

Consultation Paper

CP23/11**

Remuneration:
Enhancing proportionality
for dual-regulated firms

May 2023

How to respond

We are asking for comments on this Consultation Paper (CP) by **9 June 2023**.

You can send them to us using the form on our [website](#).

Or in writing to:

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Chapter 1

Summary

Why we are consulting

- 1.1** The proposals in this consultation aim to ensure our remuneration rules for small dual-regulated firms are proportionate to the risks they pose to consumers and markets in the UK. When we talk about dual-regulated firms in this consultation we are referring to only those firms who are subject to the dual-regulated firms Remuneration Code.
- 1.2** We propose changes to our proportionality thresholds, while also proposing to exempt dual-regulated firms meeting the updated proportionality thresholds from the requirements relating to malus and clawback. This aims to result in more dual-regulated firms being subject to a more appropriate and proportionate regime for the UK market.
- 1.3** The changes we want to make to the rules are broadly consistent with the changes proposed by the Prudential Regulation Authority (PRA) in their Consultation Paper, Remuneration: Enhancing proportionality for small firms (CP5/23). This consultation should be read in conjunction with the PRA's consultation.
- 1.4** We are also proposing some minor changes to the current rules to address some differences between the FCA Handbook and the PRA Rulebook.

Who this applies to

- 1.5** This consultation applies to:
- credit institutions (banks and building societies)
 - designated investment firms (those designated for prudential regulation by the PRA)
 - firms from overseas 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 3 categories above
- 1.6** The following may also be interested in this consultation:
- other investment firms
 - trade bodies and firms' professional advisers
 - consumers and consumer organisations to understand how firms remunerate their staff and align risk with reward

What we want to change

- 1.7** We propose to:
- amend our proportionality thresholds which allow smaller, less complex dual-regulated firms to be excluded from some of the remuneration rules by increasing the total assets threshold and changing the additional criteria that firms with over £4 billion of total assets must meet (Chapter 3)
 - remove the requirement for smaller, less complex dual-regulated firms to apply the rules on malus and clawback (Chapter 3)
 - align some minor differences between our rules and the PRA Rulebook, including those relating to the identification of dual-regulated firms Remuneration Code Staff (Code staff) (Chapter 4)
 - make corresponding changes to our non-Handbook guidance
- 1.8** We propose that firms can apply the amended remuneration rules and guidance set out in Chapter 3 to remuneration awarded in respect of their next performance year that begins on or after publication of the relevant Policy Statement.
- 1.9** We propose that our amended remuneration rules and guidance set out in Chapter 4 would come into force immediately following publication of the relevant Policy Statement.

Outcome we are seeking

- 1.10** Remuneration is one of the key drivers of culture and behaviour for all firms and individuals. Appropriate remuneration policies and practices support sound and effective risk management. They also ensure appropriate outcomes for consumers and markets, reducing the likelihood of harm.
- 1.11** Our remuneration rules seek to ensure firms establish, implement and maintain effective remuneration policies and practices in a way that is proportionate to their size, internal organisation and the nature, scope and complexity of their activities.
- 1.12** Our proposals will provide increased flexibility for dual-regulated firms who meet the amended thresholds to apply the remuneration framework in a way that is more proportionate to the risks these firms pose to consumers and the market. In time, for firms who meet the amended thresholds, our proposals could increase their ability to attract new staff, compete and grow in the market, and ultimately could enhance competition in UK markets and increase the UK's attractiveness as a place to do business.
- 1.13** Updating our rules in this way is consistent with our 2022 to 2025 Strategy focus area of 'promoting competition and positive change'.

Measuring success

- 1.14** In implementing these changes, we want to ensure our interventions have been effective. We may measure the success of our proposals through the extent to which we see:
- an increase in the number of firms who consider our amended rules to be more proportionate to the risks they pose to consumers and the UK market
 - a reduction in the number of waiver applications received from firms seeking to benefit from the proportionality provisions

Next steps

- 1.15** We want to know what you think of our proposals. Please respond to this consultation by 9 June 2023.
- 1.16** We are proposing a consultation period of just under a month to ensure our consultation period broadly aligns with the end of the PRA's consultation period for [CP5/23](#). We and the PRA plan to align the timing of publication of the final rules and guidance.
- 1.17** We consider that a shorter consultation period is appropriate as the changes we are proposing are broadly the same as the PRA's changes that it is consulting on.
- 1.18** We will consider all the feedback and aim to publish our Policy Statement and final rules and guidance in Q4 2023.
- 1.19** If firms have already responded to the PRA's [CP5/23](#), firms can respond to this consultation by sharing their response to the PRA's [CP5/23](#) with us.

Chapter 2

The wider context

- 2.1** This chapter explains why we are proposing to change our rules and how this links to our objectives. It gives an overview of the proposed changes.

Our Remuneration Codes

- 2.2** Under the Financial Services and Markets Act 2000 (FSMA), the PRA is the prudential regulator for credit institutions and designated investment firms. The FCA is the conduct regulator for these firms. These firms are described as dual-regulated firms. The FCA is the prudential and conduct regulator for all other investment firms.
- 2.3** We implemented remuneration provisions for dual-regulated firms in the dual-regulated firms Remuneration Code (SYSC 19D). These requirements are similar to the PRA rules in the Remuneration Part of its Rulebook.
- 2.4** We have three other Remuneration Codes. These apply to investment firms who are MIFIDPRU firms (SYSC 19G), Alternative Investment Fund Managers (SYSC 19B), and to companies that manage Undertakings for Collective Investment in Transferable Securities (SYSC 19E).
- 2.5** The Remuneration Codes all support prudential soundness and risk management in firms and help ensure appropriate outcomes for consumers and markets. Having separate codes for the different types of firms has enabled us to tailor each of the codes appropriately.

Evolution of the dual-regulated firms Remuneration Code (SYSC 19D)

- 2.6** Remuneration requirements for credit institutions and designated investment firms have evolved, most recently from the introduction of the fifth iteration of the Capital Requirements Directive (CRD V). This contained the latest updates to the European Union's (EU) prudential requirements regime and governance standards for credit institutions and investment firms.
- 2.7** At the time of CRD V's introduction, the terms of the EU Withdrawal Agreement required the UK to transpose many of the CRD V provisions, including those relating to remuneration, by 28 December 2020.
- 2.8** Before the introduction of CRD V we, and the PRA, permitted some smaller dual-regulated firms not to apply the remuneration requirements relating to the ratio between fixed and variable remuneration (the bonus cap), deferral, payment in instruments, malus (if firms choose to use deferral), clawback and discretionary pension arrangements.

- 2.9** CRD V lowered the threshold that exempted some smaller, less complex dual-regulated firms from some of the remuneration requirements, bringing more firms into scope of the full remuneration rules. At the same time, all dual-regulated firms, irrespective of size and complexity, became subject to the bonus cap, malus (if firms choose to apply deferral) and clawback.

Our approach

- 2.10** Following the changes introduced through the introduction of CRD V, we and the PRA have seen evidence that the current remuneration regime may be burdensome for some smaller, less complex dual-regulated firms. This includes through waiver applications and firms' responses to a PRA survey sent to small firms in August 2022 (further details are outlined in the Cost Benefit Analysis (CBA) of the PRA's [CP5/23](#)).
- 2.11** We want to ensure our remuneration rules for dual-regulated firms are proportionate to the risks firms pose to consumers and the market, while ensuring we promote competition and positive change. This is reflected in our [2022 to 2025 Strategy](#), in which we commit to using competition as a force for better consumer and market outcomes. It is also consistent with the proposed new secondary objective to facilitate the international competitiveness of the economy of the UK (in particular, the financial services sector) and its growth in the medium to long term, as set out in the Financial Services and Markets Bill (the Bill) being considered by Parliament.
- 2.12** Following publication of a joint FCA and PRA consultation paper in December 2022 regarding removal of the bonus cap ([CP22/28 \(PRA CP15/22\)](#)), in February 2023 the PRA published a Consultation Paper ([CP5/23](#)) proposing changes to the Remuneration Part of its Rulebook.
- 2.13** Having independently assessed the PRA's proposals against our statutory objectives we propose to update our rules and relevant non-Handbook guidance to ensure our rules remain broadly consistent with the PRA's rules.

Proposed amendments to the dual-regulated firms Remuneration Code

2.14 In Chapters 3 and 4, we set out our proposed amendments to SYSC 19D. Our proposals are summarised in the table below.

Table 1: Overview of proposed amendments to SYSC 19D

Chapter	Topic	Key proposals
3	Proportionality at firm level	To change our proportionality thresholds (which allow firms to be exempt from some of the structural remuneration requirements) for firms with total assets averaging £4bn or less over the previous 3 years (or £20bn where certain other criteria are also fulfilled)
3	Malus and clawback	To remove the requirement for firms meeting the proportionality thresholds to comply with the rules relating to malus and clawback
4	Identification of Code staff	To align our approach to the identification of Code staff with the criteria for the identification of Material Risk Takers (MRTs) in the Remuneration Part of the PRA's Rulebook
4	Breaches	To align our wording on breaches with that in the Remuneration Part of the PRA's Rulebook
3 and 4	Date of application	Firms to apply the amended remuneration requirements in Chapter 3 to remuneration awarded in respect of the next performance year beginning on or after the day following publication of the relevant Policy Statement Firms to apply the amended remuneration requirements in Chapter 4 from the day following publication of the relevant Policy Statement

Proposals to make certain rules ambulatory

2.15 To ensure continuing consistency with the PRA's rules and to avoid the need to reconsult on any minor changes being made by the PRA in the future (specifically, changes to the definition of Code staff, material business unit or the criteria dual-regulated firms are required to meet to fall within the proportionality thresholds), we propose to make these rules ambulatory.

