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Principles for sound compensation policies

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1. INTRODUCTION

A large proportion of the employees in the financial services sector receive some form of variable compensation. For some the variable compensation is a significant part of the overall compensation package. Variable compensation schemes can motivate directors and employees and provide a means of establishing a link between performance and pay. However, variable compensation schemes can also provide incentives to take undesirable and sometimes irresponsible risks. In addition, this form of compensation can induce people to act in a manner contrary to the interests of the financial enterprise and its clients.

Since the start of the credit crisis, many organisations, including the FSF[1] and IIF[2], have identified variable compensation structures of financial enterprises as one of the causes of the crisis[3]. The moment has come to change this situation. Financial enterprises are now more inclined than in the past to acknowledge the necessity of rethinking their compensation policy.[4] DNB (De Nederlandsche Bank) and the AFM (the Netherlands Authority for the Financial Markets) wish to encourage this development by providing guidance for financial enterprises and developing a supervisory framework so that the risks of performance-related pay can be better managed in the future.

Supervision of compensation policies

Compensation policies of financial enterprises are subject to DNB's supervision of the sound management of business operations and is relevant to the AFM's supervision of the provision of services with due care[5]. This is because compensation policy can act as a catalyst in relation to the scope of various risks, including credit risk, market risk, operational risk, compliance and strategic risk, and can also adversely affect the careful provision of services to clients[6].

Given the complexity and diversity, it is not easy to frame rules of general application for a sound compensation policy. DNB and the AFM have therefore decided to start by drafting a number of

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[1] *Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience*, April 2008

[2] *Final Report of the IIF Committee on Market Best Practices: Principles of Conduct and Best Practice Recommendations, Financial Services Industry Response to the Market Turmoil of 2007-2008*, Institute of International Finance, July 2008. The IIF is the worldwide association of major financial enterprises.

[3] Surveys by PricewaterhouseCoopers and KPMG also show that the industry itself sees compensation structures as one of the main causes of the crisis. *Reward: A new paradigm?*, PricewaterhouseCoopers, 2008 and *Never Again?*, KPMG, 2008

[4] See, for example, the gentlemen's agreement on a sustainable and moderate compensation policy, which was concluded between the Minister of Finance and the financial services industry on 30 March 2009.

[5] The report of the High-Level Group on Financial Supervision in the EU (De Larosière Group) of 25 February 2009 contains a recommendation for supervision by financial supervisors of the compensation policies of financial enterprises (Recommendation 11).

[6] In this report "clients" should be understood as clients, consumers and unit holders as defined in the *Wet Financieel Toezicht/Wft* [Act on Financial Supervision].

principles that are broadly applicable. These principles are presented and explained in this document.

In order to give the AFM a widely applicable and concrete handle for enforcing the principles too, the Ministry of Finance will ensure that sound compensation policy is clearly embedded in the *Wet Financieel Toezicht/Wft* [Act on Financial Supervision] The supervisors will then define in more detail what they mean by sound compensation policy. This may take the form, for example, of a policy rule or guidance.[7]

Steps are now being taken at the international level as well to define what is meant by a sound compensation policy. DNB and the AFM are actively participating in these discussions. In addition, DNB and the AFM will enter into a dialogue with the financial services sector, both through the trade associations and directly with the financial enterprises subject to supervision. The principles set out in this document will be elaborated in the light of international developments, the experience gained from supervision and the dialogue with the sector.

Pending the adoption of clearer provisions on this subject in legislation and regulations, the principles contained in this document will serve as guidance for supervisors on how they should approach the subject. Financial enterprises are expected to use the principles as guidance in critically reviewing their compensation policy and adjusting it where necessary. If DNB and the AFM consider that the compensation policy of an enterprise may result in substantial prudential and/or behavioural risks, this will prompt an investigation into the identified risks and stricter supervision of the enterprise as a whole.

Establishment of the principles

The principles for sound compensation policies for the Dutch financial services sector have been developed on the basis of existing national and international principles and schemes for compensation, including the Markets in Financial Instruments Directive (MiFID) inducement rule, parts of the Dutch Corporate Governance Code and the FSF Principles for Sound Compensation Practices. In addition, DNB and the AFM have interviewed directors and employees of financial enterprises to obtain more information about compensation in practice and the attendant risks. They have also held discussions with experts on compensation and corporate governance and have consulted with trade associations in the financial services sector. Finally, they have used the literature and the findings of recent surveys.

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[7] The process of providing guidance will be organised by the AFM in much the same way as the introduction of the MiFID inducement rule for investment firms and financial service providers.

Target group and scope of the principles

The principles are intended for all financial enterprises and pension funds which come under the supervision of DNB or the AFM by virtue of the Act on Financial Supervision, the Pensions Act or the Occupational Pension Schemes (Compulsory Membership) Act[8]. They apply to employees and directors whose compensation consists (or may consist) to a significant extent of variable compensation, as in the case of senior management positions or commercial jobs. No two financial enterprises are the same in terms of nature and size, and it is therefore to be expected that the way in which the principles are applied will differ from enterprise to enterprise. The governance principles have been drafted from the perspective of large and medium-sized companies. Small companies will have to take comparable or other risk management measures that are appropriate to the extent of the risk posed by their compensation policy. DNB and the AFM expect that companies will observe the spirit, and not just the letter, of the principles.

Enterprises that have outsourced a substantial part of their activities, for example a large proportion of the pension funds, must use their influence through the outsourcing relationship to bring the compensation policy of the service provider into line with the principles for sound compensation policies.

It is the responsibility of financial enterprises to arrange for the right balance to be struck between the use of variable compensation and the management of the attendant risks. If an enterprise is not able to provide a sufficient degree of risk management, it will have to modify its compensation policy accordingly and pursue a more moderate policy on variable compensation.

Outline of this report

Chapter 2 contains the principles for sound compensation policies. The principles are subdivided into three categories: (1) foundation principles for compensation policies, (2) governance of compensation policies, and (3) design of the variable compensation structures. Chapters 3 to 4 and 5 of this report explain the principles in more detail. The explanation is an integral part of the principles for sound compensation policies.

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[8] References in this document to financial enterprises are deemed to include pension funds.

2. PRINCIPLES FOR SOUND COMPENSATION POLICIES

Foundation principles for compensation policies

1. The compensation policy should promote the integrity and soundness of the financial enterprise, with a focus on the enterprise’s long-term interests.

2. The compensation policy contains no incentives that detract from the obligation of a financial enterprise to promote the interests of its clients[9] and other stakeholders, or from other duties of care to which it is subject.

Governance of compensation policies

3. On the basis of principles 1 and 2, the enterprise should carefully draw up a compensation policy for the directors and job groups within the enterprise and apply it consistently and evaluate its operation. In doing so, it should pay explicit and structural attention to limiting and managing the negative effects of variable compensation structures on the enterprise’s risk profile and the clients’ interests.

4. The supervisory board (or any similar internal supervisory body) should arrange for the careful and sound design, implementation and evaluation of the compensation policy for the management board. It should also supervise the compensation policy for the entire enterprise. Each variable compensation structure within which compensation above a fixed level is possible requires the prior approval of the supervisory board.

5. The personnel, risk management, compliance and internal audit functions should work together to manage the risks of the compensation policy for all (other) employees.
   a) The personnel function draws up, on behalf of management, a compensation policy for all job groups within the enterprise. The personnel function also monitors the consistent application of the policy and evaluates its operation.
   b) The risk management function analyses how a variable compensation structure affects the risk profile of the enterprise and monitors its management.
   c) The compliance function analyses how a variable compensation structure affects the enterprise’s compliance with legislation, regulations and internal policy.

[9] In this report "clients” should be understood as clients, consumers and unit holders as defined in the *Wet Financieel Toezicht/Wft* [Act on Financial Supervision].

d) The internal audit function periodically carries out an independent audit of the design, implementation and effects of the enterprise's compensation policy.

6. The compensation and the compensation policy for employees in risk-control positions should support their role of independent countervailing power in relation to the commercial jobs.

7. The enterprise should provide insight and transparency into its compensation policy to relevant stakeholders.

Design of variable compensation structures

8. Each variable compensation structure should comprise a balanced mix of measures appropriate to the job in order to ensure the correct incentive effects.

   a) The variable compensation should be in due proportion to the fixed salary. The enterprise should set a maximum ratio between variable and fixed compensation per function group.

   b) Variable compensation should be linked to predefined, assessable and influenceable performance criteria. These performance criteria should reflect as far as possible the interests of all stakeholders in the enterprise.

   c) The award of variable compensation should be dependent on its being in due proportion to the performance of the employee and/or the department and/or the enterprise as a whole.

   d) Financial results which are used in appraising performance should be corrected to take account of risks and costs.

   e) The award of the variable compensation should not be dependent on an 'all or nothing' commercial objective, and such compensation should instead have a linear or graduated structure.

   f) The variable compensation structure should provide for the possibility of exercising some degree of discretion when awarding variable compensation in order to counter undesirable effects, such as compensation that is not commensurate with actual performance. This is equally applicable in exceptional situations such as an acquisition or dismissal.

   g) An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration.

h) The ratio between compensation in cash, shares, options or other forms of compensation should be in keeping with the enterprise's risk management practices.

