Association for Financial Markets in Europe

Consultation Response

PRA/FCA Remuneration Reform Consultation Paper CP 16/24

18 March 2025

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the **PRA and FCA Remuneration Reform Consultation Paper (CP 16/24).** AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

We welcome the opportunity to provide feedback on the PRA and FCA Remuneration Reform Consultation Paper (CP16/24). We support the principle of revising the UK bank remuneration rules to ensure they support the regulators' primary objectives whilst also supporting the competitiveness of the UK as a key global banking centre. We strongly support a number of the proposals which we think contribute to achieving this objective.

However, we also have a number of suggestions and recommendations on the proposals. Members have identified additional existing rules which are not discussed in the consultation, but which create substantive issues in practice. Moreover, there are other aspects of the current rules not discussed in the consultation which materially negatively affect the competitiveness of the UK banking sector. We therefore encourage the regulators to consider updating the rules on these further points, to take this opportunity to focus the rules on supporting UK competitiveness as against global banking centres.

Principles on which we encourage the regulators to focus

In reviewing the Consultation Paper, our members have also had in mind certain key principles, which we would also encourage the PRA and FCA to take into account in reviewing consultation responses:

- Maintaining an **appropriate and proportional approach to risk management**, allowing firms to manage risk exposure but also control costs (in particular in relation to any aspects of the rules which otherwise create a pressure towards fixed pay).
- Driving **consistency across regulatory requirements on MRTs**, so that the UK remains competitive globally, and to reduce operational complexity for both individuals and firms.

- Striving for **simplicity and clarity** across policies and documentation, to reduce operational risks and burdens on firms managing the implementation of the regulations, and to improve MRTs' understanding of the requirements to which they are subject.
- **Avoiding unintended consequences**. We have identified a number of what appear to be unintended consequences arising from the remuneration rules in our response, including in particular the distortions created by the current individual proportionality threshold; the "cliff-edge" nature of the threshold triggering a 60% deferral; and proposals which appear to create expectations for the role of the SMF4 and Remuneration Committee which do not align to the operation of firms' governance structures.

Summary of points discussed in our consultation response

We discuss in our response those areas on which we support the PRA and FCA proposals. In particular, members strongly support the reduction of the deferral periods from the current position. The current deferral periods, and the prohibition of vesting in the first three years for SMFs, has meant that the deferral periods for senior staff in the UK have become a significant international outlier, drive the perception of the remuneration rules in the UK banking sector being uncompetitive and discourage globally mobile staff from working in the UK and/or taking roles in which they hold Senior Manager Functions.

We also highlight in our response those areas which have been raised by member firms for the PRA and FCA to consider further, including the following:

- **Timing of implementation**: as discussed in Section 1 below, in our view it is important that the rules affecting the structure of MRT pay are able to be applied by firms with immediate effect on the Policy Statement being published. We do not think there is any policy advantage in delaying the implementation of these elements of the rules, whereas allowing these rules to be applied immediately would mean that the improvement to competitiveness can start to be realised without delay.
- **Removal of retention periods**: Members welcome the removal of an expectation that deferred instruments should be subject to a retention period in addition to the deferral period, given that a retention period on deferred instruments adds no material benefit beyond that already created by the deferral but adds significant complexity. However, the application of a retention period to instruments delivered as part of non-deferred variable remuneration similarly adds significant complexity and, even more importantly, is one of the biggest drivers of the UK remuneration rules being uncompetitive as compared to remuneration structures operated in key global markets (with it being important to focus on the competitiveness of the UK from a global perspective rather than only benchmarking the rules to the position in the EU). We therefore encourage the regulators to also remove the expectation that non-deferred instruments should be subject to a retention period.
- **Removal of PRA Remuneration Part 15.16** (providing that the requirement for 50% of variable remuneration to be delivered in instruments is applied equally to both the upfront and deferred portions of variable remuneration): in our view this requirement serves no policy objective or advantage, and stems purely from a legacy interpretation of the EU rules. In fact, delivering a greater

portion of deferred remuneration in instruments can be more beneficial, including as it means overall that instruments may be held for longer, and this was expressly acknowledged by the FCA when this rule was removed for investment firms under the UK MIFIDPRU Remuneration Rules.

- **Removal of need for regulatory pre-approval of retention awards:** The requirement for prior approval from the PRA in order to grant retention awards creates a very significant issue for members in being able to respond quickly when faced with retention issues. Often a timeline of having to seek prior approval will mean that any grant of a retention award would come too late, and as such this rule directly hampers firms from being able to remain competitive by retaining key staff. The UK is also an outlier on this point, as prior approval is not required in any other jurisdiction (including the EU, where national regulators and the ECB do not require pre-approval of retention awards).

