

Updating the Dual-regulated firms Remuneration Code to reflect CRD V: feedback to CP20/14 and final rules

Policy Statement

PS20/16

December 2020

This relates to

Consultation Paper 20/14
which is available on our website at
www.fca.org.uk/publications

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1 Summary

- 1.1** In May 2019, the European Union (EU) adopted the fifth Capital Requirements Directive (CRD V) which EU Member States and the UK are required to transpose by 28 December 2020.
- 1.2** CRD V contains amendments to the provisions on remuneration upon which our rules for dual-regulated firms are based. In CP20/14 (Updating the Dual-regulated firms Remuneration Code to reflect CRD V), we set out our proposals for amending the Dual-regulated firms Remuneration Code (SYSC 19D) and relevant non-Handbook guidance to reflect these changes.
- 1.3** We also consulted on making consequential changes to address deficiencies arising from the UK's exit from the EU. We are closely aligned with the approach taken by the Prudential Regulation Authority (PRA), as the relevant competent authority for transposing CRD V in the UK, to ensure that our rules and guidance on remuneration for dual-regulated firms remain consistent with the PRA's and support our own objectives.
- 1.4** A firm's approach to rewarding and incentivising its staff is a key driver of behaviour and firm culture. We want to support firms to develop an approach to remuneration that drives positive behaviours and healthy cultures and does not drive behaviours that are likely to lead to harm to consumers or markets.
- 1.5** This Policy Statement (PS) summarises the feedback we received during the consultation period and our response to it. In this PS, we set out our final rules on remuneration for dual-regulated firms and the revised versions of the relevant guidance documents. The PRA has published its [Policy Statement on CRD V](#).

Who this affects

- 1.6** This PS is relevant to firms in scope of the Dual-regulated firms Remuneration Code, specifically:
- credit institutions (banks and building societies)
 - designated investment firms (those designated for prudential regulation by the PRA)
 - firms from outside the European Economic Area (EEA) that carry on activities from an establishment in the UK that mean they would be a credit institution or designated investment firm if they were a UK domestic firm
 - firms in the same group as at least 1 of the types of firm in the previous 3 points
- 1.7** While this PS does not affect FCA solo-regulated investment firms which are subject to other Remuneration Codes, it will be of interest to solo-regulated investment firms that are members of a group to which the Dual-regulated firms Remuneration Code applies on a consolidated basis.

- 1.8** We are making certain changes to non-Handbook guidance to ensure that it remains applicable to IFPRU investment firms. These firms will find paragraphs 2.54-2.56 of relevance.

The wider context of this policy statement

Our consultation

- 1.9** In CP20/14, we set out our proposals for amending the Dual-regulated firms Remuneration Code and relevant non-Handbook guidance. These proposals focused on updating our approach to reflect the changes made by CRD V. Our proposals were developed to closely align with the PRA's proposals on remuneration, which are set out in its [Consultation Paper on CRD V](#), and to support our own objectives.
- 1.10** By amending our remuneration rules and guidance to reflect the changes made by CRD V, we are ensuring that our remuneration framework for dual-regulated firms remains broadly consistent with the PRA's rules on remuneration. In doing so, we are minimising inconsistencies between the two remuneration regimes, reducing regulatory burden and minimising the cost of compliance for firms.

How it links to our objectives

- 1.11** Our changes seek to ensure that firms establish, implement and maintain remuneration policies and practices that are consistent with, and promote, effective risk management and healthy cultures. Culture in financial services can be driven by a number of factors, including a firm's approach to rewarding and incentivising its staff, in particular those whose role may have a material impact on the risk profile of the firm. Our rules aim to encourage firms to implement a remuneration approach that rewards positive behaviour and does not incentivise behaviour that could lead to harm to consumers or markets.
- 1.12** The amendments to the Dual-regulated firms Remuneration Code also aim to ensure there is greater proportionality for firms. This should reduce the risk that the Remuneration Code creates any distortions to competition and will support firms to implement remuneration frameworks that are proportionate to the risks posed by their activities.

What we are changing

- 1.13** We are amending the Dual-regulated firms Remuneration Code and the relevant non-Handbook guidance to reflect the changes made by CRD V. This includes;
- adding categories of staff who must be included as material risk takers (MRTs)
 - replacing our current proportionality thresholds with exemptions from some remuneration rules for firms below a certain size and for individuals with remuneration below a certain level
 - amending the criteria for assessing whether a UK branch of a third country firm is in scope of application of certain rules
 - amending the minimum deferral and clawback periods

- introducing a new requirement for firms to have gender neutral remuneration policies and practices
- permitting listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments

1.14 We are making consequential amendments to 2 non-Handbook guidance documents:

- General Guidance on Proportionality – the Dual-regulated firms Remuneration Code (SYSC 19D)
- Remuneration Codes (SYSC 19A and SYSC 19D) – Frequently Asked Questions on remuneration (FAQs guidance)

1.15 As the FAQs guidance currently applies to firms in scope of the Dual-regulated firms Remuneration Code (SYSC 19D) and firms in scope of the IFPRU Remuneration Code (SYSC 19A), we are splitting it to create 2 versions that will be applicable to each cohort of firms separately.

1.16 Following consultation feedback, we revised the General Guidance on Proportionality and FAQs guidance, for SYSC 19D firms, to provide updated guidance on part-year MRTs and on the application of remuneration requirements to MRTs in groups.

1.17 Firms are expected to apply our amended remuneration requirements from the next performance year that begins on or after 29 December 2020.

1.18 We are also introducing changes to ensure that the Dual-regulated firms Remuneration Code remains effective after the end of the implementation period following the UK's exit from the EU. This includes addressing deficiencies in the Dual-regulated firms Remuneration Code and converting certain thresholds that are currently in Euros to Sterling. These amendments will come into force from 1 January 2021.

1.19 We have concluded that the amendments made following consultation do not lead to significant changes to FCA-specific costs and benefits so they do not require a further cost benefit analysis under section 138I(5) of the Financial Services and Markets Act 2000 (FSMA). We are also satisfied that our assessment of the impact of the rules on mutual societies remains the same as set out in CP20/14.

Outcome we are seeking

1.20 Our amendments to the Dual-regulated firms Remuneration Code will help to strengthen the remuneration framework for credit institutions and designated investment firms.

1.21 These amendments will ensure that firms have the mechanisms to operate stronger risk management, to implement higher levels of individual accountability and to better incentivise their staff to make decisions not involving short-term or excessive risks. Our aim is that this results in positive conduct and behaviours that drive healthy cultures within the financial industry. This would contribute to reducing the number of misconduct incidents in these firms and, where misconduct does occur, the level of harm it causes.

Measuring success

- 1.22** Our approach to supervision is forward looking and involves making judgements to minimise harm for consumers and markets. Culture within firms is the foundation on which their customer outcomes are built and we assess the effectiveness of key drivers of culture in reducing potential harm arising from firms' business models and strategies. This assessment includes the extent to which firms' remuneration and recognition practices reward and incentivise all staff to promote healthy cultures. We also assess the extent to which remuneration policies positively promote diversity and inclusion.
- 1.23** The changes we are making to the Dual-regulated firms Remuneration Code should contribute to fewer instances of misconduct in the relevant firms, and reduce the level of harm those incidents cause. Through our ongoing supervision work, we will assess the impact of our changes to the remuneration rules to ensure they are driving the right behaviours and minimising harm.

