 2 should be further amended and/or supplemented? Please also state the reasons for your answer.

Guideline 3 – Controlling risks that remuneration policies and practices create

31. Section V.II. of the 2013 guidelines becomes Section V.III. and guideline 3 in the new guidelines.
32. As for guidelines 1 and 2 above, the parts which are now incorporated in Level 1 or Level 2 have been deleted (for instance, paragraphs 32 and 33 of the 2013 guidelines). Guideline 3 has thus been reorganised accordingly.
33. In addition, guideline 3 now includes some supporting guidelines which were taking the form of good practices in the 2013 guidelines (for instance, paragraph 50 of the new guidelines). The second example of bad practices in the 2013 guidelines has also been deleted as it would now be more than a bad practice but rather a breach of the MiFID II remuneration requirements.
34. Paragraphs 49 and 52(d) of the new guidelines have also been amended so as to take into account NCAs' supervisory experience.

Q10: Do you agree with the amendments made to guideline 3? Please also state the reasons for your answer.

Q11: Do you believe that guideline 3 should be further amended and/or supplemented? Please also state the reasons for your answer.

35. Lastly, please note that Section V.III. (*Guideline on competent authorities' supervision and enforcement of remuneration policies and practices*) of the 2013 guidelines has been entirely deleted. This section was useful under the MiFID I framework where there was no specific Level 1 or Level 2 requirements relating to remuneration. As the MiFID II framework includes specific Level 1 and Level 2 remuneration requirements, NCAs may conduct supervisory and enforcement actions based on those provisions.

Q12: Do you agree with the deletion of Section V.III. of the 2013 guidelines? Please also state the reasons for your answer.

Q13: Do you agree with the arguments set out in the cost-benefit analysis in Annex IV? Do you think that other items should be factored into the cost-benefit analysis and if so, for what reasons?

3 Annexes

3.1 Annex I - Summary of questions

- Q1: Do you agree that career progression is likely to have an impact on fixed remuneration and that, consequently, firms should define appropriate criteria to align the interests of the relevant persons or the firms and that of the clients in respect of all types of remuneration (not just in respect of variable remuneration)? Please also state the reasons for your answer.**
- Q2: Do you agree with the suggested approach on career progression? Please also state the reasons for your answer.**
- Q3: Do you agree that, to align the interests of relevant persons or the firms with the interests of clients on a long term basis, firms should consider the possibility to adjust remuneration previously awarded through the use of ex-post adjustment criteria in their remuneration policies and practices (such as clawbacks and malus)? Please also state the reasons for your answer.**
- Q4: Do you agree with the suggested approach on ex-post adjustment criteria? Please also state the reasons for your answer.**
- Q5: Do you agree with the added focus and suggested approach on the remuneration policies and practices for control functions and members of the management body or senior management? Please also state the reasons for your answer.**
- Q6: Do you believe that guideline 1 should be further amended and/or supplemented? Please also state the reasons for your answer.**
- Q7: Do you agree that the remuneration policy should not only be reviewed on a periodic basis but also upon the occurrence of certain *ad hoc* events as described in new general guideline 2? Please also state the reasons for your answer.**
- Q8: Do you agree that the persons involved in the design, monitoring and review of the remuneration policies and practices should have access to all relevant documents and information to understand the background to and decisions that led to such remuneration policies and procedures? Please also state the reasons for your answer.**
- Q9: Do you believe that guideline 2 should be further amended and/or supplemented? Please also state the reasons for your answer.**
- Q10: Do you agree with the amendments made to guideline 3? Please also state the reasons for your answer.**
- Q11: Do you believe that guideline 3 should be further amended and/or supplemented? Please also state the reasons for your answer.**



Q12: Do you agree with the deletion of Section V.III. of the 2013 guidelines? Please also state the reasons for your answer.

Q13: Do you agree with the arguments set out in the cost-benefit analysis in Annex IV? Do you think that other items should be factored into the cost-benefit analysis and if so, for what reasons?

