

Chapter 19D

Dual-regulated firms Remuneration Code

19D.3 Remuneration principles

Application: groups

- 19D.3.1** **R** (1) A *firm* that is a member of a *group* must:
- (a) comply with this section on an individual basis; and
 - (b) comply, and ensure that the other members of the *group* comply, with this section on a *consolidated basis* or *sub-consolidated basis*, including in respect of those *subsidiaries* established in a country or territory which is outside the *United Kingdom*.
- (2) Paragraph (1) does not limit **■ SYSC 12.1.13R(2)(dA)** (which relates to the application of the *dual-regulated firms Remuneration Code* within *UK consolidation groups*).
- 19D.3.1A** **G** (1) Where the *dual-regulated firms Remuneration Code* applies on a *consolidated basis*, this means treating the *firms* in the- *UK consolidation group* as if they formed a single *firm*.
- (2) Where the *dual-regulated firms Remuneration Code* applies on a *sub-consolidated basis*, this means treating the *firms* in the *UK consolidation group* to which sub-consolidation applies as if they formed a single *firm*.
- 19D.3.2** **G** **■ SYSC 12.1.13R(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-UK sub-group* of which a *firm* is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the *FCA's* view, the application of this section at *group, parent undertaking* and *subsidiary undertaking* levels in **■ SYSC 19D.3.1R(1)** is in line with the application of systems and controls requirements to *groups* (as in **■ SYSC 12.1.13R**).
- 19D.3.2A** **G** *Firms* should refer to **■ SYSC 12** (Group risk systems and controls requirements), which sets out how the systems and control requirements imposed by *SYSC* (Senior Management Arrangements, Systems and Controls) apply where a *firm* is part of a *group*.
- 19D.3.2B** **R** (1) For a *firm* within the scope of **■ SYSC 19D.1.1R(1)(a)**, (1)(b) or (1)(c), the provisions in (3) do not apply if:
- (a) [deleted]

- (b) the *firm*:
 - (i) has *average total assets* of less than or equal to £4 billion; or
 - (ii) has *average total assets* of less than or equal to £20 billion, and meets the conditions set out in Chapter 2A.1 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time); and
- (c) where the *firm* is part of a *group* that contains any other *firm* which is subject to these *rules* on an individual basis, the requirements of (1A) are met.

(1A) The requirements of this paragraph are met where:

- (a) both of the following criteria are satisfied:
 - (i) each *firm* in the *group* to which these *rules* apply on an individual basis has *average total assets* less than or equal to £4 billion; and
 - (ii) where any *firm* in the *group* to which these *rules* apply on an individual basis is a member of a *UK consolidation group*, the *UK consolidation group* has *average total assets* less than or equal to £4 billion on a *consolidated basis*; or
- (b) all of the following criteria are satisfied:
 - (i) each *firm* in the *group* to which these *rules* apply on an individual basis has *average total assets* that are less than or equal to £20 billion;
 - (ii) where any *firm* in the *group* to which these *rules* apply on an individual basis is a member of a *UK consolidation group*, the *UK consolidation group* has *average total assets* that are less than or equal to £20 billion on a *consolidated basis*;
 - (iii) each *firm* in the *group* to which these *rules* apply on an individual basis meets the following conditions in the Remuneration Part of the *PRA Rulebook* (as amended from time to time):
 - (A) for a *firm* within the scope of ■ SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), the conditions in Chapter 2A.1; or
 - (B) for a *firm* within the scope of ■ SYSC 19D.1.1R(1)(d), the conditions in Chapter 2B.1; and
 - (iv) where any *firm* in the *group* to which these *rules* apply on an individual basis is a member of a *UK consolidation group*, the *UK consolidation group* meets the conditions in (1), (2) and (3) of Chapter 2A.1 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time) on a *consolidated basis*.

(1B) References in (1A) to a *firm's average total assets* are, for any *firm* within the scope of ■ SYSC 19D.1.1R(1)(d), to be read as references to the *average total assets* that relate to the activities of the *UK branch*.

