

Remuneration in CRD IV firms: final guidance and changes to Handbook

Policy Statement

PS17/10

May 2017

This relates to

Consultation Paper 16/28
which is available on our website at
www.fca.org.uk/publications

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abbreviations

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1 Overview

Introduction

- 1.1** In this Policy Statement (PS), we publish our final Handbook text and guidance on remuneration in Capital Requirements Directive IV (CRD IV) firms that we consulted on in Consultation Paper 16/28.

Who does this Policy Statement affect?

- 1.2** This Policy Statement will affect all firms within the scope of CRD IV, namely banks, building societies, investment firms and overseas firms who are required to comply with our Remuneration Code under SYSC 19A and 19D. It also affects firms subject to our Remuneration Code under SYSC 19C.
- 1.3** Other firms may find this Policy Statement useful to understand what we expect from firms' remuneration policies and practices.

Is this of interest to consumers?

- 1.4** This Policy Statement will mostly be of interest to firms; however consumers may be interested to understand how firms align risk with reward when remunerating their staff.

Context

- 1.5** CRD IV contains remuneration requirements that aim to ensure that remuneration policies are consistent with and promote sound and effective management, do not provide excessive risk taking, and are aligned with the long-term interests of the firm. We implemented the CRD IV requirements in SYSC 19A and SYSC 19D of our Handbook, and also published accompanying non-Handbook guidance.
- 1.6** The European Banking Authority (EBA) subsequently published Guidelines in December 2015, which set out its views on how the CRD IV rules should be applied. These came into force on 1st January 2017.
- 1.7** To comply with the Guidelines, we needed to make some amendments to our Handbook and guidance. We issued Consultation Paper 16/28¹ in September 2016, which set out proposed changes to our Handbook, and minor changes to our existing proportionality guidance. We also consulted on new non-Handbook guidance to address frequently asked questions on remuneration.

¹ CP16/28: Remuneration in CRD IV firms, new guidance and changes to Handbook, available at www.fca.org.uk/publications/consultation-papers/remuneration-crd-iv-firms



- 1.8** This Policy Statement sets out the response to that consultation and the final rules and guidance.

Summary of feedback and our response

- 1.9** We received 3 responses to the consultation paper. These welcomed the additional guidance we were providing on the application of the EBA Guidelines but raised some issues, as well as asking for further clarification in some areas.
- 1.10** Key areas of feedback included:
- Clarification over our approach to retention payments;
 - The need for 'significant' subsidiaries of companies to establish a remuneration committee themselves, in addition to the parent and group level committee;
 - Further guidance on how firms can meet the obligation to assess performance conditions of long-term incentive plans (LTIPs) post grant and prior to vesting; and
 - A concern about the disclosure implications for limited licence and limited activity firms as a consequence of our changes to the General Guidance on Proportionality for IFPRU firms.
- 1.11** As a result we have made minor changes to the wording of our proposed final rules and guidance. We have addressed these areas of feedback in greater detail in Section 2 of this Policy Statement.

Equality and diversity

- 1.12** We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement.
- 1.13** Overall, we do not consider that the proposals in this Policy Statement adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

Next steps

What do you need to do next?

- 1.14** The EBA Guidelines came into force on 1 January 2017 and are directly addressed to firms. Firms should ensure that they comply with the EBA Guidelines for the 2017 performance year onwards, as well our rules and guidance.
- 1.15** These changes take effect upon publication of this Policy Statement.

2 Summary of feedback

2.1 In this section, we summarise the feedback we have received to CP16/28.

Feedback

Q1: *Do you agree with the proposals in each of the areas set out in this guidance consultation?*

2.2 All respondents welcomed the new guidance in the form of Frequently Asked Questions (FAQs). We received a few comments asking for additional clarification on some areas. In particular, one respondent asked for further clarification on the requirement to establish a separate remuneration committee for a subsidiary, when a group-level committee already existed.

2.3 We also received a question on how firms should comply with the rules on assessing post-grant performance of a long-term incentive plan (LTIP). In particular, we were asked whether, when measuring individual performance, it was sufficient for individual performance to be assessed at the point of granting the award only, combined with a malus adjustment prior to vesting.

Our Response

When establishing a remuneration committee, the EBA Guidelines set out that the 'significant' subsidiary test must be carried out on a standalone entity basis. We have set out our interpretation of significance for these purposes under Question 4 of our Frequently Asked Questions. Broadly, this encompasses significant IFRPU firms, or institutions referred to in Article 131 of CRD. This is different to the proportionality test under our General Guidance on Proportionality, so from an FCA perspective we would only expect a firm to have a Remuneration Committee on a standalone basis where they met the additional criteria for 'significance' set out in Question 4.

Where a firm is dual regulated, they will also need to consider the significance criteria established by the PRA.

In relation to LTIPs, under SYSC 19A and 19D, firms are required to ensure that all variable remuneration is based on an assessment of financial and non-financial performance of the individual, business unit and the firm as a whole.

We would expect to see individual performance considered both at the point of granting the award, and in the period prior to vesting, irrespective of whether the future performance measures are linked to firm level or division targets and measures. This is in addition to any ex-post risk adjustment to reflect a specific crystallised risk or adverse performance outcome.

Q2: *Are there any other areas in relation to our remuneration rules where additional clarification from the FCA would help?*

- 2.4** A respondent asked us to clarify how a firm can meet the provisions in the EBA Guidelines on control function remuneration, and on assessing LTIP awards for new joiners.

Our response

As the EBA Guidelines already cover these areas in detail, we do not propose issuing any further guidance at this stage. Firms should review the provisions of the EBA Guidelines alongside the rules in SYSC 19A and SYSC 19D, and we will continue to engage with firms to understand how they are implementing the Guidelines and to consider where further feedback is needed.

Q3: *Do you agree with our changes to SYSC 19A and SYSC 19D?*

- 2.5** One respondent noted that, under the existing wording of our Handbook, there was the potential for confusion over the status of 'retention awards', as reference to these payments appeared under a subheading referring only to 'Guaranteed variable remuneration and buyouts' only.

Our response

We agree that 'retention awards' are different from guaranteed variable remuneration. In order to make this clear and remove any potential for different interpretations, we have edited the relevant subheadings in SYSC 19A and 19D to explicitly include the term 'retention awards'.

Q4: *Do you agree with our changes to existing proportionality guidance?*

- 2.6** We received feedback that our changes to paragraph 4.6 of our proportionality guidance for IFPRU firms would have new disclosure consequences for IFPRU limited license and limited activity firms.
- 2.7** One respondent expressed concern over our approach to proportionality and the 'bonus cap'. The respondent noted that firms not subject to the bonus cap would potentially have a commercial advantage in relation to the attraction and recruitment of skilled employees.

Our response

In relation to disclosure, this was not our policy intention. As such, we have changed our wording to maintain the previous policy in the final version of the guidance for both IFPRU and dual-regulated limited license and limited activity firms.

On proportionality, the FCA, in conjunction with the PRA, has taken a proportionate approach to applying the bonus cap in order to recognise the different incentives and consequences for risk-taking across all CRD-regulated firms. We have set out objective criteria for firms to use when considering whether proportionality applies, which considers the size, internal organisation, nature, scope and complexity of their activities.

We think it is proportionate to continue to allow smaller and non-complex firms to disapply the bonus cap where this is appropriate and justified. All firms that meet the Level 1 and Level 2 criteria of our proportionality guidance have no discretion to disapply the bonus cap.



Annex 1

List of non-confidential respondents

The Alternative Investment Management Association Limited (AIMA)

City of London Law Society (CLLS) Regulatory Law Committee



Annex 2

Abbreviations used in this paper

| | |
|-----------------------|--|
| CRD IV | Capital Requirements Directive IV |
| EBA | European Banking Authority |
| EBA Guidelines | EBA Guidelines on sound remuneration policies under Articles 74(2) and 75(2) of Directive 2013/36/EU and disclosure under Article 450 of Regulation (EU) No 575/2013 |
| FCA | Financial Conduct Authority |
| LTIP | Long-Term Incentive Plan |
| PRA | Prudential Regulation Authority |
| RTS | Regulation (EU) 604/2014 of 4 March 2014 |

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future. We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

Final guidance: Remuneration Codes (SYSC 19A and 19D) – Frequently asked questions

FG 17/5

Remuneration Codes (SYSC 19A and 19D) – Frequently asked questions on remuneration

May 2017

1 Introduction

Overview

- 1.1 This statement is general *guidance* given under section 139A(1) of the Financial Services and Markets Act 2000 (FSMA).
- 1.2 An expression in italics that is defined in the Handbook *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 (including the plural) given in the following table:

| Defined expression | Definition |
|---------------------------------|---|
| <i>EBA Guidelines</i> | The European Banking Authority's published Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of the CRD and disclosures under Article 450 of the EU CRR on 21 December 2015 |
| <i>FCA's Remuneration Code</i> | The Financial Conduct Authority Remuneration Code under SYSC 19A or SYSC 19D |
| <i>Group</i> | Has the meaning given in the <i>Glossary</i> in paragraph (3A)-(3B) |
| <i>Material risk takers</i> | Has the meaning of staff identified in the <i>Glossary</i> as <i>Remuneration Code staff</i> and <i>dual-regulated firms Remuneration Code Staff</i> |
| <i>Proportionality Guidance</i> | Has the meaning given in paragraph 1.4, bullet points 2, 3 and 4 |
| <i>Proportionality level</i> | Has the meaning given in paragraph 2.2 of the General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D) and paragraph 2.2 of the General Guidance on Proportionality: The IFPRU Remuneration Code (SYSC 19A) |

