Committee of European Banking Supervisors
Tower 42, Level 18
25 Old Broad Street
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By email to CP42@c-ebs.org

8 November 2010

Dear Sirs

Consultation Paper on Guidelines on Remuneration Policies and Practices ("CP42")

Artemis Investment Management LLP ("Artemis") welcomes the opportunity to comment on the proposed guidelines on remuneration policies and practices contained in CP42.

Artemis manages an asset base of some £10.6bn and has become one of the leading fund management groups in the UK. Clients' investments are spread across a range of unit trusts, an investment trust, hedge fund products, a venture capital trust, an international SICAV as well as segregated and pooled institutional portfolios. Through its retail unit trust range, Artemis manages money on behalf of more than 100,000 private investors. The Artemis philosophy requires our fund managers to invest in Artemis funds. This means that our fund managers' interests are directly aligned with our investors.

In March of this year Artemis became an affiliate of Affiliated Managers Group, Inc ("AMG"), a NYSE listed global asset management company with equity investments in leading boutique investment management firms. On 1 October, Artemis became a limited liability partnership; a structure which we consider further aligns our long term interests with those of our clients and directly mitigates many of the potential conflicts of interest regarding remuneration practices.

In light of market events since 2007, Artemis supports the principles for sound compensation practices put forward by the G20 but has significant concerns at the speed at which these are being taken forward, and the level of granularity being applied, through amendments to the EU's Capital Requirements Directive ("CRD3"). The CRD3 is yet another example of EU legislation which, in attempting to create a level playing field within the EU, is too inward looking and ignores the broader global landscape. There are no similarly detailed proposals for investment managers being taken forward by non-EU G20 members, nor any of the major financial centres which are not G20 members.

In light of those concerns, we welcome and support CEBS's promotion of a proportional approach to the remuneration requirements of CRD3, in particular the proposals that a firm can neutralise certain of the remuneration principles where appropriate.

Artemis fully endorses the responses of the trade bodies of which we are members, namely the Investment Management Association ("IMA") and the Alternative Investment Management Association ("AIMA"). The purpose of this letter is not to replicate each of the detailed points which we consider to be well made in those responses. The purpose is to

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lend our support to those responses, to highlight the aspects which we consider to be the most fundamental points of concern, and to add nuances to points Artemis considers of particular relevance to its own circumstances. These are set out below.

Partnerships

We acknowledge, for the avoidance of regulatory arbitrage between legal structures, that CRD3 cannot exclude partnerships. Therefore, as an LLP, we particularly welcome CEBS's clarification that the remuneration requirements of CRD3 will be applied proportionally. Having made a conscious decision to become a LLP this year we strongly echo the comments in the IMA and AIMA responses that a partnership is a structure which naturally aligns itself to the principles of risk management contained within CRD3, e.g. removing the conflict between the interests of owners and managers as they are generally one and the same.

We note the consultation clarifies that dividends, as profits of the business, which partners receive as owners of an institution are not covered by the guidance. We agree with, and fully support, this clarification. Partnerships are fundamentally different organisations from other corporate legal structures, and it would be inappropriate to apply the requirements of CRD3 to partners without appreciation of the nuances associated with the legal structure of a partnership and the bespoke nature of the payments to partners.

The structure of partnership remuneration also needs to be reflected in CEBS's guidelines on the ratio of fixed and variable remuneration, which is discussed further below.

Identified Staff

We agree with the CP42 statement that "it is primarily the responsibility of institutions to identify the members of staff whose professional activities have a material impact on the institution's profile". Accordingly, we support the statement that firms can exclude individuals from the scope of CRD3 where it can be "demonstrated that they have no material impact on the institution's risk profile." We do not believe it will be appropriate for member state supervisors to implement default lists of Identified Staff, as any default list cannot correctly recognise the different legal structures, business models and risk profiles of the hugely diverse range of firms subject to CRD3.

We consider that the CEBS proposal provides reasonable and proportionate guidance as to who should be regarded as Identified Staff, and the criteria to be applied by firms to that identification process, and we encourage CEBS not to alter its position when finalising its guidelines.

Revenue versus profit

We strongly advocate that the guidelines should allow differential remuneration to individual fund managers, reflecting their contribution in terms of performance returns and associated revenue generation, not just the overall profitability of the business. This is required because there may be circumstances where a strongly performing fund manager deserves to be well remunerated even though the overall business is performing poorly. This is equally the case where a new investment franchise is generating strong revenues but is itself not yet profitable due to launch costs and/or fixed fund administration costs. Any such variable remuneration would of course be subject to the firm having appropriate risk management measures in place and not being to the detriment of the firm's overall financial position.

