RESPONSE TO EBA/CP/2020/26 17 DECEMBER 2020 CONSULTATION PAPER ON DRAFT GUIDELINES ON SOUND REMUNERATION POLICIES UNDER DIRECTIVE (EU) 2019/2034 – SENT IN 17 MARCH 2021

Question 1: Are the subject matter, scope and definitions appropriate and sufficiently clear?:

Yes

Question 2: Is the section on gender neutral remuneration policies sufficiently clear?:

Yes

Question 3: Are the sections on the remuneration committee sufficiently clear?:

Yes

Question 4: Are the guidelines on the application of the requirements in a group context sufficiently clear?:

Paragraph 73 of Draft EBA Guidelines indicates that under certain circumstances short-term seconded staff qualifies as identified staff. To prevent unnecessary complexity and preserve proportionality, we suggest the Guidelines to include a de minimis threshold of a stay of 3 months. Under the current wording, an overseas entity not subject Directive (EU) 2019/2034 would need to set up "EU remuneration program" solely for employees on a business trip to an affiliate company in the EU. In practice this means, even for a stay less than a month, dual payroll administration and complicating employees' international tax and social security situations, as the European entity will need to place the seconded employee on European payroll, delineating the EU compensation.

Question 5: Are the guidelines regarding the application of waivers within section 4 sufficiently clear?:

Yes

Question 6: Is section 9 on severance payments sufficiently clear?:

Yes

Question 7: Are the provisions on performance criteria sufficiently clear, which other performance indicators, e.g. regarding the performance of business units or portfolios, are used to determine the variable remuneration of identified staff?:

Paragraph 178 the Draft EBA Guidelines states "members of the supervisory function should be compensated only with fixed remuneration." For smaller to medium-sized investment firms with unitary board structures, the management body fulfils multiple functions – a supervisory function as well as an executive management function. The role of the management body in a unitary board structure cannot be separated from its role as a collective supervisory function, cf. EBA's template for the Assessment of Collective Suitability, which states that "the responsibility of the management body in its supervisory function as well as in its management function is

collective." Therefore, with regard for proportionality, we believe this paragraph should be revised for unitary board structures in the same manner that EBA sets out for control functions in paragraph 183: "The methods used for determining the variable remuneration of the [control] supervisory function within unitary board structures should not compromise [staff's] the management body's objectivity and independence."

Question 8: Is the section on the pay out in instruments sufficiently clear?:

On two points we feel this section needs to be clarified/amended. (1) The last sentence of paragraph 249 Draft EBA Guidelines sets a five-year deferral period for members of the management body, where an investment firm has more than EUR 100 million of on and off-balance sheet assets over the four-year period immediately preceding the given financial year. For the following reasons we believe this last sentence should be left out of the Guidelines. (a) This goes beyond what is required in the Level 1 text, that sets no minimum deferral period. In effect it means the minimum threshold for firms applying any deferral requirement automatically triggers the maximum deferral period for members of the management body. (b) This would create an unlevel playing field between CRDV/Class 1 IFD firms and Class 2 IFD firms, as CRD V Guidelines on sound remuneration policies only require significant institutions to apply a five-year deferral period for members of the management body. Class 1 firms under the scope of CRD V, but which are not considered significant (as they are unlikely to meet the definition of significant in Article 10 of the EBA guidelines GL/2015/22 i.e. G-SII O-SII or other large firms), would be subject to less stringent deferral rules than (smaller) Class 2 firms (that will be treated as significant with a balance sheet above 100m). (c) As the threshold to apply the deferral rules is set at a relatively low level, many class 2 investment firms, large and small, will have to comply with the deferral requirements. We feel the last sentence of paragraph 249 is not drafted with due regard to the principle of proportionality. (2) Paragraph 260 of the Draft EBA Guidelines states that where an investment firm does not issue any eligible instruments, it should apply for the use of an alternative arrangement, demonstrating that it does not issue such instruments. Paragraph 261 list considerations competent authorities should make when deciding on applications to use alternative arrangements, the first of which (a) is: "that for investment firms which are stock corporations (both listed and non-listed), shares or share-linked instruments are issued." We feel that it is important to take note that a majority of the IFD firms are non-listed stock corporations. Many of these firms did and do not issue shares, other than to the founders/holding company. If these firms would be required to issue new shares to employees this would substantially increase regulatory burden and costs, whereas the RTS specifically considers that the use alternative arrangements is aimed at reducing the regulatory burden. We also believe that the requirements of article 6 of the EBA RTS, allows such firms to establish deferral schedules, subject to retention, malus and clawback arrangements, that meet the same objectives as financial instruments. Such should not be prevented by the mere fact that a firm issued shares upon incorporation, which nearly all firms do. Therefore we suggest to amend paragraph 261 under (a) as follows: if investment firms which are stock corporations (both listed and non-listed), issue new shares or share-linked instruments to others than to its founders or holding company.