General Guidance

| | |
|---|--|
| <i>Relevant proportionality rule</i> | Refers to the rules identified in the <i>Glossary</i> as the <i>remuneration principles proportionality rule</i> (SYSC 19A.3.3R); the <i>dual-regulated firms remuneration principles proportionality rule</i> (SYSC 19D.3.3R) and the <i>BIPRU remuneration principles proportionality rule</i> (SYSC 19C.3.3R) |
| <i>Regulatory Technical Standard or RTS</i> | Regulation (EU) 604/2014 of 4 March 2014 |

- 1.3 This guidance applies to all firms that fall within the scope of the Directive 2013/36/EU (Capital Requirements Directive or CRD IV), namely *banks, building societies, investment firms* and *overseas firms*, who are required to comply with the *FCA's Remuneration Code*. Questions 6 and 7 are relevant for *BIPRU firms*, and other firms may also find this document useful to understand our expectations about firms' remuneration policies and practices.
- 1.4 In addition to our *Handbook*, you should read this FCA guidance on remuneration in conjunction with our other general guidance documents:
- [General guidance on the application of ex-post risk adjustment¹ to variable remuneration](#)
 - General Guidance on Proportionality: the IFPRU Remuneration Code (SYSC 19A)
 - General Guidance on Proportionality: the BIPRU Remuneration Code (SYSC 19C) and Pillar 3 disclosure on remuneration (BIPRU 11)
 - General Guidance on Proportionality: the Dual-regulated firms Remuneration Code (SYSC 19D)
- 1.5 This guidance supersedes any previous frequently asked questions (FAQs) we – or our predecessor the Financial Services Authority – have issued in relation to the Remuneration Code in SYSC 19A.
- 1.6 This guidance statement has effect from 3 May 2017.

Background

- 1.7 The *EBA Guidelines* set out requirements regarding remuneration policies that apply to *CRD firms*. *Competent authorities* and firms must apply the *EBA Guidelines* from 1 January 2017. Firms should review the *EBA Guidelines* to understand the requirements that apply to them and make every effort to comply with them.
- 1.8 This guidance gives firms some practical guidance to understanding how the *EBA Guidelines* apply to them, and gives additional clarification on the *FCA's Remuneration Code*.

¹ Ex-post risk adjustment refers to the adjustment of variable remuneration to take account of a specific crystallised risk or adverse performance outcome including those relating to misconduct. Ex-post risk adjustments include reducing current year awards, the application of malus (reducing or cancelling deferred incentive awards that have not yet vested), and clawback (recouping already vested awards).

General Guidance

- 1.9 While these frequently asked questions may refer to our existing remuneration *rules* and *guidance* or to the *EBA Guidelines*, they do not provide a complete summary of them. Firms should use this guidance as a supplement to the *FCA's Remuneration Code, Proportionality Guidance* and the *EBA Guidelines* to help understand how the requirements apply to them.

2 FAQs: Material risk takers

Q1 Who needs to be identified as material risk takers?

- 2.1 Under SYSC 19A.3.4R and SYSC 19D.3.4R, firms must identify employees 'whose professional activities have a material impact on the firm's risk profile'. This includes – but is not limited to – employees identified under the qualitative and quantitative criteria set out in articles 3 and 4(1) of the RTS.
- 2.2 The types of professional activity and the risks inherent in these are not limited under *CRD*. All types of risk are therefore relevant to this assessment, including those of a prudential, operational, conduct and reputational nature.
- 2.3 Under paragraph 79 of the *EBA Guidelines*, all firms should first identify their *material risk takers*, before the *FCA's Remuneration Code* requirements are applied in a proportionate way. Once *material risk takers* have been identified, the relevant proportionality rule can then be applied to determine the extent to which certain *FCA Remuneration Code* requirements apply on an individual or firm-wide basis (see 2.4(4) below).

Q2 What is the process for identifying (and excluding) material risk takers?

- 2.4 Firms should follow the steps below (in the order presented) when identifying their *material risk takers*. These steps reflect the requirements under the RTS for firms to identify their *material risk takers* using both qualitative and quantitative criteria, and explain how the identification interacts with the *Proportionality Guidance*:
 - 1. **Identify *material risk takers* using qualitative criteria.** Firms must identify all staff who meet the qualitative criteria under Article 3 of the RTS and any other additional criteria set by the firm to identify all *material risk takers*. The RTS covers a common set of the most relevant risks across the EU; however *CRD* does not provide an exhaustive categorisation of risks and so firms must consider all types of risk when performing their internal analysis. This includes, but is not limited to, prudential, operational, market, credit, conduct and reputational risks. When identifying *material risk takers*, firms will need to be able to demonstrate to us how they have conducted this analysis and considered the relevant categories of risk.
 - 2. **Identify *material risk takers* using quantitative criteria.** Firms need to identify any individuals who have not been captured as *material risk takers* under the qualitative criteria above (including any additional

criteria set by the firms), but who meet the quantitative criteria under Article 4(1) of the RTS. Firms must be able to show us how they have conducted this analysis.

3. **Consider whether any exclusions are appropriate.** After steps 1 and 2 have been undertaken, firms may consider excluding an individual from being identified as a *material risk takers* if they have only been captured based on step 2 above, subject to prior FCA notification or our approval under Article 4(4) of the RTS (see Question 3 below).
4. **Apply the proportionality framework.** After steps 1, 2 and 3 above have been undertaken, firms may then consider whether/how to apply the proportionality framework to their *material risk takers* in line with the FCA's *Proportionality Guidance*.

Q3 Who can be excluded as a material risk taker?

- 2.5 Where an individual is caught only by the quantitative criteria, they may be eligible for exclusion from identification as a *material risk taker*. They can apply via the application and notification template on our [website](#). Applications can only be approved by the FCA where sufficient evidence is provided on the responsibilities of the individual role, supported by clear justification for why these do not amount to material risk. This evidence should include details of the qualitative analysis risk outlined in 2.4(1) above.
- 2.6 While a firm can request to exclude an individual because they undertake professional activities only in relation to a non-material business unit,² we would still require an individual assessment of each role to be carried out in the context of the firm. This is so the firm can demonstrate it has given sufficient consideration to why the individual does not meet any of the qualitative criteria under 2.4(1) above.
- 2.7 For those earning more than €1 million, Article 4(5) of the RTS provides that an individual can only be excluded from identification in 'exceptional circumstances'. To meet this test, we expect firms to be able to justify why the roles and responsibilities that support this level of remuneration do not correspond to a material impact on the firm's risk profile. The firm also needs to demonstrate how and why the circumstances on which the exclusion is based are 'exceptional'.
- 2.8 No distinction is drawn between staff in deposit takers and investment banks relative to those in asset management firms. All *CRD* firms are equally required to consider the risks relevant to their firm.

² A material business unit is defined in Article 3 (5) of the RTS.

3 FAQs: Governance

Q4 Does a firm that is part of a group that has a Remuneration Committee at the UK consolidation group level also need to establish a local Remuneration Committee?

- 3.1 Under SYSC 19A.3.1R and SYSC 19D.3.1R, any firm (whether at the *individual, parent undertaking* or *group* level) that is 'significant' in terms of its size, internal organisation, and the nature, scope and complexity of its activities, must establish a Remuneration Committee.
- 3.2 'Significant' for these purposes means:
- In SYSC 19A:
 - institutions referred to in article 131 of the CRD (globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs))
 - *significant IFPRU firms* as defined in IFPRU 1.2 (the condition of significance for this requirement can be waived, as explained in IFPRU 1.2.9G)
 - In SYSC 19D:
 - institutions referred to in article 131 of the CRD (globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs))
 - any other institutions determined to be significant by the FCA based on their size, internal organisation, and the nature, scope and complexity of its activities
- 3.3 The EBA Guidelines clarify that the test of 'significant' must be assessed on a standalone entity basis (paragraph 46). This means that if a subsidiary meets one of the tests of 'significant' set out above, it should itself establish a Remuneration Committee. It is not enough to rely on the Remuneration Committee at the *UK consolidation group* level.
- 3.4 If a subsidiary does not meet the 'significant' test, the firm can rely on the Remuneration Committee at the *UK consolidation group* level.

4 FAQs: Groups

Q5 Do the pay-out process rules and the bonus cap apply to non-CRD entities within the UK consolidation group?

- 4.1 Firms that are in the same *UK consolidation group* as a CRD IV firm, but are not themselves subject to *CRD*, will need to apply the *FCA's Remuneration Code* to which the consolidating entity is subject to those staff who:
- have a material impact on the risk profile of the *UK consolidation group*; or
 - have a material impact on the risk profile of a *CRD* firm within the *UK consolidation group*
- 4.2 Where an individual is employed by a firm that is subject to different sectoral rules (for example, an *AIFMD* firm subject to *SYSC 19B*) but their role has a material impact on the group's risk profile, then the consolidating institution will need to ensure that the *FCA's Remuneration Code* is complied with for that individual.
- 4.3 Where there is a conflict between the *FCA's Remuneration Code* and the sectoral requirements, then the sectoral requirements apply. Using the example of an *AIFMD* firm, this would mean that variable remuneration is paid in the form of instruments in *the alternative investment fund* concerned.
- 4.4 However, even where the specific sectoral rules are applied, the EBA Guidelines mean firms must still apply the bonus cap under *CRD* unless they rely on the *FCA's Proportionality Guidance* to disapply the bonus cap.

Q6 Are BIPRU firms in the same group as a CRD IV firm required to apply SYSC 19A or SYSC 19D?

- 4.5 Where a *BIPRU* firm is part of a *UK consolidation group* containing a firm that *SYSC 19A* or *SYSC 19D* applies to, then the *BIPRU* firm will need to apply:
- *SYSC 19C* and associated guidance to staff who are *material risk takers* of the *BIPRU* firm; and
 - *SYSC 19A* or *SYSC 19D* (as relevant) and associated guidance to staff who are *material risk takers* of the *UK consolidation group*
- 4.6 Our *General Guidance on Proportionality: the BIPRU Remuneration Code* contains more detail on group application for *BIPRU* firms in *CRD IV* groups.