2.16 We have the power to make ambulatory references under s137T(b) of FSMA. Ambulatory references have the effect of automatically updating references to the PRA Rulebook in the FCA Handbook each time the PRA updates its own rule. This is by the addition of words such as 'as updated from time to time' for each rule or definition which is ambulatory.

2.17 We have carefully considered whether the use of ambulatory references is appropriate and proportionate. Making the rules and definitions outlined in paragraph 2.14 ambulatory will ensure continued alignment between both sets of rules and avoid any future inconsistency if the PRA were to consult on amendments to these rules or definitions. This will avoid the need for the FCA to consult separately on any changes the PRA makes to these provisions where we agree with the changes the PRA is making. We think this is a more cost-effective and streamlined approach in respect of these specific rules.

Proposed amendments to non-Handbook guidance

2.18 We set out our expectations of firms regarding the application of specific rules or other provisions in non-Handbook guidance. Our proposed changes to SYSC 19D mean we propose to make consequential amendments to the following non-Handbook guidance:

- Finalised Guidance (FG) 20/4 General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D)
- FG20/5 Dual-regulated firms Remuneration Code (SYSC 19D): Frequently asked questions on remuneration
- FG21/5 General guidance on the application of ex-post risk adjustment to variable remuneration

2.19 As these guidance documents cover more than one topic, we summarise our proposals in the relevant chapter or chapters. All proposed amendments are shown in tracked changes in Appendices 2 to 4.

How it links to our objectives

Competition

2.20 The changes we are proposing seek to introduce a more proportionate regime for smaller, less complex dual-regulated firms, while also allowing a greater number of firms to benefit from this more proportionate approach because of the changes to the proportionality thresholds.

2.21 This potentially enables smaller, less complex dual-regulated firms to reduce their costs in understanding and complying with SYSC 19D, and potentially enables more firms to be eligible to benefit from this more proportionate regime, making it more attractive for new entrants to the market. This more proportionate approach could increase competition in the UK market in the interests of consumers, encourage firms to grow or enter new business lines, and improve the ability for firms to attract and retain highly qualified individuals.

Consumer protection

- 2.22** We do not expect our proposed changes to reduce overall levels of consumer protection. SYSC 19D continues to include rules for all dual-regulated firms. For example, all firms would remain required to assess individual and firm performance and only award variable remuneration where justified based on financial and non-financial criteria, including criteria 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.

Market integrity

- 2.23** The updates we are proposing seek to ensure dual-regulated firms continue to establish, implement and maintain remuneration policies and practices that are consistent with, and promote, effective risk management and healthy cultures. SYSC 19D continues to require firms to assess the financial risks run by firms themselves and to make sure their remuneration arrangements do not encourage excessive risk taking, which supports our statutory objective of enhancing the integrity of the UK financial system.
- 2.24** Culture in financial services is a key area of focus for us across all sectors. A firm's approach to rewarding and incentivising its staff is a major 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.

How it links to our new secondary objective

- 2.25** The Financial Services and Markets Act 2023 (the Act) is expected to introduce a secondary objective for the FCA to facilitate the medium to long-term growth and international competitiveness of the UK economy. Our legal duty to comply with this secondary objective will apply once the Bill receives Royal Assent.
- 2.26** Our work in relation to the remuneration requirements for dual-regulated firms started before this legislation was introduced but will be completed, with final decisions made, after the Act is likely to come into force. The need to comply with this future obligation was also reflected in our new [remit letter](#), received 9 December 2022, to which we must have regard. We have therefore considered here the likely effects of these proposals on competitiveness and growth.

Facilitating the medium to long-term growth and international competitiveness of the UK economy

- 2.27** These proposals are designed to further our primary operational objective of improving competition in the interests of consumers. By enabling more dual-regulated firms to benefit from more proportionate remuneration regulatory requirements that better reflect the risks they pose to consumers and the UK markets, we expect impacted firms to be able to grow or enter new business lines, and be better able to attract and retain highly qualified individuals. By reducing impacted dual-regulated firms' ongoing implementation costs of the remuneration regime, these proposals give these firms room for growth. By supporting the attractiveness of the UK as a place to do business and by reducing the regulatory impact on firms entering the UK market, these proposals facilitate growth and international competitiveness of the UK.

Wider effects of this consultation

- 2.28** In addition to SYSC 19D, we have three other Remuneration Codes. These apply to MIFIDPRU Investment firms, Alternative Investment Fund Managers, and to companies that manage Undertakings for Collective Investment in Transferable Securities. We will keep under review these other remuneration regimes and will consider whether further changes are needed as appropriate.

Alternative proposals considered

- 2.29** In developing our proposals, several alternatives were considered, including making no changes to SYSC 19D. For the reasons set out in this CP, we consider the proposal presented to be the most appropriate.

Equality and diversity considerations

- 2.30** We have considered the equality and diversity issues that may arise from the proposals in this CP.
- 2.31** Overall, we do not consider that the proposals materially impact 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.
- 2.32** We welcome feedback on this.

Chapter 3

Proposals – application and proportionality

- 3.1** This chapter sets out our proposals for changes to the proportionality thresholds for the application of remuneration requirements by dual-regulated firms and to the malus and clawback requirements for firms who meet these thresholds.

Threshold for application of remuneration requirements to firms

Current approach

- 3.2** Under our existing approach in SYSC 19D, we set out criteria a firm must meet for the firm to be exempt from some of the remuneration requirements (see paragraphs 3.12 and 3.13 below).
- 3.3** For a UK bank, building society or UK designated investment firm to be exempt from some of the remuneration requirements, the firm currently needs to meet the following conditions:
- not be a 'large institution' as defined in Article 4(1) of the UK Capital Requirements Regulation (UK CRR)
 - have average total assets equal to or below £4 billion over the 4 years immediately preceding the current financial year
 - have average total assets greater than £4 billion and equal to or below £13 billion over the 4 years immediately preceding the current financial year, and meet the following additional criteria:
 - no obligations, or be subject to simplified obligations, for recovery and resolution planning purposes
 - a small trading book within the meaning of Article 94(1) of the UK CRR
 - the total value of its derivative positions held with trading intent does not exceed 2% of its total on- and off-balance-sheet assets and the total value of its overall derivative positions does not exceed 5%
 - it is 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
- 3.4** For an overseas firm (as defined in SYSC 19D 1.1R(d)) to be exempt from some of the remuneration requirements, the criteria outlined above should be assessed based on the activities of the UK branch. The criteria in relation to recovery and resolution planning and 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, do not apply to overseas firms.

- 3.5** These criteria broadly reflect the EU-wide approach under CRD V as transposed in the UK.

Proposed rule changes

- 3.6** To ensure more dual-regulated firms are subject to remuneration rules that are more proportionate to the risks these firms pose to consumers and markets in the UK, and broadly consistent with the PRA, we propose that in relation to a UK bank, building society or UK designated investment firm, the firm needs to meet either condition 1a or 1b set out in Box A below to be exempt from some of the remuneration requirements:

Box A: proposed proportionality criteria

Condition 1a: Size criteria

- have average total assets (which will be calculated in line with the approach in the PRA's Strong and Simple framework, this being a 3-year average) equal to or below £4 billion

Condition 1b: Size and other criteria

- have average total assets greater than £4 billion and equal to or below £20 billion (calculated as above), providing the firm meets all the conditions proposed by the PRA's [CP5/23](#), which will be set out in 2A of the Remuneration Part of the PRA Rulebook, namely (in summary):
 - trading book business at or under 5% of the firm's total assets and at or under £44 million
 - foreign exchange positions at or under 3.5% of own funds and at or under 2% of own funds on average
 - no commodities or commodity derivatives positions
 - no provision of clearing, transaction settlement, custody or correspondent banking services to a UK bank or building society, or non-UK credit institution, including by acting as an intermediary for a UK bank or building society or such a credit institution to access certain facilities. Firms can still satisfy this criterion if the only entities to which they provide these services are within their immediate group and the services are in Pound Sterling (GBP)
 - is not an operator of a payment system

- 3.7** In addition to the criteria outlined in Box A above, where the firm is part of a group containing another firm which is subject to the dual-regulated firms Remuneration Code on an individual basis, both firms must meet the criteria in Box A on an individual basis, consolidated basis and sub-consolidated basis. This means that there cannot be a group where one firm benefits from the proportionality-based exemptions and another does not; all dual-regulated firms within a group must be subject to the same remuneration rules. Our articulation of these group factors is different to the PRA's articulation.

- 3.8** Unchanged from our current rules in relation to overseas firms (as defined in SYSC 19D 1.1R(d)), the criteria outlined above in Box A and paragraph 3.7 should be assessed based on the activities of the UK branch (for a third country firm, the conditions in 1b of Box A above will be found in 2B of the Remuneration Part of the PRA Rulebook).

- 3.9** In proposing these changes, we have sought to take an approach that is generally consistent with the PRA's proposals to develop an approach more suitable and proportionate for the UK market. Broadly aligning our approach with that of the PRA will support these firms in understanding and complying with the various remuneration regulatory requirements and ensure they do not incur additional costs and complexities due to differing remuneration regimes.
- 3.10** We propose to make the other criteria outlined in condition 1b of Box A above ambulatory. This is explained in detail in Chapter 2 and would mean that references to the PRA Rulebook in the FCA Handbook would automatically update each time the PRA updates its rule.
- 3.11** Our proposed amendments are set out in full in Appendix 1.

Q1: Do you agree with our proposed proportionality criteria?

Requirements that do not apply where the proportionality criteria are met

Current approach

- 3.12** Under our current rules, dual-regulated firms that meet the proportionality criteria are exempt from the rules relating to deferral, payment in instruments and discretionary pension arrangements that apply to their Code staff.
- 3.13** Following the introduction of CRD V in 2020, our rules currently require all dual-regulated firms, irrespective of size or complexity, to comply with rules relating to the bonus cap, malus (where they operate deferral) and clawback for all Code staff. Under the previous CRD IV regime (in force until 28 December 2020), we permitted firms not to apply these rules where they met the proportionality criteria in force at the time.