Summary of feedback and our response

- 1.24** We received 10 responses to CP20/14. A full list of non-confidential respondents can be found in Annex 1.
- 1.25** Respondents were broadly supportive of our proposals, but did raise concerns regarding the following areas:
- application of remuneration requirements to groups on a consolidated basis
 - minimum deferral periods
 - minimum clawback periods
 - part-year MRTs in role for less than 3 months
- 1.26** Further detail on the feedback received to each of our questions and our responses are set out in the following chapter.

Equality and diversity considerations

- 1.27** In CP20/14, we set out our analysis of our equality and diversity considerations. Our proposal to include a requirement for dual-regulated firms to ensure their remuneration policies and practices are gender neutral supports our actions as a regulator in helping to eliminate poor conduct prohibited by the Equality Act 2010.
- 1.28** The Equality Act 2010 already places a legal obligation on firms to ensure that men and women are given equal pay when performing equal work or work of equal value. Our proposal to reflect this in our Dual-regulated firms Remuneration Code reinforces the importance we place on promoting equality in the workplace. It will strengthen how we work with and support firms in taking positive action to implement this, alongside other market standards.

- 1.29** As we set out in CP20/14, we did not consider that the proposals materially affected any of the groups with protected characteristics under the Equality Act 2010. We did not receive any feedback to alter this view.

Next steps

- 1.30** We set out the final rules at Appendix 1 and 2, and links to the final non-Handbook guidance documents at Appendix 3, 4 and 5. The new Handbook rules and guidance will come into force on 29 December 2020. Firms are required to apply the new rules and guidance from the next performance year starting on or after 29 December 2020.

2 Feedback to CP20/14: Updating the Dual-regulated firms Remuneration Code to reflect CRD V

2.1 In this chapter, we summarise and respond to the feedback received on our proposals to amend the Dual-regulated firms Remuneration Code and relevant non-Handbook guidance to reflect CRD V.

Material risk takers in CRD V

2.2 Firms are required to apply the rules and guidance of the Dual-regulated firms Remuneration Code to their 'Dual-regulated firms Remuneration Code staff'. This is defined as comprising employees of a dual-regulated firm whose professional activities have a material impact on the firm's risk profile. It also includes employees of an overseas firm that would have been a UK dual-regulated firm if it had been a UK domestic firm, who meet this definition. We consulted to include in the Dual-regulated firms Remuneration Code the following amended categories of staff used to identify who are MRTs:

- all members of the management body and senior management
- staff members with managerial responsibility over the firm's control functions or material business units
- staff members entitled to significant remuneration in the preceding financial year, for which 3 conditions must be met:
 - the staff member's remuneration is at least €500,000
 - the staff member's remuneration is at least the average remuneration awarded to the members of the firm's management body and senior management
 - the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile

2.3 We proposed to add the new terms introduced by these categories and their definitions to our Handbook Glossary and to make cross-reference to the definitions provided in the Regulatory Technical Standards (RTS) developed by the EBA (the new MRT RTS). We also proposed to replace references in SYSC 19D to the CRD IV version of the MRT RTS with references to the new MRT RTS, and to make consequential amendments to the FAQs guidance. We asked:

Q1: *Do you agree with our proposals to amend our rules and guidance on material risk takers?*

2.4 We received 3 responses which explicitly addressed this question. Two respondents agreed with our proposals. One respondent provided feedback concerning the classification of MRTs for the purposes of deferral and clawback; this feedback is addressed in response to questions 5 and 6 below.

Our response

We welcome the support for this proposal and are proceeding as consulted on. It should be noted that, as the EU is still to adopt the final MRT RTS, our rules make reference to the draft version instead. This produces the same legal effect. In the onshoring instrument, we make one minor modification to the reference.

Proportionality

- 2.5** In CP20/14, we set out the amendments made by CRD V to proportionality and the thresholds for application of remuneration requirements. We proposed to replicate the changes made by CRD V in our rules. This includes deleting the words 'to the extent' from the dual-regulated firms remuneration principles proportionality rule (SYSC 19D.3.3R(2)).
- 2.6** We proposed to replicate the thresholds CRD V introduces to establish which firms and individuals can be exempt from applying the requirements on deferral, pay-out in retained shares or other instruments and holding and retention periods for discretionary pension benefits.
- 2.7** We also proposed to amend our General Guidance on Proportionality and FAQs guidance to reflect our proposed changes to the application of proportionality and to introduce the exemptions for certain firms and individuals.

Feedback on our approach

Q2: *Do you agree with our proposed approach to proportionality and, in particular, with our proposed exemptions for certain firms and individuals?*

- 2.8** The respondents who commented on this proposal broadly agreed that the changes to the thresholds for application replicate CRD V's approach. However, some respondents expressed concern regarding the changes to the threshold for application to individuals and the guidance on part-year MRTs.

Threshold for application to individuals

- 2.9** Three respondents expressed concern regarding the change in the threshold for application to individuals, with 2 respondents requesting a review of this threshold after CRD V has been implemented. These respondents stated that the threshold for application as set by CRD V would have a significant impact on proportionality for individuals and would bring into scope more individuals who would not have previously had certain remuneration rules applied to them.

Our response

As CRD V sets explicit thresholds for application to firms and to individuals, relevant competent authorities in the EU and UK must transpose them as set out in CP20/14. Since we are replicating the PRA's approach to transposing CRD V, we do not consider it would be useful for the FCA to develop and implement different thresholds. As such, we are proceeding as consulted on and are introducing the amended thresholds for application, as well as the exemptions for certain firms and individuals. We will take this feedback into account for any future review.

Part-year MRTs

- 2.10** Three respondents disagreed with our proposal to amend the General Guidance on Proportionality to reflect the changes made by CRD V. This had the effect of removing guidance on part-year MRTs in role for less than 3 months and, instead, applied the pro-rata calculation to all MRTs in role for less than 1 year.
- 2.11** Respondents stated that this change, in conjunction with the amended threshold for application to individuals, would impact the amount of variable remuneration awarded to part-year MRTs. One respondent suggested that this did not reflect that, in practice, an individual in a new role would use those first few months to adjust and that this may deter individuals from taking on a MRT role towards the end of a performance year.
- 2.12** One respondent asked for clarity on the arrangements for individuals based overseas working in the UK for a short-term assignment of less than 3 months.

Our response

Following feedback, we have amended the guidance on part-year MRTs to no longer require firms to apportion the individual proportionality threshold when assessing whether certain remuneration requirements should apply to part-year MRTs.

Instead, firms should assess the amount of variable remuneration awarded to the individual in their capacity as a MRT against the full threshold of application, as well as determining whether the variable remuneration amounts to one-third of the total remuneration awarded to the individual in their capacity as a MRT. We have made the full threshold of €50,000 variable remuneration, or £44,000 when converted to Sterling, applicable to the relevant amount of variable remuneration awarded to part-year MRTs.

For example, A1 joins a firm as a Dual-regulated firms Remuneration Code staff member 6 months into the performance year. A1's annual fixed remuneration is £200,000. For the remaining 6 months of the performance year, A1 is awarded variable remuneration of £40,000.

As A1 is only in role for part of the performance year, the firm will need to determine how much fixed remuneration A1 received for that performance year in their capacity as a MRT. In this example, A1 would

have received £100,000 fixed remuneration for the performance year. This, taken with the £40,000 variable remuneration, means that A1 received total remuneration of £140,000 for the relevant performance year.

In this scenario, A1's variable remuneration of £40,000 is below the threshold of £44,000 and is less than one-third of total remuneration. So, the rules at paragraph 2.6 do not apply to A1's variable remuneration for the relevant performance year.

In response to the query about individuals based overseas working in the UK on short-term assignments, firms would need to apply the threshold for application to these individuals in the same way as set out above.

