Chapter 19A

IFPRU Remuneration Code

19A.1 General application and purpose

Who? What? Where?

19A.1.1 R (1) The *Remuneration Code* applies to:

(a) [deleted]

(b) [deleted]

(c) an *IFPRU investment firm*; and

(d) an *overseas firm* that:

(i) is not an *EEA firm*;

(ii) has its head office outside the *EEA*; and

(iii) would be an *IFPRU investment firm* if it had been a *UK domestic firm*, had carried on all its business in the *UK* and had obtained whatever authorisations for doing so as are required under the *Act*.

(2) In relation to a *firm* that falls under (1)(d), the *Remuneration Code* applies only in relation to activities carried on from an establishment in the *United Kingdom*.

(3) Otherwise, the *Remuneration Code* applies to a *firm* within (1) in the same way as SYSC 4.1.1 R (General Requirements).

19A.1.1A G

19A.1.2 G Part 2 of SYSC 1 Annex 1 provides for the application of SYSC 4.1.1 R (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in SYSC 12, this means that:

(1) in relation to what the *Remuneration Code* applies to, it:

(a) applies in relation to *regulated activities*, activities that constitute *dealing in investments as principal* (disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc)), *ancillary activities* and (in relation to *MiFID business*) *ancillary services*;

(b) applies with respect to the carrying on of *unregulated activities* in a *prudential context*; and

(c) takes into account activities of other *group* members; and

(2) in relation to where the *Remuneration Code* applies, it applies in relation to:

(a) a *firm*'s *UK* activities;

(b) a *firm*'s *passported activities* carried on from a *branch* in another *EEA State*; and

(c) a *UK domestic firm*'s activities wherever they are carried on, in a *prudential context*.

When?

19A.1.3 R (1) A *firm* must apply the *remuneration* requirements in SYSC 19A.3 other than SYSC 19A.3.44 R (3) and SYSC 19A.3.44A R in relation to:

(a) *remuneration* awarded, whether pursuant to a contract or otherwise, on or after 1 January 2011;

(b) *remuneration* due on the basis of contracts concluded before 1 January 2011 which is awarded or paid on or after 1 January 2011; and

(c) *remuneration* awarded, but not yet paid, before 1 January 2011, for services provided in 2010.

[**Note:** article 3(2) of the Third Capital Requirements Directive (Directive 2010/76/EU)]

(2) A *firm* must apply the remuneration requirements in SYSC 19A.3.44 R (3) and SYSC 19A.3.44A R in relation to remuneration awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before, on or after 31 December 2013.

[**Note:** article 162(3) of *CRD*]

19A.1.4 G Subject to the requirements of SYSC 19A.1.5 R, in the *FCA's* view SYSC 19A.1.3 R does not require a *firm* to breach requirements of applicable contract or employment law.

[**Note:** recital 69 of the *CRD*]

19A.1.5 R (1) This *rule* applies to a *firm* that is unable to comply with the *Remuneration Code* because of an obligation it owes to a *Remuneration Code staff member* under a provision of an agreement made on or before 29 July 2010 (the "provision").

(2) A *firm* must take reasonable steps to amend or terminate the provision referred to in (1) in a way that enables it to comply with the *Remuneration Code* at the earliest opportunity.

(3) Until the provision referred to in (1) ceases to prevent the *firm* from complying with the *Remuneration Code*, the *firm* must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.

Purpose

19A.1.6 G

(1) The aim of the *Remuneration Code* is to ensure that *firms* have risk-focused *remuneration* policies, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in SYSC 4.

(2) The *Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *Remuneration Code*, *firms* should comply with the Guidelines published by the *EBA* on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the *CRD* and on disclosures under article 450 of the *EU CRR*. The Guidelines can be found at: http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b.

(3) [deleted]

Notifications to the FCA

19A.1.7 G

(1) In addition to the notification requirements in the *Remuneration Code* general circumstances in which the *FCA* expects to be notified by *firms* of matters relating to their compliance with requirements under the *regulatory system* are set out in SUP 15.3 (General notification requirements).

(2) In particular, in relation to *remuneration* matters such circumstances should take into account *unregulated activities* as well as *regulated activities* and the activities of other members of a *group* and would include each of the following:

(a) significant breaches of the *Remuneration Code*, including any breach of a *rule* to which the detailed provisions on voiding and recovery in SYSC 19A Annex 1 apply;

(b) any proposed *remuneration* policies, procedures or practices which could:

(i) have a significant adverse impact on the *firms* reputation; or

(ii) affect the *firms* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*; or

(iii) result in serious financial consequences to the *financial system* or to other *firms*;

(c) any proposed changes to *remuneration* policies, practices or procedures which could have a significant impact on the *firms* risk profile or resources;

(d) fraud, errors and other irregularities described in SUP 15.3.17 R which may suggest weaknesses in, or be motivated by, the *firms* *remuneration* policies, procedures or practices.

