

## FG 17/7

# General Guidance on Proportionality

## The BIPRU Remuneration Code (SYSC 19C) and Pillar 3 disclosures on Remuneration (BIPRU 11)

[May 2017]

# 1 Part A: Introduction and interpretations

## Introduction

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### 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 both to:
1. the *BIPRU Remuneration Code* of SYSC 19C of the *FCA Handbook*, and
  2. the requirement to make Pillar 3 disclosures in relation to remuneration (in accordance with *BIPRU 11* 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 12 December 2013 and revised on 9 January 2014 and 23 June 2015. On 3 May the guidance was revised as FG17/7 and has effect from 3 May 2017.

### Remuneration principles proportionality rule

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- 1.4 The *BIPRU remuneration principles proportionality rule* is set out in SYSC 19C.3.3R (2).
- 1.5 The *BIPRU Remuneration Code* requires (amongst other things) a *firm* to apply requirements in SYSC 19C.3 to *BIPRU Remuneration Code staff*. The *BIPRU remuneration principles proportionality rule* requires a *firm*, when establishing and applying the total remuneration policies for *BIPRU Remuneration Code staff*, to comply with SYSC 19C.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

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- 1.6 General *guidance* is given in relation to specific aspects of the *remuneration principles proportionality rule* in SYSC 19C.3 itself.<sup>1</sup>
- 1.7 Part C of this *guidance* statement provides additional general *guidance* in relation to the application of the *BIPRU remuneration principles proportionality rule* to *BIPRU Remuneration Code staff* who have, in relation to a given performance year, been *BIPRU Remuneration Code staff* for only part of the year.
- 1.8 This *guidance* statement represents our *guidance* in a field that may be subject to change, we intend to keep the *guidance* set out here under review.

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

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- 1.9 The *BIPRU 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 tests, on which *guidance* is given in Parts D and E of this *guidance* statement.

## Individual guidance

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- 1.10 We may give individual *guidance* to a firm, either on its 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 19C.3.3R*). Such *guidance* may relate to the application of the *rule* by the firm generally, or in specific areas.

## Arrangement of guidance statement

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- 1.11 This general *guidance* statement is divided into five Parts:
1. This Part, Part A: Introduction & interpretation
  2. Part B: Guidance to *BIPRU* firms on the application of proportionality
  3. Part C: Guidance about part-year *Remuneration Code staff*
  4. Part D: Remuneration committees
  5. Part E: Pillar 3 remuneration disclosures (*BIPRU 11*)
- 1.12 It is supplemented by two Annexes:
1. Annex 1: Pillar 3 disclosure requirements by proportionality level
  2. Annex 2: Supplemental guidance on dividing firms into proportionality levels

## Interpretation

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- 1.13 This *guidance* statement is to be interpreted as if it was an Annex to *SYSC 19C.3* (other than Part E and Annex 1, 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.

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<sup>1</sup> The main provisions of guidance which specifically refer to the *BIPRU remuneration principles proportionality rule* are *SYSC 19C.3.34G* (giving guidance in relation to *BIPRU Remuneration Code staff* and certain rules on remuneration structures).

## General Guidance

- 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 1: Glossary of terms defined in this guidance statement**

Defined expression	Definition
<i>group</i>	has the meaning given in the <i>Glossary</i> under paragraph (3).
<i>BIPRU Remuneration Code firm</i>	a <i>BIPRU firm</i> or <i>third country BIPRU firm</i> to which the <i>BIPRU Remuneration Code</i> applies (in accordance with <i>SYSC 19C.1.1R</i> ).

## 2 Part B: Guidance to BIPRU firms on the application of proportionality

### BIPRU firms that are part of a group

- 2.1 Where a *BIPRU Remuneration Code firm* is part of a *group* comprised only of firms that are not subject to SYSC 19A or SYSC 19D and their applicable *guidance*, each firm should apply this guidance.
- 2.2 Where a *BIPRU Remuneration Code firm* is part of a *group* in which:
1. a firm to which SYSC 19A applies is a member:
    - a. This guidance applies to staff whose professional activities have a material impact on the risk profile of the *BIPRU Remuneration Code firm*.
    - b. SYSC 19A and applicable guidance applies to staff whose professional activities have a material impact on the risk profile of the group.
  2. a firm to which SYSC 19D applies is a member:
    - a. This guidance applies to staff whose professional activities have a material impact on the risk profile of the *BIPRU Remuneration Code firm*.
    - b. SYSC 19D and applicable guidance applies to staff whose professional activities have a material impact on the risk profile of the group.
  3. In 2.2.1 and 2.2.2, where a *BIPRU Remuneration Code firm* is part of a *group* (other than a *UK consolidation group*) with a firm to which SYSC 19A or SYSC 19D applies, it may be appropriate for the *BIPRU Remuneration Code firm* to apply SYSC 19C and this *guidance*, instead of SYSC 19A or SYSC 19D and their *guidance*. In such situations, if requested by the *FCA*, the *FCA* will expect the firm's senior management to be able to demonstrate why the firm believes it is reasonable to apply SYSC 19C and its *guidance* in light of the *remuneration principles proportionality rule*.

