

## Chapter 19B

### AIFM Remuneration Code



19B.1 Application

- 19B.1.1

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The *AIFM Remuneration Code* applies to a *full-scope UK AIFM* of:

  - (1) a *UK AIF*; and
  - (2) a non-UK *AIF*.
  - (3) [deleted]
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- (1) *Full-scope UK AIFMs* are advised that *ESMA* published *Guidelines* on sound remuneration policies under the *AIFMD* on 3 July 2013 (*Guidelines on sound remuneration policies under the AIFMD, 03.07.2013*[*ESMA/2013/232*]), which *full-scope UK AIFMs* should comply with in applying the *rules* in this section.
  - (2) The *FCA* has provided additional *guidance* on the application of principles of proportionality to remuneration policies of *AIFM*. The *guidance* also addresses several other aspects of the *AIFM Remuneration Code* and the *Guidelines*. The *guidance* can be found at: [ <http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg14-02> ]
- 19B.1.2

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**Remuneration policies and practices**

An *AIFM* must establish, implement and maintain *remuneration* policies and practices for *AIFM Remuneration Code staff* that are consistent with, and promote, sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profile of the *instrument constituting the fund* of the *AIFs* it manages.

[**Note:** article 13(1) of *AIFMD*]
- 19B.1.3

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*AIFM Remuneration Code staff* comprise those categories of staff whose professional activities have a material impact on the risk profiles of the *AIFMs* or of the *AIFs* the *AIFM* manages. This includes senior management, risk takers, control functions, and any *employees* receiving total *remuneration* that takes them into the same *remuneration* bracket as senior management and risk takers.

[**Note:** article 13(1) of *AIFMD*]
- 19B.1.4

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- (1) When establishing and applying the total *remuneration* policies for *AIFM Remuneration Code staff* (inclusive of salaries and discretionary

	<p>pension benefits), an <i>AIFM</i> must comply with the <i>AIFM remuneration principles</i> in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities.</p> <p>(2) Paragraph (1) does not apply to the requirement for significant <i>AIFMs</i> to have a <i>remuneration</i> committee (■ SYSC 19B.1.9 R).</p> <p>(3) The <i>AIFM remuneration principles</i> apply to remuneration of any type paid by the <i>AIFM</i>, to any amount paid directly by the <i>AIF</i> itself, including <i>carried interest</i>, and to any transfer of <i>units</i> or <i>shares</i> of the <i>AIF</i> made to the benefits of <i>AIFM Remuneration Code staff</i>.</p> <p>[Note: paragraph 1 and 2 of Annex II of <i>AIFMD</i>]</p>
19B.1.5	<div><div>R</div><p><b>AIFM Remuneration Principle 1: Risk management</b></p><p>An <i>AIFM</i> must ensure that its <i>remuneration</i> policy is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles of the <i>instrument constituting the fund</i> of the <i>AIFs</i> it manages.</p><p>[Note: paragraph 1(a) of Annex II of <i>AIFMD</i>]</p></div>
19B.1.6	<div><div>R</div><p><b>AIFM Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interest</b></p><p>An <i>AIFM</i> must ensure that its <i>remuneration</i> policy is in line with the business strategy, objectives, values and interests of the <i>AIFM</i> and the <i>AIFs</i> it manages or the investors of such <i>AIFs</i>, and includes measures to avoid conflicts of interest.</p><p>[Note: paragraph 1(b) of Annex II of <i>AIFMD</i>]</p></div>
19B.1.7	<div><div>R</div><p><b>AIFM Remuneration Principle 3: Governance</b></p><p>An <i>AIFM</i> must ensure that the <i>governing body</i> of the <i>AIFM</i>, in its supervisory function, adopts and periodically reviews the general principles of the <i>remuneration</i> policy and is responsible for its implementation.</p><p>[Note: paragraph 1(c) of Annex II of <i>AIFMD</i>]</p></div>
19B.1.8	<div><div>R</div><p>An <i>AIFM</i> must ensure the implementation of the <i>remuneration</i> policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for <i>remuneration</i> adopted by the <i>governing body</i> in its supervisory function.</p><p>[Note: paragraph 1(d) of Annex II of <i>AIFMD</i>]</p></div>
19B.1.9	<div><div>R</div><p>(1) An <i>AIFM</i> that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a <i>remuneration</i> committee.</p><p>(2) The <i>remuneration</i> committee must be constituted in a way that enables it to exercise competent and independent judgment on</p></div>

*remuneration* policies and practices, and the incentives created for managing risk.