AFME is an organisation that represents banking organisations headquartered in the UK, the EU, the US and other global banking centres. Member firms who are EU headquartered banking groups have noted that the points which we have requested the regulators focus on in relation to the removal of the retention period to upfront instruments, the removal of PRA Remuneration Part 15.16 and the application of the 60% deferral rate on a marginal basis would lead to the UK remuneration rules diverging further from the EU remuneration rules and would contribute to an unlevel playing field for EU headquartered banking groups given that they will continue to be subject to the EU remuneration rules across their entire group. Conversely, member firms who are UK, North American or APAC headquartered banking groups support the PRA and FCA adopting the proposals on these points to enable greater flexibility and improve the attractiveness of the UK in the international talent market.

Chapter 1 in relation to timing of implementation

Whilst we have a number of recommendations to further enhance competitiveness as set out in our response below, we think the reforms proposed in the Consultation Paper will contribute to increasing the competitiveness of the banking sector in the UK.

However, in our view there is no policy benefit to delaying the implementation of the rules to the start of the next performance period. Given the nature of most of the proposed changes, a delay is not required to give firms time to implement revisions to their remuneration pay-out structures and member firms are confident they can implement changes to the payout rules safely without risking non-compliance with the rules. Firms will also have flexibility to implement the amendments either immediately or on a slower timescale if they feel it is preferable to do so in their own circumstances.

In particular, given the changes have been identified as measures that will support the competitiveness of the UK, it is not clear what policy objective would support delaying those changes, and in turn delaying that boost to competitiveness.

Moreover, a position where the revisions to the deferral periods, retention periods and other rules related to the delivery of MRT pay (the "**MRT pay out process rules**") are announced during 2025, but where firms then have to deliver the 2026 bonus round (for 2025 performance) under the "old" rules would create material confusion for MRTs and be difficult for our members to explain to their MRTs and other stakeholders.

In respect of the changes to the MRT pay out process rules (including in particular the changes to the applicable deferral periods, the changes to the guidance on retention periods and the changes which have an impact on applicable clawback periods), we therefore strongly recommend that the PRA and FCA should provide for these rule changes to have immediate effect upon the final Policy Statement being published.

In respect of the other changes, we recommend that PRA and FCA acknowledge that firms should have flexibility to apply the other revised rules either immediately, or from the start of the next performance period, depending on the firm's situation and the time which firms may require to update relevant policies and processes (noting that some of the other rules changes may take some firms longer to prepare for). We therefore recommend that firms should be permitted to apply any of the other updated rules immediately but that mandatory application would apply only from the start of the next performance period after the new rules are published.

In addition, and in any event, given the difficulties posed for firms where changes to remuneration rules are published late in the calendar year, we ask that the regulators prioritise publication of the final policy statement by the end of Q2 of 2025, to allow firms sufficient time to prepare for changes before their year-end remuneration processes commence in Q4 2025.

Chapter 2: Changes to the FCA Handbook Chapters SYSC 19D and Buy-outs Rule

We support the approach of removing duplication between the PRA Remuneration Part and FCA SYSC 19D, but we do request that the regulators consider whether the rules and guidance could be further condensed into fewer documents, to reduce complexity.

We therefore query whether the regulatory guidance and expectations that are proposed to be retained in SYSC 19D could be moved; to be combined with another existing guidance document, such as being moved into SS2/17.

Even more importantly, we recommend that the rule providing that the longer deferral period must also be applied to FCA SMFs should be moved (or, at least, repeated) within the PRA Remuneration Part. This is the only remuneration <u>rule</u> substantively affecting the structuring of remuneration policies that would remain in the revised SYSC 19D and having that one provision documented separately from all the other substantive requirements creates operational and compliance risks.

Chapter 3: Identifying Material Risk Takers

We strongly support the amendments to the rules on the identification of MRTs, both from the perspective of removing the quantitative MRT thresholds based on absolute pay-levels, and in materially simplifying the operational processes by removing the need to submit MRT exclusions for regulatory approval.

<u>Removal of pay-based MRT thresholds and regulatory approval for MRT exclusions</u>

In relation to the removal of the quantitative MRT tests based on absolute GBP earnings, these thresholds currently apply arbitrarily, without catering for differences between firms and different business models, and therefore currently require an unnecessary volume of exclusion applications. The removal of these criteria based on absolute thresholds will therefore make the rules more efficient in practice.

