FSA®
Financial Services Authority

Financial Services Authority

General guidance on proportionality:

The Remuneration Code (SYSC 19a) & Pillar 3 disclosures on remuneration (BIPRU 11)

December 2011 – Edition 1.1

GENERAL GUIDANCE ON PROPORTIONALITY: THE REMUNERATION CODE (SYSC 19A) & PILLAR 3 DISCLOSURES ON REMUNERATION (BIPRU 11)

19 December 2011

PART A: INTRODUCTION & INTERPRETATION

Introduction

Status of guidance statement

1. This statement is general *guidance* given by the *FSA* under section 157(1) of the *Act*. It relates both to—

   (1) the *Remuneration Code* of *SYSC* 19A of the *Handbook*, and

   (2) the requirement to make Pillar 3 disclosures in relation to *remuneration* (in accordance with *BIPRU* 11 of the *Handbook*).

2. Paragraphs 14 and 15 make provision about the interpretation of this *guidance* statement. Expressions in italics either bear the meaning in the *Handbook Glossary*, or in the table in paragraph 15.

3. This *guidance* statement has effect from 1 January 2011.

Remuneration principles proportionality rule

4. The *remuneration principles proportionality rule* is set out in *SYSC* 19A.3.3R(2).

5. The *Remuneration Code* requires (amongst other things) a *firm* to apply requirements in *SYSC* 19A.3 to *Remuneration Code staff*. The *remuneration principles proportionality rule* requires a *firm*, when establishing and applying the total *remuneration* policies for *Remuneration Code staff*, to comply with *SYSC* 19A.3 in a way and to the extent that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities.

Guidance on the remuneration principles proportionality rule

6. General *guidance* is given in relation to specific aspects of the *remuneration principles proportionality rule* in *SYSC* itself.[1]

7. Part D of this *guidance* statement provides additional general *guidance* in relation to the application of the *remuneration principles proportionality rule* to different types of *firm*.

8. Part E of this *guidance* statement provides additional general *guidance* in relation to the application of the *remuneration principles proportionality rule* to *Remuneration Code staff* who have, in relation to a given performance year, been *Remuneration Code staff* for only part of the year.

9. This *guidance* statement represents our initial *guidance* in a field where new requirements relating to *remuneration* are being implemented within the *EEA*. The *FSA* recognises this will be an evolving process, and intends to keep the *guidance* set out in this *guidance* statement under review.

---

[1] The main provisions of *guidance* which specifically refer to the *remuneration principles proportionality rule* are *SYSC* 19A.3.34G (giving guidance in relation to *Remuneration Code staff* and certain rules on *remuneration* structures) and the transitional *guidance* given in *SYSC* TP3.5G and *SYSC* TP3.6G.

Guidance on proportionality in relation to remuneration committees and Pillar 3 remuneration disclosures

10. The *remuneration principles proportionality rule* does not apply to the requirement to establish a *remuneration* committee or to make disclosures in relation to *remuneration* under *BIPRU* 11 (as part of Pillar 3). But these requirements are governed by similar proportionality *rules*, on which *guidance* is given in Parts F and G of this *guidance* statement.

Individual guidance

11. The *FSA* may give individual *guidance* to a *firm*, either on its own initiative or on the application of the *firm*. The *FSA's* policy on individual *guidance* is set out in *SUP* 9. In consequence, the *FSA* may give individual *guidance* to a *firm* in relation to the *remuneration principles proportionality rule*. Such *guidance* may relate to the application of the *rule* by the *firm* generally, or in specific areas.

Arrangement of guidance statement

12. This general *guidance* statement is divided into seven Parts:
    (1) This Part, Part A: Introduction & interpretation.
    (2) Part B: Proportionality tiers.
    (3) Part C: Process for dividing firms into proportionality tiers.
    (4) Part D: Guidance to firms in particular proportionality tiers.
    (5) Part E: Guidance about part-year Remuneration Code staff.
    (6) Part F: Remuneration committees.
    (7) Part G: Pillar 3 remuneration disclosures (BIPRU 11).
13. It is supplemented by two Appendices:
    (1) Appendix 1: Supplemental guidance on dividing firms into proportionality tiers.
    (2) Appendix 2: Pillar 3 disclosure requirements by proportionality tier.