Application of proportionality conditions to third country branches in the UK

2.13 We consulted on continuing to apply proportionality conditions to UK branches of third country firms. For a UK branch to determine whether it is in scope of application of the remuneration rules, a branch will need to assess:

- The average total assets that relate to the activities of the UK branch (rather than the average total assets of the entire legal entity) over the previous 4 years. If those assets are under €5 billion then that branch will be exempt from applying the relevant remuneration requirements.
- If it has higher assets than €5 billion, but less than €15 billion, then it should consider whether (based on the activities of the UK branch) it meets the conditions relating to:
 - the size of its trading book
 - its derivatives activity
 - whether applying the increased threshold would be appropriate taking into account the nature, scope and the complexity of its activities, its internal organisation or, if applicable, the characteristics of the group to which it belongs.

2.14 We asked:

Q3: *Do you agree with our proposed approach to the application of proportionality to third country branches in the UK?*

2.15 Respondents agreed that our proposed approach to UK branches of third country firms was appropriate, or had no substantive comments.

Our response

Since we did not receive substantive comments on this proposal, we are making rules to reflect our approach as consulted on. We are also adding rules that expressly address the approach that should be taken for third country branches, and clarify how average total assets are calculated.

Application to groups

- 2.16** In CP20/14, we proposed to maintain our current approach of applying remuneration requirements on a consolidated basis at group, parent undertaking and subsidiary undertaking levels. To effect this, we proposed to update our rules to reflect the amendments CRD V makes to Articles 92 and 109 regarding the application of remuneration rules on a consolidated basis.
- 2.17** By maintaining this approach, the Dual-regulated firms Remuneration Code remains applicable to a solo-regulated investment firm, in scope of the IFPRU or BIPRU Remuneration Code, which is a member of a group to which the Dual-regulated firms Remuneration Code applies on a consolidated basis. Subsidiaries would continue to apply their sectoral remuneration requirements on an individual basis.
- 2.18** We asked
- Q4:** *Do you agree with our proposed approach to the application of remuneration rules to groups?*
- 2.19** Four of the 5 respondents who commented on this proposal did not agree with our proposed approach to applying to groups remuneration requirements on a consolidated basis.
- 2.20** Respondents requested that we change our approach so investment firms that do not form part of a prudential consolidation group containing a credit institution, are not subject to CRD V remuneration requirements. Respondents stated that applying relevant sectoral requirements to other investment firms within groups containing a credit institution would better reflect their risk profiles and the intention of the proposed introduction of the UK's Investment Firm Prudential Regime (IFPR).
- 2.21** Some respondents raised concerns that our approach creates an unlevel playing field as CRD V applies standards different to those applied by other sectoral remuneration regimes.
- 2.22** One respondent set out that this approach would not be proportionate in the scenario of an investment group, mainly consisting of solo-regulated investment firms, which contains a banking entity whose activities are ancillary to the group. This is because, as a result of the investment group containing a banking entity, the whole group would be subject to CRD V remuneration requirements on a consolidated basis.
- 2.23** One respondent questioned our use of s.421 FSMA to define 'group'. In particular, as this definition includes entities in which a group has a participating interest. The effect is this may create challenges when enforcing the application of remuneration requirements on a consolidated basis to all entities in a group.

Our response

After considering the feedback on our proposal on the application to groups, we are clarifying our approach and have included this in our non-Handbook guidance.

In CP20/14, we consulted on the basis that relevant remuneration requirements of the Dual-regulated firms Remuneration Code would apply on a consolidated basis to firms within a group who would not

otherwise be subject to these remuneration requirements on a solo basis. However, we also set out that this was only for individuals who pose a material risk to the individual entity in scope of the Dual-regulated firms Remuneration Code and/or the group as a whole.

As set out in CP20/14, firms within the consolidation group should continue to apply relevant sectoral remuneration requirements to their other staff who do not pose a material risk to the credit institution or group, including those in scope of the IFPRU Remuneration Code.

We have concluded that it is reasonable for us to continue to use s.421 FSMA to define the term 'group'. Changing our approach to defining the term 'group' would have a wider impact on our rules and, in particular, the interplay between different rules that rely on the definition given in s.421 FSMA.

If a group or a firm believes that it should not be required to apply CRD V remuneration requirements on a consolidated basis, it remains open to them to apply for a waiver.

Deferral periods

2.24 To reflect the changes made by CRD V to the rules on deferral, we consulted on our proposals to amend the minimum deferral periods and to create new categories of MRTs to show how these deferral periods should be applied.

2.25 Table 1 sets out the current minimum deferral periods and the proposed minimum deferral periods we consulted on. These amendments include creating a new category for FCA-designated senior management functions (SMFs) and setting different minimum deferral periods for MRTs with total remuneration over £500,000 and for MRTs with total remuneration equal to or less than £500,000.

Table 1: Proposed changes to deferral periods

| Type of MRT | Minimum deferral period (in years) | | |
|--------------------|------------------------------------|-----------------------------------|--------------------------------------|
| | Current rules | Our proposals | |
| | | Total remuneration above £500,000 | Total remuneration £500,000 or below |
| PRA-designated SMF | 7 | 7 | 5 |
| FCA-designated SMF | 3 - 5 | 5 | 5 |
| Other MRT | | 4 - 5 | 4 |

Feedback on our approach

Q5: *Do you agree with our proposals for minimum deferral periods?*

2.26 Four of the 5 respondents who commented on our proposals for minimum deferral periods stated that our proposals have created complexity. One respondent was supportive of our approach to deferral, although the respondent would not be directly impacted by our amendments to deferral as the rules on deferral would not apply to its firm.

Categories of MRTs for applying deferral

2.27 Most of these respondents highlighted that our proposal to set different minimum deferral periods for MRTs with total remuneration above £500,000 and those with total remuneration equal to or less than £500,000 is complex and confusing. Some respondents suggested how we may amend the minimum deferral periods to add clarity and simplicity. These suggestions included:

- removing the distinction between MRTs with total remuneration above £500,000 and those with total remuneration equal to or less than £500,000
- aligning with the minimum deferral periods as set out in CRD V for all MRTs, ie a minimum of 5 years deferral for members of the management body and senior management and 4 years deferral for other MRTs
- similar to the above, however, retaining the minimum 7 years deferral for PRA-designated SMFs

2.28 Some respondents highlighted instances of where our draft rules appeared to diverge from the PRA's draft rules.

Our response

We acknowledge the feedback around the challenges posed by the complexity of our proposals. For deferral, we and the PRA proposed an additional set of minimum periods for MRTs who would be newly brought into scope by the lower individual proportionality thresholds to provide the maximum flexibility provided for under CRD V.

The PRA has concluded that, on balance, it is better to provide this flexibility to MRTs who will be newly in scope of the rules on deferral as a result of the lower individual proportionality thresholds. We are replicating the PRA's approach for simplicity. If the FCA were to implement a different approach to deferral from the PRA, this would increase rather than reduce confusion and complexity.

It should be noted that these periods represent the minimum period of deferral that should be applied to an individual's variable remuneration. It is open to firms to apply a deferral period that is longer than the minimum period set out in our rules.

We are implementing the changes to the minimum deferral periods largely as consulted on. Our final minimum deferral periods are set out at Table 2.

To ensure alignment with the PRA's approach, we are amending the distinction between MRTs whose total remuneration is above £500,000 and those MRTs whose total remuneration is equal to or less than £500,000, to also include the assessment of whether the variable remuneration amounts to 33% of total remuneration. For ease, we are introducing this in our rules by way of a new term of 'higher paid MRT'.

We are also including in our rules on deferral reference to the term 'significant firm', and making consequential amendments to two other rules using the same concept. This brings our rules in closer alignment with the terminology used by CRD V and by the PRA in setting out the requirements for deferral.

