

Senior Management Arrangements, Systems and Controls

Chapter 19G

MIFIDPRU Remuneration Code

19G.5 Application of remuneration requirements to material risk takers

Identifying material risk takers

- 19G.5.1** **R** A *material risk taker* is a staff member at a *non-SNI MIFIDPRU investment firm* whose professional activities have a material impact on the risk profile of the *firm* or of the assets that the *firm* manages.
- 19G.5.2** **R** A *non-SNI MIFIDPRU investment firm* must assess at least once a year which of its staff members are *material risk takers*.
- 19G.5.3** **R** For the purposes of **SYSC 19G.5.1R**, a staff member's professional activities are deemed to have a material impact on a *firm's* risk profile or the assets the *firm* manages if one or more of the following criteria are met:
- (1) the staff member is a *member of the management body* in its management function;
 - (2) the staff member is a *member of the management body* in respect of the *management body in its supervisory function*;
 - (3) the staff member is a member of the *senior management*;
 - (4) the staff member has *managerial responsibility* for *business units* that are carrying on at least one of the following *regulated activities*:
 - (a) *arranging (bringing about) deals in investments*;
 - (b) *dealing in investments as agent*;
 - (c) *dealing in investments as principal*;
 - (d) *managing investments*;
 - (e) *making investments with a view to transactions in investments*;
 - (f) *advising on investments (except P2P agreements)*; and/or
 - (g) *operating an organised trading facility*;
 - (5) the staff member has *managerial responsibilities* for the activities of a *control function*;
 - (6) the staff member has *managerial responsibilities* for the prevention of *money laundering* and terrorist financing;

- (7) the staff member is responsible for managing a material risk within the *firm*;
- (8) in a *firm* that has permission for carrying on at least one of the *regulated activities* in (4)(a) to (g), the staff member is responsible for managing one of the following activities:
 - (a) information technology;
 - (b) information security; and/or
 - (c) outsourcing arrangements of critical or important functions as referred to in article 30(1) of the *MiFID Org Regulation*; and
- (9) the staff member has authority to take decisions approving or vetoing the introduction of new products.

19G.5.4 G The *FCA* considers the following are key indicators that the professional activities of a staff member (X) have a material impact on the risk profile of the *firm* or of the assets that the *firm* manages for the purposes of ■ SYSC 19G.5.1R:

- (1) there is no sufficiently senior and experienced *material risk taker* who supervises X on a day-to-day basis or to whom X reports;
- (2) X is responsible for key strategic decisions; and
- (3) X is responsible for significant revenue, material assets under management or for approving transactions.

19G.5.5 G The *FCA* expects *individuals* in the following roles would usually be categorised as *material risk takers*:

- (1) in relation to portfolio management business, heads of key areas including equities, fixed income, alternatives, private equity;
- (2) heads of investment research;
- (3) *individuals* responsible for a high proportion of revenue;
- (4) senior advisors where they can exert key strategic influence;
- (5) chief market strategists, where media profile is linked to reputational risk and risk to market integrity;
- (6) heads of a trading or broking desk; and
- (7) all *individuals* with responsibility for information technology, information security and outsourcing where there is not a single person with responsibility for all three areas. For example, if there is a chief operating officer and a chief information technology officer who are both equally senior and have shared responsibility for these areas, then both should be identified as *material risk takers*.

19G.5.6 G (1) A *firm* should update its assessment under ■ SYSC 19G.5.2R as necessary throughout the year.

- (2) It is important that *firms* consider all types of roles that may have a material impact on the *firm's* risk profile or on the assets it manages. The categories of staff referred to in ■ SYSC 19G.5.3R are intended to be a starting point only. A *firm* should develop its own additional criteria to identify further *individuals* based on the specific types of activities and risks relevant to the *firm*.
- (3) In identifying its *material risk takers*, a *firm* should consider all types of risks involved in its professional activities. These may include prudential, operational, market, conduct and reputational risks.
- (4) The decisive factor when identifying *material risk takers* is not the name of the function or role, but the authority and responsibility held by the *individual*.