Interpretation

14. This *guidance* statement is to be interpreted as if it was an Annex to *SYSC* 19A (other than Part G and Appendix 2, which are to be interpreted as if they were an Annex to *BIPRU* 11). In consequence, *GEN* 2 (interpreting the Handbook) applies to the interpretation of this *guidance* statement.
15. In particular, an expression in italics which is defined in the *Glossary* has the meaning given there (*GEN* 2.2.7R). Where an expression in italics is not defined in the *Glossary*, it has the meaning given by the following table—

Table 1: Glossary of terms defined in this guidance statement

Defined expression	**Definition**
CEBS Guidelines	'Guidelines on Remuneration Policies and Practices' of 10 December 2010 of

	the Committee of European Banking Supervisors.
group	has the meaning given in the *Glossary* under paragraph (3).
proportionality tier	has the meaning given in paragraph 17, and references to *proportionality tier one*, etc. are to be construed accordingly.
Remuneration Code firm	a *BIPRU firm* or *third country BIPRU firm* to whom the Remuneration Code applies (in accordance with *SYSC* 19A.1.1R).
solo Remuneration Code firm	a *Remuneration Code firm* which is not part of a *group* containing one or more other *Remuneration Code firms*.

PART B: PROPORTIONALITY TIERS

16. *SYSC* 19A.1.1R provides that the *Remuneration Code* applies to a *BIPRU firm* and a *third country BIPRU firm* (in the case of a *third country BIPRU firm,* in relation to the activities carried on from an establishment in the *United Kingdom*). In this *guidance* statement, such *firms* are referred to as *Remuneration Code firms.*

17. This *guidance* statement provides for the division of *Remuneration Code firms* into four categories—

    (1) *proportionality tier one*,

    (2) *proportionality tier two*,

    (3) *proportionality tier three*, and

    (4) *proportionality tier four*.

18. The process by which firms are divided into *proportionality tiers* is provided in Part C (as supplemented by Appendix 1), and may also depend on individual *guidance*.

19. The *proportionality tiers* provide a framework for the operation of the *remuneration principles proportionality rule*. *Guidance* is given to *firms* in different *proportionality tiers* in Part D.

20. The *proportionality tiers* are also used as the basis for *guidance* on separate proportionality *rules* which apply in relation to *remuneration* committees (Part F) and Pillar 3 remuneration disclosures (Part G and Appendix 2).

PART C: PROCESS FOR DIVIDING FIRMS INTO PROPORTIONALITY TIERS

Overview

21. This Part provides the process by which a *Remuneration Code firm* should ascertain the *proportionality tier* into which it falls. Appendix 1 provides supplementary *guidance* (including examples).

22. A *Remuneration Code firm*, in order to ascertain its *proportionality tier*, must first establish whether it is part of a *group* which contains one or more other *Remuneration Code firms*:

    (1) If the *firm* is not part of such a *group* (a *solo Remuneration Code firm*), its *proportionality tier* will depend on its individual characteristics (as determined in accordance with paragraphs 24 to 26).

    (2) If the *firm* is part of such a *group*, its *proportionality tier* will depend on a two-stage process (as provided in paragraphs 27 and 28).

    (This requires all *Remuneration Code firms* that are part of the *group* to fall into the highest *proportionality tier* that any individual *Remuneration Code firm* in the group would fall into on the assumption that it was a *solo Remuneration Code firm*.)

23. Individual *guidance* may vary the *proportionality tier* into which a *firm* would otherwise fall under paragraphs 24 to 28.

Solo Remuneration Code firms

24. A *solo Remuneration Code firm*'s *proportionality tier* depends on whether it is—

    (1) a *BIPRU firm*, or

    (2) a *third country BIPRU firm*.

<u>BIPRU firms</u>

25. The following table shows the *proportionality tier* into which a *solo Remuneration Code firm* that is a *BIPRU firm* falls:

    (1) A *firm* of the description given in the second column falls into the *proportionality tier* listed in the first column.

    (2) Where applicable, the *firm's proportionality tier* will further depend on whether it held *capital resources* on its last *accounting reference date* of the amount listed in the third column of the table.

