

Chapter 19D

Dual-regulated firms Remuneration Code

19D.1 Application and purpose

Who? What? Where?

19D.1.1 **R**

- (1) The *dual-regulated firms Remuneration Code* applies to:
- (a) a *building society*;
 - (b) a *UK bank*;
 - (c) a *UK designated investment firm*;
 - (d) an *overseas firm* that:
 - (i) is not an *EEA firm*;
 - (ii) has its head office outside the *EEA*; and
 - (iii) would be a *firm* in (a), (b) or (c) if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.
- (2) For a *firm* which falls under (1)(a), (1)(b) or (1)(c), the *dual-regulated firms Remuneration Code* applies in relation to:
- (a) its *UK activities*;
 - (b) its *passported activities* carried on from a *branch* in another *EEA State*; and
 - (c) a *UK domestic firm's* activities wherever they are carried on.
- For a *firm* that falls under (1)(d), the *dual-regulated firms Remuneration Code* applies only in relation to activities carried on from an establishment in the *United Kingdom*.
- (4) Otherwise, the *dual-regulated firms Remuneration Code* applies to a *firm* within (1) in the same way as **SYSC 4.1.1R** (General requirements).

19D.1.1A **G**

SYSC 19D.1.1R(2) is applied to the extent of the *FCA's* powers and regulatory responsibilities.

19D.1.2 **R**

Under Part 2 of **SYSC 1 Annex 1** in relation to **SYSC 4.1.1R** (General requirements), and subject to the provisions on group risk systems and controls requirements in **SYSC 12** (Group risk systems and controls requirements), the *dual-regulated firms Remuneration Code*:

- (1) 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*;
- (2) applies in relation to the carrying on of *unregulated activities* in a *prudential context*; and
- (3) takes into account activities of other *group* members.

When?

19D.1.3

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Except as set out in (2) and (3), a *firm* must apply the *remuneration* requirements in ■ SYSC 19D.3 (Remuneration principles) 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 Directive 2010/76/EU]

- (2) A *firm* must apply the *remuneration* requirements in ■ SYSC 19D.3.48R(3) (1:1 ratio of variable to fixed components) and ■ SYSC 19D.3.49R (1:2 ratio of fixed to variable components) 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]

- (3) A *firm* must apply the *remuneration* requirements in ■ SYSC 19D.3.59R(1)(b), ■ SYSC 19D.3.61R(2), ■ SYSC 19D.3.61R(3), ■ SYSC 19D.3.61R(4), ■ SYSC 19D.3.61R(5), ■ SYSC 19D.3.64R and ■ SYSC 19D.3.67R(1)(c) in relation to variable *remuneration* awarded in relation to the performance year starting on or after 1 January 2016.

19D.1.4

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Subject to ■ SYSC 19D.1.5R, ■ SYSC 19D.1.3R does not require a *firm* to breach requirements of applicable contract or employment law.

[Note: recital 14 of Directive 2010/76/EU]

Conflict with other obligations

19D.1.5

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- (1) Where a *firm* is unable to comply with the *dual-regulated firms Remuneration Code* because to do so would breach a provision of a prior contract (including a provision in a contract with a *dual-regulated firms Remuneration Code staff member*), it must take reasonable steps to amend or to terminate the provision in question in a way which enables it to comply with the *dual-regulated firms Remuneration Code* at the earliest opportunity.

- (2) Until the provision in (1) ceases to prevent the *firm* from complying with the *dual-regulated firms Remuneration Code*, it must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.

Purpose

19D.1.6

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- (1) The aim of the *dual-regulated firms 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 *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *rules* in the *dual-regulated firms Remuneration Code*, *firms* should comply with 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>

Notifications to the FCA

19D.1.7

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- (1) In addition to the notification requirements in the *dual-regulated firms 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) For *remuneration* matters in particular, those 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 *dual-regulated firms Remuneration Code*, including any breach of a *rule* to which the provisions on voiding and recovery in ■ SYSC 19D Annex 1 apply;
 - (b) any proposed *remuneration* policies, procedures or practices which could:
 - (i) have a significant adverse impact on the *firm's* reputation; or
 - (ii) affect the *firm's* 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 *firm's* risk profile or resources;
 - (d) fraud, errors and other irregularities described in ■ SUP 15.3.17R (notification of fraud, errors and other irregularities) which may

suggest weaknesses in, or be motivated by, the *firm's* remuneration policies, procedures or practices.

- (3) Notifications should be made immediately as the *firm* becomes aware or has information which reasonably suggests that those circumstances have occurred, may have occurred or may occur in the foreseeable future.

Individual guidance

19D.1.8 **G** The *FCA's* policy on individual *guidance* is set out in ■ SUP 9. *Firms* should particularly note the policy on what the *FCA* considers to be a reasonable request for guidance (see ■ SUP 9.2.5G). 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 *dual-regulated firms Remuneration Code*, including the general requirement for *remuneration* policies, procedures and practices to be consistent with, and promote, sound and effective risk management.

Interpretation

19D.1.9 **G** Except as provided in the *Glossary*, any expression used in, or for the purpose of, this chapter which is defined or used in *EU CRR* has the meaning given by, or used in, those Regulations.