3. FOUNDATION PRINCIPLES FOR COMPENSATION POLICIES (principles 1 and 2)

Financial enterprises play an essential role in the economy. The course which financial enterprises pursue not only determines their profitability but also influences the operation of and confidence in the financial services sector and hence the functioning of the economy as a whole. Partly due to their special economic position, financial enterprises often have to deal with a complex network of stakeholders. On the basis of the principles of good corporate management as set out in the Dutch Corporate Governance Code, account should be taken of the interests of all stakeholders, including shareholders, clients, employees and society as a whole, when determining the strategic course[10]. The strategy of the enterprise is translated into its policy, including its compensation policy. Compensation policy is thus a reflection of the interests of the various stakeholders[11].

Part of the compensation received by a large proportion of the employees (including directors) of financial enterprises is variable. An enterprise can have many different valid reasons for a variable compensation policy. For example, it may wish to influence the behaviour of its employees, create extra motivation, recruit or retain talented staff or adjust salary costs in line with the financial results[12]. But a variable compensation structure may also encourage an employee to take undesirable or irresponsible risks in the hope of generating more turnover or making more profit and thus increasing his variable compensation. A variable compensation structure may also cause employees to focus too much on the variables for which they are held accountable rather than on other important aspects of their job. A third danger of variable remuneration structures is that employees may be tempted to ‘play’ with or manipulate information with a view to making their (measured) performance look better.

From the perspective of the supervisors, the integrity and soundness of a financial enterprise and the interests of its clients should be the basic criteria for the design of the enterprise’s compensation policy. The compensation policy and the compensation structure for all employees (including directors) should be drawn up, implemented and evaluated in this light.

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[10] This is described in the preamble to the Dutch Corporate Governance Code as follows: ‘The code is based on the principle accepted in the Netherlands that a company is a long-term form of collaboration between the various parties involved. The stakeholders are (…) employees, shareholders and other providers of capital, suppliers and clients, but also government and civil society. The management board and the supervisory board have overall responsibility for weighing up the interests, generally with a view to ensuring the continuity of the enterprise. In doing so, the company endeavours to create long-term shareholder value.’

[11] *Remuneration; where we’ve been, how we got there, what are the problems and how to fix them*, M. Jensen and K. Murphy, ECGI, 2004; Recommendation no. 1, “Companies should embrace enlightened value maximization / enlightened stakeholder theory in which creating firm value is the firm’s sole governing objective”.

[12] It is important in this connection to ensure that in bad times the variable compensation is greatly reduced or not paid out at all. In practice this is often difficult to achieve because staff quickly become accustomed to receiving this compensation and there is great dissatisfaction if the bonus is suddenly much lower.

The importance of the principles is explained below. Afterwards, there is a description of various factors that have to some extent compromised the integrity and soundness of some financial enterprises and the interests of their clients. This has had an effect on the compensation policy, which has in turn amplified the effect of these factors.

Principle 1: The compensation policy should promote the integrity and soundness of the financial enterprise with a focus on the enterprise's long-term interests.

The soundness and integrity of financial enterprises are a precondition for financial stability. This is why it is essential for the business operations of these enterprises to be carried out in a controlled and sound way. The nature and extent of the risks which the enterprise takes should be determined in this light. It must also design a risk management system that is in keeping with the chosen risk profile.

Controlled and sound business operations may be compromised as a consequence of incorrect compensation incentives. These may encourage directors or employees to engage in high risk activities geared to short-term results that are not in keeping with the chosen risk profile and which the risk management system is not equipped to deal with. In certain cases, the effects of the compensation incentives may have a major impact on the integrity and soundness of the financial enterprise. This is clearly shown by the role which the compensation incentives have played in the present financial crisis. Many transactions would perhaps never have been entered into in the first place if the director or employee concerned had not himself also had a financial interest in them. Examples are the sale of mortgages to uncreditworthy clients, the purchase of high risk financial products and excessive focus on the growth of the business, thereby jeopardising stability.

Compensation incentives may raise the risk profile of a financial enterprise in such a way that the profile is no longer in keeping with the chosen risk policy and the risk management system is not equipped to deal with the level of risk. Given the strength of the incentives (which is connected with the relative level of the variable compensation) and the fact that they apply mainly to risk-taking jobs, inadequate control of the effects of the compensation policy may have immediate consequences for the integrity and soundness of the enterprise. This is why the principle that the policy must support the integrity and soundness of the financial enterprise, and that the focus should be on the long term, should be the basic criterion for every compensation policy. This serves as a general basis for further definition of the policy.

Example of undesirable practice

A financial enterprise invests heavily in products without having a clear understanding of these products' components and what risks are attached. Warnings issued by the risk manager are ignored, because the investments yield high returns for the bank and hence also for the directors and employees in the form of a large bonus. The risks warned against by the risk manager later materialise. However, the bonuses have already been paid out.

Principle 2: The compensation policy should not contain incentives which detract from the obligation of a financial enterprise to promote the interests of its clients and other stakeholders, or from other duties of care to which it is subject.

In their day-to-day operations financial enterprises have dealings with a large number of stakeholders with disparate interests (e.g. shareholders, clients, employees and society as a whole). An incorrectly designed compensation structure may induce employees and directors to allow the interests of the enterprise (e.g. boosting turnover or market share) or their own interests (receiving the variable compensation) to prevail over those of other stakeholders. These stakeholders are not always in a position to assess whether the activities of the enterprise or the products or service offered to them actually serve their interests. This applies especially – but not exclusively – to non-professional clients. An inadequately designed compensation policy may induce commercial employees, in their role as a financial services provider, to give priority to their own financial interests rather than the client's needs and personal situation. In order to avoid this potential conflict of interest, the interests of the clients and other stakeholders must form the basis for the compensation policy. This will help to prevent risks to clients such as product pushing, misselling and churning.

As long ago as 2005 the AFM noted that a conflict of interest could arise as a consequence of variable compensation, thereby compromising the duty of care[13]. A recent example of product pushing and misselling as a consequence of compensation structures is the sale of investment-linked insurance policies with excessive charges (referred to in Dutch as '*woekerpolissen*'). The commission earned on these policies was often higher than in the case of investment funds or savings products, which thus increased the pressure on front-line staff to sell these products[14]. The financial crisis provides numerous examples of how compensation structures have stimulated the development of ever more complex products, which consumers did not comprehend and often proved unfathomable even to professional and institutional investors.

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[13] AFM Report *Voortdurende Zorgplicht*, 2005.
[14] AFM Report *Feitenonderzoek beleggingsverzekeringen,* 2008.

The principle formulated above resembles the MiFID inducement rule. This rule has been incorporated in the Act on Financial Supervision (Wft) and the Decree on the Supervision of the Conduct of Financial Enterprises (BGfo) and applies (since 1 January 2009) to commission payments for complex financial products or mortgage loans between financial enterprises[15]. To prevent the risks described above and promote a level playing field for financial services in a broad sense, this rule is a logical starting point for an internal compensation policy. Since the introduction of the MiFID inducement rule, it has also been noted in Europe that conflicts of interest comparable to those between enterprises can occur in respect of compensation structures within enterprises[16].

Example of undesirable practice

A significant share of the variable compensation for commercial employees is based on turnover. Employees thus have an incentive to sell as many products as possible (or a certain kind of products). This incentive, arising from the variable compensation, is at odds with the obligation on financial enterprises to provide appropriate advice to their customers based on their situation and needs. This type of variable compensation increases the risk of *product pushing* en *misselling* and may seriously impinge on the customer's interests.

Factors that may compromise the principles of a sound compensation policy

The principles of a sound compensation policy as described above (i.e. a controlled and sound enterprise that acts in the interests of its clients) may be compromised by a variety of factors. Together these factors have resulted in some financial enterprises focusing too much in recent years on creating short-term shareholder value. This has in turn affected the compensation policy of these enterprises. These factors will be explained in the remainder of this chapter. The role and compensation of the management board of the enterprise will also be examined. As listed and unlisted companies face different problems, they are dealt with separately.

Listed companies

The objectives of an enterprise should do justice to the long-term interests of all stakeholders and the compensation policies should support this. Arranging this is a matter for the management board of a listed company, on the basis of the principles of good corporate management.

The compensation policy of some enterprises is or has been focused too emphatically on the short-term interests of some of the shareholders. Possible causes are:

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15 Wft, section 4:90, BGfo articles 149a and 168a.

16 Committee of European Securities Regulators (CESR), *Inducements under MiFID, recommendations*, 2007.

- *Shareholder activism.* The interests of some shareholders may not be not entirely in line, certainly in the short term, with those of other stakeholders such as depositors, policyholders and other clients. In recent years groups of shareholders have successfully pressed for short-term shareholder value. In some enterprises this development has led to more high risk behaviour in the short term in order to meet expectations.

- *Pressure on directors to perform.* Directors of listed companies operate increasingly in the public domain. They are expected to produce results within a few years. Moreover, directors themselves often wish to put their stamp on their enterprise within the relatively short period of their term of office with a view to establishing their reputation and furthering their career. The external expectations and the director's own ambitions may result in more risk-taking than is desirable in the long-term interests of the enterprise.