Although CRD V sets out a minimum deferral period of at least 4 to 5 years, we will be presenting this as a minimum of at least 4 years. This does not change the effect of these thresholds.

Table 2: Final minimum deferral periods

| Type of MRT | Minimum deferral period (in years) | | |
|--------------------|------------------------------------|-----------------|---------------------|
| | Current rules | Final rules | |
| | | Higher paid MRT | Not higher paid MRT |
| PRA-designated SMF | 7 | 7 | 5 |
| FCA-designated SMF | 3 - 5 | 5 | 5 |
| Other MRT | | 4 | 4 |

Part-year or part-time MRTs

2.29

Two consultation respondents raised queries about our proposal to set different minimum deferral periods for MRTs according to their total remuneration. These queries include how firms should apply the minimum deferral periods to MRTs who work part-time or who have changed role during the performance year which would result in them moving from one category for deferral to another.

Our response

As set out above, the assessment is based on 'total remuneration' received and so we expect firms to apply the deferral period which reflects the final total remuneration the individual received for that performance year.

Clawback periods

2.30 Although CRD V requires firms to apply clawback to all Remuneration Code staff, it does not set minimum clawback periods. Except for where longer clawback periods were already in place in the UK, in CP20/14 we proposed that firms must apply whichever is the longer period of:

- the minimum clawback period set out in our rules, or
- the period which is equal to the sum of the deferral and retention periods the firm applies to the individual

2.31 The minimum clawback periods resulting from this approach are shown in Table 3.

Table 3: Proposed changes to clawback periods

| Type of MRT | Minimum clawback period (in years) | | | |
|--------------------|------------------------------------|-----------------------------------|--------------------------------------|------------|
| | Current rules | Our proposals | | |
| | | Total remuneration above £500,000 | Total remuneration £500,000 or below | |
| | | | Deferred | Undeferred |
| PRA-designated SMF | 7* | 7* | 6 | 1 |
| FCA-designated SMF | 7 | 7* | 6 | 1 |
| Other MRT | | 7 | 5 | 1 |

* Minimum clawback periods may be extended to at least 10 years in certain circumstances

2.32 We asked:

Q6: *Do you agree with our proposals for minimum clawback periods?*

2.33 Six respondents commented on our proposals to amend the minimum clawback periods and all 6 either disagreed with our approach or raised concerns with it. All respondents commented on the complexity of our proposals, echoing the feedback received on our proposals on deferral. In particular, respondents remarked that linking the clawback period to the deferral period would cause confusion and create adverse consequences.

2.34 Some respondents did not agree with the proposal to set different clawback periods based on whether the total remuneration received is above £500,000 or equal to or less than £500,000. They argued that this would cause operational complexity as staff may move between MRT categories and receive different remuneration awards over the years, resulting in different clawback periods applying to different awards.

2.35 Two respondents stated that our proposals apply clawback periods that are too long given that some firms may meet the conditions to not apply deferral. This may have the effect of deterring firms, that meet the conditions to not apply deferral, from

applying deferral voluntarily. This stems from our proposal to apply a minimum of 1 year clawback to undeferred remuneration. The respondents pointed out that if these firms decided to apply deferral, then the minimum clawback period would increase from 1 year to 6 years.

- 2.36** Most respondents suggested that we apply a simpler approach to clawback. One respondent suggested reducing complexity by introducing just one minimum clawback period to all MRTs, even if this resulted in stricter rules for certain MRTs.
- 2.37** Two respondents noted our proposal to apply a minimum clawback period of 5 years to MRTs not performing a SMF with total remuneration equal to or less than £500,000. These respondents requested that we apply this shorter clawback period of at least 5 years to all MRTs that do not perform a SMF, regardless of the total remuneration received.
- 2.38** One respondent requested clarity on our proposal that firms should apply the longer of; the minimum clawback period set in our rules and the period which is equal to the sum of the deferral and retention periods applied. Another respondent suggested that this appears to be an unintended penalty for firms that decide to apply deferral periods longer than the minimum.
- 2.39** One respondent agreed with our approach to enable firms to, in certain circumstances, extend clawback from 7 years to 10 years for FCA-designated SMFs.

Our response

As with deferral, the PRA has decided to proceed with its proposals on clawback largely as consulted on and we are replicating the PRA's approach to avoid introducing additional complexity.

These periods represent the minimum period of clawback that should be applied to an individual's variable remuneration. It is open to firms to apply a clawback period that is longer than the minimum period set out in our rules.

Although we are largely implementing our proposals on clawback as consulted on, we have made some amendments to our approach to remedy the unintended consequences of some of our proposals.

We will not be requiring firms to apply the longer period of:

- the minimum clawback periods in our rules; or
- the period which is equal to the sum of the deferral and retention periods the firm applies to the individual.

Instead, our rules will set out the minimum clawback periods. Table 4 sets out our final minimum clawback periods.

As explained in our response to the feedback on deferral, we are amending the distinction between MRTs whose total remuneration is above £500,000 and those MRTs whose total remuneration is equal to or less than £500,000 to also include the assessment of whether the variable remuneration amounts to 33% of total remuneration.

We are also including in our rules on clawback reference to the term 'significant firm'.

Table 4: Final minimum clawback periods

| Type of MRT | Minimum clawback period (in years) | | | |
|--------------------|------------------------------------|-----------------|---------------------|------------|
| | Current rules | Final rules | | |
| | | Higher paid MRT | Not higher paid MRT | |
| | | | Deferred | Undeferred |
| PRA-designated SMF | 7* | 7* | 6 | 1 |
| FCA-designated SMF | 7 | 7* | 6 | 1 |
| Other MRT | | 7 | 5 | 1 |

* Minimum clawback periods may be extended to at least 10 years in certain circumstances

Gender neutral remuneration policies

2.40

CRD V introduces a new requirement for firms' remuneration policies and practices to be gender neutral and defines what is meant by 'gender neutral remuneration policies'. We proposed to amend our Handbook rules and guidance to reflect this by:

- introducing a new requirement for firms to ensure and be able to demonstrate that their remuneration policies and remuneration practices are gender neutral
- explaining what is meant by 'gender neutral remuneration policies', using the CRD definition
- adding Handbook guidance reminding firms of the existing legal obligation to ensure that remuneration policies and practices do not discriminate against applicants and employees on the grounds of any of the protected characteristics in the Equality Act 2010
- adding Handbook guidance to make clear that a firm's assessment of an individual's performance, for the purpose of awarding variable remuneration, should not discriminate against the protected characteristics of the individual

2.41 We asked:

Q7: *Do you agree with our proposal for a new rule and guidance on the gender neutrality of remuneration policies and practices?*

2.42 Respondents agreed with this proposal and noted that the new requirement and guidance on gender neutrality in remuneration appear to reflect the position of the Equality Act 2010 (2010 Act).

2.43 One respondent asked how we would assess firms' compliance with the requirement for gender neutral remuneration policies and practices.

Our response

We welcome the support for this proposal and will introduce a new requirement and guidance on gender neutral remuneration policies and practices as consulted on.

The requirement for equal pay for equal work is enshrined in the 2010 Act. We would expect firms, in fulfilling their legal obligations under the 2010 Act, to already have taken the necessary measures to ensure that men and women are awarded equal pay for equal work.

Monitoring firms' compliance with this requirement will be absorbed into our ongoing supervisory work.

