



CNMV Communication relating to the ESMA guidelines on sound remuneration policies of management companies of collective investment schemes

INSTITUTIONS GENERAL DIVISION

28 december 2016

On the 14th of October of 2016, the European Securities and Markets Authority (ESMA) published on its webpage the “Guidelines on sound remuneration policies under the UCITS Directive” and the “Guidelines on sound remuneration policies under the AIFMD” (the latter amending the previous Guidelines ESMA/2013/232). Both sets of Guidelines come into force on the 1st of January of 2017, subject to the transitional provisions established in them.

The Guidelines on sound remuneration policies under the UCITS Directive establish the criteria and requirements in relation to remuneration policies demanded of managers of harmonized investment funds (UCITS). The Guidelines cover the following aspects: concept of remuneration; identification of the staff subject to these Guidelines; proportionality principle; remuneration at management companies that are part of a group; application of different sectoral rules; remuneration taking into account the financial situation of the management companies; corporate governance of remuneration; general and specific requirements of risk alignment; transparency regarding remuneration.

In relation to the above-mentioned aspects, it should be emphasized that these Guidelines, unlike the Guidelines on remuneration under the Alternative Investment Fund Managers Directive (AIFMD), does not provide any specific criterion in relation to the application of the proportionality principle, merely reproducing the general reference to that principle contained in the level 1 Directive.

In relation to the employees subject to the Guidelines, according to such guidelines they are the members of staff whose professional activities have a material impact on the management company’s risk profile and the risk profiles of the funds that it manages, as well as the staff of entities to which risk management and/or portfolio management activities may have been delegated by the management company (members of the board of directors, portfolio management executives, administration, marketing..., staff that perform control functions...).

In addition, the AIFMD remuneration guidelines are amended to recognize the application of the Guidelines on the remuneration of banks of the European Banking Authority (EBA), if the management company is part of a banking group and the staff of the management company have a material impact on the group’s risk profile.

The Guidelines have been issued pursuant to article 16 of Regulation no. 1095/2010 of the European Parliament and of the Council of 24 November 2010, which regulates the creation of the ESMA, in which it is set that the competent authorities and the financial market participants shall make every effort to comply with these Guidelines. In addition, the ESMA Regulation also establishes the obligation of the competent authorities to confirm whether they intend to comply with the Guidelines which may be published by the ESMA.

The Spanish National Securities Market Commission (CNMV) has notified to the ESMA its intention to comply with the Guidelines. Therefore, the CNMV is going to take them into careful consideration in its supervisory procedures.

In the application of the proportionality principle by the management companies of UCITS (as has been pointed out, the Guidelines on remuneration relating to them do not contain specific rules in relation to this principle), the CNMV intends to adopt as a reference the criteria contained in the Guidelines relating to management companies of alternative funds.

This means, on the one hand, the possibility of not applying certain rules, such as the partial deferral rule or the rule on payment of a portion in financial instruments, and, on the other hand, an application adapted to the characteristics of each institution of the principle of balance between the fixed and variable components of remuneration, i.e. that the fixed component must constitute a sufficiently significant portion of the total remuneration (this principle is stated in general terms in this regard, without indicating any percentage limit). In this respect, it is considered that this principle of balance, in this area of the management companies, is compatible with the possibility of the variable portion of the remuneration exceeding double the fixed remuneration.