- *Executive pay.* The compensation of directors generally contains a substantial variable short-term component[17]. This compensation structure can cause the management board to focus even more on short-term results.

The tone and behaviour of the management board (the 'tone at the top') have a strong influence on the corporate culture. If the management board is preoccupied with short-term considerations, this has a strong impact on the entire enterprise. As a result, the enterprise's compensation policy will tend to focus to a greater extent on achieving short-term results. This creates a self-perpetuating process in which the long-term interests of clients and other stakeholders are increasingly compromised and ultimately the integrity and soundness of the enterprise can be undermined.

In the long run, it is the responsibility of the management board to ignore the various disruptive influences and continue along its own course, which should be aimed at the long term and take sufficient account of the interests of the various stakeholders. This is irrespective of the extent to which stakeholders are able to make known their interests and to hold the management board accountable for this. All of this stands or falls on whether the directors have sufficient expertise and integrity. It is the task of the supervisory board to ensure that the management board pursues a policy that serves the collective long-term interests of the various stakeholders. To this end the supervisory board should also ensure that the compensation policy of the management board is conducive to these interests. This will then be translated into a compensation policy for the rest of the enterprise. The role of the supervisory board in corporate compensation policy is discussed in more detail in chapter 4.

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[17] Compensation of the top executives of AEX-listed companies in 2007, Hewitt in association with Erasmus University Rotterdam, 2008; 'An ever-growing proportion is variable. On average, only a quarter of the direct compensation package now consists of basic salary. 75% is *at risk*.'

Unlisted companies

The previous section dealt with various factors that caused a sharp focus on short-term results in some listed companies and led to this being reflected in the compensation policy. The extent to which pressure exists in an unlisted company to deliver short-term results depends above all on the ownership structure of the company. In the case of an enterprise that is owned by a private equity fund that will wish to sell the enterprise again within a few years of its purchase, the focus on short-term results will perhaps be stronger than in the case of listed companies. By contrast, the pressure is generally less in the case of a financial cooperative. How a managing director/majority shareholder manages his company depends on his personal ambitions and how quickly he wishes to achieve them.

Regardless of the ownership structure, the management board of an unlisted financial enterprise too is responsible for ensuring that the interests of the various stakeholders are reflected in a balanced way in the corporate policy on compensation.

Although the Dutch Corporate Governance Code applies only to listed companies, it can also serve as a good guideline for unlisted financial enterprises in the design of their compensation policy for the management board. In addition, the principles for sound compensation policy act as a guideline for the compensation policy of the management board and the enterprise as a whole, just as this serves as guide for all employees and directors of listed companies.

4. GOVERNANCE OF COMPENSATION POLICIES (principles 3 - 7)

The previous chapter dealt with the criteria underlying a sound compensation policy. These criteria apply equally to every financial enterprise, irrespective of the type of enterprise and the amount of the variable compensation. The principles in this chapter have been drafted from the perspective of large and medium-sized companies. Small companies are expected to take comparable risk management measures appropriate to the compensation policy pursued by them.

It is up to the financial enterprises to strike a good balance between the use of variable compensation and the management of the attendant risks. If an enterprise chooses a compensation policy that allows for the possibility of high variable compensation, it must also put in place a strong corporate governance structure to manage the risks of the compensation policy. If an enterprise is unable to provide adequate risk management, it must adapt its compensation policy and introduce a more moderate policy on variable compensation.

A moderate compensation policy involves a deliberate and explicit cycle of drafting, implementing, evaluating and, if necessary, adjusting the compensation structure for both the directors and the employees of the enterprise. A sound compensation policy also means that at each step of the cycle explicit account is taken of the risks of variable compensation structures. It is important for the enterprise to be aware of the possible undesirable effects of a variable compensation arrangement on the behaviour of directors and employees and to limit and control such behaviour as far as possible. Various departments within the enterprise should play a role in this and cooperate together.

This chapter will deal with the governance of compensation. It will also discuss the role which audit functions should play in the good governance of compensation.

Principle 3: On the basis of principles 1 and 2, the enterprise should carefully draw up a compensation policy for the directors and job groups within the enterprise and apply it consistently and evaluate its operation. In doing so, it should pay explicit and lasting attention to limiting and managing the negative effects of variable compensation structures on the enterprise's risk profile and the clients' interests.

The first step in ensuring that the risks of the compensation policy are manageable is to draw up a compensation policy for directors and job groups within the enterprise. The compensation policy should be determined on the basis of the enterprise's objectives and the criteria referred to in principles 1 and 2 of the previous chapter. It is important for an enterprise, when drawing up a variable compensation structure, to analyse its possible undesirable side-effects on the behaviour

of the directors and employees and how this would affect the enterprise's risk profile and the clients' interests. The enterprise should also indicate how the identified risks are limited or sound.

It is evident from interviews with personnel officers of financial enterprises that line managers are sometimes inclined to act outside the fixed frameworks if they wish to recruit scarce talent or retain good staff. Performance-related compensation is sometimes paid even though this is not in keeping with the compensation structure, where compliance infringements have been identified and reported in respect of the employee concerned. This is mainly relevant where the commercial performance of the employee concerned is good. In order to ensure that the risk management measures operate, it is important for the fixed compensation policy to be applied consistently. Departures from the implementation of the fixed remainder compensation policy may have an unintended effect on the moral and social compass of employees and thus induce undesirable behaviour. The corporate culture itself may even be adversely affected by the differentiation between employees accorded preferential treatment and the others. Policy departures should therefore seldom be permitted and those that are permitted should first be approved by senior management.

It is evident from interviews conducted by DNB and the AFM with the staff of financial enterprises that compensation policy is not always viewed as a source of risk. Risks entailed by the compensation policy are generally not managed in a deliberate and structured way. The compensation policy is not an integral part of the enterprise's internal risk management and control system. A possible explanation for this is that in many enterprises variable compensation is mainly regarded as a recruitment and retention tool, owing to the (then) labour shortages. Its operation is therefore mainly evaluated in the light of this objective. Consequently, the need to monitor the impact on the employees' behaviour seems to be overlooked.

Consideration of how the compensation policy adversely affects the enterprise's risk profile and the clients' interests should be part of every step in the compensation policy: design, implementation and evaluation. Risk management is thus an integral part of compensation policy.

Principle 4: The supervisory board (or any similar internal supervisory body) should arrange for the careful and sound design, implementation and evaluation of the compensation policy for the management board. It should also supervise the compensation policy for the entire enterprise. Each variable compensation structure within which compensation above a fixed level is possible requires the prior approval of the supervisory board.

This principle describes the process of managing the compensation policy. The supervisory board should arrange for the proper implementation of this process in respect of the compensation policy for directors. As a substantial part of the compensation for directors of financial enterprises is often variable, it is of great importance for due consideration to be given to any undesirable side-effects on the behaviour of directors. Supervisory board members should be aware of the incentives which may emanate from the compensation structures they frame for directors and of their role in limiting and managing any negative consequences of these structures. This is not an easy task, which is why supervisory boards often use the services of external advisers. It is important for such advisers to be appointed by the supervisory board and not by the management board. Ultimately it is the supervisory board that must ensure that it is sufficiently able to make its own independent assessment of what is desirable and appropriate with regard to the management of the enterprise in keeping with the long-term interests of the various stakeholders. Finally, the compensation policy for the management board should be approved by the general meeting of shareholders.

The compensation policy for the rest of the enterprise is primarily the responsibility of the management board. However, the supervisory board should monitor this as part of its supervision of the enterprise's internal risk management and control system. The compensation policy may, after all, have the effect of greatly increasing the risk element, certainly for groups of employees who are eligible for high variable compensation.

In financial enterprises the highest variable compensation is not always paid to members of the management board. Some employees, often those in jobs involving commercial transactions, receive a high level of variable remuneration. The remuneration of these employees sometimes exceeds that of members of the management board. Often these employees accept substantial risks directly and on behalf of the enterprise. This direct influence on the risk profile, in combination with the strong incentive caused by a large variable compensation component, means that it is desirable for the supervisory board to monitor the compensation of these employees as well. This is why each compensation structure in the enterprise, within which the variable compensation in excess of a given level is possible, should be approved by the supervisory board. This level should be determined by the supervisory board itself.

The supervisory board may decide to establish a remuneration committee[18] to prepare and define these duties.

Enterprises that do not have a supervisory board but do have a variable compensation policy should also ensure that an internal supervisory body is charged with these duties.

Principe 5: The personnel, risk management, compliance and internal audit functions should work together to manage the risks of the compensation policy for all (other) employees.

The management board and the line management have primary responsibility for pursuing a sound compensation policy for the employees of the enterprise. They are supported in this connection by the enterprise's personnel function. In addition, the risk management function, the compliance function and the internal audit function all have their own role to play in managing the risks of the compensation policy. They should work together to make possible the sound implementation of the compensation policy for all employees as referred to in principle 3. The tasks of these functions are set out below.

Principle 5a: The personnel function draws up, on behalf of management, a compensation policy for all job groups within the enterprise. The personnel function also monitors the consistent application of the policy and evaluates its operation.

