

**Senior Management Arrangements, Systems and Controls**

## Chapter 19G

# MIFIDPRU Remuneration Code

## 19G.1 General application

### Application: non-SNI MIFIDPRU investment firms

#### 19G.1.1 **R**

- (1) Subject to (2), the *MIFIDPRU Remuneration Code* applies to a *non-SNI MIFIDPRU investment firm*.
- (2) The provisions in (4) do not apply to a *non-SNI MIFIDPRU investment firm*:
  - (a) where the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £100 million or less; or
  - (b) where:
    - (i) the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £300 million or less; and
    - (ii) the conditions in (3) are (where they are relevant to a *firm*) satisfied.
- (3) The conditions referred to in (2)(b)(ii) are:
  - (a) that the exposure value of the *firm's* on- and off-balance sheet *trading book* business is equal to or less than £150 million; and
  - (b) that the exposure value of the *firm's* on- and off-balance sheet derivatives business is equal to or less than £100 million.
- (4) The provisions referred to in (2) are:
  - (a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
  - (b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);
  - (c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
  - (d) ■ SYSC 19G.6.35R(2) (Discretionary pension benefits).

**19G.1.2**

**G**

- (5) For the purposes of paragraph (2), paragraph (6) applies where a *non-SNI MIFIDPRU investment firm* does not have monthly data covering the 4-year period referred to in that paragraph.
- (6) Where this paragraph applies, a *non-SNI MIFIDPRU investment firm* must calculate the rolling averages referred to in paragraph (2) using the data points that it does have.

**19G.1.3**

**R**

- (1) The amounts referred to in ■ SYSC 19G.1.1R must be calculated on an individual basis, and:
  - (a) in the case of on-balance sheet assets, in accordance with the applicable accounting framework;
  - (b) in the case of *off-balance sheet items*, using the full nominal value.
- (2) The value of the on-balance sheet assets and *off-balance sheet items* in ■ SYSC 19G.1.1R(2)(a) and ■ (b) must be an arithmetic mean of the assets and items over the preceding 4 years, based on monthly data points.
- (3) A *firm* may choose the day of the *month* that it uses for the data points in (2), but once that day has been chosen the *firm* may only change it for genuine business reasons.

**19G.1.4**

**R**

- (1) When calculating the amounts referred to in ■ SYSC 19G.1.1R(2)(a) and ■ (b), a *firm* must use the total amount of its on-balance sheet assets and off-balance sheet items.
- (2) A *firm* must calculate the exposure values referred to in ■ SYSC 19G.1.1R(3)(a) and ■ (b) by adding together the following items:
  - (a) the positive excess of the *firm's* long positions over its short positions in all *trading book financial instruments*, using the approach specified for K-NPR in ■ MIFIDPRU 4.12.2R to calculate the net position for each instrument; and
  - (b) the exposure value of contracts and transactions referred to in ■ MIFIDPRU 4.14.3R, calculated using the approach specified for K-TCD in ■ MIFIDPRU 4.14.8R.

- (3) Any amounts in foreign currencies must be converted into pound sterling using the relevant conversion rate.
- (4) A *firm* must determine the relevant conversion rate referred to in (3) by reference to an appropriate market rate and must record which rate was chosen.

**19G.1.5** G

The *FCA* considers that an example of an appropriate market rate for the purposes of ■ SYSC 19G.1.4R(4) is the relevant daily spot exchange rate against pound sterling published by the Bank of England.

**Application: SNI MIFIDPRU investment firms**

**19G.1.6** R

- (1) The provisions in (2) apply to a *SNI MIFIDPRU investment firm*.
- (2) The provisions referred to in (1) are:
  - (a) ■ SYSC 19G.2 (Remuneration policies and practices);
  - (b) ■ SYSC 19G.3.1R to ■ SYSC 19G.3.3R (Oversight of remuneration policies and practices);
  - (c) ■ SYSC 19G.3.6R to ■ SYSC 19G.3.8G (Control functions);
  - (d) ■ SYSC 19G.4.1R to ■ SYSC 19G.4.5R and ■ SYSC 19G.4.7G(1) and ■ (2) (Fixed and variable components of remuneration);
  - (e) ■ SYSC 19G.6.1R (Remuneration and capital);
  - (f) ■ SYSC 19G.6.2R (Exceptional government intervention); and
  - (g) ■ SYSC 19G.6.5R to ■ SYSC 19G.6.6G (Assessment of performance).

**Application: summary of application to MIFIDPRU investment firms**

**19G.1.7** G

The effect of the application provisions in ■ SYSC 19G.1.1R to ■ 19G.1.6R is summarised in the following table.

