
Consultation Response

PRA CP9/21 Remuneration: Correction to the Definition of 'Higher Paid Material Risk Taker'

26 May 2021

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **CP9/21 REMUNERATION: CORRECTION TO THE DEFINITION OF 'HIGHER PAID MATERIAL RISK TAKER'**. 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.

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

Comments

AFME welcomes the opportunity to comment on CP9/21 and thanks the PRA for providing advance notice of its intention to consult on this issue.

We appreciate the PRA setting out how it considers that this proposed change to the definition of Higher Paid Material Risk Taker ("MRT") is in line with its previous policy intentions. However, we would like to raise a concern relating to how the change will affect the population of employees who will henceforth be classed as higher paid MRTs.

In particular, we note that there will be employees who will meet the first criterion of 1.3 of the Remuneration Part of the PRA Rulebook "*whose annual variable remuneration exceeds 33% of their total remuneration*", without meeting the second "*whose total remuneration exceeds £500,000*". This will include employees whose total remuneration is comparatively low.

For example, if we consider two scenarios:

MRT1 – fixed pay £330,000, variable pay £160,000, total remuneration £490,000

Variable is 32.6% of Total Remuneration – i.e. under 33%

Total Remuneration is £490,000 – i.e. under £500,000

Outcome: Does not meet the higher-paid MRT definition

MRT2 – fixed pay £88,000, variable pay £45,000, total remuneration £133,000

Variable is 33.8% of Total Remuneration – i.e. over 33%

Variable is over £44,000 – i.e. above the de minimis threshold

Total Remuneration is £133,000 – i.e. under £500,000

Outcome: Meets the higher-paid MRT definition

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In considering these scenarios, it seems disproportionate that that the second individual would be subject to more stringent malus and clawback than the first individual, given the disparity between their overall compensation levels and likely seniority.

There is also a risk of confusion when setting out the rules for employees. This is because for all pay-out rules to be disapplied (PRA Rulebook, Remuneration Part 15.A1), *both* of the following conditions need to be met: variable compensation lower than £44,000 and less than 33% of total compensation.

We therefore suggest that the PRA considers one of the following approaches:

- To retain the previous approach requiring both criteria to be met before an individual is considered a higher paid MRT.

i.e. A higher paid MRT is an MRT with:

- variable remuneration which exceeds 33% of their total remuneration; AND
- total remuneration which exceeds £500,000.

- With reference to FCA CP21/7 'A new UK prudential regime for MiFID investment firms'¹, page 72, the threshold of £500,000 total remuneration could be amended to a threshold of £167,000 variable remuneration. This means there would be no maximum total remuneration. This approach could be more appropriate, because it is not the amount of the total remuneration that can incentivise inappropriate risk-taking, rather it is the variable component and the ratio between the variable and fixed components that are relevant.

i.e. A higher paid MRT is an MRT with:

- variable remuneration which exceeds 33% of their total remuneration; AND
- variable remuneration which exceeds £167,000.

- Removal of the 33% criterion from the definition to leave a single criterion relating to total compensation. Furthermore, since the 60% deferral rate is triggered by a *variable* compensation threshold of £500,000 (PRA Rulebook, Remuneration Part 15.18), a single total compensation threshold could be used as a single high earner definition which triggers both the 60% deferral rate and the higher deferral period.

i.e. A higher paid MRT is an MRT with:

- total remuneration which exceeds £500,000.

Finally, we welcome the PRA's decision not to apply the change retroactively.

On a separate note, we would like to encourage the PRA to consider creating a single source for all UK remuneration rules. At present, firms are required to consult multiple sources, including EU Directives, to understand the complete set of remuneration rules in the UK. This adds unnecessary complexity to the process and increases the risk of inadvertent incorrect application.

¹ <https://www.fca.org.uk/publication/consultation/cp21-7.pdf>

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