### Disapplication of certain remuneration principles for BIPRU firms

- 2.3 It may not be necessary for *BIPRU firms* to apply *BIPRU* remuneration principles at all.
- 2.4 In our view, it will normally be appropriate for a *BIPRU firm* to disapply under the *BIPRU remuneration principles proportionality rule* the following *rules*
1. retained shares or other instruments (SYSC 19C.3.47R);
  2. deferral (SYSC 19C.3.49R);
  3. performance adjustment (SYSC 19C.3.51R); and
  4. the ratios between fixed and variable components of total remuneration (SYSC 19C.3.44R).

*BIPRU 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'.<sup>2</sup>

- 2.6 However, *BIPRU firms* should also note that some remuneration principles set specific

<sup>2</sup> As per FSA's Policy Statement 10/20. See link at [http://www.fsa.gov.uk/pubs/policy/ps10\\_20.pdf](http://www.fsa.gov.uk/pubs/policy/ps10_20.pdf).

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 *BIPRU Remuneration Code staff* and are not capable of disapplication under the approach set out above. In such circumstances, we do not consider that the *remuneration principles proportionality rule permits* a firm to apply lower numerical criteria. (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 19C.3, for example in order to comply with the *BIPRU Remuneration Code general requirement*.)

## 3 Part C: Guidance about part-year BIPRU Remuneration Code staff

### Introduction

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- 3.1 SYSC 19C.3.34G provides *guidance* on when we do not generally consider it necessary for a firm to apply to certain *BIPRU 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 *BIPRU Remuneration Code staff* who have, in relation to a given performance year, been *BIPRU Remuneration Code staff* for only part of the year.
- 3.2 In giving this *guidance*, we have taken account of the *remuneration principles proportionality rules*.<sup>3</sup>

### Part-year Remuneration Code staff for more than three months

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- 3.3 This paragraph applies where an individual (A) has, in relation to a given performance year, been *BIPRU 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 19C.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 *BIPRU 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 *BIPRU 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; and
      - ii. in the case where A was only ever employed in the given performance year as *BIPRU Remuneration Code staff*, A's actual variable remuneration.

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<sup>3</sup> As per FSA's Policy Statement 10/20. See link at [http://www.fsa.gov.uk/pubs/policy/ps10\\_20.pdf](http://www.fsa.gov.uk/pubs/policy/ps10_20.pdf).

- d. 'total qualifying remuneration' means qualifying fixed remuneration added to qualifying variable remuneration; and
    - 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 19C.3.40R);
    - b. retained *shares* or other instruments (SYSC 19C.3.47R);
    - c. deferral (SYSC 19C.3.49R); and
    - d. performance adjustment (SYSC 19C.3.51R).
  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 19C.3.47R);
    - b. deferral (SYSC 19C.3.49R); and
    - c. performance adjustment (SYSC 19C.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 through the performance year and is promoted to a *BIPRU Remuneration Code staff* role with effect from 1 September. A1's previous fixed remuneration was £150,000. In his *BIPRU 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 variable 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 *BIPRU 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, 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 variable remuneration of £50,000.

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

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3.4 Paragraphs 3.5 and 3.6 apply where:

1. an individual (B) has, in relation to a given performance year, been *BIPRU 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 *BIPRU Remuneration Code staff*.

3.5 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 19C.3.47R);
2. deferral (SYSC 19C.3.49R), and
3. performance adjustment (SYSC 19C.3.51R).



- 3.6 Where this paragraph applies, the *guidance* in paragraph 3.3 (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**

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- 3.7 Paragraph 3.8 applies where an individual (C) has, in relation to a given performance year, been *BIPRU 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
- 3.8 The *guidance* in paragraph 3.3 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.