- (2) For a *firm* within the scope of ■ SYSC 19D.1.1R(1)(d), the provisions in (3) do not apply if:
 - (a) either:

- (i) the *average total assets* that relate to the activities of the *UK branch* are less than or equal to £4 billion; or
 - (ii) the *average total assets* that relate to the activities of the *UK branch* are less than or equal to £20 billion and the conditions set out in Chapter 2B.1 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time) are met; and
- (b) where the *firm* is part of a *group* that contains any other *firm* which is subject to these *rules* on an individual basis, the requirements of (1A) are met.
- (3) The provisions referred to in (1) and (2) are:
- (a) ■ SYSC 19D.3.31R(2) and (3) (pension policy);
 - (b) ■ SYSC 19D.3.56R (retained *shares* or other instruments);
 - (c) ■ SYSC 19D.3.59R (deferral) ; and
 - (d) ■ SYSC 19D.3.61R(2), (3), (3A), (4) and (5), ■ SYSC 19D.3.62R, ■ SYSC 19D.3.63E and ■ SYSC 19D.3.64R (performance adjustment (affordability, malus, clawback)).
- (4) If a *firm* has not yet been required to report its total assets, the calculations in respect of *average total assets* shall instead be done on the basis of the *firm's* reasonable forecast of its total assets as at the first occasion on which it will be required to report them.

19D.3.2C **R** [deleted]

Application: categories of staff and proportionality

- 19D.3.3 **R**
- (1) This section applies in relation to *dual-regulated firms Remuneration Code staff*, except as set out in (3).
 - (2) When establishing and applying the total *remuneration* policies for *dual-regulated firms Remuneration Code staff*, a *firm* must comply with this section in a way that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities (the *dual-regulated firms remuneration principles proportionality rule*).
 - (3) Paragraphs (1) and (2) do not apply to the requirement for significant *firms* to have a *remuneration committee* (■ SYSC 19D.3.12R).

[Note: article 92(2) of CRD]

[Note: In addition to the *guidance* in this section about the *dual-regulated firms 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 *dual-regulated firms remuneration principles proportionality rule*. This *guidance* is available on the *FCA* website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.]

19D.3.4 **R** [deleted]

(3) [deleted]

- 19D.3.4A **G** (1) *Dual-regulated firms Remuneration Code staff* is a term defined in the *Handbook Glossary* by reference to the requirements of Chapter 3 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time).
- (2) Expectations in relation to the identification of *dual-regulated firms Remuneration Code staff* are considered further in non-*Handbook* guidance at <https://www.fca.org.uk/publication/finalised-guidance/fg23-4.pdf>.

19D.3.5 **G** [deleted]

- 19D.3.6 **R** A firm must:
- (1) maintain a record of its *dual-regulated firms Remuneration Code staff* under the general record-keeping requirements (**SYSC 9**); and
 - (2) take reasonable steps to ensure that its *dual-regulated firms 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 *dual-regulated firms Remuneration Code* to be rendered void and recoverable by the firm.

Remuneration Principle 1: Risk management and risk tolerance

- 19D.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

- 19D.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

- 19D.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

- 19D.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*]

19D.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*]

19D.3.12 **R** (1) A *significant firm* must establish a *remuneration committee* .

(2) A *firm* in (1) must ensure that:

- (a) the *remuneration committee* is constituted in a way that enables it to exercise competent and independent judgement on *remuneration* policies and practices and the incentives created for managing risk, capital and liquidity;
- (b) 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*;
- (c) the *remuneration committee* is 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*; and
- (d) when preparing those 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*]

19D.3.13 **R** A *firm* that maintains a website must explain on the website how it complies with the *dual-regulated firms Remuneration Code*.

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

19D.3.14 **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 *dual-regulated firms 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) Guidance on what the *supervisory function* might involve is set out in **SYSC 4.3.3G** (responsibility of senior personnel, in particular, the *supervisory function*).

Remuneration Principle 5: Control functions

19D.3.15 **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 *employees*; 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*]

19D.3.16 **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 19D.3.15R(2)).

19D.3.17 **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 19D.3.12R or, if such a committee has not been established, by the *governing body* in its *supervisory function*.