A compensation policy for employees is drawn up by the personnel function on behalf of management. Where the compensation structure has a variable element it arranges for the risk management function and compliance function to be sufficiently involved in order to ensure that the attendant risks are identified and managed. The same applies to the implementation and evaluation of the compensation policy.

The personnel function should ensure that the compensation structures are consistently applied to the positions to which they relate. Procedures involving the appointment of new employees and periodical appraisal and remuneration rounds should be designed in such a way that personnel function is able to monitor them consistently. It will sometimes be necessary for the personnel function to resist the wishes of commercial line managers to act outside the fixed compensation policy when attracting or retaining good staff. If necessary, the personnel function may allow a dispute on this subject to escalate to a higher management level, which can then decide on any departure from the policy.

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[18] Under the Dutch Corporate Governance Code supervisory boards of listed companies (including financial enterprises) are required to establish a remuneration committee.

Principle 5b: The risk management function analyses how a variable compensation structure affects the risk profile of the enterprise and monitors its management.

If a compensation structure includes a variable compensation scheme, the involvement of the risk management function is necessary. A variable compensation scheme may, after all, encourage more risk-taking. Depending on the nature of the position, this may result in an increase in, for example, the credit risk, the market risk, the operational risk and the compliance risk. A variable compensation scheme therefore influences the risk profile of the department or business unit concerned and the enterprise as a whole. The higher the variable compensation is in relation to the fixed salary, the greater will be this influence.

It is the task of the risk management function to analyse a proposed variable compensation structure and determine the risks of undesirable behaviour and how this impacts the enterprise's risk profile. On the basis of this analysis the proposed compensation structure can be modified. Measures for management of the remaining risks should also be identified.

The risk management function should then continuously monitor and manage the influence of a variable compensation scheme on the risk profile. If it is known, for example, that the compensation structure provides a strong incentive for employees in commercial positions to take certain risks, the risk management function must be aware of this and ensure that an adequate risk management system is in place.

It is evident from interviews with risk managers of financial enterprises that the majority of enterprises do not regard their compensation policy as coming within the domain of the risk management function. Their involvement is limited in most enterprises to providing input for the appraisal of employees in commercial positions (e.g. the number of times specified limits are exceeded). Often they have no information about the extent to which this input actually influences the appraisal and remuneration of the employees concerned.

As a variable compensation scheme can act as a catalyst for risk-taking by the enterprise, it is important for the risk management function to be closely involved in all steps of the compensation policy, particularly for job groups for which variable compensation can be substantial.

Principle 5c: The compliance function analyses how a variable compensation structure affects the enterprise's compliance with legislation, regulations and internal policy.

Like the risk management function, the compliance function too should be involved in drawing up, implementing and evaluating any compensation policy that includes a variable component. The compliance function analyses how a proposed variable compensation structure will affect the enterprise's compliance with legislation and regulations or internal rules. A variable compensation structure may, for example, result in actions contrary to clients' interests and hence in breach of the duty of care. The involvement of compliance functions too in compensation policy is often at present limited to providing input for the appraisal of employees in commercial jobs (compliance infringements). The compliance function plays no further role in compensation policy. Given the potentially negative effects of compensation structures on clients' interests (duty of care), it is important for the compliance function to be closely involved in all steps of the compensation policy.

Principe 5d: The internal audit function periodically carries out an independent audit of the design, implementation and effects of the enterprise's compensation policy.

The task of the internal audit function of a financial enterprise is to assess the design and operation of the enterprise's internal risk management and control system through independent audits. These are carried out at all levels within the organisation.

The present financial crisis has shown that the design of the compensation policy and the management of its effects are defective in many enterprises. This would perhaps have been discovered and addressed at an earlier stage if the internal audit function had investigated this.

As part of its planning the internal audit function should periodically study the effects of the compensation policy on the enterprise's risk profile and how these effects are managed.

Principle 6: The compensation and the compensation policy for employees in risk-control jobs should support their role of independent countervailing power in relation to the commercial jobs.

The previous sections have described why employees in risk-control jobs (risk management, compliance and internal audit) should play a role in the compensation policy of a financial enterprise. This is in keeping with their general task of protecting enterprises from undesirable risks.

To enable these functions to perform their tasks properly (as part of the day-to-day operations of the enterprise), it is important that they should be able to appoint and retain sufficiently qualified staff for these positions. Adequate compensation is essential for this purpose.

Interviews with a number of financial enterprises show that employees in risk-control jobs generally earn much less than their colleagues in commercial positions. This also affects the status of these functions within the enterprise. The difference in remuneration in some enterprises has meant that employees in risk-control jobs are more likely to switch to commercial jobs than vice versa.

In the day-to-day practice of a financial enterprise employees in risk-control jobs should be in a position to resist the wishes of commercial staff. They may find themselves taking a position diametrically opposed to that of a commercial line manager when deciding on whether to enter into a high-risk transaction. In such circumstances it is important for the employee in the risk-control job to have a sufficiently strong position in the hierarchy to actually serve as a countervailing power. A substantial difference in pay between the commercial and the risk-control jobs can result in a shift in the balance to the detriment of the risk-control job.

In order to safeguard the independence of employees in risk-control jobs it is also important that any variable compensation for them should not be dependent (or should be dependent only to a limited extent) on commercial results. In addition, the determination of the compensation policy and the award of compensation for these employees should occur independently of the commercial line manager of the business unit in which the employee works. The line manager should merely provide input for the decision-making process.

Principle 7: The enterprise should provide insight and transparency into its compensation policy to relevant stakeholders.

The enterprise should provide transparency about its compensation policy to DNB and the AFM. On request, the enterprise should provide information to the supervisors about the design of the compensation policy and its consequences for the behaviour of employees and directors and the enterprise's risk profile. There should also be transparency about how the governance of the compensation is organised and how the functions referred to in principle 5 are involved.

It is important for shareholders and clients to know how the enterprise's compensation policy affects the risk profile and quality of the service. This will enable them to determine whether it is in keeping with their interests. It is therefore advisable to make supplementary information on the enterprise's compensation policy available to shareholders and clients as a supplement to the collective agreement and the transparency of executive pay[19].

The information provided should not only relate to the enterprise's management board but should also deal in general terms with the compensation policy for the rest of the enterprise, explaining the general philosophy that was chosen as the underlying principle and how it has been implemented, giving specific attention to the manner in which the instrument of variable compensation is used and what targets are envisaged. Unlike in the case of directors of listed companies, this information does not include details on the level of compensation for individual employees.

The exact information that should be made available, to which stakeholders, and in what way, will differ per type of enterprise and will be subject to change. Experience will reveal good practices. Every financial enterprise has the task of reflecting on what information could be relevant to stakeholders and to make that information available accordingly. It is important that the information is communicated transparently to the relevant stakeholders.

[19] The Dutch Corporate Governance Code contains principles and best practice provisions on the provision of information about the remuneration policy pursued and yet to be pursued for the management board of listed companies and the individual remuneration for members of the management board and the individual components of this policy.

5. DESIGN OF VARIABLE COMPENSATION STRUCTURES (principle 8)

It has already been stated in the previous chapter that a compensation policy must be drawn up for the management board and each job (or job group) in the enterprise. In many enterprises the compensation structure for the directors and some of the employees contains a substantial variable component. In these cases, the criteria for sound compensation policy and the governance of compensation should first be designed in such a way that the risks can be managed, as described in the previous chapters. This chapter deals with the substantive design of a variable compensation scheme and some of the measures that can be built into it in order to limit the risk of undesirable incentive effects.

Principle 8: Each variable compensation structure should comprise a balanced mix of measures appropriate to the job in order to ensure the correct incentive effects.

Various measures can be included in a variable compensation scheme to ensure that the incentive effects are in tune as far as possible with the long-term interests of the company and its stakeholders. This chapter describes a number of measures supervisors consider important. When these measures are applied an appropriate balance should be struck for each job. Depending on the nature of the job and the quality of the general management environment in which the directors or employees concerned operate, specific measures may be of greater or lesser importance. However, when each compensation structure is drawn up, all these measures must be considered and a suitable balance deliberately chosen.

Principle 8a: The variable compensation should be in due proportion to the fixed salary. The company should set a maximum ratio between variable and fixed compensation per function group.

For directors and some employees in financial enterprises, variable compensation has grown over the years from being an extra something over and above fixed salary to a very significant part of the income and sometimes even a multiple of the fixed salary[20]. For such people variable compensation has become an essential part of their income and hence a factor that helps to determine their living standards and the financial

[20] See also: '*Beloningen van topbestuurders bij AEX-ondernemingen 2007*' (Compensation of the top executives of AEX-listed companies in 2007, Hewitt in association with Erasmus University Rotterdam, 2008; 'An ever-growing proportion is variable. On average, only a quarter of the direct compensation package now consists of basic salary. 75% is *at risk*.'

obligations they can assume. Although they allow for the fact that the amount of the variable compensation can fluctuate, they regard the variable compensation to some extent as a given. The word bonus therefore appears to have acquired a different meaning in these situations.