Table 2: Overview of key remuneration rules

Requirement	Description
Bonus cap	Variable remuneration is restricted to 100% of fixed remuneration, or 200% with shareholder approval.
Deferral	An arrangement whereby a proportion of variable remuneration is awarded to an employee but is delivered to them in future. During this time the employee is not the legal owner of the remuneration.
Payment in instruments	An arrangement whereby a proportion of variable remuneration is awarded to an employee in a vehicle other than cash, for example, shares.
Malus	An arrangement that permits a firm to reduce the value of all or part of deferred variable remuneration before it has vested under certain conditions.
Clawback	An arrangement under which an employee must return ownership of an amount of variable remuneration paid in the past or which has already vested to the firm under certain conditions.
Discretionary pension arrangements	Enhanced pension benefits granted on a discretionary basis by a firm to an employee which are not granted under the terms of the company pension scheme.

Proposed rule changes

- 3.14** We propose to remove the requirement for dual-regulated firms meeting the proposed updated proportionality criteria set out above, to operate malus and clawback. These firms will continue to be exempt from the requirements relating to deferral, payment in instruments and discretionary pension arrangements.
- 3.15** Separately, with the PRA, we have consulted on the removal of the bonus cap for all firms ([CP22/28 \(PRA CP15/22\)](#)). This consultation closed on 31 March 2023 and we anticipate publishing our Policy Statement and final rules in Q3 2023.
- 3.16** All other requirements under SYSC 19D remain unchanged and continue to apply to firms meeting the proportionality criteria outlined above in Box A.
- 3.17** Removal of the requirement for dual-regulated firms meeting the updated proportionality criteria to operate malus and clawback is aligned to the rules previously in force under CRD IV. However, we encourage impacted firms to consider whether the continued use of malus and clawback supports their remuneration policies and practices and whether these features continue to promote sound and effective risk management and are aligned with driving healthy cultures and positive conduct.
- 3.18** Our proposed amendments can be found in full in Appendix 1.

Q2: Do you agree with our proposal to remove the requirement for dual-regulated firms who meet the updated proportionality criteria to operate malus and clawback?

- 3.19** In CP5/23, the PRA are also consulting on allowing firms that meet the updated proportionality criteria to be exempt from its rules relating to buy-outs (15A in the Remuneration Part of its Rulebook). At the time the PRA's rules were introduced on buy-outs, we did not make corresponding changes to SYSC 19D and as such, we are proposing no changes to our remuneration rules on buy-outs.

Proposed changes to associated non-Handbook Guidance

Proposed changes to FG20/4 General Guidance on Proportionality

- 3.20** We propose amendments to our General Guidance on Proportionality (FG20/4) to reflect our proposals above. This includes amending the description of the 3 proportionality levels to reflect the new thresholds for application.
- 3.21** Our proposed amendments can be found in Appendix 2.

Proposed changes to FG20/5 FAQs on remuneration

- 3.22** Our FAQs guidance (FG20/5) include questions on proportionality. We propose changes to our FAQs guidance to reflect the amendments to the application of proportionality.
- 3.23** Our proposed amendments can be found in Appendix 3.

Proposed changes to FG21/5 General guidance on the application of ex-post risk adjustment

- 3.24** We propose amendments to our General guidance on the application of ex-post risk adjustment (FG21/5) to reflect our proposals outlined above. This includes guidance on both malus and clawback, alongside in-year adjustments to variable remuneration.
- 3.25** We propose amendments to this guidance to clarify that our rules still require all dual-regulated firms to ensure that variable remuneration is only awarded on the basis of risk-adjusted performance set in a multi-year framework. This means that all firms, irrespective of size and complexity, should continue to consider, and make adjustments to, in-year variable remuneration at firm, business unit and / or individual level to reflect ex-post risk.
- 3.26** Our proposed amendments can be found in Appendix 4.

Q3: Do you agree with our proposed changes to our Non-Handbook guidance, including those changes outlined in both Chapters 3 and 4?

Date of application

3.27 Consistent with the PRA, we propose that firms are required to apply the amendments in this chapter from their next performance year beginning on or after the day following publication of the relevant Policy Statement.

Q4: **Do you agree that firms should apply the amended rules and guidance as set out in Chapter 3 from the next performance year beginning on or after the day following publication of the relevant Policy Statement?**

Chapter 4

Other minor changes

- 4.1** This chapter sets out our other proposed minor changes to the Handbook and associated non-Handbook Guidance. The proposed changes would result in aligning those rules in our Handbook with their equivalent in the PRA Rulebook.

Identification of Code staff

Current approach

- 4.2** SYSC 19D includes a requirement for dual-regulated firms to identify those individuals whose professional activities have a material impact on the firm's risk profile.
- 4.3** In SYSC 19D we refer to these individuals as Code staff, while CRD V and the PRA refer to these individuals as Material Risk Takers (MRTs).
- 4.4** CRD V included some criteria on the identification of risk takers within the CRD V text – these criteria have previously been embedded within SYSC 19D. Other criteria are included in Commission Delegated Regulation (EU) 2021/923 (MRT Regulation). SYSC 19D currently cross refers to the draft MRT Regulation, as the final regulations came into force post-Brexit.
- 4.5** During 2021, the PRA consulted on consolidating the MRT Regulation into the Remuneration Part of its Rulebook, with the corresponding Policy Statement published in December 2021 (PS28/12). At the time we committed to consult on making similar changes to clarify our approach for dual-regulated firms and highlighted that a firm operating in compliance with the relevant requirements of the Remuneration Part of the PRA's Rulebook would also be considered to be operating in compliance with our requirements.
- 4.6** Separately, because of the above approach, under SYSC 27 (Senior managers and certification regime (SM&CR): Certification regime), one of the FCA Certification Functions is material risk takers. Material risk taker for the purposes of SYSC 27 is as defined in SYSC 27.8.15 which currently cross-refers to the MRT Regulation.

Proposed rule changes – SYSC 19D

- 4.7** To align to the PRA's requirements on the identification of MRTs, and to address our previous commitment to revisit our approach, we propose to update SYSC 19D to now define Code staff as being those individuals identified under Chapter 3 of the Remuneration Part of the PRA Rulebook.

- 4.8** As part of this change, and to avoid unnecessary duplication, we will be removing our rules relating to the exclusion of staff by overseas firms, as these rules are fully embedded within the Remuneration Part of the PRA Rulebook and its associated Supervisory Statement, SS2/17 Remuneration.
- 4.9** We propose to make the definition of Code staff (and linked to this, material business unit) ambulatory. This is explained in detail in Chapter 2 and would mean that references to the PRA Rulebook in the FCA Handbook would automatically update each time the PRA updates its rule.
- 4.10** As outlined in our FAQs on remuneration (FG20/5) and consistent with the PRA, we consider the criteria outlined in Chapter 3 of the Remuneration Part of the PRA Rulebook to represent the minimum criteria for the identification of staff. Firms should continue to consider all types of risk, including prudential, operational, conduct and reputational risk, and identify employees who can expose the firm to material levels of risk as Code staff accordingly, even where the employee does not meet one of the prescribed criteria.
- 4.11** We believe that this alignment of SYSC 19D with the Remuneration Part of the PRA Rulebook simplifies the approach for firms in understanding and complying with our remuneration regulatory requirements. Further, as we already consider firms to be compliant with our rules on the identification of staff if they are compliant with the PRA Rulebook, we do not consider that these changes will have a material impact on firms.

Proposed rule changes – SYSC 27

- 4.12** To ensure alignment throughout the Handbook, we propose to remove the reference to the MRT Regulation in SYSC 27.8.15. The definition of a material risk taker for an SM&CR banking firm, including an EEA SM&CR banking firm, will now be defined as those employees identified as dual-regulated firms Remuneration Code staff.

Q5: Do you agree with our proposal to required firms to identify Code staff in line with Chapter 3 of the Remuneration Part of the PRA Rulebook (including the corresponding implications for SYSC 27)?

Proposed changes to FAQs on remuneration

- 4.13** We propose amendments to our FAQs on remuneration (FG20/5) to reflect our proposals as outlined above. This includes guidance on the identification of material risk takers (known in our rules as dual-regulated firms Remuneration Code staff).
- 4.14** This will include an update to the question in relation to who can be excluded as a material risk taker. Currently employees earning over EUR 1 million can only be excluded in 'exceptional circumstances'. We propose to update this EUR 1 million threshold to £880,000 to align with the threshold defined in the PRA Supervisory Statement, SS2/17 Remuneration.

Other minor wording changes

4.15 We propose the following other minor changes:

- To add additional wording to SYSC 19D.3.67.8R(b)(ii)(C) such that it now reads “the cost of providing it at the time of the award” rather than “the cost of providing it”.
- To update SYSC 19D Annex 1.6 from “For the purposes to this chapter, ...” to “For the purposes of this annex, ...”.
- Subject to the outcome of the joint FCA and PRA CP regarding removal of the bonus cap (CP22/28 (PRA CP15/22)), to remove paragraph 4.4 from our FAQs on remuneration (FG20/5). This paragraph relates to the bonus cap and would no longer be applicable if the proposals to remove the bonus cap proceed. As we are making other changes to our Non-Handbook guidance, we consider this an appropriate time to propose this change.

Q6: Do you agree with our other minor proposed wording changes to SYSC 19D?

Date of application

4.16 We propose that the amendments in this chapter would come into force and apply immediately following publication of the relevant Policy Statement.

Q7: Do you agree that the amended rules and guidance as set out in Chapter 4 should come into force immediately following publication of the relevant Policy Statement?