(3) Such notifications should be made immediately the *firm* becomes aware, or has information which reasonably suggests such circumstances have occurred, may have occurred or may occur in the foreseeable future.

Individual guidance

19A.1.8 G The *FCA*'s policy on individual *guidance* is set out in SUP 9. *Firms* should in particular note the policy on what the *FCA* considers to be a reasonable request for *guidance* (see SUP 9.2.5 G). For example, where a *firm* is seeking *guidance* on a proposed *remuneration* structure the *FCA* will expect the *firm* to provide a detailed analysis of how the structure complies with the *Remuneration Code*, including the general requirement for *remuneration* policies, procedures and practices to be consistent with and promote sound and effective risk management.

19A.2 General requirement

Remuneration policies must promote effective risk management

19A.2.1 R A *firm* must establish, implement and maintain *remuneration* policies, procedures and practices that are consistent with and promote sound and effective risk management.

[**Note:** article 74(1) of *CRD*]

19A.2.2 G

(1) [deleted]

(2) The *Remuneration Code* covers all aspects of *remuneration* that could have a bearing on effective risk management including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements.

(3) As with other aspects of a *firm*'s systems and controls, in accordance with SYSC 4.1.2 R *remuneration* policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the *common platform firm*'s activities. What a *firm* must do in order to comply with the *Remuneration Code* will therefore vary. For example, while the *Remuneration Code* refers to a *firm's remuneration* committee and risk management function, it may be appropriate for the *governing body* of a smaller *firm* to act as the *remuneration* committee, and for the *firm* not to have a separate risk management function.

(4) [deleted]

(5) The *FCA* may also ask *remuneration* committees to provide evidence of how well the *firm*'s *remuneration* policies meet the *Remuneration Code*'s principles, together with plans for improvement where there is a shortfall. The *FCA* also expects relevant *firms* to use the principles

in assessing their exposure to risks arising from their *remuneration* policies as part of the *internal capital adequacy assessment process (ICAAP)*.

(6) [deleted]

19A.2.3 G

(1) [deleted]

(2) [deleted]

(3) The *FCA* would also expect *firms* to apply, on a *firm*-wide basis, at least the principles relating to:

(a) risk management and risk tolerance (Remuneration Principle 1);

(b) supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2);

(c) conflicts of interest (Remuneration Principle 3);

(d) governance (Remuneration Principle 4);

(e) risk adjustment (Remuneration Principle 8);

(f) pension policy (Remuneration Principle 9);

(g) personal investment strategies (Remuneration Principle 10);

(h) payments related to early termination (Remuneration Principle 12(e)); and

(i) deferral (Remuneration Principle 12(g))

Record-keeping

19A.2.4 G

In line with the record-keeping requirements in SYSC 9, a *firm* should ensure that its *remuneration* policies, practices and procedures are clear and documented. Such policies, practices and procedures would include performance appraisal processes and decisions.

Interpretation of references to remuneration

19A.2.5 R

(1) In this chapter references to *remuneration* include *remuneration* paid, provided or awarded by any *person* to the extent that it is paid, provided or awarded in connection with *employment* by a *firm*.

(2) Paragraph (1) is without prejudice to the meaning of *remuneration* elsewhere in the *Handbook*.

19A.2.6 G

Remuneration includes, for example, payments made by a seconding organisation which is not subject to the *Remuneration Code* to a secondee in respect of their *employment* by a *firm* which is subject to the *Remuneration Code*.

19A.3 Remuneration principles for IFPRU investment firms

Application: groups

19A.3.1 R

(1) A *firm* must apply the requirements of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is not an *EEA State*.

(2) Paragraph (1) does not limit SYSC 12.1.13 R (2)(dA) (which relates to the application of the *Remuneration Code* within *UK consolidation groups* and *non-EEA sub-groups*).

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

19A.3.2 G

SYSC 12.1.13 R (2)(dA) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or *non-EEA sub-group* of which a *firm* is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis. In the *FCA's* view, the application of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels in SYSC 19A.3.1R(1) is in line with article 109(2) of *CRD* on the application of systems and controls requirements to *groups* (as in SYSC 12.1.13 R).

Application: categories of staff and proportionality

19A.3.3 R

(1) This section applies in relation to *Remuneration Code staff*, except as set out in (3).

(2) When establishing and applying the total *remuneration* policies for *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 *remuneration principles proportionality rule*).

(3) Paragraphs (1) and (2) do not apply to the requirement for significant *firms* to have a *remuneration* committee (SYSC 19A.3.12 R).

