

Updating the Dual-regulated firms Remuneration Code to reflect CRD V

Consultation Paper

CP20/14**

August 2020

How to respond

We are asking for comments on this Consultation Paper (CP) by **30 September 2020**.

You can send them to us using the form on our website at:
www.fca.org.uk/cp20-14-response-form

Please do not post responses to us at the current time.

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1 Summary

Why we are consulting

- 1.1** We propose to update our Dual-regulated firms Remuneration Code (SYSC 19D) and relevant non-Handbook guidance. Our proposals reflect the changes made by the Capital Requirements Directive V (CRD V) and are closely aligned with the approach taken by the Prudential Regulation Authority (PRA) in its [Consultation Paper on CRD V](#).
- 1.2** Our proposals aim to ensure that:
- we can continue to apply our remuneration rules to and set expectations in line with our statutory objectives for credit institutions and investment firms designated for prudential regulation by the PRA
 - our Dual-regulated firms Remuneration Code remains consistent with CRD V and the PRA's proposed changes to the Remuneration Part of its Rulebook
 - our remuneration rules can continue to work effectively at the end of the transition period following the UK's exit from the EU

Who this applies to

- 1.3** Who needs to read the whole document:
- credit institutions (banks and building societies)
 - designated investment firms (those designated for prudential regulation by the PRA)
 - firms from outside the European Economic Area (EEA) that carry on activities from an establishment in the UK that mean they would be a credit institution or designated investment firm if they were a UK domestic firm
 - firms in the same group as at least 1 of the types of firm in the previous 3 points
- 1.4** IFPRU investment firms should read this summary, and Chapters 2, 4 and 7.
- 1.5** Other investment firms that are prudentially regulated by the FCA, including BIPRU firms, only need to read this summary.
- 1.6** Other firms and stakeholders who work closely with firms, for example lawyers and consultants, may also find this consultation useful to understand what we expect from firms' remuneration policies and practices.
- 1.7** Consumers may be interested in understanding how firms remunerate their staff and align risk with reward.

The wider context of this consultation

- 1.8** In May 2019, the European Union (EU) adopted a revised Capital Requirements Directive, known as CRD V, that includes amended provisions on remuneration. EU Member States must transpose these provisions by 28 December 2020. The UK is required under the terms of the EU Withdrawal Agreement to transpose CRD V because the transposition deadline is before the end of the transition period following the UK's exit from the EU.
- 1.9** As the competent authority for CRD V, the PRA has published a Consultation Paper on CRD V in which it sets out its proposals for implementing the Directive. We have worked closely with the PRA on the proposals related to the implementation of the remuneration provisions.
- 1.10** We are not a competent authority for CRD V but are proposing in this consultation paper to amend our rules and guidance to ensure they remain largely consistent with the PRA's approach, and to support our own conduct-based objectives.
- 1.11** In its July 2020 consultation document on Updating the UK's Prudential Regime before the end of the Transition Period, Her Majesty's Treasury (the Treasury) clarified that it does not intend CRD V to apply to FCA solo-regulated investment firms.
- 1.12** These investment firms remain subject to the existing rules in the IFPRU Remuneration Code or BIPRU Remuneration Code, as appropriate. We are not proposing to reflect the CRD V changes in these Remuneration Codes.
- 1.13** As part of our June 2020 Discussion Paper on a new UK prudential regime for MiFID investment firms (DP20/2), we set out our initial views on what a new regime for these firms could look like. These include replacing the IFPRU and BIPRU Remuneration Codes with a new remuneration code.

What we want to change

- 1.14** We propose to make changes to the Dual-regulated firms Remuneration Code and consequential amendments to relevant non-Handbook guidance which:
- add examples of categories of staff who must be included as material risk takers (MRTs) (Chapter 3)
 - replace our proportionality thresholds with exemptions from some remuneration rules for firms below a certain size and for individuals with remuneration below a certain level (Chapter 4)
 - revise the criteria for assessing whether a UK branch of a third country firm is in scope (Chapter 4)
 - amend the minimum deferral periods (Chapter 5)
 - amend the minimum clawback period (Chapter 5)
 - require firms to have gender neutral remuneration policies and practices (Chapter 5)
 - permit listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments (Chapter 5)

- 1.15** We propose that firms apply our amended remuneration requirements from the next performance year that begins on or after 29 December 2020 (Chapter 6).
- 1.16** We are also proposing to create 2 versions of our non-Handbook guidance with Frequently Asked Questions on remuneration (FAQs guidance). It currently applies to firms in scope of the Dual-regulated firms Remuneration Code and firms in scope of the IFPRU Remuneration Code. We propose to create separate versions of the guidance for the 2 types of firms (Chapter 7).
- 1.17** Furthermore, we make proposals which aim to ensure that our amended remuneration requirements can continue to work effectively at the end of the transition period following the UK's exit from the EU. These include converting certain thresholds from Euros to Sterling from 1 January 2021 (Chapter 8).

Outcome we are seeking

- 1.18** Our remuneration rules seek to ensure that firms establish, implement and maintain remuneration policies and practices that are consistent with, and promote, effective risk management and healthy cultures. Culture in financial services is a key area of focus for the FCA across all sectors and, as a key driver of behaviour, remuneration is an important element of this work. A firm's approach to remuneration should drive healthy cultures and not drive behaviours that are likely to lead to harm to markets or consumers.
- 1.19** Our proposals will help to strengthen the remuneration framework for credit institutions and designated investment firms. In doing so, we would expect them to contribute to reducing the number of misconduct incidents in these firms and, where misconduct does occur, the level of harm it causes.
- 1.20** Updating our Dual-regulated firms Remuneration Code in a way that is consistent with the PRA's proposals to implement CRD V will support our Mission. It will help us to identify and take appropriate action to address actual or potential harm to markets or consumers that may be caused by the remuneration policies and practices of a credit institution or designated investment firm.

Next steps

- 1.21** We want to know what you think of our proposals. In particular, we welcome responses to the questions listed in Annex 1.
- 1.22** Please send us your feedback by 30 September 2020. You can do this using the online response form on our website or by emailing us at cp20-14@fca.org.uk.
- 1.23** We are proposing a consultation period of 9 weeks to ensure that our final rules and guidance can be published as soon as possible before 28 December 2020. In this way, we hope to maximise the time available to firms to take any action needed.
- 1.24** We recognise that this consultation period is a little shorter than many FCA consultations, and that firms continue to be faced with challenges due to the impact

of COVID-19. Nevertheless, we consider that 9 weeks is appropriate given the changes we are proposing:

- are not extensive changes
- are largely consistent with those being put forward by the PRA
- generally reflect the final text of CRD V, published in June 2019, which firms will already be familiar with and have begun considering how they will comply with them

1.25 We will consider all the feedback received and publish final rules and guidance before 28 December 2020. In doing so, we will continue to work closely with the PRA.

2 The wider context

- 2.1** In this chapter, we explain why we are issuing this consultation and how it links to our objectives as the conduct regulator for credit institutions and investment firms. We also give an overview of the changes we are proposing, and set out our overall approach.

Why we are consulting

Remuneration in CRD

- 2.2** The CRD and Capital Requirements Regulation (CRR) contain the EU's prudential requirements regime and governance standards for credit institutions and investment firms. The CRD has been amended on a number of occasions since it was originally adopted, with CRD III first introducing specific remuneration provisions in 2010. These were amended in 2013 as part of the CRD IV package of reforms.
- 2.3** The remuneration provisions aim to ensure that remuneration policies are consistent with, and promote, sound and effective risk management, do not provide incentives for excessive risk taking, and are aligned with the long-term interests of the firm. Inappropriate incentives can drive adverse behaviours that pose risks not only to prudential soundness but also to the way a firm conducts itself in the market and how it treats its customers.

Our remuneration codes

- 2.4** Under the Financial Services and Markets Act 2000 (FSMA), the PRA is the prudential regulator for credit institutions and designated investment firms. The FCA regulates these firms from a conduct perspective. We are also the prudential and conduct regulator for all other investment firms.
- 2.5** Both we and the PRA were named as competent authorities for the transposition of CRD IV. We implemented the remuneration provisions for the FCA-regulated investment firms in scope of CRD IV in SYSC 19A of our Handbook. The PRA implemented them for credit institutions and designated investment firms in the Remuneration Part of the PRA Rulebook.
- 2.6** We decided to also create SYSC 19D which applies to dual-regulated firms and consists of provisions which largely mirror the PRA rules. This enables us to apply the same standards as the PRA when assessing these firms' remuneration policies and practices from a conduct perspective.
- 2.7** We have 3 further remuneration codes. These apply to investment firms not in scope of CRD IV, to Alternative Investment Fund Managers, and to companies that manage Undertakings for Collective Investment in Transferable Securities.

- 2.8** While the remuneration codes generally contain the same core set of principles, having separate codes for the different types of firms we regulate has enabled us to tailor them accordingly.

From CRD IV to CRD V

- 2.9** CRD IV required the European Commission, in close cooperation with the European Banking Authority (EBA), to review the efficiency and implementation of the remuneration provisions.
- 2.10** In July 2016, the European Commission published a [report](#) which concluded that the provisions were largely successful in contributing to the overall objectives of curbing excessive risk-taking and better aligning remuneration with performance. A small number of specific provisions were identified as operating less efficiently, and the European Commission indicated that it would explore targeted amendments to these.
- 2.11** In November 2016, the European Commission proposed amendments to the existing legislative framework in the form of CRD V and CRR II. These included amendments to the CRD IV provisions on remuneration. The final legislation was adopted by the European Parliament and Council, and published in the Official Journal of the EU on 7 June 2019 as [Directive \(EU\) 2019/878](#) and [Regulation \(EU\) 2019/876](#).
- 2.12** EU Member States must adopt the measures necessary to transpose many of the CRD V provisions, including those relating to remuneration, by 28 December 2020. As this is before the end of the transition period following the UK's exit from the EU, the UK is required under the terms of the EU Withdrawal Agreement to transpose CRD V by this date.

Box 1: Investment Firms Directive and Investment Firms Regulation

In 2017, the European Commission evaluated the appropriateness of CRR and CRD requirements applying to investment firms. The key finding was that the requirements applicable to investment firms need to be more proportionate and should better reflect their business models, and the risks they face and are exposed to.

Consequently, the European Commission proposed to create a separate prudential regime that would apply to most investment firms authorised under the Markets in Financial Instruments Directive (MiFID). This new regime, which includes remuneration requirements, is set out in the [Investment Firms Directive](#) (IFD) and [Investment Firms Regulation](#) (IFR).

The legislation also amends the scope of the CRD and CRR to limit it to credit institutions and larger or otherwise more systemically significant investment firms.

The new regime for investment firms is to be transposed in EU Member States by 26 June 2021. This is after the transition period following the UK's exit from the EU.

In [DP20/2 on a new UK prudential regime for MiFID investment firms](#), we set out our initial views on what a new UK regime based on the IFD/IFR could look like. These include our intention to replace the IFPRU and BIPRU Remuneration Codes with a new remuneration code based on the IFD remuneration provisions. We will consider respondents' feedback to the Discussion Paper, and publish our proposals in due course.

Our approach

Credit institutions and designated investment firms

- 2.13** We consider that a firm's approach to rewarding and incentivising its staff is a key driver of behaviour and firm culture. We want to ensure that a firm's approach to remuneration drives healthy cultures and does not drive behaviours that are likely to lead to harm to consumers or markets. This is reflected in our [Business Plan 2020/21](#), in which we commit to remaining focused on the key culture drivers in firms.
- 2.14** We propose to update our Dual-regulated firms Remuneration Code (SYSC 19D) and relevant non-Handbook guidance. As the competent authority, the PRA is implementing the remuneration provisions of CRD V. Our aims are to reflect the changes made by CRD V in a way which ensures our rules remain largely consistent with PRA rules, and supports our conduct-based objectives.
- 2.15** It is important that we can continue to apply our rules to and set expectations in line with our statutory objectives for the remuneration policies and practices of credit institutions and designated investment firms.
- 2.16** Further, if we were to take no action regarding the remuneration provisions of CRD V, some of our rules on remuneration would be inconsistent with the PRA's proposed amendments. This lack of consistency would make it difficult for firms to understand the sum of the regulatory requirements on remuneration. We believe it would reduce clarity while increasing compliance costs.

FCA solo-regulated investment firms

Box 2: Interaction between CRD V/CRR II and IFD/IFR

The interaction between CRD V/CRR II and IFD/IFR is complex:

- CRD V and CRR II apply to the same investment firms as CRD IV and CRR. Only when the measures implementing the IFD/IFR enter into force would their scope be reduced.
- The transposition deadline for the relevant provisions in CRD V is around 6 months earlier than for the relevant provisions in IFD.
- While the UK is legally required under the terms of the EU Withdrawal Act to transpose CRD V, it is not required to transpose the IFD.

The different timings of CRD V and IFD mean that investment firms in scope of the IFD/IFR would, on the face of it, need to apply the new CRD V/CRR II requirements for the period between 29 December 2020 and the introduction of a new regime for investment firms in the UK.

The Treasury addressed this point in its June 2020 [policy statement on Prudential standards in the Financial Services Bill](#) and its July 2020 consultation document on [Updating the UK's Prudential Regime before the end of the Transition Period](#). The Treasury clarified that, subject to its ongoing consultation, it does not intend CRR II/CRD V to apply to FCA solo-regulated investment firms. These firms should instead continue to comply with the relevant current regulation until a new UK prudential regime for these investment firms is introduced in the UK. The Treasury aims to do this by summer 2021.

2.17 At present, solo-regulated investment firms are subject either to the IFPRU Remuneration Code in SYSC 19A or the BIPRU Remuneration Code in SYSC 19C. The exception is 'exempt-CAD firms', which are not subject to any of our remuneration codes.

2.18 In line with the Treasury's clarification, solo-regulated investment firms should continue to apply the existing remuneration regime until a new UK prudential regime for solo-regulated investment firms is in place. We are not proposing to reflect the CRD V remuneration changes in the IFPRU or BIPRU Remuneration Codes. This means that after 28 December 2020:

- the IFPRU Remuneration Code will continue to apply to IFPRU investment firms
- the BIPRU Remuneration Code will continue to apply to BIPRU firms
- exempt-CAD firms will remain outside the scope of our remuneration codes

2.19 Solo-regulated investment firms should also continue to apply the relevant EU regulation and guidance. For IFPRU investment firms, this includes the 2014 Delegated Regulation with regulatory technical standards (RTS) on identifying staff who are material risk takers.

How it links to our objectives

Market integrity

2.20 Our Remuneration Codes, and the updates we are proposing to make to the Dual-regulated firms Remuneration Code, seek to ensure that firms establish, implement and maintain remuneration policies and practices that are consistent with, and promote, effective risk management and healthy cultures. They concern the financial risks run by firms themselves, and support the FCA statutory objective of enhancing the integrity of the UK financial system.

2.21 Culture in financial services is a key area of focus for the FCA across all sectors. A firm's approach to rewarding and incentivising its staff is a key driver of behaviour and firm culture. A firm's approach to remuneration should drive healthy cultures and not drive behaviours that are likely to lead to harm to markets.

2.22 By updating our Dual-regulated firms Remuneration Code in line with CRD V and the PRA's proposals, we will be able to take appropriate action should we have concerns about the implications for markets of a firm's remuneration policies and practices.

Consumer protection

2.23 There are no direct implications for consumers. But we expect our proposed updates to the Dual-regulated firms Remuneration Code to help improve financial sector stability in general. This should have positive implications for consumer protection, for example by enhancing consumer confidence.

2.24 Our proposals should contribute to a robust and appropriate remuneration framework, which is a key element of a healthy culture. An important aspect of this is encouraging senior management and others whose roles may have a material impact on the risk profile of the firm to take decisions which are in the long-term interest of the firm and its customers.

- 2.25** For example, our rules require individual performance to be assessed by means of both financial and non-financial criteria, including those related to conduct and culture. This helps to reduce the number of incidents of misconduct and, where misconduct does occur, the level of harm it causes.

Competition

- 2.26** Many of the changes we are proposing reflect provisions that were included in CRD V to ensure greater proportionality within the remuneration regime for dual-regulated firms. These may contribute to a more level playing field by helping to ensure that firms are subject to rules proportionate to the risks posed by their activities.
- 2.27** By updating the Dual-regulated firms Remuneration Code and continuing to supervise their compliance from a conduct and culture perspective, we can ensure that our expectations of their remuneration policies and practices are consistent with those we apply to the investment firms we regulate on both a prudential and conduct basis, for example IFPRU investment firms and BIPRU firms.

Wider effects of this consultation

- 2.28** When compared with the current rules, we understand that updating the Dual-regulated firms Remuneration Code to reflect CRD V but not the IFPRU Remuneration Code may introduce an extra layer of complexity for UK and EEA groups containing both dual-regulated and IFPRU investment firms. However, firms are permitted to apply stricter rules to some or all entities. This approach can help create more consistency within groups.

What we are doing

Proposed amendments to the Dual-regulated firms Remuneration Code

- 2.29** In Chapters 3 to 6, we set out our proposed amendments to SYSC 19D on a thematic basis. Our proposals are summarised in Table 1.

Table 1: Overview of proposed amendments to SYSC 19D

Chapter	Topic	Key proposals
3	Identifying material risk takers (MRTs)	To add the list contained in CRD V of examples of categories of staff who must be included as MRTs
4	Proportionality at firm level and individual level	<p>To replace our proportionality thresholds with exemptions from the remuneration rules on pay-out in shares or other instruments, deferral, and pensions holding/retention periods for:</p> <ul style="list-style-type: none"> firms with total assets averaging €5bn or less over the previous 4 years (or €15bn where certain other criteria are also fulfilled) individuals whose annual variable remuneration does not amount to more than one-third of the individual's total remuneration, and does not exceed €50,000
	Proportionality and third country branches	To revise the criteria for assessing whether a UK branch of a third country firm is in scope of the Remuneration Code

Chapter	Topic	Key proposals
5	Deferral	To amend minimum deferral periods in line with CRD V requirements while also differentiating between the requirements that apply to: <ul style="list-style-type: none"> • PRA-designated senior management functions (SMFs), FCA-designated SMFs, and other MRTs • individuals currently in scope of the existing remuneration rules, and individuals who would be newly in scope under our proposals
	Clawback	To amend the minimum clawback period to take into account the revised minimum deferral periods
	Gender neutral remuneration policies	To add a new requirement which requires firms to ensure their remuneration policies and practices are gender neutral
	Use of share-linked instruments	To permit listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments
6	Date of application	Firms to apply the amended remuneration requirements from the next performance year that begins on or after 29 December 2020

Proposed amendments to non-Handbook guidance

2.30 In non-Handbook guidance, we set out our expectations of firms regarding the application of specific Handbook rules or other provisions. Our proposed changes to the Dual-regulated firms Remuneration Code mean that we would also need to make consequential amendments to 2 non-Handbook guidance documents on remuneration:

- General Guidance on Proportionality – the Dual-regulated firms Remuneration Code
- Remuneration Codes (SYSC 19A and SYSC 19D) – Frequently Asked Questions on remuneration

2.31 As these guidance documents cover more than one topic, we summarise our proposals for amendments in the relevant chapter or chapters. All proposed amendments are tracked in Appendices 3 and 4. We have also proposed minor amendments to the guidance to address deficiencies arising from the UK's exit from the EU.

Proposals relevant to IFPRU investment firms

2.32 The General Guidance with FAQs currently applies to both the Dual-regulated firms Remuneration Code (SYSC 19D) and the IFPRU Remuneration Code (SYSC 19A). Because we are proposing to reflect the CRD V remuneration changes only in SYSC 19D, we suggest creating 2 versions of the FAQs guidance.

2.33 The current version would be updated to reflect CRD V, and apply to dual-regulated firms only (see Appendix 4). A new version would be created which would apply to IFPRU investment firms, and the substance would remain unchanged (see Appendix 5). We give more detail on this proposal in Chapter 7.