Annex 1

Questions in this paper

- Q1:** Do you agree with our proposed proportionality criteria?
- Q2:** Do you agree with our proposal to remove the requirement for dual-regulated firms who meet the updated proportionality criteria to operate malus and clawback?
- Q3:** Do you agree with our proposed changes to our Non-Handbook guidance, including those changes outlined in both Chapters 3 and 4?
- Q4:** Do you agree that firms should apply the amended rules and guidance as set out in Chapter 3 from the next performance year beginning on or after the day following publication of the relevant Policy Statement?
- Q5:** Do you agree with our proposal to require firms to identify Code staff in line with Chapter 3 of the Remuneration Part of the PRA Rulebook (including the corresponding implications for SYSC 27)?
- Q6:** Do you agree with our other minor proposed wording changes to SYSC 19D?
- Q7:** Do you agree that the amended rules and guidance as set out in Chapter 4 should come into force immediately following publication of the relevant Policy Statement?
- Q8:** 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. Section 138I also provides that if, in our opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, the CBA must include a statement of our opinion and an explanation of it.
3. This CBA focuses on the costs and benefits associated with our proposals to amend the rules on proportionality and the remuneration requirements (the relevant remuneration requirements being those regarding malus and clawback). As discussed in the Consultation Paper (CP), we propose to alter our General Guidance on Proportionality (FG20/4), FAQs guidance (FG20/5) and General guidance on the application of ex-post risk adjustment (FG21/5); 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 SYSC 19D.
4. As discussed in Chapter 4 of this CP, we propose to make other minor amendments to SYSC 19D and SYSC 27, in part to ensure our rules align with the Remuneration Part of the PRA Rulebook; these proposals have not been taken into account in the CBA. This is because the proposals represent minor amendments to SYSC 19D and SYSC 27 which we do not believe will have a material impact on firms.
5. Dual-regulated firms are also subject to the PRA Rulebook. This CBA should be read in conjunction with the CBA accompanying the PRA's consultation paper on Remuneration: Enhancing proportionality for small firms (CP5/23).

Problem and rationale for our intervention

6. The proportionality rule within SYSC 19D enables firms to comply with the remuneration requirements on a proportionate basis, taking into consideration their size, internal organisation and the nature, scope and complexity of their activities. The implementation of the CRD V requirements into our Handbook reduced the extent to which firms could benefit from the proportionality rule and brought more firms into scope of additional rules (namely those relating to the bonus cap, malus and clawback).

7. In February 2023, the PRA published a consultation relating to proposed changes to the Remuneration Part of the PRA Rulebook. In its consultation, the PRA highlighted the challenges faced by some firms in complying with the current remuneration regime, in particular, that the requirements had been costly or burdensome for some firms. There was also a view from some smaller, less complex firms, that the current requirements are not considered proportionate relative to the risks they pose to consumers and the market.
8. Not changing SYSC 19D in a way that is broadly in line with the changes proposed by the PRA would result in two different sets of rules applying to firms. This could create challenges and cause confusion for these firms in understanding and complying with the rules.
9. It is important that SYSC 19D is proportionate to the risks firms pose to safety and soundness and consumers. It should also support our objectives.

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 SYSC 19D. This CBA focuses on the proposals which constitute a change to SYSC 19D, as discussed in Chapter 3 of the CP.
11. The changes that we propose to make are largely consistent with the PRA's proposals and will affect only a small number of the rules in SYSC 19D.
12. The proposed changes have the potential to impact all dual-regulated firms with average total assets of equal to or below £20 billion, as there is no change to SYSC 19D that impacts firms with total assets above £20 billion.
13. This CBA draws on responses to CP20/14 (Updating the dual-regulated firms Remuneration Code to reflect CRD V) and waiver applications by firms received since the implementation of CRD V.

Costs and benefits

Costs

14. As we are proposing an approach broadly consistent with the PRA's proposed approach, the impact on firms of our proposed changes is principally driven by the PRA's changes. We expect that firms will incur one-off costs for familiarisation and implementation from the proposed changes, as captured in the PRA's [CP5/23](#).
15. As for FCA specific costs, all impacted firms will incur one-off familiarisation and gap analysis costs from our proposed changes, in addition to the familiarisation and gap analysis costs incurred from the PRA's changes.

16. Therefore, the incremental costs incurred from our changes will be marginal and of a lesser magnitude than the ones driven by the PRA's changes.
17. We describe the costs we expect from our proposals qualitatively as we do not believe quantitative costs can be reliably estimated.
18. At the time of implementation of the remuneration requirements of CRD V (CP20/14), we considered that the proposals at the time would support firms in better incentivising positive behaviours in employees, and improve culture and design-making, resulting in fewer actions and decisions being taken that could lead to misconduct and harm. As such, removing specific requirements for smaller, less complex firms could potentially increase the risk that these firms pose to consumers and the market. However, these requirements did not apply to smaller, less complex firms prior to the implementation of CRD V.
19. Collectively, our rules and guidance should continue to support healthy firm cultures and discourage behaviours that can lead to misconduct and poor consumer outcomes. Other remuneration rules that promote sound and effective risk management and are aligned with driving healthy cultures and positive conduct within firms will continue to apply, alongside the clarification of our expectations regarding ex-post risk adjustment.
20. As such, we do not consider that removing these requirements nor increasing the assets threshold for firms to benefit from the application of proportionality for remuneration purposes would lead to a significant change in risk taking on its own.

Familiarisation and gap analysis costs

21. We anticipate firms impacted by the proposals in this CP will incur costs to read the proposals and familiarise themselves with the details of the requirements. All dual-regulated firms will need to determine whether they are, or continue to be, eligible to apply the updated proportionality criteria (gap analysis). As firms will have already familiarised themselves with the PRA proposals and undertaken gap analysis, we consider the additional costs to firms from our proposals to be minimal.

Implementation cost

22. Firms already monitor on an ongoing basis the extent to which they meet the current proportionality criteria. Some of the proposed proportionality criteria are different to the current criteria, meaning firms will now have to consider and monitor alternative criteria, as outlined in Chapter 3 of our CP. As our proposals are broadly similar to those proposed by the PRA in its CP, and the proposed criteria reflect criteria firms will regularly monitor already (albeit for non-remuneration purposes), we consider it unlikely that firms will incur additional costs over and above any costs already normally incurred through business-as-usual activities.
23. Firms will need to consider whether to make changes to their current remuneration structures, and to what extent. Firms will need to consider the remuneration structures that currently apply to their Code staff and decide what features should apply going forward. There will be a cost to firms in undertaking this analysis and decision making.

24. If firms choose to make changes to their remuneration structures (or if they are required to due to no longer meeting the proposed proportionality criteria outlined in Chapter 3 of our CP), this could introduce some one-off costs of adapting remuneration structures. There will also be a cost in adapting remuneration policies and processes to allow for such changes, a potential cost of updating employee contracts (depending on how these are currently worded) and a cost in communicating the changes to impacted employees.
25. In considering whether to make changes to remuneration structures, firms will consider whether the benefits of the changes outweigh the costs.

Benefits

26. The PRA set out the expected benefits of its proposed changes in its consultation ([CP5/23](#)). We expect to see similar benefits.
27. We believe our proposals will help us achieve our objectives of enhancing both competition and competitiveness, while continuing to promote sound and effective risk management and are aligned with driving healthy cultures and positive conduct within firms. This, in turn, will deliver benefits to firms, consumers and the market.
28. We describe the benefits we expect from our proposals to firms, the wider economy and the FCA qualitatively, as we do not believe these can be reliably estimated.

Benefits to firms

29. Firms will benefit from increased flexibility to determine their own approach to the structure of remuneration for their Code staff. Impacted firms will be able to choose whether, and to what extent, to implement the proposed changes outlined. Impacted firms would be free to choose to opt for a change if they believed the benefits of changing remuneration structures outweighed the costs.
30. Impacted firms may experience a reduction in the costs of complying with the requirements relating to malus and clawback. These costs form a part of the total compliance costs for the CRD V regime. The PRA sent a voluntary survey to firms on the impact to these firms of the implementation of the remuneration requirements of CRD V in August 2022. The survey was aimed at small UK banks, building societies, and designated investment firms. The findings from this survey are discussed in the PRA's CBA ([CP5/23](#)).
31. Should firms choose to make changes to their remuneration packages, this may improve their ability to attract and retain highly qualified individuals from within the financial services sector or other sectors such as the technology sector.
32. The proposed changes to the proportionality criteria may provide headroom for firms to grow and evolve before being subject to more remuneration requirements.
33. Our proposals to update our General guidance on the application of ex-post risk adjustment ([FG21/5](#)) will continue to ensure that firms incentivise positive behaviours in staff and improve culture and decision-making.

Benefits to the wider economy and consumers

- 34.** The proposals may enhance the medium to long-term growth and competitiveness of the UK economy. Being subject to the proposed remuneration regime could increase the attractiveness of the UK as a base for small firms, encourage firms to grow or enter new business lines, or encourage new players into the market. The proposals may also attract key talent to the UK financial services sector.
- 35.** The changes may also help UK firms more effectively compete when doing business in jurisdictions where there are no prescriptive rules for Code staff, thereby promoting UK competitiveness in global financial markets.
- 36.** Our proposed changes to our General Guidance on the application of ex-post risk adjustment ([FG21/5](#)) will continue to ensure firms' remuneration policies and processes positively influence the behaviour and conduct of Code staff through sound and effective risk management by appropriately aligning the long-term interests of both firms and their Code staff.

Benefits to the FCA

- 37.** Since the implementation of CRD V, we have seen an increase in the number of modification requests where proportionality was a relevant consideration. This poses an administrative burden on us (and the firms), both at the point of application but also at the point of expiry and potential renewal that is disproportionate to the benefit. We consider that our proposals should result in a decrease in FCA time and resources in considering such modification requests.