- (3) The chairman and the members of the *remuneration* committee must be members of the *governing body* who do not perform any executive function in the *AIFM*.
- (4) The *remuneration* committee must be responsible for the preparation of decisions regarding *remuneration*, including those which have implications for the risk and risk management of the *AIFM* or the *AIF* concerned and which are taken by the *governing body* in its supervisory function.

[Note: paragraph 3 of Annex II of *AIFMD*]

#### AIFM Remuneration Principle 4: Control functions

- 19B.1.10 **R** An *AIFM* must ensure that *employees* engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: paragraph 1(e) of Annex II of *AIFMD*]

- 19B.1.11 **R** An *AIFM* must ensure the *remuneration* of the senior officers in the risk management and compliance functions is directly overseen by the *remuneration* committee, or, if such a committee has not been established, by the *governing body* in its supervisory function.

[Note: paragraph 1(f) of Annex II of *AIFMD*]

#### AIFM Remuneration Principle 5(a): Remuneration structures - assessment of performance

- 19B.1.12 **R** An *AIFM* must ensure that, where *remuneration* is performance related, the total amount of *remuneration* is based on a combination of the assessment of the performance of the individual and of the business unit or *AIF* concerned and of the overall results of the *AIFM*. When assessing individual performance, financial and non-financial criteria are taken into account.

[Note: paragraph 1(g) of Annex II of *AIFMD*]

- 19B.1.13 **R** An *AIFM* must ensure that the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the *AIFs* managed by the *AIFM* to ensure that:

- (1) the assessment process is based on longer term performance; and
- (2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the *AIFs* it manages and their investment risks.

[Note: paragraph 1(h) of Annex II of *AIFMD*]

19B.1.13A G

- (1) Taking account of the remuneration principles proportionality *rule* in ■ SYSC 19B.1.4 R, the *FCA* does not generally consider it necessary for a *firm* to apply the *rules* referred to in (2) where, in relation to an individual ("X"), both of the following conditions are satisfied:
- (a) Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and
  - (b) Condition 2 is that X's total *remuneration* is no more than £500,000.
- (2) The *rules* referred to in (1) are those relating to:
- (a) guaranteed variable *remuneration* (■ SYSC 19B.1.14 R);
  - (b) retained *units, shares* or other instruments (■ SYSC 19B.1.17 R);
  - (c) deferral (■ SYSC 19B.1.18 R); and
  - (d) performance adjustment (■ SYSC 19B.1.19 R).

**AIFM Remuneration Principle 5(b): Remuneration structures - guaranteed variable remuneration**19B.1.14 R

An *AIFM* must not award, pay or provide guaranteed variable remuneration unless it;

- (1) is exceptional;
- (2) occurs only in the context of hiring new staff; and
- (3) is limited to the first year of service.

[Note: paragraph 1(i) of Annex II of *AIFMD*]

**AIFM Remuneration Principle 5(c): Remuneration structures - fixed and variable components of total remuneration**19B.1.15 R

An *AIFM* must ensure that:

- (1) fixed and variable components of total *remuneration* are appropriately balanced; and
- (2) the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component.

[Note: paragraph 1(j) of Annex II of *AIFMD*]

**AIFM Remuneration Principle 5(d): Remuneration structures - payments related to early termination**19B.1.16 R

An *AIFM* must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

[Note: paragraph 1(k) of Annex II of *AIFMD*]

**AIFM Remuneration Principle 5(e): Remuneration structures - retained units, shares or other instruments****19B.1.17 R**

- (1) Subject to the legal structure of the *AIF* and the *instrument constituting the fund*, an *AIFM* must ensure that a substantial portion, and in any event at least 50% of any variable *remuneration*, consists of *units* or *shares* of the *AIF* concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments. However, if the management of *AIFs* accounts for less than 50% of the total portfolio managed by the *AIFM*, the minimum of 50 % does not apply.
- (2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the long-term interests of the *AIFM* and the *AIFs* it manages and the investors of such *AIFs*.
- (3) This *rule* applies to the portion of the variable *remuneration* component deferred in line with ■ SYSC 19B.1.18R (1) and the portion not deferred.