Q7 Can a Level 3 BIPRU firm that is part of a UK consolidation group with a Level 1 CRD IV firm apply the BIPRU remuneration principles proportionality rule?

- 4.1 No – if a *BIPRU firm* is part of a *UK consolidation group* with a CRD IV entity, they must apply SYSC 19A or SYSC 19D (and the associated *guidance*) as relevant.
- 4.2 If the consolidating CRD IV entity is a *proportionality level 1* firm under our *Proportionality Guidance*, this means that neither this CRD IV entity nor any of the BIPRU entities within the *group* are permitted to disapply the *FCA's Remuneration Code*. The firm must apply the *FCA's Remuneration Code* in full to those staff identified as *material risk takers* as per question 6.
- 4.3 If a firm is part of a *UK consolidation group* with a SYSC 19A or SYSC 19D firm and believes it should fall into a lower *proportionality level*, the firm may apply for individual guidance from us to vary its *proportionality level*. Our policy on individual guidance is set out in SUP 9.
- 4.4 The firm's application must provide sound reasoning, justified with reference to the proportionality principles in SYSC 19A.3.3 R (2) or SYSC 19C.3.3 R (2). Find more information on how to vary the assigned *proportionality level*, as well as the necessary documentation that must be provided, on our website at www.fca.org.uk/remuneration/apply-vary-firms-proportionality-level.
- 4.5 Firms should note that we do not automatically approve applications – we review them on a case-by-case basis.
- 4.6 A *BIPRU firm* that falls outside a *UK consolidation group* may decide to only apply SYSC 19C and its related guidance – see paragraph 2.2(3) of our *General Guidance on Proportionality: the BIPRU Remuneration Code*.

5 FAQs: Proportionality

Q8 Can we apply the FCA's Remuneration Code in a proportionate manner?

- 5.1 Our *Proportionality Guidance* sets out the circumstances where firms may be able to disapply certain aspects of the *FCA's Remuneration Code*, such as the pay-out process rules, where this is appropriate and proportionate.
- 5.2 The FCA has decided to explain non-compliance only in relation to paragraph 79 of the *EBA Guidelines*. This is the requirement that the bonus cap must be applied to all firms subject to the CRD. This means that firms (other than those falling into *proportionality level 1* or *2* – see 5.4 below) may choose to continue to rely on our domestic *Proportionality Guidance* to disapply the bonus cap where relevant.
- 5.3 However, in line with our *Proportionality Guidance*, firms will need to ensure that where proportionality has been applied, they can justify that this is appropriate and be able to demonstrate this to us on request.
- 5.4 Larger firms (ie those falling into *proportionality level 1* or *2*) have no discretion to disapply the bonus cap.

6 FAQs: Variable remuneration

Q9 How can we measure individual performance in a Long-Term Incentive Plan (LTIP) award?

- 6.1 As an LTIP is a form of variable remuneration, it must be based on an assessment of the financial and non-financial performance of the individual, business unit and the firm as a whole (see SYSC 19A.3.36R and SYSC 19D.3.39R).
- 6.2 We do not prescribe the non-financial factors that firms should use to measure an individual's performance. Examples of good practice that we have observed include measures relating to building and maintaining positive customer relationships, reputation, achievement in line with firm strategy or values, and effectiveness and operation of the risk and control environment.

Q10 Do the upfront and deferred components of variable remuneration need to have the same split of cash and instruments?

- 6.3 No. This used to be the case under the previous CEBS Guidelines on remuneration policies and practices,³ however the *EBA Guidelines* now provide that firms should consider deferring a higher proportion of instruments (paragraph 240), provided that the minimum of 50% in instruments is still met (SYSC 19D.3.56R and SYSC 19A.3.47R). We consider it good practice for the deferred portion of variable remuneration to contain a higher proportion of instruments.

Q11 How can bonus pools include ex-ante risk adjustments?

- 6.4 When measuring performance for the purpose of setting a firm's bonus pool, firms are required under the *dual-regulated firms Remuneration Code* to include adjustments for all types of current and future risks (SYSC 19D.3.29R).
- 6.5 For the avoidance of doubt, this applies to financial and non-financial types of risk, including those that are more difficult to measure. Measures relating to:
- building and maintaining positive customer relationships
 - reputation
 - achieving in line with firm strategy and values
 - effectiveness and operation of the risk and control environment

³ Committee of European Banking Supervisors Guidelines on Remuneration Policies and Practices (published 10 December 2010).

are examples of good practice of non-financial criteria we have observed. This allows firms to recognise and incentivise efforts to increase performance relative to each unit of risk undertaken and boost long-term performance and profitability, even in a year where this does not result in increased financial performance.

- 6.6 While we do not prescribe the process firms should follow when risk-adjusting their bonus pools, under SYSC 19D.3.25R we require firms to have a clear and verifiable mechanism for measuring performance. Firms are then required to apply risk-adjustments in a clear and transparent manner. This is useful in facilitating a consistent approach that is subject to robust challenge.
- 6.7 When communicating their approach to the FCA, firms need to be able to demonstrate how risk-adjustments have been applied in a transparent manner. For example, they can set out the stages involved in determining the final bonus pool, with adjustments separately distinguishable for major risk and performance considerations, and any collective adjustments in relation to ex-post risk adjustment made at the end of the process.

Appendix 2

General guidance on proportionality: The IFPRU Remuneration Code (SYSC 19A)

FG 17/6

GENERAL GUIDANCE ON PROPORTIONALITY

The IFPRU Remuneration Code (SYSC 19A)

May 2017

[Note: In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.]

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 *Remuneration Code* of SYSC 19A 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 has effect from 1 July 2015. This *guidance* statement was initially issued on 12 December 2013, and revised on 9 January 2014 and 23 June 2015. On 3 May 2017 the guidance was revised as FG 17/6 and has effect from 3 May 2017.~~

Remuneration principles proportionality rule

- 1.4 The *remuneration principles proportionality rule* is set out in SYSC 19A.3.3R (2).
- 1.5 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

- 1.6 General *guidance* is given in relation to specific aspects of the *remuneration principles proportionality rule* in SYSC 19A.3 itself.¹
- 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 *firms*.
- 1.8 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.
- 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 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 19A.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:
 1. This Part, Part A: Introduction and interpretation;
 2. Part B: Proportionality levels;
 3. Part C: Division of firms into proportionality levels;
 4. Part D: Guidance to firms in particular proportionality levels; and
 5. Part E: Guidance about part-year Remuneration Code staff.

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).

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

Interpretation

- 1.13 This *guidance* statement is to be interpreted as if it was an Annex to SYSC 19A.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:

| Defined expression | Definition |
|--|---|
| <i>group</i> | has the meaning given in the <i>Glossary</i> in paragraph (3A) |
| <i>overseas Remuneration Code firm</i> | an <i>overseas firm</i> that: (i) is not an <i>EEA firm</i> ; (ii) has its head office outside the <i>EEA</i> ; and (iii) would be an <i>IFPRU investment firm</i> if it had been a <i>UK domestic firm</i> , had carried on all its business in the United Kingdom and had obtained whatever authorisation for doing so as required under the <i>Act</i> . |
| <i>proportionality level</i> | has the meaning given in paragraph 2.23, and references to <i>proportionality level one</i> , etc. are to be construed accordingly. |
| <i>Remuneration Code firm</i> | a <i>firm</i> specified in SYSC 19A.1.1 R(1)(c) <u>and</u> <u>(d)</u> |
| <i>relevant total assets</i> | has the meanings given in paragraph 3.4 (3). |
| <i>relevant date</i> | has the meanings given in paragraph 3.4 (4). |
| <i>solo Remuneration Code firm</i> | a <i>Remuneration Code firm</i> which is not part of a <i>group</i> containing one or more further <i>Remuneration Code firms</i> . |

2 Part B: Proportionality Levels

- 2.1 SYSC 19A.1.1R provides that the *Remuneration Code* applies to a *Remuneration Code firm* and an *overseas 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 *Remuneration Code firms* into three categories:
1. *proportionality level one*;
 2. *proportionality level two*; and
 3. *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 *Remuneration Code firm* should ascertain the *proportionality level* into which it falls. Annex 1 provides supplementary *guidance* (including examples).
- 3.2 A *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 *Remuneration Code firms*:
1. If the *firm* is not part of such a *group* (a *solo Remuneration Code firm*), its *proportionality level* will depend on its individual characteristics (as determined in accordance with paragraph 3.4).
 2. 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 to 3.7).
- (This requires all *Remuneration Code firms* that are part of the *group* to fall into the highest *proportionality level* that any individual *Remuneration Code firm* in the group would fall into on the assumption that it was a *solo Remuneration Code firm*.)
- 3.3 Individual *guidance* may vary the *proportionality level* into which a *firm* would otherwise fall under paragraphs 3.4 to 3.7.

Solo Remuneration Code firms

- 3.4 The following table shows the *proportionality level* into which a *solo Remuneration Code firm* that is an *IFPRU investment firm* or an *overseas Remuneration Code firm* falls:
1. A *firm* of the description given in the second column falls into the *proportionality level* listed in the first column;
 2. 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;
 3. In (2) –

(a) 'relevant total assets' means:

- (i) for *IFPRU investment firms*, the average of the *firm's total assets* on the *firm's last three relevant dates*; and
- (ii) for an *overseas 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*.

(b) 'relevant date' means:

- (i) for *IFPRU investment firms*, an accounting reference date; and
- (ii) for overseas *Remuneration Code firms*, ~~'relevant date'~~ means 31 December.