Governance of MRT identification process

Our member firms support the principle that the MRT identification process should be subject to appropriate and robust internal governance to ensure that the process is designed and implemented effectively.

However, we think that the proposed new guidance on the governance of the MRT identification process as currently drafted in the Consultation Paper can be improved in two key regards, as follows:

1. *Recognition that different firms operate different governance structures, and that firms already have established governance processes in relation to the MRT identification process*

The current draft guidance, in particular the sections seeking to prescribe that certain responsibilities should sit with the risk function and, even more so, with a specific individual within the risk function, add a level of prescription to the guidance that do not appear to be necessary, and which do not reflect the fact that firms may structure governance processes differently whilst each still achieving a robust outcome.

In our members' views, it will always be the case that the risk function is appropriately involved in the process, along with other appropriate functions (which, depending on the structure of each firm's governance framework, could include the HR, legal and compliance functions). This involvement of the risk function, as well as other relevant functions, is already reflected in the 2015 EBA Guidelines, which firms already apply.

In our view it would therefore be more appropriate for the guidance to remove the specific expectations on the role of the risk function and, in particular, on the role of the individual with overall responsibility for the risk function / SMF4, and to instead reference that firms are expected to ensure the appropriate involvement of the risk and other appropriate functions and at an appropriate level of seniority.

2. *Clarity on the governance expectations*

To the extent that any of the more prescriptive expectations on the governance of the MRT identification process are retained in SS2/17, then we would encourage the PRA and FCA to review the wording to ensure there is greater clarity on the expectations, in particular on the following points:

- **Paragraph 3.3 SS2/17**: depending on a firm's governance structure, it may not be appropriate for decisions on whether or not an individual should be identified as an MRT to be made by the SMF4 (or the risk function), which could create a misalignment with the principle that ultimate approval, or responsibility for oversight of, MRT identification or "exclusions", should be for the Remuneration Committee, and would create confusion as to the allocation of responsibility. We therefore think the specific expectation on the involvement of the SMF4 in considering the identification of MRTs should be removed as a mandatory requirement (and, instead, as referred to above, there should instead be a general expectation that firms must ensure the appropriate involvement of the risk function).

- **Paragraph 3.37 SS/2/17, first bullet**: we think it should be clarified that the role of the Remuneration Committee should be to *oversee* (rather than "be involved in") the design of the MRT methodology, as this sets a clearer expectation of the Remuneration Committee's role and which is also more appropriate in light of its role as a non-executive committee.

- **Paragraph 3.38 SS2/17:** we are not clear why the reference to the committees being "*actively*" involved is included. We think this word adds confusion, particularly when used in connection with a non-executive committee, without adding any clarity or benefit. In addition, in respect of the role of a Remuneration Committee, it is not clear what is meant to be covered by paragraph 3.38 as compared to the content of paragraph 3.37. We therefore recommend that paragraph 3.38 should either be deleted, or, if necessary, be replaced with a statement that where remuneration and risk committees are established, then the remuneration committee should fulfil the responsibilities of the board in its supervisory function as set out in paragraph 3.37 and, in addition, firms should ensure the appropriate involvement of the risk committee.
- **Paragraph 3.*39 SS2/17:*** if this paragraph is retained, it should be refined, as it currently merges the roles of the first, second and third lines of defence. In particular, the risk function, and the individual with responsibility for the risk function should: (i) be expected to provide appropriate input into the operation of the process, but not to be responsible for its implementation; (ii) not have approval authority for the identification methodology, as the approval authority is a responsibility for the Remuneration Committee, not the risk function as a control function; (iii) not have responsibility for ensuring the process identifies the relevant employees, as this falls to the Remuneration Committee (as the body having responsibility for the process) and audit (to audit the implementation of the process); and (iv) not have responsibility for ensuring the involvement of other functions, as this should also fall to the ultimate responsibility of the Remuneration Committee (as the body having responsibility for the firm's remuneration policies).

Chapter 4: Enhancing Proportionality for MRTs

We support the approach of updating the thresholds for the individual proportionality principle, and for the application of the higher deferral rate, to reflect inflation since the thresholds were first applied and to ensure that they reflect the structure of pay in the UK banking sector. However, we think a number of further improvements to the way these thresholds operate should be made, to remove the issues which these thresholds create in practice, as set out below.