Table 2: Proportionality tiers: solo Remuneration Code firms which are BIPRU firms

Proportionality tier	**Type of firm**	**Capital resources on last accounting reference date of firm** (where applicable)

Proportionality tier one	*UK Bank*.	Exceeding £1 billion.
	Building society.	Exceeding £1 billion.
	BIPRU 730k firm that is a *full scope BIPRU investment firm*.	Exceeding £750 million.
Proportionality tier two	*UK Bank*.	Exceeding £100 million, but not exceeding £1 billion.
	Building society.	Exceeding £100 million, but not exceeding £1 billion.
	BIPRU 730k firm that is a *full scope BIPRU investment firm*.	Exceeding £100 million, but not exceeding £750 million.
Proportionality tier three	*UK Bank*.	Not exceeding £100 million.
	Building society.	Not exceeding £100 million.
	Any *full scope BIPRU investment firm* that does not fall within *proportionality tier one* or *proportionality tier two* (in accordance with this Table).	Not applicable.
Proportionality tier four	*BIPRU limited licence firm*.	Not applicable.
	BIPRU limited activity firm.	Not applicable.

Third country BIPRU firms

26. The following table shows the *proportionality tier* into which a *solo Remuneration Code firm* that is a *third country BIPRU firm* falls:

 (1) A *firm* of the description given in the second column falls into the *proportionality tier* listed in the first column.

 (2) Where applicable, the *firm's proportionality tier* will further depend on whether it held relevant total assets on the last relevant date of the amount listed in the third column of the table.

 (3) In (2)—

  (a) "relevant total assets" means the total assets of the *firm* that cover the activities of the branch operation in the *United Kingdom*;

  (b) "relevant date" means 31 December 2010, and each subsequent anniversary.

 The limit confining relevant total assets to those that cover the activities of the branch operation in the *United Kingdom* is taken from *SUP*

16.12.3R(1)(iv), which relates to a reporting requirement in relation to *non-EEA banks* (among others). The *FSA* considers that a *firm* which needs to ascertain its relevant total assets should, as appropriate, apply an analogous methodology to that used by a *non-EEA bank* in completing data element A14 of FSA044 (so, for example, the general policy on valuation set out in *GENPRU* 1.3 should be applied).

These definitions are intended to apply on an interim basis, as FSA044 is to be withdrawn. The *FSA* will in due course consider whether to revise the definitions relating to the tier thresholds for *third country BIPRU firms*.

Table 3: Proportionality tiers: solo Remuneration Code firms which are third country BIPRU firms

Proportionality tier	**Type of firm**	**Relevant total assets on last relevant date** (where applicable)
Proportionality tier one	*Third country BIPRU firm* that is not a *limited licence firm* or *limited activity firm*.	Exceeding £25 billion.
Proportionality tier two	*Third country BIPRU firm* that is not a *limited licence firm* or *limited activity firm*.	Exceeding £2 billion, but not exceeding £25 billion.
Proportionality tier three	*Third country BIPRU firm* that is not a *limited licence firm* or *limited activity firm*.	Not exceeding £2 billion.
Proportionality tier four	*Limited licence firm.*	Not applicable.
	Limited activity firm.	Not applicable.

Groups with more than one Remuneration Code firm

27. This paragraph applies where a *Remuneration Code firm* is part of a *group* containing one or more other *Remuneration Code firms*:

(1) Each *Remuneration Code firm* in the *group* must determine the *proportionality tier* into which it would fall on the assumption that it was a *solo Remuneration Code firm*.

(2) Where each *Remuneration Code firm* falls into the same *proportionality tier* on the assumption that it was a *solo Remuneration Code firm*, each *firm* falls into that *proportionality tier*.

(3) Where the *Remuneration Code firms* fall into different *proportionality tiers* on the assumption that they were *solo Remuneration Code firms*, each *firm* falls into the highest *proportionality tier*.

(4) For the purposes of (3), *proportionality tier one* is the highest and *proportionality tier four* is the lowest.

28. Appendix 1 provides examples of this approach. A *firm* which has a higher *proportionality tier* as a result of the *guidance* in paragraph 27 than would have been the case had the *firm* been a *solo Remuneration Code firm* should note the scope to apply for individual *guidance* to vary its *proportionality tier* (as discussed in paragraphs 5 and 6 of Appendix 1).