3.2 Annex II - Cost-benefit analysis

1. The remuneration of staff involved in the provision of investment services to clients is a crucial investor protection issue. While MiFID I did not contain specific requirements on remuneration, it set out the obligations on firms in respect of conflicts of interest⁸ and conduct of business obligations of firms when providing investment and/or ancillary services.⁹
2. ESMA published the 2013 guidelines to enhance clarity and foster convergence in the implementation of the MiFID I conflicts of interests and conduct of business requirements with respect to firms' remuneration policies and practices.
3. MiFID II recognised further and highlighted the importance of the topic of remuneration. The MiFID II framework now contains specific remuneration requirements that, notably, include some of the recommendations set out in the 2013 guidelines.
4. The purpose of these draft guidelines is to enhance clarity by emphasising a number of important issues, and to foster convergence in the implementation of the MiFID II remuneration requirements. The aim is to help firms to improve their implementation of these requirements and thereby enhance existing standards.
5. For firms, effective remuneration policies and practices that take into account clients' interests and align the interests of the firm and of relevant persons with them leads to better investor outcome. Greater convergence leads to improved investor protection (consumer outcomes), which is a key ESMA objective.

The impact of the draft ESMA guidelines

6. In light of the main objectives of these draft Guidelines (extensively illustrated in the background), the following preliminary assessment aims at explaining the benefits and costs of the key policy choices that are presented for consultation.
7. It should be preliminary observed that since the remuneration requirements are provided under MiFID II and the MiFID II Delegated Regulation, the impact of the proposed guidelines should be considered having in mind those legal provisions that they support. While market participants will likely incur certain costs for implementing these guidelines, they will also benefit from the increased legal certainty and the harmonised application of the requirements across Member States. The proposed Guidelines should also facilitate competent authorities' efforts to improve the overall compliance with MiFID requirements increasing the investor confidence in the financial markets, which is considered necessary for the establishment of a genuine single capital market. Lastly, greater convergence leads to improved investor protection (consumer outcomes), which is a key ESMA objective.

⁸ Articles 13(3) and 18 of MiFID I and Articles 21, 22 and 23 of the MiFID I Implementing Directive.

⁹ Article 19 of MiFID I.

8. Finally, it is important to remind that those existing 2013 guidelines which are confirmed should not imply any additional impacts/costs for both firms and NCAs.

Benefits

9. It is possible to illustrate the main benefits linked to the proposed Guidelines as follows:
 - a) better convergence and clarity and, consequently, the reduction of the compliance risk and its related financial and reputational consequences;
 - b) stronger remuneration policies and practices taking into account clients' interests which lead to better client outcome and satisfaction;
 - c) reduction of risks linked to regulatory or supervisory arbitrage due to an increased degree of harmonisation and more consistent supervisory convergence;
 - d) positive effects from improved harmonisation and standardisation of the processes that firms have to put in place when implementing the MiFID II remuneration requirements;
 - e) positive effects from improved harmonisation and standardisation for competent authorities on the costs and activities needed to implement the new supervisory processes related to the remuneration requirements;
 - f) restoring investors' confidence in financial markets.

Costs

10. With reference to the costs, it should be firstly reminded that the importance of firms' remuneration policies and practices already stemmed from the MiFID I conflicts of interests and conduct of business requirements. The importance of firms' remuneration policies and practices in the pursuit of clients' best interests was also stressed in the 2013 guidelines.
11. In light of what has been said, it can be reasonably expected that those firms having already in place a complete set of arrangements to comply with the provisions, principles and good practices issued under the MiFID I conflict of interests and conduct of business requirements in the area of remuneration as well as the 2013 guidelines will presumably incur less overall costs when implementing the new framework and these guidelines.
12. ESMA considers that potential and incremental costs that firms will face when implementing the remuneration requirements under the MiFID II regime (including but not limited to these draft guidelines) might have both one-off and ongoing nature, arguably linked to:
 - a) (direct) costs linked to the update/review of the existing procedures and practices as well as, potentially, the firms' organisational arrangements (e.g. the review and/or the update of the firm's arrangements to assess staff performance); and

b) (direct) initial and ongoing IT costs.

13. ESMA believes that the proposed options in this area provide the most cost-efficient solution to achieving the general objectives of these Guidelines.

Conclusions

14. In light of what has been illustrated above, ESMA believes that the overall (compliance) costs associated with the implementation of the new regime on the remuneration requirements (which includes the proposed guidelines) will be fully compensated by the benefits from the highlighted and clarified importance of the remuneration requirements and from the subsequent reduction of compliance risk and improved investor protection. These benefits will interest all the market participants contributing to the restoration of the fundamental trust in the financial markets.
15. ESMA also considers that the proposed guidelines are able to achieve an increased level of harmonisation in the interpretation and application of the remuneration requirements across Member States, minimising the potential adverse impact on firms linked to compliance costs. These benefits will outweigh all associated costs in respect of these Guidelines.
16. Finally, ESMA believes that the adoption of guidelines is the best tool to achieve the explained objectives since this topic is already covered by existing guidelines. Furthermore, the adoption of guidelines further reduces the risk of diverging interpretations that might lead to discrepancies in the application and supervision of the relevant regulation and requirements across Member States (determining a risk of regulatory arbitrage and circumvention of rules).