The greater the proportion of total income that consists of variable compensation, the greater the incentives provided by this compensation. And the higher the possible variable compensation, the stronger the incentive to deliver the required performance and the greater the attendant risks. This effect will be even more marked if the director or employee concerned has become accustomed to a given level of variable compensation and has based his standard of living on this.

Moreover, very few jobs in financial enterprises are such that the employee's contribution to the long-term objectives of a financial enterprise can be accurately calculated. This is also true of jobs that pay substantial variable compensation, often the jobs of directors and some commercial staff. The risks entered into by people in these jobs usually have a long time horizon. When this horizon extends beyond the period over which compensation is paid, the employees concerned may be rewarded for performance that ultimately turns out to have been poor. The rest of this chapter describes various measures that can be taken to solve these problems, such as adjusting commercial performance measurements to take account of risks taken and assessing performance over a longer time horizon when granting variable compensation. These measures can to some extent mitigate the problem of undesirable risk-taking and avoid 'rewarding failure'. However, for most jobs it is almost impossible in practice to measure individual employee performance in a manner that takes full account of the risks taken and allows for the long time horizon of the risks.

For the reasons mentioned above, a suitable maximum for variable compensation in relation to total compensation should be determined for each compensation structure. The desired ratio of fixed to variable compensation differs from job to job. What is suitable depends, for example, on the extent to which other measures (discussed in the sections below) can be applied in the compensation structure.[21]

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[21] Kees Cools in his book '*Controle is goed, vertrouwen nog beter*' (2005): 'In the event of maximum influenceability and a maximum contribution to long-term objectives of companies, variable compensation can be 50%, otherwise less.'

Example of good practice

An insurer has fundamentally changed the ratio of fixed to variable income in its sales departments. The variable compensation has been greatly reduced and the fixed compensation raised. The new ratio is more in keeping with the desired profile of the staff, who are to act as advisers rather than sellers.

Example of undesirable practice

A financial enterprise pays staff in commercial positions a relatively low fixed salary . The bonus accounts for the majority of the total compensation they receive. This is higher than the fixed compensation in normal periods and can easily increase significantly in good times. The employees concerned have in fact come to regard some form of bonus as a fixed salary component.

Principle 8b: Variable compensation should be linked to predefined, assessable and influenceable performance criteria. These performance criteria should reflect as far as possible the interests of all stakeholders in the enterprise.

The performance of directors and employees is generally appraised by reference to various predefined performance criteria. The effectiveness of these criteria depend on the extent to which the performances of a director or employee can be assessed against them as well as the extent to which they can be influenced by the director or employee.

A result of working with performance criteria is that directors and employees will mainly focus on those aspects of their position, as their appraisal and hence their compensation are dependent on them. This is why it is important for the performance criteria to provide a good and balanced reflection of the interests of the various stakeholders in the financial enterprise. If this is not the case, there is a risk that the interests of one or more stakeholders may receive inadequate attention.

Commercial activities can often easily be translated into measurable criteria (e.g. volume, profit). This is more difficult in the case of non-commercial activities. This may mean that the commercial aspects of a job receive a disproportionately large amount of attention in the appraisal of a director or employee. Other essential, non-commercial aspects of the job such as integrity, quality, team spirit and risk management may then receive insufficient attention.

By using a good mix of performance criteria, an enterprise can strike a better balance in pursuing the long-term interests of the various stakeholders. Through the intermediary of the corporate objectives these should be translated into the performance criteria of directors and employees.

Example of good practice

The commercial objectives for members of the management board of a medium-sized bank include not only commercial performance criteria (turnover growth, market share etc) but also other criteria. Examples are the successful completion of projects, improvement of client satisfaction, expansion of product range and improvement of risk management.

Example of undesirable practice

A financial enterprise motivates its advisors by means of turnover targets and related variable compensation. Clients are not informed of this. The extent to which clients are provided with the product best suited to them is not measured and is barely taken into account in the appraisal and compensation of the advisors. Consequently, the risks of product pushing and misselling are high.

Principle 8c: The award of variable compensation should be dependent on its being in due proportion to the performance of the employee and/or the department and/or the enterprise as a whole.

Employees can be encouraged to pursue the interests of the department or enterprise by arranging for the variable compensation to be partially dependent on the performance of the department, business unit or enterprise as a whole.

Ideally, variable compensation should be determined on the basis of the contribution made by the employee to achieving the objectives of the enterprise. For this purpose it is necessary to be able to measure the individual contribution accurately. If this is measured properly, the interests of the employee or director will be more in keeping with those of the enterprise. If this is not possible, the performance of the broader group can be taken into account in order to strike the balance between personal and corporate objectives.

How much weight should be attributed to the performance of the broader group in relation to that of the individual employee level depends on the extent to which the individual performance can be measured independently of that of the rest of the group.

For most jobs this is scarcely measurable, if at all, and it is therefore advisable to take account of the performance of the broader group and the enterprise as a whole. This has the further advantage that the scope of the variable compensation is better synchronised with the results of the enterprise. A situation in which the enterprise runs a loss will have serious consequences for an employee's variable compensation. Limited variable compensation is still an option if the employee has performed well individually. In most cases, no variable compensation will be paid to directors in the event of a loss, because their individual performances are strongly related to the enterprise's performance.

Example of undesirable practice

A financial enterprise has made a loss in a certain year. The directors of the enterprise have performed well against other performance criteria. The supervisory board hence decided, on the basis of existing agreements, to allocate variable compensation of 75% of the fixed salary (the maximum being 100%) to the directors. The supervisory board fails to explain why it is reasonable to award a bonus in this case. It is thus unclear to stakeholders whether this compensation is in line with the performances of the directors, seen in the context of the incurred loss.

Principle 8d: Financial results which are used in appraising performance should be corrected to take account of risks and costs.

Variable compensation schemes of significant size tend to be used above all in commercial jobs. The commercial activities therefore often play a major role in the granting of variable compensation. Commercial performance is frequently determined by reference to the financial results that have been achieved. It is important for these results to be corrected to take account of the cost of the capital employed and risk taken. In this way, it is possible to obtain a clear picture of the quality of the results and the performance.

If an employee has taken too much risk in order to achieve a given result, the performance is less than that of an employee who has achieved the same result with less risk. Likewise, a difference in how costs are passed on can produce different results even where the performance is the same. By adjusting the measurements to take account of risk and costs, enterprises can avoid a situation in which employees are rewarded for seemingly good results that are later found, after correction for risks and costs, to have been altogether less impressive.

Depending on the job, adjustments of varying degrees of refinement will have to be made for the risk taken. Where this is not possible in a quantitative sense, it is important to take as much account is possible of the risk when interpreting the results.

Example of good practice

In a mortgage acceptance department at an insurer the performance criteria include not only the amount but also the quality of the turnover. Factors included are the average loan to value and the extent of payment arrears in the relevant portfolio.

Example of good practice

A large bank uses risk-adjusted criteria to determine the performance of the trading portfolio of individual dealers.

Principle 8e: The award of the variable compensation should not be dependent on an 'all or nothing' commercial objective, and such compensation should instead have a linear or graduated structure.

In some variable compensation schemes for commercial, transaction-oriented jobs, the so-called 'all or nothing' target applies. The employee concerned either receives the full variable compensation or nothing at all (binary system). This depends on one or two measurable indicators, such as the number of mortgages sold or the economic profit of the trading portfolio. A binary system provides a strong incentive for undesirable behaviour. If the target has not yet been reached towards the end of the period, the employee concerned may be tempted to enter into a number of risky transactions in order to secure the bonus after all. Conversely, once the target has been reached, the system may prompt excessive caution and provide little incentive for extra effort. Application of a binary system also fails to give sufficient recognition to differences between the performance of the employees concerned.

For these reasons, it is better to use commercial targets in which there is a more linear or graduated relationship between performance and pay. In a linear or graduated compensation system it is possible to reward performance components. Rewarding performance components reduces the incentive to make 'all or nothing' attempts. In such cases employees will make decisions on risk and return which are more in keeping with the interests of the enterprise and take more account of the interests of the client.

Example of good practice

The amount of the variable compensation received by the sales staff of a medium-sized insurer is dependent on their performance in various 'dimensions'. Four levels of performance are specified for each dimension. The lowest level is a satisfactory level. If the lowest performance level is achieved in respect of all dimensions, the employee is eligible for a modest bonus. If the second level of performance is reached in respect of all dimensions, the employee is entitled to a higher bonus. And so on and so forth.

Example of undesirable practice

Based on a peer group comparison, the management board of a bank has been set the target by the advisory board and the shareholders of reaching a given value for the share. If this value is reached by a given date (and other performance criteria have been fulfilled), variable compensation amounting to 100% of the fixed salary is awarded. If the value of the share remains below the agreed target, no variable compensation whatever is awarded.

Principle 8f: The variable compensation structure should provide for the possibility of exercising some degree of discretion when determining variable compensation in order to counter undesirable effects such as compensation that is not commensurate with actual performance. This is equally applicable in exceptional situations such as an acquisition or dismissal.