PART D: GUIDANCE TO FIRMS IN PARTICULAR PROPORTIONALITY TIERS

Purpose of proportionality tiers

29. In relation to the *remuneration principles proportionality rule*, the *proportionality tiers* provide the following:

    (1) A framework for the *FSA's* supervisory approach, and a broad indication of the *FSA's* likely expectations.

    (2) *Guidance* on which *remuneration* principles may normally be disapplied under the *remuneration principles proportionality rule*.

    As noted above, this is initial *guidance* in an evolving field.

30. The *proportionality tiers* also provide *guidance* on the separate but similar proportionality *rules* that apply in relation to—

    (1) *remuneration* committees (Part F), and

    (2) Pillar 3 disclosures in relation to *remuneration* (Part G and Appendix 2).

Firms to continue to consider proportionality in their individual circumstances, etc.

31. It follows from the nature of the *remuneration principles proportionality rule*, and the limited purposes noted in paragraph 29, that the *proportionality tiers* do not provide comprehensive *guidance* on how the *remuneration principles proportionality rule* will apply to a particular *firm*. A *firm* will still need to consider the application of the *remuneration principles proportionality rule* to its individual circumstances.

32. A *firm* should bear in mind that the *Remuneration Code* may require different responses from *firms* that fall into the same *proportionality tier*. This is illustrated by the following example:

    (1) Firm A is a global bank with capital resources of £10 billion, with substantial investment banking business, foreign exchange exposures and a complex business model seeking aggressive growth. It falls into *proportionality tier one*.

    (2) Firm B is a large mortgage and savings bank with capital resources of £1.5 billion and a comparatively simple, conservative business model. It falls into *proportionality tier one*.

    (3) Firm C is a large building society, with capital resources of £800 million and a comparatively simple, conservative business model. It falls into *proportionality tier 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* 19A.3.22R(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 tier*. Indeed, the difference in the necessary

sophistication is likely to be greater as between Firm A and Firm B than as between Firm B and Firm C.

Disapplication of certain remuneration principles for firms in particular proportionality tiers

33. The *Banking Consolidation Directive* can be interpreted such that it may not be necessary for certain *firms* to apply certain *remuneration* principles at all.[2] This has been endorsed and elaborated in the *CEBS Guidelines*.[3]

34. In the view of the *FSA*, it will normally be appropriate for a *firm* in *proportionality tier three* or *proportionality tier four* to disapply under the *remuneration principles proportionality rule* the following *rules*—

    (1) retained *shares* or other instruments (*SYSC* 19A.3.47R),

    (2) deferral (*SYSC* 19A.3.49R), and

    (3) performance adjustment (*SYSC* 19A.3.51R).

35. The following *guidance* applies to *firms* in *proportionality tier four* that are *limited licence firms* or *limited activity firms*:[4]

    (1) In the view of the *FSA*, it will normally be appropriate for such a *firm* to disapply under the *remuneration principles proportionality rule* the *rule* on ratios between fixed and variable components of total *remuneration* (*SYSC* 19A.3.44R).

    (2) The *FSA* also endorses the *CEBS Guidelines* where they state that such *firms* may "take into account the specific features of their types of activities" in applying the "requirement on the multi-year framework …, in particular the accrual and ex-ante risk adjustment aspects of it" as discussed further in section 4.2.2.a of the *Guidelines*.[5]

36. However, *firms* should also note that some *remuneration* principles set specific numerical criteria (such as on the minimum period of deferral, the minimum portion to be deferred and the minimum portion to be issued in *shares*). The following *guidance* applies where such principles apply to *Remuneration Code staff* and are not capable of disapplication under the approach set out above. In such circumstances, the *FSA*, in line with the *CEBS Guidelines*, does not consider that the *remuneration principles proportionality rule* permits a *firm* to apply lower numerical criteria.[6] (For the avoidance of doubt, this *guidance* does not apply where a *firm* chooses to use deferral or issuance in shares more widely than required by *SYSC* 19A.3, for example in order to comply with the *Remuneration Code general requirement*.)

---

[2] *Banking Consolidation Directive*, Annex V, paragraph 23 provides that the principles should be applied by *firms* "in a way and <u>to the extent</u> that is appropriate to their size, internal organisation and the nature, the scope and complexity of their activities" (emphasis added).

