**CONSULTATION RESPONSE**

**EBA REMUNERATION GUIDELINES**

Bernstein is one of the leading global investment research and institutional brokerage firms not affiliated with an investment bank. We are a subsidiary of AllianceBernstein, a global asset manager, which is majority-owned by a French insurer AXA.

Sanford C. Bernstein Limited (“SCBL”), our UK FCA regulated broker dealer, operates an agency broker business and accordingly does no proprietary trading except client facilitation. In light of our business model, SCBL as a proportionality level three IFPRU firm has appreciated the ability to date to dis-apply certain CRD remuneration principles. Whilst the full suite of CRD remuneration rules may not apply, we remain subject to various rules around remuneration, including those set out in SYSC 19A of the UK FS Handbook, which ensure we have prudent remuneration policies in place.

We welcome the opportunity to comment on the EBA’s DRAFT GUIDELINES ON SOUND REMUNERATION POLICIES AND DISCLOSURES (EBA/CP/2015/03). As a member firm of the Association for Financial Markets in Europe (“AFME) we support the response that AFME has prepared in relation to this consultation exercise, but for us the most significant aspect of the Draft Guidelines relate to the effective removal of the proportionality principle.

In particular, consistent with the AFME response, we question what the legal basis is for the change of approach in relation to the principle of proportionality and consequential ability of member states to neutralise certain aspects of the remuneration rules.

LEGAL BASIS

Under CRD III, the CEBS Guidelines on Remuneration Policies and Practices stated that it was possible to neutralise the more onerous remuneration requirements on the grounds of proportionality. Accordingly, if it had been the intention of the Council and Parliament to change this practice under CRD IV, they should have explicitly reflected this in the text of CRD IV. However, there was no change in the operative provisions on the application of proportionality of the remuneration rules between CRD III and CRD IV and consequently we do not understand how it is possible to infer that it was the intention of the co-legislators at the time of CRD IV to limit the then current practice of neutralisation of certain aspects of the remuneration rules.

Indeed, in our view, the text of CRD IV at Recital 66 and Articles 92 and 94 could not be more *explicit* in contemplating the neutralisation or partial neutralisation of the remuneration rules by setting out that the principle of proportionality should apply “to the extent appropriate” for “different types of institutions…taking into account their size, internal organisation and the nature, scope and complexity of their activities”. Further, the EU legislature acknowledged at Article 161 of CRD IV that the application of proportionality could lead to the neutralisation of certain rules.

Accordingly, by removing the ability to neutralise or partially neutralise these rules, it would appear that the result of the proposals contained within the Draft Guidelines is that the EBA would effectively be creating binding, minimum standards which would render the proportionality principle meaningless.

IMPACT

We are deeply concerned about the impact that the Draft Guidelines would have on our business activities. In particular, we are concerned that these Draft Guidelines would impact competition and would create an un-level playing field between in-scope and out-of-scope firms, such as asset managers and non-CRD broker-dealers, operating in the same markets, both within the EU as well as in relation to third countries.

We have identified that a significant proportion of SCBL’s workforce could be identified staff for the purposes of the CRD remuneration rules, and as a result, these Draft Guidelines would require us to significantly increase the fixed costs and capital of our business by increasing the amount of fixed compensation we pay to identified staff. This would have a consequential impact on our ability to invest in growing our business within Europe. Furthermore, we would be at a detrimental position in comparison to out-of-scope and third country firms with lower and more flexible fixed staffing costs who would be better able to take advantage of future opportunities.

Bernstein recruits employees from a broad talent pool where we compete for staff with asset managers, non-CRD broker-dealers, and consultancy firms. The result of these Draft Guidelines would be to put us at a competitive disadvantage in terms of both recruitment and retention, where talent would be attracted away from us to firms who are not constrained by rules limiting the amount and manner in which they can be remunerated.

Further, these Draft Guidelines would impose an additional layer of administration upon us in terms of remuneration committees, shareholder approvals, and annual applications for exemptions for staff who might otherwise be considered to be material risk takers etc., which would be both significant and disproportionate for a firm of our size. In particular, we would question what the purpose was for applying to a small or medium-sized investment firm such as ours, rules which were brought forward to govern banks which are seen to be of systemic importance. We are of the view that the rules contained within SYSC 19A of the FS Handbook are both sensible and proportionate for a business of our nature and size.

Due to the mobility of Bernstein analysts, should these Draft Guidelines be adopted we would expect to see a number of requests for our staff to relocate to Bernstein offices in third country jurisdictions not caught by the impact of these remuneration rules.

Additionally, in light of the detrimental impact of these Draft Guidelines, the EBA should be aware that a potential consequence of these rules could be to encourage small and medium-sized firms to consider adapting their business models in order to be recharacterised as an out-of-scope firm. For example, currently a wide number of broker dealers have permission to hold client money, which provides for a competitive marketplace, but if firms were to conclude that they would be treated as being out-of-scope of CRD rules by ceasing to hold client money, the number of brokers offering such services could reduce dramatically, to the detriment of clients.