The use of measurable performance criteria, if properly defined, can form an important part of the compensation systems of financial enterprises. However, if appraisals are conducted solely by reference to measured performance, situations can arise in which the director or employee concerned focuses on these aspects of the job to the exclusion of others.[22] Measurable performance criteria can be defined for some jobs better than for others. Even in jobs where this is perfectly possible, it is important for the responsible management or the supervisory board to decide whether there are reasons for adjusting or even withholding the compensation to which the employee or the director, as the case may be, would be entitled on the basis of his measured performance. After all, situations can occur for which the measurable criteria do not cater. It is therefore necessary for the management and the supervisory board to have some degree of discretion in every variable compensation structure. The less the

22 Kees Cools describes this phenomenon as 'bonus blindness' in his book 'Controle is goed, vertrouwen nog beter', 2005

performance can be assessed in measurable criteria, the greater should be the degree of discretion that can be exercised.

For managers and supervisory boards, measurable performance criteria have the advantage of seemingly promoting an objective assessment of employee performance. However, it is necessary to guard against assessing employees and directors on the basis of measurable criteria that are too remote from reality. This tends to promote manipulation of information in such a way as to exaggerate the performance. A measure of discretion in appraising performance can help to obviate this risk.

Example of good practice

To determine the level of bonuses for dealers, the management meets to discuss the performance of each individual dealer. The input for the discussion is a survey of the measured performance of each employee. The meeting discusses whether the information in the survey corresponds with the image of the dealer concerned in the view of those present. If this is not the case, the bonus is adjusted upwards or downwards. The personnel, risk management and compliance departments are also present at this meeting.

Example of undesirable practice

A bank has established a variable compensation structure for higher management, which includes a wide set of performance indicators. A situation can arise in which a manager is found at the end of the year to have scored well on all indicators and therefore be entitled to a high bonus. In reality, however, he has neglected a number of internal projects and his behaviour has led some major clients to take their business elsewhere. As these aspects do not form part of the measurable performance indicators, the management board is obliged to pay the full bonus.

Where, owing to unforeseen or exceptional circumstances, a variable compensation structure produces an undesirable result in terms of the amount, a discretionary power exercisable by the supervisory board or the management could help to bring the variable compensation more into line with the actual performance. Especially where use is made of shares or options, the results are not always in keeping with the actual performance. This applies particularly in the case of mergers, acquisitions or the departure of a director or employee. In the event of an acquisition of an underperforming enterprise, for example, the situation may arise that a director is rewarded for his “failure”, because in the course of the acquisition he can redeem the shares he has accumulated over the years. The performance structure should allow compensation to be brought into line with actual performance in such situations too.

This also applies to any severance payment and the results of any "change of control" provisions.

Example of good practice

In the course of an acquisition that was partly caused by the enterprise's weak performance, the supervisory board decides that the directors may not sell their shares at the acquisition price, but at a certain historical average of the price.

Principle 8g: An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration.

Variable compensation is generally awarded on an annual basis. However, the time horizon of the transactions that are concluded or the effects of decisions that have been taken is generally much longer for most jobs. This applies, for example, to directors or dealers who perform long-term transactions. Often nothing can be said with any certainty about the quality of the performance of these employees for some years at the earliest. If the variable compensation structure for these jobs is oriented towards the short term, any compensation is paid on the basis of a final result that is still uncertain. This creates the risk of 'rewarding failure'. It is therefore important to take account of the performance over a number of years when assessing commercial performance in awarding variable compensation.

It will not always be possible to do complete justice to the time horizon in which the results of the performance will become clear. But a period of 3 to 5 years can be observed in such cases in order to minimise the risks. If a financial enterprise is unable to take sufficient account of the long-term risks in its variable compensation structure, the solution may be to moderate the variable part of the compensation.

One way of taking account of the long-term risk in a variable compensation structure is to pay only part of the variable compensation immediately and to award the remainder conditionally. This conditional part can then be paid out in subsequent years once there is more certainty about the quality of the performance. Interviews with financial enterprises show that when the variable compensation of employees is determined only the financial results for the previous year, as shown in the books, are usually taken into account. In consequence, the employees are mainly motivated by short-term results and

the enterprise's long-term results receive insufficient attention. If it later transpires that the performance has turned out badly for the enterprise, nothing can be done because the variable compensation has already paid.

Variable compensation that has already been paid out may be reclaimed if it has been awarded and paid out on the basis of what later emerges to have been incorrect financial or other information resulting from fraudulent actions by the director or employee concerned. It is important that that the enterprise reclaims this undeserved compensation, if necessary by legal means.

Example of good practice

At the end of each year a trading firm awards variable compensation in cash. Only part is paid out directly and the remainder is awarded conditionally. The conditional part is retained for five years on a risk-bearing basis and is subsequently adjusted if this is warranted by results.

Example of good practice

An asset manager awards variable compensation (in cash) on the basis of a moving weighted average of performance over the previous three years.

Example of undesirable practice

The senior management of a large bank are awarded variable compensation each year. This averages about 50% of the fixed salary. The variable compensation paid in cash as soon as it has been awarded.

Principle 8h: The ratio between compensation in cash, shares, options or other forms of compensation should be in keeping with the enterprise's risk management practices.

The payment of variable compensation to employees in financial enterprises is usually made in cash. Some employees receive all or part of their variable compensation in the form of shares, share options or other forms of compensations. For senior management and the directors of large enterprises, this form of variable compensation is often higher than the amount paid out in cash.

The desired effect of variable compensation in the form or shares or share options is that the director or employee should do their best to increase the overall value of the enterprise (i.e. that the interests of directors and employees should thus coincide with those of the enterprise). In addition, directors and employees should generally hold the awarded shares or share options for a few years, so as to promote the long-term focus. However, a variable compensation in the form of shares or share options also has disadvantages. The link between performance and the amount paid is often difficult to establish, because external circumstances (such as stockmarket conditions) have a major influence on the results. Moreover, the awarding of shares or share options may induce a director or employee to focus primarily on the value of the share and less on the enterprise and its stakeholders' other long-term interests.

For these reasons, variable compensation in the form of shares and share options should be used sparingly[23]. The mix of variable compensation in cash, shares and share options should be designed to give the correct incentives and to thus match the enterprise's risk management practices. In addition, the discretionary power of the supervisory board or management, as formulated in principle 8g, is essential to prevent shares or option arrangements leading to undesirable results.

The Dutch Corporate Governance Code contains best practice provisions for the use of shares and share options schemes for directors of listed companies. These provisions are endorsed by the AFM and DNB.

Example of undesirable practice

In the course of an acquisition, the directors of a financial enterprise allow themselves to act in their own interests, which are related to the sizeable share packages built up by the directors over the years.

[23] See also 'Risk-taking incentives: a review of the literature', R. Windram, Bank of England, 2005 and 'Remuneration; where we've been, how we got there, what are the problems and how to fix them', M. Jensen and K. Murphy, ECGI, 2004.

ANNEX I RELATIONSHIP WITH THE FSF PRINCIPLES FOR SOUND COMPENSATION PRACTICES

Financial Stability Forum	DNB/AFM
1. The firm's board of directors must actively oversee the compensation system's design and operation.	Principle 4: The supervisory board (or any similar internal supervisory body) should arrange for the careful and sound design, implementation and evaluation of the compensation policy for the management board. It should also supervise the compensation policy for the entire company. Each variable compensation structure within which compensation above a fixed level is possible requires the prior approval of the supervisory board.
2. The firm's board of directors must monitor and review the compensation system to ensure the system operates as intended.	Principle 3: On the basis of principles 1 and 2, the enterprise should carefully draw up a compensation policy for the directors and job groups within the company and apply it consistently and evaluate its operation. In doing so, it should pay explicit and lasting attention to limiting and managing the negative effects of variable compensation structures on the company's risk profile and the clients' interests. Principle 5: The personnel, risk management, compliance and internal audit functions should work together to manage the risks of the compensation policy for all (other) employees. e) The personnel function draws up, on behalf of management, a compensation policy for all job groups within the company. The personnel function also monitors the consistent application of the policy and evaluates its operation. f) The risk management function analyses how a variable compensation structure affects the risk profile of the company and monitors its management. g) The compliance function analyses how a variable compensation structure affects the company's compliance with legislation, regulations and internal policy. h) The internal audit function periodically carries out an independent audit of the design, implementation and effects of the company's compensation policy.
3. Staff engaged in financial and risk control must be independent, have appropriate authority, and be compensated in a manner that is independent of the business areas they oversee and commensurate with their key role in the firm.	Principle 6: The compensation and the compensation policy for employees in risk-control positions should support their independent role of countervailing power in relation to the commercial jobs.
4. Compensation must be adjusted for all types of risk.	Principle 8d: Financial results which are used in appraising performance should be corrected to take account of risks and costs.

Financial Stability Forum	DNB/AFM
5. Compensation outcomes must be symmetric with risk outcomes.	Principle 8c: The award of variable compensation should be dependent on its being in due proportion to the performance of the employee and/or the department and/or the company as a whole(explanation of principle).
6. Compensation payout schedules must be sensitive to the time horizon of risks.	Principle 8g: An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration.
7. The mix of cash, equity and other forms of compensation must be consistent with risk alignment.	Principle 8h: The ratio between compensation in cash, shares, options or other forms of compensation should be in keeping with the enterprise's risk management practices.
8. Supervisory review of compensation practices must be rigorous and sustained, and deficiencies must be addressed promptly with supervisory action.	This FSF principle relates to supervisors.
9. Firms must disclose clear, comprehensive and timely information about their compensation practices to facilitate constructive engagement by all stakeholders.	Principle 7: The enterprise should provide insight and transparency into its compensation policy to relevant stakeholders.

