

**Senior Management Arrangements, Systems and Controls**

## Chapter 19G

# MIFIDPRU Remuneration Code

## 19G.1 General application

### Application: non-SNI MIFIDPRU investment firms

#### 19G.1.1 R

- (1) Subject to (2), the *MIFIDPRU Remuneration Code* applies to a *non-SNI MIFIDPRU investment firm*.
- (2) The provisions in (4) do not apply to a *non-SNI MIFIDPRU investment firm*:
  - (a) where the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £100 million or less; or
  - (b) where:
    - (i) the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £300 million or less; and
    - (ii) the conditions in (3) are (where they are relevant to a *firm*) satisfied.
- (3) The conditions referred to in (2)(b)(ii) are:
  - (a) that the exposure value of the *firm's* on- and off-balance sheet *trading book* business is equal to or less than £150 million; and
  - (b) that the exposure value of the *firm's* on- and off-balance sheet derivatives business is equal to or less than £100 million.
- (4) The provisions referred to in (2) are:
  - (a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
  - (b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);
  - (c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
  - (d) ■ SYSC 19G.6.35R(2) (Discretionary pension benefits).
- (5) For the purposes of paragraph (2), paragraph (6) applies where a *non-SNI MIFIDPRU investment firm* does not have monthly data covering the 4-year period referred to in that paragraph.
- (6) Where this paragraph applies, a *non-SNI MIFIDPRU investment firm* must calculate the rolling averages referred to in paragraph (2) using the data points that it does have.

- 19G.1.2** **G**
- (1) For the purposes of ■ SYSC 19G.1.1R(5), the FCA expects a *non-SNI MIFIDPRU investment firm* to have insufficient data for a period only where it did not carry on any *MiFID business* during that period, or where (for periods prior to the application of the *MIFIDPRU Remuneration Code*) the *firm* did not record the relevant data on a monthly basis.
  - (2) Where a *firm* doesn't have all the monthly data points, the *firm* should use the data points it has in the way that paints the most representative picture of the period in question. For example, if a *firm* has monthly data for 2 years of the 4-year period, but prior to that only recorded the relevant data on a quarterly basis, the *firm* could sensibly calculate its rolling average by using the quarterly figure for each of the 3 monthly data points in each quarter.
- 19G.1.3** **R**
- (1) The amounts referred to in ■ SYSC 19G.1.1R must be calculated on an individual basis, and:
    - (a) in the case of on-balance sheet assets, in accordance with the applicable accounting framework;
    - (b) in the case of *off-balance sheet items*, using the full nominal value.
  - (2) The value of the on-balance sheet assets and *off-balance sheet items* in ■ SYSC 19G.1.1R(2)(a) and ■ (b) must be an arithmetic mean of the assets and items over the preceding 4 years, based on monthly data points.
  - (3) A *firm* may choose the day of the *month* that it uses for the data points in (2), but once that day has been chosen the *firm* may only change it for genuine business reasons.
- 19G.1.4** **R**
- (1) When calculating the amounts referred to in ■ SYSC 19G.1.1R(2)(a) and ■ (b), a firm must use the total amount of its on-balance sheet assets and off-balance sheet items.
  - (2) A *firm* must calculate the exposure values referred to in ■ SYSC 19G.1.1R(3)(a) and ■ (b) by adding together the following items:
    - (a) the positive excess of the *firm's* long positions over its short positions in all *trading book financial instruments*, using the approach specified for K-NPR in ■ MIFIDPRU 4.12.2R to calculate the net position for each instrument; and
    - (b) the exposure value of contracts and transactions referred to in ■ MIFIDPRU 4.14.3R, calculated using the approach specified for K-TCD in ■ MIFIDPRU 4.14.8R.
  - (3) Any amounts in foreign currencies must be converted into pound sterling using the relevant conversion rate.
  - (4) A *firm* must determine the relevant conversion rate referred to in (3) by reference to an appropriate market rate and must record which rate was chosen.

**19G.1.5** G The *FCA* considers that an example of an appropriate market rate for the purposes of ■ SYSC 19G.1.4R(4) is the relevant daily spot exchange rate against pound sterling published by the Bank of England.

**Application: SNI MIFIDPRU investment firms**

**19G.1.6** R

(1) The provisions in (2) apply to a *SNI MIFIDPRU investment firm*.