[**Note:** article 92(2) of *CRD*]

[**Note:** In addition to the *guidance* in this section which relates to the *remuneration principles proportionality rule*, the *FCA* provides guidance on the division of *firms* into categories for the purpose of providing a framework for the operation of the *remuneration principles proportionality rule*. This

19A

guidance is available in the *FCA* website at http://www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code]

19A.3.4 R

(1) *Remuneration Code staff* comprises:

(a) an *employee* of an *IFPRU investment 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); or

(b) subject to (2) and (3), an *employee* of an *overseas firm* in SYSC 19A1.1.1R(1)(d) (i.e., an *overseas firm* that would have been an *IFPRU 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 (Regulatory technical standards to identify staff who are material risk takers) if it had applied to him.

(2) An *overseas firm* in SYSC 19A1.1.1R(1)(d) (i.e., an *overseas firm* that would have been an *IFPRU investment firm* if it had been a *UK domestic firm*) may deem an *employee* not to be *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;

(ii) would not meet any of the criteria in article 3 of Regulation (EU) No 604/2014 of 4 March 2014; and

(iii) was awarded total remuneration of less than €750,000 in the previous year; and

(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.

(3) Where the *overseas firm* deems an *employee* not to be *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.

[**Note:** article 92(2) of *CRD* and articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014.]

19A.3.4A G

Where an *overseas firm* in SYSC 19A1.1.1R(1)(d) (i.e., an *overseas firm* that would have been a *IFPRU investment firm* if it had been a *UK domestic firm*) wishes to deem an *employee* who earns more than €750,000 not to be *Remuneration Code staff*, the *overseas firm* may apply for a *waiver* of the requirement in ■ SYSC 19A.3.4R in respect of that *employee*.

19A.3.5 R A *firm* must:

(1) maintain a record of its *Remuneration Code staff* in accordance with the general record-keeping requirements (SYSC 9); and

(2) take reasonable steps to ensure that its *Remuneration Code staff* understand the implications of their status as such, including the potential for *remuneration* which does not comply with certain requirements of the *Remuneration Code* to be rendered void and recoverable by the *firm*.

19A.3.6 G [deleted]

Remuneration Principle 1: Risk management and risk tolerance

19A.3.7 R A *firm* must ensure that its *remuneration* policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the *firm*.

[**Note:** article 92(2)(a) of *CRD*]

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

19A.3.8 R A *firm* must ensure that its *remuneration* policy is in line with the business strategy, objectives, values and long-term interests of the *firm*.

[**Note:** article 92(2)(b) of *CRD*]

Remuneration Principle 3: Avoiding conflicts of interest

19A.3.9 R A *firm* must ensure that its *remuneration* policy includes measures to avoid conflicts of interest.

[**Note:** article 92(2)(b) of *CRD*]

Remuneration Principle 4: Governance

19A.3.10 R A *firm* must ensure that its *management body* in its *supervisory function* adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for overseeing its implementation.

[**Note:**article 92(2)(c) of *CRD* and Standard 1 of the *FSB Compensation Standards*]

19A.3.11 R A *firm* must ensure that the implementation of the *remuneration* policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *management body* in its *supervisory function*.

[**Note:**article 92(2)(d) of *CRD* and Standard 1 of the *FSB Compensation Standards*]

19A.3.12 R

(1) A *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.

(2) The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgment on *remuneration* policies and practices and the incentives created for managing risk, capital and liquidity.

(3) The chairman and the members of the *remuneration* committee must be members of the *management body* who do not perform any executive function in the *firm*.

(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 *firm* and which are to be taken by the *management body*.

(5) When preparing such decisions, the *remuneration* committee must take into account the long-term interests of shareholders, investors and other stakeholders in the *firm* and the public interest.

[**Note:**article 95 of *CRD* and Standard 1 of the *FSB Compensation Standards*]

19A.3.12A R

A *firm* that maintains a website must explain on the website how it complies with the *Remuneration Code*.

[**Note**: article 96 of *CRD*]

19A.3.12B R

In SYSC 19A.3.12 R a '*firm* that is significant' means a *significant IFPRU firm*.

19A.3.13 G

(1) A *firm* should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which *remuneration* is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the *governing body* or *remuneration* committee (or both) should work closely with the *firm*'s risk function in evaluating the incentives created by its *remuneration* system.

(2) The *governing body* and any *remuneration* committee are responsible for ensuring that the *firm*'s *remuneration* policy complies with the *Remuneration Code* and where relevant should take into account relevant guidance, such as that issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).

(3) [deleted]

(4) Guidance on what the *supervisory function* might involve is set out in SYSC 4.3.3 G.

