1 Part A: Introduction and interpretations

Introduction and status of guidance statement

1.1 This statement is general guidance given under section 139A(1) of the Financial Services and Markets Act 2000 (FSMA). It relates to the Dual-regulated firms Remuneration Code of SYSC 19D of the Handbook.

1.2 Paragraphs 1.13 and 1.14 make provision about the interpretation of this guidance statement. Expressions in italics either bear the meaning given in the Handbook Glossary, or in Table 1.

1.3 This guidance statement was initially issued on 23 June 2015 as final guidance. On 3 May 2017 the guidance was revised as FG 17/8 and has effect from 3 May 2017.

Dual-regulated firms remuneration principles proportionality rule

1.4 The Dual-regulated firms remuneration principles proportionality rule is set out in SYSC 19D.3.3R (2).

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

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

1.7 Part D of this guidance statement provides additional general guidance in relation to the application of the Dual-regulated firms remuneration principles proportionality rule to different types of firms.

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

1.9 This guidance statement represents our guidance in a field where requirements relating to remuneration are being implemented within the EEA. We recognise this will be an evolving process, and intend to keep the guidance set out here under review.

Individual guidance

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

Arrangement of guidance statement

1.11 This general guidance statement is divided into five Parts:

- This Part, Part A: Introduction and interpretation;
- Part B: Proportionality levels;
- Part C: Division of firms into proportionality levels;
- Part D: Guidance to firms in particular proportionality level; and
- Part E: Guidance about part-year Dual-regulated firms Remuneration Code staff.

1.12 It is supplemented by Annex 1 – Supplemental guidance on dividing firms into proportionality levels.

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

1.13 This guidance statement is to be interpreted as if it was an Annex to SYSC 19D.3.3 R. In consequence, GEN 2 (Interpreting the Handbook) applies to the interpretation of this guidance statement.

1.14 In particular, an expression in italics which is defined in the Glossary has the meaning given there (GEN 2.2.7R). Where an expression in italics is not defined in the Glossary, it has the meaning given by the following table:

<table>
<thead>
<tr>
<th>Defined expression</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>group</td>
<td>has the meaning given in the Glossary in paragraph (3B)</td>
</tr>
<tr>
<td>overseas Dual-regulated Remuneration Code firm</td>
<td>an overseas firm that: (i) is not an EEA firm; (ii) has its head office outside the EEA; and (iii) would be a building society, a bank or a UK designated investment firm if it had been a UK domestic firm, had carried on all its business in the United Kingdom and had obtained whatever authorisation for doing so as required under the Act.</td>
</tr>
<tr>
<td>proportionality level</td>
<td>has the meaning given in paragraph 2.2, and references to proportionality level one, etc. are to be construed accordingly.</td>
</tr>
<tr>
<td>Dual-regulated Remuneration Code firm</td>
<td>a firm specified in SYSC 19D.1.1 R(1)(a)-(d).</td>
</tr>
<tr>
<td>relevant total assets</td>
<td>has the meanings given in paragraph 3.4 (3).</td>
</tr>
<tr>
<td>relevant date</td>
<td>has the meanings given in paragraph 3.4 (4).</td>
</tr>
<tr>
<td>solo Dual-regulated Remuneration Code firm</td>
<td>a Dual-regulated Remuneration Code firm which is not part of a group containing one or more further Dual-regulated Remuneration Code firms.</td>
</tr>
</tbody>
</table>

2 Part B: Proportionality Levels

2.1 SYSC 19D.1.1R provides that the Dual-regulated firms Remuneration Code applies to a Dual-regulated Remuneration Code firm and an overseas Dual-regulated Remuneration Code firm, in relation to the activities carried on from an establishment in the UK.

2.2 This guidance statement provides for the division of Dual-regulated Remuneration Code firms into three categories:
• proportionality level one;
• proportionality level two; and
• proportionality level three.

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

2.4 The proportionality levels provide a framework for the operation of the remuneration principles proportionality rule. Guidance is given to firms in different proportionality levels in Part D.
3 Part C: Process for dividing firms into proportionality levels

Overview

3.1 This Part provides the process by which a Dual-regulated Remuneration Code firm should ascertain the proportionality level into which it falls. Annex 1 provides supplementary guidance (including examples).

3.2 A Dual-regulated Remuneration Code firm, in order to ascertain its proportionality level, must first establish whether it is part of a group which contains one or more other Dual-regulated Remuneration Code firms:

- If the firm is not part of such a group (a solo Dual-regulated Remuneration Code firm), its proportionality level will depend on its individual characteristics (as determined in accordance with paragraph 3.4).