Proposals to address the UK's exit from the EU

2.34 We aim to ensure that our amended remuneration requirements can continue to work effectively at the end of the transition period following the UK's exit from the EU. In Chapter 8, we propose to:

- address the deficiencies in the Dual-regulated firms Remuneration Code which arise from the UK's exit from the EU

- convert from Euros to Sterling the proportionality thresholds and thresholds relevant to the identification of MRTs

2.35 These proposals would come into force on 1 January 2021.

Incoming EEA firms

2.36 In the context of the Dual-regulated firms Remuneration Code, incoming EEA firms are those credit institutions and investment firms that have their head office in an EEA State and use the passporting regime to establish a UK branch or establishment.

2.37 The transition period following the UK's exit from the EU ends on 31 December 2020. At the end of this period, the passporting regime will fall away and the temporary permissions regime (TPR) will come into force. The TPR will provide a backstop to allow incoming EEA firms to continue operating in the UK within the scope of their current permissions for a limited period after the end of the transition period, while seeking full UK authorisation if necessary.

2.38 We confirmed on 30 April 2020 that, after the transition period, we intend to grant transitional relief under the temporary transitional power (TTP) from the end of the transition period until 31 March 2022. This means that where the TTP applies, regulatory obligations on EEA firms operating in the UK under the TPR will generally remain the same as they were before the end of the transition period for that temporary period.

Equality and diversity considerations

2.39 We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.

2.40 Our proposal to include a requirement for dual-regulated firms to ensure their remuneration policies and practices are gender neutral furthers our commitment to upholding our Public Sector Equality Duty. Introducing this requirement supports our actions as a regulator in helping to eliminate poor conduct prohibited by the Equality Act 2010. It also promotes equality of opportunity between people who share a protected characteristic and those who do not.

2.41 The Equality Act 2010 already places a legal obligation on firms to ensure that employees performing work of equal value are paid comparable amounts. Our proposal to reflect this in our Dual-regulated firms Remuneration Code reinforces the importance we place on promoting equality in the workplace. It will strengthen how we work with and support firms in taking positive action to implement this, alongside other market standards.

2.42 Overall, we do not consider that our proposals materially impact in a negative way any of the groups with protected characteristics under the Equality Act 2010. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when making the final rules.

2.43 In the meantime, we welcome your input to the consultation on this.

3 Identifying material risk takers

- 3.1** In this chapter, we set out our proposals to amend our rules and guidance on MRTs in line with the PRA proposals and the forthcoming new RTS on identifying MRTs.

Material risk takers in CRD V

- 3.2** We require firms in scope of the Remuneration Code to apply the rules and guidance on remuneration to their 'Dual-regulated firms Remuneration Code staff'. In line with CRD IV, this term is defined as comprising employees of a dual-regulated firm whose professional activities have a material impact on the firm's risk profile. This includes any employee who is deemed to have a material impact on the firm's risk profile under the 2014 Delegated Regulation with RTS on identifying staff who are MRTs.
- 3.3** The term 'Dual-regulated firms Remuneration Code staff' also includes employees of an overseas firm that would have been a UK dual-regulated firm if it had been a UK domestic firm, who meet this definition.
- 3.4** CRD V retains the concept of staff whose professional activities are deemed to have a material impact on the firm's risk profile. It also includes some of the detail set out in the 2014 RTS on the categories of staff who must be included as MRTs.
- 3.5** CRD V provides that the categories of staff must include at least:
- all members of the management body and senior management
 - staff members with managerial responsibility over the firm's control functions or material business units
 - staff members entitled to significant remuneration in the preceding financial year, for which 3 conditions must be met:
 - the staff member's remuneration is at least €500,000
 - the staff member's remuneration is at least the average remuneration awarded to the members of the firm's management body and senior management
 - the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile
- 3.6** CRD V recognises that there is a need to further define some of these categories of staff. It mandates the EBA to develop new RTS that help to define:
- managerial responsibility and control functions
 - material business unit and significant impact on the relevant business unit's risk profile
 - other categories of staff whose professional activities have an impact on the firm's risk profile which is comparably as material as that of the categories of staff expressly referred to in CRD V
- 3.7** Following a public consultation in December 2019, the EBA published its final draft RTS and submitted them to the European Commission in June 2020. The text will not be

final until it has been adopted by the European Commission. We expect this process to be completed and the final RTS published as a Delegated Regulation in the Official Journal of the EU before the CRD V transposition deadline of 28 December 2020.

- 3.8** In this consultation paper, we refer to the text of the EBA's final draft RTS as submitted to the European Commission. If the final text differs from that submitted by the EBA, we will make any minor adjustments, for example to the numbering of the articles, in our final rules. We would also summarise them in our accompanying policy statement. Should there be any significant amendments which necessitate substantive changes to our policy proposals, we would consider whether there is a need to consult on them.

Proposed rule changes

- 3.9** To reflect the CRD V examples of categories of staff who must be included as MRTs, we propose to replicate in the Dual-regulated firms Remuneration Code the list contained in CRD V. We consider this to be necessary because the draft new RTS do not contain the list but rather only define certain terms and elements used in the examples.
- 3.10** It would further enhance clarity if we add definitions of the terms 'managerial responsibility', 'control functions' and 'material business unit' to our Handbook Glossary. We propose that these definitions cross-refer to the relevant article of the new RTS rather than reproduce the full text of the definitions.
- 3.11** The categories of staff mentioned in the list, together with the qualitative and quantitative criteria set out in the new RTS, do not provide a complete set of criteria for a firm to identify all its MRTs. The types of professional activity and the risks inherent in these activities, including conduct risks, will vary by firm. As with existing requirements, firms would still need to consider whether further employees may also be MRTs and, where necessary, apply additional criteria to identify them.
- 3.12** We also propose to replace all references in SYSC 19D to the 2014 RTS with references to the new RTS.
- 3.13** We set out in Chapter 8 our proposals to convert from Euros to Sterling the thresholds relevant to the identification of MRTs that would be in the Dual-regulated firms Remuneration Code under our proposals.

Proposed changes to our guidance 'Frequently Asked Questions on Remuneration'

- 3.14** Section 2 of our FAQs guidance deals with MRTs. We propose to make amendments to this section to take account of the changes to the definition of MRTs contained in CRD V and the new RTS. These include reflecting the definition in the new RTS of the 'exceptional circumstances' in which a firm may exclude from identification an individual who earns more than €1m.

3.15 All our proposed amendments to the FAQs guidance can be found in Appendix 4.

Q1: Do you agree with our proposals to amend our rules and guidance on material risk takers?

4 Application and proportionality

- 4.1** In this chapter, we set out our proposals for changes to thresholds for proportionality, including the thresholds for application of remuneration requirements by firms and to individuals. We also cover application to groups. We set out in Chapter 8 our proposals to convert the new proportionality thresholds from Euros to Sterling.

Proportionality

Current approach

- 4.2** In line with CRD IV, we currently require a firm in scope of the Dual-regulated firms Remuneration Code to comply with the remuneration principles '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' (SYSC 19D.3.3R(2)). This is called 'the dual-regulated firms remuneration principles proportionality rule'.
- 4.3** Its purpose is to ensure that a firm's remuneration policies and practices are appropriate in view of the differences between firms. In particular, larger and more complex firms would usually be expected to establish and apply more sophisticated remuneration policies than smaller and non-complex firms.
- 4.4** In our General Guidance on Proportionality – the Dual-regulated firms Remuneration Code, we set thresholds (based on total assets) which permit smaller firms to consider whether it may be justified to disapply certain remuneration requirements in light of the proportionality rule.
- 4.5** We take the view that it would be disproportionate to require firms to apply all of the remuneration requirements in the same way to all staff in scope of the Remuneration Code.
- 4.6** For this reason, the Dual-regulated firms Remuneration Code includes guidance that we do not generally consider it necessary for firms to apply certain remuneration requirements to individuals whose total remuneration is below a certain level and the variable remuneration component also makes up less than a certain proportion of the total.

Proportionality rule

- 4.7** In CRD IV, the words 'to the extent' contained in the general proportionality principle provided some flexibility in how the remuneration regime is applied. CRD V removes these words and instead specifies directly the thresholds that may be used.
- 4.8** We intend to reflect these changes in a way that is as consistent as possible with our existing approach and reflects the specificities of the UK market. We propose to delete the words 'to the extent' from the dual-regulated firms remuneration principles proportionality rule. We discuss the thresholds set out in CRD V in the sections which follow.

Threshold for application of remuneration requirements to firms

Current approach

4.9 In our current General Guidance on Proportionality, we set out how proportionality can be applied to a dual-regulated firm according to the proportionality level it falls into. The guidance sets out the criteria and process.

4.10 Firms with an average of total assets exceeding £15bn over the preceding 3 relevant dates ('relevant total assets') should apply the relevant remuneration rules. Firms with less than £15bn relevant total assets may be able to justify, under the remuneration principles proportionality rule, the disapplication of 1 or more of the following rules:

- pay-out in retained shares or other instruments
- deferral
- performance adjustment (malus and clawback)
- the specific ratio between fixed and variable components of total remuneration ('bonus cap')

Thresholds and exemptions in CRD V

4.11 CRD V has set explicit thresholds to establish which requirements certain firms can be exempt from applying. CRD V requires all firms to apply the bonus cap and performance adjustment (malus and clawback).

4.12 CRD V states that firms meeting certain criteria, discussed below, shall be exempt from applying the requirements on:

- deferral
- pay-out in retained shares or other instruments
- holding and retention periods for discretionary pension benefits

4.13 For clarity, a firm cannot be exempt from ensuring that its pension policy is in line with its business strategy, objectives, values and long-term interests.

Proposed rule changes

4.14 Consistent with the PRA, we propose to introduce a rule to exempt certain firms from applying the rules on deferral, pay-out in retained shares or other instruments, and holding and retention periods for discretionary pension benefits. A firm would need to meet the following conditions:

- not be a 'large institution' as defined in the CRR, so not:
 - a global systemically important institution or other systemically important institution, or
 - 1 of the 3 largest institutions in its Member State in terms of total value of assets, or
 - an institution with total assets (calculated either on an individual or a consolidated basis) equal to or greater than €30bn
- have an average of total assets equal to or below €5bn over the 4 years immediately preceding the current financial year

4.15 We propose to define a 'large institution' in the Handbook Glossary by cross-referencing the relevant article of the CRR.

4.16 As reflected in the conditions listed above, CRD V sets the threshold for application at €5bn as an average of total assets over the 4 years immediately preceding the current financial year. CRD V permits Member States to raise this threshold from €5bn to up to €15bn for firms that meet certain additional conditions. A firm must have:

- no obligations, or be subject to simplified obligations, for recovery and resolution planning purposes
- a small trading book, ie traded business $\leq 5\%$ total assets and $< \text{EUR } 50\text{m}$
- traded derivatives positions $\leq 2\%$ of its total on- and off-balance sheet assets, and the total value of its overall derivatives positions $\leq 5\%$

4.17 It must also be appropriate to increase the threshold taking into account the firm's nature, scope and the complexity of its activities, its internal organisation or, if applicable, the characteristics of the group to which it belongs.

4.18 Consistent with the PRA, we propose to increase the proportionality threshold from €5bn to €15bn for those firms who meet these additional conditions.

4.19 In applying the maximum threshold of €15bn, we are preserving, as far as possible, the scope of the current proportionality threshold. Applying the original threshold of €5bn would not be proportionate as more dual-regulated firms would be brought into scope of the remuneration requirements on deferral and pay-out in shares or other instruments. It would also increase complexity and costs for all firms in scope. Using a threshold of €15bn better reflects the nature and size of dual-regulated firms in the context of the UK market.

Proposed changes to General Guidance on Proportionality

4.20 We propose to amend our General Guidance on Proportionality to reflect our proposals to introduce an exemption for certain firms. This includes amending the description of the 3 proportionality levels to reflect the new thresholds for application.

4.21 We also propose to amend the guidance to indicate that all firms in scope of the Dual-regulated firms Remuneration Code must apply the bonus cap and performance adjustment (malus and clawback).

4.22 We do not propose to alter how a group ascertains its proportionality level.

4.23 Our proposed amendments can be found in full in Appendix 3.

Proposed changes to General Guidance with FAQs on remuneration

4.24 Sections 4 and 5 of our FAQs guidance include questions on proportionality. We propose to make amendments to these sections to reflect the changes to the application of proportionality. Our proposed amendments can be found in Appendix 4.

Threshold for application of remuneration requirements to individuals

4.25 The Dual-regulated firms Remuneration Code contains guidance on the thresholds related to the application of remuneration requirements to individuals. Currently, we do not generally consider it necessary for a firm to apply the remuneration rules on retained shares or other instruments, deferral, performance adjustment or the bonus cap to individuals whose:

- variable remuneration is no more than 33% of total remuneration, and

- total remuneration is no more than £500,000

4.26 CRD V sets out when remuneration requirements relating to deferral, pay-out in retained shares or other instruments, and the holding and retention periods for discretionary pension benefits shall not be applied to individuals. Consistent with the PRA, we are proposing to reflect these changes in our rules.

Proposed rule changes

4.27 We propose to set out in a rule that the remuneration requirements on retained shares or other instruments, deferral, and the holding and retention periods for discretionary pension benefits shall not apply to individuals if:

- their annual variable remuneration does not amount to more than one-third of total remuneration, and
- their annual variable remuneration does not exceed €50,000

4.28 This change is likely to bring more individuals into scope of the remuneration rules.

4.29 Firms will be expected to first identify the individuals who are MRTs, and so meet the definition of dual-regulated firms Remuneration Code staff. Firms will then need to assess which of these staff have annual variable remuneration exceeding the above thresholds. These individuals will be in scope of all relevant remuneration requirements.

4.30 CRD V provides flexibility in allowing Member States to apply all the remuneration rules to individuals below the thresholds. Consistent with the PRA, we do not propose to set a lower threshold as we do not believe it would be appropriate in the context of the UK financial services market. Doing so would not substantially further the objectives of promoting effective risk management and discouraging excessive risk-taking.

Proposed changes to General Guidance on Proportionality

4.31 The proposals we set out above would require corresponding changes to Part E of the General Guidance on Proportionality. Part E provides guidance on the application of the proportionality rule to individuals who have been dual-regulated firms Remuneration Code staff for only part of the performance year.

4.32 We propose to make necessary amendments to the guidance to reflect the proposed rule changes described above.

4.33 Our proposed amendments can be found in Appendix 3.

Q2: Do you agree with our proposed approach to proportionality and, in particular, with our proposed exemptions for certain firms and individuals?

Application of proportionality conditions to third country branches in the UK

4.34 SYSC 19D.1.1R sets out that the Dual-regulated firms Remuneration Code applies to an overseas firm, as defined in SYSC 19D.1.1R(1)(d), for the activities carried on from a branch in the UK. This approach prevents UK branches of third country firms from being afforded more favourable treatment than UK firms and ensures a domestic level playing field.

- 4.35** We currently take the same approach as the PRA in determining which UK branches are in scope of applying remuneration requirements and which may apply proportionality. We set out in Part C of our General Guidance on Proportionality for dual-regulated firms that a UK branch should assess the average of the total assets that covered the activities of the branch operation in the UK over the previous 3-year period.
- 4.36** Consistent with the PRA, we propose to continue to apply proportionality conditions to UK branches of third country firms, and to do so in a rule. We propose to continue on the basis that a UK branch determines whether it is in scope of applying remuneration requirements by assessing its total assets (rather than the assets of the entire legal entity). In line with CRD V, branches with average total relevant assets of €5bn or below over the previous 4 years will be exempt from applying the relevant remuneration requirements.
- 4.37** In addition, we propose to require that a UK branch wishing to benefit from the higher threshold of €15bn should consider whether it meets the conditions relating to the size of its trading book and of its derivatives activity. The relevant thresholds are set out in paragraph 4.16 above.
- 4.38** The branch should also consider whether applying the increased threshold would be appropriate taking into account the nature, scope and the complexity of its activities, its internal organisation or, if applicable, the characteristics of the group to which it belongs.
- 4.39** We do not propose to apply the remaining CRD V proportionality conditions as we consider it would be technically complex and so potentially disproportionate to do so. These other criteria are whether it is a 'large institution' (see paragraph 4.14 above) and, for firms wishing to make use of the higher €15bn assets threshold, the nature of the branch's recovery and resolution planning obligations.
- 4.40** We propose to amend the General Guidance on Proportionality to reflect the new rules proposed above.

Q3: Do you agree with our proposed approach to the application of proportionality to third country branches in the UK?

Application to groups

Current approach

- 4.41** The Dual-regulated firms Remuneration Code sets out the application of remuneration requirements to groups as defined in section 421 FSMA (SYSC 19D.3.1R). In line with Articles 92 and 109 of the CRD, remuneration requirements are applied on a consolidated basis at group, parent undertaking and subsidiary undertaking levels. This ensures that our rules are not restricted in applying only to members of the EEA consolidation group.
- 4.42** By applying remuneration rules on a consolidated basis to firms within a group, we bring into the scope of remuneration requirements individuals in other entities within the group whose professional activities have a material impact on the risk profile of the firm in question. This allows for individuals who pose material risks to both

the individual entity and/or the group as a whole to be identified, and appropriate requirements applied to them.

- 4.43** Firms subject to the IFPRU Remuneration Code, that form part of a group to which the Dual-regulated firms Remuneration Code applies, are required to apply the Dual-regulated firms Remuneration Code on a consolidated basis.

Proposed approach to the application of remuneration requirements to groups

- 4.44** CRD V sets a minimum scope for the application of remuneration requirements at group level but permits EU Member States to apply remuneration requirements on a consolidated basis to a broader scope of subsidiary undertakings and their staff. This is consistent with our current approach to group application.
- 4.45** Consistent with the PRA, we propose to maintain our current approach of applying remuneration requirements on a consolidated basis to firms within a group, as defined in section 421 FSMA. This ensures we can continue to keep within scope Remuneration Code staff whose professional activities may have a material impact on the risk profile of the firm in question. To maintain our current approach, we propose to update SYSC 19D.3.1R to reflect the amendments to Articles 92 and 109 with regards to applying remuneration rules on a consolidated basis to firms within a group.
- 4.46** This proposal includes maintaining our current approach of applying the Dual-regulated firms Remuneration Code to a firm in scope of the IFPRU Remuneration Code which is a member of a group to which the Dual-regulated firms Remuneration Code applies.
- 4.47** We propose to retain this approach to ensure consistency with the PRA's proposed approach. Subsidiaries would continue to apply their sectoral remuneration requirements on an individual basis. We acknowledge that this may result in IFPRU investment firms being subject to CRD V requirements on a consolidated basis, some of which may apply a different standard.
- 4.48** An alternative option would be to permit IFPRU investment firms to apply the IFPRU Remuneration Code at both individual and consolidated level. This would result in groups being required to apply two different remuneration regimes at the consolidated level. This would likely result in conflicts between specific requirements.

Q4: Do you agree with our proposed approach to the application of remuneration rules to groups?

5 Remuneration principles

- 5.1** This chapter sets out our proposals to change the existing deferral and clawback periods, require firms' remuneration policies and practices to be gender neutral, and extend the use of share-linked instruments.

Deferral periods

- 5.2** When variable remuneration is deferred, an employee does not gain legal ownership of the award until it vests. The length of time until the whole award has vested is known as the deferral period. Deferral periods strengthen the alignment between risk and reward, for example by enabling a firm to adjust variable remuneration to reflect risk outcomes which had not materialised when the remuneration was awarded.

- 5.3** We currently require dual-regulated firms to apply the following minimum deferral periods:

- 7 years for MRTs who perform a PRA-designated senior management function (SMF)
- 3 to 5 years for all other MRTs

- 5.4** CRD V increases the minimum deferral period from 3 to 5 years, to 4 to 5 years. It also provides that the deferral period should not be less than 5 years for members of the management body and senior management of firms which are significant in terms of their size, internal organisation, and the nature, scope and complexity of their activities.

Our proposals

- 5.5** We propose to amend the current deferral periods in line with 2 principles:

- Where our current minimum deferral periods are lower than required by CRD V, we will increase them to reflect CRD V.
- Where our current minimum deferral periods are higher than required by CRD V, we will leave them unchanged.