Remuneration Principle 5: Control functions

19A.3.14 R A *firm* must ensure that *employees* engaged in control functions:

(1) are independent from the business units they oversee;

(2) have appropriate authority; and

(3) are *remunerated*:

(a) adequately to attract qualified and experienced staff; and

(b) in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[**Note:**article 92(2)(e) of *CRD* and Standard 2 of the *FSB Compensation Standards*]

19A.3.15 E (1) A *firm's* risk management and compliance functions should have appropriate input into setting the *remuneration* policy for other business areas. The procedures for setting *remuneration* should allow risk and compliance functions to have significant input into the setting of individual *remuneration* awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.

(2) Contravention of (1) may be relied on as tending to establish contravention of the *rule* on *employees* engaged in control functions having appropriate authority (SYSC 19A.3.14 R (2)).

19A.3.16 R A *firm* must ensure that the *remuneration* of the senior officers in risk management and compliance functions is directly overseen by the *remuneration* committee referred to in SYSC 19A.3.12 R, or, if such a committee has not been established, by the *governing body* in its *supervisory function*.

[**Note:** article 92(2)(f) of *CRD*]

19A.3.17 G (1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the *remuneration* of *employees* within control functions. Conflicts of interest can easily arise when *employees* are involved in the determination of *remuneration* for their own business area. Where these could arise they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a *firm's* human resources function when setting *remuneration* for other business areas.

(2) [deleted]

(3) [deleted]

Remuneration Principle 6: Remuneration and capital

19A.3.18 R A *firm* must ensure that total variable *remuneration* does not limit the *firm*'s ability to strengthen its capital base.

[**Note:**article 94(1)(c) of *CRD* and Standard 3 of the *FSB Compensation Standards*]

19A.3.19 G [deleted]

Remuneration Principle 7: Exceptional government intervention

19A.3.20 R A *firm* that benefits from exceptional government intervention must ensure that:

(1) variable *remuneration* is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(2) it restructures *remuneration* in a manner aligned with sound risk management and long-term growth, including when appropriate establishing limits to the *remuneration* ofmembers of its *management body*; and

(3) no variable *remuneration* is paid to members of its *management body* unless this is justified.

[**Note:**article 93 of *CRD* and Standard 10 of the *FSB Compensation Standards*]

19A.3.21 G The *FCA* would normally expect it to be appropriate for the ban on paying variable *remuneration* to members of the *management body* of a *firm* that benefits from exceptional government intervention to apply only in relation to members of the *management body* who were in office at the time that the intervention was required.

Remuneration Principle 8: Profit-based measurement and risk adjustment

19A.3.22 R (1) A *firm* must ensure that any measurement of performance used to calculate variable *remuneration* components or pools of variable *remuneration* components:

(a) includes adjustments for all types of current and future risks and takes into account the cost and quantity of the capital and the liquidity required; and

(b) takes into account the need for consistency with the timing and likelihood of the firm receiving potential future revenues incorporated into current earnings.

(2) A *firm* must ensure that the allocation of variable *remuneration* components within the *firm* also takes into account all types of current and future risks.

[**Note:**article 94(a)(j) and (k) of *CRD* and Standard 4 of the *FSB Compensation Standards*]

19A.3.23 G

(1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying judgement and common sense. The *FCA* expects a *firm* to apply qualitative judgements and common sense in the final decision about the performance-related components of variable *remuneration* pools.

(2) A number of risk-adjustment techniques and measures are available, and a *firm* should choose those most appropriate to its circumstances. The *FCA* considers good practice for this Principle to be represented by *firms* who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered including non-financial risks such as reputation, conduct, client outcomes, values and strategy.

(3) The *FCA* expects a *firm* to be able to provide it with details of all adjustments that the *firm* has made through application of formulae or the exercise of discretion. This will enable the *FCA* to consider if the *firm's* risk adjustment framework is sufficiently robust. Where discretion has been applied, the *firm* should be able to provide a clear explanation for, and quantification of, such adjustments.

(4) A *firm* should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the *governing body* or *remuneration committee* for this purpose.

19A.3.24 G [deleted]

19A.3.25 R A *firm* must base assessments of financial performance used to calculate variable *remuneration* components or pools of variable *remuneration* components principally on profits.

19A.3.26 G [deleted]

19A.3.27 R A *firm* must ensure that its total variable *remuneration* is generally considerably contracted where subdued or negative financial performance of the *firm* occurs, taking into account both current *remuneration* and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[**Note:**article 94(1)(n) of *CRD* and Standard 5 of the *FSB Compensation Standards*]

19A.3.28 G [deleted]

Remuneration Principle 9: Pension policy

19A.3.29 R A *firm* must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests;

(2) when an *employee* leaves the *firm* before retirement, any *discretionary pension benefits* are held by the *firm* for a period of five years in the form of instruments referred to in SYSC 19A.3.47 R (1); and

(3) when an *employee* reaches retirement, *discretionary pension benefits* are paid to the *employee* in the form of instruments referred to in SYSC 19A.3.47 R (1) and subject to a five-year retention period.