Type of firm	Applicable sections
<i>Non-SNI MIFID-PRU investment firm</i> not falling within SYSC 19G.1.1R(2)	The <i>MIFIDPRU Remuneration Code</i>
<i>Non-SNI MIFID-PRU investment firm</i> falling within SYSC 19G.1.1R(2)	The <i>MIFIDPRU Remuneration Code</i> except for: SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements); SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy); SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and SYSC 19G.6.35R(2) (Discretionary pension benefits)
<i>SNI MIFIDPRU investment firm</i>	SYSC 19G.2 (Remuneration policies and practices); SYSC 19G.3.1R to SYSC 19G.3.3R (Oversight of remuneration policies and practices); SYSC 19G.3.6R to SYSC 19G.3.8G (Control functions);

SYSC 19G.4.1R to SYSC 19G.4.5R and SYSC 19G.4.7G(1) and SYSC 19G.4.7G(2) (Fixed and variable components of remuneration);  
 SYSC 19G.6.1R (Remuneration and capital);  
 SYSC 19G.6.2R (Exceptional government intervention); and  
 SYSC 19G.6.5R to SYSC 19G.6.6G (Assessment of performance)

■ MIFIDPRU 1.2 contains provisions regarding the classification of a *firm* as a *SNI MIFIDPRU investment firm* and *non-SNI MIFIDPRU investment firm*.

**Application: where the application of SYSC 19G.1.1R changes in relation to a firm**

- 19G.1.8** R (1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that did not meet either condition in ■ SYSC 19G.1.1R(2)(a) or ■ (b) but subsequently does.
- (2) The provisions referred to in ■ SYSC 19G.1.1R(2) cease to apply to the *firm* in (1) if:
- (a) the *firm* has met the conditions in either ■ SYSC 19G.1.1R(2)(a) or ■ (b) for a continuous period of at least 6 *months* (or such longer period as may have elapsed before the firm submits the notification in (b)); and
- (b) it has notified the *FCA* that it has met the conditions in (a).
- (3) The notification in (2)(b) must be submitted through the *online notification and application system* using the form in ■ MIFIDPRU 7 Annex 3R.
- 19G.1.9** G The effect of ■ SYSC 19G.1.8R(2)(a) is that a *firm* may move between meeting the conditions in ■ SYSC 19G.1.1R(2)(a) and ■ (b) during the 6-*month* period.
- 19G.1.10** R Where a *non-SNI MIFIDPRU investment firm* has met the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b) but then ceases to do so, it must comply with the provisions referred to in ■ SYSC 19G.1.1R(2) within 12 *months* from the date on which the *firm* ceased to meet the conditions.
- 19G.1.11** R (1) Where a *non-SNI MIFIDPRU investment firm* ceases to meet the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), it must promptly notify the *FCA*.
- (2) The notification in (1) must be submitted through the *online notification and application system* using the form in ■ MIFIDPRU 1 Annex 3R.
- 19G.1.12** G Where a *firm* ceases to meet the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), but subsequently meets the conditions again within a period of 6 *months*, the *firm* will still be subject to the provisions referred to in ■ SYSC 19G.1.1R(2)

for 12 *months* after the date on which it first ceased to meet the conditions. The *firm* only ceases to be subject to the provisions referred to in ■ SYSC 19G.1.1R(2) where it meets the conditions in ■ SYSC 19G.1.8R(2).

- 19G.1.13** **R** The requirements in ■ SYSC 19G.1.8R(2)(b) and ■ SYSC 19G.1.11R(1) do not apply where a *non-SNI MIFIDPRU investment firm* has notified the FCA in accordance with the requirements of ■ MIFIDPRU 7.1.9R(2)(b) or ■ MIFIDPRU 7.1.12R(1) of the same event.

**Application: collective portfolio management investment firms**

- 19G.1.14** **G** The *MIFIDPRU Remuneration Code* applies to a *collective portfolio management investment firm*.

- 19G.1.15** **G**
- (1) A *collective portfolio management investment firm* must assess the thresholds in ■ SYSC 19G.1.1R(2) and ■ (3) on the basis of the total of both its *MiFID business* and *non-MiFID business*.
  - (2) ■ SYSC 19G.1.20R to ■ SYSC 19G.1.23G explain the position for *firms* subject to the *MIFIDPRU Remuneration Code* and another FCA remuneration code.

**Application: levels of application**

- 19G.1.16** **G** ■ SYSC 19G.1.1R to ■ SYSC 19G.1.15R and ■ SYSC 19G.1.17R explain when the *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis. ■ SYSC 19G.1.18R and ■ 19G.1.19R explain when the *MIFIDPRU Remuneration Code* applies on a consolidated basis, and what that means.

- 19G.1.17** **R** The *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis where the FCA has granted a firm permission under ■ MIFIDPRU 2.4.17R and ■ MIFIDPRU 2.4.18R to apply the *group capital test*.