4. 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 Remuneration Code firms and overseas Remuneration Code firms

| Proportionality level | Type of firm | Relevant total assets on relevant date of firm |
|-----------------------------|--|--|
| Proportionality level one | <i>IFPRU 730k Investment firm that is a full scope IFPRU investment firm</i> | Exceeding £50bn |
| Proportionality level two | <i>IFPRU 730k Investment firm that is a full scope IFPRU investment firm</i> | Exceeding £15bn, but not exceeding £50bn |
| Proportionality level three | Any <i>full scope IFPRU Investment firm</i> that does not fall within <i>proportionality level one</i> or <i>proportionality level two</i> (in accordance with this Table) | Not applicable |
| | <i>IFPRU limited licence firm</i> | |
| | <i>IFPRU limited activity firm</i> | |

Groups with more than one Remuneration Code firm

3.5 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 level* into which it would fall on the assumption it was a solo *Remuneration Code firm*.
2. Where each *Remuneration Code firm* falls into the same *proportionality level* on the assumption that it was a solo *Remuneration Code firm*, each firm falls into that *proportionality level*.

3. Where the *Remuneration Code firms* fall into different *proportionality levels* on the assumption that they were solo *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.
- 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 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).
- 3.7 Where a *Remuneration Code firm* is part of a *group* to which SYSC 19D applies is a member, this *guidance* does not apply, SYSC 19D and its applicable general *guidance on proportionality* apply instead.

4 Part D: guidance to firms in particular proportionality levels

Purpose of proportionality levels

- 4.1 In relation to the *remuneration principles proportionality rule*, the *proportionality levels* provide the following:
1. A framework for our supervisory approach, and a broad indication of our likely expectations; and
 2. Guidance on which remuneration principles may ~~normally~~ be disapplied under the *remuneration principles proportionality rule*.

Firms to continue to consider proportionality in their individual circumstances

- 4.2 It follows from the nature of the *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 *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. This means that, although this guidance gives the FCA's view of how certain provisions in the Remuneration Code could be applied in light of the remuneration principles proportionality rule, it is the responsibility of the 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 Remuneration Code staff. If requested, Remuneration Code firms should be able to explain to the FCA the rationale for how they apply the 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 *Remuneration Code* may require different responses from *firms* that fall into the same *proportionality level*. This is illustrated by the following example:
1. Firm A is a *full scope IFPRU investment firm* with *relevant total assets* of £800bn with complex business operations with substantial foreign exchange exposures. It falls into *proportionality level one*.
 2. Firm B is a *full scope IFPRU investment firm* with *relevant total assets* of £100bn and a comparatively simple, conservative business model. It falls into *proportionality level one*.

3. Firm C is ~~an~~ *full scope IFPRU investment firm*, with *relevant total assets* of £25bn and a comparatively simple, conservative business model. 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 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 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~~ will normally be appropriate for a *firm* in *proportionality level three* to disapply under the *remuneration principles proportionality rule* one or more of the following *rules*:
 1. retained *shares* or other instruments (SYSC 19A.3.47R)
 2. deferral (SYSC 19A.3.49R)
 3. performance adjustment (SYSC 19A.3.51R – SYSC 19A.3.51AR)
- ~~4.6 It may also be appropriate for:~~
 4. ~~1. *proportionality level three full scope IFPRU investment firm* to disapply the specific ratio between fixed and variable components of total remuneration (SYSC 19A.3.44R (3)).~~ ~~2. and~~
- 4.6 It may also be appropriate for *IFPRU limited licence firms* and *IFPRU limited activity firms* to disapply, under the *remuneration principles proportionality rule*, the ratios between fixed and variable components of total remuneration (SYSC 19A.3.44R).
- 4.7 ~~4.7 In both all cases: ~~4.6 (1) and 4.6 (2) above, if requested by the FCA,~~~~
 1. the disapplication of the relevant requirement is not automatic. The *firm* should assess whether each requirement may be disapplied under the *remuneration principle proportionality rule*:

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'.

2. ~~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 disapply ~~it~~ these rules in the light of the *remuneration principles proportionality rule*.

~~We are also of the opinion that such firms may 'take into account the specific features of their types of activities in applying the requirement on multi-year framework, in particular the accrual and ex-ante risk adjustment aspects of it.~~

- 4.8 ~~4.8~~ — 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, 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 19D.3).~~ If a Remuneration Code firm is able to completely disapply the rules identified in 4.5, that Remuneration Code firm may, in its discretion, nevertheless apply all or part of those rules to the remuneration of its Remuneration Code staff. Where a 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 Remuneration Code staff

Introduction

- 5.1 SYSC 19A.3.34G provides *guidance* on when we do not generally consider it necessary for a *firm* to apply to certain *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 *Remuneration Code staff* who have, in relation to a given performance year, been *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 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 *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. 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 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)—SYSC 19A.3.51AR)
- 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 19A.3.47R)
 - (b) deferral (SYSC 19A.3.39R)
 - (c) performance adjustment (SYSC 19A.3.51R)—SYSC 19A.3.51AR)
- 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 *Remuneration Code staff* role with effect from 1 September. A1's previous fixed remuneration was £150,000. In his *Remuneration Code staff* role A1's fixed remuneration increases to £250,000. For the performance year, A 1 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 *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 adjustments must be applied to A2's qualifying variable remuneration of £50,000.

Certain part-year 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 *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*.

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 19A.3.47R)

2. deferral (SYSC 19A.3.49R)

3. performance adjustment (SYSC 19A.3.51R)- SYSC 19A.3.51AR

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 'C').

Part-year 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 *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 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.

6 Annex 1: Supplemental guidance on dividing firms into proportionality levels

Groups with more than one Remuneration Code 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 *full scope IFPRU investment firm* (that is an *IFPRU 730k investment firm*) 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 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 *full scope IFPRU investment firm* (that is an *IFPRU 730k investment firm*) that had *relevant total assets* of £100bn on its last accounting reference date.
 3. On the assumption that they were *solo 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 3.65 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 *Remuneration Code firms*;
 - (b) Firm F is a *full scope IFPRU investment firm* (that is an *IFPRU 730k 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 *limited license* that had *relevant total assets* of £10bn on its last accounting reference date.
3. On the assumption that they were *solo 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 in 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 Remuneration Code firm*, depending on the particular circumstances of the case.



Appendix 3

General guidance on proportionality: The BIPRU Remuneration Code (SYSC 19C)

FG 17/7

General Guidance on Proportionality

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

[May 2017]

[Note: In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.]

1 Part A: Introduction and interpretations

Introduction

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 has effect from 1 July 2015.~~ 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

- 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

- 1.6 General *guidance* is given in relation to specific aspects of the *remuneration principles proportionality rule* in SYSC 19C.3 itself.¹
- 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

- 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

- 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

- 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 ~~one~~ Annexes:
1. Annex 1: Pillar 3 disclosure requirements by proportionality level
 2. Annex 2: Supplemental guidance on dividing firms into proportionality levels

Interpretation

- 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.

¹ 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 ~~*BIPRU Remuneration Code 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, ~~this guidance does not apply, SYSC 19A and applicable guidance applies instead:~~
 - 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, ~~this guidance does not apply, SYSC 19D and applicable guidance applies instead:~~
 - 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'.²

² As per FSA's Policy Statement 10/20. See link at http://www.fsa.gov.uk/pubs/policy/ps10_20.pdf.

- 2.6 However, *BIPRU 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 *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

- 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*.³

Part-year Remuneration Code staff for more than three months

- 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.

³ As per FSA's Policy Statement 10/20. See link at 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

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

- 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

- 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

- 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

- 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

| BIPRU 11.5.18R disclosure requirement |
|---|
| <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*.

Appendix 4

General guidance on proportionality: Dual-regulated firms Remuneration Code (SYSC 19D)

Guidance consultation

FG 17/8 GENERAL GUIDANCE ON PROPORTIONALITY

The Dual-regulated firms Remuneration Code (SYSC 19D)

[May 2017]

[Note: In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.]

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 has effect from 1 July 2015. 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 have, in relation to a given performance year, 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 ~~its~~ 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;

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*).

- 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.

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:

| Defined expression | Definition |
|---|---|
| <i>group</i> | has the meaning given in the <i>Glossary</i> in paragraph (3B) |
| <i>overseas Dual-regulated Remuneration Code firm</i> | an <i>overseas firm</i> that: (i) is not an <i>EEA firm</i> ; (ii) has its head office outside the <i>EEA</i> ; and (iii) would be a <i>building society</i> , a <i>bank</i> or a <i>UK designated investment firm</i> if it had been a <i>UK domestic firm</i> , had carried on all its business in the United Kingdom and had obtained whatever authorisation for doing so as required under the <i>Act</i> . |
| <i>proportionality level</i> | has the meaning given in paragraph 2.23, and references to <i>proportionality level one</i> , etc. are to be construed accordingly. |
| <i>Dual-regulated Remuneration Code firm</i> | a <i>firm</i> specified in SYSC 19D.1.1 R(1)(a)-(de). |
| <i>relevant total assets</i> | has the meanings given in paragraph 3.4 (3). |
| <i>relevant date</i> | has the meanings given in paragraph 3.4 (4). |
| <i>solo Dual-regulated Remuneration Code firm</i> | a <i>Dual-regulated Remuneration Code firm</i> which is not part of a <i>group</i> containing one or more further <i>Dual-regulated Remuneration Code firms</i> . |

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:

- '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

| Proportionality level | Type of firm | Relevant total assets on relevant date of firm |
|-----------------------------|---|--|
| Proportionality level one | UK Bank | Exceeding £50bn |
| | Building society | Exceeding £50bn |
| | UK designated investment firm that is a CRD full-scope firm | Exceeding £50bn |
| Proportionality level two | UK Bank | Exceeding £15bn but not exceeding £50bn |
| | Building society | Exceeding £15bn, but not exceeding £50bn |
| | UK designated investment firm that is a CRD full-scope firm | Exceeding £15bn, but not exceeding £50bn |
| Proportionality level three | UK Bank. | Not exceeding £15bn |
| | Building society. | Not exceeding £15bn |
| | 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). | Not applicable |

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 firms 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 will normally~~ 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)
 3. performance adjustment (SYSC 19D.3.61R – SYSC 19D.3.62R)
- ~~4.6 It may also be appropriate for:~~
 4. ~~1. proportionality level three UK designated investment firm that is a CRD full-scope firm to disapply~~ the specific ratio between fixed and variable components of total remuneration (SYSC 19D.3.48R (3))~~;~~ ~~and~~
 - ~~2. a~~ 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 ~~both all~~ cases ~~(1) and (2) above, if requested by the FCA,;~~

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* will expects the *firm's* senior management to be able to demonstrate why the *firm* believes it is reasonable to disapply it ~~the relevant rule~~ in light of the *Dual-regulated firms remuneration principle proportionality rule*.

