ICAP

London, 08 November 2010

Committee of European Banking Supervisors (CEBS)

Email: CP42@c-ebs.org.

BY ELECTRONIC MAIL

Re: ICAP response to Consultation Paper on Guidelines on Remuneration Policies and Practices (CP42)

Introduction

ICAP is grateful for the opportunity to respond to the CEBS consultation - it is supportive of the High-level Principles for Remuneration Policies published on 20 April 2009 and the aims of the CRD III.

The holding company of ICAP Group is ICAP plc, which has shares listed on the London Stock Exchange (IAP). Although the largest portion of the Group's earnings by region is from the EU, it has substantial operations in the rest of the world, most significantly in the US and the larger financial centres in Asia. ICAP has offices and entities in several EU Member States, the majority of which are "investment firms" for the purposes of Art 4(1)(1) of Directive 2004/39/EC. ICAP has no credit institutions within its Group. The Group's earnings are almost exclusively earned in the form of commission or fees, which are only earned on the successful provision of certain services.

ICAP companies provide brokerage to wholesale dealers in securities, FX, money markets, commodities and derivatives, both by telephone and via electronic platforms (the majority of which are regulated as MTFs in the EU). ICAP also provides bulk messaging and portfolio risk mitigation services and sells data, the latter as the aggregated and anonymous by-product of its broking activities.

The Importance of Effective Risk Mitigation

ICAP regards appropriate remuneration policies as a key aspect of risk mitigation. However, despite the very positive and well considered matters raised in the CEBS Consultation, there are some aspects that could have very serious implications for a business like ICAP, which includes investment firms in its Group but does not have the same exposure to risk as credit institutions, fund managers and insurance companies with whom ICAP is effectively grouped by the scope of the proposed guidelines.

Proportionality (Paragraph 1.2, and Annex 2)

ICAP supports a risk-orientated approach to remuneration policies. Due to the nature of ICAP's role as an intermediary, post-trade service provider and information provider, the Group's revenues are in the form of (i) commissions for successful execution or processing of our customers' trades and (ii) fees for the provision of market data services. ICAP's conversion of commissions or fees invoiced into collected revenues is very rapid (typically within 60 days), and not contingent on the future performance of any underlying reference asset or transaction. Consequently, ICAP's annual cash flow is almost exactly equal to its post-tax, post-dividend profits.

ICAP also agrees with the observation set out in paragraph 16 of the main text of the Consultation, that "institutions should not categorically dismiss low earners as non risk-takers", and agrees that, by extension, institutions should not assume that all high earners are risk-takers.

Composition of Variable Remuneration (Paragraph 4.4, and Annex 2)

There may be benefits in certain cases to ensure that variable remuneration is both deferred and only partially composed of cash in each element. However, it would be a mistake to create rules that have an "all or nothing" effect in terms of applicability or which remove the discretion from Supervisors in assessing how and where those concepts should most effectively be applied. For a business that earns commission, attributable to a time period, and which are not vulnerable to a change in value or repayment, deferral in to an entirely different time period seems nugatory, indeed potentially distortative (in that staff are likely to become exposed to risks they had no ability to influence), and therefore creates misalignment between risk and reward to which any risk relates. ICAP therefore supports proportionality on this subject and a process that would allow assessment of its efficacy.

ICAP would make three points about the nature of its business that should form part of any consideration Supervisors have as to the exercise of discretion in the application of Annex 2 (o) and (q):

- **Remuneration is earned on revenues that are certain:** ICAP brokers' "variable" remuneration are commissions calculated as fixed percentages of the revenues or profit for which the individual brokers are (or sometimes their desk is) responsible for generating and thus fluctuate formulaically both up and down with such revenues. They are contractual obligations of the firm over the life of the relevant broker's employment contract which will typically be 2-3 years and maybe a long as 5 years. They are paid in cash one, two or four months following the bonus period in which ICAP recognises the relevant revenues. The relevant revenues are not contingent and are typically collected as receipts from our customers within 60 days of a transaction being completed. Each contract is specific to an individual broker; generally we do not have standard commission terms.

- **ICAP employees cannot increase their remuneration simply by taking on more risk**: As noted, brokers' variable remuneration is based only on non-contingent collected commissions. While remuneration policies, such as remuneration committee oversight, the basic principles of risk alignment, performance based variability and performance criteria should properly be applied to their remuneration, it is entirely unproductive to impose mandatory deferral on those staff whose remuneration is calculated in this way

- **ICAP's competitors are mainly non-EU and so most of their activities will not be covered by any rules that emanate from this Consultation**: Implementing the changes envisaged by Section 4.4 of the consultation would unbalance the competitive playing field for broking services between ICAP (and its other EU domiciled competitors) and non-EEA domiciled firms; and for our non-broking businesses create a systematically skewed playing field globally. The deferral provisions envisaged would create in our highly concentrated broking, electronic trading and data provision industry a systematic competitive advantage for US and other non-EEA firms such as GFI, Tradition, BGC, the Chicago Mercantile Exchange Group, the New York Stock Exchange Group, Thompson Reuters and Bloomberg which, not being EU headquartered, would have a huge advantage when paying staff outside the EEA compared with ICAP.

Discretionary Remuneration & Impact on Risk

In respect of other staff to whom Paragraph 4.4 may apply, ICAP policies already reflect the ability of senior employees to impact the longer term performance of the firm. The firm's compensation arrangements are overseen by a non-executive Remuneration Committee. Board Members of ICAP plc are remunerated in cash and shares with deferral arrangements that would appear to be broadly compliant with the proposed recommendations. Management Committee compensation is in the process of being changed (not because of this Consultation) to include share components and deferral, which embrace the aims of the CRD III, but would require Supervisors to accept neutralization under the proportionality principles set out in Annex 2 (o) of the Consultation.

Generally, having a variable component to compensation is regarded as prudent to protect the firm from large fixed overheads, incentivise performance and assess on the basis of non-financial measures, such as risk awareness and compliance. Extending Paragraph 4.4 to Staff who do not occupy the top decision making levels within ICAP to inflexible deferred remuneration structures, with any award being a maximum of 50% cash, would create a disincentive and therefore competes with (i) to work in the EU, or (ii) work for a regulated business in the EU (ICAP operates several significant unregulated businesses and has its most significant competitors outside the EU).

Summary

ICAP is highly supportive of the aims of CRD III and appropriate risk alignment. It does, however, caution against the extension of mandatory deferred and share-based remuneration to a too-wide class of staff within groups that do not include credit institutions. ICAP would support greater discretion to be left to Supervisors rather than creating an inflexible system that creates fixed minimum elements of deferral and limits on cash bonuses, and urges the application of the principles of proportionality CEBS suggests in conjunction with Supervisors.

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