19G.5.7 **R**

- (1) If a *non-SNI MIFIDPRU investment firm* is part of an *FCA investment firm group* to which prudential consolidation applies, its *material risk takers* must be identified at both *individual* and consolidated level.
- (2) The *UK parent entity* of a *firm* is responsible for the *material risk taker* identification process at a consolidated level and must identify as *material risk takers*:
 - (a) all staff members whose professional activities have a material impact on the risk profile of the *investment firm group*; and
 - (b) all staff members of an *undertaking* in the *investment firm group* ('*undertaking A*') whose professional activities have a material impact on:
 - (i) the risk profile of another *undertaking* within the *investment firm group* to whom the *MIFIDPRU Remuneration Code* applies on an individual basis ('*undertaking B*'); or
 - (ii) the risk profile of any assets managed by *undertaking B*.

19G.5.8 **G**

It may be helpful for the *UK parent entity* to coordinate the process for identifying *material risk takers* across the *group* entities.

Exemption for individuals

19G.5.9 **R**

- (1) The provisions in (2) do not apply in relation to a *material risk taker* (X), where X's annual variable *remuneration*:
 - (a) does not exceed £167,000; and
 - (b) does not represent more than one-third of X's total annual *remuneration*.
- (2) The provisions referred to in (1) 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).

- 19G.5.10** **G** (1) ■ SYSC 19G.5.9R applies only to *material risk takers* of *non-SNI MIFIDPRU investment firms* that do not fall within ■ SYSC 19G.1.1R(2).
- (2) A *non-SNI MIFIDPRU investment firm* not falling within ■ SYSC 19G.1.1R(2) should therefore assess whether staff members are *material risk takers* before applying the thresholds in ■ SYSC 19G.5.9R.
- (3) As the provisions listed in ■ SYSC 19G.5.9R(2) don't apply on a consolidated basis (see ■ 19G.1.18R(4)(b)), the exemption for *individuals* in ■ SYSC 19G.5.9R(1) will not be relevant on a consolidated basis.
- 19G.5.11** **R** When considering whether an *individual* that becomes a *material risk taker* at a point during the *firm's* performance period falls within ■ SYSC 19G.5.9R, a *firm* must:
- (1) apply the full £167,000 variable *remuneration* threshold;
- (2) apply the requirement that the variable *remuneration* must not be more than one-third of the *individual's* total *remuneration* to the relevant portion of the total *remuneration* paid for the part of the performance period that the *individual* is a *material risk taker* at that *firm*; and
- (3) include any guaranteed variable *remuneration*, for example a 'sign-on bonus', in the *individual's* variable *remuneration* for the part of the performance period that the *individual* is a *material risk taker* at that *firm*.
- 19G.5.12** **G** (1) An *individual* may become a *material risk taker* at any point during the *firm's* performance period, either by changing role within the *firm* or by joining the *firm*.
- (2) The effect of ■ SYSC 19G.5.11R is illustrated by the following example:
- An *individual* ('X'), becomes a *material risk taker* 6 months into the *firm's* performance period. X receives annual fixed *remuneration* of £900,000. This means X will receive £450,000 for the 6 months of the performance period for which X is a *material risk taker*. X receives variable *remuneration* of £100,000 in respect of the first 6 months. X falls below the thresholds in ■ SYSC 19G.5.9R because X's variable *remuneration* of £100,000 is:
- (a) less than the £167,000 threshold in ■ SYSC 19G.5.9R(1)(a), and
- (b) less than one-third of the £450,000 fixed *remuneration* received (which would be £150,000) for the purposes of ■ SYSC 19G.5.9R(1)(b).
- 19G.5.13** **G** The FCA considers it good practice for a *firm* to consider whether applying any of the rules applicable to *material risk takers* to other members of *staff* would contribute to sound risk management or a healthy firm culture.