<u>Individual proportionality</u>

In relation to the individual proportionality threshold, the proposal to replace the second limb of the test, with a threshold of total remuneration of £660,000 rather than a threshold of variable remuneration of £44,000, is supported. The current threshold, derived from the EU CRD V position, has never reflected the structure of remuneration in the UK banking sector.

However, it remains the case that the relative limb of the test, of variable remuneration being no more than 1/3rd of total remuneration, means that the test will continue to lead to outcomes which in our view are unintended and which do not support the policy objective of the rules. In particular, the relative limb of the test means that staff who are more junior, and paid at the lower end of a firm's pay levels, might not fall within the exemption (and so be required to be subjected to the full MRT pay-out process rules), whereas a significantly more senior and more highly paid individual might benefit from it.

To mitigate this issue, we recommend that the relative limb of the test is replaced with a test that variable remuneration should be no more than £220,000. The revised test would therefore mean that an MRT would benefit from the exemption if their *total* remuneration is of less than £660,000 and their *variable* remuneration is of less than £220,000.

Having the two limbs of the test focused on each of total remuneration and variable remuneration means that the principle of the current test is retained (i.e. of having a test focusing on both total pay levels and on the levels of variable pay), but in a way that will remove the unintended consequences caused by the current drafting of the rule.

For background, we also note that most large banking organisations already operate global deferral arrangements, such that an individual who receives variable remuneration below this threshold, and who is not required to be subject to the MRT pay-out process rules for that performance year, would in many cases remain subject to bonus deferral arrangements pursuant to the group's enterprise deferral arrangements.

<u>60% deferral threshold</u>

In relation to the proposal to increase the threshold for the higher deferral rate, we support the proposed increase to this threshold to variable remuneration of £660,000, to reflect inflation since this threshold was first introduced.

However, the operation of this threshold as a "cliff-edge" threshold is not appropriate and creates a materially disproportionate outcome for an individual who crosses this boundary. In particular, this causes a very material impact on the amount of non-deferred variable remuneration for an MRT depending on whether they may earn slightly above, or below, this threshold. This is not a limited issue, as this distortion affects MRTs at a wide range of pay bands: for example, an MRT earning variable remuneration of c£985,000 would still receive lower upfront (i.e. non-deferred) pay than an MRT earning variable remuneration of £659,000.

In addition, there is a common approach in global market practice of defining deferral amounts based on marginal bands. Moving to a marginal approach would therefore reduce the material distortions created by the current rule, without affecting the overall intention of the policy, and would also allow banks operating in the UK flexibility to align to a marginal deferral approach if that is the approach operated in the relevant group.

We therefore propose that the requirement in PRA Remuneration Part 15.18(1) should be amended, so as to require firms, at a minimum, to ensure that amounts of <u>*variable remuneration in excess of*</u> £660,000 are subject to 60% deferral.

<u>Indexing of pay thresholds</u>

As the PRA and FCA have acknowledged in the Consultation Paper, over time any threshold or test based on an absolute level of total and/or variable remuneration will become outdated, taking into account both general inflation and pay inflation in the sector. We therefore recommend that the new rules should incorporate an ability for the PRA and FCA to periodically uplift any absolute thresholds to reflect inflation, to ensure that over time the rules continue to meet the objective of facilitating competitive remuneration policies. We think the PRA and FCA should have power to do this without a need for a formal amendment to the rules, given the time delay that a consultation process entails. One way to implement this may be for the value of each absolute threshold to be removed from the PRA Remuneration Part and instead be documented in SS2/17, so that that guidance can be amended as necessary from time to time.

<u>Removal of concepts of "Higher Paid Material Risk Taker" and the differential deferral periods for management of significant firms</u>

We support these proposals, which simplify the operation of the deferral and clawback requirements. Explaining the potential deferral period outcomes to MRTs has, since the introduction of the Higher Paid MRT concept, been very complex. The simplification of these rules will better support the objective of firms being able to use remuneration to drive positive outcomes, by avoiding MRTs naturally focusing on the complexity in the messaging.

<u>"Part-year" MRTs</u>

In light of the proposal to revert the individual proportionality level to the position as applied under CRD IV (whilst uprating for inflation), the PRA proposes also reverting its guidance at paragraph 13.14 of SS2/17 to (in essence) the position that applied under CRD IV, but has done so only in part. The PRA has proposed to remove the guidance (which applied under the CRD V rule set) that the individual proportionality thresholds do not need to be applied on a pro-rata basis for a part-year MRT, but has <u>*not*</u> reinserted the guidance that dealt expressly with the position of an MRT who is identified for less than 3 months within a performance year.