Individuals with total remuneration of £500,000 or below

- 5.6** We acknowledge that deferral is a potential area of considerable change for many dual-regulated firms. The CRD V thresholds for exempting individuals are likely to mean that more MRTs will be in scope of the remuneration rules. This would mean most firms needing to apply deferral to a larger number of individuals.

- 5.7** With this in mind, we suggest setting different minimum deferral periods for those individuals whose total remuneration is below £500,000. These are individuals to whom we would not currently expect deferral to be applied. We propose to apply the minimum periods set out in CRD V to these persons.

- 5.8** We understand that this proposal may add complexity for firms and individuals, for example because different deferral periods may apply to one individual in different years. However, all deferral periods are only minimums. This means that a firm is permitted to apply the longer deferral periods to all its MRTs in scope of deferral if it would prefer to do so, for example, to have a less complex approach.

MRTs performing an FCA-designated senior management function

- 5.9** For the purpose of defining minimum deferral periods, we propose to introduce a new category of MRTs: those who perform FCA-designated SMFs. Examples include the chair of the nomination committee function (SMF13), the compliance oversight function (SMF16), and the money laundering reporting function (SMF17).
- 5.10** We believe it is important to create a separate category for FCA-designated SMFs to appropriately reflect the extent to which their activities can have a material impact on the risk profile of firms.
- 5.11** The new category would be relevant to individuals with total remuneration both above and below £500,000.

Summary of proposed changes

- 5.12** Table 2 sets out the current deferral periods and how they would change under our proposals.

Table 2: Proposed changes to deferral periods

Type of MRT	Minimum deferral period (in years)		
	Current rules	Our proposals	
		Total remuneration above £500,000	Total remuneration £500,000 or below
PRA-designated SMF	7	7	5
FCA-designated SMF	3 – 5	5	5
Other MRT		4 – 5	4

- 5.13** Our proposed deferral periods would provide greater flexibility for firms and their staff by ensuring the length of the minimum deferral periods is proportionate to the level of responsibility of the individual to whom it relates. We consider that applying these deferral periods will help firms to discourage key individuals from taking excessive risks that could lead to harm.

Examples

- 5.14** In these examples (which are for illustrative purposes only), we assume that all the employees and the firms they work for are in scope of our proposed rules on deferral.

Example 1

- 5.15** Employee A performs the executive director function (an FCA-designated SMF) for their firm. They receive total remuneration of £525,000.

- 5.16** At present, their variable remuneration is subject to a deferral period of at least 3 to 5 years. Under our proposals, it would need to be subject to a deferral period of at least 5 years.

Example 2

- 5.17** Employee B performs the chief financial officer function (a PRA-designated SMF) for their firm. They receive total remuneration of £575,000.

- 5.18** At present, their variable remuneration is subject to a deferral period of at least 7 years. Under our proposals, this minimum period would remain unchanged.

Example 3

- 5.19** Employees C and D are both MRTs who do not perform FCA- or PRA-designated SMFs. They work for Firm X.

- 5.20** Employee C receives total remuneration of £350,000 of which £105,000 is variable remuneration (30% of total). At present, their variable remuneration is not subject to deferral. Under our proposals, it would need to be subject to a deferral period of at least 4 years.

- 5.21** Employee D receives total remuneration of £550,000. At present, their variable remuneration is subject to a deferral period of at least 3 to 5 years. Under our proposals, it would need to be subject to a deferral period of at least 4 to 5 years.

- 5.22** Under our proposals, Firm X could choose to apply:

- a 4-year deferral period to both C and D
- a deferral period longer than 4 years to C and/or D

Q5: Do you agree with our proposals for minimum deferral periods?

Clawback periods

- 5.23** We currently require dual-regulated firms to ensure that all variable remuneration is subject to clawback for a period of at least 7 years from the date on which it is awarded.

- 5.24** For MRTs who perform PRA-designated SMFs, firms can extend the clawback period from 7 to at least 10 years in certain circumstances. These are when the firm or a regulatory authority has started an investigation into facts or events that could potentially lead to application of clawback if the clawback period were not to expire.

- 5.25** CRD V requires all firms to apply clawback to Remuneration Code staff but, like CRD IV, it does not set out a minimum clawback period. However, the EBA [Guidelines on sound remuneration policies](#) (paragraph 272) state that the clawback period should at least span the length of the deferral and retention periods. The Guidelines suggest that the retention period should be a minimum of 1 year (paragraph 267).

Our proposals

5.26 In light of the CRD V changes to the minimum deferral period, we have considered whether it would be appropriate to also make changes to the minimum clawback period.

5.27 We propose to clarify that firms must apply whichever is the longer period:

- the minimum clawback period set out in our rules, or
- the period which is equal to the sum of the deferral and retention periods the firm applies to the individual

Individuals with total remuneration over £500,000

5.28 The current clawback period of 7 years is longer than the sum of the CRD V minimum deferral period (4 to 5 years) and the minimum retention period (1 year) set out in the EBA Guidelines. For this reason, we do not propose to amend it for individuals who receive total remuneration of over £500,000.

Individuals with total remuneration of £500,000 or below

5.29 For individuals who receive total remuneration of £500,000 or below, we propose to align the minimum clawback period to the deferral periods we are proposing. To ensure consistency with the EBA Guidelines, we are proposing minimum clawback periods that cover the length of the minimum deferral period and the minimum retention period.

5.30 For example, an MRT with an FCA- or PRA-designated SMF would be subject to a minimum deferral period of 5 years. We are therefore proposing a minimum clawback period of 6 years (deferral period of 5 years plus retention period of 1 year).

5.31 For individuals who receive total remuneration of £500,000 or below, we propose a minimum clawback period of 1 year for variable remuneration which is immediately paid and is not subject to deferral. As there is no deferral period to take into account, this clawback period is based on the minimum retention period of 1 year only.

Extending clawback to at least 10 years in certain circumstances

5.32 We propose to permit firms, in certain circumstances, to extend the clawback period to at least 10 years for individuals performing an FCA-designated SMF who also earn over £500,000. The circumstances in which this would be permitted would be when the firm or a regulatory authority has started an investigation into facts or events that could potentially lead to application of clawback if the clawback period were not to expire.

5.33 These are the same as the circumstances to which this extension may already be applied to individuals who perform a PRA-designated SMF.

Summary of proposed changes

5.34 Table 3 shows the changes we are proposing to the minimum clawback periods set out in our rules.

Table 3: Proposed changes to clawback periods

Type of MRT	Minimum clawback period (in years)			
	Current rules	Our proposals		
		Total remuneration above £500,000	Total remuneration £500,000 or below	
			Deferred	Undeferred
PRA-designated SMF	7*	7*	6	1
FCA-designated SMF	7	7*	6	1
Other MRT		7	5	1

* Minimum clawback periods may be extended to at least 10 years in certain circumstances (see paragraph 5.24 above)

Q6: Do you agree with our proposals for minimum clawback periods?

Gender neutral remuneration policies

- 5.35** Our current rules on remuneration do not explicitly address gender neutrality in remuneration policies.
- 5.36** CRD V introduces a new requirement for firms' remuneration policies and practices to be gender neutral. We propose to require firms to ensure and be able to show that their remuneration policies and remuneration practices are gender neutral.
- 5.37** 'Gender neutral remuneration policy' is defined in CRD V as being a remuneration policy based on equal pay for male and female workers for equal work or work of equal value. We propose to include in the Handbook Glossary the term 'gender neutral remuneration policy', and use the CRD definition.
- 5.38** In its July 2020 consultation document on Updating the UK's Prudential Regime before the end of the Transition Period, the Treasury clarified that the Equality Act 2010 (the 2010 Act) already makes it a legal requirement for employers to pay the same to men and women who carry out the same jobs, similar jobs or work of equal value. The Act covers individuals in the same employment, and includes equality in pay and all other contractual terms, including variable remuneration.
- 5.39** Our proposal to include a new remuneration requirement on gender neutrality would further our commitment to upholding our Public Sector Equality Duty, and support our actions as a regulator in helping to eliminate poor conduct prohibited by the 2010 Act. It also promotes equality of opportunity between people who share a protected characteristic and those who do not.
- 5.40** The 2010 Act prohibits discrimination on the basis of an individual's protected characteristics. This prohibition includes employment, both before and after employment is offered. The 2010 Act lists the following characteristics as protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 5.41** We also propose to include a guidance provision which reminds firms of their existing obligations as employers to ensure their remuneration policies and practices do not

discriminate against applicants and employees on the grounds of any of the protected characteristics under the 2010 Act.

- 5.42** Under current FCA rules, a firm must have a clear and verifiable mechanism for measuring performance. When assessing the performance of an individual for the purposes of determining variable remuneration, a firm must take into account financial and non-financial criteria.
- 5.43** We propose to include guidance to clarify that firms must ensure that when they assess individual performance, the variable remuneration awarded does not discriminate against the protected characteristics of an individual.
- 5.44** All of our proposals on gender neutrality in remuneration support and reaffirm our aim to drive healthy purposeful cultures in firms, which includes developing an inclusive and diverse workplace. It will support us in supervising the extent to which firms are meeting these standards and holding them to account if they fail to do so. Chairs of remuneration committees have ultimate responsibility for ensuring that their firms' remuneration policies and practices comply with the Remuneration Code.
- 5.45** Since the 2010 Act has been in place for many years, we would expect firms to already be actively taking steps to ensure their remuneration policies reflect the required standards in this area, in line with the Conduct Rule on observing proper standards of market conduct.
- 5.46** We will keep this area under review, including whether there is evidence that further guidance to firms may be necessary.

Q7: Do you agree with our proposal for a new rule and guidance on the gender neutrality of remuneration policies and practices?

Use of share-linked instruments

- 5.47** In line with CRD V, we and the PRA propose to expressly permit listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments.
- 5.48** The Dual-regulated firms Remuneration Code requires firms to pay at least 50% of any variable remuneration in shares or other instruments. This requirement applies to both the deferred portion and the non-deferred portion of the variable remuneration. It is intended to contribute to aligning the interests of staff with the interests of the firm and other stakeholders, such as shareholders and customers.
- 5.49** At present, listed firms (ie those which are listed and trade on a stock market) must use shares and, where possible, other instruments that adequately reflect the credit quality of the firm. In recognition of the different legal structures of the firms in scope of the Remuneration Code, ownership interests equivalent to shares may be used instead of shares.
- 5.50** We propose to extend to listed firms the possibility of awarding variable remuneration in the form of share-linked instruments and equivalent non-cash instruments. This

aims to recognise that these instruments are as effective as shares in aligning the interests of the individual with those of the firm. They can also achieve equivalent prudential benefits.

5.51 Our proposal would give listed firms a broader choice of pay-out options while maintaining the flexibility required by non-listed firms. We would expect this to reduce the costs for those firms who have found it administratively burdensome to repeatedly use shares (or equivalent ownership interests) to fulfil the pay-out requirements. Listed firms would still be able to award shares instead of, or alongside, share-linked instruments and equivalent non-cash instruments.

Q8: **Do you agree with our proposal to permit listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments?**

6 Date of application and reporting requirements

- 6.1** This chapter sets out our proposal on when we expect firms to apply the amended remuneration rules, and explains our proposed approach to reporting.

Date of application

- 6.2** CRD V requires Member States to transpose the remuneration requirements by 28 December 2020, with the measures to apply from 29 December 2020.
- 6.3** Consistent with the PRA, we propose that:
- the amendments to the rules and guidance we set out in Chapters 3 to 5 of this consultation paper enter into force on 29 December 2020
 - firms are required to apply the amendments from their next performance year beginning on or after 29 December 2020

Q9: Do you agree that firms should apply the amended rules and guidance from the next performance year that begins on or after 29 December 2020?

Reporting requirements

- 6.4** We do not currently require dual-regulated firms to report to us the information required by competent authorities under CRD IV to benchmark remuneration trends and practices. The PRA collects the relevant information.
- 6.5** CRD V extends the requirement on what data competent authorities should collect to also include information on whether a firm meets the relevant criteria and falls below the threshold for application to firms, as well as information on the gender pay gap.
- 6.6** We do not propose to replicate either of these requirements but to maintain our current approach. In this way, we can continue to avoid duplicating work and placing an additional burden on firms in terms of cost and resource.
- 6.7** The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 require UK firms with more than 250 employees to disclose and publish information on their gender pay gaps. We do not consider it is necessary to require these firms to provide to the FCA the same information they publish under the Gender Pay Gap Information Regulations.

Q10: Do you agree with our proposal to leave our reporting requirements on remuneration unchanged?

7 IFPRU investment firms: General Guidance with FAQs on remuneration

- 7.1** In this chapter, we set out our proposal for a new version of the General Guidance with FAQs on remuneration for IFPRU investment firms.
- 7.2** Our General Guidance with FAQs on remuneration currently applies to both the Dual-regulated firms Remuneration Code (SYSC 19D) and the IFPRU Remuneration Code (SYSC 19A). The changes to SYSC 19D which we are proposing in this consultation paper mean it is also necessary to amend the FAQs guidance for dual-regulated firms. Our proposed amendments are summarised in Chapters 3 and 4, and can be found in full in Appendix 4.
- 7.3** To ensure that the FAQs guidance remains relevant to IFPRU investment firms in scope of SYSC 19A, we propose to create a second version of the guidance which would apply only to firms in scope of the IFPRU Remuneration Code. The substance of the guidance would remain unchanged. We propose to amend it only to:
- delete references to SYSC 19D and dual-regulated firms
 - address deficiencies arising from the UK's exit from the EU
- 7.4** We propose that this new version of the guidance enters into force on 29 December 2020. This aligns with our proposal for the entry into force of the changes to the FAQs guidance for dual-regulated firms.
- 7.5** Our proposed new FAQs guidance for IFPRU investment firms can be found in Appendix 5.

Q11: Do you agree with our proposal to create a separate version of the General Guidance with Frequently Asked Questions for IFPRU investment firms?

8 Addressing the UK's exit from the EU

- 8.1** In this chapter, we set out proposals in relation to the remuneration rules for dual-regulated firms that would enter into force at the end of the transition period following the UK's exit from the EU (1 January 2021). The details of these proposals can be found in Appendix 2.

Deficiencies arising from the UK's exit from the EU

Current approach

- 8.2** In 2019, we published final amendments to the FCA Handbook to address deficiencies arising from the anticipated exit of the UK from the EU. These aimed to ensure that our Handbook continues to work effectively. Full details of our approach can be found in [CP18/28](#), [CP18/36](#) and [PS19/5](#).
- 8.3** The [Exiting the European Union: High Level Standards \(Amendments\) Instrument 2019](#) and the [Exiting the European Union: Miscellaneous \(Amendments\) Instrument 2019](#) (the 2019 instruments) include changes to the Dual-regulated firms Remuneration Code (SYSC 19D). For example, we amended references to the CRD to refer to the UK legislation that implemented the CRD.
- 8.4** These changes will come into force at the end of the transition period following the UK's exit from the UK (1 January 2021).

Proposed changes

- 8.5** The proposals we have made in Chapters 3 to 6 of this consultation seek to make amendments to SYSC 19D to reflect the changes made by CRD V. They would come into force on 29 December 2020. To ensure that these provisions continue to work effectively at the end of the transition period, we are proposing to make minor amendments to address exit-related deficiencies. These changes would come into force on 1 January 2021.
- 8.6** Appendix 2 shows our proposals to address the deficiencies in SYSC 19D. It includes both the changes made in the 2019 instruments as well as the additional changes required as a result of the proposals in this CP.
- 8.7** Appendix 2 would also revoke the 2019 instruments insofar as they amend SYSC 19D.

Q12: Do you agree with our proposals to address the deficiencies arising from the UK's exit from the EU?

Converting thresholds from Euros to Sterling

- 8.8** CRD V sets the thresholds for application of remuneration requirements to firms and individuals in Euros. We explain in Chapter 4 how we intend to update the Dual-regulated Remuneration Code to take account of these thresholds.
- 8.9** Consistent with the PRA's approach, we propose to convert these proportionality thresholds from Euros to Sterling with effect from 1 January 2021. We also propose to convert the thresholds in our Remuneration Code relevant to the identification of MRTs.
- 8.10** If we were to continue to define the proportionality thresholds in Euros, they would be inconsistent with the PRA's proposals. This inconsistency would likely reduce clarity while increasing costs for firms.
- 8.11** We propose to use the same Sterling thresholds as the PRA. These are set out in Table 4.

Table 4: Proposed thresholds in Euros and Sterling

Threshold purpose	Proposed threshold in Euros	Proposed threshold in Sterling
Application to firms	€5 billion	£4 billion
	€15 billion	£13 billion
Application to individuals	€50,000	£44,000
Identification of MRTs	€500,000	£440,000
	€750,000	£658,000

Q13: Do you agree with our proposals to convert from Euros to Sterling the proportionality thresholds and thresholds relevant to the identification of material risk takers?

Annex 1

Questions in this paper

- Q1:** Do you agree with our proposals to amend our rules and guidance on material risk takers?
- Q2:** Do you agree with our proposed approach to proportionality and, in particular, with our proposed exemptions for certain firms and individuals?
- Q3:** Do you agree with our proposed approach to the application of proportionality to third country branches in the UK?
- Q4:** Do you agree with our proposed approach to the application of remuneration rules to groups?
- Q5:** Do you agree with our proposals for minimum deferral periods?
- Q6:** Do you agree with our proposals for minimum clawback periods?
- Q7:** Do you agree with our proposal for a new rule and guidance on the gender neutrality of remuneration policies and practices?
- Q8:** Do you agree with our proposal to permit listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments?
- Q9:** Do you agree that firms should apply the amended rules and guidance from the next performance year that begins on or after 29 December 2020?
- Q10:** Do you agree with our proposal to leave our reporting requirements on remuneration unchanged?
- Q11:** Do you agree with our proposal to create a separate version of the General Guidance with Frequently Asked Questions for IFPRU investment firms?
- Q12:** Do you agree with our proposals to address the deficiencies arising from the UK's exit from the EU?
- Q13:** Do you agree with our proposals to convert from Euros to Sterling the proportionality thresholds and thresholds relevant to the identification of material risk takers?
- Q14:** Do you have any comments on our cost benefit analysis?

Annex 2

Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
2. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other formats where it isn't possible to provide quantitative data, such as qualitative explanations. Our proposals are based on carefully weighing up these considerations, as well as the UK's obligation to transpose EU directives into domestic law, against achieving our objectives.
3. This annex contains our CBA on the impacts arising from our proposals to amend the Dual-regulated firms Remuneration Code. This CBA will focus on the costs and benefits associated with our proposals to amend or add rules on proportionality, the thresholds for application and exemption, identifying material risk takers (MRTs), and remuneration requirements. The relevant remuneration requirements are those regarding deferral, clawback, gender neutrality in remuneration and the use of share-linked instruments.
4. As discussed in the Consultation Paper (CP), we propose to alter our General Guidance on Proportionality and FAQs guidance, however, these proposals have not been taken into account in this CBA. This is because they are consequential amendments which we propose to make to provide additional guidance regarding our proposals to update the Dual-regulated firms Remuneration Code.
5. Dual-regulated firms are also subject to the PRA's Rulebook and so this CBA should be read in conjunction with the CBA accompanying the PRA's consultation paper on the implementation of the Capital Requirements Directive V (CRD V).