Summary

- 38.** Overall, we consider that the benefits of increased flexibility for impacted firms (and the associated impact on recruitment and retention) and wider economic benefits outweigh the potential small costs from our proposals. Dual-regulated firms will incur costs to determine whether they are, or continue to be, eligible to apply the updated proportionality criteria. Firms who meet the updated proportionality criteria will need to decide whether to make changes to their remuneration packages and they can choose to continue with their current approach if they consider the costs of change outweigh the benefits.

Q8: 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 His 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 primarily intended to advance the FCA's operational objective of enhancing competition in the interests of consumers. They are also relevant to the FCA's objective of maintaining market integrity and protecting consumers.
8. Our proposals in this CP seek to enhance competition through implementing remuneration requirements that are more proportionate to the risks firms pose to consumers and the market, while continuing to ensure that firms establish and maintain remuneration policies and practices that promote effective risk management and drive healthy cultures. In doing so, this may in turn contribute to firms' ability to attract and retain highly qualified individuals, reduce compliance costs (which can be redirected elsewhere), grow their business or enter new business lines. Being subject to this updated remuneration regime could also improve the attractiveness of the UK as a base for small firms or encourage new entrants into the market.
9. While our proposals do not have direct implications for consumers, the proposed changes seek to continue to promote sound and effective risk management, which will contribute to consumers being treated appropriately.
10. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they aim to provide greater flexibility to firms in determining their remuneration policies and practices, allowing firms to apply remuneration requirements that are proportionate to the risks they pose to consumers and the market. 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 increase the extent to which dual-regulated firms can apply the remuneration requirements in a proportionate manner. Enabling more firms to benefit from proportionality and widening the scope of the remuneration requirements that can be disapplied, may reduce the number of modification requests the FCA receives. In turn, this should reduce resource pressure on the FCA in processing modifications and renewals of these.
13. In addition, our proposals would amend SYSC 19D in a way that maintains broad consistency with the changes the PRA is consulting on to the Remuneration Part of its Rulebook. 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

14. The CBA in Annex 2 sets out the costs and benefits of our proposals. As outlined in our CBA, firms who meet the updated proportionality criteria would have the flexibility to consider the extent to which to make changes to their remuneration policies and practices. If a firm considers the costs of a change outweigh the benefits they could continue with their current approach.

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

15. Our proposals seek to apply more proportionate remuneration requirements to dual-regulated firms by providing firms in scope of these proposals with greater flexibility over their remuneration policies and practices. In turn, we anticipate this could improve the attractiveness of the UK as a place to do business, encourage new entrants into the market or support existing firms to enter new business lines. Changes to the proportionality criteria may provide firms with more headroom to grow their business (without being subject to additional remuneration requirements). The increased flexibility could also help with attracting talent to the sector (both from other sectors and jurisdictions). Any of these outcomes would support the sustainable growth of the economy of the United Kingdom.
16. More proportionate remuneration requirements for dual-regulated firms also supports the proposed new secondary objective to facilitate the medium to long-term growth and international competitiveness of the UK economy.

The general principle that consumers should take responsibility for their decisions

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

The responsibilities of senior management

18. Our proposals support the aim of the SM&CR to make individuals accountable for their conduct and competence. In line with their responsibilities under SM&CR and SYSC 19D, relevant Senior Managers are expected to ensure that their firms' remuneration policies and practices reflect SYSC 19D. Chairs of remuneration committees have ultimate responsibility for ensuring that their firms' remuneration policies and practices comply with SYSC 19D.

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

19. 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.

20. We consider that the impact of the proposed rule changes on mutuals is consistent with the impact on other firms, as the proposals would apply equally to all dual-regulated firms, including mutuals.

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

21. 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

22. This consultation 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.
23. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). We do not consider that this is relevant to our proposals.

Expected effect on mutual societies

24. The FCA expects the proposals in this paper to have an impact on certain mutual societies. We are proposing changes to SYSC 19D, which applies to dual-regulated firms, including building societies. Building societies are one type of mutual society.
25. Firms in scope of our proposals must comply with the remuneration principles in a manner appropriate to their size, internal organisation and the nature, scope and 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.
26. Therefore, while 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 SYSC 19D.

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

- 27.** 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. We consider that the proposals will support enhancing competition in the UK.

Equality and diversity

- 28.** 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, to and foster good relations between people who share a protected characteristic and those who do not.
- 29.** 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 paragraph 2.31 of the CP.

Legislative and Regulatory Reform Act 2006 (LRRRA)

- 30.** 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 our proposals are:
- transparent – we are consulting on our proposed guidance changes
 - accountable – stakeholders will have an opportunity to feedback on our proposals and we will consider all evidence received prior to finalising the rules and guidance
 - proportionate – we consider our proposals to result in a more proportionate regime for impacted firms
 - consistent – the proposed changes to our guidance will help clarify our expectations of firms, resulting in a more consistent application of the requirements
 - targeted only at cases in which action is needed – we consider that these proposals are needed given the evidence from some firms set out in our CBA
- 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

Abbreviation	Description
CBA	cost benefit analysis
CP	consultation paper
CRD	Capital Requirements Directive
EEA	European Economic Area
EU	European Union
EUR	Euro
FAQs	Frequently Asked Questions
FCA	Financial Conduct Authority
FG	Finalised Guidance
FSMA	Financial Services and Markets Act 2000
GBP	British Pound Sterling
LRRA	Legislative and Regulatory Reform Act 2006
MRT	Material Risk Taker
PRA	Prudential Regulation Authority
SM&CR	Senior Managers & Certification Regime
SS	Supervisory Statement
SYSC	Senior Management Arrangements, Systems and Controls
UK CRR	UK Capital Requirements Regulation

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Appendix 1

Draft Handbook text

SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority ("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 listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the FCA 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:**" or "*Editor's 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 Instrument 2023.

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 definition in the appropriate alphabetical position. This text is not underlined.

sub-consolidated basis (in relation to a group to which the *UK CRR* applies) has the meaning given in Article 4(1)(49) of the *UK CRR*.

Amend the following definitions as shown.

average total assets means the ~~arithmetic mean of the *firm's* total assets on:~~ recent average of the *firm's* total assets calculated as follows:

(1) for a *firm* within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), ~~each of its last four *accounting reference dates*; or:~~

(a) by identifying the occasions (due dates) in the preceding 36 months by which the *firm* was required to report its total assets; and

(b) by calculating the arithmetic mean of the total assets that the *firm* was required to report on those occasions;
or

(2) for a *firm* within the scope of SYSC 19D.1.1R(1)(d), ~~31 December of each of the preceding four years.~~ by calculating the arithmetic mean of the *firm's* total assets over the last three *accounting reference dates*.

dual-regulated firms Remuneration Code staff (~~in relation to a *dual-regulated firm* and an *overseas firm* in SYSC 19D.1.1R(1)(d) that would have been a *UK bank, building society or UK designated investment firm* if it had been a *UK domestic firm*) has the meaning in SYSC 19D.3.4R which is, in summary, an *employee* 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 the *Material Risk Takers Regulation 2020*. means a 'material risk taker' as defined in Chapter 3 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time).~~

material business unit has the meaning in article 4 of the *Material Risk Takers Regulation 2020*. has the meaning given to it by Chapter 1.3 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time).

Delete the following definition. The text is not shown struck through.

*Material Risk Takers
Regulation 2020*

means the draft regulatory technical standards on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material impact on an institution's risk profile, published by the *EBA* on 18 June 2020, which is applied subject to the omission of the final sentence of article 7(4).

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.

[*Editor's note:* references in this Annex to provisions of the PRA Rulebook appear as if the PRA Rulebook: CRR Firms: Remuneration Instrument 2023 was made in the form consulted on in PRA CP5/23 (<https://www.bankofengland.co.uk/prudential-regulation/publication/2023/february/remuneration-enhancing-proportionality-for-small-firms>).]

19D Dual-regulated firms Remuneration Code

...

19D.3 Remuneration principles

Application: groups

...

- 19D.3.2 R (1) For a *firm* within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or B (1)(c), the ~~rules~~ provisions in (3) do not apply if:
- (a) ~~the firm is not a large institution;~~ and [deleted]
 - (b) ~~the firm's average total assets, calculated on an individual basis in accordance with the UK legislation that implemented CRD V and the UK CRR,~~ are less than or equal to £4 billion; and
 - (c) where the firm is part of a group that contains any other firm which is subject to these rules on an individual basis, that other firm:
 - (i) has average total assets that are less than or equal to £20 billion on an individual basis, a consolidated basis and a sub-consolidated basis; and
 - (ii) meets the relevant criteria in SYSC 19D.3.2CR(1).
- (2) For a *firm* within the scope of SYSC 19D.1.1R(1)(d), the ~~rules~~ provisions in (3) do not apply if ~~the average total assets that relate to the activities of the UK branch are less than or equal to £4 billion;~~
- (a) the average total assets that relate to the activities of the UK branch are less than or equal to £4 billion; and
 - (b) where the firm is part of a group that contains any other firm which is subject to these rules on an individual basis, that other firm:
 - (i) has average total assets that are less than or equal to £20 billion on an individual basis, a consolidated basis and a sub-consolidated basis; and

(ii) meets the relevant criteria in SYSC 19D.3.2CR(1).

(3) The ~~rules~~ provisions referred to in (1) and (2) 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); and
- (d) SYSC 19D.3.61R(2), (3), (3A), (4) and (5), SYSC 19D.3.62R, SYSC 19D.3.63E and SYSC 19D.3.64R (performance adjustment (affordability, malus, clawback)).

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

(4) If a firm has not yet been required to report its total assets, the calculations in respect of average total assets shall instead be done on the basis of the firm's reasonable forecast of its total assets as at the first occasion on which it will be required to report them.