As the PRA and FCA will recall, this "3-month rule" was proposed to be removed from SS2/17 in response to an EBA proposal to remove the equivalent "3 month rule" from the EBA Guidelines, but when the EBA then responded to feedback and in fact reinstated that provision into its final 2021 guidelines, this provision was not reinstated into SS2/17. We acknowledge that the PRA has made a statement on this point, but in our view for clarity and consistency we recommend that this "3-month rule" should now be reinserted expressly into SS2/17.

Applying the MRT pay out rules to an individual who is an MRT for only a small part of a performance year (and to the portion of their variable remuneration which relates to the MRT-part of the year) creates significant administrative and operational complexities which in our view are not justified by any limited benefit this approach provides.

The previous guidance read as follows:

> *Where an individual has, in relation to a given performance year, been an MRT for a period of three months or less; and a guaranteed variable remuneration award has not been (or is not to be) made in relation to their MRT appointment, the PRA does not consider it necessary to apply the following rules: (i) retained shares or other instruments (Remuneration 15.15); (ii) deferral (Remuneration 15.17); and (iii) performance adjustment (Remuneration 15.20-15.23).*

Chapter 5: Remuneration and individual accountability

The proposed additional rules and elements of guidance under Chapter 5 reflect expectations that broadly exist in current guidance and regulatory practice, and if the PRA and FCA feel that it is necessary to add further detail on these expectations to the PRA Remuneration Part and SS2/17 then our members are supportive in principle of the regulators doing so. In our members' views, most firms should be well placed to comply with the overall intention of these requirements, given that most banks operating in the UK market already operate well-established and sophisticated processes to support the determination of pay awards and the operation of performance adjustment.

However, there are aspects of the drafting of the new provisions which we feel could cause confusion or complexity in practice, and so we would encourage the PRA and FCA to consider the following refinements:

1. The drafting of PRA Remuneration Part 11.4A deals with both ex-ante and ex-post risk adjustment, and we think it would be more effective to deal with the regulatory expectations in relation to each principle separately. The expectation to set specific criteria for the application of risk adjustment appears to be much more appropriate in the case of malus and clawback. Conversely, whilst firms operate internal procedures and processes to ensure that remuneration awards are appropriately adjusted ex-ante or in-year, it would be appropriate to acknowledge that firms need flexibility in how they approach ex-ante risk adjustment, and defining a specific list of events related to ex-ante or in-year risk adjustments would not support the overall policy objective.

2. It should be clear that any criteria related to risk adjustment adopted by a firm can be adopted on a non-exhaustive basis, to ensure firms are able to retain flexibility in their policies and processes to react to unexpected events.

3. The drafting of PRA Remuneration Part 11.4A(2) should not use the concept of a "reasonableness" test. The decision of whether or not to apply risk adjustment is always very nuanced, and requires balancing different considerations, whereas the reference to a case where it is "reasonable" for an MRT to be held responsible seems to imply an objective standard. We also think the reference to "reasonableness" in this context may have unintended consequences, in particular as there is a risk that it could be used as a basis to resist or challenge a firm's decision to apply risk adjustment.

4. Also, in PRA Remuneration Part 11.4A(2), we think the reference to "*seniority*" should be removed, as the focus of this principle should be on those who have responsibility by virtue of their role.

5. In PRA Remuneration Part 11.7, the reference to the performance measures used to "calculate" variable remuneration could imply the use of formulaic calculations, which may not reflect the operation of firms' remuneration policies in practice and may also unintentionally limit the scope of this expectation. We recommend this provision should instead read as: "*A firm must ensure that, in determining variable remuneration for senior management, the firm appropriately takes into account the member of senior management's performance in their areas of responsibility*".

We note that the PRA proposes that material or urgent actions requested in a Periodic Summary Meeting (PSM) letter should be reflected in a Senior Manager's Statement of Responsibilities (SoRs). Our members emphasise that, to avoid SoRs becoming a ‘tick list’, to not routinely add any but the most significant actions arising from a PSM that have been assigned to a particular Senior Management Function (SMF), to their SoR. The requirements do not make it clear which actions would be deemed material or urgent which may result in adding all actions to the SoRs, including interim responsibilities. This becomes a repetitive and onerous administrative process when completing Form J and updating SoRs on a more frequent basis. It may be more appropriate for the PRA to require firms to ensure that a SMF is accountable for each action, but allow firms to allocate those responsibilities and include in remuneration reviews through the most appropriate mechanism. This could include adding an action to a SoR where a firm deems it material; other mechanisms could include adding to a SMFs objectives or capturing material or urgent actions under the Role Responsibilities Document.