Problem and rationale for intervention

6. The financial crisis of 2007-2009 made clear the high levels of risk taking and poor conduct in the financial services industry. The key drivers of this behaviour included poor individual accountability within firms as well as incentives for excessive risk-taking or poor conduct, which collectively gave rise to significant harm to the market and consumers.
7. In response to this, the Financial Services Authority, and subsequently the FCA and PRA, developed a regulatory approach to remuneration in the form of the

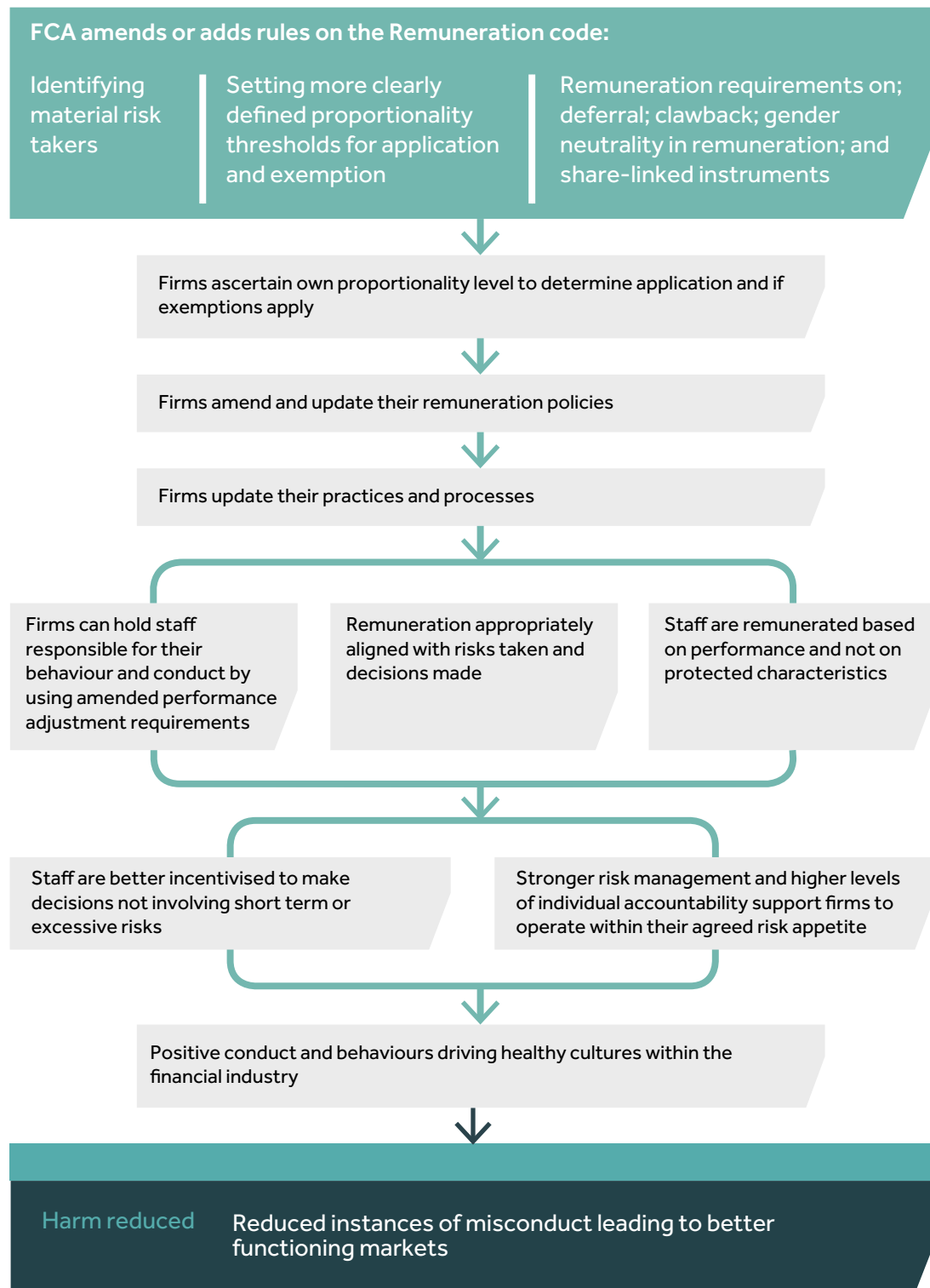
Remuneration Codes. The Remuneration Codes are based on the standards and provisions we developed with the Financial Stability Board and European legislation, including the CRD.

8. CRD V introduces further provisions to those in CRD IV and makes amendments to existing principles to provide clarity and support implementation. The PRA is required, as the competent authority, to transpose the requirements of CRD V into domestic law. We have taken the decision to update the Dual-regulated firms Remuneration Code (SYSC 19D) in line with CRD V and the proposals put forward by the PRA to further strengthen the alignment between risk, reward and conduct.
9. To not change the Dual-regulated firms Remuneration Code in line with the changes proposed by the PRA would result in two different sets of rules for the same firms. This might create challenges and cause confusion for these firms. It is important that the Dual-regulated firms Remuneration Code reflects current standards to ensure greater alignment between risk and reward, encourage stronger risk management and discourage excessive or short-term risk taking. This, in turn, would enhance the integrity of the UK financial system and, indirectly, maintain an appropriate level of protection for consumers.

Our proposed intervention

10. This CBA provides an analysis of the costs and benefits of applying the proposals set out in the CP on updates to the Dual-regulated firms Remuneration Code. This CBA is focusing on the proposals which constitute a change to the Dual-regulated firms Remuneration Code, as discussed in Chapters 3 to 6 of the CP. This CBA also sets out the costs associated with our proposals in Chapter 7 to IFPRU investment firms. We describe our baseline scenario below.
11. As our main proposals only affect dual-regulated Remuneration Code firms, solo-regulated investment firms should continue to apply the current IFPRU or BIPRU Remuneration Codes, as applicable. In our June 2020 [Discussion Paper on a new UK prudential regime for MiFID investment firms \(DP20/2\)](#), we set out our initial views on what new remuneration rules for these firms could look like.
12. Our proposed approach to replicate the remuneration provisions makes clear that certain aspects of the remuneration rules will not be changed. The changes that we do propose to make are largely consistent with the PRA's proposals and will affect only a small proportion of the rules in the Remuneration Code. Accordingly, we would not expect firms to be significantly impacted or be required to make extensive changes to their remuneration policies and practices, due to our changes.
13. Figure A below illustrates the causal links between the intervention described above and the harm we are trying to address. The causal chain reflects that the benefits are interrelated and are cumulatively derived from each change made to reduce harm.

Figure A: Causal chain



Baseline and key assumptions

Baseline – existing Dual-regulated firms Remuneration Code

14. In this CBA, we assess the costs and benefits of our proposals to reflect in our rules CRD V's remuneration provisions against a baseline in which the PRA has transposed CRD V and we do not replicate the remuneration provisions, leaving the Dual-regulated firms Remuneration Code unchanged.

Affected firms and individuals

Firms

15. Our proposed amendments to the Remuneration Code will impact the firms to which the Dual-regulated firms Remuneration Code applies. SYSC 19D.1.1R sets out that these are:
- building societies
 - UK banks
 - UK designated investment firms
 - overseas firms that are not an EEA firm, with its head office outside the EEA and that would be considered as being one of the other types of firm had it been a UK domestic firm carrying on all of its business in the UK
16. Based on the figures reported for 2017 to 2019, we estimate that there are approximately 290 firms that are subject to the Dual-regulated firms Remuneration Code. This includes approximately 58 firms that fall into proportionality level one and 28 in proportionality level two. The remaining 204 firms fall into proportionality level three. The proportionality levels are explained at paragraph 4.9 in the CP.
17. We propose to change the principle of proportionality which is likely to result in more firms being brought into scope of applying certain remuneration requirements. We propose to amend the proportionality threshold to firms from total of assets of £15 billion to total assets of €15 billion. We estimate that 10 firms currently in proportionality level three, in addition to those that currently cannot disapply remuneration requirements, will fall above the threshold for application of remuneration rules to firms.
18. We propose to create a new version of the General Guidance with FAQs on remuneration that would apply to IFPRU investment firms only. This change would not require these firms to make any amendments to their policies and practices but rather ensures that the guidance applicable to them remains unchanged (see Chapter 7 of the CP). IFPRU investment firms are not affected by the changes to the Dual-regulated firms Remuneration Code. We currently prudentially regulate approximately 1,000 investment firms that apply the IFPRU Remuneration Code.

Individuals

19. We propose to change the threshold for application to individuals to reflect the threshold contained in CRD V and to align with the PRA's proposed approach. This means that individuals with annual variable remuneration exceeding €50,000 and where this amounts to more than one-third of their total remuneration will be subject to the relevant remuneration requirements.

20. This threshold differs from the current approach to determining application to individuals and will result in more individuals being brought into scope of application. We estimate that including this threshold in the Remuneration Code would bring 760 new individuals at 15 major UK banks into scope of the remuneration requirements. These 15 major UK banks are counted on a group level and are all currently level one firms.

Data

21. We have used a standardised cost modelling tool which utilises several data sources, and uses average salaries across the industry from the Willis Towers Watson UK Financial Services Report. We have relied on this model in estimating the costs, rather than carrying out an additional survey of firms specifically for the purpose of this CBA. Therefore, the final figures provided below are, in part, based on the standardised data and assumptions used in that model. It should also be noted that the individual figures provided may not add to the total due to rounding.

Costs and benefits

Summary of costs and benefits

22. Given that we are proposing an approach consistent with the PRA's proposed approach to the implementation of CRD V, the impact on firms of our changes will principally be driven by the PRA's changes. We expect that firms will incur one-off costs for implementation and governance, IT and training from the PRA's changes and these costs are accounted for in the CBA produced by the PRA.
23. As for the FCA specific costs, firms will incur only one-off familiarisation and gap analysis costs from our proposed changes, in addition to the familiarisation and gap analysis costs incurred as a result of the PRA's changes. The baseline against which we have assessed our proposed changes is based on the PRA transposing CRD V. The action we are taking against the baseline is to act consistently with the PRA and replicate the relevant remuneration provisions. Therefore, the costs incurred from our changes will be marginal and of a lesser magnitude than the ones driven by the PRA's changes.
24. As discussed above, while our proposal to create a new version of the General Guidance with FAQs on remuneration for IFPRU investment firms does not require firms to change to their existing policies and practices, these firms will incur a familiarisation cost. This cost reflects that IFPRU investment firms will need to familiarise themselves with Chapter 7 of the CP. Other costs will not be incurred by IFPRU investment firms as they are not affected by the rules contained in CRD V nor the changes to the Dual-regulated firms Remuneration Code.
25. We outline the one-off costs to the industry from our proposals on amending the Dual-regulated firms Remuneration Code in Table 1 below. We have calculated the one-off costs only, as any ongoing costs incurred by firms are considered as being part of firms' current ongoing costs to comply with the remuneration requirements. The first set of costs are incremental from our proposals. The remaining costs are derived from the PRA's changes and have been included in this CBA for completeness. Based on our summary at Table 1, we expect our total costs to the industry to be less than £2.5 million.

Table 1: Summary of total one-off costs to firms from our proposals

Cost type	Number of firms	Category of firm	One-off cost	Are these costs in addition to the PRA's costs?
Familiarisation of new requirements	290	In scope of the Dual-regulated firms Remuneration Code	£2,283,300	Yes
	1,000	IFPRU investment firms	£173,000	Yes
Implementation and governance	86	In current proportionality levels one and two	£17,065,600	No
	204	In current proportionality level three	£80,810,100	No
Training costs	58	In current proportionality level one	£2,171,350	No
	28	In current proportionality level two	£110,820	No
	204	In current proportionality level three	£4,169,350	No
IT costs	290	In scope of the Dual-regulated firms Remuneration Code	£62,025,800	No
Total costs from FCA's proposals	–	–	£2,456,300	–

26. We consider that the costs to dual-regulated Remuneration Code firms will not be significant in comparison to the benefits of enhancing market integrity and protecting consumers. The changes we propose to make to the Remuneration Code are not extensive. The majority of the Remuneration Code remains the same and the remuneration principles are largely unaffected.

Familiarisation and gap analysis costs

27. We expect firms affected by our proposals to replicate remuneration provisions will read these proposals in this CP and familiarise themselves with the details of the requirements. We have estimated the costs of this to firms using assumptions on the time taken to read the CP, including annexes and appendices. We also expect firms to carry out gap analysis.
28. There are approximately 50 pages, plus 45 pages of legal text. We assume that there are 300 words per page and reading speed is 100 words per minute. We estimate that 6 compliance staff at large firms will read this document. It is further assumed that 4 legal staff at large firms will review the legal instrument and text. The hourly staff salary is assumed to be £60 for compliance staff and £70 for legal staff at large firms. This assumption is from our standardised cost model which uses average salaries for legal and compliance costs across the industry.
29. We are assuming that these costs apply to all firms currently in scope of the Dual-regulated firms Remuneration Code. Under these assumptions, the one-off industry costs of familiarisation, including gap analysis,¹ are estimated to be approximately

¹ The cost of gap analysis has been calculated by assuming that a large firm will use a regulatory analysis team comprised of 4 members of legal staff. It is assumed that these 4 members will all review the 45 pages of legal instrument and legal text, amounting to 101 hours per firm at the hourly salary of £70. Without gap analysis, the estimated familiarisation costs is £258,700 for the industry, or £892 per firm.

£2,283,300 in total, or £7,870 per firm. These costs will be in addition to the costs firms will incur in familiarising themselves with the proposals in the PRA's papers.

30. We expect that IFPRU investment firms will also read this CP, to familiarise themselves with our proposals. As our proposals do not require IFPRU investment firms to make corresponding changes to their policies and practices, we do not expect these firms to read the legal instruments accompanying this CP nor to carry out gap analysis.
31. We assume that fewer compliance staff will need to read this CP at IFPRU investment firms. We estimate that 3 compliance staff will read Chapters 1, 2 and 7 in this CP which totals 11 pages. We estimate that 2 legal staff will review the draft General Guidance with FAQs on remuneration for IFPRU firms, which totals 11 pages. We do not expect firms to carry out gap analysis. Using the standardised cost model, we estimate that IFPRU investment firms will incur a familiarisation cost of £173,000 in total, or £173 per firm.

Implementation and governance costs

32. We expect firms will need to amend their remuneration policies, internal processes, and governance arrangements to implement the changes to the thresholds for application, to proportionality as well as the deferral and clawback periods.
33. We expect that this will be a one-off cost, in the form of a change project with the aim to amend the firm's remuneration policies and processes to reflect the proposed changes to the Remuneration Code. The scale of the change project will depend on the size and complexity of the firm. While we expect that these changes can be implemented by way of one change project, there may be need for ongoing work to keep policies and practices updated as the firm evolves.
34. It is assumed firms that currently cannot disapply remuneration requirements, i.e. those firms which fall into proportionality levels one and two, will not need to carry out a significant change project. This is on the assumption that these firms will already have in place the required processes and practices for the remuneration requirements that will be applied as mandatory, as well as those which will become applicable if the firm exceeds the threshold for application. On this basis, we expect that these 86 firms will carry out one minor change project, with Board review, amounting to an estimated total cost of £17,065,600 or £198,440 per firm.
35. Using this reasoning, we would expect that firms in scope of the Remuneration Code currently benefitting from proportionality are likely to require a moderate change project. This is because of our proposals to apply performance adjustment and bonus cap as mandatory requirements, and to change the threshold for application to firms and individuals. We estimate a total cost of £80,810,100 for the 204 firms or £396,130 per firm carrying out one moderate change project, with Board review.
36. These costs have been produced using our standardised modelling tool as explained in paragraph 21. We expect that these costs will be subsumed by the costs incurred by the PRA's proposed changes.
37. We do not expect any measurable increase in ongoing costs above the existing level needed to ensure ongoing compliance with the current version of the Remuneration Code.

Training costs

38. We expect that firms will train existing staff about any updates they make to their remuneration policies and process to reflect our proposed amendments to the Remuneration Code and general guidance on proportionality.
39. We expect that this will be a one-off cost, deliverable through in-house training. We have assumed that all large firms have in-house training capabilities. It is assumed that the training will be basic training; provided in a meeting setting and delivered by internal staff member(s) with expertise in the area of remuneration. The cost of in-house training includes the cost of time taken for staff to design and deliver the training and the cost of time spent by attendees at the training.
40. We also expect firms to incur a one-off cost in training compliance staff to enforce and monitor the changes made to the firm's remuneration policies to reflect the new threshold and the application of relevant remuneration requirements.
41. Similar to the implementation and governance costs, we expect there to be two cohorts of firms with regards to training costs.
42. We assume that staff in proportionality level one and two firms will already be aware of the remuneration principles and rules and will not require extensive training. It is assumed that training to update MRTs and senior managers in these firms would be a 1-hour session. For a 1-hour session we estimate that it would take 8 hours to design the training. Using assumptions based on data previously gathered, we estimate:
 - there will be on average 754 MRTs, including senior managers, in proportionality level one firms. This figure includes an estimated number of additional individuals who will be brought into scope due to the new threshold for application to individuals.
 - there are on average 79 MRTs, including senior managers, in proportionality level two firms.
43. Based on this, we assume that one-off basic training for 1 hour will cost approximately £2,171,350 for the 58 level one firms, or £37,440 per firm, and £110,820 for the 28 level two firms, or £3,960 per firm.
44. We would expect that staff in proportionality level three firms would require longer training which explains the remuneration requirements that these firms would have previously disappplied under the proportionality rule. Therefore, we assume that MRTs and senior managers would attend a 2-hour session to understand the final remuneration policy changes as implemented. It is estimated that it would take staff 16 hours to design this training.
45. Using assumptions based on data previously gathered, we estimate that there is on average 29 MRTs, including senior managers, in proportionality level 3 firms. The number of MRTs, including senior managers, in these firms in this data set ranges from 3 to 93. Based on this, we assume that the cost for one-off basic training for 2 hours will cost approximately £4,169,350 for this cohort, or £20,440 per firm.
46. These costs have been produced using our standardised modelling tool as explained in paragraph 21. We expect that these costs will be subsumed by the costs incurred by the PRA's proposed changes.

47. We do not expect firms to incur ongoing costs in training their staff on the changes to their remuneration policies and practices beyond that which is already needed to keep staff updated on the Remuneration Code. For new joiners to the firm, it is likely that this can be subsumed into any existing training or into any guidance or explanation which accompanies the firm's remuneration policies.

IT costs

48. We acknowledge that firms will need to make adjustments to their IT systems to account for any corresponding changes that need to be made to the firm's remuneration policies. Our changes to thresholds for application are likely to mean that more MRTs will be in scope of applying remuneration requirements. We would expect that IT systems will need to be updated to facilitate the application of remuneration requirements to individuals who exceed the threshold for application.
49. It is expected that firms may incur costs to maintain their IT systems as individuals are added to the system and to update the system to take into account changes in the firm's remuneration practices and policies. The level of costs will depend on the type of firm and to what extent the amended remuneration rules will affect them.
50. We have not been able to estimate with a high degree of confidence the IT costs firms may incur as the level of amendment required is specific to each firm and dependent on the sophistication of the IT systems in use.
51. We assume that the IT cost to each firm will constitute a minor project which includes analysis, design, programming, testing and approval. As the firms that will be affected by our proposals are large firms, we expect them to have their own in-house IT and project teams. Based on this, we broadly estimate the cost of a minor project to update and amend IT systems will cost approximately £62,025,800 in total, or £213,880 each.
52. These costs have been produced using our standardised modelling tool as explained in paragraph 21. We expect that these costs will be subsumed by the costs incurred by the PRA's proposed changes.

Costs to the FCA

53. The cost to the FCA of updating the Dual-regulated firms Remuneration Code broadly falls under the categories of policy development, training, and supervision. Policy development includes creating new rules and guidance as well as amending existing rules and guidance.
54. Given that we already have teams in Policy and Supervision with responsibility for remuneration; we do not expect any additional material costs for the FCA. We expect the on-going supervision of firms and individuals in scope of the Remuneration Code to be incorporated into our existing approach to supervision. The cost of training staff about the changes related to remuneration can be considered within the usual training provided, and therefore within our business as usual costs.
55. As the changes we propose to make are not extensive, we do not expect any significant change in the level of resources we use, relative to the costs of regulating under our current regime.

Estimating benefits

- 56.** We believe our proposals will help us achieve our aims of ensuring that remuneration policies promote sound and effective risk management and are aligned with driving healthy cultures and positive conduct within firms. This, in turn, will deliver considerable benefits to firms, consumers and the market.
- 57.** We have illustrated the benefits, derived from our proposals, to firms, consumers and the wider economy, qualitatively as we do not think quantitative benefits can be reliably estimated.