Use of share-linked instruments

2.44 We consulted on permitting firms that are listed and traded on a stock market to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments. This enables listed firms to use share-linked instruments and equivalent non-cash instruments in place of, or alongside, shares when awarding variable remuneration. We asked:

Q8: *Do you agree with our proposal to permit listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments?*

2.45 The respondents who commented on this question supported our proposal.

Our response

We welcome the support for this proposal and will make the changes required to permit listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments as consulted on.

Date of application

2.46 In CP20/14, we proposed that:

- the amendments to the rules and guidance enter into force on 29 December 2020
- firms are required to apply the amendments from their next performance year beginning on or after 29 December 2020

2.47 We asked:

Q9: *Do you agree that firms should apply the amended rules and guidance from the next performance year that begins on or after 29 December 2020?*

2.48 Four respondents commented on this proposal with 2 respondents agreeing with the proposal and 2 respondents disagreeing with it.

2.49 Both respondents that disagreed with the proposal flagged that an application date of 29 December 2020 does not give enough time to implement the changes as required. Both respondents requested that the date of application be extended for a further 12 months.

Our response

We acknowledge respondents' concerns regarding the date of application. However, CRD V requires Member States to apply the measures from 29 December 2020. Although the UK is no longer a Member State, the UK is required to transpose CRD V by way of the EU Withdrawal Agreement, as the deadline for transposition is before the end of the Implementation Period. The PRA is required to ensure implementation of CRD V and we are maintaining an approach consistent with the PRA's.

As a result, we are proceeding as consulted on and are requiring firms to apply the amendments from their next performance year beginning on or after 29 December 2020.

Reporting requirements

- 2.50** Currently, we do not require dual-regulated firms to report to us the information CRD IV requires competent authorities to collect to benchmark remuneration trends and practices. This is because the PRA collects this information.
- 2.51** CRD V extends the requirement on what data competent authorities should collect to include more data sets.
- 2.52** We consulted to not replicate CRD V's requirement on reporting so that firms would be clear that they only need to submit this information to the PRA. By doing so, we continue to avoid duplicating work and placing an unnecessary burden on firms. We asked:

Q10: *Do you agree with our proposal to leave our reporting requirements on remuneration unchanged?*

- 2.53** Three respondents provided feedback to this question, all of whom agreed with our proposal to leave our reporting requirements unchanged.

Our response

We welcome the support for this proposal and will leave our reporting requirements unchanged.

IFPRU investment firms: General Guidance with FAQs on remuneration

- 2.54** Our FAQs guidance currently applies to both the Dual-regulated firms Remuneration Code (SYSC 19D) and the IFPRU Remuneration Code (SYSC 19A). The consequential amendments we proposed to make to the guidance to reflect the changes to SYSC 19D mean that the FAQs guidance would no longer be relevant to SYSC 19A firms. We proposed to create a second version of the FAQs guidance which would apply only to SYSC 19A firms. We proposed to amend the guidance for SYSC 19A firms only to delete references to SYSC 19D and dual-regulated firms, and address deficiencies arising from the UK's exit from the EU.
- 2.55** We asked
- Q11:** *Do you agree with our proposal to create a separate version of the General Guidance with Frequently Asked Questions for IFPRU investment firms?*
- 2.56** Respondents did not provide substantive comments on this proposal.

Our response

As we received no substantive feedback on this proposal, we have finalised the guidance as consulted on, subject to making some minor amendments to add clarity.

Deficiencies arising from the UK's exit from the EU

- 2.57** In 2019, we published the Exiting the European Union: High Level Standards (Amendments) Instrument 2019 and the Exiting the European Union: Miscellaneous (Amendments) Instrument 2019 (the 2019 instruments). These instruments address deficiencies in our rules which arise from the UK's exit from the EU and they include changes to the Dual-regulated firms Remuneration Code.
- 2.58** We consulted on making minor amendments to the 2019 instruments to ensure that the remuneration rules continue to work effectively after the end of the implementation period.
- 2.59** We asked:
- Q12:** *Do you agree with our proposals to address the deficiencies arising from the UK's exit from the EU?*
- 2.60** Two respondents agreed with our proposals to amend the 2019 instruments.

Our response

We welcome the support for this proposal and are proceeding with our proposals as consulted on, subject to making some minor amendments to address EU exit deficiencies in the changes to the rules described above. The amended rules will come into force at the end of the implementation period (1 January 2021).

Converting thresholds from Euros to Sterling

- 2.61** The thresholds for application of remuneration rules to firms and individuals are set out in CRD V in Euros. The thresholds used for identifying MRTs are also set out in Euros.
- 2.62** Consistent with the PRA, we proposed to convert these thresholds from Euros to Sterling, effective from 1 January 2021. The thresholds as converted from Euros to Sterling are set out in Table 5.

Table 5: Thresholds in Euros and Sterling

| Threshold purpose | Threshold in Euros | Threshold in Sterling |
|----------------------------|--------------------|-----------------------|
| Application to firms | €5 billion | £4 billion |
| | €15 billion | £13 billion |
| Application to individuals | €50,000 | £44,000 |
| Identification of MRTs | €500,000 | £440,000 |
| | €750,000 | £658,000 |

We asked:

Q13: *Do you agree with our proposals to convert from Euros to Sterling the proportionality thresholds and thresholds relevant to the identification of material risk takers?*

- 2.63** All respondents that commented on this proposal agreed with converting these thresholds from Euros to Sterling from 1 January 2021.
- 2.64** Some respondents provided suggestions for alternative approaches to converting thresholds. Three respondents suggested rounding the converted thresholds further eg from £44,000 to £45,000, to make it easier for inclusion in remuneration policies. Two respondents proposed that we use a 1:1 conversion rate, eg €5 billion becomes £5 billion.
- 2.65** Three respondents requested guidance on how often we will review the conversion rate used and whether it would be amended to reflect substantial movements in the Euro to Sterling rate.
- 2.66** One respondent requested guidance on what conversion rate non-UK firms should use to convert remuneration amounts into Sterling.

Our response

We, and the PRA, will use the methodology as consulted on to convert the relevant thresholds from Euros to Sterling. This involves using a conversion rate based on an average of daily EUR/GBP spot exchange rates over a 12-month period. We are implementing the same converted thresholds as the PRA for simplicity.

With regards to non-UK firms converting remuneration amounts into Sterling, as set out in the PRA's paper, we expect these firms to use either the internal exchange rate or the average daily 12-month exchange rate for the relevant performance year based on the rates provided on the Bank of England's website. We have set this out in the General Guidance on Proportionality.

Cost benefit analysis

2.67 In CP20/14, we set out our analysis of the costs and benefits of our proposals. The baseline for our proposed changes is based on the PRA transposing CRD V. The action we are taking against the baseline is to act consistently with the PRA and replicate the relevant remuneration provisions, so the costs incurred from the changes made by the FCA are minimal.

2.68 With regards to FCA-specific costs, firms will incur only one-off familiarisation and gap analysis costs from our proposed changes, in addition to the familiarisation and gap analysis costs incurred as a result of the PRA's changes. We asked:

Q14: *Do you have any comments on our cost benefit analysis?*

2.69 We received 1 substantive comment on this proposal. The respondent suggested that the implementation cost for firms of the changes made by us and PRA is likely to be significant, and that this cost could be reduced if we and the PRA simplify our proposals.

Our response

We acknowledge this comment. Our cost benefit analysis (CBA) identifies that, as the PRA is the transposing authority for CRD V, the substantive costs to firms, with regards to training, IT, implementation etc are driven by the changes made by the PRA. The FCA-specific costs include only the cost of familiarisation.

We have concluded that changes explained in this PS do not lead to any significant change to the costs and benefits associated with our proposals. We will not be amending the CBA as the FCA-specific costs remain substantially the same.