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The ratio between fixed and variable remuneration

We support the consultation proposal that the appropriate balance between fixed and variable remuneration may vary across staff according to the industry sector in which the firm operates and prevailing market conditions. This flexibility should not, therefore, result in any expectation by member state supervisors that every firm, or even similar firms, should implement similar balances between fixed and variable remuneration. To that end, we advocate the complete neutralisation of this provision where it is appropriate and within the spirit of the remuneration principles.

We believe this is more important and appropriate for investment management firms which, because of the expenditure based capital requirements to which these firms are subject, have less flexibility to adopt the policy of raising fixed remuneration as has already occurred in the UK banking sector. Those firms do not use fixed remuneration as a principal factor in calculating regulatory capital requirements; investment management firms do. Accordingly, a rise in fixed overheads simultaneously pushes up an investment management firm's regulatory capital requirements and reduces its scope to manage employment in a flexible manner. That is, variable remuneration allows a firm to manage its cost base in tougher times without having to resort to more extreme measures such as redundancies. By reducing employment flexibility it is likely, unless proportionally applied, the CRD3 proposals will lead to greater volatility in the job market. Furthermore, any skewing of the employment market towards a greater element of fixed remuneration favours those firms (i.e. banks) who do not need to account for it within their regulatory capital requirements.

Driving up fixed costs, limiting a firm's ability to deal with more difficult times, and creating greater inflexibility in employment practices cannot be the intention of CRD3. Nor can creating competitive disadvantages for the investment management sector on staff recruitment and retention measures by comparison to the banking sector, which is the prime target of the CRD3 requirements.

Another factor for investment management firms is that the highly variable nature of revenues generated from funds with performance fees makes it difficult to identify with certainty a ratio of fixed to variable remuneration. Therefore, investment management firms are at risk of being required to stipulate a ratio that may be overtaken because of a period of exceptional fund performance. Or artificially constraining the variable remuneration that can be paid for that exceptional performance, which would be to the detriment of the individual who had generated that performance and make staff retention problematic.

For partnerships in particular, reducing the level of variable remuneration is not possible for an owner-managed business where the variable remuneration constitutes the profit of the firm, i.e. payable to the senior staff as a profit distribution in their capacity as partners.

Performance assessment period

Greater clarity is requested on the applicability of the requirement that "the assessment of performance is set in a multi-year framework to ensure that the assessment is based on longer term performance". Within the investment management sector, performance is generally assessed in line with the period over which the fund manager is rewarded for the investment performance of his fund; usually this is an annual cycle. For investment management firms historic revenues are not at risk in future years, i.e. profits derived from management fees are fully realised. Any future downturn in fund performance may reduce that year's revenue but not require re-payment of the preceding year's fees. Therefore, it is disproportionate to impose on the investment management sector the clawback type

provisions applicable to banks where profits generated on a mark to market valuation basis may be subject to significant downward re-valuation in future years.

Implementation timetable

We have significant concerns regarding the implementation timetable, and consider it to be unrealistic to expect firms to implement the requirements by 1 January 2011 when the CEBS guidelines will not be finalised until mid-December 2010. This gives little time for member state supervisors to transpose the requirements into local regulations, never mind for firms to then implement those regulations. We have concerns that an overly aggressive timetable may result in implementation being less effective than is intended and/or required. To ensure the best outcome from the new requirements, we would recommend that either the implementation date is postponed to 1 July 2011 or the guidelines give appropriate direction to member state supervisors regarding a transitional period to that date.

Summary

In summary, Artemis supports the objectives of having firms implement sound compensation practices to ensure the appropriate management of a firm's risk profile and its systemic significance. That said, these compensation practices need to be proportionate to the firm's legal structure, the systemic risks it poses to financial markets, the size and nature of its business, and any conflicts of interest arising within its business model.

To that end, we commend CEBS for the clarification of the proportionality requirements contained in CP42 and in particular the neutralisation that is available on some of the principles. We request that CEBS gives consideration to further clarification of proportionality as it affects the investment management industry, including neutralisation of the ratio of fixed and variable remuneration. However, we caution against a rushed, and potentially flawed, implementation of the remuneration requirements of CRD3 that may disadvantage and damage EU financial services institutions in a competitive global marketplace.

Yours faithfully

Graeme Mitchell
Head of Compliance

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