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

19D.3.18 **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

19D.3.19 **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 the *CRD* and Standard 3 of the *FSB Compensation Standards*]

19D.3.20 **G** [deleted]

Remuneration Principle 7: Exceptional government intervention

19D.3.21 **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 or discretionary *remuneration* of any kind is paid to members of its *management body* unless this is justified.

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

19D.3.22 **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 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

19D.3.23 **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(1)(j), (k) of the *CRD* and Standard 4 of the *FSB Compensation Standards*]

- 19D.3.24** **G** (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying judgment and common sense. The *FCA* expects that a *firm* will apply qualitative judgements and common sense in the final decision about the performance-related components of variable *remuneration* pools.
- (2) [deleted]
- (3) We consider good practice in this area to be represented by those *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.
- (4) The *FCA* expects a *firm* to be able to provide it with details of all adjustments that the *firm* has made whether through application of formulae or the exercise of discretion. This will enable the *FCA* to consider whether 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.
- (5) 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.
- 19D.3.25** **R** A *firm* must have a clear and verifiable mechanism for measuring performance, with risk adjustment applied thereafter in a clear and transparent manner.
- 19D.3.26** **G** A *firm* may apply discretionary factors to the extent that is appropriate and consistent with the overall aims of the risk adjustment exercise. Where such further adjustments have been made, *firms* should provide clear quantification and explanation to ensure their risk adjustment frameworks are sufficiently transparent.
- 19D.3.27** **R** A *firm* must base assessments of financial performance used to calculate variable *remuneration* components or pools of variable *remuneration* components principally on profits.
- 19D.3.28** **G** (1) Performance measures based primarily on revenues or turnover are unlikely to pay sufficient regard to the quality of business undertaken or services provided. Profits are a better measure provided they are

adjusted for risk, including future risks not adequately captured by accounting profits.

(2) [deleted]

19D.3.29 R

(1) A *firm's* risk-adjustment approach must reflect both ex-ante adjustment (which adjusts remuneration for intrinsic risks that are inherent in its business activities) and ex-post adjustment (which adjusts remuneration for crystallisation of specific risks events).

(2) 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*]

19D.3.30 G

[deleted]

Remuneration Principle 9: Pension policy

19D.3.31 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 19D.3.56R(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 19D.3.56R(1) and subject to a five-year retention period.

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

Remuneration Principle 10: Personal investment strategies

19D.3.32 R

(1) A *firm* must ensure that its *employees* undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their *remuneration* arrangements.

(2) A *firm* must ensure that its *employees* do not use *remuneration-* or liability-related *contracts of insurance* to undermine the risk alignment effects embedded in their *remuneration* arrangements.

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

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

19D.3.33 **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 dual-regulated firms Remuneration Code

19D.3.34 **R** A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with obligations arising from the *Dual-regulated Remuneration Code*, the *UK CRR* or the *UK* legislation that implemented the *CRD*.

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

Remuneration Principle 12: Remuneration structures - introduction

19D.3.35 **R** (1) The *rules* in (2) do not apply to a *firm* in relation to an individual (X), where both the following conditions are satisfied:

- (a) Condition 1 is that X's annual variable *remuneration* is no more than one third of X's total annual *remuneration*; and
- (b) Condition 2 is that X's total annual variable *remuneration* is no more than £44,000.

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

- (a) pension policy (■ SYSC 19D.3.31R(2) and (3));
- (b) retained *shares* or other instruments (■ SYSC 19D.3.56R);
- (c) deferral (■ SYSC 19D.3.59R); and
- (d) [deleted]

[Note: article 94(3)(b) of *CRD V*]

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

19D.3.36 **R** A *firm* must ensure that the structure of an *employee's remuneration* is consistent with, and promotes, effective risk management.

19D.3.37 **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 *dual-regulated firms Remuneration Code*.

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

19D.3.38 R A *firm* must not award variable *remuneration* to a *non-executive director* acting as such.