Annex 1

List of non-confidential respondents

Association for Financial Markets in Europe (AFME)

Building Societies Association (BSA)

Annex 2

Abbreviations used in this paper

| | |
|--------------|--|
| BIPRU | Prudential Sourcebook for Banks, Building Societies and Investment Firms |
| CBA | Cost benefit analysis |
| CP | Consultation Paper |
| CRD | Capital Requirements Directive |
| CRR | Capital Requirements Regulation |
| EBA | European Banking Authority |
| EU | European Union |
| FAQs | Frequently Asked Questions |
| FCA | Financial Conduct Authority |
| IFPR | Investment Firms Prudential Regime |
| IFPRU | Prudential sourcebook for Investment Firms |
| MRT | Material risk taker |
| PRA | Prudential Regulation Authority |
| PS | Policy Statement |
| SMF | Senior management function |
| RTS | Regulatory Technical Standard |



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Appendix 1

Senior Management Arrangements, Systems and Controls (Remuneration Codes) (No 8) Instrument 2020

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODES) (No 8) INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137H (General rules about remuneration);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- 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 29 December 2020.

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 8) Instrument 2020.

By order of the Board
10 December 2020

Annex A

Amendments to the Glossary of definitions

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

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

| | |
|---|--|
| <i>average total assets</i> | means the arithmetic mean of the <i>firm</i> 's total assets on: for a <i>firm</i> within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), each of its last four <i>accounting reference dates</i> ; or for a <i>firm</i> within the scope of SYSC 19D.1.1R(1)(d), 31 December of each of the preceding four years. |
| <i>CRD V</i> | <i>CRD</i> as amended by Directive 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures |
| <i>control functions</i> | has the meaning in article 3 of the <i>Material Risk Takers Regulation 2020</i> . |
| <i>gender neutral remuneration policy</i> | means a <i>remuneration</i> policy based on equal pay for male and female workers for equal work or work of equal value. [Note: article 3(1)(65) of <i>CRD V</i>] |
| <i>higher paid material risk taker</i> | means a <i>dual-regulated firms Remuneration Code</i> staff member whose total <i>remuneration</i> exceeds £500,000 and whose annual variable <i>remuneration</i> exceeds 33% of that total <i>remuneration</i> . |
| <i>large institution</i> | has the meaning in article 4(1)(146) of the <i>EU CRR</i> . |
| <i>managerial responsibility</i> | has the meaning in article 2 of the <i>Material Risk Takers Regulation 2020</i> . |
| <i>material business unit</i> | has the meaning in article 4 of the <i>Material Risk Takers Regulation 2020</i> . |
| <i>Material Risk Takers Regulation 2020</i> | means the draft regulatory technical standards on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material |

impact on an institution's risk profile, published by the *EBA* on 18 June 2020.

significant firm means a *firm* that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities.

Amend the following definition as shown.

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) the *Material Risk Takers Regulation 2020*.

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, unless otherwise stated.

19D Dual-regulated firms Remuneration Code

...

19D.2 General requirement

...

19D.2.2 ...

Gender neutral policies and practices

19D.2.2 R A firm must ensure that its remuneration policy is a gender neutral remuneration policy and the practices referred to in SYSC 19D.2.1R are gender neutral.

A

[Note: articles 74(1) and 92(2)(aa) of CRD V]

19D.2.2 G Firms are reminded that the Equality Act 2010 prohibits discrimination on the basis of an individual's protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable remuneration. A firm should ensure that its remuneration policy complies with the Equality Act 2010.

B

19D.2.2 G Firms should ensure that when they assess individual performance, the assessment process and any variable remuneration awarded in accordance with SYSC 19D.3.39R does not discriminate on the basis of the protected characteristics of an individual.

C

...

19D.3 Remuneration principles

19D.3.1 R (1) ...

~~[Note: article 92(1) of CRD]~~

...

19D.3.2 G Firms should refer to SYSC 12 (Group risk systems and controls requirements), which sets out how the systems and control requirements

A

imposed by SYSC (Senior Management Arrangements, Systems and Controls) apply where a *firm* is part of a *group*.

- 19D.3.2 R (1) For a *firm* within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or
B (1)(c), the *rules* in (3) do not apply if:
- (a) the *firm* is not a *large institution*; and
 - (b) the *firm's average total assets*, calculated on an individual basis in accordance with *CRD V* and the *EU CRR*, are less than or equal to €5 billion.
- (2) For a *firm* within the scope of SYSC 19D.1.1R(1)(d), the *rules* in (3) do not apply if the *average total assets* that relate to the activities of the *UK branch* are less than or equal to €5 billion.
- (3) The *rules* referred to in (1) and (2) are:
- (a) SYSC 19D.3.31R(2) and (3) (pension policy);
 - (b) SYSC 19D.3.56R (retained *shares* or other instruments); and
 - (c) SYSC 19D.3.59R (deferral).

[Note: article 94(3)(a) of *CRD V*]

- 19D.3.2 R (1) The value in SYSC 19D.3.2BR(1)(b) or (2) is increased to €15
C billion if:
- (a) the *firm* meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the *EU CRR*; and
 - (b) the increase is appropriate taking into account the *firm's* nature, the scope and complexity of its activities, its internal organisation and (if applicable) the characteristics of the *group* to which it belongs.
- (2) For a *firm* within the scope of SYSC 19D.1.1R(1)(d), the criteria referred to in (1)(a) must be assessed on the basis of the activities of the *UK branch*.

[Note: article 94(4) of *CRD V*]

Application: categories of staff and proportionality

- 19D.3.3 R ...
- (2) When establishing and applying the total *remuneration* policies for *dual-regulated firms Remuneration Code staff*, a *firm* must comply with this section 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 (the *dual-regulated firms remuneration principles proportionality rule*).

...

- 19D.3.4 R (1) *Dual-regulated firms Remuneration Code staff* comprises:
- (a) an *employee* of a *dual-regulated firm* 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)~~ the *Material Risk Takers Regulation 2020*; or
 - (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~~ articles 6 or 7(1) of the *Material Risk Takers Regulation 2020* if it had applied to ~~him~~ them.
- (1A) For the purposes of paragraph (1), *dual-regulated firms Remuneration Code staff* must, at least, include:
- (a) all members of the *firm's management body* and *senior management*;
 - (b) staff members with *managerial responsibility* over the *firm's control functions* or *material business units*;
 - (c) staff members entitled to significant *remuneration* in the preceding financial year, provided that the following conditions are met:
 - (i) the staff member's *remuneration* is equal to or higher than:
 - (A) €500,000; and
 - (B) the average *remuneration* awarded to the members of the *firm's management body* and *senior management* referred to in point (a);
 - (ii) the staff member performs the professional activity within a *material business unit* and the activity is of a

kind that has a significant impact on the relevant business unit's risk profile.

[**Note:** article 92(3) of *CRD V*]

- (2) An *overseas firm* in SYSC 19D1.1.R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) may deem an *employee* not to be a *dual-regulated firms Remuneration Code staff* where:
- (a) the *employee*:
 - (i) would meet the criteria in ~~article 4(1) of Regulation (EU) No 604/2014 of 4 March 2014~~ article 7(1) of the *Material Risk Takers Regulation 2020*;
 - (ii) would not meet any of the criteria in ~~article 3 of Regulation (EU) No 604/2014 of 4 March 2014~~ article 6 of the *Material Risk Takers Regulation 2020*; and
 - (iii) ...
 - (b) the *overseas firm* determines that the professional activities of the *employee* do not have a material impact on its risk profile on the grounds described in ~~article 4(2) of Regulation (EU) 604/2014 of 4 March 2014~~ article 7(2) of the *Material Risk Takers Regulation 2020*; and
 - (c) the *overseas firm* has obtained the prior written approval of the *PRA*, in accordance with Chapter 3 of the *Remuneration Part of the *PRA Rulebook**.
- (3) ~~Where the *overseas firm* deems an *employee* not to be *dual-regulated firms Remuneration Code staff* as set out in (2), it must notify the *FCA*, applying the approach described in article 4(4) of Regulation (EU) 604/2014 of 4 March 2014. [deleted]~~

[**Note:** article 92(2) of *CRD V* and ~~articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014~~ articles 6 and 7 of the *Material Risk Takers Regulation 2020*.]