The following DNB/AFM principles from this report are an addition to the principles of the FSF

Principle 1: The compensation policy should promote the integrity and soundness of the financial enterprise with a focus on the enterprise's long-term interests.

Principle 2: The compensation policy should not contain incentives which compromise the obligation of a financial enterprise to use its best endeavours to look after the interests of its clients and other stakeholders or discharge other duties of care to which it is subject.

Principle 8: Each variable compensation structure should comprise a balanced mix of measures appropriate to the job in order to ensure the correct incentive effects.

a) The variable compensation should be in due proportion to the fixed salary. The company should set a maximum ratio between variable and fixed compensation per function group.

b) Variable compensation should be linked to predefined, assessable and influenceable performance criteria. These performance criteria should reflect as far as possible the interests of all stakeholders in the enterprise.

c) (see table above)

d) (see table above)

e) The award of the variable compensation should not be dependent on an ‘all or nothing’ commercial objective, and such compensation should instead have a linear or graduated structure.

f) The variable compensation structure should provide for the possibility of exercising some degree of discretion when determining variable compensation in order to counter undesirable effects such as compensation that is not commensurate with actual performance. This is equally applicable in exceptional situations such as an acquisition or dismissal.

g) (see table above)

h) (see table above)

ANNEX II RELATIONSHIP WITH THE DUTCH CORPORATE GOVERNANCE CODE

The Dutch Corporate Governance Code (the Code) includes a number of principles and best practice provisions for the remuneration of members of the management boards of Dutch listed companies. This annex compares the principles and best practices from the Code with the DNB/AFM principles for sound compensation policies.

Differences between the two can be explained by:

- different target groups:
  - The Code relates only to listed companies whereas the DNB/AFM principles are applicable to both listed and unlisted companies.
  - The DNB/AFM principles relate only to financial enterprises whereas the Code relates to all (listed) companies.
  - The Code relates only to the management of the company whereas the DNB/AFM principles relate to all employees, including the directors.
- different objects: the object of the Code is to regulate relations between the management board, the supervisory board and the shareholders (i.e. the general meeting of shareholders) of a listed company, with overall consideration of all interests involved. The DNB/AFM principles are primarily intended to prevent and control the undesirable incentive effects of the compensation policy of a financial enterprise.

Every effort has been made in drawing up the DNB/AFM principles for sound compensation policies to avoid inconsistencies with the Code.

The Dutch Corporate Governance Code	DNB/AFM
<u>PREAMBLE</u>	
Preamble 7: The Code is based on the principle accepted in the Netherlands that a company is a long-term alliance between the various parties involved. The stakeholders are the groups and individuals who, directly or indirectly, influence – or are influenced by – the attainment of the company's objects (...) The management board and the supervisory board have overall responsibility for weighing up the interests, generally with a view to ensuring the continuity of the enterprise, while the company endeavours to create long-term shareholder value. Preamble 8: (…) If stakeholders are to cooperate	Principle 1: The compensation policy should promote the integrity and soundness of the financial enterprise, with a focus on the enterprise's long-term interests. Principle 2: The compensation policy should not contain incentives which compromise the obligation of a financial enterprise to use its best endeavours to look after the interests of its clients and other stakeholders or discharge other duties of care to which it is subject.

The Dutch Corporate Governance Code	DNB/AFM
within and with the company, it is essential for them to be confident that their interests are represented [by the management board and supervisory board] Preamble 12: (...) It is important for the remuneration policy of companies to be closely aligned with the strategy and the related risks. This applies to the remuneration of both the management board and the other levels of the organisation. (...) Ultimately, remuneration policy must serve the interests of the company and its affiliated enterprise, in other words be aimed at creating long-term value.	
II.2 REMUNERATION	
Principle: Amount and composition of the remuneration	
The level and structure of the remuneration which the management board members receive from the company for their work shall be such that qualified and expert managers can be recruited and retained.	The DNB/AFM principles focus on a sound compensation policy that seeks to prevent and/or manage undesirable incentive effects. This principle from the Dutch Corporate Governance Code does not relate to this.
When the overall remuneration is fixed, its impact on pay differentials within the enterprise shall be taken into account.	The DNB/AFM principles focus on a sound compensation policy that seeks to prevent and/or manage undesirable incentive effects. This principle from the Dutch Corporate Governance Code does not relate to this.
If the remuneration consists of a fixed component and a variable component, the variable component shall be linked to predetermined, assessable and influenceable targets, which are predominantly of a long-term nature.	Principle 1: The compensation policy should promote the integrity and soundness of the financial enterprise, with a focus on the enterprise's long-term interests. Principle 8 (b): Variable compensation should be linked to predefined, assessable and influenceable performance criteria. These performance criteria should reflect as far as possible the interests of all stakeholders in the enterprise. Principle 8 (g): An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration.
The variable component must be appropriate in relation to the fixed component.	Principe 8 (a): The variable compensation should be in due proportion to the fixed salary. The company should set a maximum ratio between variable and fixed compensation per function group.
The remuneration structure, including severance pay, shall be simple and transparent.	The DNB/AFM principles focus on a sound compensation policy that seeks to prevent and/or manage undesirable incentive effects.

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	This principle from the Dutch Corporate Governance Code does not relate to this..
It shall promote the interests of the company in the medium and long term, may not encourage management board members to act in their own interests or take risks that are not in keeping with the adopted strategy, and may not 'reward' failing board members upon termination of their employment.	Principle 1: The compensation policy should promote the integrity and soundness of the financial enterprise, with a focus on the enterprise's long-term interests. Principle 2: The compensation policy should not contain incentives which compromise the obligation of a financial enterprise to use its best endeavours to look after the interests of its clients and other stakeholders or discharge other duties of care to which it is subject. Principle 8: Each variable compensation structure should comprise a balanced mix of measures appropriate to the job in order to ensure the correct incentive effects (principle 8 (a) to (h)).
The supervisory board is responsible for this.	Principle 4: The supervisory board (or any similar internal supervisory body) should arrange for the careful and sound design, implementation and evaluation of the compensation policy for the management board. It should also supervise the compensation policy for the entire enterprise. Each variable compensation structure within which compensation above a fixed level is possible requires the prior approval of the supervisory board.
The level and structure of remuneration shall be determined by reference to, among other things, the results, the share price performance and non-financial indicators that are relevant to the company's long-term value creation.	Principle 8 (b): Variable compensation should be linked to predefined, assessable and influenceable performance criteria. These performance criteria should reflect as far as possible the interests of all stakeholders in the enterprise.
The shares held by a management board member in the company on whose board he sits are long-term investments.	Principe 8 (g): An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration. Principle 8h: The ratio between compensation in cash, shares, options or other forms of compensation should be in keeping with the enterprise's risk management practices.
The amount of compensation which a management board member may receive on termination of his employment may not exceed	The DNB/AFM principles apply to directors and all employees. It would not be desirable to have a maximum amount of severance pay

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one year's salary, unless this would be manifestly unreasonable in the circumstances.	for employees that is universally applicable. The purpose of principle 8 (f) is to prevent undesirable situations. In addition, the Corporate Governance Code is applicable to the directors of listed companies. Principle 8 (f) The variable compensation structure should provide for the possibility of exercising some degree of discretion when determining variable compensation in order to counter undesirable effects such as compensation that is not commensurate with actual performance. This is equally applicable in exceptional situations such as an acquisition or dismissal.
Best practice provisions	
II.2.1 Before drawing up the remuneration policy and determining the remuneration of individual management board members, the supervisory board shall analyse the possible outcomes of the variable remuneration components and how they may affect the remuneration of the management board members.	Principle 3: On the basis of principles 1 and 2, the enterprise should carefully draw up a compensation policy for the directors and job groups within the enterprise and apply it consistently and evaluate its operation. In doing so, it should pay explicit and lasting attention to limiting and managing the negative effects of variable compensation structures on the enterprise's risk profile and the clients' interests.
II.2.2 The supervisory board shall determine the level and structure of the remuneration of the management board members by reference to the scenario analyses carried out and with due regard for the pay differentials within the enterprise.	Principle 4: The supervisory board (or any similar internal supervisory body) should arrange for the careful and sound design, implementation and evaluation of the compensation policy for the management board. It should also supervise the compensation policy for the entire enterprise. Each variable compensation structure within which compensation above a fixed level is possible requires the prior approval of the supervisory board.
II.2.3 In determining the level and structure of the remuneration of the management board members, the supervisory board shall take into account, among other things, the results, the share price performance and non-financial indicators relevant to the long-term objectives of the company, with due regard for the risks to which variable remuneration may expose the enterprise.	Principle 3: On the basis of principles 1 and 2, the enterprise should carefully draw up a compensation policy for the directors and job groups within the enterprise and apply it consistently and evaluate its operation. In doing so, it should pay explicit and lasting attention to limiting and managing the negative effects of variable compensation structures on the enterprise's risk profile and the clients' interests. Principle 8 (g): An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of

