

RESPONSE TO EBA CONSULTATION PAPER EBA/CP/2015/29

Dear Sirs

In response to the EBA's Consultation Paper on Draft Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services (the "**Draft Guidelines**"), we set out below our response to the questions asked in the consultation paper.

Defined terms used in this response have the same meaning as used in the Draft Guidelines, unless otherwise defined in this response.

1. QUESTION ONE: DO YOU AGREE WITH GUIDELINE 1 ON DESIGN?

The EBA guidelines on sound remuneration policies under the CRD IV (the EBA/GL/2015/22, published on 21 December 2015, hereinafter referred to as the "**EBA GLs**") obliges institutions to ensure that their remuneration policies and practices for all staff are aligned with the institutions' overall risk appetite, taking into account all risks, including risks resulting from the mis-selling of products.

Further, the CRD IV and the EBA GLs oblige institutions to ensure that there is an appropriate balance between the fixed and variable remuneration components and that both quantitative and qualitative performance criteria are documented for variable remuneration awards. The main aim of the aforementioned obligations is to avoid incentives for short-term-oriented excessive risk taking, including the mis-selling of products. However, and as stated by the EBA in Annex 1 of the EBA's final report on Guidelines on sound remuneration policies under the CRD IV, these obligations only apply in relation to so called "*material risk takers*" or "*identified staff*". The EBA should therefore clarify that it is only where staff fall within the scope of material risk takers or identified staff that their variable remuneration should be based on both quantitative and qualitative criteria and be appropriately balanced.

The wording of paragraph 1.6 of the Draft Guidelines indicates a limitation of institutions' right to award variable remuneration pursuant to the CRD IV and EBA GLs. We assume this not to be the intention other than with the view to clarify that e.g. sales bonuses should not incentivise mis-selling. Therefore, the EBA should clarify that the Draft Guidelines do not in any way operate to limit institutions' right to award *inter alia* sign-on bonuses in connection with the hiring of new staff.

As currently worded, paragraph 1.6. of the Draft Guidelines can also be interpreted as altogether preventing institutions from suggesting specific products to a consumer. As noted by the EBA there is an information asymmetry between institutions and consumers, consumers therefore often depending on recommendations or guidance from institutions. A total ban on promotion of products may of course alleviate institutions from mis-selling responsibility, but a total ban is unlikely to lead to better end-results as one may fear that only a few consumers will succeed in making well-informed independent decisions. The EBA should therefore consider re-phrasing paragraph 1.6 so as to allow institutions to promote specific products as long as such products, to the best of the institutions' knowledge and based on information provided by the customer, is the most beneficial alternative for the customer.

On a general note, and as set out in the Draft Guidelines, unnecessarily complex policies and practices as well as unclear combinations of different policies and practices should be avoided by institutions. Considering this, we assume that

institutions which design and implement remuneration policies and practices in accordance with the provisions of CRD IV and the EBA GLs, will satisfy the requirements under the Draft Guidelines, provided that such remuneration policies and practices also consider the impact of remuneration on consumers. This should preferably be confirmed by the EBA.

2. QUESTION TWO: DO YOU AGREE WITH GUIDELINE 2 ON DOCUMENTATION?

For the avoidance of unnecessary administrative burdens on institutions, and also to ensure clarity in relation to members of staff, it should suffice to prepare documentation in accordance with the CRD IV and EBA GLs – according to which institutions are obliged to document their remuneration policies and practices and ensure that the relevant staff is clearly informed of these.

The EBA should also elaborate on the information obligation pursuant to paragraph 2.3 of the Draft Guidelines.

3. QUESTION THREE: DO YOU AGREE WITH GUIDELINE 3 ON APPROVAL AND MONITORING?

The EBA should clarify whether or not institutions being part of larger banking groups can delegate or outsource any part of the internal governance of remuneration policies and practices to group-wide functions, such as a remuneration committee established on group level and group control functions.

4. QUESTION FOUR: DO YOU SEE A NEED FOR ANY ADDITIONAL REQUIREMENTS?

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5. QUESTION FIVE: DO YOU HAVE ANY OTHER COMMENTS?

Yes, our additional comments are set out below.

5.1 Legal basis

The EBA is requested to elaborate on the legal basis for issuing, as well as the EBA's mandate to issue, guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services.

5.2 Definitions

The scope of persons intended to be included by the definition "relevant persons" is unclear and should be revisited. As currently worded, third party staff such as agency staff could be deemed included by the definition. If this is the intention, the EBA should elaborate on whether an approach similar to that as applicable in relation to third party delegates under the remuneration guidelines suggested by the European Securities Markets Authority under the UCITS V Directive and Alternative Investment Fund Management Directives would apply.