3.3 Annex III - Guidelines

I. Scope

Who?

1. These guidelines apply to competent authorities and firms.

What?

2. These guidelines apply in relation to the provision of the investment services listed in Section A of Annex I of MiFID II and ancillary services listed in Section B thereof, as well as in relation to the sale of or advice on structured deposits.

When?

3. These guidelines apply from [dd/mm/yyyy].
4. The Guidelines on remuneration policies and practices (MiFID)¹⁰ issued under MiFID I will cease to apply on the same date.

II. Legislative references, abbreviations and definitions

Legislative references

<i>AIFMD</i>	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ¹¹
<i>CRR</i>	Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ¹²
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ¹³

¹⁰ ESMA/2013/606.

¹¹ OJ L 174, 01.07.2011, p.1-73.

¹² OJ L 176, 27.6.2013, p. 1-337.

¹³ OJ L 331, 15.12.2010, p. 84.



<i>MiFID II</i>	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 ¹⁴
<i>MiFID II Delegated Regulation</i>	Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive
<i>UCITS Directive</i>	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

Abbreviations

<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union

Definitions

5. Unless otherwise specified, terms used in MiFID II and the MiFID II Delegated Regulation have the same meaning in these guidelines.
6. In addition, for the purposes of these guidelines, the following definitions apply:

<i>firms</i>	investment firms (as defined in Article 4(1)(1) of MiFID II), credit institutions (as defined in Article 4(1)(1) of the CRR) when providing investment services and activities within the meaning of Article 4(1)(2) of MiFID II, investment firms and credit institutions when selling or advising clients on structured deposits, UCITS management companies and external Alternative Investment Fund Managers (AIFMs) (as defined in Article 5(1)(a) of the AIFMD) when providing the investment services or non-core services listed in Article 6(3) of the UCITS Directive and Article 6(4) of the AIFMD.
<i>quantitative criteria</i>	primarily numeric or financial data that is used to determine the remuneration of a relevant person (e.g. value of

¹⁴ OJ L 173, 12.06.2014, p. 349.

instruments sold, sales volumes, establishment of targets for sales or new clients, etc.).

qualitative criteria

primarily criteria other than quantitative criteria. It can also refer to numeric or financial data used to assess the quality of the relevant person's performance and/or service to the client e.g. return on the client's investment, very low number of complaints over a large timescale, etc.

7. Guidelines do not reflect absolute obligations. For this reason, the word 'should' is often used. However, the words 'shall', 'must' or 'required to' are used when describing a MiFID II or MiFID II Delegated Regulation requirement.

III. Purpose

8. The purpose of these guidelines is to ensure the common, uniform and consistent application of the MiFID II remuneration requirements set out in Article 27 of the MiFID II Delegated Regulation as well as, on the one hand, the conflicts of interest requirements set out in Articles 16(3) and 23 of MiFID II and Article 34 of the MiFID II Delegated Regulation in the area of remuneration; and on the other hand, the conduct of business rules set out in Article 24(1) and (10) of MiFID II. In addition, these guidelines clarify the application of the governance requirements in the area of remuneration under Article 9(3) of MiFID II.
9. ESMA expects these guidelines to promote greater convergence in the interpretation of, and supervisory approaches to, the MiFID II remuneration requirements as well as the MiFID II conflicts of interest and conduct of business requirements in the area of remuneration by emphasising a number of important issues, and thereby enhancing the value of existing standards. By helping to ensure that firms comply with regulatory standards, ESMA anticipates a corresponding strengthening of investor protection.

IV. Compliance and reporting obligations

Status of the guidelines

10. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with these guidelines.
11. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

Reporting requirements

12. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
13. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
14. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.
15. Financial market participants are not required to report whether they comply with these guidelines.