~~We are also of the opinion that such *firms* may 'take into account the specific features of their types of activities in applying the 'requirement on multi-year framework, in particular the accrual and ex-ante risk adjustment aspects of it.'~~³

- 4.8 ~~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 *Dual-regulated firms Remuneration Code staff* and are not capable of disapplication under the approach set out above. In such circumstances, we do not consider that the *Dual-regulated firms 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 19D.3). 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 firms 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.



Appendix 5

Made rules (legal instrument)

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODES) (No 7) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1)
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137H (General rules about remuneration);
 - (c) section 137T (General supplementary powers);
 - (d) section 138C (Evidential provisions)
 - (e) section 138D (Action for damages); and
 - (f) section 139A (Power of the FCA to give guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 3 May 2017.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex B to this instrument.

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Codes) (No 7) Instrument 2017.

By order of the Board
27 April 2017

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

third country IFPRU 730k firm an overseas firm that:

- (a) is not an *EEA firm*;
- (b) has its head office outside the *EEA*; and
- (c) would be an *IFPRU 730k firm* if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.

Amend the following definitions as shown.

dual-regulated firm (in SYSC 19D) a firm that is a UK bank, a *building society* or a *UK designated investment firm*.

dual-regulated firms Remuneration Code SYSC 19D (Dual-regulated firms Remuneration Code) for:

- (1) dual-regulated firms; and
- (2) *overseas firms* in SYSC 19D.1.1R(1)(d) that would have been a UK bank, *building society* or *UK designated investment firm* if it had been a *UK domestic firm*.

dual-regulated firms Remuneration Code staff (in relation to a *dual-regulated firm* and an *overseas firm* in SYSC 19D.1.1R(1)(d) that would have been a UK bank, *building society* or *UK designated investment firm* if it had been a *UK domestic firm*) has the meaning in SYSC 19D.3.4R which is, in summary, an *employee* whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who is deemed to have a material impact on the *firm's* risk profile in accordance with Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers).

group ...

(3B) (for the purposes of SYSC 12 (Group risk systems and

controls requirement), as applicable to a *firm* to which the *dual-regulated firms Remuneration Code* applies and in relation to a *person* “A”), A and any *person*:

- (a) who falls into (1);
- (b) who is a member of the same *financial conglomerate* as A;
- (c) who has a *consolidation Article 12(1) relationship* with A;
- (d) who has a *consolidation Article 12(1) relationship* with any *person* in (a);
- (e) who is a *subsidiary* of a *person* in (c) or (d); or
- (f) whose omission from an assessment of the risks to A of A’s connection to any *person* coming within (a) to (e) or an assessment of the *financial resources* available to such *persons* would be misleading.

...

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

19A IFPRU Remuneration Code

19A.1 General application and purpose

Who? What? Where?

19A.1.1 R (1) The *Remuneration Code* applies to:

...

(c) an *IFPRU investment firm*; and

(d) an *overseas firm* that:

...

(iii) would be a an IFPRU investment firm ~~referred to in (a), (b)~~
~~or (c)~~ if it had been a *UK domestic firm*, had carried on all
of its business in the *UK* and had obtained whatever
authorisations for doing so as are required under the *Act*.

...

...

When?

...

19A.1.4 G Subject to the requirements of SYSC 19A.1.5R, in the ~~appropriate regulator's~~
FCA's view SYSC 19A.1.3R does not require a *firm* to breach requirements of
applicable contract or employment law.

[**Note:** recital 44 69 of the ~~Third Capital Requirements Directive~~ (Directive
2010/76/EU) CRD]

...

Purpose

19A.1.6 G ...

(2) The *Remuneration Code* implements the main provisions of the *CRD*

which relate to *remuneration*. ~~The Committee of European Banking Supervisors published Guidelines on Remuneration Policies and Practices on 10 December 2010. Provisions of the Capital Requirements Regulations 2013 (SI 2013/3115) together with the European Banking Authority's Guidelines to article 75(1) and (3) of the CRD relating to the collection of remuneration benchmarking information and high earners information have been implemented through SUP 16 Annex 33AR and SUP 16 Annex 34AR. The Guidelines can be found at <http://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-the-remuneration-benchmarking-exercise> and <http://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-the-data-collection-exercise-regarding-high-earners>. In applying the *Remuneration Code*, firms should comply with the Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at: <http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b>.~~

...

Notifications to the ~~appropriate regulator~~ FCA

- 19A.1.7 G (1) ~~The~~ In addition to the notification requirements in the *Remuneration Code* does not contain specific notification requirements. However, general circumstances in which the ~~appropriate regulator~~ FCA expects to be notified by *firms* of matters relating to their compliance with requirements under the *regulatory system* are set out in SUP 15.3 (General notification requirements).

...

...

19A.2 General requirement

Remuneration policies must promote effective risk management

...

- 19A.2.2 G (1) ~~If a firm's remuneration policy is not aligned with effective risk management it is likely that employees will have incentives to act in ways that might undermine effective risk management. [deleted]~~
- (2) The *Remuneration Code* covers all aspects of *remuneration* that could have a bearing on effective risk management including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements. ~~In applying the *Remuneration Code*, a firm should have regard to applicable good practice on~~

~~remuneration and corporate governance, such as guidelines on executive contracts and severance produced by the Association of British Insurers (ABI) and the National Association of Pension Funds (NAPF). In considering the risks arising from its remuneration policies, a firm will also need to take into account its statutory duties in relation to equal pay and non-discrimination.~~

...

- (4) ~~The principles in the Remuneration Code are used by the appropriate regulator to assess the quality of a firm's remuneration policies and whether they encourage excessive risk-taking by a firm's employees. [deleted]~~
- (5) The ~~appropriate regulator~~ FCA may also ask remuneration committees to provide ~~the appropriate regulator with~~ evidence of how well the firm's remuneration policies meet the Remuneration Code's principles, together with plans for improvement where there is a shortfall. The ~~appropriate regulator~~ FCA also expects relevant firms to use the principles in assessing their exposure to risks arising from their remuneration policies as part of the internal capital adequacy assessment process (ICAAP).
- (6) ~~The Remuneration Code is principally concerned with the risks created by the way remuneration arrangements are structured, not with the absolute amount of remuneration, which is generally a matter for firms' remuneration committees. [deleted]~~

- 19A.2.3 G
- (1) ~~The specific remuneration requirements in this chapter may apply only in relation to certain categories of employee. But the appropriate regulator would expect firms, in complying with the Remuneration Code general requirement, to apply certain principles on a firm-wide basis. [deleted]~~
 - (2) ~~In particular, the appropriate regulator considers that firms should apply the principle relating to guaranteed variable remuneration on a firm-wide basis (Remuneration Principle 12(c); SYSC 19A.3.40R to SYSC 19A.3.43G). [deleted]~~
 - (3) The ~~appropriate regulator~~ FCA would also expect firms to apply, on a firm-wide basis, at least the principles relating to:
 - (a) risk management and risk tolerance (Remuneration Principle 1);
 - (b) supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2);
 - (c) conflicts of interest (Remuneration Principle 3);
 - (d) governance (Remuneration Principle 4);

- (e) risk adjustment (Remuneration Principle 8);
- (f) pension policy (Remuneration Principle 9);
- (g) personal investment strategies (Remuneration Principle 10);
- (h) payments related to early termination (Remuneration Principle 12(e)); and
- (i) deferral (Remuneration Principle 12(g)) ~~on a firm-wide basis~~.

...

19A.3 Remuneration principles for IFPRU investment firms

Application: groups

...

- 19A.3.2 G SYSC 12.1.13R(2)(dA) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or *non-EEA sub-group* of which a *firm* is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis. In the ~~appropriate regulator's~~ FCA's view, the ~~requirement to apply~~ application of this section at *group, parent undertaking* and *subsidiary undertaking* levels ~~(as provided for in SYSC 19A.3.1R(1))~~ is in line with the requirements in article 109(2) of CRD concerning on the application of systems and controls requirements to *groups* (as implemented in SYSC 12.1.13R).

Application: categories of staff and proportionality

- 19A.3.3 R ...

[**Note:** In addition to the *guidance* in this section which relates to the *remuneration principles proportionality rule*, the ~~FSA gave~~ FCA provides guidance on the division of *firms* into categories for the purpose of providing a framework for the operation of the *remuneration principles proportionality rule*. This guidance ~~has been adopted by the FCA and~~ is available in the *FCA* website at ~~www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code~~ <http://www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code>]

...