(2) The provisions referred to in (1) are:

- (a) ■ SYSC 19G.2 (Remuneration policies and practices);
- (b) ■ SYSC 19G.3.1R to ■ SYSC 19G.3.3R (Oversight of remuneration policies and practices);
- (c) ■ SYSC 19G.3.6R to ■ SYSC 19G.3.8G (Control functions);
- (d) ■ SYSC 19G.4.1R to ■ SYSC 19G.4.5R and ■ SYSC 19G.4.7G(1) and ■ (2) (Fixed and variable components of remuneration);
- (e) ■ SYSC 19G.6.1R (Remuneration and capital);
- (f) ■ SYSC 19G.6.2R (Exceptional government intervention); and
- (g) ■ SYSC 19G.6.5R to ■ SYSC 19G.6.6G (Assessment of performance).

**Application: summary of application to MIFIDPRU investment firms**

**19G.1.7** G The effect of the application provisions in ■ SYSC 19G.1.1R to ■ 19G.1.6R is summarised in the following table.

Type of firm	Applicable sections
<i>Non-SNI MIFID-PRU investment firm</i> not falling within SYSC 19G.1.1R(2)	The <i>MIFIDPRU Remuneration Code</i>
<i>Non-SNI MIFID-PRU investment firm</i> falling within SYSC 19G.1.1R(2)	The <i>MIFIDPRU Remuneration Code</i> except for: SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements); SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy); SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and SYSC 19G.6.35R(2) (Discretionary pension benefits)
<i>SNI MIFIDPRU investment firm</i>	SYSC 19G.2 (Remuneration policies and practices); SYSC 19G.3.1R to SYSC 19G.3.3R (Oversight of remuneration policies and practices); SYSC 19G.3.6R to SYSC 19G.3.8G (Control functions); SYSC 19G.4.1R to SYSC 19G.4.5R and SYSC 19G.4.7G(1) and SYSC 19G.4.7G(2) (Fixed and variable components of remuneration); SYSC 19G.6.1R (Remuneration and capital); SYSC 19G.6.2R (Exceptional government intervention); and

SYSC 19G.6.5R to SYSC 19G.6.6G (Assessment of performance)

■ MIFIDPRU 1.2 contains provisions regarding the classification of a *firm* as a *SNI MIFIDPRU investment firm* and *non-SNI MIFIDPRU investment firm*.

**Application: where the application of SYSC 19G.1.1R changes in relation to a firm**

- 19G.1.8** **R** (1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that did not meet either condition in ■ SYSC 19G.1.1R(2)(a) or ■ (b) but subsequently does.
- (2) The provisions referred to in ■ SYSC 19G.1.1R(2) cease to apply to the *firm* in (1) if:
- (a) the *firm* has met the conditions in either ■ SYSC 19G.1.1R(2)(a) or ■ (b) for a continuous period of at least 6 *months* (or such longer period as may have elapsed before the *firm* submits the notification in (b)); and
- (b) it has notified the *FCA* that it has met the conditions in (a).
- (3) The notification in (2)(b) must be submitted through the *online notification and application system* using the form in ■ MIFIDPRU 7 Annex 3R.
- 19G.1.9** **G** The effect of ■ SYSC 19G.1.8R(2)(a) is that a *firm* may move between meeting the conditions in ■ SYSC 19G.1.1R(2)(a) and ■ (b) during the 6-*month* period.
- 19G.1.10** **R** Where a *non-SNI MIFIDPRU investment firm* has met the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b) but then ceases to do so, it must comply with the provisions referred to in ■ SYSC 19G.1.1R(2) within 12 *months* from the date on which the *firm* ceased to meet the conditions.
- 19G.1.11** **R** (1) Where a *non-SNI MIFIDPRU investment firm* ceases to meet the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), it must promptly notify the *FCA*.
- (2) The notification in (1) must be submitted through the *online notification and application system* using the form in ■ MIFIDPRU 1 Annex 3R.
- 19G.1.12** **G** Where a *firm* ceases to meet the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), but subsequently meets the conditions again within a period of 6 *months*, the *firm* will still be subject to the provisions referred to in ■ SYSC 19G.1.1R(2) for 12 *months* after the date on which it first ceased to meet the conditions. The *firm* only ceases to be subject to the provisions referred to in ■ SYSC 19G.1.1R(2) where it meets the conditions in ■ SYSC 19G.1.8R(2).
- 19G.1.13** **R** The requirements in ■ SYSC 19G.1.8R(2)(b) and ■ SYSC 19G.1.11R(1) do not apply where a *non-SNI MIFIDPRU investment firm* has notified the *FCA* in

accordance with the requirements of ■ MIFIDPRU 7.1.9R(2)(b) or ■ MIFIDPRU 7.1.12R(1) of the same event.