V. Guidelines on certain aspects of the MiFID II remuneration requirements

V.I. DESIGN OF REMUNERATION POLICIES AND PRACTICES

Relevant legislation: Articles 16(3), 23 and 24(10) of MiFID II as well as Articles 27 and 34 of the MiFID II Delegated Regulation

Guideline 1

16. When designing remuneration policies and practices in accordance with the requirements under Article 27 of the MiFID II Delegated Regulation, firms should define appropriate criteria to align the interests of the relevant persons and of the firms with that of the clients. For variable remuneration, such criteria aligning the interests of the relevant persons and of the firms with that of the clients should allow the firms to assess the performance of relevant persons.
17. In order to do so and in accordance with Article 27(4) of the MiFID II Delegated Regulation, firms shall consider qualitative criteria that encourage the relevant persons to act in the best interests of the client. Examples of appropriate qualitative criteria include compliance with regulatory requirements such as conduct of business rules (in particular, the review of the suitability of instruments sold by relevant persons to clients, if relevant) and internal procedures, fair treatment of clients and client satisfaction.
18. Qualitative criteria used by firms in their remuneration policies and practices should be sufficiently and clearly defined and documented to ensure that they are not being used to indirectly reintroduce quantitative commercial criteria that may create conflicts of interests or incentives that may lead relevant persons to favour their own interests or

their firm's interests to the potential detriment of any client. For instance, if a firm uses client satisfaction as a qualitative criterion in the determination of the variable remuneration of relevant persons, it should be clear from the remuneration policy how the firm will be measuring staff performance in this respect with the remuneration policy indicating what data will be used, any thresholds applicable, etc so as to avoid creating a vague criteria that may be used by the firm to, instead, reward sales or pressure sales staff to sell certain products (although the remuneration policy would not be indicating such quantitative commercial criteria as performance indicators).

19. Regarding quantitative criteria, firms should ensure to take into account criteria that do not create conflicts of interests or incentives that may lead relevant persons to favour their own interests or their firm's interests to the potential detriment of any client. For example, firms may take into account in their remuneration policy, if appropriate with the investment services provided, the investment return on clients' portfolios/investments, taking into account the clients' investment horizon (short, middle or long term) and risk profile (to mitigate any risk of excessive risk taking). To do so, a firm may use information-gathering tools to assess the investment returns received by clients over various timelines in respect of the investment services provided by relevant persons who are remunerated by variable remuneration. Or, firms may assign sales objectives to staff provided that such commercial objectives do not create an incentive for sales staff to recommend only certain products to the detriment of clients' best interest (for instance, group products or those that are more lucrative to the firm or group) and that any remaining conflicts of interests are properly mitigated through the use of other equally weighted criteria such as staff's performance regarding suitability requirements or clients' satisfaction.
20. The weights attributed to the criteria used to determine the remuneration should not be such that they render some of the criteria, especially qualitative ones, insignificant or that they give others, especially quantitative commercial ones, too much significance.
21. When designing remuneration policies and practices in accordance with the requirements under Article 27 of the MiFID II Delegated Regulation, firms should consider all relevant factors such as, but not limited to, the role performed by relevant persons, the type of products offered, and the methods of distribution (e.g. advised or non-advised, face-to-face or through telecommunications/electronic communications) in order to prevent potential conduct of business and conflict of interest risks from adversely affecting the interests of their clients and to ensure that the firm adequately manages any related residual risk.
22. Without prejudice to the requirement in the second subparagraph of Article 27(4) of the MiFID II Delegated Regulation, the remuneration policies and practices in place should allow the operation of a flexible policy on variable remuneration, including, where relevant, the possibility to pay no variable remuneration at all.¹⁵

¹⁵ When determining the remuneration for tied agents, firms may take the tied agents' special status (usually as self-employed commercial agents) and the respective national specificities into consideration.