## 4 Part D: Remuneration Committees

### Remuneration Committee for BIPRU firms and third country BIPRU firms

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- 4.1 Remuneration Principle 4 (Governance) provides, in SYSC 19C.3.12R(1), that a *BIPRU 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
- 4.2 With regards to larger *BIPRU firms*, it would be desirable for a remuneration committee to be established under SYSC 19C.3.12R and we would normally expect such firms to do so. However, we accept that it may be possible for such firms to justify on the ground of proportionality not establishing under SYSC 19C.3.12R at solo level a remuneration committee of the *BIPRU Remuneration Code firm*. 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 with sufficient authority, and with sufficient independence from those performing executive functions within the firm. Where, for example, members of the *governing body* of the firm acted together with a group remuneration committee to discharge these functions, we would expect as a minimum to be satisfied that the operational arrangements ensured sufficient independence from those performing executive functions at *BIPRU Remuneration Code firm* or *group* level, and allowed the *governing body* of the firm to exercise sufficient authority in relation to the *BIPRU Remuneration Code firm*.

## 5 Part E: Pillar 3 Remuneration Disclosures (BIPRU 11)

### Requirement to make Pillar 3 remuneration disclosures

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- 5.1 *BIPRU 11* requires certain *Remuneration Code firm* to disclose a series of qualitative and quantitative information relating to remuneration (*BIPRU 11.3* and *BIPRU 11.5.18R*).
- 5.2 *BIPRU 11* applies only to *BIPRU firms*.

### Pillar 3 remuneration disclosures and proportionality

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- 5.3 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)*); and
  - 2. *BIPRU firms* must comply with 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)*).
- 5.4 In relation to the proportionality test referred to in paragraph 5.3 (1), the FCA considers that a firm should be regarded as 'significant' if on *relevant date* a firm has *relevant total assets* exceeding £50bn.
- 5.5 In relation to the proportionality test set referred to in paragraph 5.3 (2) the table in Appendix 1 sets out the categories of information that we consider *BIPRU firms* should typically disclose –where applicable.

## 6 Annex 1: Pillar 3 disclosure requirements by proportionality level

<b>BIPRU 11.5.18R disclosure requirement</b>
<i>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')</i>
<i>BIPRU 11.5.18R (2) ('information on link between pay and performance')</i>
<i>BIPRU 11.5.18R (6) ('aggregate quantitative information on remuneration, broken down by business area')</i>
<i>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...')</i>

## 7 Annex 2: Supplemental guidance on dividing firms into proportionality levels

### Groups with more than one Remuneration Code firm: examples

- 7.1 The following non-exhaustive examples illustrate the operation of the *guidance* provided in Part B.
- 7.2 Example 1:
1. Firm A is the *parent undertaking* of Firms B and C. Firm A is not a *Remuneration Code firm*.
  2. Firm B is a *BIPRU firm*. Firm C is a *full scope IFPRU 730K investment firm* with relevant total assets of £100bn. Firm B and Firm C are part of the same *UK consolidation group*.
  3. On the assumption that they were *solo Remuneration Code firms*, Firm C falls into *proportionality level one* and Firm B falls into *proportionality level three*.
  4. Firm B and Firm C are part of the same *UK consolidation group* so as a result of the *guidance* in 2.2, both firms fall into *proportionality level one*.
  5. Firm B (the BIPRU firm) must therefore:
    - a. identify all staff whose professional activities have a material impact on the risk profile of Firm B (the *BIPRU Remuneration Code firm*) and apply this *guidance* to them; and
    - b. identify all staff whose professional activities have a material impact on the risk profile of the *group* and apply SYSC 19A and the applicable *guidance*.
- 7.2 Example 2:
1. Firm D is the *parent undertaking* of Firms E, F and G. Firm D is not a *Remuneration Code firm*.
  2. Firm E is a *BIPRU firm*. Firm F is a *full scope IFPRU 730K investment firm* with relevant total assets of £100bn. Firm G is a *UK Bank* with relevant total assets of £100bn.
  3. Firm F and Firm G are part of the same *UK consolidation group*. Firm E is part of the same *group* as Firm F and G but not the same *UK consolidation group*.
  4. On the assumption that they were *solo Remuneration Code firms*, Firm F and Firm G fall into *proportionality level one* and Firm E falls into *proportionality level three*.
  5. Firm E is not part of the same *UK consolidation group* as Firm F and G. Therefore, as a result of the *guidance* in 2.2, Firm E (the BIPRU firm) must:
    - a. decide whether it is appropriate to apply SYSC 19C and this *guidance* instead of SYSC 19D;
    - b. identify all staff whose professional activities have a material impact on the risk profile of Firm E (the *BIPRU Remuneration Code firm*) and apply this *guidance* to them; and
    - c. identify all staff whose professional activities have a material impact on the risk profile of the *group* and apply, depending on the conclusion drawn in step (a), EITHER SYSC 19D and its applicable *guidance* OR SYSC 19C and this *guidance*.