

General Guidance on Proportionality

The Dual-regulated firms Remuneration Code (SYSC 19D)

1 July 2015

1 Part A: Introduction and interpretations

Introduction and status of guidance statement

- 1.1 This statement is general *guidance* given under section 139A(1) of the Financial Services and Markets Act (FSMA). It relates to the *Dual-regulated firms Remuneration Code* of SYSC 19D of the *Handbook*.
- 1.2 Paragraphs 1.13 and 1.14 make provision about the interpretation of this *guidance* statement. Expressions in italics either bear the meaning given in the *Handbook Glossary*, or in Table 1.
- 1.3 This *guidance* statement has effect from 1 July 2015.

Dual-regulated firms remuneration principles proportionality rule

- 1.4 The *Dual-regulated firms remuneration principles proportionality rule* is set out in SYSC 19D.3.3R (2).
- 1.5 The *Dual-regulated firms Remuneration Code* requires (amongst other things) a *firm* to apply requirements in SYSC 19D.3 to *Dual-regulated firms Remuneration Code staff*. The *Dual-regulated firms remuneration principles proportionality rule* requires a *firm*, when establishing and applying the total *remuneration* policies for *Dual-regulated firms Remuneration Code staff*, to comply with SYSC 19D.3R in a way and to the extent that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities.

Guidance on the Dual-regulated remuneration principles proportionality rule

- 1.6 General *guidance* is give in relation to specific aspects of the *Dual-regulated firms remuneration principles proportionality rule* in SYSC 19D.3.3R itself.¹

- 1.7 Part D of this *guidance* statement provides additional general *guidance* in relation to the application of the *Dual-regulated firms remuneration principles proportionality rule* to different types of *firm*.
- 1.8 Part E of this *guidance* statement provides additional general *guidance* in relation to the application of the *Dual-regulated firms remuneration principles proportionality rule* to *Dual-regulated firms Remuneration Code staff* who have, in relation to a given performance year, been *Dual-regulated firms Remuneration Code staff* for only part of the year.
- 1.9 This *guidance* statement represents our *guidance* in a field where requirements relating to *remuneration* are being implemented within the EEA. We recognise this will be an evolving process, and intend to keep the *guidance* set out here under review.

Individual guidance

- 1.10 We may give individual *guidance* to a *firm*, either on its own initiative or on the application of the *firm*. Our policy on individual *guidance* is set out in SUP 9. In consequence, we may give individual *guidance* to a *firm* in relation to the *remuneration principles proportionality rule* (SYSC 19D.3.3R). Such *guidance* may relate to the application of the *rule* by the *firm* generally, or in specific areas.

Arrangement of guidance statement

- 1.11 This general *guidance* statement is divided into five Parts:
 1. This Part, Part A: Introduction and interpretation;
 2. Part B: *Proportionality levels*;
 1. Part C: Division of firms into proportionality levels;
 2. Part D: Guidance to firms in particular proportionality level; and
 3. Part E: Guidance about part-year Dual-regulated firms Remuneration Code staff.
- 1.12 It is supplemented by Annex 1 – Supplemental guidance on dividing firms into proportionality levels.

¹ The main provisions of guidance which specifically refer to the *Dual-regulated firms remuneration principles proportionality rule* are SYSC 19D.3.35G (giving guidance in relation to *Dual-regulated firms Remuneration Code staff* and certain rules on *remuneration* structures).

Interpretation

- 1.13 This *guidance* statement is to be interpreted as if it was an Annex to SYSC 19D.3.3 R. In consequence, *GEN 2* (interpreting the Handbook) applies to the interpretation of this *guidance* statement.
- 1.14 In particular, an expression in italics which is defined in the *Glossary* has the meaning given there (*GEN 2.2.7R*). Where an expression in italics is not defined in the *Glossary*, it has the meaning given by the following table:

Table 1: Glossary of terms defined in this guidance statement

Defined expression	Definition
<i>group</i>	has the meaning given in the <i>Glossary</i> in paragraph (3)
<i>overseas Dual-regulated Remuneration Code firm</i>	an <i>overseas firm</i> that: (i) is not an <i>EEA firm</i> ; (ii) has its head office outside the <i>EEA</i> ; and (iii) would be a <i>building society</i> , a <i>bank</i> or a <i>UK designated investment firm</i> if it had been a <i>UK domestic firm</i> , had carried on all its business in the United Kingdom and had obtained whatever authorisation for doing so as required under the <i>Act</i> .
<i>proportionality level</i>	has the meaning given in paragraph 2.3, and references to <i>proportionality level one</i> , etc. are to be construed accordingly.
<i>Dual-regulated Remuneration Code firm</i>	a <i>firm</i> specified in SYSC 19D.1.1 R(1)(a)-(c).
<i>relevant total assets</i>	has the meanings given in paragraph 3.4 (3).
<i>relevant date</i>	has the meanings given in paragraph 3.4 (4).
<i>solo Dual-regulated Remuneration Code firm</i>	a <i>Dual-regulated Remuneration Code firm</i> which is not part of a <i>group</i> containing one or more further <i>Dual-regulated Remuneration Code firms</i> .

2 Part B: Proportionality Levels

- 2.1 SYSC 19D.1.1R provides that the *Dual-regulated firms Remuneration Code* applies to a *Dual-regulated Remuneration Code firm* and an *overseas Dual-regulated Remuneration Code firm*, in relation to the activities carried on from an establishment in the UK.
- 2.2 This *guidance* statement provides for the division of *Dual-regulated Remuneration Code firms* into three categories:
 - a. *proportionality level one*;
 - b. *proportionality level two*; and
 - c. *proportionality level three*.
- 2.3 The process by which firms are divided into *proportionality levels* is provided in Part C (as supplemented by Annex 1), and may also depend on individual *guidance*.
- 2.4 The *proportionality levels* provide a framework for the operation of the *remuneration principles proportionality rule*. *Guidance* is given to *firms* in different *proportionality levels* in Part D.

3 Part C: Process for dividing firms into proportionality levels

Overview

- 3.1 This Part provides the process by which a *Dual-regulated Remuneration Code firm* should ascertain the *proportionality level* into which it falls. Annex 1 provides supplementary *guidance* (including examples).
- 3.2 A *Dual-regulated Remuneration Code firm*, in order to ascertain its *proportionality level*, must first establish whether it is part of a *group* which contains one or more other *Dual-regulated Remuneration Code firms*:
1. If the *firm* is not part of such a *group* (a *solo Dual-regulated Remuneration Code firm*), its *proportionality level* will depend on its individual characteristics (as determined in accordance with paragraph 3.4).
 2. If the *firm* is part of such a *group*, its *proportionality level* will depend on a two-stage process (as provided in paragraphs 3.5 and 3.6).

(This requires all *Dual-regulated Remuneration Code firms* that are part of the *group* to fall into the highest *proportionality level* that any individual *Dual-regulated Remuneration Code firm* in the *group* would fall into on the assumption that it was a *solo Dual-regulated Remuneration Code firm*.)
- 3.3 Individual *guidance* may vary the *proportionality level* into which a *firm* would otherwise fall under paragraphs 3.4 to 3.6.

Solo Dual-regulated Remuneration Code firms

- 3.4 The following table shows the *proportionality level* into which a *solo Dual-regulated Remuneration Code firm* or an *overseas Dual-regulated Remuneration Code firm* falls:
1. A *firm* of the description given in the second column falls into the *proportionality level* listed in the first column;
 2. Where applicable, the *firm's proportionality level* will further depend on whether it held *relevant total assets* on the *relevant date* of the amount listed in the third column of the table (2);
 3. In (2) 'relevant total assets' means:
 - a. 'for a *Dual-regulated Remuneration Code firm*, the average of the *firm's total assets* on the *firm's last three relevant dates*; and
 - b. for an *overseas Dual-regulated Remuneration Code firm*, the average of the *firm's total assets* that covered the activities of the branch operation in the *United Kingdom* on the *firm's last three relevant dates*.

4. Relevant date means:
 - a. for *Dual-regulated Remuneration Code firm*, an accounting reference date; and
 - b. for overseas *Dual-regulated Remuneration Code firm* 'relevant date' means 31 December.
5. The limit confining *relevant total assets* to those that cover the activities of the bank operation in the UK is taken from SUP 16.12.3R(1)(a)(iv), which relates to a reporting requirement in relation to *non-EEA banks* (among others). We consider that a *firm* which needs to ascertain its *relevant total assets* should apply the valuation requirements set out in the *EU CRR*.

