

Chapter 19B

AIFM Remuneration Code

19B.1 Application

19B.1.1 **R** The *AIFM Remuneration Code* applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*; and
- (2) a non-UK AIF.
- (3) [deleted]

19B.1.1A **G** (1) *Full-scope UK AIFMs* are advised that *ESMA* published Guidelines on sound remuneration policies under the *AIFMD* on 3 July 2013 (Guidelines on sound remuneration policies under the *AIFMD*, 03.07.2013[ESMA/2013/232]), which *full-scope UK AIFMs* should comply with in applying the *rules* in this section.

(2) The *FCA* has provided additional *guidance* on the application of principles of proportionality to remuneration policies of *AIFM*. The *guidance* also addresses several other aspects of the *AIFM Remuneration Code* and the Guidelines. The *guidance* can be found at: [<http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg14-02>]

Remuneration policies and practices

19B.1.2 **R** An *AIFM* must establish, implement and maintain *remuneration* policies and practices for *AIFM Remuneration Code staff* that are consistent with, and promote, sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profile of the *instrument constituting the fund* of the *AIFs* it manages.

[Note: article 13(1) of *AIFMD*]

19B.1.3 **R** *AIFM Remuneration Code staff* comprise those categories of staff whose professional activities have a material impact on the risk profiles of the *AIFMs* or of the *AIFs* the *AIFM* manages. This includes senior management, risk takers, control functions, and any *employees* receiving total *remuneration* that takes them into the same *remuneration* bracket as senior management and risk takers.

[Note: article 13(1) of *AIFMD*]

19B.1.4 **R** (1) When establishing and applying the total *remuneration* policies for *AIFM Remuneration Code staff* (inclusive of salaries and discretionary

pension benefits), an *AIFM* must comply with the *AIFM remuneration principles* in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities.

- (2) Paragraph (1) does not apply to the requirement for significant *AIFMs* to have a *remuneration* committee (■ SYSC 19B.1.9 R).
- (3) The *AIFM remuneration principles* apply to remuneration of any type paid by the *AIFM*, to any amount paid directly by the *AIF* itself, including *carried interest*, and to any transfer of *units* or *shares* of the *AIF* made to the benefits of *AIFM Remuneration Code staff*.

[Note: paragraph 1 and 2 of Annex II of *AIFMD*]

AIFM Remuneration Principle 1: Risk management

19B.1.5 **R** An *AIFM* must ensure that its *remuneration* policy is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles of the *instrument constituting the fund* of the *AIFs* it manages.

[Note: paragraph 1(a) of Annex II of *AIFMD*]

AIFM Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interest

19B.1.6 **R** An *AIFM* must ensure that its *remuneration* policy is in line with the business strategy, objectives, values and interests of the *AIFM* and the *AIFs* it manages or the investors of such *AIFs*, and includes measures to avoid conflicts of interest.

[Note: paragraph 1(b) of Annex II of *AIFMD*]

AIFM Remuneration Principle 3: Governance

19B.1.7 **R** An *AIFM* must ensure that the *governing body* of the *AIFM*, in its supervisory function, adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for its implementation.

[Note: paragraph 1(c) of Annex II of *AIFMD*]

19B.1.8 **R** An *AIFM* must ensure 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 *governing body* in its supervisory function.

[Note: paragraph 1(d) of Annex II of *AIFMD*]

19B.1.9 **R** (1) An *AIFM* 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.

- (3) The chairman and the members of the *remuneration* committee must be members of the *governing body* who do not perform any executive function in the *AIFM*.
- (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 *AIFM* or the *AIF* concerned and which are taken by the *governing body* in its supervisory function.

[Note: paragraph 3 of Annex II of *AIFMD*]

AIFM Remuneration Principle 4: Control functions

19B.1.10 **R**

An *AIFM* must ensure that *employees* engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[Note: paragraph 1(e) of Annex II of *AIFMD*]

19B.1.11 **R**

An *AIFM* must ensure the *remuneration* of the senior officers in the risk management and compliance functions is directly overseen by the *remuneration* committee, or, if such a committee has not been established, by the *governing body* in its supervisory function.

[Note: paragraph 1(f) of Annex II of *AIFMD*]

AIFM Remuneration Principle 5(a): Remuneration structures - assessment of performance

19B.1.12 **R**

An *AIFM* must ensure that, where *remuneration* is performance related, the total amount of *remuneration* is based on a combination of the assessment of the performance of the individual and of the business unit or *AIF* concerned and of the overall results of the *AIFM*. When assessing individual performance, financial and non-financial criteria are taken into account.

[Note: paragraph 1(g) of Annex II of *AIFMD*]

19B.1.13 **R**

An *AIFM* must ensure that the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the *AIFs* managed by the *AIFM* to ensure that:

- (1) the assessment process is based on longer term performance; and
- (2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the *AIFs* it manages and their investment risks.

[Note: paragraph 1(h) of Annex II of *AIFMD*]

19B.1.13A G

- (1) Taking account of the remuneration principles proportionality *rule* in ■ SYSC 19B.1.4 R, the *FCA* 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 of the following conditions are satisfied:
 - (a) Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and
 - (b) Condition 2 is that X's total *remuneration* is no more than £500,000.
- (2) The *rules* referred to in (1) are those relating to:
 - (a) guaranteed variable *remuneration* (■ SYSC 19B.1.14 R);
 - (b) retained *units, shares* or other instruments (■ SYSC 19B.1.17 R);
 - (c) deferral (■ SYSC 19B.1.18 R); and
 - (d) performance adjustment (■ SYSC 19B.1.19 R).