- 19A.3.6 G (1) ~~In the appropriate regulator's view:~~
- (a) ~~a firm's staff includes its employees;~~
 - (b) ~~a person who performs a significant influence function for, or is a senior manager of, a firm would normally be expected to be part~~

~~of the firm's Remuneration Code staff;~~

- ~~(c) the table in (2) provides a non-exhaustive list of examples of key positions that should, subject to (d), be within a firm's definition of staff who are risk takers;~~
- ~~(d) firms should consider how the examples in the table in (2) apply in relation to their own organisational structure (as the description of suggested business lines in the first row may be most appropriate to a firm which deals on its own account to a significant extent);~~
- ~~(e) firms may find it useful to set their own metrics to identify their risk takers based, for example, on trading limits; and~~
- ~~(f) a firm should treat a person as being Remuneration Code staff in relation to remuneration in respect of a given performance year if they were Remuneration Code staff for any part of that year.~~

~~[Note: The FSA gave guidance on the application of particular rules on remuneration structures in relation to individuals who are Remuneration Code staff for only part of a given performance year. This guidance has been adopted by the FCA and is available in the FCA website at www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code]~~

| (2) High-level category | Suggested business lines |
|--|--|
| Heads of significant business lines (including regional heads) and any individuals or groups within their control who have a material impact on the firm's risk profile | Fixed income Foreign exchange Commodities Securitisation Sales areas Investment banking (including mergers and acquisitions advisory) Commercial banking Equities Structured finance Lending quality Trading areas Research |
| Heads of support and control functions and other individuals within their control | Credit / market / operational risk Legal Treasury controls |

| | |
|--|---|
| who have a material impact on the <i>firm's</i> risk profile | Human resources Compliance Internal audit |
|--|---|

[deleted]

...

Remuneration Principle 4: Governance

...

- 19A.3.12 R (1) A ~~CRR~~ 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.

...

[Note: article 95 of *CRD* and Standard 1 of the *FSB Compensation Standards*]

~~[Note: The guidance referred to in the Note to SYSC 19A.3.3R also gives guidance on proportionality in relation to remuneration committees.]~~

...

- 19A.3.12B R In SYSC 19A.3.12R a '~~CRR~~ firm that is significant' means a *significant IFPRU firm*.

- 19A.3.13 G ...

- (3) ~~The periodic review of the implementation of the remuneration policy should assess compliance with the *Remuneration Code*. [deleted]~~

...

Remuneration Principle 5: Control functions

...

- 19A.3.17 G ...

- (2) ~~The need to avoid undue influence is particularly important where employees from the control functions are embedded in other business areas. This Remuneration Principle does not prevent the views of other business areas being sought as an appropriate part of the assessment process. [deleted]~~
- (3) ~~The appropriate regulator would generally expect the ratio of the potential variable component of remuneration to the fixed component of remuneration to be significantly lower for employees in risk management and compliance functions than for employees in other~~

~~business areas whose potential bonus is a significant proportion of their remuneration. Firms should nevertheless ensure that the total remuneration package offered to those employees is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the remuneration of relevant persons involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see SYSC 6.1.4R(4)). [deleted]~~

Remuneration Principle 6: Remuneration and capital

...

- 19A.3.19 G ~~This Remuneration Principle underlines the link between a firm's variable remuneration costs and the need to manage its capital base, including forward-looking capital planning measures. Where a firm needs to strengthen its capital base, its variable remuneration arrangements should be sufficiently flexible to allow it to direct the necessary resources towards capital building. [deleted]~~

Remuneration Principle 7: Exceptional government intervention

...

- 19A.3.21 G The ~~appropriate regulator~~ FCA would normally expect it to be appropriate for the ban on paying variable remuneration to members of the *management body* of a firm that benefits from exceptional government intervention to apply only in relation to members of the *management body* who were in office at the time that the intervention was required.

Remuneration Principle 8: Profit-based measurement and risk adjustment

...

- 19A.3.23 G (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying ~~judgment~~ judgement and common sense. ~~A The FCA expects a firm should ask to apply qualitative judgements and common sense in the risk management function to validate and assess risk adjustment techniques, and to attend a meeting final decision about the performance-related components of the governing body or variable remuneration committee for this purpose pools.~~
- (2) A number of risk-adjustment techniques and measures are available, and a firm should choose those most appropriate to its circumstances. The FCA considers good practice for this Principle to be represented by firms who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered. ~~The appropriate~~

~~regulator expects a firm to be able to provide it with details of all adjustments that the firm has made under a formulaic approach, including non-financial risks such as reputation, conduct, client outcomes, values and strategy.~~

- (3) ~~The appropriate regulator expects that a firm will apply qualitative judgments and common sense in the final decision about the performance-related components of variable remuneration pools. The FCA expects a firm to be able to provide it with details of all adjustments that the firm has made through application of formulae or the exercise of discretion. This will enable the FCA to consider if the firm's risk adjustment framework is sufficiently robust. Where discretion has been applied, the firm should be able to provide a clear explanation for, and quantification of, such adjustments.~~
- (4) ~~A firm's governing body (or remuneration committee where appropriate) should take the lead in determining the measures to be used. It should offer the appropriate checks and balances to prevent inappropriate manipulation of the measures used. It should consult closely and frequently with the firm's risk management functions, in particular those relating to operational, market, credit and liquidity risk. A firm should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the governing body or remuneration committee for this purpose.~~

- 19A.3.24 G
- (1) ~~Long-term incentive plans should be treated as pools of variable remuneration. Many common measures of performance for long-term incentive plans, such as earnings per share (EPS), are not adjusted for longer term risk factors. Total shareholder return (TSR), another common measure, includes in its measurement dividend distributions, which can also be based on unadjusted earnings data. If incentive plans mature within a two to four year period and are based on EPS or TSR, strategies can be devised to boost EPS or TSR during the life of the plan, to the detriment of the true longer-term health of a firm. For example, increasing leverage is a technique which can be used to boost EPS and TSR. Firms should take account of these factors when developing risk-adjustment methods.~~
 - (2) ~~Firms that have long-term incentive plans should structure them with vesting subject to appropriate performance conditions, and at least half of the award vesting after not less than five years and the remainder after not less than three years.~~
 - (3) ~~Long-term incentive plan awards may be included in the calculation of the deferred portion of variable remuneration only if upside incentives are adequately balanced by downside adjustments. The valuation of the award should be based on its value when the award is granted, and determined using an appropriate technique. [deleted]~~

- 19A.3.25 R Assessments A firm must base assessments of financial performance used to calculate variable remuneration components or pools of variable

remuneration components ~~must be based~~ principally on profits.

19A.3.26 G ...

- (2) ~~Management accounts should provide profit data at such levels within the firm's structure as to enable a firm to see as accurate a picture of contributions of relevant staff to a firm's performance as is reasonably practicable. If revenue or turnover is used as a component in performance assessment, processes should be in place to ensure that the quality of business undertaken or services provided and their appropriateness for clients are taken into account. [deleted]~~

...

19A.3.28 G ~~Where a firm makes a loss the appropriate regulator would generally expect no variable remuneration to be awarded. Variable remuneration may nevertheless be justified, for example, to incentivise employees involved in new business ventures which could be loss making in their early stages. [deleted]~~

...

Remuneration Principle 10: Personal investment strategies

...

19A.3.31 G In the ~~appropriate regulator's~~ FCA's view, circumstances in which a *person* will be using a personal hedging strategy include (and are not limited to) entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that *person* that are linked to or commensurate with the amounts by which the *person's* remuneration is subject to reductions.

Remuneration Principle 11: Non-compliance with the Remuneration Code

19A.3.32 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with the *Remuneration Code*, the EU CRR or CRD.

[**Note:** article 94(1)(q) of *CRD*]

Remuneration Principle 12: Remuneration structures - introduction

...

19A.3.34 G ...

[**Note:** The ~~FSA also gave~~ FCA provides guidance on the application of certain *rules* on remuneration structures in relation to individuals who are *Remuneration Code* staff for only part of a given performance year. This guidance ~~has been adopted by the FCA~~ and is available in the *FCA* website at <http://www.fca.org.uk/your->

fca/documents/finalised-guidance/remuneration-code.]

...

Remuneration Principle 12(b): Remuneration structures - assessment of performance

...

19A.3.37 G ~~Non financial performance metrics should form a significant part of the performance assessment process and should include adherence to effective risk management and compliance with the *regulatory system* and with relevant overseas regulatory requirements. Poor performance as assessed by non financial metrics such as poor risk management or other behaviours contrary to *firm* values can pose significant risks for a *firm* and should, as appropriate, override metrics of financial performance. The performance assessment process and the importance of non financial assessment factors in the process should be clearly explained to relevant *employees* and implemented. A balanced scorecard can be a good technique.~~

(1) The non-financial criteria in SYSC 19A.3.36R(2) should include:

- (a) the extent of the *employee's* adherence to effective risk management, and compliance with the *regulatory system* and with relevant overseas regulatory requirements; and
- (b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.

(2) Poor performance, such as poor risk management or other behaviours contrary to *firm* values, can pose significant risks for a *firm* and non-financial metrics should override metrics of financial performance where appropriate.

(3) Aligning variable awards to sustainable financial performance requires *firms* to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per *share* (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentivise highly leveraged activities.

...

19A.3.39 G ~~The requirement for assessment of performance to be in a multi-year framework reflects the fact that profits from a *firm's* activities can be volatile and subject to cycles. The financial performance of *firms* and individual *employees* can be exaggerated as a result. Performance assessment on a moving average of results can be a good way of meeting this requirement. However, other techniques such as good quality risk adjustment and deferral of a sufficiently large proportion of *remuneration* may also be useful.~~

[deleted]

- 19A.3.39 A G A firm should note that the requirement in SYSC 19A.3.36R(2) for financial and non-financial criteria to be taken into account applies wherever remuneration is performance-related including within any assessment of future performance.