- 19D.3.2 R (1) The value in SYSC 19D.3.2BR(1)(b) or (2)(a) is increased to £13 billion if:
- (a) the firm meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the UK CRR; and for a firm within the scope SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), the firm meets the conditions set out in 2A of the Remuneration Part of the PRA Rulebook (as amended from time to time); or
 - (b) the increase is appropriate taking into account the firm's nature, the scope and complexity of its activities, its internal organisation and (if applicable) the characteristics of the group to which it belongs. for a firm within the scope of SYSC 19D.1.1R(1)(d), the firm meets the conditions set out in 2B of the Remuneration Part of the PRA Rulebook (as amended from time to time).
- (2) For a firm within the scope of SYSC 19D.1.1R(1)(d), the criteria referred to in (1)(a)(b) must be assessed on the basis of the activities of the UK branch.

~~[Note: article 94(4) of CRD V]~~

Application: categories of staff and proportionality

...

- 19D3.4 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 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 6 or 7(1) of the *Material Risk Takers Regulation 2020* if it had applied to 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:~~

~~(A) £440,000; and~~

~~(B) 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 V]~~

(2) ~~An overseas firm in SYSC 19D.1.1R(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 7(1) of the *Material Risk Takers Regulation 2020*;~~

(ii) ~~would not meet any of the criteria in article 6 of the *Material Risk Takers Regulation 2020*; and~~

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

and

- (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 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*. [deleted]~~

(3) [deleted]

~~[Note: article 92(2) of CRD V and articles 6 and 7 of the *Material Risk Takers Regulation 2020*.]~~

19D.3.4 G (1) Dual-regulated firms Remuneration Code staff is a term defined in the *Handbook Glossary* by reference to the requirements of Chapter 3 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time).

(2) Expectations in relation to the identification of dual-regulated firms Remuneration Code staff are considered further in non-*Handbook* Guidance.

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 £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. [deleted]~~

...

Effect of breaches of the Remuneration Principles

...

19D.3.6 R ...
7

- (8) In relation to (7):
 - (a) references to *remuneration* are to *remuneration* awarded or paid in respect of the relevant performance year;
 - (b) the amount of any *remuneration* is:
 - (i) if it is money, its amount when awarded;
 - (ii) otherwise, whichever of the following is greatest:
 - (A) its value to the recipient when awarded;
 - (B) its market value when awarded; and

(C) the cost of providing it, at the time of the award;

...

...

19D **Detailed provisions on voiding and recovery (SYSC 19D.3.66R and**
Annex **SYSC 19D.3.67R**
1

Rendering contravening provisions of agreements void		
...		
6	R	For the purposes of this chapter <u>annex</u> , it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the <i>United Kingdom</i> , or a part of the <i>United Kingdom</i> .
...		

...

27 **Senior managers and certification regime: Certification regime**

...

27.8 **Definitions of the FCA certification functions**

...

Material risk takers

...

27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
(1) An <i>SMCR banking firm</i> , including an <i>EEA SMCR banking firm</i>	Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the <i>firm</i> in column (1) of this row (1). This includes any person who meets any of the criteria set out in articles 6 to 8 of the <i>Material Risk Takers Regulation 2020</i> (criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile).
...	

...

After SYSC TP 12, insert the following new section, SYSC TP 13. This text is not underlined.

TP 13 Updates to the dual-regulated firms Remuneration Code transitional provision

	Material to which the transitional provision applies	R/G	Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1	SYSC 19D.3.2B, SYSC 19D.3.2C and SYSC 19D.3.4	R	A <i>firm</i> must apply SYSC 19D as it applied on [the <i>day</i> before the date of commencement] to <i>remuneration</i> awarded in respect of a performance year starting before [date of commencement].	The date of commencement of this instrument	The date of commencement of this instrument

Appendix 2

Draft General Guidance on Proportionality

Finalised Guidance

FG23/[XX]0/4 General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D)

December 2020 [month] 2023

1 Part A – Introductions 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 1.89 and 1.910 make provision about the interpretation of this guidance statement. Certain expressions either bear the meaning given in the Handbook Glossary or in Table 1.
- 1.3 Where SYSC TP 9 means that a firm must continue to apply the rules and guidance in SYSC 19D.3 as it stood on the 28 Dec 2020, firms should consider the version of this guidance in effect on that date.

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 17 December 2020 the guidance was further revised as FG 20/4 and has effect from 29 December 2020. On [date] [month] 2023 the guidance was further revised as FG 23/[XX] and has effect from [date] [month] 2023.

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).~~

~~1.4 The Dual-regulated firms Remuneration Code requires a firm to apply requirements in SYSC 19D.3 to Dual-regulated firms Remuneration Code staff. However, in order to ensure the rules apply in a proportionate way, SYSC 19D.3.2BR and SYSC 19D.3.2CR provide that where certain criteria are met (including criteria in relation to groups) a firm will be exempt from some of the requirements outlined in SYSC 19D.~~

~~1.5 SYSC 19D.3.3R(2) (which is often referred to as 'the Dual-regulated firms remuneration principles proportionality rule') also makes clear that requires a firm, when establishing and applying the total remuneration policies for Dual-regulated firms Remuneration Code staff, to comply with a firm should comply with SYSC 19D.3R in a way that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities. This is designed to ensure the rules apply in a way that is proportionate for individuals who are Dual-regulated firms Remuneration Code staff.~~

~~1.6 This guidance provides a framework for this our supervisory approach and a broad indication of our expectations. This guidance explains how we determine which firms fall within each proportionality level.~~

~~In addition to these requirements in the rules, we also take a proportionate approach to our supervision of and have different expectations of how firms apply the proportionality rule, depending on their size. Tprovides this , by reference to broad 'proportionality levels'. This guidance explains how we determine which firms fall within each level.~~

Guidance on the Dual-regulated remuneration principles proportionality rule

~~1.5 General guidance is given in relation to specific aspects of the Dual-regulated firms remuneration principles proportionality rule in SYSC 19D.3.3R itself.~~

~~1.6 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.~~

Arrangement of guidance statement

1.7 This general guidance statement is divided into the following parts:

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

Interpretation

- 1.8 This guidance statement is to be interpreted as if it was an annex to SYSC 19D.3.3R. In consequence, GEN 2 (interpreting the Handbook) applies to the interpretation of this guidance statement.
- 1.9 This guidance statement uses expressions that are defined in the Handbook Glossary. Where an expression in italics is not defined in the Glossary, it has the meaning given by the following table:

Table 1

Defined expression	Definition
group	has the meaning given in the Glossary in paragraph (3B)
overseas Dual-regulated Remuneration Code firm	an overseas firm that 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 UK and had obtained whatever authorisation for doing so as required under the Act
proportionality level	has the meaning given in paragraph 2.2, and references to proportionality level one, etc. are to be construed accordingly
Dual-regulated Remuneration Code firm	a firm specified in SYSC 19D.1.1 R(1)(a)-(d)
average total assets	has the meanings given in paragraph 3.3
relevant date	has the meanings given in paragraph 3.3
solo Dual-regulated Remuneration Code firm	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 3 categories:
- proportionality level one
 - proportionality level two
 - proportionality level three
- 2.3 The process by which firms are divided into proportionality levels is provided in Part C.
- 2.4 The proportionality levels provide a framework for our supervisory approach and a broad indication of our expectations for how firms should comply with 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.
- 3.2 To ascertain its proportionality level, a Dual-regulated Remuneration Code firm 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 3.3).
 - If the firm is part of such a group, its proportionality level will depend on a two-stage process (as provided in paragraph 3.4).

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.

Solo Dual-regulated Remuneration Code firms

- 3.3 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 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.
 - In Table 2, 'average total assets' means:
 - ~~– for the purpose of identifying whether a firm is a proportionality level 3 firm, the meaning given in the Handbook Glossary, which is:~~
 - ~~– for a Dual-regulated Remuneration Code firm, the average of the firm's total assets on the occasions (due dates) in the preceding 36 months by which the firm was required to report its total assets~~
 - ~~– a Dual-regulated Remuneration Code firm, the average of the firm's total assets on the firm's last four relevant dates~~
 - ~~– 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 UK on the firm's last three accounting reference~~~~four relevant~~ dates
 - ~~– for the purposes of identifying whether a firm is a proportionality level 1 or 2 firm:~~

- for a Dual-regulated Remuneration Code firm, the average of the firm's total assets over the last four accounting reference dates
- 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 UK on the firm's last four accounting reference dates
- 'Relevant date' means:
 - for a Dual-regulated Remuneration Code firm, an accounting reference date
 - for an overseas Dual-regulated Remuneration Code firm 'relevant date' means 31 December
- The limit confining 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 banks (among others). We consider that a firm which needs to ascertain its average total assets should apply the valuation requirements set out in the UK CRR.
- A firm that awards remuneration in currencies other than Sterling may use, for the purposes of thresholds set out in Sterling, either the exchange rate used internally for accounting purposes, or the average of daily spot rates over the performance year, based on the daily spot rates provided on the Bank of England's website.

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

Proportionality level	Average total assets of relevant date of firm*
Proportionality level one	Exceeding £50bn
Proportionality level two	Either: <ul style="list-style-type: none"> (i) Exceeding £2013bn; or (ii) Not exceeding £2013bn <u>and but</u> does not satisfy the 2 conditions in SYSC 19D.3.2BR2CR(1)
Proportionality level three	Either: <ul style="list-style-type: none"> (i) Not exceeding £2013bn and satisfies the 2 conditions in SYSC 19D.3.2CBR(1); or (ii) Not exceeding £4bn

* In order to determine the proportionality level into which a firm falls, a firm should first determine whether it meets the proportionality level three test.

Groups with more than one Dual-regulated Remuneration Code firm

- 3.4 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.
4. For the purposes of (3), proportionality level one is the highest and proportionality level three is the lowest.