Table 2: Proportionality levels: solo Dual-regulated Remuneration Code firms and overseas Dual-regulated Remuneration Code firms

Proportionality level	Type of firm	Relevant total assets on relevant date of firm
<i>Proportionality level one</i>	<i>UK Bank</i>	Exceeding £50bn
	<i>Building society</i>	Exceeding £50bn
	<i>UK designated investment firm that is a CRD full-scope firm</i>	Exceeding £50bn
<i>Proportionality level two</i>	<i>UK Bank.</i>	Exceeding £15bn but not exceeding £50bn
	<i>Building society.</i>	Exceeding £15bn, but not exceeding £50bn
	<i>UK designated investment firm that is a CRD full-scope firm</i>	Exceeding £15bn, but not exceeding £50bn
<i>Proportionality level three</i>	<i>UK Bank.</i>	Not exceeding £15bn
	<i>Building society.</i>	Not exceeding £15bn
	<i>Any UK designated investment firm that is a CRD full-scope firm that does not fall within proportionality level one or proportionality level two (in accordance with this Table).</i>	Not applicable
	<i>UK designated investment firm that is a limited licence firm.</i>	
	<i>UK designated investment firm that is a limited activity firm.</i>	

Groups with more than one Dual-regulated Remuneration Code firm

- 3.5 This paragraph applies where a *Dual-regulated Remuneration Code firm* is part of a group containing one or more other *Dual-regulated Remuneration Code firms*:
1. Each *Dual-regulated Remuneration Code firm* in the group must determine the *proportionality level* into which it would fall on the assumption it was a solo *Dual-regulated Remuneration Code firm*;
 2. Where each *Dual-regulated Remuneration Code firm* falls into the same *proportionality level* on the assumption that it was a solo *Dual-regulated Remuneration Code firm*, each firm falls into that *proportionality level*;
 3. Where the *Dual-regulated Remuneration Code firms* fall into different *proportionality levels* on the assumption that they were solo *Dual-regulated Remuneration Code firms*, each firm falls into the highest *proportionality level*; and
 4. For the purposes of (3), *proportionality level one* is the highest and *proportionality level three* is the lowest.
- 3.6 Annex 1 provides examples of this approach. A *firm* which has a higher *proportionality level* as a result of the *guidance* in paragraph 3.5 than would have been the case had the *firm* been a solo *Dual-regulated Remuneration Code firm* should note the scope to apply for individual *guidance* to vary its *proportionality level* (as discussed in paragraphs 6.5 and 6.6 of Annex 1).

4 Part D: guidance to firms in particular proportionality levels

Purpose of the proportionality levels

- 4.1 In relation to the *Dual-regulated firms remuneration principles proportionality rule*, the *proportionality levels* provide the following:
1. A framework for our supervisory approach, and a broad indication of expectations; and
 2. Guidance on which remuneration principles may normally be disapplied under the *Dual-regulated firms remuneration principles proportionality rule*.

Firms to continue to consider proportionality in their individual circumstances

- 4.2 It follows from the nature of the *Dual-regulated firms remuneration principles proportionality rule*, and the limited purposes noted in paragraph 4.1, that the *proportionality levels* do not provide comprehensive guidance on how the *Dual-regulated firms remuneration principles proportionality rule* will apply to a particular firm. A firm will still need to consider the application of the *Dual-regulated firms remuneration principles proportionality rule* to its individual circumstances.
- 4.3 A firm should bear in mind that the *Dual-regulated firms Remuneration Code* may require different responses from firms that fall into the same *proportionality level*. This is illustrated by the following example:
1. Firm A is a global bank with *relevant total assets* of £800bn, with substantial investment banking business, foreign exchange exposures and a complex business model seeking aggressive growth. It falls into *proportionality level one*.
 2. Firm B is a large mortgage and savings bank with *relevant total assets* of £100bn and a comparatively simple, conservative business model. It falls into *proportionality level one*.
 3. Firm C is a large building society, with *relevant total assets* of £25bn and a comparatively simple, conservative business model. It falls into *proportionality level two*.
 4. *Remuneration Principle 8* requires, amongst other things, a firm to risk-adjust performance measures to take account of all types of current and future risks (SYSC 19D.3.23R(1)(a)).
 5. Clearly the processes necessary to identify such risks will need to be more sophisticated for Firm A than for Firm B, despite the fact that they fall into the same *proportionality level*. Indeed, the difference in the necessary sophistication is likely to be greater as between Firm A and Firm B than as between Firm B and Firm C.