23. Regarding variable remuneration, firms should avoid setting performance targets that may incentivise the relevant persons to adopt behaviours focused on short-term gains to meet the relevant thresholds such as “all or nothing targets” when those might create a conflict of interest or impair clients’ interests. Firms should favour remuneration policies and practices in which the variable part of the remuneration paid out is calculated and awarded on a linear basis or where the variable part depends on several performance targets set at different levels and giving rights to different amounts or, preferably, different rates of variable remuneration.
24. When designing and implementing their remuneration policies, firms should take into account possible conflicts of interests or risks of impairing clients’ interests stemming from cross-selling objectives imposed on relevant persons. For instance, specific attention should be paid to situations where relevant persons would be encouraged to make the grant of better conditions under a mortgage loan to a client dependent on the condition that this client buys a specific financial instrument which is part of the relevant persons’ sales objectives.
25. In accordance with Recital 40 of the MiFID II Delegated Regulation, firms’ remuneration policies and practices should also ensure that the criteria used to assess career progression comply with the MiFID II remuneration requirements. For instance, firms’ career progression management systems should not be used to reintroduce quantitative commercial criteria upon which may depend relevant persons’ career advancement and having an impact on their (fixed and/or variable) remuneration that may create conflicts of interests that may encourage such relevant persons to act against the interests of their firms’ clients.
26. Firms should consider including ex-post adjustment criteria of the variable remuneration in their remuneration policies and practices in order to further discourage relevant persons to disregard client’s interests or favour their own interests (for instance, by investing in products with higher short term returns but presenting more risks in the long term or not suitable to the client’s investment horizon) in order to attain short-term performance objectives. Ex-post adjustment criteria should allow firms to further align the interests of the firm and of relevant persons with that of clients by adjusting variable remuneration if a negative staff performance outcome (for instance, misconduct) appears after the remuneration has been awarded or paid-out. For such criteria to be effective, firms should consider including in their remuneration policies and practices appropriate ex-post adjustment mechanisms such as the application of malus (i.e. the reduction of value of all or part of deferred variable remuneration based on ex-post risk adjustments before it has vested) and clawbacks (i.e. the return of ownership of an amount of variable remuneration paid in the past or which has already vested to the institution under certain conditions).
27. Ex-post adjustment mechanisms referred to in the previous paragraph should be triggered by relevant events impacting the firm’s or relevant persons’ compliance with the applicable provisions under MiFID II and its delegated acts aiming at the fair treatment of clients and the quality of services provided to clients. Relevant events impacting the firm’s and relevant persons’ compliance with applicable regulations should

not be limited to those giving rise to regulatory action, fines or sanctions but should take into account confirmed failings or breaches. Ex-post adjustment mechanisms should not be limited to the relevant persons who engaged directly in misconduct but should also be applied to the relevant persons whose responsibilities and roles include the areas where the relevant events crystallised, provided that such relevant persons have an impact, directly or indirectly, on the investment and ancillary services provided or on the corporate behaviour of the firm. As such, adjustment mechanisms may, depending on the relevant event, be applied collectively, to a particular business unit or department or at individual level.

28. The application of ex-post adjustment mechanisms should take into account the seriousness of any failings or misconduct impairing clients' interests.
29. In order for ex-post adjustment mechanisms to be meaningful, firms should consider paying the variable remuneration partly upfront and partly deferred, in an appropriate balance between the part paid upfront and the one deferred, and according to an appropriate deferral schedule allowing for the interests of the relevant persons and of the firms to be aligned with the interests of clients.
30. Furthermore, firms should adopt and maintain measures enabling them to effectively identify where the relevant person fails to act in the best interests of the client and to take remedial action.
31. Relevant persons should be clearly informed, at the outset, of the criteria that will be used to determine the amount of their remuneration, the weight attributed to each, the consequences of not meeting one or the other and the steps and timing of their performance reviews. The criteria used by firms to assess the performance of relevant persons should be accessible, understandable and recorded.
32. Firms should avoid creating unnecessarily complex policies and practices (such as combinations of different policies and practices, or multi-faceted or multi-layered schemes, which increase the risk that relevant persons' behaviour will not be driven to act in the best interests of clients, and that any controls in place will not be as effective to identify the risk of detriment to the client). This may potentially lead to inconsistent approaches and hamper proper knowledge or control of the policies by the compliance function. The Annex to these guidelines sets out illustrative examples of remuneration policies and practices that create risks that may be difficult to manage due to their complexity, and that give strong incentives to sell specific products.
33. Firms should ensure that the organisational measures they adopt regarding the launch of new products or services appropriately take into account their remuneration policies and practices and the risks that these products or services may pose. In particular, before launching a new product, firms should assess whether the remuneration features related to the distribution of that product comply with the firm's remuneration policies and practices and therefore do not pose conduct of business and conflicts of interest risks. This process should be appropriately documented by firms.

