

Finalised Guidance

FG23/5 General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D)

5 December 2023

1 Part A – Introductions

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 1.8 and 1.9 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 December 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 5 December 2023 the guidance was further revised as FG 23/5 and has effect from 8 December 2023.

Dual-regulated firms remuneration principles - proportionality

- 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 provides 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 when establishing and applying the total remuneration policies for Dual-regulated firms Remuneration Code staff 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 our supervisory approach and a broad indication of our expectations. This guidance explains how we determine which firms fall within each proportionality level.

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
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 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 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
 - 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 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
- 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 firm*
Proportionality level one	Exceeding £50bn
Proportionality level two	Either: i.Exceeding £20bn; or ii.Not exceeding £20bn but does not satisfy the conditions in SYSC 19D.3.2BR (1)(b)(ii)
Proportionality level three	Either: i.Not exceeding £20bn and satisfies the conditions in SYSC 19D.3.2BR(1)(b)(ii); 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 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 then need to consider how it should apply the Dual-regulated firms remuneration principles proportionality rule 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 £15bn and a comparatively simple, conservative business model. However, it does not satisfy the conditions in SYSC 19D.3.2BR(1)(b)(ii). 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 should 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.