...

- 19D.3.1 R (1) A *significant 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*.

...

...

Remuneration Principle 12: Remuneration structures - introduction

- 19D.3.3 5 ~~G~~ R (1) ~~Taking account of the dual-regulated firms remuneration principles proportionality rule, the FCA does not generally consider it necessary for a firm to apply the rules in (2) where, The rules in (2) do not apply to a firm in relation to an individual (X), where both the following conditions are satisfied:~~
- (a) Condition 1 is that X's annual variable remuneration is no more than ~~33%~~ one third of X's total annual remuneration; and
- (b) Condition 2 is that X's total annual variable remuneration is no more than ~~£500,000~~ €50,000.
- (2) The rules referred to in (1) are those relating to:
- (a) ~~guaranteed variable remuneration (SYSC 19D.3.44R); pension policy (SYSC 19D.3.31R(2) and (3));~~
- ...
- (d) ~~performance adjustment (SYSC 19D.3.61R). [deleted]~~

[Note: article 94(3)(b) of CRD V]

...

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

- 19D.3.5 6 R (1) A firm must ensure that a substantial portion, which is at least 50%, of any variable remuneration consists of an appropriate balance of:
- (a) subject to the legal structure of the firm concerned: shares or equivalent ownership interests; or share-linked instruments or equivalent non-cash instruments ~~subject to the legal structure of the firm concerned, or share-linked instruments or equivalent non-cash instruments in the case of a non-listed firm; and~~
- ...
- ...

...

Remuneration Principle 12(g): Remuneration structures - deferral

- 19D.3.5 9 R (1) In relation to higher paid material risk takers a firm must not award, pay or provide a variable remuneration component unless a

substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

- (a) for *dual-regulated firms Remuneration Code staff* who ~~do not~~ perform a *PRA-designated senior management function* FCA-designated senior management function, ~~three to five years, with no vesting taking place until one year after the award,~~ and vesting no faster than on a pro-rata basis-;
- (b) for *dual-regulated firms Remuneration Code staff* who perform a *PRA-designated senior management function*, seven years, with no vesting taking place until three years after the award, and vesting no faster than on a pro-rata basis-; and
- (c) for any other dual-regulated firms Remuneration Code staff who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.

(1A) In relation to dual-regulated firms Remuneration Code staff who are not higher paid material risk takers, a firm must not award, pay or provide a variable remuneration component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

- (a) for dual-regulated firms Remuneration Code staff who perform a FCA-designated senior management function at a significant firm, five years, and vesting no faster than on a pro-rata basis;
- (b) for dual-regulated firms Remuneration Code staff who perform a PRA-designated senior management function at a significant firm, five years, and vesting no faster than on a pro-rata basis;
- (c) for any other dual-regulated firms Remuneration Code staff who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.

(2) In the case of a variable *remuneration* component:

- (a) of £500,000 or more, or
- (b) payable to a *director* of a *firm* ~~that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities~~ significant firm;

at least 60% of the amount must be deferred on the basis set out in SYSC 19D.3.59R(1) and vesting no faster than on a pro-rata basis.

...

...

Remuneration Principle 12(h): Remuneration structures - performance adjustment (affordability, malus, clawback)

19D.3.6 R A *firm* must ensure that:

1

...

- (3) any variable remuneration is subject to clawback for a period of at least seven years from the date on which the variable remuneration is awarded; and for higher paid material risk takers, variable remuneration is subject to clawback for a period of at least seven years from the date on which the variable remuneration is awarded;
- (3A) for dual-regulated firms Remuneration Code staff who are not higher paid material risk takers:
- (a) who are PRA-designated senior management function holders at a significant firm, the deferred component of variable remuneration is subject to clawback for a period of at least six years from the date on which the variable remuneration is awarded;
- (b) who are FCA-designated senior management function holders at a significant firm, the deferred component of variable remuneration is subject to clawback for a period of at least six years from the date on which the variable remuneration is awarded;
- (c) who do not fall within (a) or (b) above, the deferred component of variable remuneration is subject to clawback for a period of at least five years from the date on which the variable remuneration is awarded;
- (d) the undeferred component of variable remuneration is subject to clawback for a period of at least one year from the date on which the variable remuneration is awarded; and
- (4) for dual-regulated firms Remuneration Code staff whose total annual remuneration is greater than £500,000 and who perform either a PRA-designated senior management function or FCA-designated senior management function, it can, by notice to the employee employee to be given no later than seven years after the variable remuneration was awarded, extend the period during which variable remuneration is subject to clawback to at least ten

years from the date on which the variable *remuneration* is awarded, where:

...

...

...

19D.3.6 R (1) Subject to (2) to (7), the *rules* in SYSC 19D Annex 1.1R to 1.6R
7 apply in relation to the prohibitions on *dual-regulated firms Remuneration Code staff* being remunerated in the ways specified in:

...

(7) ~~This rule does not apply in relation to *dual-regulated firms Remuneration Code staff* (X) in respect of whom both the following conditions are satisfied: This rule does not apply to a firm in relation to an individual (X), where both the following conditions are satisfied:~~

- (a) Condition 1 is that X's annual variable remuneration is no more than ~~33%~~ one third of X's total annual remuneration; and
- (b) Condition 2 is that X's ~~total~~ annual variable remuneration is no more than ~~£500,000~~ £50,000.

...

...

Insert the following new transitional provision, TP 9, after SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies). The text is not underlined.

| TP 9 Updates to reflect CRD V | | | | | |
|-------------------------------|--|-----|--------------------------------------|--|---------------------------------------|
| | Material to which the transitional provision applies | R/G | Transitional Provision | Transitional Provision: dates in force | Handbook Provision: coming into force |
| 1 | SYSC 19D.3 | | A firm subject to SYSC 19D.1.3 on 28 | From 29 December 2020 | 29 December 2020 |

| | | | | |
|--|--|--|--|--|
| | | | <p>December 2020, must apply the <i>rules and guidance</i> in SYSC 19D.3 as it stood on the 28 December 2020 in relation to:</p> <p>(a) <i>remuneration</i> awarded, whether pursuant to a contract or otherwise, in relation to the performance year active on the 28 December 2020;</p> <p>(b) <i>remuneration</i> due on the basis of contracts concluded before 29 December 2020 which is awarded or paid in relation to the performance year active on the 28 December 2020; and</p> <p>(c) <i>remuneration</i> awarded, but not yet paid, before 29 December 2020, for</p> | |
|--|--|--|--|--|

| | | | | | |
|--|--|--|---|--|--|
| | | | services provided in the performance year active on the 28 December 2020. | | |
|--|--|--|---|--|--|

Amend the following as shown.

| Sch 2 | Notification requirements | | | | | |
|---------|---------------------------|-----|--------------------|--|--------------------------------------|--------------------------------------|
| Sch 2.1 | G | ... | | | | |
| | | (3) | Table | | | |
| | | | Handbook reference | Matter to be notified | Content of the notification | Trigger event |
| | | | ... | | | |
| | | | SYSC 19D.3.4R(3) | Where an <i>overseas firm</i> deems an <i>employee</i> not to be <i>dual-regulated firms</i> <i>Remuneration Code staff</i> | Matter described in SYSC 19D.3.4R(3) | Matter described in SYSC 19D.3.4R(3) |
| | | | ... | | | |
| ... | | | | | | |

Appendix 2

Exiting the European Union: Senior Management Arrangements, Systems and Controls (Remuneration Codes) (Amendments) Instrument 2020

**EXITING THE EUROPEAN UNION: SENIOR MANAGEMENT ARRANGEMENTS,
SYSTEMS AND CONTROLS (REMUNERATION CODES) (AMENDMENTS)
INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
 - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. Annex A to this instrument comes into force on the 11 December 2020. The rest of this instrument comes into force on IP completion day within the meaning of section 39 of the European Union (Withdrawal Agreement) Act 2020.