### Application: collective portfolio management investment firms

**19G.1.14** **G** The *MIFIDPRU Remuneration Code* applies to a *collective portfolio management investment firm*.

- 19G.1.15** **G**
- (1) A *collective portfolio management investment firm* must assess the thresholds in ■ SYSC 19G.1.1R(2) and ■ (3) on the basis of the total of both its *MiFID business* and *non-MiFID business*.
  - (2) ■ SYSC 19G.1.20R to ■ SYSC 19G.1.23G explain the position for *firms* subject to the *MIFIDPRU Remuneration Code* and another *FCA* remuneration code.

### Application: levels of application

**19G.1.16** **G** ■ SYSC 19G.1.1R to ■ SYSC 19G.1.15R and ■ SYSC 19G.1.17R explain when the *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis. ■ SYSC 19G.1.18R and ■ 19G.1.19R explain when the *MIFIDPRU Remuneration Code* applies on a consolidated basis, and what that means.

**19G.1.17** **R** The *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis where the *FCA* has granted a *firm* permission under ■ MIFIDPRU 2.4.17R and ■ MIFIDPRU 2.4.18R to apply the *group capital test*.

- 19G.1.18** **R**
- (1) Subject to (3), where ■ MIFIDPRU 2.5 applies to a *UK parent entity*, the *MIFIDPRU Remuneration Code* applies to that *UK parent entity* on a consolidated basis.
  - (2) A *UK parent entity* that is treated as an *SNI MIFIDPRU investment firm* in accordance with ■ MIFIDPRU 2.5.21R is also treated as an *SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.
  - (3) A *UK parent entity* that is treated as a *non-SNI MIFIDPRU investment firm* in accordance with ■ MIFIDPRU 2.5.21R is also treated as a *non-SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.
  - (4) The following provisions only apply to a *firm* on an individual basis:
    - (a) ■ SYSC 19G.1.1R(2), ■ (3), ■ (5) and ■ (6);
    - (b) The provisions listed in ■ SYSC 19G.1.1R(4);
    - (c) ■ SYSC 19G.1.2G to ■ 19G.1.5G; and
    - (d) ■ SYSC 19G.1.8G to ■ 19G.1.13G.
  - (5) For the purposes of the *MIFIDPRU Remuneration Code*, application on a consolidated basis means on the basis of the situation that results from applying the requirements in the *MIFIDPRU Remuneration Code* to a *UK parent entity* as if that *undertaking*, together with all the *investment firms, financial institutions, ancillary services undertakings*

and *tied agents* in the *investment firm group*, formed a single *MIFIDPRU investment firm*.

- (6) For the purposes of (5), the terms *investment firm*, *financial institution*, *ancillary services undertaking* and *tied agent* apply to *undertakings* established in *third countries*, which, if established in the *UK*, would satisfy the definitions of those terms.
- (7) Where an *undertaking* in a *third country* is included in the consolidated situation of a *UK parent entity* as a result of (6), the *MIFIDPRU Remuneration Code* only applies in relation to *material risk takers* at that *undertaking* who oversee or are responsible for business activities that take place in the *UK*.

**19G.1.19** G

Where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the effect of ■ SYSC 19G.1.18R(5) is that the *UK parent entity* and all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group* are treated for these purposes as a single *MIFIDPRU investment firm*. This means, for example, treating a staff member of an *undertaking* within the *investment firm group* as if they were a staff member of the *UK parent entity*.

- (2) When considering which rules in the *MIFIDPRU Remuneration Code* apply on a consolidated basis, a *UK parent entity* must consider whether it is treated as an *SNI MIFIDPRU investment firm* or a *non-SNI MIFIDPRU investment firm* under ■ MIFIDPRU 2.5.21R (which, as ■ SYSC 19G.1.18R(2) and ■ (3) explain, also determines its categorisation under the *MIFIDPRU Remuneration Code*).
- (3) The effect of ■ SYSC 19G.1.18R(4)(b) is that a *UK parent entity* need not comply with the provisions listed in ■ SYSC 19G.1.1R(4) on a consolidated basis. These provisions apply on an individual basis where a *firm* exceeds the thresholds in ■ SYSC 19G.1.1R(2)(a) or ■ (b). As these thresholds are not relevant where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the provisions concerning them are also disapplied.