Disapplication of certain remuneration principles for firms in particular proportionality levels

- 4.4 The *CRD* can be interpreted such that it may not be necessary for certain *firms* to apply certain *remuneration* principles at all.²
- 4.5 In our view, it will normally be appropriate for a *firm* in *proportionality level three* to disapply under the *Dual-regulated firms remuneration principles proportionality rule one* or more of the following *rules*:
1. retained *shares* or other instruments (SYSC 19D.3.56R)
 2. deferral (SYSC 19D.3.59R)
 3. performance adjustment (SYSC 19D.3.61R – SYSC 19D.3.62R)

4.6 It may also be appropriate for:

1. *proportionality level three UK designated investment firm that is a CRD full-scope firm* to disapply the specific ratio between fixed and variable components of total *remuneration* (SYSC 19D.3.48R (3)); and
2. a *UK designated investment firm* that is a *limited licence firm* or a *limited activity firm* to disapply, under the *Dual-regulated firms remuneration principles proportionality rule*, the ratios between fixed and variable components of total *remuneration* (SYSC 19D.3.49R);

In both cases (1) and (2) above, if requested by the *FCA*, the *FCA* will expect the *firm's* senior management to be able to demonstrate why the *firm* believes it is reasonable to disapply it in the light of the *Dual-regulated firms remuneration principles proportionality rule*.

We are also of the opinion that such *firms* may 'take into account the specific features of their types of activities in applying the 'requirement on multi-year framework, in particular the accrual and ex- ante risk adjustment aspects of it.'³

- 4.7 However, *firms* should also note that some *remuneration* principles set specific numerical criteria (such as on the minimum period of deferral, the minimum portion to be deferred and the minimum portion to be issued in *shares*). The following *guidance* applies where such principles apply to *Dual-regulated firms Remuneration Code staff* and are not capable of disapplication under the approach set out above. In such circumstances, we do not consider that the *Dual-regulated firms remuneration principles proportionality rule* permits a *firm* to apply lower numerical criteria. (For the avoidance of doubt, this *guidance* does not apply where a *firm* chooses to use deferral or issuance in *shares* more widely than required by SYSC 19D.3).

² *CRD* Article 92(2) provides that the principles should be applied 'in a manner and to the extent that is appropriate to their size, internal organisation and the nature, the scope and complexity of their activities'.

³ As per the *FSA's* Policy Statement 10/20. See link http://www.fsa.gov.uk/pubs/policy/ps10_20.pdf

5 Part E: Guidance about part-year Dual regulated firms

Dual-regulated firms Remuneration Code staff introduction

- 5.1 SYSC 19D.3.35G provides *guidance* on when we do not generally consider it necessary for a *firm* to apply to certain *Dual-regulated firms Remuneration Code staff* certain *rules* relating to *remuneration* structures. This Part provides supplementary *guidance* on how certain *rules* on *remuneration* structures might normally be applied to *Dual-regulated firms Remuneration Code staff* who have, in relation to a given performance year, been *Dual-regulated firms Remuneration Code staff* for only part of the year
- 5.2 In giving this *guidance*, we have taken account of the *remuneration principles proportionality rule*.

Part-year Dual regulated firms Remuneration Code staff for more than three months

- 5.3 This paragraph applies where an individual (A) has, in relation to a given performance year, been *Dual-regulated firms Remuneration Code staff* for a period more than three months, but less than 12 months.
1. Sub-paragraphs (3) and (4) explain how the *guidance* in SYSC 19D.3.35G (as mentioned in the introduction to this Part) is to be applied in relation to A. Sub-paragraphs (5) and (6) provide that in certain circumstances it may be appropriate to apply certain *rules* to only a proportion of A's variable *remuneration*. Sub-paragraphs (7) to (9) provide examples;
 2. In this paragraph:
 - a. 'relevant fraction' means the fraction derived by dividing the number of days in the given performance year for which A has been *Dual-regulated firms Remuneration Code staff* by the number of days in the year; and
 - b. 'qualifying fixed *remuneration*' means A's annual fixed *remuneration* in A's capacity as *Dual-regulated firms Remuneration Code staff* multiplied by the relevant fraction.
 - c. 'qualifying variable *remuneration*' means:
 - (i). in the case where A was an *employee* of the *firm* for the whole of the given performance year, A's variable *remuneration* in relation to the performance year multiplied by the relevant fraction;
 - (ii) in the case where A was only ever employed in the given performance year as *Dual-regulated firms Remuneration Code staff*, A's actual variable *remuneration*.

