

Consultation Paper: draft guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013

Dear Sirs,

We are grateful for the opportunity to respond to the European Banking Authority (EBA) consultation paper, "Draft Guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013."

Killik & Co is a privately-owned, full-service stockbroking and wealth management firm structured as a Limited Liability Partnership (LLP). We have over 23,000 retail clients and c£4bn of assets under administration. We are members of the Wealth Management Association, which represents 186 wealth management firms and associate members that deal in stocks, shares and other financial instruments for the retail sector.

We have not responded to the specific questions in the Consultation, but wish to raise some general points for the EBA's consideration.

Proportionality under CRD4

As a LLP and relatively small firm representing no systemic risk to retail markets, currently we are able to avail of the CEBS¹ guidelines that allow for a proportionate application of some of the remuneration provisions within CRD4. The EBA consultation states that the terms of CRD4 "do not explicitly grant for such a right."

Whilst this may be the case, Recital 66 of CRD4 states: "*In particular, it would not be proportionate to require certain types of investment firms to comply with all of those provisions*".

This seems to provide a very clear statement that the intention when drafting the Directive was that some of the remuneration provisions need not be applied by some firms.

The consultation also refers to correspondence between the EBA and the European Commission, where the EBA were informed that "*the ... principles as implicitly referred to in the introductory part of Article 92(2) can in no way justify the non-application of one or the other rule contained in that provision.*"

However, Article 92(2) states that the provisions are to be applied "**to the extent that is appropriate**". In light of Recital 66, the intention seems clear that for some firms the appropriate extent of application may be not to apply the provision at all.

There will likely be more articulate submissions to the EBA on the legal interpretation of the Directive, and we hope that these will be given further consideration.

Application to Limited Liability Partnerships (LLPs)

Identified Staff Members may be Partners of the LLP. Therefore, their remuneration is governed by the LLP deed. Profits of an LLP may be distributed according to the LLP deed in a way that is predetermined with reference to the size of their holding within the LLP (Fixed remuneration), as discretionary bonus or a combination of both. A further justification for permitting "neutralisation" of certain provisions is the fact that within a firm structured as a LLP, not all of the provisions can be practically applied. Deferred remuneration and the requirement to offer a substantial portion (at least 50%) of any variable remuneration in shares or "equivalent ownership interests" being of primary difficulty. There may be other

¹ Committee of European Banking Supervisors – predecessor to the EBA.

issues peculiar to individual LLPs and their partnership deeds, which is why the proportionality principle is so important to uphold:

We reiterate the conclusions of the WMA's submission to the EBA, which urges the EBA to remember that the purpose of CRD IV was to target problems at banks and not at the small investment firms. It is these small investment firms that will be most impacted by the EBA's proposals. We also agree with the WMA that: "*The EBA must not treat all financial services firms as if they were large, systemic banks, but instead must develop a more nuanced and differentiated approach taking into account the business models operated, and risked posed, by different financial services firms.*"

We believe this was the intention in the drafting of Recital 66 and ask that you reconsider your proposals in light of this.

We would be happy to discuss our response in further detail, if required.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Penny Rooney', with a large, sweeping flourish extending to the right.

Penny Rooney
Partner, Compliance Director