[3] *CEBS Guidelines*, paragraphs 19 to 23.

[4] Under the approach set out in paragraphs 24 to 26, *proportionality tier four* will compromise only *limited licence firms* or *limited activity firms*. However, a firm other than a *limited licence firm* or *limited activity firm* could conceivably fall into *proportionality tier four* as a result of individual *guidance*.

[5] *CEBS Guidelines*, paragraph 20.

[6] *CEBS Guidelines*, paragraph 19.

PART E: GUIDANCE ABOUT PART-YEAR REMUNERATION CODE STAFF

Introduction

37. *SYSC* 19A.3.34G provides *guidance* on when the *FSA* does not generally consider it necessary for a *firm* to apply to certain *Remuneration Code staff* certain *rules* relating to *remuneration* structures. This Part provides further *guidance* on how certain *rules* on *remuneration* structures might normally be applied to *Remuneration Code staff* who have, in relation to a given performance year, been *Remuneration Code staff* for only part of the year.

38. In giving this *guidance*, the *FSA* has taken account of the *remuneration principles proportionality rule*.

Part-year Remuneration Code staff for more than three months

39. This paragraph applies where an individual (A) has, in relation to a given performance year, been *Remuneration Code staff* for a period more than three months, but less than 12 months:

    (1) Sub-paragraphs (3) and (4) explain how the *guidance* in *SYSC* 19A.3.34G (as mentioned in the introduction to this Part) is to be applied in relation to A. Sub-paragraphs (5) and (6) provide that in certain circumstances it may be appropriate to apply certain *rules* to only a proportion of A's variable *remuneration*. Sub-paragraphs (7) to (9) provide examples.

    (2) In this paragraph—

        (a) "relevant fraction" means the fraction derived by dividing the number of days in the given performance year for which A has been *Remuneration Code staff* by the number of days in the year;

        (b) "qualifying fixed *remuneration*" means A's annual fixed *remuneration* in A's capacity as *Remuneration Code staff* multiplied by the relevant fraction;

        (c) "qualifying variable *remuneration*" means—

            (i) in the case where A was an *employee* of the *firm* for the whole of the given performance year, A's variable *remuneration* in relation to the performance year multiplied by the relevant fraction;

            (ii) in the case where A was only ever employed in the given performance year as *Remuneration Code staff*, A's actual variable *remuneration*;

        (d) "total qualifying *remuneration*" means qualifying fixed *remuneration* added to qualifying variable *remuneration*;

        (e) "threshold amount" means £500,000 multiplied by the relevant fraction.

    (3) The *FSA* does not generally consider it necessary for a *firm* to apply the rules referred to in (4) where, in relation to A, the following conditions are satisfied—

(a) Condition 1 is that A's qualifying variable *remuneration* is no more than 33% of total qualifying *remuneration*, and

(b) Condition 2 is that A's total qualifying *remuneration* is no more than the threshold amount.

(4) The rules referred to in (3) are those relating to—

(a) guaranteed variable *remuneration* (*SYSC* 19A.3.40R),

(b) retained *shares* or other instruments (*SYSC* 19A.3.47R),

(c) deferral (*SYSC* 19A.3.49R), and

(d) performance adjustment (*SYSC* 19A.3.51R).

(5) Sub-paragraph (6) applies where one or both of the conditions in (3) are not satisfied (and accordingly where the *firm* should apply in relation to A the rules referred to in (4)).

(6) Where this sub-paragraph applies, the *FSA* generally considers that it would be appropriate to apply the following *rules* to qualifying variable *remuneration* only—

(a) retained *shares* or other instruments (*SYSC* 19A.3.47R),

(b) deferral (*SYSC* 19A.3.49R), and

(c) performance adjustment (*SYSC* 19A.3.51R).

(7) The examples in (8) and (9) illustrate this *guidance*. The performance year in each case is 1 January to 31 December.

(8) Example 1:

(a) A1 is an *employee* of the *firm* for the entire performance year and is promoted to a *Remuneration Code staff* role with effect from 1 September. A1's previous fixed *remuneration* was £150,000. In A1's *Remuneration Code staff* role A1's fixed *remuneration* increases to £250,000. For the performance year, A1 is awarded variable *remuneration* of £120,000.