- d. 'total qualifying *remuneration*' means qualifying fixed *remuneration* added to qualifying variable *remuneration*;
 - e. 'threshold amount' means £500,000 multiplied by the relevant fraction.
3. We do not generally consider it necessary for a firm to apply the rules referred to in (4) where, in relation to A, the following conditions are satisfied:
 - a. Condition 1 is that A's qualifying variable *remuneration* is no more than 33% of total qualifying *remuneration*, and
 - b. Condition 2 is that A's total qualifying *remuneration* is no more than the threshold amount.
4. The rules referred to in (3) are those relating to:
 - a. guaranteed variable *remuneration* (SYSC 19D.3.44R)
 - b. retained *shares* or other instruments (SYSC 19D.3.56R),
 - c. deferral (SYSC 19D.3.59R), and
 - d. performance adjustment (SYSC 19D.3.61R).
5. Sub-paragraph (6) applies where the conditions in (3) are not satisfied and the firm should apply the rules referred to in (6).
6. Where this sub-paragraph applies, we generally consider that it would be appropriate to apply the following rules to qualifying variable remuneration only:
 - a. retained shares or other instruments (SYSC 19D.3.56R)
 - b. deferral (SYSC 19D.3.59R)
 - c. performance adjustment (SYSC 19D.3.61R)
7. The examples in (8) and (9) illustrate this guidance. The performance year in each case is 1 January to 31 December.
8. Example 1
 - a. A1 is an *employee* of the *firm* through the performance year and is promoted to a *Dual-regulated firms Remuneration Code staff* role with effect from 1 September. A1's previous fixed *remuneration* was £150,000. In his *Dual-regulated firms Remuneration Code staff* role A1's fixed *remuneration* increases to £250,000. For the performance year, A1 is awarded variable *remuneration* of £130,000.
 - b. The relevant fraction is 122/365. A1's qualifying fixed *remuneration* is £83,560 (£250,000 multiplied by 122/365). A1's qualifying variable *remuneration* is £43,452 (£130,000 multiplied by 122/365). A1's total qualifying *remuneration* is £127,012. The threshold amount is £167,120 (£500,000 multiplied by 122/365).

- c. A1's total qualifying *remuneration* is below the threshold amount, so condition 2 of (3) is satisfied. But A1's qualifying *remuneration* is more than 33% of A1's total qualifying *remuneration*, and condition 1 of (3) is not satisfied.
 - d. The rule on guaranteed variable remuneration applies to A1. In addition, the *rules* on retained shares and other instruments, deferral and performance adjustment must be applied to A1's qualifying variable *remuneration* of £43,452.
9. Example 2
- a. A2 joins the *firm* as a *Dual-regulated firms Remuneration Code staff* member with effect from 1 July. A2's annual fixed *remuneration* is £450,000. For the period of 1 June to 31 December, A2 is awarded variable *remuneration* of £50,000.
 - b. The relevant fraction is 184/365. A2's qualifying fixed *remuneration* is £ 226,850 (£450,000 multiplied by 184/365). A2's qualifying variable *remuneration* is £50,000 (the actual amount). A2's total qualifying *remuneration* is £ 276,850. The threshold amount is £252,050 (£500,000 multiplied by 184/365).
 - c. A2's qualifying variable *remuneration* is not more than 33% of A2's total qualifying *remuneration*, and condition 1 of (3) is satisfied. But A2's total qualifying *remuneration* is more than the threshold amount, so condition 2 of (3) is not satisfied.
 - d. The rule on guaranteed variable *remuneration* applies to A2. In addition, the rules on retained shares and other instruments, deferral and performance adjustment must be applied to A2's qualifying remuneration of £50,000.

Certain part-year Dual regulated firms Remuneration Code staff for three months or less

5.4 Paragraphs 5.5 and 5.6 apply where:

1. an individual (B) has, in relation to a given performance year, been *Dual-regulated firms Remuneration Code staff* for a period of three months or less, and
2. an exceptional or irregular payment (such as a sign-on award) has not been or is not to be made in relation to B's appointment as *Dual-regulated firms Remuneration Code staff*.