[**Note:** article 94(1)(o) of *CRD*]

Remuneration Principle 10: Personal investment strategies

19A.3.30 R (1) A *firm* must ensure that its *employees* undertake not to use personal hedging strategies or *remuneration*- or liability-related *contracts of insurance* to undermine the risk alignment effects embedded in their *remuneration* arrangements.

(2) A *firm* must maintain effective arrangements designed to ensure that *employees* comply with their undertaking.

[**Note:**article 94(1)(p) of *CRD* and Standard 14 of the *FSB Compensation Standards*]

19A.3.31 G In the *FCA's* view, circumstances in which a *person* will be using a personal hedging strategy include (and are not limited to) entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that *person* that are linked to or commensurate with the amounts by which the *person's remuneration* is subject to reductions.

Remuneration Principle 11: Non-compliance with the Remuneration Code

19A.3.32 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with the *Remuneration Code*, the *EU CRR* or *CRD*.

[**Note:** article 94(1)(q) of *CRD*]

Remuneration Principle 12: Remuneration structures - introduction

19A.3.33 G Remuneration Principle 12 consists of a series of *rules*, *evidential provisions* and *guidance* relating to *remuneration* structures.

19A.3.34 G (1) Taking account of the *remuneration principles proportionality rule*, the *appropriate regulator* 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 the following conditions are satisfied:

(a) Condition 1 is that Xs variable *remuneration* is no more than 33% of total *remuneration*; and

(b) Condition 2 is that Xs total *remuneration* is no more than 500,000.

(2) The *rules* referred to in (1) are those relating to:

(a) guaranteed variable *remuneration* (■ SYSC 19A.3.40 R);

(b) retained *shares* or other instruments (■ SYSC 19A.3.47 R);

(c) deferral (■ SYSC 19A.3.49 R); and

(d) performance adjustment (■ SYSC 19A.3.51 R).

[**Note:** The *FCA* provides *guidance* on the application of certain *rules* on *remuneration* structures in relation to individuals who are *Remuneration Code staff* for only part of a given performance year. This guidance is available in the *FCA* website at www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code .]

Remuneration Principle 12(a): Remuneration structures - general requirement

19A.3.35 R A *firm* must ensure that the structure of an *employee's remuneration* is consistent with and promotes effective risk management.

19A.3.35A R A *firm* must ensure that the *remuneration* policy makes a clear distinction between criteria for setting:

(1) basic fixed *remuneration* that primarily reflects an *employee's* professional experience and organisational responsibility as set out in the *employee's* job description and terms of employment; and

(2) variable *remuneration* that reflects performance in excess of that required to fulfil the *employee's* job description and terms of employment and that is subject to performance adjustment in accordance with the *Remuneration Code*.

[**Note**: article 92(2)(g) of *CRD*]

Remuneration Principle 12(b): Remuneration structures - assessment of performance

19A.3.36 R A *firm* must ensure that where *remuneration* is performance-related:

(1) the total amount of *remuneration* is based on a combination of the assessment of the performance of:

(a) the individual;

(b) the business unit concerned; and

(c) the overall results of the *firm*; and

(2) when assessing individual performance, financial as well as non-financial criteria are taken into account.

[**Note:**article 94(1)(a) of *CRD* and Standard 6 of the *FSB Compensation Standards*]

19A.3.37 G

(1) The non-financial criteria in SYSC 19A.3.36R(2) should include:

(a) the extent of the *employee's* adherence to effective risk management, and compliance with the *regulatory system* and with relevant overseas regulatory requirements; and

(b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.

(2) Poor performance, such as poor risk management or other behaviours contrary to *firm* values, can pose significant risks for a *firm* and non-financial metrics should override metrics of financial performance where appropriate.

(3) Aligning variable awards to sustainable financial performance requires *firms* to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per *share* (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentivise highly leveraged activities.

19A.3.38 R

A *firm* must ensure that the assessment of performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of *remuneration* is spread over a period which takes account of the underlying business cycle of the *firm* and its business risks.

[**Note:** article 94(1)(b) of *CRD*]

19A.3.39 G

[deleted]

19A.3.39A G

A *firm* should note that the requirement in SYSC 19A.3.36R(2) for financial and non-financial criteria to be taken into account applies wherever *remuneration* is performance-related including within any assessment of future performance.

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration, buy-outs and retention awards

19A.3.40 R

A *firm* must ensure that guaranteed variable *remuneration* is not part of prospective *remuneration* plans. A *firm* must not award, pay or provide guaranteed variable *remuneration* unless:

(1) it is exceptional;

(2) it occurs in the context of hiring new *Remuneration Code staff*;

(3) the *firm* has a sound and strong capital base; and

(4) it is limited to the first year of service.