[Note: paragraph 1(m) of Annex II of *AIFMD*]**AIFM Remuneration Principle 5(f): Remuneration structures - deferral****19B.1.18 R**

- (1) An *AIFM* must not award, pay or provide a variable *remuneration* component unless a substantial portion, and in any event at least 40%, of the variable *remuneration* component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the *AIF* concerned and is correctly aligned with the nature of the risks of the *AIF* in question
- (2) The period referred to in (1) must be at least three to five years, unless the life cycle of the *AIF* concerned is shorter.
- (3) *Remuneration* payable under (1) must vest no faster than on a pro-rata basis.
- (4) In the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount must be deferred.

[Note: paragraph 1(n) of Annex II of *AIFMD*]**19B.1.18A G**

- (1) £500,000 is a particularly high amount for the purpose of ■ SYSC 19B.1.18R (4).
- (2) Paragraph (1) is without prejudice to the possibility of lower sums being considered a particularly high amount.
- (3) Whilst any variable *remuneration* component of £500,000 or more paid to *AIFM Remuneration Code staff* should 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 *AIFM Remuneration Code staff* in the levels of variable *remuneration* paid.

	<b>AIFM Remuneration Principle 5(g): Remuneration structures - performance adjustment, etc.</b>
<b>19B.1.19</b> <b>R</b>	<p>An <i>AIFM</i> must ensure that any variable <i>remuneration</i>, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the <i>AIFM</i> as a whole and justified according to the performance of the <i>AIF</i>, the business unit and the individual concerned.</p> <p>[Note: paragraph 1(o) first sub-paragraph of Annex II of <i>AIFMD</i>]</p>
<b>19B.1.20</b> <b>G</b>	<p>The total variable <i>remuneration</i> should generally be considerably contracted where subdued or negative financial performance of the <i>AIFM</i> or of the <i>AIF</i> concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.</p> <p>[Note: paragraph 1(o) second sub-paragraph of Annex II of <i>AIFMD</i>]</p>
	<b>AIFM Remuneration Principle 6: Measurement of performance</b>
<b>19B.1.21</b> <b>R</b>	<p>An <i>AIFM</i> must ensure the measurement of performance used to calculate variable <i>remuneration</i> components, or pools of variable <i>remuneration</i> components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.</p> <p>[Note: paragraph 1(l) of Annex II of <i>AIFMD</i>]</p>
	<b>AIFM Remuneration Principle 7: Pension policy</b>
<b>19B.1.22</b> <b>R</b>	<p>An <i>AIFM</i> must ensure that:</p> <ol style="list-style-type: none"> <li>(1) its pension policy is in line with its business strategy, objectives, values and long-term interests of the <i>AIFs</i> it manages;</li> <li>(2) when an <i>employee</i> leaves the <i>firm</i> before retirement, any <i>discretionary pension benefits</i> are held by the <i>firm</i> for a period of five years in the form of instruments in ■ SYSC 19B.1.17R (1); and</li> <li>(3) in the case of an <i>employee</i> reaching retirement, <i>discretionary pension benefits</i> are paid to the <i>employee</i> in the form of instruments referred to in ■ SYSC 19B.1.17R (1) and subject to a five-year retention period.</li> </ol> <p>[Note: paragraph 1(p) of Annex II of <i>AIFMD</i>]</p>
	<b>AIFM Remuneration Principle 8: Personal investment strategies</b>
<b>19B.1.23</b> <b>R</b>	<p>An <i>AIFM</i> must ensure that its <i>employees</i> undertake not to use personal hedging strategies or <i>remuneration</i>- and liability-related insurance to undermine the risk alignment effects embedded in their <i>remuneration</i> arrangements.</p> <p>[Note: paragraph 1(q) of Annex II of <i>AIFMD</i>]</p>

**AIFM Remuneration Principle 9: Avoidance of the remuneration code**

**19B.1.24** **R**

An *AIFM* must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the *AIFM Remuneration Code*.

[**Note:** paragraph 1(r) of Annex II of *AIFMD*]