- If the firm is part of such a group, its proportionality level will depend on a two-stage process (as provided in paragraphs 3.5 and 3.6).

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

3.3 Individual guidance may vary the proportionality level into which a firm would otherwise fall under paragraphs 3.4 to 3.6.

Solo Dual-regulated Remuneration Code firms

3.4 The following table shows the proportionality level into which a solo Dual-regulated Remuneration Code firm or an overseas Dual-regulated Remuneration Code firm falls:

- A firm of the description given in the second column falls into the proportionality level listed in the first column;

- Where applicable, the firm’s proportionality level will further depend on whether it held relevant total assets on the relevant date of the amount listed in the third column of the table (2);

- In (2) ‘relevant total assets’ means:
Guidance consult

General Guidance

- 'for a Dual-regulated Remuneration Code firm, the average of the firm’s total assets on the firm’s last three relevant dates; and
- for an overseas Dual-regulated Remuneration Code firm, the average of the firm’s total assets that covered the activities of the branch operation in the United Kingdom on the firm’s last three relevant dates.

- Relevant date means:
  - for Dual-regulated Remuneration Code firm, an accounting reference date; and
  - for overseas Dual-regulated Remuneration Code firm 'relevant date ' means 31 December.

- The limit confining relevant total assets to those that cover the activities of the bank operation in the UK is taken from SUP 16.12.3R(1)(a)(iv), which relates to a reporting requirement in relation to non-EEA banks (among others). We consider that a firm which needs to ascertain its relevant total assets should apply the valuation requirements set out in the EU CRR.

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

<table>
<thead>
<tr>
<th>Proportionality level</th>
<th>Type of firm</th>
<th>Relevant total assets on relevant date of firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportionality level one</td>
<td>UK Bank.</td>
<td>Exceeding £50bn</td>
</tr>
<tr>
<td></td>
<td>Building society.</td>
<td>Exceeding £50bn</td>
</tr>
<tr>
<td></td>
<td>UK designated investment firm that is a CRD full-scope firm.</td>
<td>Exceeding £50bn</td>
</tr>
<tr>
<td>Proportionality level two</td>
<td>UK Bank.</td>
<td>Exceeding £15bn but not exceeding £50bn</td>
</tr>
<tr>
<td></td>
<td>Building society.</td>
<td>Exceeding £15bn but not exceeding £50bn</td>
</tr>
<tr>
<td></td>
<td>UK designated investment firm that is a CRD full-scope firm.</td>
<td>Exceeding £15bn but not exceeding £50bn</td>
</tr>
<tr>
<td>Proportionality level three</td>
<td>UK Bank.</td>
<td>Not exceeding £15bn</td>
</tr>
<tr>
<td></td>
<td>Building society.</td>
<td>Not exceeding £15bn</td>
</tr>
<tr>
<td></td>
<td>Any UK designated investment firm that is a CRD full-scope firm that does not fall within proportionality level one or proportionality level two (in accordance with this Table).</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
Groups with more than one Dual-regulated Remuneration Code firm

3.5 This paragraph applies where a Dual-regulated Remuneration Code firm is part of a group containing one or more other Dual-regulated Remuneration Code firms:

1. Each Dual-regulated Remuneration Code firm in the group must determine the proportionality level into which it would fall on the assumption it was a solo Dual-regulated Remuneration Code firm;

2. Where each Dual-regulated Remuneration Code firm falls into the same proportionality level on the assumption that it was a solo Dual-regulated Remuneration Code firm, each firm falls into that proportionality level;

3. Where the Dual-regulated Remuneration Code firms fall into different proportionality levels on the assumption that they were solo Dual-regulated Remuneration Code firms, each firm falls into the highest proportionality level; and

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

3.6 Annex 1 provides examples of this approach. A firm which has a higher proportionality level as a result of the guidance in paragraph 3.5 than would have been the case had the firm been a solo Dual-regulated Remuneration Code firm should note the scope to apply for individual guidance to vary its proportionality level (as discussed in paragraphs 6.5 and 6.6 of Annex 1).
4 Part D: guidance to firms in particular proportionality levels

Purpose of the proportionality levels

4.1 In relation to the Dual-regulated firms remuneration principles proportionality rule, the proportionality levels provide the following:

- A framework for our supervisory approach, and a broad indication of our expectations; and
- Guidance on which remuneration principles may normally be disapplied under the Dual-regulated firms remuneration principles proportionality rule.

