

Book III - Service providers

Title I ter - Asset management companies of UCITS

Chapter IV - Conduct of business rules

Section 3 - Inducements

General regulation of the AMF

Article 321-125 into force since 03 January 2018

DISCLAIMER : Information boxes have been inserted within the General Regulation. They allow for a direct access to the relevant European regulations on the subject matter.

The user will be redirected to the European regulations as initially published in the Official Journal of the European Union and to the subsequent corrigenda, if any. The AMF does not guarantee the completeness of the redirections to these European regulations and corrigenda.

The boxes are located at the most relevant level of the GRAMF depending on the provision of the EU regulations to which they refer (Book, Title, Chapter, Section, etc.).

This additional material is provided for information purposes only and does not constitute a regulatory instrument. The AMF shall not be held liable or responsible for any harm resulting directly or indirectly from the provision or the use of these information boxes.

Article 321-125

I. – Where establishing and applying remuneration policies, notably concerning the fixed and variable components of salaries and discretionary pension benefits, for the staff categories referred to in Article L. 533-22-2 of the Monetary and Financial Code, the asset management company shall comply with the following principles in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities:

- 1 • The remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;
- 2 • The remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;
- 3 • The management body of the asset management company in its supervisory function, or, if management and supervisory functions are separated, the supervisory board of the management company or any other body or person performing equivalent supervisory functions in a company with a different corporate structure, adopts the remuneration policy, reviews at least annually the general principles of the remuneration policy and is responsible for, and oversees, implementation of the

policy; the tasks referred to in this point shall be undertaken only by members of the above bodies who do not perform any executive functions in the asset management company concerned and who have expertise in risk management and remuneration;

- 4 • The implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the bodies mentioned in point 3;
- 5 • Staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;
- 6 • The remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;
- 7 • Where remuneration is performance-related, when assessing individual performance the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or UCITS concerned, having regard to the risks they take, and of the overall results of the asset management company, taking financial and non-financial criteria into account;
- 8 • The assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the asset management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;
- 9 • Guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;
- 0 • Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- 1 • Payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- 2 • The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- 3 • Subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50%, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50% of the total portfolio managed by the management company, in which case the minimum of 50% does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the asset management company and the UCITS that it manages and the investors of such UCITS.

This paragraph shall apply to both the portion of the variable remuneration component deferred in line with point 14 and the portion of the variable remuneration component not deferred;

- 4 • A substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

The period referred to in the previous sub-paragraph shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred;

- 5 • The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the asset management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- 6 • The pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.

If the employee leaves the asset management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments referred to in point 13.

In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point 13, subject to a five-year retention period;

- 7 • Staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- 8 • Variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the statutory and regulatory requirements applicable to asset management companies.

II. - The principles set out in I shall apply to any benefit of any type paid by the asset management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on the risk profiles of the management company or of the UCITS that it manages.

III. – Asset management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the asset management company or the UCITS concerned and which are to be taken by the bodies mentioned in I, 3 in their supervisory function. The remuneration committee shall be chaired by a member of one of the bodies mentioned in I, 3 who does not perform any executive functions in the asset management company concerned. The members of the remuneration committee shall be members of the bodies mentioned in I, 3 who do not perform any executive functions in the asset management company concerned.

If employee representation on the bodies mentioned in I, 3 is provided for, the remuneration committee shall include one or more employee representatives.

When preparing its decisions, the remuneration committee shall take into account the long-term interest of unit holders or shareholders of UCITS and other stakeholders and the public interest.

↘ **Version into force since 3 January 2018**