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~~ As explained above, the proportionality levels provide a framework for our supervisory approach, and a broad indication of our expectations for how firms should apply the remuneration principles proportionality rule.

Firms to continue to consider proportionality in their individual circumstances

- 4.2 Once a firm has determined into which proportionality level it would fall, the firm will still then need to consider ~~the application of the~~ how it should apply the Dual-regulated firms remuneration principles proportionality rule ~~to~~ based on 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. For example:
1. Firm A is a global bank with 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 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 average total assets of £~~2~~15bn and a comparatively simple, conservative business model. However, it does not satisfy the ~~two~~ conditions in SYSC 19D.3.2BCR(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.

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

Dual-regulated firms Remuneration Code staff introduction

- 5.1 SYSC 19D.3.35R sets out when a firm is not required 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 can 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.

Part-year Dual regulated firms Remuneration Code staff

- 5.2 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 less than 12 months. The full threshold for application of remuneration requirements in SYSC 19D.3.35R falls to be considered in light of the fixed and variable remuneration awarded to A in A's capacity as Dual-regulated firms Remuneration Code staff. Firms are expected to establish the amount of remuneration awarded to A during the period of the performance year where they had been Dual-regulated firms Remuneration Code staff and assess this against the conditions in SYSC 19D.3.35R.

Appendix 3

Draft Frequently asked questions on remuneration

Finalised Guidance

FG ~~23/[XX]20/5~~ Dual-regulation firms Remuneration Code (SYSC 19D) – Frequently asked questions on remuneration

[month] 2023 December 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 This guidance uses expressions that are defined in the Handbook Glossary. Where an expression is not defined in the Glossary, it has the meaning (including the plural) given in the following table:

Defined expression	Definition
EBA Guidelines	The <u>European Banking Authority’s published Guidelines on sound remuneration policies</u> 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

Defined expression	Definition
FCA's Dual-regulated firms Remuneration Code	The Financial Conduct Authority Dual-regulated firms Remuneration Code under SYSC 19D
Group	Has the meaning given in the Glossary in paragraph (3B)
Material risk takers	Has the meaning of Dual-regulated firms Remuneration Code Staff in SYSC 19D.3.4R
Proportionality Guidance	Means the guidance referred to in paragraph 1.4, bullet points 2, 3 and 4
Proportionality level	Has the meaning given in paragraph 2.2 of the General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D)

1.3 This guidance statement has effect from [date] [month] 2023~~29 December 2020~~. This guidance applies to all firms that fall within the scope of our Dual-regulated firms Remuneration Code in SYSC 19D, namely:

- banks
- building societies
- UK designated investment firms
- certain overseas firms as defined in SYSC 19D.1.1R(1)(d)

Other firms may also find this document useful to understand our expectations about firms' remuneration policies and practices.

1.4 You should read our guidance on remuneration in conjunction with our other general guidance documents:

- General guidance on the application of ex-post risk adjustment to variable remuneration
- ~~• 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 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 19D.

1.6 Where SYSC TP 9 means that a firm must continue to apply the rules and guidance in SYSC 19D.3 as it stood on the 28 December 2020, firms should consider the version of this guidance in effect on that date.

This guidance statement was initially issued on 3 May 2017 as final guidance. On 17 December 2020, the guidance was revised as FG20/5 and has effect from 29 December 2020. On [date] [month] 2023, the guidance was further revised as FG23/[XX] and has effect from [date] [month] 2023.

Background

- 1.7 The EBA Guidelines set out requirements regarding remuneration policies that apply to 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 our Dual-regulated firms 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 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 19D.3.4R, firms must identify employees in line with Chapter 3 of the Remuneration Part of the PRA Rulebook, these being 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 6 and 7(1) of the Material Risk Takers Regulation 2020.~~
- 2.2 The types of professional activity and the risks inherent in these are not limited under 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 Dual-regulated firms Remuneration Code requirements are applied in a proportionate way. Once material risk takers have been identified, the application thresholds for individuals and the dual-regulated firms remuneration principles proportionality rule can then be applied to determine the way in which certain 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 terms of the Material Risk Takers Regulation 2020 for firms to identify their material risk takers using both qualitative and quantitative criteria.~~ 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 set out in Chapter 3 of the Remuneration Part of the PRA Rulebook Article 6 of the Material Risk Takers Regulation 2020 and any other additional criteria set by the firm to identify all material risk takers. Chapter 3 of the Remuneration Part of the PRA Rulebook The 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 set out ~~in Chapter 3 of the Remuneration Part of the PRA Rulebook Article 7(1) of the 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, firms may consider excluding an individual from being identified as a material risk taker if they have only been captured based on step 2 above, subject to prior PRA approval ~~as outlined in the PRA's Supervisory Statement (SS2/17) under Article 7(3) of the Material Risk Takers Regulation 2020~~ (see Question 3 below).

4. Apply the proportionality framework.

After steps 1, 2 and 3 above, 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 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.
- 2.6 For those earning more than ~~£880,000 we expect firms to provide additional explanatory reasoning, in particular concerning the individual role and the impact on the risk profile of the firm. €1 million, Article 7(4) of the Material Risk Takers Regulation 2020 provides that 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 demonstrate the existence of exceptional circumstances.~~

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 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:
- 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 us 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 entities that are not in scope of SYSC 19D but are within the same UK consolidation group as a firm with 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 firm in scope of the Dual-regulated firms Remuneration Code, but are not themselves in scope of that Code, will, subject to limited exceptions, need to apply the Dual-regulated firms Remuneration Code to those staff 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 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 (ie a firm subject to ~~SYSC 19A~~, SYSC 19B, ~~SYSC 19C or~~ SYSC 19E or SYSC 19G) but their role has a material impact on the group's risk profile, then the consolidating institution will need to ensure that the Dual-regulated firms Remuneration Code is complied with for that individual.
- 4.3 Where there is a conflict between the Dual-regulated firms Remuneration Code and the sectoral requirements, then the sectoral requirements apply. Using as an example 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.~~

Q6 Can a firm that is subject to a Remuneration Code which is not the Dual-regulated firms Remuneration Code and is part of a UK consolidation group with a firm in scope of the dual-regulation firms Remuneration Code apply its own sectoral remuneration principles proportionality rule for all of its staff?

- ~~4.54.4~~ No – if a firm subject to ~~SYSC 19A~~, SYSC 19B, ~~SYSC 19C or~~ SYSC 19E or SYSC 19G, is part of a UK consolidation group with an entity in scope of the Dual-regulated firms Remuneration Code, they must apply SYSC 19D (and the associated guidance) to relevant individuals in the way explained in FAQ 5.

5 FAQs: Variable remuneration

Q7 How can we measure individual performance in a Long-Term Incentive Plan (LTIP) award?

- 5.1 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 19D.3.39R).
- 5.2 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

Q8 Do the upfront and deferred components of variable remuneration need to have the same split of cash and instruments?

- 5.3 No. This used to be the case under the previous CEBS Guidelines on remuneration policies and practices (Committee of European Banking Supervisors Guidelines on Remuneration Policies and Practices (published 10 December 2010)), 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). We consider it good practice for the deferred portion of variable remuneration to contain a higher proportion of instruments.

Q9 How can bonus pools include ex-ante risk adjustments?

- 5.4 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).
- 5.5 For the avoidance of doubt, this applies to financial and non-financial types of risk, including those that are more difficult to measure. Good examples of practice of non-financial criteria we have observed are:
 - building and maintaining positive customer relationships
 - reputation

- achieving in line with firm strategy and values
- effectiveness and operation of the risk and control environment

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 result in increased financial performance.

- 5.6 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.
- 5.7 When communicating their approach to us, 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 4

Draft General guidance on the application of ex-post risk adjustment to variable remuneration

Finalised Guidance

FG23/[XX]1/5: General guidance on the application of ex-post risk adjustment to variable remuneration

~~October 2024~~[month] 2023

1 Introduction

- 1.1 This statement is general guidance under section 139A(1) of the Financial Services and Markets Act 2000 (FSMA). It was initially issued on 1 July 2015 and applied to all firms in scope of the FCA's Dual-regulated firms Remuneration Code in SYSC 19D. In 2021, we revoked the guidance and reissued it with an extended scope to also apply ~~to FCA investment firms in scope of the MIFIDPRU Remuneration Code in SYSC 19G~~ (FG21/5), ~~and has been effective~~ from 1 January 2022. On [date] [month] 2023, the guidance was further revised as FG23/XX and has effect from [date] [month] 2023.
- 1.2 The main purpose of this guidance is to set out the FCA's expectations of the way in which firms comply with the requirements on ex-post risk adjustment (also referred to as performance adjustment). Where firms consider an alternative approach to be justified in meeting the requirements on ex-post risk adjustment in the Dual-regulated firms Remuneration Code or the MIFIDPRU Remuneration Code, this should be consistent with the general requirement to promote sound and effective risk management set out in SYSC 19D.2.1R and SYSC 19G.2.8R.

1.3 The Prudential Regulation Authority (PRA) issued a Supervisory Statement (SS2/13) entitled 'PRA expectations regarding the application of malus to variable remuneration'. This has been superseded by a Supervisory Statement on Remuneration (SS2/17), which was revised in [February 2023](#)~~July 2021~~¹.

1.4 The primary purpose of the Dual-regulated firms Remuneration Code and the MIFIDPRU Remuneration Code is to ensure greater alignment between risk and individual reward, to discourage excessive risk taking and short-termism, and encourage more effective risk management, and in turn to support positive behaviours and a strong and appropriate conduct culture within firms. This advances our objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

~~1.5~~ The effective, meaningful and timely use of ex-post risk adjustment ~~including malus~~, is essential to these aims.