[**Note:**article 94(1)(d) and (e) of *CRD* and Standard 11 of the *FSB Compensation Standards*]

19A.3.40A R A *firm* must ensure that *remuneration* packages relating to compensation for, or buy out from, an *employee's* contracts in previous employment align with the long term interests of the *firm* and are subject to appropriate retention, deferral and performance and clawback arrangements.

[**Note**: article 94(1)(i) of *CRD*]

19A.3.41 E [deleted]

19A.3.42 G Guaranteed variable *remuneration* should be subject to the same requirements applicable to variable *remuneration* awarded by the *firm* including deferral, malus and clawback.

19A.3.43 G The *FCA* expects that guaranteed variable awards and retention awards should not be common practice for *Remuneration Code staff* and should be limited to rare, infrequent occurrences.

Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration

19A.3.44 R A *firm* must set an appropriate ratio between the fixed and variable components of total *remuneration* and ensure that:

(1) fixed and variable components of total *remuneration* are appropriately balanced;

(2) the level of 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; and

subject to SYSC 19A.3.44AR, the level of the variable component of total *remuneration* must not exceed 100% of the fixed component of total *remuneration* for each *Remuneration Code staff*.

[**Note:** article 94(1)(f) and 94(1)(g)(i) of the *CRD*]

19A.3.44A R A *firm* may set a higher maximum level of the ratio between the fixed and variable components of total *remuneration* provided:

(1) the overall level of the variable component does not exceed 200% of the fixed component of the total *remuneration* for each *Remuneration Code staff*; and

(2) is approved by the shareholders or owners or members of the *firm* in accordance with SYSC 19A.3.44B R.

[**Note**: article 94(1)(g)(ii) of *CRD*]

19A.3.44B R A *firm* must ensure that any approval by the its shareholders or owners or members for the purposes of SYSC 19A.3.44AR is carried out in accordance with the following procedure:

(1) the *firm* must give reasonable notice to all its shareholders or owners or members of its intention to seek approval of the proposed higher ratio;

(2) the *firm* must make a detailed recommendation to all its shareholders or owners or members that includes:

(a) the reasons for, and the scope of, the approval sought;

(b) the number of staff affected and their functions; and

(c) the expected impact on the requirement to maintain a sound capital base;

(3) the *firm* must:

(a) without delay, inform the *FCA* of the recommendation to its shareholders or owners or members, including the proposed higher ratio and the reasons therefor; and

(b) demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the *CRD* and the *EU CRR*, having particular regard to the *firm*'s *own funds* obligations;

(4) the *firm* must ensure that *employees* who have an interest in the proposed higher ratio are not allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the *firm* in respect of the approval sought; and

(5) the higher ratio is approved by a majority of:

(a) at least 66% of the shares or equivalent ownership rights represented, if at least 50% of the shares or equivalent ownership rights in the *firm* are represented; or

(b) at least 75% of the shares or equivalent ownership rights represented, if less than 50% of the shares or equivalent ownership rights in the *firm* are represented.

[**Note**: article 94(1)(g)(ii) of *CRD*]

19A.3.44C R A *firm* must notify without delay the *FCA* of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio.

[**Note**: article 94(1)(g)(ii) of *CRD*]

19A.3.44D R A *firm* may apply a discount rate to a maximum of 25% of an *employee*'s total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

[**Note**: article 94(1)(g)(iii) of *CRD*]

19A.3.44E R In applying the discount rate in ■ SYSC 19A.3.44DR, a *firm* must apply the *EBA* Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014.

[**Note:** the *EBA* Guidelines on the applicable notional discount rate for variable remuneration can be found at: http://www.eba.europa.eu/documents/10180/643987/EBA-GL-2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9]

Remuneration Principle 12(e): Remuneration structures - payments related to early termination

19A.3.45 R A *firm* must ensure that payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failureor misconduct.

[**Note:**article 94(1)(h) of *CRD* and Standard 12 of the *FSB Compensation Standards*]

19A.3.46 G [deleted]

Remuneration Principle 12(f): Remuneration structures - retained shares or other instruments

19A.3.47 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) *shares* or equivalent ownership interests, 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

(b) where possible other instruments which are eligible as Additional Tier 1 instruments or are eligible as Tier 2 instruments or other instruments that can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the *firm* as a going concern and are appropriate for use as variable remuneration.

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the *firm*.

(3) This *rule* applies to both the portion of the variable *remuneration* component deferred in accordance with SYSC 19A.3.49 R and the portion not deferred.

[**Note:**article 94(1)(l) of *CRD* and Standard 8 of the *FSB Compensation Standards*]

19A.3.48 G [deleted]

Remuneration Principle 12(g): Remuneration structures - deferral

19A.3.49 R

(1) 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 three to five years.