Chapter 6: Deferral and retention period

Simplification of deferral requirements

As explained above, we support the move to a simpler set of deferral requirements, of one defined deferral period for SMFs and one for other MRTs, as the current regime based on the Higher Paid MRT threshold has become overly-complex.

Deferral periods for SMFs and non-SMF MRTs

We also strongly support the reduction of the deferral periods for PRA and FCA SMFs, and non-SMF MRTs (who fall above the individual proportionality threshold), from the current position.

The current deferral periods, and the prohibition of vesting in the first three years for SMFs, has meant that the deferral periods for senior staff in the UK have become a significant international outlier, drive the perception of the remuneration rules in the UK banking sector being uncompetitive and discourage globally mobile staff from working in the UK and/or taking roles in which they hold Senior Manager Functions.

The proposed revised deferral periods, of 5 years for SMFs and 4 years for other MRTs, are more appropriate than the position under the current rules (albeit still longer than practice in global markets outside the EU). However, the deferral periods need to be looked at in combination with the approach on retention periods for both deferred but also non-deferred remuneration (given that MRTs see non-deferred remuneration subject to a retention period as just another form of deferral), and so our members’ views on the appropriateness of the proposed deferral periods takes into account our member’ strong views that the retention periods should also be removed in relation to non-deferred, as well as deferred, instruments (as explained below).

Retention periods for deferred instruments

We strongly support the removal of any requirement or regulatory expectation that a retention period needs to be applied to deferred instruments. Deferral periods already ensure that deferred instruments are held by the MRT, and create alignment to the bank and shareholders/investors, over a material time period. The addition of a retention period on deferred instruments therefore does not create any substantive policy benefit, but does add significant complexity operationally and in terms of employees’ understanding of the rules.

Retention periods for non-deferred instruments

We strongly encourage the regulators to consider further the treatment of remuneration delivered in non-deferred instruments.

The application of a retention period to non-deferred instruments means that employees see any remuneration delivered as non-deferred instrument as just another part of their deferral. This means that the UK pay model will continue to be seen as materially unattractive compared to global comparators. Indeed, the delivery of a portion of non-deferred variable remuneration in instruments subject to a retention period is one of the biggest drivers of the UK remuneration rules being uncompetitive in comparison to global remuneration structures (with it being important to focus on the competitiveness of the UK from a global perspective rather than only benchmarking the rules to the position in the EU).

The delivery of non-deferred instruments subject to a retention period also adds significant administrative and operational complexity.

We therefore encourage the regulators to also remove the expectation that non-deferred instruments should be subject to a retention period.

Whilst our strong view is that the requirement to apply a retention period to non-deferred instruments creates no substantive policy benefit but is materially adverse to the competitiveness of UK remuneration structures, if the regulators do retain this requirement, then we further propose that the guidance on what would constitute an appropriate retention period should be aligned to that taken under the MIFIDPRU remuneration rules, such that firms would be required to determine their own retention period considering: (a) the length of the deferral period, (b) the length of the firm's business cycle, (c) the types of risk relevant to the role of the staff member, and (d) how long it could take for the risks underlying the staff member's performance to crystallise (with this applying instead of the regulators specifying any suggested absolute period).

PRA Remuneration Part 15.16

In addition, the requirement at PRA Remuneration Part 15.16, that the minimum 50:50 split in cash and instruments applies equally to both upfront and deferred variable remuneration, continues to create a material issue, both with the competitiveness of the remuneration rules in the UK compared to global standards and in creating significant operational complexity.

This rule means that MRTs can receive only 20% or 30% of variable remuneration in upfront cash which is one of the biggest factors contributing to the UK remuneration rules being uncompetitive globally. This small portion of variable remuneration received in upfront cash is a significant concern raised by individuals taking on MRT roles and results in compensation negotiations and pay-mix alterations and can ultimately put pressure on firms to deliver higher fixed pay to attract and retain staff in key roles.