AIFM Remuneration Principle 5(b): Remuneration structures - guaranteed variable remuneration

19B.1.14 R

An *AIFM* must not award, pay or provide guaranteed variable remuneration unless it;

- (1) is exceptional;
- (2) occurs only in the context of hiring new staff; and
- (3) is limited to the first year of service.

[Note: paragraph 1(i) of Annex II of *AIFMD*]

AIFM Remuneration Principle 5(c): Remuneration structures - fixed and variable components of total remuneration

19B.1.15 R

An *AIFM* must ensure that:

- (1) fixed and variable components of total *remuneration* are appropriately balanced; and
- (2) 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.

[Note: paragraph 1(j) of Annex II of *AIFMD*]

AIFM Remuneration Principle 5(d): Remuneration structures - payments related to early termination

19B.1.16 R

An *AIFM* must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

[Note: paragraph 1(k) of Annex II of *AIFMD*]

AIFM Remuneration Principle 5(e): Remuneration structures - retained units, shares or other instruments

19B.1.17 **R**

- (1) Subject to the legal structure of the *AIF* and the *instrument constituting the fund*, an *AIFM* must ensure that a substantial portion, and in any event at least 50% of any variable *remuneration*, consists of *units* or *shares* of the *AIF* concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments. However, if the management of *AIFs* accounts for less than 50% of the total portfolio managed by the *AIFM*, the minimum of 50 % does not apply.
- (2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the long-term interests of the *AIFM* and the *AIFs* it manages and the investors of such *AIFs*.
- (3) This *rule* applies to the portion of the variable *remuneration* component deferred in line with **SYSC 19B.1.18R (1)** and the portion not deferred.

[Note: paragraph 1(m) of Annex II of *AIFMD*]

AIFM Remuneration Principle 5(f): Remuneration structures - deferral

19B.1.18 **R**

- (1) An *AIFM* must not award, pay or provide a variable *remuneration* component unless a substantial portion, and in any event at least 40%, of the variable *remuneration* component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the *AIF* concerned and is correctly aligned with the nature of the risks of the *AIF* in question
- (2) The period referred to in (1) must be at least three to five years, unless the life cycle of the *AIF* concerned is shorter.
- (3) *Remuneration* payable under (1) must vest no faster than on a pro-rata basis.
- (4) In the case of a variable *remuneration* component of a particularly high amount, at least 60 % of the amount must be deferred.

[Note: paragraph 1(n) of Annex II of *AIFMD*]

19B.1.18A **G**

- (1) £500,000 is a particularly high amount: for the purpose of **SYSC 19B.1.18R (4)**.
- (2) Paragraph (1) is without prejudice to the possibility of lower sums being considered a particularly high amount.
- (3) Whilst any variable *remuneration* component of £500,000 or more paid to *AIFM Remuneration Code staff* should 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 *AIFM Remuneration Code staff* in the levels of variable *remuneration* paid.

AIFM Remuneration Principle 5(g): Remuneration structures - performance adjustment, etc.

19B.1.19 **R** An *AIFM* 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 *AIFM* as a whole and justified according to the performance of the *AIF*, the business unit and the individual concerned.

[Note: paragraph 1(o) first sub-paragraph of Annex II of *AIFMD*]

19B.1.20 **G** The total variable *remuneration* should generally be considerably contracted where subdued or negative financial performance of the *AIFM* or of the *AIF* concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: paragraph 1(o) second sub-paragraph of Annex II of *AIFMD*]

AIFM Remuneration Principle 6: Measurement of performance

19B.1.21 **R** An *AIFM* must ensure the measurement of performance used to calculate variable *remuneration* components, or pools of variable *remuneration* components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[Note: paragraph 1(l) of Annex II of *AIFMD*]

AIFM Remuneration Principle 7: Pension policy

19B.1.22 **R** An *AIFM* must ensure that:

- (1) its pension policy is in line with its business strategy, objectives, values and long-term interests of the *AIFs* it manages;
- (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 in ■ SYSC 19B.1.17R (1); and
- (3) in the case of an *employee* reaching retirement, *discretionary pension benefits* are paid to the *employee* in the form of instruments referred to in ■ SYSC 19B.1.17R (1) and subject to a five-year retention period.

[Note: paragraph 1(p) of Annex II of *AIFMD*]

AIFM Remuneration Principle 8: Personal investment strategies

19B.1.23 **R** An *AIFM* must ensure that its *employees* undertake not to use personal hedging strategies or *remuneration*- and liability-related insurance to undermine the risk alignment effects embedded in their *remuneration* arrangements.

[Note: paragraph 1(q) of Annex II of *AIFMD*]

AIFM Remuneration Principle 9: Avoidance of the remuneration code
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19B.1.24 **R**

An *AIFM* must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the *AIFM Remuneration Code*.

[**Note:** paragraph 1(r) of Annex II of *AIFMD*]