

**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's</i> 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

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19D.2 General requirement

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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.

[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.

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.

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19D.3 Remuneration principles

19D.3.1 R (1) ...

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

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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

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

- 19D.3.2 R B (1) For a *firm* within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or (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 C (1) The value in SYSC 19D.3.2BR(1)(b) or (2) is increased to €15 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*).

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- 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*.]

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- 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*.

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Remuneration Principle 12: Remuneration structures - introduction

- 19D.3.3 5 **G** (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:~~
- R**
- (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]

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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~~

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Remuneration Principle 12(g): Remuneration structures - deferral

- 19D.3.5 9 **R** (1) In relation to higher paid material risk takers a 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.

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

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

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- (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 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.

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...

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 <i>firm</i> subject to SYSC 19D.1.3 on 28	From 29 December 2020	29 December 2020

			<p>December 2020, must apply the <i>rules</i> and <i>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 services</p>		
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			provided in the performance year active on the 28 December 2020.		
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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
			...			
			<i>SYSC 19D.3.4R(3)</i>	<i>Where an overseas firm deems an employee not to be dual-regulated firms Remuneration Code staff</i>	Matter described in <i>SYSC 19D.3.4R(3)</i>	Matter described in <i>SYSC 19D.3.4R(3)</i>
			...			
...						