In our view the requirement that the minimum 50:50 split applies equally to each element of pay serves no policy benefit[1]. Delivering variable remuneration in non-deferred instruments does not facilitate the application of risk-adjustment, as non-deferred instruments are within scope of the clawback provisions only (i.e. as they are vested, they are not subject to malus) which is the same position as for cash paid upfront. Further, this does not create any additional alignment to the bank or shareholders/investors, because the level of delivery required to be in instruments is fixed at 50% of total variable remuneration (i.e. this is not affected by whether that 50% in instruments is comprised in non-deferred or deferred remuneration). Indeed, given that upfront instruments are held for only 1 year at most, whereas deferred instruments are held through-out the applicable deferral period, having a greater portion of the deferral held in instruments will lead to MRTs holding instruments, and being aligned to the bank and shareholders/investors, for a longer period.

We therefore propose that the requirement at PRA Remuneration Part 15.16, that the minimum 50:50 split in cash and instruments be applied equally to both upfront and deferred variable remuneration, should be removed.

This approach would allow firms to implement a remuneration delivery schedule for MRTs that is more competitive globally and importantly, would reduce the pressure upon firms to deliver higher fixed pay to MRTs to attract and retain staff, who will otherwise continue to receive only 20%-30% of their variable remuneration upfront. Consequently, this change would support the drive to increase the proportion of remuneration delivered as variable remuneration, which is aligned to the regulators' intentions in having removed the 2:1 maximum ratio.

This would also align to the revised approach adopted by the FCA in implementing the MiFIDPRU remuneration rules, and indeed in the context of the MiFIDPRU remuneration rules that FCA states that in its view it is preferable for the deferred portion of pay to include a greater portion of instruments.

<u>Removal of the prohibition on the payment of dividends or interest on deferred remuneration</u>

We strongly support the removal of the prohibition on dividends or interest being paid on deferred remuneration, which has always created an arbitrary misalignment between MRTs holding deferred remuneration and shareholders or investors.

We note that in paragraphs 6.19 – 6.20 of the CP, the regulators discuss removing this prohibition from deferred remuneration, whereas the draft paragraph at 1.9B of SS2/17 refers to a removal of the prohibition on paying dividends or interest on deferred *instruments*. We understand this is because the EBA Guidelines only impose the prohibition on interest on deferred instruments, and so that this should not be read as the PRA and FCA proposing that dividends or interest could be paid on deferred *instruments* but not on deferred

[1] We also note that, when looking at the EU position, the basis for the expectation that the 50% instruments requirement should be applied to both upfront and deferred pay has always been unclear at best. This is not required by the drafting of the EU Capital Requirements Directive itself, and stemmed from a unilateral view expressed by the European Parliament rapporteur in 2010. Indeed, the FSA's original proposal when introducing the CRD 3 remuneration rules disagreed and stated that it proposed to apply the requirement across variable remuneration as a whole, a position that it had to later change when the EU position was codified (paragraph 3.82, FSA CP 10/19).

cash (which would seem an unjustified distinction). However, to avoid confusion, we request that paragraph 1.9B of SS2/17 is clarified, to refer to deferred *remuneration* rather than only deferred *instruments*.

Feedback on other aspects of the remuneration rules

Whilst not covered in the Consultation Paper, we request that the PRA and FCA also consider the following additional aspects of the remuneration rules:

<u>Disclosure</u>

The remuneration disclosure and reporting regime currently imposes a material administrative and compliance burden on firms, which in our view is disproportionate to the extent to which this reporting supports the regulatory objectives of the remuneration rules. There is also significant overlap between the different sources of reporting, but with a requirement to disclose data in different formats or taking into account similar, but different, supporting guidance, which exacerbates the burden on firms. We also note that a number of the current disclosures derive from legacy EU reporting requirements.

With this in mind, members welcome the confirmation that organisations will no longer submit Table 8 as part of RPS stage 1, but we encourage the PRA and FCA to consider more fundamentally how the current reporting requirements can be refined, to efficiently support the PRA and FCA in their supervisory functions but on a targeted and proportionate basis. Particular principles which we would encourage the regulators to consider are:

1. **To avoid firms having to provide the same data in more than one source or format**. Given that, for UK institutions, the remuneration data disclosed in the Article 450 CRR disclosure is very comprehensive, for most firms the data in a number of the RPS Tables, and the High Earners and Benchmark data, becomes very repetitive, albeit with the slight variations in format and content requirements leading to a disproportionate administrative burden in creating the various disclosures.
2. **To focus the RPS on key trends**, with the granular detail available on request. For UK institutions the Article 450 CRR disclosure provides comprehensive remuneration data on an aggregated basis, and so moving to a position where more granular data is provided only on request would materially reduce the administrative burden without reducing the ability for the regulators to effectively supervise firms.
3. **Removing any obsolete reporting requirements**. In particular, the EU Benchmark reporting seems to now serve no purpose and, given it reports very similar data to Article 450 CRR, this report seems obsolete in particular. Similarly, the EU High Earners reporting is a legacy EU disclosure.