34. In order to avoid conflicts of interests with respect to their role in the design and/or overseeing of the remuneration policies and practices of the firm, the design of the remuneration policies and practices applicable to control functions (risk management and internal audit functions, where established)¹⁶, management body and senior management of the firm should not compromise their objectivity and independence.
35. As such, the remuneration of control functions' staff should be based on function-specific objectives. In addition, the variable part of the remuneration of staff in control functions, if any, should not be linked to quantitative commercial performance of relevant persons whose remuneration they are in charge of designing and/or controlling. Where the remuneration of the control functions' staff includes a component based on the firm's commercial performance (e.g. sales volume), the risk of conflicts of interest may increase and should be properly addressed through the use of appropriate qualitative performance or adjustment criteria.
36. Similarly, the structure of the remuneration of members of the management body and of the senior management of the firm, as well as the criteria used to assess performance, should not create conflicts of interest or incentives that may lead members of the management body or senior management of the firm or relevant persons in the firm to favour their own interests or the firm's interests to the potential detriment of any client.
37. Examples of good practice:
 - a. References used in the calculation of variable remuneration of relevant persons are common across products sold.
 - b. In the case of an open-ended investment with no investment term, the remuneration is deferred for a set number of years or until the encashment of the product.
 - c. Payment of variable remuneration may be aligned with the investment term or deferred in order to ensure that the product sold does in fact take into consideration the final return of the product for the client and, where applicable, an adjusted award of variable remuneration is made.
 - d. Employees are paid in relation to both volume of products sold and effective return of these products for the client over an appropriate timeframe. In this instance, the assessment of financial data is used as a measure of the quality of the service provided.
38. Examples of poor practice:
 - a. A firm has started offering advisers specific additional remuneration to encourage clients to apply for new fund products in which the firm has a specific interest. This often involves the relevant person having to suggest that their clients sell products

¹⁶ Article 22(3)(e) of the MiFID II Delegated Regulation applies in respect of the compliance function.

that they would otherwise recommend they retain so they can invest in these new products.

- b. Managers and employees receive a large bonus linked to a specific product. As a result, the firm's advisors recommend this specific product irrespective of the suitability of this product for the clients addressed¹⁷. Warnings from the risk manager are ignored because the investment products generate high returns for the firm. When the risks that had been identified occur, the products have already been sold and the bonuses have already been paid out.
- c. The variable component of the total remuneration is based only on volumes sold, and increases the relevant person's focus on short-term gains rather than the client's best interest.
- d. Relevant persons engage in frequent buying and selling of financial instruments in a client's portfolio in order to earn additional remuneration without considering the suitability of this activity for the client. Likewise, rather than considering the suitability of a product for a client, relevant persons focus on the sale of products that have a short investment term in order to earn remuneration from re-investing the product after the short term.
- e. Regulatory breaches under MiFID II and its delegated acts that impair clients' interests are identified by the competent authority supervising the firm but no financial sanctions are imposed on the firm as non-compliance has since been remedied. The firm decides to allocate the maximum fixed and variable remuneration for the year to its board members on the basis that the other criteria were met, thereby not drawing the consequences of the firm's non-compliance with its regulatory obligations and its board members' role in it.

V.II. GOVERNANCE

Relevant legislation: Article 9(3) of MiFID II and Article 27(3) of the MiFID II Delegated Regulation

Guideline 2

- 39. Firms should have a written remuneration policy which, in accordance with Article 9(3) of MiFID II, shall be periodically reviewed. In addition, it should be reviewed upon any relevant amendment to the business activities or structure of the firm. Where the review reveals that the remuneration policy does not operate as intended or that there is a residual risk of detriment to the firm's clients stemming from it (crystallised or not), the remuneration policy should be amended in a timely and efficient manner.
- 40. Proper documentation on the remuneration policy as well as the decision-making process and procedures that lead to its approval or amendment should be maintained in

¹⁷ In that case, the firm would also breach applicable suitability requirements.

a clear and transparent manner and made available to the management body and senior management as well as other control functions involved in the design, monitoring and/or review of the remuneration policy and procedures.

41. In order to fulfil its advisory role regarding the firm's remuneration policy as per Article 27(3) of the MiFID II Delegated Regulation, the compliance function should have access to all relevant documents and information regarding the remuneration of relevant persons, including regarding the remuneration of members of the management body and senior management.
42. The management body, after taking advice from the compliance function, should approve any significant amendment made to the remuneration policy of the firm.
43. Depending on the size of the firm and complexity of its business model and of the investment services and activities provided, the review of the remuneration policy may also require the involvement of other control functions (such as the risk management and/or internal audit functions) to ensure that appropriate performance and risk adjustment criteria are used.
44. Senior management is responsible and should retain the ultimate responsibility for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the policy.
45. Firms should ensure that they have appropriate and transparent reporting lines in place across the firm or group to assist in escalating issues involving risks of non-compliance with the MiFID II remuneration, conflicts of interest and conduct of business requirements.