Firms to continue to consider proportionality in their individual circumstances

4.2 It follows from the nature of the Dual-regulated firms remuneration principles proportionality rule, and the limited purposes noted in paragraph 4.1, that the proportionality levels do not provide comprehensive guidance on how the Dual-regulated firms remuneration principles proportionality rule will apply to a particular firm. A firm will still need to consider the application of the Dual-regulated firms remuneration principles proportionality rule to its individual circumstances. This means that, although this guidance gives the FCA’s view of how certain provisions in the Dual-regulated Remuneration Code could be applied in light of the Dual-regulated firms remuneration principles proportionality rule, it is the responsibility of the Dual-regulated Remuneration Code firm to assess its own characteristics and to develop and implement remuneration policies and practices that appropriately align the risks faced and provide adequate and effective incentives to its Dual-regulated Remuneration Code staff. If requested, Dual-regulated Remuneration Code firms should be able to explain to the FCA the rationale for how they apply the Dual-regulated firms remuneration principles proportionality rule, particularly where they have concluded that it is appropriate for certain rules to be disapplied.

4.3 A firm should bear in mind that the Dual-regulated firms Remuneration Code may require different responses from firms that fall into the same proportionality level. This is illustrated by the following example:

5. Firm A is a global bank with relevant total assets of £800bn, with substantial investment banking business, foreign exchange exposures and a complex business model seeking aggressive growth. It falls into proportionality level one.
6. Firm B is a large mortgage and savings bank with relevant total assets of £100bn and a comparatively simple, conservative business model. It falls into proportionality level one.

7. Firm C is a large building society, with relevant total assets of £25bn and a comparatively simple, conservative business model. It falls into proportionality level two.

8. 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)).

9. Clearly the processes necessary to identify such risks will need to be more sophisticated for Firm A than for Firm B, despite the fact that they fall into the same proportionality level. Indeed, the difference in the necessary sophistication is likely to be greater as between Firm A and Firm B than as between Firm B and Firm C.

Disapplication of certain remuneration principles for firms in particular proportionality levels

4.4 The CRD can be interpreted such that it may not be necessary for certain firms to apply certain remuneration principles at all.2

4.5 In our view, it may be appropriate for a firm in proportionality level three to disapply under the Dual-regulated firms remuneration principles proportionality rule one or more of the following rules:

1. retained shares or other instruments (SYSC 19D.3.56R)
2. deferral (SYSC 19D.3.59R)
4. the specific ratio between fixed and variable components of total remuneration (SYSC 19D.3.48R (3))

4.6 It may also be appropriate for a UK designated investment firm that is a limited licence firm or a limited activity firm to disapply, under the Dual-regulated firms remuneration principles proportionality rule, the ratios between fixed and variable components of total remuneration (SYSC 19D.3.48R);

4.7 In all cases,

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2 CRD Article 92(2) provides that the principles should be applied ‘in a manner and to the extent that is appropriate to their size, internal organisation and the nature, the scope and complexity of their activities’.
1. the disapplication of the relevant requirement is not automatic. The firm should assess whether each requirements may be disapplied under the remuneration principle proportionality rule;

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

4.8 If a Dual-regulated Remuneration Code firm is able to completely disapply the rules identified in 4.5, that Dual-regulated Remuneration Code firm may, in its discretion, nevertheless apply all of part of those rules to the remuneration of its Dual-regulated Remuneration Code staff. Where a Dual-regulated Remuneration Code firm is not able to disapply any of such rules in their entirety, the specific numerical criteria in the relevant rule should be adhered to.
5 Part E: Guidance about part—year Dual-regulated Remuneration Code staff

Dual- regulated firms Remuneration Code staff introduction

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

5.2 In giving this guidance, we have taken account of the remuneration principles proportionality rule.

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

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

1. Sub-paragraphs (3) and (4) explain how the guidance in SYSC 19D.3.35G (as mentioned in the introduction to this Part) is to be applied in relation to A. Sub-paragraphs (5) and (6) provide that in certain circumstances it may be appropriate to apply certain rules to only a proportion of A’s variable remuneration. Sub-paragraphs (7) to (9) provide examples;

2. In this paragraph:

(a) ‘relevant fraction’ means the fraction derived by dividing the number of days in the given performance year for which A has been Dual-regulated firms Remuneration Code staff by the number of days in the year; and

(b) ‘qualifying fixed remuneration’ means A’s annual fixed remuneration in A’s capacity as Dual-regulated firms Remuneration Code staff multiplied by the relevant fraction.

(c) ‘qualifying variable remuneration’ means:

(i) in the case where A was an employee of the firm for the whole of the given performance year, A’s variable remuneration in relation to the performance year multiplied by the relevant fraction;
(ii) in the case where A was only ever employed in the given performance year as Dual-regulated firms Remuneration Code staff, A’s actual variable remuneration.