We therefore have the following comments and recommendations in respect of the current sources of disclosure and reporting:

- **Remuneration Policy Statement:** for those firms to which this applies, the requirement to resubmit a full RPS narrative template every year creates a significant administrative burden. This seems unjustified, given that the purpose of the RPS is to summarise content that will also be reflected in the firm's policies and procedures. We also query whether receiving such lengthy documents each year supports the PRA and FCA in effectively supervising firms. We therefore recommend a move to a self-assessment approach (i.e. extending the position currently applied for Proportionality Level 3 firms to all firms). If the regulators would prefer to continue to receive submitted information from certain firms (i.e. primarily Proportionality Level 1 firms), the self-assessment approach could be supplemented by requiring those firms to submit an Executive Summary only, highlighting key changes to policies and summarising any material updates for the regulators. All firms would themselves continue to maintain full up-to-date policies and processes, and so would be able to share further information on any point with regulators upon request.

- **Obsolete and repetitive RPS tables:**

  In our member's views the following RPS tables are very repetitive of other disclosures, such that we recommend the following RPS tables are retired:

  - **RPS Table 1a**: based on the proposal in the consultation to remove the MRT exclusion process, the PRA and FCA will no longer need mid-year data for this purpose, and firms having to prepare this mid-year report seems to become unnecessary. We would therefore recommend that MRT status should be tracked by firms internally throughout the year, but that firms would be able to track this based on the data formats in their internal HR systems (rather than having to populate Table 1b in a fixed format). After the conclusion of the performance year firms would document the MRT data in the fixed format of Table 1b.
  - **RPS Table 4**: given that information in this table overlaps with data submitted as part of Pillar 3 reporting, members would like to recommend retiring the disclosure of Table 4.
  - **RPS Table 5**: similarly, given that the majority of information is disclosed as part of Table 3, members would propose to retire this table.
  - **RPS Table 6**: members would propose to retire this table (or that it should become data that firms are expected to be able to provide to the PRA and FCA on request) as there is not consistent disclosure of regulatory compliance with other rules in the rulebook.

- **Approach to submission of RPS tables**

  In our member's views, it would be appropriate for RPS Tables 1b, 2 and 3 to be used as templates for firms to internally complete on an annual basis, but for the requirement for Proportionality Level 1 firms to submit this every year, by default, to be removed. Instead, firms would be expected to have these tables available to be submitted on request, and, as currently, it would also remain open for the regulators to be able to agree specific arrangements in relation to the year-end process and submission of data with firms based on their specific circumstances. Firms would continue to submit Table 7 and Annex 1 in line with the current position.

- **COREP Remuneration Benchmarking (COR014)** and **COREP High Earners reporting (COR015)**: This reporting originated from the EBA as part of its annual benchmarking exercise across the EU and was transposed to the PRA Rulebook. We understand this data is no longer shared with the EBA, and the data covered in this disclosure significantly replicates data reported in other disclosures along with the Pillar 3, such that the administrative complexity of having to prepare, review, validate and submit these additional disclosures seems unwarranted. We therefore propose that these reporting requirements are now retired.

Retention awards

Current supervisory guidance requires prior PRA approval of the grant of retention awards. However, this is a requirement that creates a material issue for firms in practice, with this directly hampering firms' ability to retain staff in a market that is competitive globally and as against other less-regulated parts of the UK financial services sector. In particular, our members frequently face situations where they need to move to ensure the retention of key staff at very short notice, and granting a retention award only after regulatory approval is required comes too late. We therefore see this requirement in particular as being directly contrary to the objective of supporting a competitive UK banking sector.

On this requirement, the UK (and the PRA specifically) is an international outlier, as pre-approval of retention awards is not required by the EBA Guidelines or by the ECB or (so far as our members are aware) any other EU national regulator (and is also not required under the UK MIFIDPRU remuneration rules).

We therefore request that this requirement for prior approval of retention awards is removed, so that retention awards can be used where they are reasonably necessary for retaining key staff.

We would be happy to meet with you to discuss any aspects of our response, if that would be helpful.

AFME Contacts

James Kemp
Managing Director
GFMA - Global FX Division,
AFME - Technology & Operations and CCA Divisions
james.kemp@afme.eu

Louise Rodger
Managing Director
Compliance Control and Accounting
louise.rodger@afme.eu