

Chapter 19D

Dual-regulated firms Remuneration Code

Detailed provisions on voiding and recovery (SYSC 19D.3.66R and SYSC 19D.3.67R)

Rendering contravening provisions of agreements void		
1	R	Any provision of an agreement that contravenes a prohibition on <i>persons</i> being <i>remunerated</i> in a way specified in a <i>rule</i> to which this <i>rule</i> applies (a 'contravening provision') is void.
2	R	<p>A contravening provision does not cease to be void because:</p> <ol style="list-style-type: none"> (1) the <i>firm</i> concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); or (2) the member of <i>dual-regulated firms Remuneration Code staff</i> concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
3	R	3 A contravening provision that, at the time a <i>rule</i> to which this <i>rule</i> applies was first made (including any previous <i>rules</i> in the <i>FCA Handbook</i>), is contained in an agreement made before that time is not rendered void by SYSC 19D Annex 1.1R, unless it is subsequently amended so as to contravene such a <i>rule</i> .
4	G	The effect of SYSC 19D Annex 1.3R, in accordance with sections 137H and 137I of the <i>Act</i> , is to prevent contravening provisions being rendered void retrospectively. However, contravening provisions may be rendered void if they are contained in an agreement made after the <i>rule</i> containing the prohibition is made by the <i>FCA</i> but before the <i>rule</i> comes into effect.
5	R	<ol style="list-style-type: none"> (1) A pre-existing provision is not rendered void by SYSC 19D Annex 1.1R. (2) In this Annex, a pre-existing provision is any provision of an agreement that would (but for this <i>rule</i>) be rendered void by SYSC 19D Annex 1.1R that was agreed at a time when either: <ol style="list-style-type: none"> (a) the <i>firm</i> concerned did not satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); or (b) the member of <i>dual-regulated firms Remuneration Code staff</i> concerned satisfied both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b). (3) But an amendment to, or in relation to, a pre-existing provision is not to be treated as a pre-existing provision where the amendment is agreed at a time when both: <ol style="list-style-type: none"> (a) the <i>firm</i> concerned satisfies at least one of the conditions set out in SYSC 19D.3.67R(3) to (4); and (b) the member of <i>dual-regulated firms Remuneration Code staff</i> concerned does not satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
6	R	For the purposes of this annex, it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the <i>United Kingdom</i> , or of a part of the <i>United Kingdom</i> .
Recovery of payments made or property transferred pursuant to a void contravening provision		

Rendering contravening provisions of agreements void

7	R	<p>In relation to any payment made or other property transferred in pursuance of a contravening provision other than a pre-existing provision, a <i>firm</i> must take reasonable steps to:</p> <ol style="list-style-type: none"> (1) recover any such payment made or other property transferred by the <i>firm</i>; and (2) ensure that any other <i>person</i> (P) recovers any such payment made or other property transferred by that <i>person</i>.
8	R	<p>SYSC 19D Annex 1.7R continues to apply in one or both of the following cases:</p> <ol style="list-style-type: none"> (1) the <i>firm</i> concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); (2) the member of <i>dual-regulated firms Remuneration Code staff</i> concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
9	G	<p>The <i>rule</i> in SYSC 19D Annex 1.7(2)R would, for example, apply in the context of a secondment. Where a <i>group</i> member secondes an individual to a <i>firm</i> and continues to be responsible for the individual's <i>remuneration</i> in respect of services provided to the <i>firm</i>, the <i>firm</i> would need to take reasonable steps to ensure that the <i>group</i> member recovers from the secondee any <i>remuneration</i> paid in pursuance of a contravening provision.</p>

Replacing payments recovered or property transferred

10	R	<ol style="list-style-type: none"> (1) A <i>firm</i> must not award, pay or provide variable <i>remuneration</i> to a <i>person</i> who has received <i>remuneration</i> in pursuance of a contravening provision other than a pre-existing provision (the 'contravening <i>remuneration</i>') unless the <i>firm</i> has obtained a legal opinion stating that the award, payment or provision of the <i>remuneration</i> complies with the <i>dual-regulated firms Remuneration Code</i>. (2) This <i>rule</i> applies only to variable <i>remuneration</i> relating to a performance year to which the contravening <i>remuneration</i> related. (3) The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual. (4) Paragraph (1) continues to apply in one or both of the following cases: <ol style="list-style-type: none"> (a) the <i>firm</i> concerned ceases to satisfy any of the conditions set out in SYSC 19D.3.67R(3) to (4); (b) the member of <i>dual-regulated firms Remuneration Code staff</i> concerned starts to satisfy both of the conditions set out in SYSC 19D.3.67R(7)(a) and (b).
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Notification to the FCA

11	G	<p>The <i>FCA</i> considers any breach of a <i>rule</i> to which this annex applies to be a significant breach which should be notified to the <i>FCA</i> in accordance with SUP 15.3.11R (Breaches of rules and other requirements in or under the Act). Such a notification should include information on the steps which a <i>firm</i> or other <i>person</i> has taken or intends to take to recover payments or property in accordance with SYSC 19D Annex 1.7R.</p>
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