Revocation of earlier instruments

- C. Annex A to this instrument revokes in part certain instruments made previously by the FCA.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex B to this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex C 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 Exiting the European Union: Senior Management Arrangements, Systems and Controls (Remuneration Codes) (Amendments) Instrument 2020.

By order of the Board
10 December 2020

Annex A

Revocation in part of earlier FCA instruments

Annex B of The Exiting the European Union: High Level Standards (Amendments) Instrument 2019 (FCA 2019/20) is revoked insofar as it amends section 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC).

Part 1 of Annex A of The Exiting the European Union: Miscellaneous (Amendments) Instrument 2019 The Exiting the European Union: High Level Standards (Amendments) Instrument 2019 (FCA 2019/29) is revoked insofar as it amends section 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (see Part 1 of Annex A of that instrument).

Annex B**Amendments to the Glossary of definitions**

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

Amend the following definitions as shown.

| | |
|---|---|
| <i>large institution</i> | has the meaning in article 4(1)(146) of the EU CRR <u>UK CRR</u> . |
| <i>Material Risk Takers Regulation 2020</i> | means the draft regulatory technical standards on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material impact on an institution's risk profile, published by the <i>EBA</i> on 18 June 2020, <u>which is applied subject to the omission of the final sentence of article 7(4).</u> |

Annex C

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

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

19D Dual-regulated firms Remuneration Code**19D.1 Application and purpose**

Who? What? Where?

19D.1.1 R (1) ...

(d) an *overseas firm* that;

(i) ~~is not an EEA firm;~~

(ii) ~~has its head office outside the EEA; and~~

(iii) would be a *firm* in (a), (b) or (c) 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*.

(2) ...

(a) its *UK activities*; and

(b) ~~its *passport* activities carried on from a branch in another EEA State; and [deleted]~~

...

...

...

19D.1.6 G (1) ...

(2) The *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *rules* in the *dual-regulated firms Remuneration Code*, *firms* should comply with the EBA “Guidelines on sound remuneration policies under articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under article 450 of Regulation (EU) No 575/2013”, 21 December 2015 (EBA/GL/2015/22). 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>~~

...

- 19D.1.9 G Except as provided in the *Glossary*, any expression used in, or for the purpose of, this chapter which is defined or used in *EU CRR* UK CRR has the meaning given by, or used in, those Regulations.

...

19D.3 Remuneration principles

Application: groups

- 19D.3.1 R (1) A *firm* must apply the requirements of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is ~~not an EEA State~~ outside the United Kingdom.
- (2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the *dual-regulated firms Remuneration Code* within *UK consolidation groups* and ~~non-EEA sub-groups~~ non-UK sub-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~~ non-UK 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).

...

...

- 19D.3.2 R (1) ...
- B
- (a) ...
- (b) the *firm's average total assets*, calculated on an individual basis in accordance with the UK legislation that

implemented CRD V, and the ~~EU-CRR~~ UK CRR, are less than or equal to ~~€5 billion~~ £4 billion;

- (2) For a *firm* within the scope of SYSC 19D.1.1R(1)(d), the *rules* in (3) do not apply if the *average total assets* that relate to the activities of the *UK branch* are less than or equal to ~~€5~~£4 billion.

...

19D.3.2 R (1) The value in SYSC 19D.3.2BR(1)(b) or (2) is increased to ~~€15 billion~~ £13 billion if:

C

- (a) the *firm* meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the ~~EU-CRR~~ UK CRR; and

- (b) ...

...

Application: categories of staff and proportionality

...

19D.3.4 R ...

(1A) ...

- (a) ...

...

- (c) ...

- (i) ...

(A) ~~€500,000~~ £440,000; and

...

...

(2) ...

- (a) ...

- (i) ...

...

- (iii) was awarded total *remuneration* of less than ~~€750,000~~ £658,000 in the previous year;

...

...

- 19D.3.5 G Where an *overseas firm* in SYSC 19D1.1.R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) wishes to deem an *employee* who earns more than ~~€750,000~~ £658,000 not to be *dual-regulated firms Remuneration Code staff*, the *overseas firm* may apply for a *waiver* of the requirement in SYSC 19D.3.4R in respect of that *employee*.

...

Remuneration Principle 11: Non-compliance with the dual-regulated firms Remuneration Code

- 19D.3.3 R A *firm* must ensure that variable *remuneration* is not paid through
4 vehicles or methods that facilitate non-compliance with obligations arising from the *Remuneration Code*, the ~~EU-CRR~~ UK CRR or the UK legislation that implemented the CRD.

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

Remuneration Principle 12: Remuneration structures - introduction

- 19D.3.3 R (1) ...
5
- (a) ...
- (b) Condition 2 is that X's total annual variable *remuneration* is no more than ~~€50,000~~ £44,000.

...

...

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

...

- 19.3.50 R ...
- (1) ...
- ...
- (3) the *firm* must:
- ...
- (b) demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the

UK legislation that implemented the CRD and the EU-CRR UK CRR, having particular regard to the *firm's own funds* obligations;

...

...

19D.3.5 R A *firm* may apply a discount rate to a maximum of 25% of an *employee's*
2 total variable *remuneration* provided it is paid in instruments that are deferred for a period of not less than five years.

[**Note:** article 94(1)(g)(iii) of the *CRD*]

[**Note:** on 27 March 2014, the *EBA* published “Guidelines on the applicable notional discount rate for variable remuneration”, 27 March 2014 (EBA/GL/2014/01).]

19D.3.5 R In applying the discount rate in SYSC 19D.3.52R, a *firm* must apply the
3 ~~*EBA Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014.*~~ [deleted]

~~**Note:** the *EBA Guidelines on the applicable notional discount rate for variable remuneration* can be found at:
<http://www.eba.europa.eu/documents/10180/643987/EBA-GL-2014-01-%28Final-Guidelines-on-the-discount-rate-for-remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9>~~

...

Effect of breaches of the Remuneration Principles

...

19D.3.6 R (1) ...
7

...

(7) ...

(a) ...

(b) Condition 2 is that X's annual variable *remuneration* is no more than €50,000 £44,000.

...

Appendix 3

FG20/4 General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D)

FG20/4 General Guidance on Proportionality: The Dual-regulated firms Remuneration Code (SYSC 19D)

Appendix 4

FG20/5 Dual-regulated firms Remuneration Code (SYSC 19D) – Frequently asked questions on remuneration

FG20/5 Dual-regulated firms Remuneration Code (SYSC 19D) – Frequently asked questions on remuneration

Appendix 5

FG20/6 IFPRU investment firms Remuneration Code (SYSC 19A) – Frequently asked questions on remuneration

FG20/6 IFPRU investment firms Remuneration Code (SYSC 19A) – Frequently asked questions on remuneration