(2) Remuneration under (1) must vest no faster than on a pro-rata basis.

(3) 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;

at least 60% of the amount must be deferred.

(4) [deleted]

(5) The length of the deferral period must be established in accordance with the business cycle, the nature of the business, its risks and the activities of the *employee* in question.

[**Note:** article 94(1)(m) of *CRD* and Standards 6 and 7 of the *FSB Compensation Standards*]

(6) [deleted]

(7) [deleted]

19A.3.50 G

(1) Deferred *remuneration* paid in:

(a) shares or *share*-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of shares; and

(b) cash should also be subject to performance criteria.

(2) The *FCA* would generally expect a *firm* to have a *firm*-wide policy (and *group*-wide policy, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable *remuneration* to fixed *remuneration* and with the amount of variable *remuneration*. While any variable *remuneration* component of £500,000 or more paid to *Remuneration Code staff* must 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 *Remuneration Code staff* in the levels of variable *remuneration* paid.

Remuneration Principle 12(h): Remuneration structures - performance adjustment, etc.

19A.3.51 R A *firm* must ensure that any variable *remuneration*, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the *firm* as a whole, and justified on the basis of the performance of the *firm*, the business unit and the individual concerned.

[**Note:**article 94(1)(n) of *CRD*]

19A.3.51A R A *firm* must:

(1) ensure that any of the total variable *remuneration* is subject to malus or clawback arrangements;

(2) set specific criteria for the application of malus and clawback; and

(3) ensure that the criteria for the application of malus and clawback in particular cover situations where the *employee*:

(a) participated in or was responsible for conduct which resulted in significant losses to the *firm*;

(b) failed to meet appropriate standards of fitness and propriety.

[**Note**: article 94(1)(n) of *CRD*]

19A.3.51B R

19A.3.52 E (1) A *firm* should reduce unvested deferred variable *remuneration* when, as a minimum:

(a) there is reasonable evidence of *employee* misbehaviour or material error; or

(b) the *firm* or the relevant business unit suffers a material downturn in its financial performance; or

(c) the *firm* or the relevant business unit suffers a material failure of risk management.

(2) For performance adjustment purposes, awards of deferred variable *remuneration* made in *shares* or other non-cash instruments should provide the ability for the *firm* to reduce the number of *shares* or other non-cash instruments.

(3) Contravention of (1) or (2) may be relied on as tending to establish contravention of the *rule* on performance adjustment (SYSC 19A.3.51 R).

19A.3.53 G

(1) [deleted]

(2) The *governing body* (or, where appropriate, the *remuneration* committee) should approve performance adjustment policies, including the triggers under which adjustment would take place. The *FCA* may ask *firms* to provide a copy of their policies and expects *firms* to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles

19A.3.53A R SYSC 19A Annex 1 makes provision about voiding and recovery.

19A.3.54 R

(1) Subject to (1A) to (3), the *rules* in SYSC 19A Annex 1.1R to 1.4R apply in relation to the prohibitions on *Remuneration Code staff* being *remunerated* in the ways specified in:

(a) SYSC 19A.3.40 R (guaranteed variable *remuneration*);

(b) SYSC 19A.3.49 R (deferred variable *remuneration*); and

(c) (replacing payments recovered or property transferred).

(1A) Paragraph (1) applies only to those prohibitions as they apply in relation to a *firm* that satisfies at least one of the conditions set out in (1B) and (1D).

(1B) Condition 1 is that the *firm* is a relevant *IFPRU 730k firm* that has relevant total assets exceeding £50 billion.

(1C) [deleted]

(1D) Condition 2 is that the *firm*:

(a) is a relevant *IFPRU 730k firm* or a relevant *third country IFPRU 730k firm*; and

(b) is part of a *group* containing a *firm* that has relevant total assets exceeding £50 billion and that is a relevant *IFPRU 730k firm*.

(1E) In this rule:

(a) a "relevant *IFPRU 730k firm*" is any *IFPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm*;

(b) a "relevant *third country IFPRU 730k firm*" is any *third country IFPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm*; and

(c) "relevant total assets" means the arithmetic mean of the *firm's* total assets as set out in its balance sheet on its last three *accounting reference dates*.

(2) This *rule* does not apply in relation to the prohibition on *Remuneration Code staff* being *remunerated* in the way specified in

SYSC 19A.3.40 R (guaranteed variable *remuneration*) if both the conditions in paragraphs (2) and (3) of that *rule* are met.

(3) This *rule* does not apply in relation to *Remuneration Code staff* (X) in respect of whom both the following conditions are satisfied:

(a) Condition 1 is that Xs variable *remuneration* is no more than 33% of total *remuneration*; and

(b) Condition 2 is that Xs total *remuneration* is no more than 500,000.