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration, buy-outs and retention awards

...

- 19A.3.41 E (1) ~~A firm should not award, pay or provide guaranteed variable remuneration in the context of hiring new Remuneration Code staff (X) unless:~~
- (a) ~~it has taken reasonable steps to ensure that the remuneration is not more generous in either its amount or terms (including any deferral or retention periods) than the variable remuneration awarded or offered by Xs previous employer; and~~
 - (b) ~~it is subject to appropriate performance adjustment requirements.~~
- (2) ~~Contravention of (1) may be relied on as tending to establish contravention of the rule on guaranteed variable remuneration (SYSC 19A.3.40R). [deleted]~~
- 19A.3.42 G ~~Guaranteed variable remuneration should be subject to the same deferral criteria as other forms of requirements applicable to variable remuneration awarded by the firm including deferral, malus and clawback.~~
- 19A.3.43 G ~~In the appropriate regulator's view, variable remuneration can be awarded to Remuneration Code staff in the form of retention awards where it is compatible with the Remuneration Code general requirement to do so. The appropriate regulator considers this is likely to be the case only where a firm is undergoing a major restructuring and a good case can be made for retention of particular key staff members on prudential grounds. Proposals to give retention awards should form part of any notice of the restructuring proposals required in accordance with Principle 11 and the general notification requirements in SUP 15.3. The FCA expects that guaranteed variable awards and retention awards should not be common practice for Remuneration Code staff and should be limited to rare, infrequent occurrences.~~

Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration

- 19A.3.44 C R A firm must notify without delay the ~~appropriate regulator~~ FCA of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio.

[Note: article 94(1)(g)(ii) of CRD]

...

- 19A.3.46 G ~~Firms should review existing contractual payments related to termination of employment with a view to ensuring that these are payable only where there is a clear basis for concluding that they are consistent with the *Remuneration Code* general requirement.~~

~~[Note: Standard 12 of the *FSB Compensation Standards*] [deleted]~~

Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments

...

- 19A.3.48 G (1) ~~The Committee of European Banking Supervisors has given guidance on the interpretation of the Directive provision transposed by SYSC 19A.3.47R(3). Its Guidelines provide that this requirement means that the 50% minimum threshold for instruments must be applied equally to the non-deferred and the deferred components; in other words, *firms* must apply the same chosen ratio between instruments and cash for their total variable *remuneration* to both the upfront and deferred components. (Guidelines on Remuneration Policies and Practices, 10 December 2010, paragraph 133.)~~
- (2) ~~This simplified example illustrates the operation of (1). The variable remuneration of a material risk taker (X) is 100, and by SYSC 19A.3.49 R(3) X is required to defer 60%. Xs upfront component is 40 and Xs deferred component is 60. At least 20 of Xs upfront component, and at least 30 of Xs deferred component, must be in instruments referred to in SYSC 19A.3.47R(1). [deleted]~~

Remuneration Principle 12(g): Remuneration structures - deferral

19A.3.49 R ...

- (3) In the case of a variable *remuneration* component:
- (a) ~~of a particularly high amount, £500,000 or more; or~~
- ...
- (4) ~~Paragraph (3)(b) does not apply to a *non-executive director*. [deleted]~~
- ...
- (6) ~~500,000 is a particularly high amount for the purpose of (3)(a). [deleted]~~
- (7) ~~Paragraph (6) is without prejudice to the possibility of lower sums being considered a particularly high amount. [deleted]~~

- 19A.3.50 G (1) Deferred *remuneration* paid in:
- (a) *shares* or *share*-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of *shares*; and
 - (b) ~~Deferred remuneration paid in~~ cash should also be subject to performance criteria.
- (2) The ~~appropriate regulator~~ FCA would generally expect a *firm* to have a *firm*-wide policy (and *group*-wide policy, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable *remuneration* to fixed *remuneration* and with the amount of variable *remuneration*. While any variable *remuneration* component of £500,000 or more paid to *Remuneration Code staff* must be subject to 60% deferral, *firms* should also consider whether lesser amounts should be considered to be ‘particularly high’ taking account, for example, of whether there are significant differences within *Remuneration Code staff* in the levels of variable *remuneration* paid.

Remuneration Principle 12(h): Remuneration structures - performance adjustment, etc.

...

- 19A.3.53 G (1) ~~Variable remuneration may be justified, for example, to incentivise employees involved in new business ventures which could be loss-making in their early stages. [deleted]~~
- (2) The *governing body* (or, where appropriate, the *remuneration committee*) should approve performance adjustment policies, including the triggers under which adjustment would take place. The ~~appropriate regulator~~ FCA may ask *firms* to provide a copy of their policies and expects *firms* to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles

...

- 19A.3.54 R (1) Subject to (1A) to (3), the *rules* in SYSC 19A Annex 1.1R to 1.4R apply in relation to the prohibitions on *Remuneration Code staff* being *remunerated* in the ways specified in:

...

- (b) SYSC 19A.3.49R (~~non~~-deferred variable *remuneration*);

...

...

- 19A.3.55 G (1) Sections 137H and 137I of the *Act* enables the ~~appropriate regulator~~ FCA to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision. SYSC 19A.3.53AR and SYSC 19A.3.54R (together with SYSC 19A Annex 1) are such *rules* and render void provisions of an agreement that contravene the specified prohibitions on guaranteed variable *remuneration*, non-deferred variable *remuneration* and replacing payments recovered or property transferred. This is an exception to the general position set out in section 138E(2) of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.

...

19A **Detailed provisions on voiding and recovery (SYSC 19A.3.53AR and SYSC**
Annex 1 **19A.3.54R)**

| Rendering contravening provisions of agreements void | | |
|---|---|--|
| ... | | |
| 3 | G | The effect of 2R, in accordance with sections 137H and 137I of the <i>Act</i> , is to prevent contravening provisions being rendered void retrospectively. Contravening provisions may however be rendered void if they are contained in an agreement made after the <i>rule</i> containing the prohibition is made by the appropriate regulator <u>FCA</u> but before the <i>rule</i> comes into effect. For further relevant transitional provisions, see SYSC TP 3.6A. |
| ... | | |
| Notification to the appropriate regulator <u>FCA</u> | | |
| 8 | G | The appropriate regulator <u>FCA</u> considers any breach of a <i>rule</i> to which this annex applies to be a significant breach which should be notified to the appropriate regulator <u>it</u> in accordance with SUP 15.3.11R (Breaches of rules and other requirements in or under the <i>Act</i>). Such a notification should include information on the steps which a <i>firm</i> or other <i>person</i> has taken or intends to take to recover payments or property in accordance with 5R. |

...

19D **Dual-regulated firms Remuneration Code**

19D.1 Application and purpose

Who? What? Where?

- 19D.1.1 R (1) The *dual-regulated firms Remuneration Code* applies to:
- ...
- (b) a UK bank;
- ...
- ...
- (2) For a *firm* which falls under (1)(a), (1)(b) or (1)(c), the *dual-regulated firms Remuneration Code* applies, ~~in a prudential context,~~ in relation to:
- ...
- ...
- (4) Otherwise, the *dual-regulated firms Remuneration Code* applies to a *firm* within (1) in the same way as SYSC 4.1.1R (General requirements).
- 19D.1.1A G SYSC 19D.1.1R(2) is applied to the extent of the *FCA*'s powers and regulatory responsibilities.
- 19D.1.2 R ~~Subject~~ Under Part 2 of SYSC 1 Annex 1 in relation to SYSC 4.1.1R (General requirements), and subject to the provisions on group risk systems and controls requirements in SYSC 12 (Group risk systems and controls requirements), the *dual-regulated firms Remuneration Code*:
- ...
- ...
- Purpose
- 19D.1.6 G ...
- (2) The *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to remuneration. ~~The Committee of European Banking Supervisors published Guidelines on Remuneration Policies and Practices on 10 December 2010. Provisions of the Capital Requirements Regulations 2013 (SI 2013/3115) together with the *EBA*'s Guidelines to article 75 of the *CRD* relating to the collection of remuneration benchmarking information and high earners information have been implemented through SUP 16 Annex 33AR and SUP 16 Annex 34AR. The Guidelines can be found at~~

~~<http://www.eba.europa.eu/documents/10180/757286/EBA-GL-2014-08+%28GLs+on+remuneration+benchmarking+%29.pdf/9d87e18b-ed79-4ceb-a3f6-64928ee26065>~~ and ~~<http://www.eba.europa.eu/documents/10180/757283/EBA-GL-2014-07+%28GLs+on+high+earners+data+collection%29.pdf/da42488f-09e1-4558-ae4e-6258e11b8345>~~. In applying the rules in the dual-regulated firms Remuneration Code, firms should comply with Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at:
<http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b>

Notifications to the FCA

- 19D.1.7 G (1) ~~The~~ In addition to the notification requirements in the dual-regulated firms Remuneration Code ~~does not contain specific notification requirements. However,~~ general circumstances in which the FCA expects to be notified by firms of matters relating to their compliance with requirements under the regulatory system are set out in SUP 15.3 (General notification requirements).

...

...

19D.3 Remuneration principles

Application: groups

...

- 19D.3.2 G SYSC 12.1.13R(2)(dA) requires the firm to ensure that the risk management processes and internal control mechanisms at the level of any UK consolidation group or non-EEA sub-group of which a firm is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the FCA's view, the application of this section at group, parent undertaking and subsidiary undertaking levels in SYSC 19D.3.1R(1) is in line with article 109(2) of the CRD on the application of systems and controls requirements to groups (as in SYSC 12.1.13R).