Benefits to firms

- 58.** Our proposals operate with the overall aim of supporting firms to better incentivise positive behaviours in staff and improve culture and decision-making, resulting in fewer actions and decisions being taken that could lead to misconduct and harm. This will generate cyclical benefits in that these firms will benefit from operating in a stable financial market, supported by strong risk management, appropriately aligned incentives and positive conduct.
- 59.** Our proposals to set different minimum deferral and clawback periods according to an individual's remuneration and to introduce a third category of MRTs are intended to better reflect the extent to which the decisions made by these individuals impact the firm. Introducing a range of deferral and clawback periods will provide firms with more flexibility to apply a relevant period proportionate to the level of responsibility held by the individual to whom it relates. These proposed changes should motivate individuals to carefully consider the wide-reaching impacts of their decisions and discourage excessive risk-taking and short-termism.
- 60.** Introducing a remuneration requirement on gender neutral remuneration policies and practices feeds into our wider work of supporting firms to develop an inclusive and representative workplace. We also propose to include new guidance to reaffirm that firms must ensure that their variable remuneration does not discriminate against the protected characteristics of an individual. These proposals align with our existing rules that firms must base variable remuneration on staff performance, and should use objective criteria in their consideration, such as the qualifications that individual holds, their competence or their level of training. By rewarding staff in line with their performance, firms can incentivise and reward strong performance irrespective of protected characteristics.

Benefits for consumers and the wider economy

- 61.** Our intention in proposing changes to the Remuneration Code is to positively influence the behaviour and conduct of a firm's MRTs through sound and effective risk management by appropriately aligning the long-term interests of both firms and their MRTs.
- 62.** Our updated Remuneration Code and guidance should support firms' risk management and their ongoing efforts to transform culture. This, in turn, will enhance the integrity of the UK financial system and reduce the instances of harm for consumers.
- 63.** Although our proposals do not have a direct impact on consumers, the enhancements should reduce the risk of harm caused by misaligned incentives. Our proposals will bring more individuals into scope of the remuneration requirements. This will enable

firms to link the variable remuneration awarded to a wider range of individuals to the long-term performance of themselves and the firm. Firms will also have the means to adjust variable remuneration awarded to more individuals according to their conduct and the risks taken, therefore reinforcing the standards of market conduct. Stability in the financial sector should be improved generally and there should be a reduced likelihood of major market disruption, which will have a positive impact for consumer protection and the wider economy.

Q14: Do you have any comments on our cost benefit analysis?

Annex 3

Compatibility statement

Compliance with legal requirements

1. This annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are intended to advance the FCA's operational objective of securing an appropriate degree of protection for consumers.

They are also relevant to the FCA's objective of enhancing the integrity of the UK financial system.

8. Our proposals in this CP seek to protect and enhance the integrity of the UK financial system by ensuring that firms establish and maintain remuneration policies and practices that promote effective risk management and drive healthy cultures. In doing so, there should be reduced instances of misconduct which, in turn, will support the orderly operation and resilience of financial markets.
9. While our proposals do not have direct implications for consumers, the proposed changes seek to promote sound and effective risk management of firms by increasing the alignment between the long-term interests of the firms and their MRTs. We expect this will positively influence the behaviour and conduct of firms' MRTs, reducing the likelihood of risk taking that exceeds a firm's level of tolerated risk or that results in misconduct. This will contribute to consumers being treated appropriately and to a reduction in harm.
10. We consider that our proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because the proposals aim to reduce instances of misconduct and promote effective risk management and healthy cultures in firms. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.
11. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

12. Our proposals are designed to be proportionate and predominantly build upon or amend existing rules in the Dual-regulated firms Remuneration Code. Our proposals would amend the Dual-regulated firms Remuneration Code in a way that maintains consistency with the changes the PRA is consulting on to the Remuneration Part of its Rulebook to transpose CRD V. This avoids unnecessary divergence between FCA and PRA requirements that could drive additional cost and complexity for dual-regulated firms.

The principle that a burden or restriction should be proportionate to the benefits

13. The CBA in Annex 2 sets out the costs and benefits for our proposals. We consider that the costs of our proposals are proportionate to the benefits as the changes we are making are principally to align with those already being made by the PRA to transpose CRD V. Therefore, the incremental costs of our changes are expected to be minimal.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

14. Remuneration is a key driver of behaviour for firms and individuals. Our proposals to strengthen the remuneration framework will help to support positive behaviour and culture in firms. This, in turn, will help support better functioning markets, reduced instances of misconduct and enhance the attractiveness of the UK as a place to do business.

The general principle that consumers should take responsibility for their decisions

15. Our proposals are not relevant to the principle of consumer decision-making.

The responsibilities of senior management

16. Our proposals support the aim of the Senior Managers and Certification Regime (SM&CR) to make individuals more accountable for their conduct and competence. In line with their responsibilities under SM&CR and the Remuneration Code, relevant senior managers are expected to ensure that their firms' remuneration policies and practices reflect the amended Dual-regulated firms Remuneration Code. Chairs of remuneration committees have ultimate responsibility for ensuring that their firms' remuneration policies and practices comply with the Remuneration Code.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

17. While we are proposing to amend the Dual-regulated firms Remuneration Code, the IFPRU and BIPRU Remuneration Codes will remain unchanged until a new UK prudential regime for FCA solo-regulated investment firms is introduced. This new regime for investment firms will better reflect the nature and objectives of those firms.
18. Our proposals seek to ensure that dual-regulated firms are subject to remuneration rules which are appropriate to the level of risk these firms pose to the UK financial system. The remuneration rules will continue to be applied proportionately to dual-regulated firms according to their size, internal organisation and the nature, scope and complexity of their activities.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

19. Our proposals do not require firms to publish information. We do not expect that our proposals will result in firms publishing information regarding persons subject to requirements imposed under FSMA.

The principle that we should exercise of our functions as transparently as possible

20. This CP sets out our proposed changes to rules and guidance, and seeks feedback from stakeholders. We believe this is consistent with the principle of exercising our functions transparently. We will engage with the industry and other stakeholders to obtain feedback during this consultation process.

Expected effect on mutual societies

21. The FCA expects the proposals in this paper to have an impact on certain mutual societies. We are proposing changes to the Dual-regulated firms Remuneration Code, which applies to banks, building societies and PRA-designated investment firms. Building societies are one type of mutual society.

- 22.** Firms in scope of our proposals must comply with the remuneration principles in a manner appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities. By continuing to apply remuneration requirements to firms according to their size and complexity, a firm will be impacted in a way which is proportionate having regard to all the relevant circumstances.
- 23.** Therefore, while we acknowledge that our proposals will have an impact on building societies, we are satisfied that the impact is not significantly different to that on other firms in scope of the Dual-regulated firms Remuneration Code.

Compatibility with the duty to promote effective competition in the interests of consumers

- 24.** In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. Most of our proposed changes replicate CRD V provisions that were designed to improve proportionality within the remuneration regime for dual-regulated firms. Our approach of continuing to apply proportionate rules to dual-regulated firms, including UK branches of third country firms, should continue to ensure a domestic level playing field.
- 25.** By not updating the IFPRU Remuneration Code to reflect CRD V, we are ensuring that IFPRU investment firms are not faced with the burden of having to make two sets of changes to their remuneration policies and practices to give effect to the both CRD V and a new UK prudential regime for FCA solo-regulated investment firms. The new regime is expected to be in place by the summer of 2021, and will better reflect the nature and objectives of those firms.

Equality and diversity

- 26.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.
- 27.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in Chapter 2 of this CP.

Legislative and Regulatory Reform Act 2006

- 28.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that they are consistent with the LRRRA's principles.

- 29.** We have acted transparently by publishing our proposals for consultation. We will engage with firms and other stakeholders during the consultation process and will consider all evidence received prior to finalising the rules.
- 30.** Our proposals apply the Dual-regulated firms Remuneration Code to the firms in scope in a proportionate way. We have principally only made changes where necessary to update the Dual-regulated firms Remuneration Code in light of CRD V. We are not proposing to update the IFPRU Remuneration Code. This is in line with HM Treasury's decision to not implement CRD V for IFPRU investment firms.
- 31.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that they are consistent with the principles of the Regulators' Code. We have taken a policy approach which is largely consistent with that of the PRA and are working closely with the PRA in this regard.
- 32.** We consider that this CP is clear and provides information that supports firms in meeting their responsibility to comply with the Dual-regulated firms Remuneration Code.

Annex 4

Abbreviations used in this paper

CBA	cost benefit analysis
CP	consultation paper
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
EBA	European Banking Authority
EEA	European Economic Area
EU	European Union
FAQs	Frequently Asked Questions
FSMA	Financial Services and Markets Act 2000
IFD	Investment Firms Directive
IFR	Investment Firms Regulation
LRRA	Legislative and Regulatory Reform Act 2006
MRT	material risk taker
PRA	Prudential Regulation Authority
SM&CR	Senior Managers and Certification Regime
SMF	senior management function
TPR	temporary permissions regime
TTP	temporary transitional power



We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

Draft Handbook text: Senior Management Arrangements, Systems and Controls (Remuneration Codes) (Amendments) Instrument 2020

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODES) (No 8) INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137H (General rules about remuneration);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 29 December 2020.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex B to this instrument.

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Codes) (No 8) Instrument 2020.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>control functions</i>	has the meaning in article 3 of the <i>Material Risk Takers Regulation 2020</i> .
<i>gender neutral remuneration policy</i>	means a <i>remuneration</i> policy based on equal pay for male and female workers for equal work or work of equal value. [Note: article 3(1)(65) of <i>CRD</i>]
<i>large institution</i>	has the meaning in article 4(1)(146) of the <i>EU CRR</i> .
<i>managerial responsibility</i>	has the meaning in article 2 of the <i>Material Risk Takers Regulation 2020</i> .
<i>material business unit</i>	has the meaning in article 4 of the <i>Material Risk Takers Regulation 2020</i> .
<i>Material Risk Takers Regulation 2020</i>	means the regulatory technical standard [TBC - made pursuant to the fifth subparagraph of article 94(2) of the <i>CRD</i> .]

Amend the following definition as shown.

<i>dual-regulated firms Remuneration Code staff</i>	(in relation to a <i>dual-regulated firm</i> and an <i>overseas firm</i> in SYSC 19D.1.1R(1)(d) that would have been a <i>UK bank, building society</i> or <i>UK designated investment firm</i> if it had been a <i>UK domestic firm</i>) has the meaning in SYSC 19D.3.4R which is, in summary, an <i>employee</i> whose professional activities have a material impact on the <i>firm's</i> risk profile, including any <i>employee</i> who is deemed to have a material impact on the <i>firm's</i> risk profile in accordance with Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers) <u>the <i>Material Risk Takers Regulation 2020</i></u> .
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Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

19D Dual-regulated firms Remuneration Code

...

19D.2 General requirement

...

Gender neutral policies and practices

19D.2.2 A ~~R~~ A firm must ensure that its remuneration policy is a gender neutral remuneration policy and the practices referred to in SYSC 19D.2.1R are gender neutral.

[Note: articles 74(1) and 92(2)(aa) of CRD]

19D.2.2 B ~~G~~ Firms are reminded that the Equality Act 2010 prohibits discrimination on the basis of an individual's protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable remuneration. A firm should ensure that its remuneration policy complies with the Equality Act 2010.

19D.2.2 C ~~G~~ Firms should ensure that when they assess individual performance, the assessment process and any variable remuneration awarded in accordance with SYSC 19D.3.39R does not discriminate on the basis of the protected characteristics of an individual.

...

19D.3.1 R (1) ...

~~[Note: article 92(1) of CRD]~~

...

19D.3.2 A ~~G~~ Firms should refer to SYSC 12 (Group risk systems and controls requirements), which sets out how the systems and control requirements imposed by SYSC (Senior Management Arrangements, Systems and Controls) apply where a firm is part of a group.

19D.3.2 B ~~R~~ (1) The rules in (2) do not apply to a firm if:

(a) the firm is not a large institution; and

- (b) the total value of the *firm's* assets on an individual basis calculated in accordance with the *CRD* and the *EU CRR* is equal to or less than €5 billion over the four-year period immediately preceding the current *financial year*;

(2) The *rules* referred to in (1) are:

- (a) *SYSC* 19D.3.31R(2) and (3) (pension policy);
- (b) *SYSC* 19D.3.56R (retained *shares* or other instruments); and
- (c) *SYSC* 19D.3.59R (deferral).

[Note: article 94(3)(a) of *CRD*]

19D.3.2 R The value in *SYSC* 19D.3.2BR(1)(b) is increased to €15 billion if:
C

- (a) the *firm* is not a *large institution*;
- (b) the *firm* meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the *EU CRR*; and
- (c) the increase is appropriate taking into account the *firm's* nature, scope and complexity of its activities, its internal organisation and (if applicable) the characteristics of the *group* to which it belongs.

[Note: article 94(4) of *CRD*]

Application: categories of staff and proportionality

19D.3.3 R ...

- (2) When establishing and applying the total *remuneration* policies for *dual-regulated firms Remuneration Code staff*, a *firm* must comply with this section 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 (the *dual-regulated firms remuneration principles proportionality rule*).

...

19D.3.4 R (1) *Dual-regulated firms Remuneration Code staff* comprises:

- (a) an *employee* of a *dual-regulated firm* whose professional activities have a material impact on the *firm's* risk profile, including any employee who is deemed to have a material impact on the *firm's* risk profile in accordance with ~~Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers)~~ the *Material Risk Takers Regulation 2020*; or

- (b) subject to (2) and (3), an *employee* of an *overseas firm* in SYSC 19D.1.1R(1)(d) (i.e., an *overseas firm* that would have been a *UK bank, building society* or *UK designated investment firm* if it had been a *UK domestic firm*) whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who would meet any of the criteria set out in ~~articles 3 or 4(1) of Regulation (EU) No 604/2014 of 4 March 2014~~ articles 6 or 7(1) of the *Material Risk Takers Regulation 2020* if it had applied to ~~him~~ them.

(1A) For the purposes of paragraph (1), *dual-regulated firms Remuneration Code staff* must, at least, include:

- (a) all members of the *firm's* management body and senior management;
- (b) staff members with *managerial responsibility* over the *firm's* control functions or material business units;
- (c) staff members entitled to significant *remuneration* in the preceding financial year, provided that the following conditions are met:
 - (i) the staff member's *remuneration* is equal to or higher than
 - (aa) €500,000; and
 - (bb) the average *remuneration* awarded to the members of the *firm's* management body and senior management referred to in point (a);
 - (ii) the staff member performs the professional activity within a *material business unit* and the activity is of a kind that has a significant impact on the relevant business unit's risk profile.

[Note: article 92(3) of CRD]

- (2) An *overseas firm* in SYSC 19D1.1.R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) may deem an *employee* not to be a *dual-regulated firms Remuneration Code staff* where:
 - (a) the *employee*:
 - (i) would meet the criteria in ~~article 4(1) of Regulation (EU) No 604/2014 of 4 March 2014~~ article 7(1) of the *Material Risk Takers Regulation 2020*;
 - (ii) would not meet any of the criteria in ~~article 3 of Regulation (EU) No 604/2014 of 4 March 2014~~ article 6 of the *Material Risk Takers Regulation 2020*; and
 - (iii) ...

- (b) the *overseas firm* determines that the professional activities of the *employee* do not have a material impact on its risk profile on the grounds described in ~~article 4(2) of Regulation (EU) 604/2014 of 4 March 2014~~ article 7(2) of the *Material Risk Takers Regulation 2020*; and
- (c) The *overseas firm* has obtained the prior written approval of the *PRA*, in accordance with Chapter 3 of the Remuneration Part of the *PRA Rulebook*.
- (3) ~~Where the *overseas firm* deems an employee not to be *dual regulated firms Remuneration Code staff* as set out in (2), it must notify the *FCA*, applying the approach described in article 4(4) of Regulation (EU) 604/2014 of 4 March 2014. [deleted]~~

[**Note:** article 92(2) of *CRD* and ~~articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014~~ articles 6 and 7 of the *Material Risk Takers Regulation 2020*].

...

- 19D.3.3 5 G R (1) ~~Taking account of the dual regulated firms remuneration principles proportionality rule, the *FCA* does not generally consider it necessary for a firm to apply the rules in (2) where,~~ The rules in (2) do not apply to a firm in relation to an individual (X), where both the following conditions are satisfied:
- (a) Condition 1 is that X's annual variable remuneration is no more than ~~33%~~ one third of X's total annual remuneration; and
 - (b) Condition 2 is that X's total annual variable remuneration is no more than ~~£500,000~~ £50,000.
- (2) The rules referred to in (1) are those relating to:
- (a) ~~guaranteed variable remuneration (SYSC 19D.3.44R);~~ pension policy (SYSC 19D.3.31R(2) and (3));
 - ...
 - (d) ~~performance adjustment (SYSC 19D.3.61R).~~ [deleted]

[**Note:** article 94(3)(b) of *CRD*]

...

...

Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments

- 19D.3.5 6 R (1) A firm must ensure that a substantial portion, which is at least 50%, of any variable remuneration consists of an appropriate balance of:

- (a) subject to the legal structure of the firm concerned; shares or equivalent ownership interests; or share-linked instruments or equivalent non-cash instruments subject to the legal structure of the firm concerned, or share-linked instruments or equivalent non-cash instruments in the case of a non-listed firm;

...

...

...

Remuneration Principle 12(g): Remuneration structures - deferral

- 19D.3.5 R (1) In relation to dual-regulated firms Remuneration Code staff whose total annual remuneration is greater than £500,000 a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:
- 9
- (a) for dual-regulated firms Remuneration Code staff who do not perform a PRA FCA-designated senior management function, three to five years, with no vesting taking place until one year after the award, and vesting no faster than on a pro-rata basis;
- (b) for dual-regulated firms Remuneration Code staff who perform a PRA-designated senior management function, seven years, with no vesting taking place until three years after the award, and vesting no faster than on a pro-rata basis;
- (c) for any other dual-regulated firms Remuneration Code staff who do not fall within (a) or (b) above, four to five years, and vesting no faster than on a pro-rata basis.
- (1A) In relation to dual-regulated firms Remuneration Code staff whose total annual remuneration is not greater than £500,000, a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:
- (a) for dual-regulated firms Remuneration Code staff who perform a FCA-designated senior management function, five years, and vesting no faster than on a pro-rata basis;
- (b) for dual-regulated firms Remuneration Code staff who perform a PRA-designated senior management function, five years, and vesting no faster than on a pro-rata basis;
- (c) for any other dual-regulated firms Remuneration Code staff who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.

- (2) In the case of a variable *remuneration* component:
- (a) of £500,000 or more, or
 - (b) payable to a *director* of a *firm* that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities;

at least 60% of the amount must be deferred on the basis set out in SYSC 19D.3.59R(1) and vesting no faster than on a pro-rata basis.

...

...

Remuneration Principle 12(h): Remuneration structures – performance adjustment (affordability, malus, clawback)

19D.3.6 R A *firm* must ensure that:
1

...

- (3) ~~any variable remuneration is subject to clawback for a period of at least seven years from the date on which the variable remuneration is awarded; and in relation to dual-regulated firms Remuneration Code staff whose total annual remuneration is greater than £500,000 variable remuneration is subject to clawback from the date on which the variable remuneration is awarded for the greater of:~~
- ~~(a) a period of at least seven years; and~~
 - ~~(b) the sum of the deferral and retention period applied by the firm;~~
- (3A) in relation to dual-regulated firms Remuneration Code staff whose total annual remuneration is not greater than £500,000:
- (a) in relation to PRA-designated senior management function holders and FCA-designated senior management function holders the deferred component of variable remuneration is subject to clawback from the date on which the variable remuneration is awarded for the greater of:
 - (i) a period of at least six years; and
 - (ii) the sum of the deferral and retention period applied by the firm;
 - (b) in relation to dual-regulated firms Remuneration Code staff not falling within (a) above, the deferred component of variable remuneration is subject to clawback, from the date on which the variable remuneration is awarded, for the greater of:

- (i) a period of at least five years; and
 - (ii) the sum of the deferral and retention period applied by the *firm*;
- (c) the undeferred component of variable *remuneration* is subject to clawback, from the date on which the variable *remuneration* is awarded, for the greater of:
 - (i) one year; and
 - (ii) the sum of the deferral and retention period applied by the *firm*.
- (4) for *dual-regulated firms Remuneration Code staff* whose total annual remuneration is greater than £500,000 and who perform either a *PRA-designated senior management function* or *FCA-designated senior management function*, it can, by notice to the ~~employee~~ *employee* to be given no later than seven years after the variable *remuneration* was awarded, extend the period during which variable *remuneration* is subject to clawback to at least ten years from the date on which the variable *remuneration* is awarded, where:
 - ...
 - ...
 - ...
- 19D.3.6 R (1) Subject to (2) to (7), the *rules* in SYSC 19D Annex 1.1R to 1.6R apply in relation to the prohibitions on *dual-regulated firms Remuneration Code staff* being remunerated in the ways specified in:
 - ...
 - (7) ~~This rule does not apply in relation to *dual-regulated firms Remuneration Code staff* (X) in respect of whom both the following conditions are satisfied:~~ This rule does not apply to a *firm* in relation to an individual (X), where both the following conditions are satisfied:
 - (a) Condition 1 is that X's annual variable *remuneration* is no more than 33% one third of X's total annual *remuneration*; and
 - (b) Condition 2 is that X's ~~total~~ annual variable *remuneration* is no more than ~~£500,000~~ €50,000.
 - ...
 - ...