(b) The relevant fraction is 122/365. A1's qualifying fixed *remuneration* is £83,560 (£250,000 multiplied by 122/365). A1's qualifying variable *remuneration* is £40,110 (£120,000 multiplied by 122/365). A1's total qualifying *remuneration* is £123,670. The threshold amount is £167,120 (£500,000 multiplied by 122/365).

(c) A1's total qualifying *remuneration* is below the threshold amount, so condition 2 of (3) is satisfied. But A1's qualifying variable *remuneration* is more than 33% of A1's total qualifying *remuneration*, so condition 1 of (3) is not satisfied.

(d) The *rule* on guaranteed variable *remuneration* applies to A1. In addition, the *rules* on retained *shares* and other instruments, deferral and performance adjustment must be applied to A1's qualifying variable *remuneration* of £40,110.

(9) Example 2:

(a) A2 joins the *firm* as a *Remuneration Code staff* member with effect from 1 July. A2's annual fixed *remuneration* is £450,000. For period of 1 June to 31 December, A2 is awarded variable *remuneration* of £50,000.

(b) The relevant fraction is 184/365. A2's qualifying fixed *remuneration* is £226,850 (£450,000 multiplied by 184/365). A2's qualifying variable *remuneration* is £50,000 (the actual amount). A2's total qualifying *remuneration* is £276,850. The threshold amount is £252,050 (£500,000 multiplied by 184/365).

(c) A2's qualifying variable *remuneration* is not more than 33% of A2's total qualifying *remuneration*, so condition 1 of (3) is satisfied. But A2's total qualifying *remuneration* is more than the threshold amount, so condition 2 of (3) is not satisfied.

(d) The *rule* on guaranteed variable *remuneration* applies to A2. In addition, the *rules* on retained *shares* and other instruments, deferral and performance adjustment must be applied to A2's qualifying variable *remuneration* of £50,000.

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

40. Paragraphs 41 and 42 apply where—

(1) an individual (B) has, in relation to a given performance year, been *Remuneration Code staff* for a period of three months or less, and

(2) an exceptional or irregular payment (such as a sign-on award) has not been or is not to be made in relation to B's appointment as *Remuneration Code staff*.

41. Where this paragraph applies, the *FSA* does not generally consider it necessary to apply the following *rules* in relation to B for the performance year in question—

(1) retained *shares* or other instruments (*SYSC* 19A.3.47R),

(2) deferral (*SYSC* 19A.3.49R), and

(3) performance adjustment (*SYSC* 19A.3.51R).

42. Where this paragraph applies, the guidance in paragraph 39(2), (3) and (4)(a) should be applied for the purposes of determining whether or not it will generally be necessary to apply the rule on guaranteed variable *remuneration* to B (substituting in that paragraph, for references to "A", references to "B").

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

43. Paragraph 44 applies where an individual (C) has, in relation to a given performance year, been *Remuneration Code staff* for a period of three months or less, but where an exceptional or irregular payment (such as a sign-on award) has or is to be made in relation to C's appointment as *Remuneration Code staff*.

44. The guidance in paragraph 39 applies in relation to C (substituting in that paragraph, for references to "A", references to "C"). The amount of exceptional

or irregular payment is to be added to C's qualifying variable *remuneration* without pro rating.

PART F: REMUNERATION COMMITTEES

General

45. Remuneration Principle 4 (Governance) provides, in *SYSC* 19A.3.12R(1), that a *firm* that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a *remuneration* committee.

46. The following table provides *guidance* on when the *FSA* considers it would be appropriate for a *remuneration* committee to established under SYSC 19A.3.12R, based on the *proportionality tier* into which the *firm* falls (as determined in accordance with Part C of this *guidance* statement (as supplemented by Appendix 1))—

Table 4: Guidance on whether SYSC 19A.3.12R remuneration committee required

Proportionality tier	SYSC 19A.3.12R remuneration committee?
Proportionality tier one and *proportionality tier two*	The *FSA* considers that such a *remuneration* committee should be established.
Proportionality tiers three and *proportionality tier four*	The *FSA* considers that it would be desirable for such a *remuneration* committee to be established, and would normally expect larger *proportionality tier three* and *proportionality tier four* firms to do so. But the *FSA* accepts that it may be appropriate for the *governing body* of the *firm* to act as the *remuneration* committee.

