

Chapter 19A

IFPRU 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 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 an *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 functions19A.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 of members 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 policy19A.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 strategies19A.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 Code19A.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 - introduction19A.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 failure or 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** 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]