(4) In relation to (3):

(a) references to *remuneration* are to *remuneration* awarded or paid in respect of the relevant performance year;

(b) the amount of any *remuneration* is:

(i) if it is money, its amount when awarded;

(ii) otherwise, whichever of the following is greatest: its value to the recipient when awarded; its market value when awarded; and the cost of providing it;

(c) where *remuneration* is, when awarded, subject to any condition, restriction or other similar provision which causes the amount of the *remuneration* to be less than it otherwise would be, that condition, restriction or provision is to be ignored in arriving at its value; and

(d) it is to be assumed that the member of *Remuneration Code staff* will remain so for the duration of the relevant performance year.

19A.3.55 G

(1) Sections 137H and 137I of the *Act* enables the *FCA* to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision. SYSC 19A.3.53A R and SYSC 19A.3.54 R (together with SYSC 19A Annex 1) are such *rules* and render void provisions of an agreement that contravene the specified prohibitions on guaranteed variable *remuneration*, non-deferred variable *remuneration* and replacing payments recovered or property transferred. This is an exception to the general position set out in section 138E(2) of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.

(2) [deleted]

Detailed provisions on voiding and recovery (SYSC 19A.3.53AR and SYSC 19A.3.54R)

Rendering contravening provisions of agreements void

1	R	Any provision of an agreement that contravenes a prohibition on *persons* being *remunerated* in a way specified in a *rule* to which this *rule* applies (a "contravening provision") is void.	
1A	R	A contravening provision does not cease to be void because:	
		(1)	the *firm* concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D); or
		(2)	the member of *Remuneration Code staff* concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).
2	R	A contravening provision that, at the time a *rule* to which this *rule* applies was made, is contained in an agreement made before that time is not rendered void by 1R unless it is subsequently amended so as to contravene such a *rule*.	
3	G	The effect of 2R, in accordance with sections 137H and 137I of the *Act*, is to prevent contravening provisions being rendered void retrospectively. Contravening provisions may however be rendered void if they are contained in an agreement made after the *rule* containing the prohibition is made by the *FCA* but before the *rule* comes into effect.	
3A	R	(1)	A pre-existing provision is not rendered void by 1R.
		(2)	In this Annex a pre-existing provision is any provision of an agreement that would (but for this *rule*) be rendered void by 1R that was agreed at a time when either: (a) the *firm* concerned did not satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D); or (b) the member of *Remuneration Code staff* concerned satisfied both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).
		(3)	But an amendment to, or in relation to, a pre-existing provision is not to be treated as a pre-existing provision where the amendment is agreed at a time when both: (a) the *firm* concerned satisfies at least one of the conditions set out in SYSC 19A.3.54R (1B) to (1D); and (b) the member of *Remuneration Code staff* concerned does not satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).
4	R	For the purposes of this chapter it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the *United Kingdom*, or of a part of the *United Kingdom*.	

Recovery of payments made or property transferred pursuant to a void contravening provision

5	R	In relation to any payment made or other property transferred in pursuance of a contravening provision other than a pre-existing provision, a *firm* must take reasonable steps to:	
		(1)	recover any such payment made or other property transferred by the *firm*; and
		(2)	ensure that any other *person* ("P") recovers any such payment made or other property transferred by that *person*.

5A	R	Paragraph 5R continues to apply in one or both of the following cases:	
		(1)	the *firm* concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D);
		(2)	the member of *Remuneration Code staff* concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).
6	G	The *rule* in 5R(2) would, for example, apply in the context of a secondment. Where a *group* member seconds an individual to a *firm* and continues to be responsible for the individuals *remuneration* in respect of services provided to the *firm*, the *firm* would need to take reasonable steps to ensure that the *group* member recovers from the secondee any *remuneration* paid in pursuance of a contravening provision.	
Replacing payments recovered or property transferred			
7	R	(1)	A *firm* must not award, pay or provide variable *remuneration* to a *person* who has received *remuneration* in pursuance of a contravening provision other than a pre-existing provision (the "contravening *remuneration*") unless the *firm* has obtained a legal opinion stating that the award, payment or provision of the *remuneration* complies with the *Remuneration Code*.
		(2)	This *rule* applies only to variable *remuneration* relating to a performance year to which the contravening *remuneration* related.
		(3)	The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual.
		(4)	Paragraph (1) continues to apply in one or both of the following cases: (a) the *firm* concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54R (1B) to (1D); (b) the member of *Remuneration Code staff* concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R (3)(a) and (b).
Notification to the *FCA*			
8	G	The *FCA* considers any breach of a *rule* to which this annex applies to be a significant breach which should be notified to it in accordance with SUP 15.3.11 R (Breaches of rules and other requirements in or under the Act). Such a notification should include information on the steps which a *firm* or other *person* has taken or intends to take to recover payments or property in accordance with 5R.	