Application: categories of staff and proportionality

- 19D.3.3 R ...

[**Note:** In addition to the guidance in this section about the dual-regulated firms remuneration principles proportionality rule, the FSA gave FCA provides guidance on the division of firms into categories for the purpose of providing a framework for the operation of the dual-regulated firms

remuneration principles proportionality rule. This guidance is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes.>]

- 19D.3.4 R (1) *Dual-regulated firms Remuneration Code staff* comprises:
- ...
- (b) subject to (2) and (3), an *employee* of an *overseas firm* in SYSC 19D.1.1R(1)(d) (i.e., an *overseas firm* that would have been a UK bank, building society or *UK designated investment firm* if it had been a *UK domestic firm*) whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who would meet any of the criteria set out in articles 3 or 4(1) of Regulation (EU) 604/2014 of 4 March 2014 if it had applied to him.
- ...

...

Remuneration Principle 5: Control functions

...

- 19D.3.18 G ...
- (2) ~~The need to avoid undue influence is particularly important where employees from the control functions are embedded in other business areas. This Remuneration Principle does not prevent the views of other business areas being sought as an appropriate part of the assessment process. [deleted]~~
- (3) ~~The FCA would generally expect the ratio of the potential variable component of remuneration to the fixed component of remuneration to be significantly lower for employees in risk management and compliance functions than for employees in other business areas whose potential bonus is a significant proportion of their remuneration. Firms should nevertheless ensure that the total remuneration package offered to those employees is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the remuneration of relevant persons involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see SYSC 6.1.4R(4)). [deleted]~~

Remuneration Principle 6: Remuneration and capital

...

- 19D.3.20 G ~~A firm should have variable remuneration arrangements that are sufficiently flexible to allow it to direct the necessary resources towards capital building.~~

[deleted]

...

Remuneration Principle 8: Profit-based measurement and risk adjustment

...

19D.3.24 G ...

- (2) ~~A number of risk adjustment techniques and measures are available, and a *firm* should choose those most appropriate to its circumstances.~~ [deleted]
- (3) We consider good practice in this area to be represented by those *firms* who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered, including non-financial risks such as reputation, conduct, *client* outcomes, values and strategy.
- (4) The *FCA* expects a *firm* to be able to provide it with details of all adjustments that the *firm* has made whether through application of formulae or the exercise of discretion. This will enable the *FCA* to ~~ensure that~~ consider whether the *firm's* risk adjustment framework is sufficiently robust. Where discretion has been applied, the *firm* should be able to provide a clear explanation for, and quantification of such adjustments.
- (5) A *firm* should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the *governing body* or *remuneration committee* for this purpose.

...

19D.3.28 G ...

- (2) ~~Management accounts should provide profit data at such levels within the *firm's* structure to enable it to see as accurate a picture of contributions of relevant staff to a *firm's* performance as is reasonably practicable.~~ [deleted]

...

19D.3.30 G

- (1) ~~Aligning variable awards to sustainable financial performance requires *firms* to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per *share* (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer term risk factors and have a tendency to incentive~~

highly leveraged activities.

- (2) ~~Long-term incentive plans should be treated as pools of variable remuneration. Firms that have long-term incentive plans should ensure that the structure of the award is compliant with the dual-regulated firms Remuneration Code's deferral and vesting requirements and that performance conditions required for vesting are appropriate. The valuation of the award should be based on its value when the award is granted, and determined using an appropriate technique.~~
- (3) ~~Firms should demonstrate that both the ex-ante intrinsic risks and the ex-post crystallisation of risk event have been considered as part of their risk-adjustment approach.~~

~~[Note: In addition to the guidance in this section on the Remuneration Principle 8 (Profit-based measurement and risk adjustment), the FSA gave guidance on the application of the requirements on risk adjustments. This guidance is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.] [deleted]~~

...

Remuneration Principle 12: Remuneration structures - introduction

19D.3.35 G ...

~~[Note: The FSA also gave guidance on the application of certain rules on remuneration structures about individuals who are dual-regulated firms Remuneration Code staff for only part of a given performance year. This guidance is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.]~~

...

Remuneration Principle 12(b): Remuneration structures - assessment of performance

...

- 19D.3.40 G
- (1) The non-financial criteria in SYSC 19D.3.39R(1)(b) should include:
 - (a) the extent of the *employee's* adherence to effective risk management, and compliance with the *regulatory system* and with relevant overseas regulatory requirements; and
 - (b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.
 - (2) Aligning variable awards to sustainable financial performance requires firms to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance

measures commonly used (such as earnings per share (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentive highly leveraged activities.

- 19D.3.41 G Poor performance ~~assessed by non-financial metrics~~, such as poor risk management or other behaviours contrary to *firm* values, can pose significant risks for a *firm* and non-financial metrics should, ~~as appropriate,~~ override metrics of financial performance where appropriate.

- 19D.3.41 A G A *firm* should note that the requirement in SYSC 19D.3.39R(1)(b) for financial and non-financial criteria to be taken into account applies wherever remuneration is performance-related including within any assessment of future performance.

...

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration, buy-outs and retention awards

...

- 19D.3.46 G ...
- (2) The *FCA* expects that guaranteed variable awards and retention awards should not be common practice for *dual-regulated firms* *Remuneration Code* staff and should be limited to rare, infrequent occurrences. The *FCA* expects a *firm* to provide prior notification to the *FCA* of any ~~such~~ proposed retention awards.

- 19D.3.47 G Retention awards should form part of variable *remuneration* for the purpose of SYSC 19D.3.48R.

...

Remuneration Principle 12(e): Remuneration structures - payments related to early termination

...

- 19D.3.55 G ~~A *firm* should review existing contractual payments related to termination of employment with a view to ensuring that these are payable only where there is a clear basis for concluding that they are consistent with SYSC 19D.2.1R, which states that remuneration policies must be consistent with, and promote, sound and effective risk management.~~

~~[Note: Standard 12 of the *FSB Compensation Standards*] [deleted]~~

Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments

...

- 19D.3.57 G ~~The FCA would normally consider a period of retention of six months to be sufficient, provided that other risk management techniques within the firm are operating to secure sound and effective risk management. [deleted]~~
- 19D.3.58 G (1) ~~The Committee of European Banking Supervisors has given guidance on the interpretation of the CRD provision transposed by SYSC 19D.3.56R(3). Its guidelines provide that this requirement means that the 50% minimum threshold for instruments must be applied equally to the non-deferred and the deferred components; i.e., firms must apply the same chosen ratio between instruments and cash for their total variable remuneration to both the upfront and deferred components. (Guidelines on Remuneration Policies and Practices, 10 December 2010, paragraph 133, <https://www.eba.europa.eu/documents/10180/106961/Guidelines.pdf>.)~~
- (2) ~~This simplified example illustrates the operation of (1). The variable remuneration of a material risk taker (X) is 100 and, under SYSC 19D.3.59R(2), X is required to defer 60%. X's upfront component is 40 and X's deferred component is 60. At least 20 of X's upfront component, and at least 30 of X's deferred component, must be in instruments referred to in SYSC 19D.3.56R(1). [deleted]~~

...

Effect of breaches of the Remuneration Principles

...

- 19D.3.67 R (1) Subject to (2) to (7), the rules in SYSC 19D Annex 1.1R to 1.6R apply in relation to the prohibitions on *dual-regulated firms Remuneration Code staff* being remunerated in the ways specified in:
- ...
- (b) SYSC 19D.3.59R (~~non~~-deferred variable remuneration);
- ...
- ...
- (4) Condition 2 is that the firm:
- ...
- (b) is part of a group containing a firm that has relevant total assets exceeding £50 billion and that is a UK bank, a building society or a UK designated investment firm.
- ...
- (6) This rule does not apply in relation to the prohibition on *dual-regulated firms Remuneration Code staff* being remunerated in the

way specified in SYSC 19D.3.44R (guaranteed variable remuneration) if both the conditions in paragraphs (2)(b) and ~~(3)~~ (2)(c) of that *rule* are met.

...

...

Sch 2 Notification requirements

Sch 2.1G ~~There are no notification or reporting requirements in SYSC.~~

- (1) The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification requirements.
- (2) It is not a complete statement of those requirements and should not be relied on as if it were.
- (3) Table

| <u>Handbook reference</u> | <u>Matter to be notified</u> | <u>Content of the notification</u> | <u>Trigger event</u> |
|---------------------------|--|---|---|
| <u>SYSC 19A.3.4R(3)</u> | <u>Where an overseas firm deems an employee not to be Remuneration Code staff</u> | <u>Matter described in SYSC 19A.3.4R(3)</u> | <u>Matter described in SYSC 19A.3.4R(3)</u> |
| <u>SYSC 19A.3.44CR</u> | <u>The decision by the shareholders, members or owners of the firm to approve a higher maximum ratio between the fixed and variable components of total remuneration</u> | <u>Matter as described in SYSC 19A.3.44CR</u> | <u>Matter as described in SYSC 19A.3.44CR</u> |
| <u>SYSC 19D.3.4R(3)</u> | <u>Where an overseas firm deems an employee not</u> | <u>Matter described in SYSC 19D.3.4R(3)</u> | <u>Matter described in SYSC 19D.3.4R(3)</u> |

| | | | |
|-----------------------|---|--|--|
| | to be <i>dual-regulated firms</i> <i>Remuneration Code staff</i> | | |
| <u>SYSC 19D.3.51R</u> | The decision by the shareholders, members or owners of the <i>firm</i> to approve a higher maximum ratio between the fixed and variable components of total <i>remuneration</i> | Matter as described in <u>SYSC 19D.3.51R</u> | Matter as described in <u>SYSC 19D.3.51R</u> |