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	the performance on the long-term results may be taken into consideration.
II.2.4 If options are granted, they shall, in any event, not be exercised in the first three years after the date of granting. The number of options to be granted shall be dependent on the achievement of challenging targets specified beforehand.	Principle 8 (g): An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration.
II.2.5 Shares granted to management board members without financial consideration shall be retained for a period of at least five years or until at least the end of the employment, if this period is shorter. The number of shares to be granted shall be dependent on the achievement of challenging targets specified beforehand.	Principle 8 (g): An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration.
II.2.6 The option exercise price may not be fixed at a level lower than a verifiable price or a verifiable price average in accordance with the trading in a regulated market on one or more predetermined days during a period of not more than five trading days prior to and including the day on which the option is granted.	As the DNB/AFM principles relate to all employees of a financial enterprise (whether the enterprise is listed or unlisted) no specific provisions have been included for the structure of option schemes. DNB and the AFM endorse the provisions on this subject in the Dutch corporate governance code.
II.2.7 Neither the exercise price of options granted nor the other conditions may be modified during the term of the options, except in so far as prompted by structural changes relating to the shares or the company in accordance with established market practice.	As the DNB/AFM principles relate to all employees of a financial enterprise (whether the enterprise is listed or unlisted) no specific provisions have been included for the structure of option schemes. DNB and the AFM endorse the provisions on this subject in the Dutch corporate governance code.
II.2.8 The remuneration in the event of dismissal may not exceed one year's salary (the 'fixed' remuneration component). If the maximum of one year's salary would be manifestly unreasonable for a management board member who is dismissed during his first term of office, such board member shall be eligible for severance pay not exceeding twice the annual salary.	The DNB/AFM principles apply to directors and all employees. It would not be desirable to have a maximum amount of severance pay for employees that is universally applicable. The purpose of principle 8 (f) is to prevent undesirable situations. In addition, the Corporate Governance Code is applicable to the directors of listed companies. Principle 8 (f)The variable compensation structure should provide for the possibility of exercising some degree of discretion when determining variable compensation in order to counter undesirable effects, such as compensation that is not commensurate with actual performance. This is equally applicable in exceptional situations such as an acquisition or dismissal.
II.2.9 The company may not grant its management board members any personal loans,	The DNB/AFM principles focus on a sound compensation policy that seeks to prevent

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guarantees or the like unless in the normal course of business and on terms applicable to the personnel as a whole, and after approval of the supervisory board. No remission of loans may be granted.	and/or manage undesirable incentive effects. This principle from the Dutch Corporate Governance Code does not relate to this.
<u>Principle: Determination and disclosure of the remuneration</u>	
The supervisory board shall determine the remuneration of the individual members of the management board, on a proposal by the remuneration committee, within the scope of the remuneration policy adopted by the general meeting of shareholders.	Principle 4: The supervisory board (or any similar internal supervisory body) should arrange for the careful and sound design, implementation and evaluation of the compensation policy for the management board. It should also supervise the compensation policy for the entire enterprise. Each variable compensation structure within which compensation above a fixed level is possible requires the prior approval of the supervisory board.
The report of the supervisory board shall include the principal points of the remuneration report concerning the remuneration policy of the company. This shall describe transparently and in clear and understandable terms the remuneration policy that has been pursued and give an overview of the remuneration policy to be pursued. The full remuneration of the individual management board members, broken down into its various components, shall be presented in the remuneration report in clear and understandable terms.	Principle 7: The enterprise should provide insight and transparency into its compensation policy to relevant stakeholders.
Best practice provisions	
II.2.10 If a variable remuneration component conditionally awarded in a previous financial year would, in the opinion of the supervisory board, produce an unfair result due to extraordinary circumstances during the period in which the predetermined performance criteria have been or should have been achieved, the supervisory board has the power to adjust the value downwards or upwards.	Principle 8 (f): The variable compensation structure should provide for the possibility of exercising some degree of discretion when determining variable compensation in order to counter undesirable effects. Principle 8 (g): An appropriate time horizon should be observed when assessing commercial performance as a basis for variable compensation, so that the effect of the performance on the long-term results may be taken into consideration.
II.2.11 The supervisory board may recover from the management board members any variable remuneration awarded on the basis of incorrect financial or other data (clawback clause).	In so far as this relates to conditionally awarded variable compensation DNB/AFM principles 8 (f) and 8 (g) provide for this. In so far as this relates to variable compensation that has already been paid, this is covered by existing legislation and regulations.

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II.2.12 The remuneration report of the supervisory board shall contain an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy planned by the supervisory board for the next financial year and subsequent years. The report shall explain how the chosen remuneration policy contributes to the achievement of the long-term objectives of the company and its affiliated enterprise in keeping with the risk profile. The report shall be posted on the company's website.	Principle 7: The enterprise should provide insight and transparency into its compensation policy to relevant stakeholders.
II.2.13 The overview referred to in best practice provision II.2.12 shall in any event contain the following information: a) an overview of the costs incurred by the company in the financial year in relation to management board remuneration; this overview shall provide a breakdown showing fixed salary, annual cash bonus, shares, options and pension rights that have been awarded and other emoluments; shares, options and pension rights must be recognised in accordance with the accounting standards; b) a statement that the scenario analyses referred to in best practice provision II.2.1 have been carried out; c) for each management board member the maximum and minimum numbers of shares conditionally granted in the financial year or other share-based remuneration components that the management board may member acquire if the specified performance criteria are achieved; d) a table showing the following information for incumbent management board members at year-end for each year in which shares, options and/or other share-based remuneration components have been awarded over which the management board member did not yet have unrestricted control at the start of the financial year: i) the value and number of shares, options and/or other share-based remuneration components on the date of granting; ii) the present status of shares, options and/or other share-based remuneration components awarded: whether they are conditional or unconditional and the year in which vesting period and/or lock-up period ends;	Principle 7: The enterprise should insight and transparency into its compensation policy to relevant stakeholders. As the DNB/AFM principles relate to all employees of a financial enterprise (whether the enterprise is listed or unlisted) no specific provisions have been included for the content of the remuneration report. DNB and the AFM endorse the provisions on this subject in the Dutch corporate governance code.

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17 iii) the value and number of shares, options and/or other share-based remuneration components conditionally awarded under i) at the time when the management board member obtains ownership of them (end of vesting period), and iv) the value and number of shares, options and/or other share-based remuneration components awarded under i) at the time when the management board member obtains unrestricted control over them (end of lock-up period); e) if applicable: the composition of the peer group of companies whose remuneration policy determines in part the level and composition of the remuneration of the management board members; f) a description of the performance criteria on which the performance-related component of the variable remuneration is dependent in so far as disclosure would not be undesirable because the information is competition sensitive, and of the discretionary component of the variable remuneration that can be fixed by the supervisory board as it sees fit; g) a summary and account of the methods that will be applied in order to determine whether the performance criteria have been fulfilled; h) an ex-ante and ex-post account of the relationship between the chosen performance criteria and the strategic objectives applied, and of the relationship between remuneration and performance; i) current pension schemes and the related financing costs; and j) agreed arrangements for the early retirement of management board members.	
II.2.14 The main elements of the contract of a management board member with the company shall be made public after it has been concluded, and in any event no later than the date of the notice calling the general meeting where the appointment of the management board member will be proposed. These elements shall in any event include the amount of the fixed salary, the structure and amount of the variable remuneration component, any agreed redundancy scheme and/or severance pay, any conditions of a change-of-control clause in the	Principle 7: The enterprise should provide insight and transparency into its compensation policy to relevant stakeholders.

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contract with a management board member and any other remuneration components promised to the management board member, pension arrangements and performance criteria to be applied.	
II.2.15 If a management board member or former management board member is paid severance pay or other special remuneration during a given financial year, an account and an explanation of this remuneration shall be included in the remuneration report.	Principle 7: The enterprise should provide transparency about its compensation policy to relevant stakeholders.

The following DNB/AFM principles from this report do not form part of the principles and best practice provisions of the Dutch corporate governance code

DNB/AFM principle	Explanation
Principle 5: The personnel, risk management, compliance and internal audit functions should work together to manage the risks of the compensation policy for all (other) employees. a) The personnel function draws up, on behalf of management, a compensation policy for all job groups within the enterprise. The personnel function also monitors the consistent application of the policy and evaluates its operation. b) The risk management function analyses how a variable compensation structure affects the risk profile of the enterprise and monitors its management. c) The compliance function analyses how a variable compensation structure affects the enterprise's compliance with legislation, regulations and internal policy. d) The internal audit function periodically carries out an independent audit of the design, implementation and effects of the enterprise's compensation policy.	The principle and best practice provisions governing remuneration in the Dutch corporate governance code relate only to the management board of the company.
Principle 6: The compensation and the	The principle and best practice provisions

compensation policy for employees in risk-control positions should support their independent role of countervailing power in relation to the commercial jobs. .	governing remuneration in the Dutch corporate governance code relate only to the management board of the company.