V.III. CONTROLLING RISKS RELATED TO REMUNERATION POLICIES AND PRACTICES

Relevant legislation: Articles 9(3) of MiFID II and Article 27(3) of the MiFID II Delegated Regulation

Guideline 3

46. Firms should set up adequate controls to assess the compliance with their remuneration policies and practices to ensure that they deliver the intended outcomes. The controls should be implemented throughout the firm and be subject to periodic review. Such controls should include assessing the quality of the service provided to the client - for example, monitoring calls for telephone sales, sampling of advice and client portfolios provided to check suitability or going through other client documentation on a periodic basis.
47. To carry out such controls in an effective and risk-based manner, firms should use a wide range of information on business quality monitoring and sales patterns, including trend and root-cause analysis, to identify areas of increased risk and to support a risk-based

approach to sales monitoring, with particular focus on high performing relevant persons (regarding sales for instance).

48. Firms should ensure that the results of such analyses and controls are clearly documented and reported to senior management together with proposals for corrective action, if necessary. The compliance function should also assist senior management in monitoring effectively the compliance risks related to the remuneration policy of the firm (based also on the ex-post controls conducted in line with this guideline). Where potential or actual client detriment might arise as a result of specific features in remuneration policies and practices, firms should take appropriate steps to manage potential conduct of business and conflict of interest risks by reviewing and/or amending these specific features, and set up appropriate controls and reporting mechanisms for taking appropriate action to mitigate potential conduct of business and conflict of interest risks.
49. When outsourcing the provision of investment services, firms should have in mind the best interests of the client. Where a firm is seeking to use another firm for the provision of services it should check that the other firm's remuneration policies and practices follow an approach consistent with these guidelines. In addition, firms should avoid setting overly complicated outsourcing or distribution structures (including through the use of tied agents) which may make it difficult for the firm to monitor the compliance risks with these guidelines and with the conflicts of interest and conduct of business policies and procedures in the area of remuneration or increase the risk of detriment to clients' interests.
50. Firms should make sure to assess, on a regular basis, whether the information management tools it uses adequately capture the qualitative data required to determine the variable remuneration it pays to relevant persons.
51. Examples of good practice:
 - a. In order to assess whether its incentive schemes are appropriate, a firm undertakes a programme of contacting a sample of clients shortly after the completion of a sale involving a face-to-face sales process where it is not able to monitor recorded telephone sales conversations, so as to test if the salesperson has acted honestly, fairly and professionally in accordance with the best interests of the client.
 - b. Top earners and performers are recognised as being potentially higher risk and, as a result, additional scrutiny is given to them; and information such as previous compliance results, complaints or cancellation data is used to direct compliance checking. The outputs have an impact on the design/review of the remuneration policy and practices.
52. Example of poor practice:
 - a. A firm mainly relies on quantitative commercial data as the criteria for assessing variable remuneration.

- b. Senior management has set various strategic goals for the firm to be reached in a certain year. All goals seem to focus solely on financial or commercial aspects without taking into account the potential detriment to the firm's clients. The remuneration policy will be in line with these strategic goals and will therefore have a strong short-term financial and commercial focus.
 - c. Despite the care taken in designing and assessing remuneration policies and practices, some policies and practices still lead to client detriment, creating risks that need to be identified and mitigated.
 - d. To distribute its products, a firm relies on a multi-level sales network (consisting solely of personnel or third-party distributors which are remunerated according to the volume of transactions of the clients captured directly by themselves, and their ranking in the sales structure of the firm. The sales structure of the firm is organised by multi-level groups of individuals coordinated by another individual called "supervisor" or "manager" and who is in charge of the support, training, coordination and supervision of the structure. These supervisors or managers are also tasked with the recruiting of other individuals. Where such sales structures have many levels of agents, this may make it difficult for the firm to monitor the compliance risks with these guidelines for each level (especially the most remote) and the whole structure.
53. The Annex to these guidelines includes illustrative examples of remuneration policies and practices that would create strong incentives to sell specific products and for which firms would therefore have difficulties demonstrating compliance with the MiFID requirements. The conduct of business and conflict of interest risks related to such examples should be taken into account by firms when designing and implementing their remuneration policies and practices.