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

19D.3.39 R (1) A *firm* must ensure that where *remuneration* is performance-related:

- (a) the total amount of *remuneration* is based on a combination of the assessment of the performance of:
 - (i) the individual;
 - (ii) the business unit concerned; and
 - (iii) the overall results of the *firm*; and
- (b) when assessing individual performance, financial as well as non-financial criteria are taken into account.

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

19D.3.40 G (1) The non-financial criteria in ■ SYSC 19D.3.39R(1)(b) 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) 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 incentive highly leveraged activities.

19D.3.41 G 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.

19D.3.41A G A *firm* should note that the requirement in ■ SYSC 19D.3.39R(1)(b) for financial and non-financial criteria to be taken into account applies wherever *remuneration* is performance-related including within any assessment of future performance.

19D.3.42 R A *firm* must clearly explain the performance assessment process in ■ SYSC 19D.3.39R to relevant *employees*.

19D.3.43 **R** A *firm* must ensure that the assessment of performance is set in a multi-year framework in order 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 underlying business cycle of the *firm* and its business risks.

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

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

19D.3.44 **R** (1) A *firm* must ensure that guaranteed variable *remuneration* is not part of prospective *remuneration* plans.

- (2) A *firm* must not award, pay or provide guaranteed variable *remuneration* unless:
 - (a) it is exceptional;
 - (b) it occurs in the context of hiring new *dual-regulated firms Remuneration Code staff*;
 - (c) the *firm* has a sound and strong capital base; and
 - (d) it is limited to the first year of service.

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

19D.3.45 **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 its long-term interests including appropriate retention, deferral and performance and clawback arrangements.

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

19D.3.46 **G** (1) Guaranteed variable *remuneration* should be subject to the same requirements applicable to variable *remuneration* awarded by the *firm* including deferral, malus and clawback.

- (2) The *FCA* expects that guaranteed variable awards and retention awards should not be common practice for *dual-regulated firms Remuneration Code staff* and should be limited to rare, infrequent occurrences. The *FCA* expects a *firm* to provide prior notification to the *FCA* of any proposed retention awards.

19D.3.47 **G** Retention awards should form part of variable *remuneration* for the purpose of **■ SYSC 19D.3.48R**.

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

19D.3.48 **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; and
- (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.
- (3) [deleted]

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

19D.3.48A **G**

- (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of **■ SYSC 19D.3.48R**, a *firm* should consider all relevant factors, including:
 - (a) the *firm's* business activities and associated prudential and conduct risks; and
 - (b) the role of the *individual* in the *firm* and, in the case of *dual-regulated firms Remuneration Code staff*, the impact that different categories of staff have on the risk profile of the *firm*.
- (2) A *firm* may set different ratios for different categories of staff. For example, the *FCA* considers that it will usually be appropriate to set a lower ratio of variable to fixed *remuneration* for control functions than for the business units they control.
- (3) Ratios may differ from one performance period to the next.
- (4) When setting a ratio, a *firm* should consider all potential scenarios, including that a *firm* exceeds its financial objectives. The ratio should reflect the highest amount of variable *remuneration* that can be awarded in the most positive scenario. A *firm* should be satisfied that it has considered all relevant factors and should be able to explain its decision to the *FCA* if requested.

19D.3.49 **R**

[deleted]

19D.3.50 **R**

[deleted]

19D.3.51 **R**

[deleted]

19D.3.52 **R**

[deleted]

19D.3.53 **R**

[deleted]

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

19D.3.54 **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 the *CRD* and Standard 12 of the *FSB Compensation Standards*]

19D.3.55 **G** [deleted]

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

19D.3.56 **R** (1) A *firm* must ensure that a substantial portion, which is at least 50%, of any variable *remuneration* consists of an appropriate balance of:

- (a) subject to the legal structure of the *firm* concerned: *shares* or equivalent ownership interests; or *share*-linked instruments or equivalent non-cash instruments; and
- (b) where possible, other instruments that in each case adequately reflect the credit quality of the *firm* as a going concern and are appropriate for use as variable remuneration, such as:
 - (i) those which are eligible as *additional tier 1 instruments* or *tier 2 instruments*; or
 - (ii) those that can be fully converted to *common equity tier 1 instruments* or written down;

(where the expressions in italics are defined, with the conditions for eligibility, in the Definition of the Capital part of the *PRA* Rulebook).

