

## Update - Final UCITS Remuneration Guidelines – November 2016

### Introduction

UCITS V was published in August 2014 and EU member states transposed the directive into national law on 18 March 2016. One of the main areas of UCITS V relates to regulations governing UCITS remuneration policies. On 14 October 2016, ESMA<sup>1</sup> published *Guidelines on sound remuneration policies under the UCITS Directive* (“ESMA Guidelines”).

Remuneration relates to fixed and variable pay and payments related to early termination and pensions. In addition, it includes performance fees as well as non-cash benefits, such as share options.

A key element, in accordance with UCITS V, is that each management company must establish remuneration policies which encourage sound and effective risk management and do not promote excessive risk-taking. The prospectus of each UCITS fund must include an up-to-date remuneration policy and each KIID<sup>2</sup> should include a statement that all remuneration policies are available online. The annual report of each UCITS fund should include remuneration disclosures.

The remuneration provisions apply to professional staff whose functions have an impact on the risk profile of a UCITS fund which would include:

- Executive and non-executive directors
- Senior management
- Employees involved in compliance, internal audit and risk management functions
- Employees responsible for portfolio management
- Employees of entities to which investment management functions have been delegated.

### ESMA Guidelines

The ESMA Guidelines included clarification on two key points - the application of the remuneration rules to delegates and proportionality.

The guidelines will apply from 1 January 2017.

### Application of Remuneration Rules to Delegates

The ESMA Guidelines confirmed that the remuneration rules should apply to delegates of the management company. Where a management company delegates investment management functions (including risk management), management companies should ensure that:

- The entities to which investment management activities have been delegated are subject to regulatory requirements on remuneration that are equally as effective as those applicable under the ESMA Guidelines; or
- Appropriate contractual arrangements are put in place with entities to which investment management is delegated to ensure that the UCITS remuneration rules are not circumvented. These contractual arrangements relate to any payments made to delegates’ identified staff as compensation for performance of investment management activities on behalf of the management company.

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<sup>1</sup> The European Securities and Markets Authority

<sup>2</sup> Key Investor Information Document

## Proportionality

Proportionality relates to management companies (and their delegates) complying with UCITS V remuneration requirements in a manner which is appropriate to their size, internal organisation and the nature, scope and complexity of their activities. In March, ESMA wrote to European Commission policymakers for legal clarification on the proportionality principle and the prospect of certain management companies (and their delegates) not applying the full remuneration principles.

In the ESMA Guidelines, the criteria relating to the application of proportionality are as follows:

- Size: this relates to the value of the management company capital and the value of the assets under management, the liabilities or risk exposures of the management company and the number of staff, branches or subsidiaries of the management company
- Internal Organisation: this relates to the legal structure of the management company and the complexity of the internal governance structure of the management company
- Nature, Scope and Complexity of the Activities: This relates to the underlying risk profiles of the business activities that are carried out. The relevant elements concern the type of authorised activity, the type of investment strategy and the national or cross-border nature of the business activities.

## KB Associates' Services

KB Associates offers a range of services to UCITS funds including:

- The provision of UCITS management company services
- The provision of designated persons to perform UCITS business plan managerial functions
- The provision of UCITS operational support
- The provision of MLRO<sup>3</sup> services
- The provision of Company Secretary services.

If you would like to discuss any issues raised in this article or related to KB Associates' services in general, please feel free to contact Mike Kirby (+353 1 667 1980), Peter Northcott (+44 203 170 8813) or Mike Parton (+1 345 946 4224).

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