Subsidiaries of overseas groups / third country BIPRU firms

47. This *guidance* relates, broadly speaking, to a *Remuneration Code firm* which is a *third country BIPRU firm*, or a *BIPRU firm* that is part of a *group* not subject to consolidated supervision by the *FSA*.

48. The *FSA* accepts that it may be possible for certain such *firms* to justify on the ground of proportionality not establishing under *SYSC* 19A.3.12R at solo level a *remuneration* committee. However, in such circumstances, it would be necessary to show how the functions which would otherwise have been performed by such a *remuneration* committee would be discharged. The *FSA* would expect as a minimum to be satisfied that the operational arrangements ensured sufficient independence from those performing executive functions at *firm* or *group* level, and were discharged with sufficient authority.

PART G: PILLAR 3 REMUNERATION DISCLOSURES (BIPRU 11)

Requirement to make Pillar 3 remuneration disclosures

49. *BIPRU* 11 requires certain *Remuneration Code firms* to disclose a series of qualitative and quantitative information relating to *remuneration* (*BIPRU* 11.3 and *BIPRU* 11.5.18R). The basis of the disclosure (which may be on a consolidated basis) is set out in *BIPRU* 11.2.

50. *BIPRU* 11 applies only to certain *Remuneration Code firms* (in that it applies to *BIPRU firms*, but not *third country BIPRU firms*).

Pillar 3 remuneration disclosures & proportionality

51. Two proportionality tests apply in relation to the requirement to make Pillar 3 disclosures in relation to *remuneration*:

    (1) A *BIPRU firm* that is significant in terms of its size, internal organisation and the nature, scope and the complexity of its activities must also disclose the quantitative information referred to in *BIPRU* 11.5.18R at the level of *senior personnel* (*BIPRU* 11.5.20R(1)).

    (2) *BIPRU firms* must comply the requirements set out in *BIPRU* 11.5.18R in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities (*BIPRU* 11.5.20R(2)).

52. The *FSA* considers that it is appropriate to give *guidance* on these proportionality tests by reference to the *proportionality tiers* determined in accordance with Part C of this *guidance* statement (as supplemented by Appendix 1). However, as the disclosure requirement applies only to *BIPRU firms*, when applying the guidance in paragraph 27, only *Remuneration Code firms* which are *BIPRU firms* should be taken into account.

53. In relation to the proportionality test referred to in paragraph 51(1), the *FSA* considers that a *firm* should be regarded as "significant" if it falls into *proportionality tier one*.

54. In relation to the proportionality test set referred to in paragraph 51(2), the table in Appendix 2 sets out the categories of information that the *FSA* considers *firms* in different *proportionality tiers* should disclose.

APPENDIX 1: SUPPLEMENTAL GUIDANCE ON DIVIDING FIRMS INTO PROPORTIONALITY TIERS

Groups with more than one Remuneration Code firm: examples

1. The following non-exhaustive examples illustrate the operation of the *guidance* provided in paragraph 27 of Part C. (It should be borne in mind that in each case individual *guidance* could vary the outcome of the operation of the *guidance* provided in that paragraph.)

2. Example 1:

   (1) Firm A is the *parent undertaking* of Firm B.

   (2) Firm A is a *UK bank* that had *capital resources* of £1.5 billion on its last *accounting reference date*. Firm B is a *limited activity firm*.

   (3) On the assumption that they were *solo Remuneration Code firms*, Firm A falls into *proportionality tier one* and Firm B falls into *proportionality tier four*.

   (4) As a result of the guidance at paragraph 27 of Part C, both Firms A and B fall into *proportionality tier one*.

3. Example 2:

   (1) Firm C is the *parent undertaking* of Firm D.

   (2) Firm C is a *limited activity firm* and Firm D is a *UK bank* that had *capital resources* of £1.5 billion on its last *accounting reference date*.

   (3) On the assumption that they were *solo Remuneration Code firms*, Firm C falls into *proportionality tier four* and Firm D falls into *proportionality tier one*.

   (4) As a result of the guidance at paragraph 27 of Part C, both Firms C and D fall into *proportionality tier one*.