VI. Annex

Illustrative examples of remuneration policies and practices that create conflicts that may be difficult to manage

Certain remuneration features (for example, the basis of pay, running performance-based competitions for relevant persons) involve higher risk of potential damage to clients than others (specifically those that include features which may have been designed to affect the behaviour of relevant persons, especially the sales force). Examples of high-risk remuneration policies and practices that will generally be difficult to manage, and where it would be difficult for a firm to demonstrate compliance with MiFID II, include:

1. Incentives that might influence relevant persons to sell, or 'push', one product or category of product rather than another or to make unnecessary/unsuitable acquisitions or sales for the investor: especially situations where a firm launches a new product or pushes a specific product (e.g. the product of the month or "in-house products") and incentivises relevant persons to sell that specific product. Where the incentive is different for different types of products, there is a high risk that relevant persons will favour selling the product that results in higher remuneration instead of another product without appropriate regard to what is in the client's best interests.
 - a. Example: A firm has remuneration policies and practices linked to individual product sales where the relevant person receives different levels of incentives depending on the specific product or category of products they sell.
 - b. Example: A firm has remuneration policies and practices linked to individual product sales, where the relevant person receives the same level of incentive across a range of products. However, at certain limited times, to coincide with promotional or marketing activity, the firm increases the incentive paid on the sales of certain products.
 - c. Example: Incentives that might influence relevant persons (who may be remunerated solely by commission, for example) to sell unit trusts rather than investment trusts – where both products may be equally suitable for clients - because sales of unit trusts pay substantially higher commissions.
2. Inappropriate requirements that affect whether incentives are paid: remuneration policies and practices which include, say, a requirement to achieve a quota of minimum sales levels across a range of products in order to earn any bonus at all is likely to be incompatible with the duty to act in the best interests of the client. Conditions which must be met before an incentive will be paid may influence relevant persons to sell inappropriately. For example, where no bonus can be earned on sales unless a minimum target is met for each of several different product types, this may impact on whether suitable products are recommended. Another example is where a reduction is made to a bonus or incentive payments earned because a secondary target or threshold has not been met.

- a. Example: A firm has relevant persons who sell a range of products that meet different client needs, and the product range is split into three ‘buckets’ based on the type of client need. Relevant persons can accrue incentive payments for each product sold, however at the end of each monthly period no incentive payment is made if they have not reached at least 50% of the sales target set for each ‘bucket’.
 - b. Example: A firm sells products with a range of optional ‘add-on’ features. The relevant person receives incentive payments for all sales, with an additional payment if the client purchases an add-on feature. However, at the end of each monthly period no incentive payment is made if they have not achieved a penetration rate of at least 50% of products sold with an add-on feature.
3. Variable salaries where the arrangements vary base pay (up or down) for relevant persons based on performance against sales targets: in such cases, the relevant person’s entire salary can become – in effect – variable remuneration.
- a. Example: A firm will reduce a relevant person’s basic salary substantially if he or she does not meet specific sales targets. There is therefore a risk that he or she will make inappropriate sales to avoid this outcome. Equally, relevant persons may be strongly motivated to sell by the prospect of increasing basic salary and associated benefits.
4. Remuneration policies and practices which create a disproportionate return for marginal sales: where relevant persons need to achieve a minimum level of sales before incentive payments can be earned, or incentives are increased, the risk is increased. Another example would be schemes that include ‘accelerators’ where crossing a threshold increases the proportion of bonus earned. In some cases, incentives are payable retrospectively based on all sales rather than just those above a threshold, potentially creating significant incentives for relevant persons to sell particular products in particular circumstances.
- a. Example: A firm makes accelerated incentive payments to relevant persons for each product sold during a quarterly period as follows:
 - **0-80% of target** **no payments**
 - **80-90% of target** **50€ per sale**
 - **91-100% of target** **75€ per sale**
 - **101-120% of target** **100€ per sale**
 - **>120% of target** **125€ per sale**

This example can also apply where the relevant person receives an increasing share of commission or income generated.

- b. Example: A firm has the same accelerated scale as the firm in the foregoing example, but the increase in payments per sale is applied retrospectively to all sales in the quarter, e.g. on passing 91% of target the incentive payments accrued to date at the rate of €50 per sale are increased to €75 per sale. This creates a series of 'cliff edge' points, where one additional sale required to reach a higher target band causes a disproportionate increase in the incentive payment.

3.4 Annex IV - Correlation table between the ‘new’ draft guidelines and the 2013 guidelines

New guidelines	2013 guidelines
Design of remuneration policies and practices Guideline 1	V.I Governance and design of remuneration policies and practices in the context of the MiFID conduct of business and conflicts of interest requirements
Governance Guideline 2	
Controlling risks that remuneration policies and practices create Guideline 3	V.II. Controlling risks that remuneration policies and practices create
n/a	V.III. Guideline on competent authorities’ supervision and enforcement of remuneration policies and practices