Insert the following new transitional provision, TP 9, after SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies). The text is not underlined.

TP 9 Updates to reflect CRD V					
	Material to which the transitional provision applies	R/G	Transitional Provision	Transitional Provision: dates in force	Handbook Provision: coming into force
1	SYSC 19D.3		<p>A <i>firm</i> subject to SYSC 19D.1.3 on 28 Dec 2020, must apply the rules and guidance in SYSC 19D.3 as it stood on the 28 Dec 2020 in relation to:</p> <p>(a) <i>remuneration</i> awarded, whether pursuant to a contract or otherwise, in relation to the performance year active on the 28 Dec 2020;</p> <p>(b) <i>remuneration</i> due on the basis of contracts concluded before 29 December 2020 which is awarded or paid in relation to the performance year active on the 28 December 2020; and</p> <p>(c) <i>remuneration</i> awarded, but not yet paid, before 29 December 2020, for services provided in the performance year active on the 28 December 2020.</p>	From 29 December 2020 until [TBC].	29 December 2020

Amend the following as shown.

Sch 2	Notification requirements		
Sch 2.1	G		
		...	

		(3)	Table			
			Handbook reference	Matter to be notified	Content of the notification	Trigger event
			...			
			<i>SYSC 19D.3.4R(3)</i>	<i>Where an overseas firm deems an employee not to be dual-regulated firms Remuneration Code staff</i>	<i>Matter described in SYSC 19D.3.4R(3)</i>	<i>Matter described in SYSC 19D.3.4R(3)</i>
			...			
...						

Appendix 2

Draft Handbook text: Exiting the European Union: Senior Management Arrangements, Systems and Controls (Remuneration Codes) (Amendments) Instrument 2020

**EXITING THE EUROPEAN UNION: SENIOR MANAGEMENT ARRANGEMENTS,
SYSTEMS AND CONTROLS (REMUNERATION CODES) (AMENDMENTS)
INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers: regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
 - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. Annex A to this instrument comes into force on the day after the day on which this instrument is made. The rest of this instrument comes into force on IP completion day within the meaning of section 39 of the European Union (Withdrawal Agreement) Act 2020.

Revocation of earlier instruments

- C. Annex A to this instrument revokes in part certain instruments made previously by the FCA.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex B to this instrument.
- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex C to this instrument.

Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Exiting the European Union: Senior Management Arrangements, Systems and Controls (Remuneration Codes) (Amendments) Instrument 2020.

By order of the Board
[date]

Annex A

Revocation in part of earlier FCA instruments

The Exiting the European Union: High Level Standards (Amendments) Instrument 2019 (FCA 2019/20) is revoked insofar as it amends section 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (see Annex B of that instrument).

The Exiting the European Union: Miscellaneous (Amendments) Instrument 2019 (FCA 2019/29) is revoked insofar as it amends section 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (see Part 1 of Annex A of that instrument).

Annex B**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amend the following definitions as shown.

<i>large institution</i>	has the meaning in article 4(1)(146) of the EU CRR <u>UK CRR</u> .
<i>Material Risk Takers Regulation 2020</i>	means the regulatory technical standard [TBC - made pursuant to the fifth sub-paragraph of article 94(2) of the <i>CRD</i> .]

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

19D Dual-regulated firms Remuneration Code

19D.1 Application and purpose

19D.1.1 R (1) ...

(d) an *overseas firm* that;

(i) ~~is not an EEA firm;~~

(ii) ~~has its head office outside the EEA; and~~

(iii) would be a *firm* in (a), (b) or (c) if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.

(2) ...

(a) its *UK activities*; and

(b) ~~its passported activities carried on from a branch in another EEA State; and [deleted]~~

...

...

...

19D.1.6 G (1) ...

(2) The *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *rules* in the *dual-regulated firms Remuneration Code*, *firms* should comply with the EBA “Guidelines on sound remuneration policies under articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under article 450 of Regulation (EU) No 575/2013”, 21 December 2015 (EBA/GL/2015/22). Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at: <http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015->

22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b

...

- 19D.1.9 G Except as provided in the *Glossary*, any expression used in, or for the purpose of, this chapter which is defined or used in ~~EU-CRR~~ UK CRR has the meaning given by, or used in, those Regulations.

...

19D.3 Remuneration principles

Application: groups

- 19D.3.1 R (1) A *firm* must apply the requirements of this section at *group, parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is ~~not an EEA State~~ outside the United Kingdom.
- (2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the *dual-regulated firms Remuneration Code* within *UK consolidation groups* and ~~non-EEA sub-groups~~ non-UK sub-groups).

...

- 19D.3.2 G SYSC 12.1.13R(2)(dA) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or ~~non-EEA sub-group~~ non-UK sub-group of which a *firm* is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the *FCA's* view, the application of this section at *group, parent undertaking* and *subsidiary undertaking* levels in SYSC 19D.3.1R(1) is in line with ~~article 109(2) of the CRD on~~ the application of systems and controls requirements to *groups* (as in SYSC 12.1.13R).

...

...

- 19D.3.2 R (1) ...
- B
- (a) ...
- (b) the total value of the *firm's* assets on an individual basis calculated in accordance with the UK legislation that implemented the CRD and the EU-CRR UK CRR is equal to or less than €5 ~~£~~4 billion over the four-year period immediately preceding the current *financial year*;

...

19D.3.2 R The value in SYSC 19D.3.2BR(1)(b) is increased to ~~€45~~ £13 billion if:
C

- (a) ...
- (b) the *firm* meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the ~~EU CRR~~ UK CRR; and
- (c) ...
- ...

...

19D.3.4 R ...

(1A) ...

(a) ...

...

(c) ...

(i) ...

(aa) ~~€500,000~~ £440,000; and

...

...

(2) ...

(a) ...

(i) ...

...

(iii) was awarded total *remuneration* of less than ~~€750,000~~ £658,000 in the previous year;

...

...

19D.3.5 G Where an *overseas firm* in SYSC 19D1.1.R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) wishes to deem an *employee* who earns more than ~~€750,000~~ £658,000 not to be *dual-regulated firms Remuneration Code staff*, the *overseas firm* may apply for a *waiver* of the requirement in SYSC 19D.3.4R in respect of that *employee*.

...

19D.3.3 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or
4 methods that facilitate non-compliance with obligations arising from the *Remuneration Code*, the ~~EU CRR~~ UK CRR or the UK legislation that implemented the CRD.

[**Note:** article 94(1)(q) of the *CRD*]

19D.3.3 R (1) ...
5

(a) ...

(b) Condition 2 is that X's total annual variable *remuneration* is no more than ~~€50,000~~ £44,000.

...

...

19.3.50 R ...

(1) ...

...

(3) the *firm* must:

...

(b) demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the UK legislation that implemented the CRD and the ~~EU CRR~~ UK CRR, having particular regard to the *firm's own funds* obligations;

...

...

19D.3.5 R A *firm* may apply a discount rate to a maximum of 25% of an *employee's* total
2 variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

[**Note:** article 94(1)(g)(iii) of the *CRD*]

[**Note:** on 27 March 2014, the *EBA* published “Guidelines on the applicable notional discount rate for variable remuneration”, 27 March 2014 (EBA/GL/2014/01).]

19D.3.5 R In applying the discount rate in SYSC 19D.3.52R, a *firm* must apply the *EBA*
3 ~~Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014. [deleted]~~

~~**Note:** the *EBA* Guidelines on the applicable notional discount rate for variable remuneration can be found at:
http://www.eba.europa.eu/documents/10180/643987/EBA_GL_2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9~~

19D.3.6 R (1) ...
7

...

(7) ...

(a) ...

(b) Condition 2 is that X's annual variable *remuneration* is no more than ~~€50,000~~ £44,000.

...

Appendix 3

General Guidance on Proportionality – the Dual-regulated firms Remuneration Code

FG17/820/[XX] GENERAL GUIDANCE ON PROPORTIONALITY

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

[May 2017/month 2020]

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 2000 (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 was initially issued on 23 June 2015 as final guidance. On 3 May 2017 the guidance was revised as FG 17/8 and had effect from 3 May 2017. On [date] [month] 2020 the guidance was further revised as FG 20/[XX] and has effect from 29 December 2020. However, firms subject to SYSC TP 9 should apply the version of this guidance in effect on 28 December 2020.

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 given in relation to specific aspects of the **Dual-regulated firms remuneration principles proportionality rule** in **SYSC 19D.3.3R** itself.[†]
- 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 **firms**.
- 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 ~~[deleted] 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 ~~[deleted] We may give individual **guidance** to a **firm**, either on our 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:
- This Part, Part A: Introduction and interpretation;
 - Part B: Proportionality levels;
 - Part C: Division of firms into proportionality levels;
 - Part D: Guidance to firms in particular proportionality level; and
 - Part E: Guidance about part-year **Dual-regulated firms Remuneration Code staff**.
- 1.12 ~~[deleted] It is supplemented by Annex 1 — Supplemental guidance on dividing firms into proportionality levels.~~

[†]~~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:

Defined expression	Definition
<i>group</i>	has the meaning given in the Glossary in paragraph (3B)
<i>overseas Dual-regulated Remuneration Code firm</i>	an overseas firm that: (i) is not an EEA firm ; (ii) has its head office outside the EEA ; and (iii) would be a building society, a bank or a UK designated investment firm if it had been a UK domestic firm , had carried on all its business in the United Kingdom and had obtained whatever authorisation for doing so as required under the Act .
<i>proportionality level</i>	has the meaning given in paragraph 2.2, and references to proportionality level one , etc. are to be construed accordingly.
<i>Dual-regulated Remuneration Code firm</i>	a firm specified in SYSC 19D.1.1 R(1)(a)-(d).
relevant <i>average 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 Dual-regulated Remuneration Code firm which is not part of a group containing one or more further Dual-regulated Remuneration Code firms .

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:
- ***proportionality level*** one;
 - ***proportionality level*** two; and
 - ***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**:
 - 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).
 - 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 ~~[deleted] 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:
 - A **firm** of the description given in the second column falls into the **proportionality level** listed in the first column should calculate its average total assets on the relevant date and then identify the relevant row it falls into in the second column of the table below. Reading back across to the first column will indicate the firm's proportionality level;

- 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);
- In (2) Table 2, 'relevant average total assets' means:
 - for a **Dual-regulated Remuneration Code firm**, the average of the firm's total assets on the firm's last ~~three~~ four **relevant dates**; and
 - 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~~ four **relevant dates**.
- Relevant date means:
 - for **Dual-regulated Remuneration Code firm**, an accounting reference date; and
 - for overseas **Dual-regulated Remuneration Code firm** 'relevant date-' means 31 December.
- The limit confining relevant average 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-UK EEA banks** (among others). We consider that a **firm** which needs to ascertain its relevant average total assets should apply the valuation requirements set out in the EU **UK CRR**.

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

Proportionality level	Type of firm	<u>Relevant Average total assets on relevant date of firm</u>
Proportionality level one	UK Bank	Exceeding £50bn
	Building society	Exceeding £50bn
	UK designated investment firm that is a CRD full-scope firm	Exceeding £50bn
Proportionality level two	UK Bank	(i) Exceeding £135bn but not exceeding £50bn; and
	Building society	(ii) <u>does not satisfy the two conditions 1 and 2 in SYSC 19D.3.2BR(1)</u>
	UK designated investment firm that is a CRD full-scope firm	Exceeding £15bn, but not exceeding £50bn Exceeding £15bn, but not exceeding £50bn
Proportionality level three	UK Bank	(i) Not exceeding £135bn and
	Building society	<u>satisfies the two conditions 1 and 2 in SYSC 19D.3.2BR(1); or</u>
	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).	(ii) <u>not exceeding £4bn</u> Not exceeding £15bn Not applicable
--	---	---

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 ~~[deleted]~~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 a framework for our supervisory approach, and a broad indication of our expectations. ~~the following:~~
- ~~A framework for our supervisory approach, and a broad indication of our expectations; and~~
 - ~~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 ~~[deleted]~~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. This means that, although this ***guidance*** gives the ***FCA's*** view of how certain provisions in the ***Dual-regulated firms Remuneration Code*** could be applied in light of the ***Dual-regulated firms remuneration principles proportionality rule***, it is the responsibility of the ***Dual-regulated Remuneration Code firm*** to assess its own characteristics and to develop and implement remuneration policies and practices that appropriately align the risks faced and provide adequate and effective incentives to its ***Dual-regulated Remuneration Code staff***. If requested, ***Dual-regulated Remuneration Code firms*** should be able to explain to the ***FCA*** the rationale for how they apply the ***Dual-regulated firms remuneration principles proportionality rule***, particularly where they have concluded that it is appropriate for certain ***rules*** to be disapplied.
- 4.3 Once a ***firm*** has determined into which ***proportionality level*** it would fall, the ***firm*** will still need to consider the application of the ***Dual-regulated firms remuneration principles proportionality rule*** to its individual circumstances. 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~~ **average 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~~ **average 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~~ **average total assets** of £25bn and a comparatively simple, conservative business model. It does not satisfy the two conditions in SYSC 19D.3.2BR(1). 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 ~~[deleted]~~ 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 ~~[deleted]~~ In our view, it may 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. ~~the specific ratio between fixed and variable components of total remuneration~~ (~~SYSC 19D.3.48R (3)~~)
- 4.6 ~~[deleted]~~ It may also be appropriate for a UK designated investment firm that is a ~~limited licence firm~~ or a ~~limited activity firm~~ to disapply, under the ~~Dual-regulated~~

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’.

~~**firms remuneration principles proportionality rule**~~, the ratios between fixed and variable components of total remuneration (SYSC 19D.3.489R);

4.7 ~~[deleted]~~ In all cases,:

1. the disapplication of the relevant requirement is not automatic. The ~~**firm**~~ should assess whether each requirements may be disappplied under the ~~**remuneration principle proportionality rule**~~;

2. if requested by the ~~**FCA**~~, the ~~**FCA**~~ expects the ~~**firm**~~'s senior management to be able to demonstrate why the ~~**firm**~~ believes it is reasonable to disapply the relevant ~~**rule**~~ in light of the ~~**Dual-regulated firms remuneration principle proportionality rule**~~;

4.8 ~~[deleted]~~ If a ~~**Dual-regulated Remuneration Code firm**~~ is able to completely disapply the rules identified in 4.5, that ~~**Dual-regulated Remuneration Code firm**~~ may, in its discretion, nevertheless apply all of part of those rules to the remuneration of its ~~**Dual-regulated Remuneration Code staff**~~. Where a ~~**Dual-regulated Remuneration Code firm**~~ is not able to disapply any of such rules in their entirety, the specific numerical criteria in the relevant rule should be adhered to.

5 Part E: Guidance about part–year Dual-regulated Remuneration Code staff

Dual- regulated firms Remuneration Code staff introduction

- 5.1 ~~SYSC 19D.3.35RG sets out when a **firm** is not required~~ 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 ~~of more than three months, but~~ less than 12 months.
1. Sub-paragraphs (3) and (4) explain how ~~the guidance in SYSC 19D.3.35RG (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 ~~£44~~£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) to the qualifying variable remuneration where, in relation to A, the following conditions are satisfied:
- (a) Condition 1 is that A’s qualifying variable remuneration is no more than one third~~33%~~ of total qualifying remuneration, and
 - (b) Condition 2 is that A’s ~~total~~-qualifying variable 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)~~pension policy (SYSC 19D.3.31R(2) and (3));
 - (b) retained **shares** or other instruments (**SYSC 19D.3.56R**),
 - (c) deferral (**SYSC 19D.3.59R**)~~;~~ and
 - (d) ~~[deleted]performance adjustment (SYSC 19D.3.61R)~~.
5. ~~[deleted]Sub-paragraph (6) applies where the conditions in (3) are not satisfied and the firm should apply the rules referred to in (6).~~
6. ~~[deleted]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 £25180,000. For the performance year, A-1 is awarded variable remuneration of £13055,000.
- (b) The relevant fraction is 122/365. A1's qualifying fixed remuneration is ~~£60,164~~ ~~83,560~~ (£25180,000 multiplied by 122/365). A1's qualifying variable remuneration is ~~£18,384~~ ~~43,452~~ (£13055,000 multiplied by 122/365). A1's total qualifying remuneration is ~~£78,548~~ ~~127,012~~. The threshold amount is ~~£14,707~~ ~~167,120~~ (£500 £44,000 multiplied by 122/365).
- (c) A1's ~~total~~ qualifying variable remuneration is less than one third of A1's total qualifying remuneration, so condition 1 of (3) is satisfied. ~~below the threshold amount, so condition 2 of (3) is satisfied. But A1's qualifying variable remuneration is above the threshold amount, more than 33% of A1's total qualifying remuneration, so and condition 2 of (3) is not satisfied.~~
- (d) ~~The rule on guaranteed variable remuneration applies to A1. In addition, the rules in (4) on retained shares and other instruments, deferral and performance adjustment must be applied to A1's qualifying variable remuneration of £18,384~~ ~~£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 ~~£458~~ ~~120,000~~. For the period of 1 June to 31 December, A2 is awarded variable remuneration of ~~£50~~ ~~22,000~~.
- (b) The relevant fraction is 184/365. A2's qualifying fixed remuneration is ~~£60,493~~ ~~40,329~~ ~~£226,850~~ (~~£450~~ ~~80~~ ~~£120,000~~ multiplied by 184/365). A2's qualifying variable remuneration is ~~£50~~ ~~£22,000~~ (the actual amount). A2's total qualifying remuneration is ~~£276,850~~ ~~£82,493~~ ~~62,329~~. The threshold amount is ~~£252,050~~ ~~£22,181~~ (£500 ~~£44,000~~ multiplied by 184/365).
- (c) A2's qualifying variable remuneration is not more than the threshold amount ~~33% of A2's total qualifying remuneration~~, and so condition 2 of (3) is satisfied. ~~But A2's total qualifying variable remuneration is not more than one third of A2's total qualifying remuneration the threshold amount, so condition 2 of (3) is also not satisfied.~~
- (d) ~~The rule on guaranteed variable remuneration applies to A2. In addition, the rules in (4) on retained shares and other instruments, deferral and performance adjustment do not generally need to must be applied to A2's qualifying variable remuneration of £50~~ ~~£22,000.~~

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

- 5.4 ~~[deleted]~~ 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 ~~[deleted]~~ 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:
1. ~~retained shares or other instruments (SYSC 19D.3.56R)~~
 2. ~~deferral (SYSC 19D.3.59R)~~
 3. ~~performance adjustment (SYSC 19D.3.61R)~~
- 5.6 ~~[deleted]~~ 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 ~~[deleted]~~ 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 ~~[deleted]~~ 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 ~~[deleted]~~Annex 1: Supplemental guidance on dividing firms into proportionality levels