(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 19D.3.59R** and the portion not deferred.

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

19D.3.57 **G** [deleted]

19D.3.58 **G** [deleted]

Remuneration Principle 12(g): Remuneration structures - deferral

19D.3.59 **R** (1) In relation to *higher paid material risk takers* a *firm* must not award, pay or provide a variable *remuneration* component unless a

substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

- (a) for *dual-regulated firms Remuneration Code staff* who perform a *FCA-designated senior management function*, five years, and vesting no faster than on a pro-rata basis;
- (b) for *dual-regulated firms Remuneration Code staff* who perform a *PRA-designated senior management function*, seven years, with no vesting taking place until three years after the award, and vesting no faster than on a pro-rata basis; and
- (c) for any other *dual-regulated firms Remuneration Code staff* who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.

(1A) In relation to *dual-regulated firms Remuneration Code staff* who are not *higher paid material risk takers*, a firm must not award, pay or provide a variable *remuneration* component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

- (a) for *dual-regulated firms Remuneration Code staff* who perform a *FCA-designated senior management function at a significant firm*, five years, and vesting no faster than on a pro-rata basis;
- (b) for *dual-regulated firms Remuneration Code staff* who perform a *PRA-designated senior management function at a significant firm*, five years, and vesting no faster than on a pro-rata basis;
- (c) for any other *dual-regulated firms Remuneration Code staff* who do not fall within (a) or (b) above, four years, and vesting no faster than on a pro-rata basis.

(2) In the case of a variable *remuneration* component:

- (a) of £500,000 or more, or
- (b) payable to a *director of a significant firm*;

at least 60% of the amount must be deferred on the basis set out in ■ SYSC 19D.3.59R(1) and vesting no faster than on a pro-rata basis.

(3) Subject to (1), 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 the CRD and Standards 6 and 7 of the FSB Compensation Standards]

19D.3.60 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*;
- (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 dual-regulated firms 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 dual-regulated firms Remuneration Code staff in the levels of variable remuneration paid.

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

19D.3.61 **R**

A firm must ensure that:

- (1) 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;
- (2) any variable *remuneration* is subject to clawback, such that it is only awarded if an amount corresponding to it can be recovered from the individual by the *firm* if the recovery is justified on the basis of the circumstances described in ■ SYSC 19D.3.62R(2) and ■ SYSC 19D.3.64R;
- (3) for *higher paid material risk takers*, variable *remuneration* is subject to clawback for a period of at least seven years from the date on which the variable *remuneration* is awarded;
- (3A) for *dual-regulated firms Remuneration Code staff* who are not *higher paid material risk takers*:
 - (a) who are *PRA-designated senior management function* holders at a *significant firm*, the deferred component of variable *remuneration* is subject to clawback for a period of at least six years from the date on which the variable *remuneration* is awarded;
 - (b) who are *FCA-designated senior management function* holders at a *significant firm*, the deferred component of variable *remuneration* is subject to clawback for a period of at least six years from the date on which the variable *remuneration* is awarded;
 - (c) who do not fall within (a) or (b) above, the deferred component of variable *remuneration* is subject to clawback for a period of at least five years from the date on which the variable *remuneration* is awarded;
 - (d) the undeferred component of variable *remuneration* is subject to clawback for a period of at least one year from the date on which the variable *remuneration* is awarded; and
- (4) for *dual-regulated firms Remuneration Code staff* whose total annual *remuneration* is greater than £500,000 and who perform either a *PRA-designated senior management function* or *FCA-designated senior management function*, it can, by notice to the *employee* to be given no later than seven years after the variable *remuneration* was awarded, extend the period during which variable *remuneration* is

subject to clawback to at least ten years from the date on which the variable *remuneration* is awarded, where:

- (a) the *firm* has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or
- (b) the *firm* has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the *firm* considers could potentially lead to the application of clawback by the *firm* were it not for the expiry of the clawback period; and

(5) it considers on an ongoing basis whether to use the power in (4).