5.5 Where this paragraph applies, we do not generally consider it necessary to apply the following rules in relation to B for the performance year in question:

- a. retained shares or other instruments (SYSC 19D.3.56R)
- b. deferral (SYSC 19D.3.59R)
- c. performance adjustment (SYSC 19D.3.61R)

- 5.6 Where this paragraph applies, the guidance in paragraph 5.3(2), 5.3 (3) and 5.3 (4)(a) should be applied for the purposes of determining whether or not it will generally be necessary to apply the rule on guaranteed variable *remuneration* to B (substituting in that paragraph, for references to 'A', references to 'B').

Part-year Dual regulated firms Remuneration Code staff for three months or less, but where exceptional etc. payments made

- 5.7 Paragraph 5.8 applies where an individual (C) has, in relation to a given performance year, been *Dual-regulated firms Remuneration Code staff* for a period of three months or less, but where an exceptional or irregular payment (such as a sign-on award) has or is to be made in relation to C's appointment.
- 5.8 The guidance in paragraph 5.3 applied in relation to C (substituting in that paragraph for references to 'A', references to 'C'). The amount of exceptional or irregular payment is to be added to C's qualifying variable *remuneration* without pro rating.

6 Annex 1: Supplemental guidance on dividing firms into proportionality levels

Groups with more than one Dual-regulated Remuneration Code staff firm: examples

6.1 The following non-exhaustive examples illustrate the operation of the guidance provided in paragraph 3.5 of Part C. (It should be borne in mind that in each case individual *guidance* could vary the outcome provided by the operation of the guidance provided in that paragraph.)

6.2 Example 1.

1. Firm A is the *parent undertaking* of Firm B.
2. Firm A is a *UK bank* that had *relevant total assets* of £800bn on its last accounting reference date. Firm B is a *limited activity firm*
3. On the assumption that they were solo *Dual-regulated Remuneration Code firms*, Firm A falls into *proportionality level one* and Firm B falls into *proportionality level three*.
4. As a result of the guidance at paragraph 3.5 of Part C, both Firms A and B fall into *proportionality level one*.

6.3 Example 2

1. Firm C is the *parent undertaking* of Firm D.
2. Firm C is a *limited activity firm* and Firm D is a *UK bank* that had *relevant total assets* of £100bn on its last accounting reference date.
3. On the assumption that they were solo *Dual-regulated Remuneration Code firms*, Firm C falls into *proportionality level three* and Firm D falls into *proportionality level one*
4. As a result of the *guidance* at paragraph 3.5 of Part C, both Firms C and D fall into *proportionality level one*.

6.4 Example 3

1. Company E is the *parent undertaking* of Firms F and G and Company H. Company H is the *parent undertaking* of Firm I. Firm J is a member of the *group* because of an *Article 12(1) consolidation relationship*.
2. The *firms* and companies have the following characteristics:
 - a. Neither Companies E nor H are *Dual-regulated Remuneration Code firms*;

- b. Firm F is an *UK designated investment firm* that is a *CRD full-scope firm* and that had *relevant total assets* of £40bn on its last accounting reference date;
 - c. Firms G and J are *limited activity firms*; and
 - d. Firm I is a *UK bank* that had *relevant total assets* of £10bn on its last accounting reference date.
3. On the assumption that they were *solo Dual-regulated Remuneration Code firms*:
 - a. Firm F falls into *proportionality level two*;
 - b. Firms G and J fall into *proportionality level three*;and
 - c. Firm I falls into *proportionality level three*.
4. As a result of the *guidance* at paragraph 3.5 of Part C, Firms F, G, I and J all fall into *proportionality level two*.

Role of individual guidance

- 6.5 Individual *guidance* may vary the *proportionality level* into which a *firm* would fall under the general *guidance* set out in Part C and supplemented by this Annex. In consequence, the definitions and thresholds provided in Part C do not provide an immutable classification.
- 6.6 The following provide non-exhaustive high level examples of where we might consider providing individual *guidance* to vary a *proportionality level*:
 1. Where a *firm* was just below the threshold for a particular *proportionality level* (as determined in accordance with Part C), but where features of its business model or growth strategy suggest that it should fall within the higher *proportionality level*.
 2. Where a *group of firms* contained several *firms* falling into a common *proportionality level*, but where the aggregate prudential risk posed by the *group* suggested that a higher *proportionality level* was more appropriate.
 3. Where a *firm* falls into a higher *proportionality level* as a result of the guidance at paragraph 3.5 of Part C than would be the case on the assumption that it was a *solo Dual-regulated Remuneration Code firm*, depending on the particular circumstances of the case.