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

- 6.1 ~~[deleted]~~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 ~~[deleted]~~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 ~~[deleted]~~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 ~~[deleted]~~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**,~~
 - (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 ~~[deleted] 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 ~~[deleted] 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 **sole Dual-regulated Remuneration Code firm**, depending on the particular circumstances of the case:~~

Appendix 4

General Guidance: Remuneration Code (SYSC 19D) – Frequently Asked Questions on Remuneration

FG 17/5-20/[XX]

Dual-regulated firms Remuneration Codes (SYSC 19A and 19D) -

Frequently asked questions on remuneration

May 2017 [month] 2020

1 Introduction

Overview

- 1.1 This statement is general **guidance** given under section 139A(1) of the Financial Services and Markets Act 2000 (FSMA).
- 1.2 An expression in *italics* that is defined in the Handbook **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 (including the plural) given in the following table:

Defined expression	Definition
<i>EBA Guidelines</i>	<u>The European Banking Authority's published Guidelines on sound remuneration policies</u> under Articles 74(3) and 75(2) of the CRD Directive 2013/36/EU and disclosures under Article 450 of the EU CRR on Regulation (EU) No 575/2013 , 21 December 2015
<i>FCA's dual-regulated firms Remuneration Code</i>	The Financial Conduct Authority <u>dual-regulated firms Remuneration Code</u> under SYSC 19A or SYSC 19D
<i>Group</i>	Has the meaning given in the <i>Glossary</i> in paragraph (3A) (3B)
<i>Material risk takers</i>	Has the meaning of staff identified in the Glossary as Remuneration Code staff and dual-regulated firms Remuneration Code Staff in SYSC 19D.3.4R
<i>Proportionality Guidance</i>	Has the meaning given in <u>Means the guidance referred to in paragraph 1.4, bullet points 2, 3 and 4</u>
<i>Proportionality level</i>	Has the meaning given in paragraph 2.2 of the General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D) and paragraph 2.2 of the General Guidance on Proportionality: The IFPRU Remuneration

	Code (SYSC 19A)
Relevant proportionality rule	Refers to the rules identified in the Glossary as the remuneration principles proportionality rule (SYSC 19A.3.3R); the dual-regulated firms remuneration principles proportionality rule (SYSC 19D.3.3R) and the BIPRU remuneration principles proportionality rule (SYSC 19C.3.3R)
Regulatory Technical Standard or RTS	Regulation (EU) 604/2014 of 4 March 2014

- 1.3 This guidance applies to all firms that fall within the scope of the Directive 2013/36/EU (Capital Requirements Directive or CRD IV), **FCA's dual-regulated firms Remuneration Code** in **SYSC 19D**, namely **banks, building societies, UK designated investment firms** and **certain overseas firms, who are required to comply with the FCA's Remuneration Code**, as defined in **SYSC 19D.1.1R(1)(d)**. Questions 6 and 7 are relevant for **BIPRU firms**, and other firms may also find this document useful to understand our expectations about firms' remuneration policies and practices.
- 1.4 In addition to our ***Handbook***, you should read this FCA guidance on remuneration in conjunction with our other general guidance documents:
- [General guidance on the application of ex-post risk adjustment¹ to variable remuneration](#)
 - ~~General Guidance on Proportionality: the IFPRU Remuneration Code (**SYSC 19A**)~~ [General Guidance on Proportionality: the IFPRU Remuneration Code \(**SYSC 19A**\)](#)
 - ~~General Guidance on Proportionality: the BIPRU Remuneration Code (**SYSC 19C**) and Pillar 3 disclosure on remuneration (BIPRU 11)~~ [General Guidance on Proportionality: the BIPRU Remuneration Code \(**SYSC 19C**\) and Pillar 3 disclosure on remuneration \(**BIPRU 11**\)](#)
 - ~~General Guidance on Proportionality: the Dual-regulated firms Remuneration Code (**SYSC 19D**)~~ [General Guidance on Proportionality: the Dual-regulated firms Remuneration Code \(**SYSC 19D**\)](#)
- 1.5 This guidance supersedes any previous frequently asked questions (FAQs) we – or our predecessor the Financial Services Authority – have issued in relation to the **dual-regulated firms Remuneration Code** in **SYSC 19A**~~19D~~.
- 1.6 ~~This guidance statement has effect from 3 May 2017.~~

¹ Ex-post risk adjustment refers to the adjustment of variable remuneration to take account of a specific crystallised risk or adverse performance outcome including those relating to misconduct. Ex-post risk adjustments include reducing current year awards, the application of malus (reducing or cancelling deferred incentive awards that have not yet vested), and clawback (recouping already vested awards).

- 1.7 This guidance statement was initially issued on 3 May 2017 as final guidance. On [day] [month] 2020, the guidance was revised as FG20/[XX] and has effect from 29 December 2020. However, firms subject to **SYSC** TP 9 should apply the version of this guidance in effect on 28 December 2020.

Background

- 1.8 The **EBA Guidelines** set out requirements regarding remuneration policies that apply to ~~CRD~~ firms in scope of the UK legislation that implemented the **CRD**. **Competent authorities** and firms must apply the **EBA Guidelines** from 1 January 2017. Firms should review the **EBA Guidelines** to understand the requirements that apply to them and make every effort to comply with them. After the end of the implementation period, firms should continue to comply with these Guidelines to the extent and in the manner set out in our guidance 'Brexit: our approach to EU non-legislative materials'.
- 1.9 This guidance gives firms some practical guidance to understanding how the **EBA Guidelines** apply to them, and gives additional clarification on the **FCA's dual-regulated firms Remuneration Code**.
- 1.10 While these frequently asked questions may refer to our existing remuneration **rules** and **guidance** or to the **EBA Guidelines**, they do not provide a complete summary of them. Firms should use this guidance as a supplement to the **FCA's dual-regulated firms Remuneration Code**, **Proportionality Guidance** and the **EBA Guidelines** to help understand how the requirements apply to them.

2 FAQs: Material risk takers

Q1 Who needs to be identified as material risk takers?

- 2.1 Under ~~SYSC 19A.3.4R~~ and **SYSC 19D.3.4R**, firms must identify employees 'whose professional activities have a material impact on the firm's risk profile'. This includes – but is not limited to – employees identified under **SYSC 19D.3.4R(1A)** and the qualitative and quantitative criteria set out in articles 36 and 47(1) of the RTS **Material Risk Takers Regulation 2020**.
- 2.2 The types of professional activity and the risks inherent in these are not limited under ~~CRD~~ the UK legislation that implemented the **CRD**. All types of risk are therefore relevant to this assessment, including those of a prudential, operational, conduct and reputational nature.
- 2.3 Under paragraph 79 of the **EBA Guidelines**, all firms should first identify their **material risk takers**, before the **FCA's dual-regulated firms Remuneration Code** requirements are applied in a proportionate way. Once **material risk takers** have been identified, the relevant application thresholds for individuals and the dual-regulated firms remuneration principles proportionality rule can then be applied to determine the extent to which certain **FCA dual-regulated firms Remuneration Code** requirements apply on an individual or firm-wide basis (see 2.4(4) below).

Q2 What is the process for identifying (and excluding) material risk takers?

- 2.4 Firms should follow the steps below (in the order presented) when identifying their **material risk takers**. These steps reflect the requirements under the RTS **Material Risk Takers Regulation 2020** for firms to identify their **material risk takers** using both qualitative and quantitative criteria, and. They also explain how the identification interacts with the application thresholds for individuals in SYSC 19D.3.35R and the Proportionality Guidance:
1. **Identify material risk takers using qualitative criteria.** Firms must identify all staff who meet the qualitative criteria under Article 36 of the RTS **Material Risk Takers Regulation 2020** and any other additional criteria set by the firm to identify all **material risk takers**. The RTS **Material Risk Takers Regulation 2020** covers a common set of the most relevant risks across the EU; however, the UK legislation that implemented the CRD does not provide an exhaustive categorisation of

risks and so firms must consider all types of risk when performing their internal analysis. This includes, but is not limited to, prudential, operational, market, credit, conduct and reputational risks. When identifying **material risk takers**, firms will need to be able to demonstrate to us how they have conducted this analysis and considered the relevant categories of risk.

2. **Identify material risk takers using quantitative criteria.** Firms need to identify any individuals who have not been captured as **material risk takers** under the qualitative criteria above (including any additional criteria set by the firms), but who meet the quantitative criteria under Article 47(1) of the RTS **Material Risk Takers Regulation 2020**. Firms must be able to show us how they have conducted this analysis.
3. **Consider whether any exclusions are appropriate.** After steps 1 and 2 have been undertaken, firms may consider excluding an individual from being identified as a **material risk taker** ~~takers~~ if they have only been captured based on step 2 above, subject to prior FCA notification or our **PRA** approval under Article 4(4)–7(3) of the RTS **Material Risk Takers Regulation 2020** (see Question 3 below).
4. **Apply the proportionality framework.** After steps 1, 2 and 3 above have been undertaken, firms may then consider whether/how to apply the proportionality framework to their **material risk takers** in line with the application thresholds for individuals in SYSC 19D.3.35R and in accordance with the FCA's Proportionality Guidance.

Q3 Who can be excluded as a material risk taker?

- 2.5 Where an individual is caught only by the quantitative criteria, they may be eligible for exclusion from identification as a **material risk taker**, with the prior approval of the PRA. Firms may apply for approval using the **PRA material risk taker** exclusions template on the PRA's website. ~~They can apply via the application and notification template on our website.~~ Applications can only be approved by the FCA where sufficient evidence is provided ~~on the responsibilities of the individual role, supported by clear justification for why these do not amount to material risk. This evidence should include details of the qualitative analysis risk outlined in 2.4(1) above.~~
- 2.6 ~~[deleted]~~ While a firm can request to exclude an individual because they undertake professional activities only in relation to a non-material business unit², we would still require an individual assessment of each role to be carried out in the context of the firm. This is so the firm can demonstrate it has given sufficient consideration to why the individual does not meet any of the qualitative criteria under 2.4(1) above.

² A material business unit is defined in Article 3 (5) of the RTS.

- 2.7 For those earning more than €1 million, Article ~~7(4)~~~~(4(5))~~ of the RTS-**Material Risk Takers Regulation 2020** provides that ~~an individual can only be excluded from identification~~ **the competent authority** must only give approval in 'exceptional circumstances'. Article 7(5) of the **Material Risk Takers Regulation 2020** clarifies that to be deemed 'exceptional circumstances', a situation must be 'unusual and very infrequent or far beyond what is usual'. The exceptional circumstances must also relate to the staff member concerned. ~~It is for the firm~~ To meet this test, we expect firms to be able to justify why the roles and responsibilities support this level of remuneration do not correspond to a material impact on the firm's risk profile. The firm also needs to demonstrate the existence of exceptional circumstances how and why the exceptional circumstances on which the exclusion is based are 'exceptional'.
- 2.8 ~~[deleted]~~ No distinction is drawn between staff in deposit takers and investment banks relative to those in asset management firms. All **CRD** firms are equally required to consider the risks relevant to their firm.

3 FAQs: Governance

Q4 Does a firm that is part of a group that has a Remuneration Committee at the UK consolidation group level also need to establish a local Remuneration Committee?

- 3.1 Under ~~SYSC 19A.3.1R~~ and **SYSC 19D.3.1R** and **SYSC 19D.3.12R**, any firm (whether at the **individual, parent undertaking** or **group** level) that is 'significant' in terms of its size, internal organisation, and the nature, scope and complexity of its activities, must establish a Remuneration Committee.
- 3.2 'Significant' for these purposes means:
- ~~○ In **SYSC 19A**:~~
 - ~~● institutions referred to in article 131 of the CRD (globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs))~~
 - ~~● **significant IFPRU firms** as defined in IFPRU 1.2 (the condition of significance for this requirement can be waived, as explained in IFPRU 1.2.9G)~~
 - ~~● In **SYSC 19D**:~~
 - institutions referred to in the UK legislation that implemented article 131 of the **CRD** (globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs))
 - any other institutions determined to be significant by the FCA based on their size, internal organisation, and the nature, scope and complexity of its activities
- 3.3 The **EBA Guidelines** clarify that the test of 'significant' must be assessed on a standalone entity basis (paragraph 46). This means that if a subsidiary meets one of the tests of 'significant' set out above, it should itself establish a Remuneration Committee. It is not enough to rely on the Remuneration Committee at the **UK consolidation group** level.
- 3.4 If a subsidiary does not meet the 'significant' test, the firm can rely on the Remuneration Committee at the **UK consolidation group** level.

4 FAQs: Groups

Q5 ~~Do the pay-out process rules and the bonus cap apply to non-CRD entities that are not in scope of SYSC 19D but within the same UK consolidation group as a firm which is in scope of SYSC 19D have to apply the rules on pay-out in retained shares or other instruments, deferral, and holding/retention periods for discretionary pension benefits?~~

- 4.1 Firms that are in the same **UK consolidation group** as a ~~CRD IV~~ firm in scope of the **dual-regulated firms Remuneration Code**, but are not themselves in scope of that Code, will, subject to ~~CRD~~, ~~will limited exceptions~~, need to apply the **FCA's dual-regulated firms Remuneration Code** to which the consolidating entity is subject to those staff ~~who whose~~ professional activities:
- have a material impact on the risk profile of the **UK consolidation group**; or
 - have a material impact on the risk profile of a ~~CRD~~ firm within the **UK consolidation group** which is a firm in scope of the **dual-regulated firms Remuneration Code**
- 4.2 Where an individual is employed by a firm that is subject to different sectoral rules (for example, an **AIFMD** firm subject to **SYSC 19B**) but their role has a material impact on the group's risk profile, then the consolidating institution will need to ensure that the **FCA's dual-regulated firms Remuneration Code** is complied with for that individual.
- 4.3 Where there is a conflict between the **FCA's dual-regulated firms Remuneration Code** and the sectoral requirements, then the sectoral requirements apply. Using the example of an **AIFMD** firm, this would mean that variable remuneration is paid in the form of instruments in the **alternative investment fund** concerned.
- 4.4 However, even where the specific sectoral rules are applied, the **EBA Guidelines** mean firms must still apply the specific ratio between fixed and variable components of total remuneration (bonus cap) in the **dual-regulated firms Remuneration Code** under ~~CRD~~ unless they rely on the ~~FCA's **Proportionality Guidance**~~ to disapply the bonus cap.

Q6 Are BIPRU firms in the same group as a ~~CRD-IV~~ firm in scope of SYSC 19D required to apply SYSC ~~19A~~ or SYSC 19D?

- 4.5 Where a **BIPRU firm** is part of a **UK consolidation group** containing a firm that ~~SYSC 19A~~ or **SYSC 19D** applies to, then the **BIPRU firm** will need to apply:
- **SYSC 19C** and associated guidance to staff who are **material risk takers** of the **BIPRU firm**; and
 - ~~SYSC 19A~~ or **SYSC 19D** (as relevant) and associated guidance to staff who are **material risk takers** of the **UK consolidation group**
- 4.6 Our General Guidance on Proportionality: the BIPRU Remuneration Code contains more detail on group application for **BIPRU firms** in ~~CRD-IV~~ groups with a firm in scope of the **dual-regulated firms Remuneration Code**.

Q7 Can a Level 3 BIPRU firm that is part of a UK consolidation group with a Level 1 ~~CRD-IV~~ firm in scope of the dual-regulated firms Remuneration Code apply the BIPRU remuneration principles proportionality rule?

- 4.7 No – if a **BIPRU firm** is part of a **UK consolidation group** with a ~~CRD-IV~~ an entity in scope of the **dual-regulated firms Remuneration Code**, they must apply ~~SYSC 19A~~ or **SYSC 19D** (and the associated **guidance**) ~~as relevant~~.
- 4.8 If the consolidating ~~CRD-IV~~ entity is a **proportionality level 1** firm under our General Guidance on Proportionality Guidance: the Dual-regulated firms Remuneration Code, this means that neither ~~this CRD-IV entity~~ the firm in scope of the **dual-regulated firms Remuneration Code** nor any of the BIPRU entities within the **group** are permitted to disapply the **FCA's dual-regulated firms Remuneration Code**. The firm must apply the **FCA's dual-regulated firms Remuneration Code** in full to those staff identified as **material risk takers** as per question 6.
- 4.9 If a **BIPRU** firm is part of a **UK consolidation group** with a ~~SYSC 19A~~ or **SYSC 19D** firm and believes it should fall into a lower **proportionality level**, the firm may apply for individual guidance from us to vary its **proportionality level**. Our policy on individual guidance is set out in **SUP 9**.
- 4.10 The firm's application must provide sound reasoning, justified with reference to the proportionality principles in ~~SYSC 19A.3.3 R (2)~~ or **SYSC 19C.3.3 R (2)**. Find more information on how to vary the assigned **proportionality level**, as well as the necessary documentation that must be provided, on our website at www.fca.org.uk/remuneration/apply-vary-firms-proportionality-level.
- 4.11 Firms should note that we do not automatically approve applications – we review them on a case-by-case basis.

General Guidance

- 4.12 A **BIPRU firm** that falls outside a **UK consolidation group** ~~may decide to only apply **SYSC 19C** and its related guidance – see~~ should consider paragraph 2.2(3) of our General Guidance on Proportionality: the BIPRU Remuneration Code.

5 ~~[deleted]~~FAQs: Proportionality

~~Q8 — Can we apply the FCA's Remuneration Code in a proportionate manner?~~

- 5.1 ~~[deleted]~~ Our **~~Proportionality Guidance~~** sets out the circumstances where firms may be able to disapply certain aspects of the **~~FCA's Remuneration Code~~**, such as the pay-out process rules, where this is appropriate and proportionate.
- 5.2 ~~[deleted]~~ The FCA has decided to explain non-compliance only in relation to paragraph 79 of the **~~EBA Guidelines~~**. This is the requirement that the bonus cap must be applied to all firms subject to the CRD. This means that firms (other than those falling into **~~proportionality level 1 or 2~~** — see 5.4 below) may choose to continue to rely on our domestic **~~Proportionality Guidance~~** to disapply the bonus cap where relevant.
- 5.3 ~~[deleted]~~ However, in line with our **~~Proportionality Guidance~~**, firms will need to ensure that where proportionality has been applied, they can justify that this is appropriate and be able to demonstrate this to us on request.
- 5.4 ~~[deleted]~~ Larger firms (ie those falling into **~~proportionality level 1 or 2~~**) have no discretion to disapply the bonus cap.

6 FAQs: Variable remuneration

Q9 How can we measure individual performance in a Long-Term Incentive Plan (LTIP) award?

- 6.1 As an LTIP is a form of variable remuneration, it must be based on an assessment of the financial and non-financial performance of the individual, business unit and the firm as a whole (see ~~SYSC 19A.3.36R~~ and ~~SYSC 19D.3.39R~~).
- 6.2 We do not prescribe the non-financial factors that firms should use to measure an individual's performance. Examples of good practice that we have observed include measures relating to building and maintaining positive customer relationships, reputation, achievement in line with firm strategy or values, and effectiveness and operation of the risk and control environment.

Q10 Do the upfront and deferred components of variable remuneration need to have the same split of cash and instruments?

- 6.3 No. This used to be the case under the previous CEBS Guidelines on remuneration policies and practices,³ however the **EBA Guidelines** now provide that firms should consider deferring a higher proportion of instruments (paragraph 240), provided that the minimum of 50% in instruments is still met (~~SYSC 19D.3.56R~~ and ~~SYSC 19A.3.47R~~). We consider it good practice for the deferred portion of variable remuneration to contain a higher proportion of instruments.

Q11 How can bonus pools include ex-ante risk adjustments?

- 6.4 When measuring performance for the purpose of setting a firm's bonus pool, firms are required under the **dual-regulated firms Remuneration Code** to include adjustments for all types of current and future risks (~~SYSC 19D.3.29R~~).
- 6.5 For the avoidance of doubt, this applies to financial and non-financial types of risk, including those that are more difficult to measure. Measures relating to:
- building and maintaining positive customer relationships
 - reputation
 - achieving in line with firm strategy and values

³ Committee of European Banking Supervisors Guidelines on Remuneration Policies and Practices (published 10 December 2010).