4. Example 3:

   (1) Company E is the *parent undertaking* of Firms F and G and Company H. Company H is the *parent undertaking* of Firm I. Firm J is a member of the *group* because of an *Article 12(1) consolidation relationship*.

   (2) The Firms and Companies have the following characteristics:

      (a) Neither Companies E nor H are *Remuneration Code firms*.

      (b) Firm F is a *BIPRU 730k firm* that is a *full scope BIPRU investment firm* and that had *capital resources* of £500 million on its last *accounting reference date*.

      (c) Firms G and J are *limited activity firms*.

      (d) Firm I is a *UK bank* that had *capital resources* of £20 million on its last *accounting reference date*.

   (3) On the assumption that they were *solo Remuneration Code firms*—

      (a) Firm F falls into *proportionality tier two*,

(b) Firms G and J fall into *proportionality tier four*, and

(c) Firm I falls into *proportionality tier three*.

(4) As a result of the guidance at paragraph 27 of Part C, Firms F, G, I and J all fall into *proportionality tier two*.

Role of individual guidance

5. Individual *guidance* may vary the *proportionality tier* into which a *firm* would fall under the general *guidance* set out in Part C and supplemented by this Appendix. In consequence, the definitions and thresholds provided in Part C do not provide an immutable classification. The *CEBS Guidelines* also provide guidance on applying proportionality between different institutions.[7]

6. The following provide non-exhaustive high level examples of where the *FSA* might consider providing individual *guidance* to vary a *proportionality tier*:

(1) Where a *firm* was just below the threshold for a particular *proportionality tier* (as determined in accordance with Part C), but where features of its business model or growth strategy suggest that it should fall within the higher *proportionality tier*.

(2) Where a *group* of *firms* contained several *firms* falling into a common *proportionality tier*, but where the aggregate prudential risk posed by the *group* suggested that a higher *proportionality tier* was more appropriate.

(3) Where a *firm* falls into a higher *proportionality tier* as a result of the guidance at paragraph 27 of Part C than would be the case on the assumption that it was a *solo Remuneration Code firm*, depending on the particular circumstances of the case.

[7] *CEBS Guidelines*, paragraphs 24 and 25.

APPENDIX 2: PILLAR 3 DISCLOSURE REQUIREMENTS BY PROPORTIONALITY TIER

BIPRU 11.5.18R disclosure requirement	Relevant proportionality tier			
	Proportionality tier one	Proportionality tier two	Proportionality tier three	Proportionality tier four
BIPRU 11.5.18R (1) ("information concerning the decision-making process used for determining the remuneration policy, including if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders").	✓	✓	✓	✓
BIPRU 11.5.18R(2) ('information on the link between pay and performance').	✓	✓	✓	✓
BIPRU 11.5.18R(3) ('the most important design characteristics of the remuneration system, including information on the criteria used for performance measurement and risk adjustment, deferral policy and vesting criteria').	✓	✓		
BIPRU 11.5.18R(4) ('information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based').	✓			
BIPRU 11.5.18R(5) ('the main parameters and rationale for any variable component scheme and any other non-cash benefits').	✓			
BIPRU 11.5.18R(6) ('aggregate quantitative information on remuneration, broken down by business area').	✓	✓	✓	✓
BIPRU 11.5.18R(7) ('aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the *firm* …')	✓	✓	✓	✓
….indicating the following:				
BIPRU 11.5.18R(7)(a) ('the amounts of remuneration for the financial year, split into fixed and variable remuneration, and the number of beneficiaries').	✓	✓	✓	
BIPRU 11.5.18R(7)(b) ('the amounts and forms of variable remuneration, split into cash, shares, share-linked instruments and other types').	✓			
BIPRU 11.5.18R(7)(c) ('the amounts of outstanding deferred remuneration, split into vested and unvested portions').	✓			
BIPRU 11.5.18R(7)(d) ('the amounts of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments').	✓			
BIPRU 11.5.18R(7)(e) ('new sign-on and severance payments made during the financial year, and the number of beneficiaries of those payments').	✓			
BIPRU 11.5.18R(7)(f) ('the amounts of severance payments awarded during the financial year, number of beneficiaries and highest such award to a single person').	✓			

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: http://www.fsa.gov.uk
Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.