**Application: firms subject to different remuneration requirements**

**19G.1.20** R

- (1) Where a *firm* is subject to the *MIFIDPRU Remuneration Code* and, as a result of the application of any of the requirements listed in (2), to provisions imposing different *remuneration* requirements, only one of which can be complied with, it must comply with the most stringent of the relevant provisions.
- (2) The requirements referred to in (1) are:
  - (a) different requirements in the *MIFIDPRU Remuneration Code*;
  - (b) the *AIFM Remuneration Code*;
  - (c) the *Dual-regulated firms Remuneration Code*; and
  - (d) the *UCITS Remuneration Code*.

**19G.1.21** **G**

■ SYSC 19G.1.20R states that where different *remuneration* requirements apply to a *firm* it must comply with the most stringent of the relevant provisions. Some non-exhaustive examples follow.

Example 1: A *firm* may be subject to different requirements under the *MIFIDPRU Remuneration Code* on an individual basis and on a consolidated basis. This scenario may arise because a *firm* is an *SNI MIFIDPRU investment firm* on an individual basis but a *non-SNI MIFIDPRU investment firm* on a consolidated basis.

Example 2: Different *remuneration* requirements may apply to a *firm* when an *investment firm group* contains both a *PRA-designated investment firm* and an *FCA investment firm* (but not a *credit institution*). This may lead to a *firm* being subject to both the *MIFIDPRU Remuneration Code* and the *Dual-regulated firms Remuneration Code*.

Example 3: A staff member at a *collective portfolio management investment firm* may be a *material risk taker* and also *AIFM Remuneration Code Staff* or *UCITS Remuneration Code Staff*. In this case the *material risk taker* will be subject to the *MIFIDPRU Remuneration Code* and the requirements of the *AIFM Remuneration Code* or the *UCITS Remuneration Code*.

**19G.1.22** **G**

The effect of ■ SYSC 19G.1.20R is that a *firm* must consider which requirement is the most stringent on a provision by provision basis.

**19G.1.23** **G**

■ SYSC 19G.1.20R is not relevant where a *firm* can comply with both sets of *remuneration* requirements, for example requirements to establish, implement and maintain *remuneration* policies and practices on both an individual basis and a consolidated basis.

**Application: staff**

**19G.1.24** **G**

The term 'staff' should be interpreted broadly in the *MIFIDPRU Remuneration Code* to include, for example, employees of the *firm* itself, *partners* or members (in the case of partnership structures), *employees* of other entities in the *group*, *employees* of joint service companies, and secondees.

**Application: performance periods**

**19G.1.25** **G**

The rules in the *MIFIDPRU Remuneration Code* apply to each performance period, regardless of whether it is annual, quarterly, or another frequency. A *firm* must comply with the rules on performance assessment and risk adjustment in relation to each such performance period.

**Application: proportionality**

**19G.1.26** **R**

A *firm* must comply with the *MIFIDPRU Remuneration Code* in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

**Application: carried interest**

- 19G.1.27** **R** (1) The *MIFIDPRU Remuneration Code* applies to *remuneration*, including carried interest (which represents a share in the profits of a *fund* managed by the *firm's* staff, as compensation for the management of the *fund*).
- (2) Where arrangements concerning carried interest meet the conditions in (3), the following provisions do not apply:
- (a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
  - (b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);
  - (c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
  - (d) ■ SYSC 19G.6.30R to ■ SYSC 19G.6.34G (Performance adjustment).
- (3) The conditions referred to in (2) are that:
- (a) the value of the carried interest must be determined by the performance of the *fund* in which the carried interest is held;
  - (b) the period between the award of the carried interest and any payment under it must be at least 4 years; and
  - (c) there are provisions for the forfeiture or cancellation of carried interest that include at least the circumstances set out in ■ SYSC 19G.6.31R(3)(a) and ■ SYSC 19G.6.31R(3)(b).

**19G.1.28** **R** For the purposes of the *MIFIDPRU Remuneration Code*, a carried interest must be valued at the time of its award.

**Application: general**

**19G.1.29** **G** While the rules in the *MIFIDPRU Remuneration Code* set out the minimum regulatory requirements that a *MIFIDPRU investment firm* must comply with, the *FCA* considers it good practice for a *firm* to assess whether going beyond those regulatory requirements would contribute to sound risk management or a healthy firm culture.

**When?**

**19G.1.30** **R** A *firm* must apply the *MIFIDPRU Remuneration Code* from the start of its first performance period that begins on or after 1 January 2022.