

## Chapter 19F

# Remuneration and performance management

**19F.1 MiFID remuneration incentives**

**Application**

- 19F.1.1 **R** (1) ■ SYSC 19F.1 applies to:
- (a) a *common platform firm*, unless it is a *collective portfolio management investment firm*;
  - (b) a *MiFID optional exemption firm*; and
  - (c) a *third country firm*.
  - (d) [deleted]
- (2) In relation to a *firm* that falls under (1)(c), ■ SYSC 19F.1 applies only in relation to activities carried on from an establishment in the *United Kingdom*.

**Purpose**

- 19F.1.2 **G** This chapter contains *rules* implementing article 24(10) of *MiFID* and on remuneration policies and practices.

**MiFID requirement on remuneration incentives**

- 19F.1.3 **R** A *firm* which provides *investment services* to *clients* must ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its *clients*. In particular, a *firm* must not make any arrangement by way of *remuneration*, sales targets or otherwise that could provide an incentive to its staff to recommend a particular *financial instrument* to a *retail client* when the *firm* could offer a different *financial instrument* which would better meet that *client's* needs.
- [Note: article 24(10) of *MiFID*]

**Remuneration policies and practices**

- 19F.1.4 **R** (1) A *dormant account fund operator* in respect of its *investment services* and *ancillary services*, a *MiFID optional exemption firm* in respect of its *investment services* and *ancillary services* and a *third country firm* in respect of its *MiFID or equivalent third country business* must:
- (a) define and implement *remuneration* policies and practices under appropriate internal procedures taking into account the interests of all the *clients* of the *firm*, with a view to ensuring that *clients* are treated fairly and their interests are not impaired by the *remuneration* practices adopted by the firm in the short, medium

or long term. *Remuneration* policies and practices must be designed in such a way so as not to create a conflict of interest or incentive that may lead *relevant persons* to favour their own interests or the *firm's* interests to the potential detriment of any *client*;

- (b) ensure that their *remuneration* policies and practices apply to all *relevant persons* with an impact, directly or indirectly, on *investment services* and *ancillary services* provided by the *firm* or on its corporate behaviour, regardless of the type of *clients*, to the extent that the *remuneration* of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the *firm's clients*; and
- (c) ensure that its *management body* approves, after taking advice from the compliance function, the *firm's remuneration* policy. The *senior management* of the *firm* must be responsible for the day-to-day implementation of the *remuneration* policy and the monitoring of compliance risks related to the policy.

(2) (a) *Remuneration* and similar incentives must not be solely or predominantly based on quantitative commercial criteria, and must take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of *clients* and the quality of services provided to *clients*.

- (b) A balance between fixed and variable components of *remuneration* must be maintained at all times, so that the *remuneration* structure does not favour the interests of the *firm* or its *relevant persons* against the interests of any *client*.

#### 19F.1.5

**G** A *firm* should also be aware of:

- (1) in the case of a *common platform firm* (but excluding a *collective portfolio management investment firm*), the requirements on *remuneration* in article 27 of the *MiFID Org Regulation* applying to it;
- (2) the requirements in relation to remuneration policies (■ SYSC 4.3A.1AR) and conflicts of interest (■ SYSC 10.1.7R);
- (3) the Finalised Guidance 13/01 entitled 'Risks to customers from financial incentives' published in January 2013; and
- (4) the Finalised Guidance 15/10 entitled 'Risks to customers from performance management at firms' published in July 2015.

## 19F.2 IDD remuneration incentives

### Application

**19F.2.1** **R** This section applies to *insurance distributors* carrying on *insurance distribution activities* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

[Note: article 7(2) of the *IDD*]

**19F.2.1A** **R** This section does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* if:

- (1) the *firm's designated professional body* has made rules which implemented article 17(3) of the *IDD*;
- (2) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
- (3) the *firm* is subject to the rules in the form in which they were approved.

### Remuneration and the customer's best interests

**19F.2.2** **R** (1) *Insurance distributors* must not:

- (a) be *remunerated*; or
- (b) *remunerate* or assess the performance of their *employees*, in a way that conflicts with their duty to comply with the customer's best interests rules (■ *ICOB*S 2.5.-1R, in relation to a *non-investment insurance contract*, or ■ *COB*S 2.1.1R, in relation to a *life policy*).

- (2) In particular, an *insurance distributor* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend a particular *contract of insurance* to a *customer* in contact with the *firm* when the *insurance distributor* could offer a different *insurance contract* which would better meet the *customer's* needs.

[Note: article 17(3) of the *IDD*]

- (3) In relation to a *non-investment insurance contract*, an *insurance distributor* must not make any arrangements by way of *remuneration* or incentive to any *person*, including itself, its *employees* or any third party, that could lead:

- (a) the *firm* or its *employees* to arrange a particular *contract of insurance*; or
- (b) the *customer* to take out a particular insurance contract, where that would not be consistent with the interests of all *customers* of the *policy*, including prospective or actual *policyholders* or *policy stakeholders* including *leaseholders* (as the case may be).

**19F.2.2A** G

- (1) When assessing whether it complies with ■ SYSC 19F.2.2R, an *insurance distributor* should consider all of the *remuneration* it receives in connection with a *non-investment insurance contract*, whether or not it intends to retain that *remuneration* or make payments out of that amount to another *person*. A *firm* should consider whether the gross amount of any sum it receives by way of *remuneration*, whether in the form of *commission* or of any other type, is consistent with ■ ICOBS 2.5.-1R, rather than the net amount that the *firm* intends to retain.
- (2) Where a *firm* has arrangements to provide incentives, including partial *premium* refunds or commission-like payments, to third parties (including the *customer* taking out the *policy*), this may encourage those *persons* to use the services of the *firm*. Where that is the case, those arrangements would be expected to lead to the *firm* receiving a financial or non-financial benefit or other incentive in respect of the *insurance distribution activities* to which it relates and so would be *remuneration* to which ■ SYSC 19F.2.2R(1) applies.

**Retail premium finance**  
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**19F.2.3** R

The requirement in ■ SYSC 19F.2.2R applies to *remuneration* an *insurance distributor* receives in relation to *retail premium finance*.

**19F.2.4** G

■ ICOBS 6A.5 includes further *guidance* on remuneration in relation to *retail premium finance*.



**19F.3 Funeral plan remuneration incentives**

**Application**

- 19F.3.1 **R** This section applies to a *firm* carrying on *regulated funeral plan activities*.  
Remuneration and the customer’s best interests
  
- 19F.3.2 **R**
  - (1) A *firm* must not:
    - (a) be *remunerated*; or
    - (b) *remunerate* or assess the performance of its *employees*,  
in a way that conflicts with its duty to comply with the *customer’s best interests rule*.
  - (2) In particular, a *firm* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend or offer a particular *funeral plan contract* to a *customer* when the *firm* could offer a different *funeral plan contract* which would better meet the *customer’s* needs.
  
- 19F.3.3 **G**
  - (1) A *firm* should consider ■ FPCOB 6.4R and ■ FPCOB 6.5R when making arrangements which concern *remuneration* or performance incentives.
  - (2) Examples of *remuneration* arrangements which may conflict with the *customer’s best interests rule* include:
    - (a) arrangements which provide for higher levels of *remuneration* based on the price of the plan that is recommended or offered (i.e. higher *remuneration* for selling a more expensive plan);
    - (b) arrangements for *remuneration* or performance management which are based primarily on the number of plans sold, or the price of plans sold; and
    - (c) arrangements which do not have adequate provision for *remuneration* to be taken back if the customer cancels the plan.