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RESPONSE TO EBA CONSULTATION PAPER

EBA/CP/2013/11 – 21.05.2013: Consultation Paper on Draft Regulatory Technical Standards on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 90(2) of the proposed Capital Requirements Directive

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MARSH & McLENNAN COMPANIES

Introduction

Mercer welcomes the opportunity to comment on European Banking Authority Consultation Paper on Draft Regulatory Technical Standards on criteria to identify material risk takers.

Mercer is a global consulting company leader in talent, health, retirement and investment. Mercer helps clients around the word advance the health, wealth and performance of their most vital asset- their people. Mercer's 20,000 employees are based in more than 40 countries.

Mercer is a wholly owned subsidiary of Marsh & McLennan Companies (listed in NY stock exchange), a global team of professional services companies offering clients advice and solutions in the areas of risk , strategy and human capital.

Specific considerations on the Consultation Paper

According to Mercer opinion, referring to:

- *Article 1 - Subject matter and scope,*
- *Article 2 - Internal identification process,*
- *Article 3 - Qualitative and quantitative criteria,*

it could be useful to **simplify the process and focus more on staff who can have a material impact on risk taking rather than on compensation levels**.

In particular, Mercer suggests to identify risk takers within the perimeter of a banking group, based on these steps:

Step 1	Staff members within the 0.3% of staff who receive the highest total compensation*
Step 2	Staff members who are awarded total compensation* of EUR 500,000 or more**
	AND ARE
Step 3	Staff members whose professional activities have or could have a material impact on the institution's risk profile based on an internal identification process

Note:

** By Total Compensation it is meant the sum of base salary, variable compensation and benefits.*

*** In computing the fixed to variable remuneration ratio it should take into consideration target levels and not actual ones.*

Further parameters and conditions (i.e., variable compensation higher than EUR 75,000 and 75% of fixed remuneration)), will lead to inclusion of many people who do not have a material impact on risk. Material risk takers should be appropriately captured by the other critieria defined in the standards.

General considerations

In addition to responding to EBA/CP/2013/11 of the 21st May 2013, Mercer would like to highlight in this document the following needs and considerations.

A) Clarify which regulatory frame should be applied to asset management and investment banking functions within the perimeter of a banking group.

According to Mercer's experience, asset management (AM) and investment banking (IB) businesses should apply specific regulatory frameworks. These businesses usually compete in a more international arena than is typical in retail banking. The major competitors of European Asset Management and Investment Banking institutions are primarily based in North America and thus are subject to different regulators, also in terms of compensation policy and practice. Also, the independent asset management firms will be subject to the regulations in UCITS V.

To provide a more level playing field, Mercer suggests that <u>Asset Management businesses within European banking groups should be subject to UCITS V regulation rather than CRDIV</u>.

B) Create a level playing field across Europe

The following are some examples of the actual unlevel playing field emerging:

- *CRDIV states requirements for the relationship between the variable component of remuneration and the fixed component. From 2014 onwards, the variable component of the total remuneration shall not exceed 100% of the fixed component of the total remuneration of material risk takers. With specified shareholder approval this maximum ratio can be increased to 200%. <u>CRDIV gives European countries the possibility to set lower ratios.</u>*

- *In each European country, local regulators set a <u>different timeframe for retention of upfront shares in response to CRD III</u>. For example, in Italy it is 2 years while in France it is 6 months.*

All these inconsistencies can make it very difficult for an international firm to manage across geographies and successfully compete for talent.

C) Timing for implementation

Mercer believes, that given the final RTS will not be published until the end of the first quarter of 2014, it is only fair to delay the implementation until 2015. The implementation of the RTS is likely to lead to a substantial increase in the number of identified staff. This will pose firms with the dilemma of anticipating the final RTS and implementing remuneration policies and employment terms for the whole of 2014 or having a double negotiation which will have a substantial administrative and business impact.