- effectiveness and operation of the risk and control environment

are examples of good practice of non-financial criteria we have observed. This allows firms to recognise and incentivise efforts to increase performance relative to each unit of risk undertaken and boost long-term performance and profitability, even in a year where this does not ~~results~~result in increased financial performance.

- 6.6 While we do not prescribe the process firms should follow when risk-adjusting their bonus pools, under **SYSC** 19D.3.25R we require firms to have a clear and verifiable mechanism for measuring performance. Firms are then required to apply risk-adjustments in a clear and transparent manner. This is useful in facilitating a consistent approach that is subject to robust challenge.
- 6.7 When communicating their approach to the FCA, firms need to be able to demonstrate how risk-adjustments have been applied in a transparent manner. For example, they can set out the stages involved in determining the final bonus pool, with adjustments separately distinguishable for major risk and performance considerations, and any collective adjustments in relation to ex-post risk adjustment made at the end of the process.

Appendix 5

General Guidance: Remuneration Code (SYSC 19A) – Frequently Asked Questions on Remuneration

FG 17/5-20/[XX]

IFPRU investment firms Remuneration Codes (SYSC 19A and 19D) -

Frequently asked questions on remuneration

May 2017 [month] 2020

1 Introduction

Overview

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Defined expression	Definition
<i>EBA Guidelines</i>	The European Banking Authority's published Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of the CRD Directive 2013/36/EU and disclosures under Article 450 of the EU-CRR on Regulation (EU) No 575/2013 , 21 December 2015
<i>FCA's <u>dual-regulated firms</u> Remuneration Code</i>	The Financial Conduct Authority <u>dual-regulated firms Remuneration Code</u> under SYSC 19A or SYSC 19D
<i>FCA's <u>IFPRU</u> Remuneration Code</i>	The Financial Conduct Authority IFPRU Remuneration Code under SYSC 19A
<i>Group</i>	Has the meaning given in the Glossary in paragraph (3A) (3B)
<i>Material risk takers</i>	Has the meaning of staff identified in the Glossary as <i>Remuneration Code staff</i> and dual-regulated firms Remuneration Code Staff in SYSC 19A.3.4R
<i>Proportionality Guidance</i>	Has the meaning given in paragraph 1.4, bullet points 2, 3 and 4
<i>Proportionality level</i>	Has the meaning given in paragraph 2.2 of the General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D) and paragraph 2.2 of the General Guidance on Proportionality: The IFPRU

	Remuneration Code (SYSC 19A)
Relevant proportionality rule	Refers to the rules identified in the Glossary as the remuneration principles proportionality rule (SYSC 19A.3.3R); the dual regulated firms remuneration principles proportionality rule (SYSC 19D.3.3R) and the BIPRU remuneration principles proportionality rule (SYSC 19C.3.3R)
Regulatory Technical Standard or RTS	Regulation (EU) 604/2014 of 4 March 2014

- 1.3 This guidance applies to all firms that fall within the scope of the ~~Directive 2013/36/EU (Capital Requirements Directive or CRD IV)~~, ~~FCA's IFPRU~~ Remuneration Code in **SYSC 19A**, namely ~~banks, building societies, IFPRU investment firms and certain overseas firms~~, who are required to comply with the ~~FCA's Remuneration Code~~, as defined in **SYSC 19A.1.1R(1)(d)**. Questions 6 and 7 are relevant for **BIPRU firms**, and other firms may also find this document useful to understand our expectations about firms' remuneration policies and practices.
- 1.4 In addition to our **Handbook**, you should read this FCA guidance on remuneration in conjunction with our other general guidance documents:
- [General guidance on the application of ex-post risk adjustment¹ to variable remuneration](#)
 - ~~General Guidance on Proportionality: the IFPRU Remuneration Code (**SYSC 19A**)~~ [General Guidance on Proportionality: the IFPRU Remuneration Code \(**SYSC 19A**\)](#)
 - ~~General Guidance on Proportionality: the BIPRU Remuneration Code (**SYSC 19C**) and Pillar 3 disclosure on remuneration (BIPRU 11)~~ [General Guidance on Proportionality: the BIPRU Remuneration Code \(**SYSC 19C**\) and Pillar 3 disclosure on remuneration \(BIPRU 11\)](#)
 - ~~General Guidance on Proportionality: the Dual regulated firms Remuneration Code (**SYSC 19D**)~~ [General Guidance on Proportionality: the Dual-regulated firms Remuneration Code \(**SYSC 19D**\)](#)
- 1.5 This guidance supersedes any previous frequently asked questions (FAQs) we – or our predecessor the Financial Services Authority – have issued in relation to the **IFPRU** Remuneration Code in **SYSC 19A**.
- 1.6 This guidance statement has effect from ~~3 May 2017~~ [29 December 2020](#).

¹ Ex-post risk adjustment refers to the adjustment of variable remuneration to take account of a specific crystallised risk or adverse performance outcome including those relating to misconduct. Ex-post risk adjustments include reducing current year awards, the application of malus (reducing or cancelling deferred incentive awards that have not yet vested), and clawback (recouping already vested awards).

Background

- 1.7 The **EBA Guidelines** set out requirements regarding remuneration policies that apply to ~~CRD~~ firms in scope of the UK legislation that implemented the **CRD**. **Competent authorities** and firms must apply the **EBA Guidelines** from 1 January 2017. Firms should review the **EBA Guidelines** to understand the requirements that apply to them and make every effort to comply with them. After the end of the implementation period, firms should continue to comply with these Guidelines to the extent and in the manner set out in our guidance 'Brexit: our approach to EU non-legislative materials'.
- 1.8 This guidance gives firms some practical guidance to understanding how the **EBA Guidelines** apply to them, and gives additional clarification on the FCA's **IFPRU** Remuneration Code.
- 1.9 While these frequently asked questions may refer to our existing remuneration **rules** and **guidance** or to the **EBA Guidelines**, they do not provide a complete summary of them. Firms should use this guidance as a supplement to the FCA's **IFPRU** Remuneration Code, **Proportionality Guidance** and the **EBA Guidelines** to help understand how the requirements apply to them.

2 FAQs: Material risk takers

Q1 Who needs to be identified as material risk takers?

- 2.1 Under **SYSC 19A.3.4R** and **SYSC 19D.3.4R**, firms must identify employees 'whose professional activities have a material impact on the firm's risk profile'. This includes – but is not limited to – employees identified under the qualitative and quantitative criteria set out in articles 3 and 4(1) of the **RTS Material Risk Takers Regulation**.
- 2.2 The types of professional activity and the risks inherent in these are not limited under ~~CRD~~ the UK legislation that implemented the **CRD**. All types of risk are therefore relevant to this assessment, including those of a prudential, operational, conduct and reputational nature.
- 2.3 Under paragraph 79 of the **EBA Guidelines**, all firms should first identify their **material risk takers**, before the FCA's **IFPRU** Remuneration Code requirements are applied in a proportionate way. Once **material risk takers** have been identified, the relevant **remuneration principles proportionality rule** can then be applied to determine the extent to which certain FCA **IFPRU** Remuneration Code requirements apply on an individual or firm-wide basis (see 2.4(4) below).

Q2 What is the process for identifying (and excluding) material risk takers?

- 2.4 Firms should follow the steps below (in the order presented) when identifying their **material risk takers**. These steps reflect the requirements under the **RTS Material Risk Takers Regulation** for firms to identify their **material risk takers** using both qualitative and quantitative criteria, and explain how the identification interacts with the **Proportionality Guidance**:
1. **Identify material risk takers using qualitative criteria.** Firms must identify all staff who meet the qualitative criteria under Article 3 of the **RTS Material Risk Takers Regulation** and any other additional criteria set by the firm to identify all **material risk takers**. The **RTS Material Risk Takers Regulation** covers a common set of the most relevant risks across the EU; however, the UK legislation that implemented the **CRD** does not provide an exhaustive categorisation of risks and so firms must consider all types of risk when performing their internal analysis. This includes, but is not limited to, prudential, operational, market, credit, conduct and reputational risks. When identifying **material risk**

takers, firms will need to be able to demonstrate to us how they have conducted this analysis and considered the relevant categories of risk.

2. **Identify *material risk takers* using quantitative criteria.** Firms need to identify any individuals who have not been captured as ***material risk takers*** under the qualitative criteria above (including any additional criteria set by the firms), but who meet the quantitative criteria under Article 4(1) of the RTS-**Material Risk Takers Regulation**. Firms must be able to show us how they have conducted this analysis.
3. **Consider whether any exclusions are appropriate.** After steps 1 and 2 have been undertaken, firms may consider excluding an individual from being identified as a ***material risk takers-taker*** if they have only been captured based on step 2 above, subject to prior FCA notification or our approval under Article 4(4) of the RTS-**Material Risk Takers Regulation** (see Question 3 below).
4. **Apply the proportionality framework.** After steps 1, 2 and 3 above have been undertaken, firms may then consider whether/how to apply the proportionality framework to their ***material risk takers*** in line with the FCA's ***Proportionality Guidance***.

Q3 Who can be excluded as a material risk taker?

- 2.5 Where an individual is caught only by the quantitative criteria, they may be eligible for exclusion from identification as a ***material risk taker***. They can apply via the application and notification template on our [website](#). Applications can only be approved by the FCA where sufficient evidence is provided on the responsibilities of the individual role, supported by clear justification for why these do not amount to material risk. This evidence should include details of the qualitative analysis risk outlined in 2.4(1) above.
- 2.6 While a firm can request to exclude an individual because they undertake professional activities only in relation to a non-material business unit,² we would still require an individual assessment of each role to be carried out in the context of the firm. This is so the firm can demonstrate it has given sufficient consideration to why the individual does not meet any of the qualitative criteria under 2.4(1) above.
- 2.7 For those earning more than €1 million, Article 4(5) of the RTS-**Material Risk Takers Regulation** provides that an individual can only be excluded from identification in 'exceptional circumstances'. To meet this test, we expect firms to be able to justify why the roles and responsibilities that support this level of remuneration do not correspond to a material impact on the firm's risk profile. The firm also needs to demonstrate how and why the circumstances on which the exclusion is based are 'exceptional'.

² A material business unit is defined in Article 3 (5) of the RTS-**Material Risk Takers Regulation**.

- 2.8 ~~[deleted]~~ No distinction is drawn between staff in deposit takers and investment banks relative to those in asset management firms. All CRD firms are equally required to consider the risks relevant to their firm.

3 FAQs: Governance

Q4 Does a firm that is part of a group that has a Remuneration Committee at the UK consolidation group level also need to establish a local Remuneration Committee?

- 3.1 Under **SYSC** 19A.3.1R and **SYSC** ~~19A.3.12R-19D.1R~~, any firm (whether at the **individual, parent undertaking** or **group** level) that is 'significant' in terms of its size, internal organisation, and the nature, scope and complexity of its activities, must establish a Remuneration Committee.
- 3.2 'Significant' for these purposes means:
- ~~• In **SYSC** 19A:~~
 - institutions referred to in the UK legislation that implemented article 131 of the **CRD** (globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs))
 - **significant IFPRU firms** as defined in IFPRU 1.2 (the condition of significance for this requirement can be waived, as explained in IFPRU 1.2.9G)
 - ~~• In **SYSC** 19D:~~
 - ~~• institutions referred to in article 131 of the CRD (globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs))~~
 - ~~• any other institutions determined to be significant by the FCA based on their size, internal organisation, and the nature, scope and complexity of its activities~~
- 3.3 The **EBA Guidelines** clarify that the test of 'significant' must be assessed on a standalone entity basis (paragraph 46). This means that if a subsidiary meets one of the tests of 'significant' set out above, it should itself establish a Remuneration Committee. It is not enough to rely on the Remuneration Committee at the **UK consolidation group** level.
- 3.4 If a subsidiary does not meet the 'significant' test, the firm can rely on the Remuneration Committee at the **UK consolidation group** level.

4 FAQs: Groups

Q5 **Do the pay-out process rules and the bonus cap apply to ~~non-CRD~~ entities within the UK consolidation group that are not in scope of the FCA's IFPRU Remuneration Code?**

- 4.1 Firms that are in the same **UK consolidation group** as a ~~CRD-IV~~ firm in scope of the FCA's IFPRU Remuneration Code, but are not themselves subject to ~~CRD-IV~~ that Code, will need to apply the FCA's **IFPRU** Remuneration Code to ~~which the consolidating entity is subject to~~ those staff who:
- have a material impact on the risk profile of the **UK consolidation group**; or
 - have a material impact on the risk profile of a ~~CRD~~ firm that is in scope of the FCA's IFPRU Remuneration Code within the **UK consolidation group**
- 4.2 Where an individual is employed by a firm that is subject to different sectoral rules (for example, an **AIFMD** firm subject to **SYSC 19B**) but their role has a material impact on the group's risk profile, then the consolidating institution will need to ensure that the FCA's **IFPRU** Remuneration Code is complied with for that individual.
- 4.3 Where there is a conflict between the FCA's **IFPRU** Remuneration Code and the sectoral requirements, then the sectoral requirements apply. Using the example of an **AIFMD** firm, this would mean that variable remuneration is paid in the form of instruments in the **alternative investment fund** concerned.
- 4.4 However, even where the specific sectoral rules are applied, the EBA Guidelines mean firms must still apply the ~~bonus cap under CRD-specific ratio~~ between fixed and variable components of total remuneration (bonus cap) unless they rely on the FCA's **Proportionality Guidance** to disapply the bonus cap.

Q6 **Are BIPRU firms in the same group as ~~a CRD-IV~~ an IFPRU investment firm required to apply SYSC 19A or SYSC 19D?**

- 4.5 Where a **BIPRU firm** is part of a **UK consolidation group** containing a firm that **SYSC 19A or SYSC 19D** applies to, then the **BIPRU firm** will need to apply:
- **SYSC 19C** and associated guidance to staff who are **material risk takers** of the **BIPRU firm**; and
 - **SYSC 19A or SYSC 19D** (as relevant) and associated guidance to staff who are **material risk takers** of the **UK consolidation group**

- 4.6 Our General Guidance on Proportionality: the BIPRU Remuneration Code contains more detail on group application for **BIPRU firms** in ~~CRD-IV~~ groups with a firm in scope of the **IFPRU** Remuneration Code.

Q7 Can a Level 3 BIPRU firm that is part of a UK consolidation group with a Level 1 ~~CRD-IV~~IFPRU investment firm apply the BIPRU remuneration principles proportionality rule?

- 4.7 No – if a **BIPRU firm** is part of a **UK consolidation group** with a ~~CRD-IV~~ an entity in scope of the FCA's **IFPRU** Remuneration Code, they must apply **SYSC 19A** or ~~SYSC 19D~~ (and the associated guidance) ~~as relevant~~.
- 4.8 If the consolidating ~~CRD-IV~~ entity is a **proportionality level 1** firm under our General Guidance on Proportionality ~~Guidance~~: the **IFPRU** Remuneration Code, this means that neither this ~~CRD-IV~~ entity ~~the firm in scope of the~~ the FCA's **IFPRU** Remuneration Code nor any of the BIPRU entities within the **group** are permitted to disapply the FCA's **IFPRU** Remuneration Code. The firm must apply the FCA's **IFPRU** Remuneration Code in full to those staff identified as **material risk takers** as per question 6.
- 4.9 If a **BIPRU firm** is part of a **UK consolidation group** with a **SYSC 19A** or ~~SYSC 19D~~ firm and believes it should fall into a lower **proportionality level**, the firm may apply for individual guidance from us to vary its **proportionality level**. Our policy on individual guidance is set out in **SUP 9**.
- 4.10 The firm's application must provide sound reasoning, justified with reference to the proportionality principles in **SYSC 19A.3.3 R (2)** or **SYSC 19C.3.3 R (2)**. Find more information on how to vary the assigned **proportionality level**, as well as the necessary documentation that must be provided, on our website at www.fca.org.uk/remuneration/apply-vary-firms-proportionality-level.
- 4.11 Firms should note that we do not automatically approve applications – we review them on a case-by-case basis.
- 4.12 A **BIPRU firm** that falls outside a **UK consolidation group** ~~may decide to only apply SYSC 19C and its related guidance – see~~ should consider paragraph 2.2(3) of our General Guidance on Proportionality: the BIPRU Remuneration Code.

5 FAQs: Proportionality

Q8 Can we apply the FCA's IFPRU Remuneration Code in a proportionate manner?

- 5.1 Our General Guidance on Proportionality-Guidance: the **IFPRU** Remuneration Code sets out the circumstances where firms may be able to disapply certain aspects of the FCA's **IFPRU** Remuneration Code, such as the pay-out process rules, where this is appropriate and proportionate.
- 5.2 The FCA has decided to explain non-compliance only in relation to paragraph 79 of the **EBA Guidelines**. This is the requirement that the bonus cap must be applied to all firms ~~subject to the CRD~~ in scope of the FCA's **IFPRU** Remuneration Code. This means that firms (other than those falling into **proportionality level** 1 or 2 – see 5.4 below) may choose to continue to rely on our domestic General Guidance on Proportionality-Guidance: the **IFPRU** Remuneration Code to disapply the bonus cap where relevant.
- 5.3 However, in line with our General Guidance on Proportionality-Guidance: the **IFPRU** Remuneration Code, firms will need to ensure that where proportionality has been applied, they can justify that this is appropriate and be able to demonstrate this to us on request.
- 5.4 Larger firms (ie those falling into **proportionality level** 1 or 2) have no discretion to disapply the bonus cap.

6 FAQs: Variable remuneration

Q9 How can we measure individual performance in a Long-Term Incentive Plan (LTIP) award?

- 6.1 As an LTIP is a form of variable remuneration, it must be based on an assessment of the financial and non-financial performance of the individual, business unit and the firm as a whole (see **SYSC 19A.3.36R** and **SYSC 19D.3.39R**).
- 6.2 We do not prescribe the non-financial factors that firms should use to measure an individual's performance. Examples of good practice that we have observed include measures relating to building and maintaining positive customer relationships, reputation, achievement in line with firm strategy or values, and effectiveness and operation of the risk and control environment.

Q10 Do the upfront and deferred components of variable remuneration need to have the same split of cash and instruments?

- 6.3 No. This used to be the case under the previous CEBS Guidelines on remuneration policies and practices,³ however the **EBA Guidelines** now provide that firms should consider deferring a higher proportion of instruments (paragraph 240), provided that the minimum of 50% in instruments is still met (**SYSC 19D.3.56R** and **SYSC 19A.3.47R**). We consider it good practice for the deferred portion of variable remuneration to contain a higher proportion of instruments.

Q11 How can bonus pools include ex-ante risk adjustments?

- 6.4 ~~[deleted]~~ When measuring performance for the purpose of setting a firm's bonus pool, firms are required under the **dual-regulated firms Remuneration Code** to include adjustments for all types of current and future risks (**SYSC 19D.3.29R**).
- 6.5 ~~[deleted]~~ For the avoidance of doubt, this applies to financial and non-financial types of risk, including those that are more difficult to measure. Measures relating to:
- ~~building and maintaining positive customer relationships~~
 - ~~reputation~~
 - ~~achieving in line with firm strategy and values~~

³ Committee of European Banking Supervisors Guidelines on Remuneration Policies and Practices (published 10 December 2010).

- ~~effectiveness and operation of the risk and control environment~~

~~are examples of good practice of non-financial criteria we have observed. This allows firms to recognise and incentivise efforts to increase performance relative to each unit of risk undertaken and boost long-term performance and profitability, even in a year where this does not results in increased financial performance.~~

- 6.6 ~~[deleted]~~ While we do not prescribe the process firms should follow when risk-adjusting their bonus pools, under ~~SYSC~~ 19D.3.25R we require firms to have a clear and verifiable mechanism for measuring performance. Firms are then required to apply risk-adjustments in a clear and transparent manner. This is useful in facilitating a consistent approach that is subject to robust challenge.
- 6.7 ~~[deleted]~~ When communicating their approach to the FCA, firms need to be able to demonstrate how risk-adjustments have been applied in a transparent manner. For example, they can set out the stages involved in determining the final bonus pool, with adjustments separately distinguishable for major risk and performance considerations, and any collective adjustments in relation to ex-post risk adjustment made at the end of the process.