(d) ‘total qualifying remuneration’ means qualifying fixed remuneration added to qualifying variable remuneration;

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

3. We do not generally consider it necessary for a firm to apply the rules referred to in (4) where, in relation to A, the following conditions are satisfied:

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

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

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

(a) guaranteed variable remuneration (SYSC 19D.3.44R)

(b) retained shares or other instruments (SYSC 19D.3.56R),

(c) deferral (SYSC 19D.3.59R), and

(d) performance adjustment (SYSC 19D.3.61R).

5. Sub-paragraph (6) applies where the conditions in (3) are not satisfied and the firm should apply the rules referred to in (6).

6. Where this sub-paragraph applies, we generally consider that it would be appropriate to apply the following rules to qualifying variable remuneration only:

(a) retained shares or other instruments (SYSC 19D.3.56R)

(b) deferral (SYSC 19D.3.59R)

(c) performance adjustment (SYSC 19D.3.61R)

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

8. Example 1

(a) A1 is an employee of the firm through the performance year and is promoted to a Dual-regulated firms Remuneration Code staff role with effect from 1 September. A1’s previous fixed remuneration was £150,000. In his Dual-regulated firms
Remuneration Code staff role A1’s fixed remuneration increases to £250,000. For the performance year, A1 is awarded variable remuneration of £130,000.

(b) The relevant fraction is 122/365. A1’s qualifying fixed remuneration is £83,560 ( £250,000 multiplied by 122/365). A1’s qualifying variable remuneration is £43,452 ( £130,000 multiplied by 122/365). A1’s total qualifying remuneration is £ 127,012. The threshold amount is £167,120 ( £500,000 multiplied by 122/365).

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

(d) The rule on guaranteed variable remuneration applies to A1. In addition, the rules on retained shares and other instruments, deferral and performance adjustment must be applied to A1’s qualifying variable remuneration of £43,452.

9. Example 2

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

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

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

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

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

5.4 Paragraphs 5.5 and 5.6 apply where:

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

2. an exceptional or irregular payment (such as a sign-on award) has not been or is not to be made in relation to B’s appointment as Dual- regulated firms Remuneration Code staff.
5.5 Where this paragraph applies, we do not generally consider it necessary to apply the following rules in relation to B for the performance year in question:

1. retained shares or other instruments (SYSC 19D.3.56R)
2. deferral (SYSC 19D.3.59R)
3. performance adjustment (SYSC 19D.3.61R)

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

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

5.7 Paragraph 5.8 applies where an individual (C) has, in relation to a given performance year, been Dual-regulated firms Remuneration Code staff for a period of three months or less, but where an exceptional or irregular payment (such as a sign-on award) has or is to be made in relation to C’s appointment.

5.8 The guidance in paragraph 5.3 applied in relation to C (substituting in that paragraph for references to ‘A’, references to ‘C’). The amount of exceptional or irregular payment is to be added to C’s qualifying variable remuneration without pro rating.
6 Annex 1: Supplemental guidance on dividing firms into proportionality levels

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

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

6.2 Example 1.

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

6.3 Example 2

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

6.4 Example 3

1. Company E is the parent undertaking of Firms F and G and Company H. Company H is the parent undertaking of Firm I. Firm J is a member of the group because of an Article 12(1) consolidation relationship.
2. The firms and companies have the following characteristics:
   (a) Neither Companies E nor H are Dual-regulated Remuneration Code firms;
   (b) Firm F is an UK designated investment firm that is a CRD full-scope firm and that had relevant total assets of £40bn on its last accounting reference date;
   (c) Firms G and J are limited activity firms; and
   (d) Firm I is a UK bank that had relevant total assets of £10bn on its last accounting reference date.
3. On the assumption that they were solo Dual-regulated Remuneration Code firms:
   (a) Firm F falls into proportionality level two;
   (b) Firms G and J fall into proportionality level three;
   (c) Firm I falls into proportionality level three.
4. As a result of the guidance at paragraph 3.5 of Part C, Firms F, G, I and J all fall into proportionality level two.

Role of individual guidance

6.5 Individual guidance may vary the proportionality level into which a firm would fall under the general guidance set out in Part C and supplemented by this Annex. In consequence, the definitions and thresholds provided in Part C do not provide an immutable classification.

6.6 The following provide non-exhaustive high level examples of where we might consider providing individual guidance to vary a proportionality level:

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

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

3. Where a firm falls into a higher proportionality level as a result of the guidance at paragraph 3.5 of Part C than would be the case on the assumption that it was a solo Dual-regulated Remuneration Code firm, depending on the particular circumstances of the case.