~~1.6~~1.5 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 (a 'relevant event'). 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~~1.6 The FCA expects firms to consider the application of ex-post risk adjustment for relevant events where there has been a materially adverse impact on any of the relevant criteria set out in 3.8. Ex-post risk adjustment should be applied as a minimum in the event of circumstances that fall within the meaning of SYSC 19D.3.62R - SYSC 19D.3.64R or SYSC 19G.6.30R - SYSC 19G.6.34G including for material cases of misconduct. While level 3 Dual-regulated firms (as defined in FG23/[XX] General Guidance on Proportionality) are no longer subject to the rules relating to malus and clawback (including SYSC 19D.3.62R - SYSC 19D3.64R), they remain subject to the other rules on ex-post risk adjustment (SYSC 19D3.29).

~~1.8~~1.7 Firms should comply with the Dual-regulated firms Remuneration Code's and MIFIDPRU Remuneration Code's provisions on risk and performance adjustment in their spirit as well as to the letter.

~~1.9~~1.8 Where a firm has a Remuneration Committee, the FCA expects the Chair to ensure that the decisions taken by this committee on ex-post risk adjustment support the purpose and objectives of the Dual-regulated firms Remuneration Code and MIFIDPRU Remuneration Code to promote positive behaviours and culture within the firm.

¹ PRA Supervisory Statement on Remuneration ([February 2023](#)~~July 2021~~) is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2023/ss217-february-2023.pdf?la=en&hash=15DA9322AD297E845E72D73F98000903D39B5025><https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2021/ss217-july-2021.pdf?la=en&hash=E72DDC91D8D74A06BCC9ACA1F812EFBCA8E11638>

2 Scope

- 2.1 All unvested variable remuneration should, in principle, be capable of forfeiture or recovery through ex-post risk adjustment. Deferred remuneration for the purposes of adjustment includes Long-Term Incentive Plans (LTIPs).
- 2.2 The use of ex-post risk adjustment should not be limited to employees who engaged directly in misconduct. In all cases, the FCA expects firms to consider applying ex-post risk adjustment to those employees whose roles and responsibilities include areas where failures or poor performance contributed to, or failed to prevent, the crystallisation of risk including cases of misconduct. Ex-post risk adjustment should be applied, including for individuals who:
 - a. could have been reasonably expected to be aware of the failure, misconduct or weakness in approach that contributed to, or failed to prevent, the crystallisation of risk at the time but failed to take adequate steps to promptly identify, assess, report, escalate or address it; or
 - b. by virtue of their role or seniority are indirectly responsible or accountable for the relevant event, including senior staff who drive the firm's culture and set its strategy.
- 2.3 Section 2.2 above includes individuals within control functions (e.g. compliance, risk, internal audit etc.) for the weaknesses and failings identified within these functions. The FCA expects firms to place primary responsibility on the business for meeting standards expected of them and expects the amount and nature of adjustments made to control functions to reflect that allocation of responsibility.
- 2.4 The FCA expects all firms subject to ex-post risk adjustment to have a firm-wide policy on the application of ex-post risk adjustment (and group-wide policy, where appropriate) for staff subject to the relevant provisions of the Dual-regulated firms Remuneration Code and MIFIDPRU Remuneration Code.

3 Expectations in relation to the application of ex-post risk adjustment

- 3.1 Firms' remuneration policies and employment contracts should make it clear that variable remuneration awards are conditional, discretionary and contingent upon a sustainable and risk-adjusted performance. They are therefore capable of forfeiture or reduction at the employer's discretion.
- 3.2 Ex-post risk adjustment can be applied collectively at bonus pool level, to groups of employees and to individuals. Firms should apply an appropriate balance of ex-post risk adjustments across these levels.
- 3.3 The primary focus in applying ex-post risk adjustments should be on individuals. Collective ex-post risk adjustments are likely to be appropriate where there are widespread failings or to meet all or a significant part of the cost of regulatory action and fines, redress and other associated costs from bonus pools. Where a relevant event has a material impact on any of the relevant criteria in paragraph 3.8, the FCA expects to see a similarly material adjustment as a proportion of a firm's bonus pool.
- 3.4 Where the misconduct, failings or poor performance which led to a relevant event occurred primarily in particular business units or divisions, collective adjustments should be weighted towards those areas.
- 3.5 Firms should ensure that individuals do not profit from a relevant event. Firms should consider the extent to which past bonuses were earned as a result of identified failings and also give appropriate consideration to the cost of consequent redress and other financial impacts. Firms should apply further ex-post risk adjustment to reflect this and should do so robustly and fairly.
- 3.6 In considering how much further ex-post risk adjustment to apply to individuals, the FCA expects firms to consider the degree of culpability, involvement or responsibility of an individual and the relevant criteria listed in paragraph 3.8.
- 3.7 For cases with a high degree of personal responsibility and a high impact in relation to any of the relevant criteria in paragraph 3.8, up to 100% ex-post risk adjustment should be the starting point. For lower degrees of responsibility and impact, proportionately less ex-post risk adjustment may be applied. In all cases, firms should ensure that the size of ex-post reductions reflect the severity of the relevant event, are material in size and are sufficient to drive positive individual behaviours and culture within the firm.
- 3.8 When deciding the amounts to be adjusted, the FCA expects firms to take into account all relevant criteria, including:
 - a. The impact on the firm's customers, counterparties and the wider market;
 - b. The impact of the failure on the firm's relationships with its other stakeholders including shareholders, employees, creditors, the taxpayer and regulators;
 - c. The cost of fines and other regulatory actions (e.g. Section 166 of FSMA reviews);
 - d. Direct and indirect financial losses attributable to the relevant failure; and
 - e. Reputational damage.

4 Timing in the consideration of ex-post risk adjustment

- 4.1 Firms should start to consider ex-post risk adjustment once relevant events have been identified and impose reductions as soon as reasonably possible.
- 4.2 Where ex-post risk adjustments are made to current or prior year awards before the full impact of the relevant event is known, subsequent consideration and, where appropriate, subsequent adjustments should be made to ensure the final value of the adjustment fully reflects the impact of the incident.
- 4.3 Firms should update the FCA on any relevant pending investigations and ahead of any payment of outstanding awards to individuals under investigation for misconduct.
- 4.4 Risk management failures and misconduct can take years to come to light. This should not prevent firms from applying ex-post risk adjustment to the extent that the relevant individuals have variable remuneration capable of reduction, even where this does not relate to performance in the year in which the relevant event occurred or came to light.
- 4.5 Firms should freeze the vesting of all variable remuneration potentially due to individuals undergoing internal or external investigation that could result in material ex-post risk adjustment until such an investigation has concluded and the firm has made a decision and communicated it to the relevant employee(s). This does not preclude the vesting of some or all variable remuneration in relation to particular individuals once the firm has established with certainty that ex-post risk adjustment of these amounts is not required.

5 Procedure for considering ex-post risk adjustment

- 5.1 The FCA expects firms to develop and maintain an adequate procedure for deciding cases that could result in the use of ex-post risk adjustment as part of or alongside regular internal performance management and disciplinary proceedings. This procedure should:
- a. Identify which roles, departments, functions and committees are responsible for identifying, escalating and deciding cases that may trigger the use of ex-post risk adjustment.
 - b. Ensure that control functions including Internal Audit, Compliance, Finance, Human Resources, Legal, Reward and Risk provide relevant information and contribute to discussions as required.
 - c. Set out clear criteria on the kind of cases that may trigger the use of ex-post risk adjustment. These criteria should be indicative and non-exhaustive. Remuneration Committees should retain full discretion to introduce additional criteria where appropriate.
 - d. Set out a clear process for determining the degree of culpability, responsibility or accountability, including allowing individuals under investigation to make representations.
 - e. Promote consistency, fairness and robustness in the application of ex-post risk adjustment.
 - f. Firms should ensure that the initial process for determining bonus pools is sufficiently transparent to enable them to quantify and articulate clearly the impact of any ex-post risk adjustments they might make prior to them being approved.
 - g. Clearly record the value of awards and the rationale for why they are that size prior to and following ex-post risk adjustments being applied.
 - h. Clearly record the value of the adjustments made at individual, business unit and firm levels so that it is possible to determine the value of each adjustment per incident and at the individual employee level. Firms should make consistent judgments and be able to explain how adjustments have been made and why any differences exist between incidents or the individuals concerned.
 - i. Ex-post risk adjustments should be applied separately after all other factors relevant to setting awards have been considered to ensure that subsequent adjustments are not made that would reduce or undermine the effect of ex-post risk adjustment at bonus pool or individual level.
 - j. Firms should ensure that the value of ex-post risk adjustments made to an individual's variable remuneration and the reasons for the adjustments are clearly communicated to the affected individuals in writing and that the value and reasons for collective adjustments are clearly communicated to staff as a group.

5.2 The operation of an effective procedure for considering ex-post risk adjustment is not a substitute for taking account of known increases in risk as they arise, including those relating to conduct. The FCA would expect firms to take these risks into account including for example, where weaknesses in systems and controls have been identified or where there is an increased level of customer complaints, when determining the appropriate size and value of new awards.

6 Co-operation with the FCA

- 6.1 Firms are expected to provide the FCA with information on their application of ex-post risk adjustment as requested. This information should be sufficient for the FCA to assess the firm's ex-post risk adjustment decisions.
- 6.2 Where a firm's policies and practices on variable remuneration are under review by the FCA, these firms should comply with any timetable set by the regulators, providing sufficient time for the FCA to form a view before the date by which they intend to communicate and distribute their awards. Firms in scope of the Dual-regulated firms Remuneration Code should refer to the FCA and PRA websites for the most up-to-date data collection templates.
- 6.3 Where a firm does not meet a timetable set by the regulators, there is likely to be a commensurate impact in the provision of the FCA's view to the firm which may delay the firm's own timetable for communicating and distributing awards.