[Note: article 94(1)(n) of the *CRD* and Standards 6 and 9 of the *FSB Compensation Standards*]

19D.3.62 R

A *firm* must:

- (1) set specific criteria for the application of malus and clawback; and
- (2) 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*; or
 - (b) failed to meet appropriate standards of fitness and propriety.

[Note: article 94(1)(n) of the *CRD* and Standards 6 and 9 of the *FSB Compensation Standards*]

[Note: The *FSA* also gave *guidance* on the application of the requirements on risk adjustments. This *guidance* is available on the *FCA* website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.]

19D.3.63 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 any of (1) or (2) may be relied on as tending to establish contravention of ■ SYSC 19D.3.61R(1) on performance adjustment.

- 19D.3.64** **R**
- (1) A *firm* must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable *remuneration* where either of the following circumstances arise during the period in which clawback applies (including any part of such period occurring after the relevant *employment* has ceased):
 - (a) there is reasonable evidence of *employee* misbehaviour or material error; or
 - (b) the *firm* or the relevant business unit suffers a material failure of risk management.
 - (2) A *firm* must take into account all relevant factors (including, where the circumstances described in (1)(b) arise, the proximity of the *employee* to the failure of risk-management in question and the *employee's* level of responsibility) in deciding whether, and to what extent it is reasonable, to seek recovery of any or all of their vested variable *remuneration*.

- 19D.3.65** **G**
- 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

- 19D.3.66** **G** ■ SYSC 19D Annex 1 makes provision about voiding and recovery.

- 19D.3.67** **R**
- (1) Subject to (2) to (7), the *rules* in ■ SYSC 19D Annex 1.1R to 1.6R apply in relation to the prohibitions on *dual-regulated firms Remuneration Code staff* being *remunerated* in the ways specified in:
 - (a) ■ SYSC 19D.3.44R (guaranteed variable *remuneration*);
 - (b) ■ SYSC 19D.3.59R (deferred variable *remuneration*);
 - (c) ■ SYSC 19D.3.61R(2) (performance adjustment – clawback); and
 - (d) ■ SYSC 19D Annex 1.10R (replacing payments recovered or property transferred).
 - (2) Paragraph (1) applies only to those prohibitions as they apply in relation to a *firm* that satisfies either Condition 1 or Condition 2 as set out in (3) and (4).
 - (3) Condition 1 is that the *firm* is a *UK bank*, a *building society*, or a *UK designated investment firm*, that has relevant total assets exceeding £50 billion.
 - (4) Condition 2 is that the *firm*:
 - (a) is either a *full credit institution* or a *UK designated investment firm*; and
 - (b) is part of a *group* containing a *firm* that has relevant total assets exceeding £50 billion and that is a *UK bank*, a *building society* or a *UK designated investment firm*.

- (5) For the purposes of this *rule*, '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*.
- (6) This *rule* does not apply in relation to the prohibition on *dual-regulated firms Remuneration Code staff* being *remunerated* in the way specified in ■ SYSC 19D.3.44R (guaranteed variable remuneration) if both the conditions in paragraphs (2)(b) and (2)(c) of that *rule* are met.
- (7) This *rule* does not apply to a *firm* in relation to an individual (X), where both the following conditions are satisfied:
 - (a) Condition 1 is that X's annual variable *remuneration* is no more than one third of X's total annual *remuneration*; and
 - (b) Condition 2 is that X's total annual variable *remuneration* is no more than £44,000.
- (8) In relation to (7):
 - (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:
 - (A) its value to the recipient when awarded;
 - (B) its market value when awarded; and
 - (C) the cost of providing it at the time of the award;
 - (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 *dual-regulated firms Remuneration Code staff* will remain so for the duration of the relevant performance year.

19D.3.68 G

- (1) Sections 137H and 137I of the *Act* enable the *FCA* to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *dual-regulated firms Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision.
- (2) ■ SYSC 19D.3.66R and ■ SYSC 19D.3.67R (together with ■ SYSC 19D Annex 1) are:
 - (a) *rules* referred to in (1) that 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; and

- (b) the 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.