- 19G.1.18** **R**
- (1) Subject to (3), where ■ MIFIDPRU 2.5 applies to a *UK parent entity*, the *MIFIDPRU Remuneration Code* applies to that *UK parent entity* on a consolidated basis.
  - (2) A *UK parent entity* that is treated as an *SNI MIFIDPRU investment firm* in accordance with ■ MIFIDPRU 2.5.21R is also treated as an *SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.
  - (3) A *UK parent entity* that is treated as a *non-SNI MIFIDPRU investment firm* in accordance with ■ MIFIDPRU 2.5.21R is also treated as a *non-SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.
  - (4) The following provisions only apply to a *firm* on an individual basis:
    - (a) ■ SYSC 19G.1.1R(2), ■ (3), ■ (5) and ■ (6);
    - (b) The provisions listed in ■ SYSC 19G.1.1R(4);
    - (c) ■ SYSC 19G.1.2G to ■ 19G.1.5G; and

(d) ■ SYSC 19G.1.8G to ■ 19G.1.13G.

- (5) For the purposes of the *MIFIDPRU Remuneration Code*, application on a consolidated basis means on the basis of the situation that results from applying the requirements in the *MIFIDPRU Remuneration Code* to a *UK parent entity* as if that *undertaking*, together with all the *investment firms, financial institutions, ancillary services undertakings and tied agents* in the *investment firm group*, formed a single *MIFIDPRU investment firm*.
- (6) For the purposes of (5), the terms *investment firm, financial institution, ancillary services undertaking and tied agent* apply to *undertakings* established in *third countries*, which, if established in the *UK*, would satisfy the definitions of those terms.
- (7) Where an *undertaking* in a *third country* is included in the consolidated situation of a *UK parent entity* as a result of (6), the *MIFIDPRU Remuneration Code* only applies in relation to *material risk takers* at that *undertaking* who oversee or are responsible for business activities that take place in the *UK*.

**19G.1.19** G

Where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the effect of ■ SYSC 19G.1.18R(5) is that the *UK parent entity* and all the *investment firms, financial institutions, ancillary services undertakings and tied agents* in the *investment firm group* are treated for these purposes as a single *MIFIDPRU investment firm*. This means, for example, treating a staff member of an *undertaking* within the *investment firm group* as if they were a staff member of the *UK parent entity*.

- (2) When considering which rules in the *MIFIDPRU Remuneration Code* apply on a consolidated basis, a *UK parent entity* must consider whether it is treated as an *SNI MIFIDPRU investment firm* or a *non-SNI MIFIDPRU investment firm* under ■ MIFIDPRU 2.5.21R (which, as ■ SYSC 19G.1.18R(2) and ■ (3) explain, also determines its categorisation under the *MIFIDPRU Remuneration Code*).
- (3) The effect of ■ SYSC 19G.1.18R(4)(b) is that a *UK parent entity* need not comply with the provisions listed in ■ SYSC 19G.1.1R(4) on a consolidated basis. These provisions apply on an individual basis where a *firm* exceeds the thresholds in ■ SYSC 19G.1.1R(2)(a) or ■ (b). As these thresholds are not relevant where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the provisions concerning them are also disapplied.

**Application: firms subject to different remuneration requirements**

**19G.1.20** R

- (1) Where a *firm* is subject to the *MIFIDPRU Remuneration Code* and, as a result of the application of any of the requirements listed in (2), to provisions imposing different *remuneration* requirements, only one of which can be complied with, it must comply with the most stringent of the relevant provisions.
- (2) The requirements referred to in (1) are:
  - (a) different requirements in the *MIFIDPRU Remuneration Code*;

- (b) the *AIFM Remuneration Code*;
- (c) the *Dual-regulated firms Remuneration Code*; and
- (d) the *UCITS Remuneration Code*.

**19G.1.21** G

■ SYSC 19G.1.20R states that where different *remuneration* requirements apply to a *firm* it must comply with the most stringent of the relevant provisions. Some non-exhaustive examples follow.

Example 1: A *firm* may be subject to different requirements under the *MIFIDPRU Remuneration Code* on an individual basis and on a consolidated basis. This scenario may arise because a *firm* is an *SNI MIFIDPRU investment firm* on an individual basis but a *non-SNI MIFIDPRU investment firm* on a consolidated basis.

Example 2: Different *remuneration* requirements may apply to a *firm* when an *investment firm group* contains both a *PRA-designated investment firm* and an *FCA investment firm* (but not a *credit institution*). This may lead to a *firm* being subject to both the *MIFIDPRU Remuneration Code* and the *Dual-regulated firms Remuneration Code*.

Example 3: A staff member at a *collective portfolio management investment firm* may be a *material risk taker* and also *AIFM Remuneration Code Staff* or *UCITS Remuneration Code Staff*. In this case the *material risk taker* will be subject to the *MIFIDPRU Remuneration Code* and the requirements of the *AIFM Remuneration Code* or the *UCITS Remuneration Code*.

**19G.1.22** G

The effect of ■ SYSC 19G.1.20R is that a *firm* must consider which requirement is the most stringent on a provision by provision basis.

**19G.1.23** G

■ SYSC 19G.1.20R is not relevant where a *firm* can comply with both sets of *remuneration* requirements, for example requirements to establish, implement and maintain *remuneration* policies and practices on both an individual basis and a consolidated basis.

**Application: staff**  
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**19G.1.24** G

The term 'staff' should be interpreted broadly in the *MIFIDPRU Remuneration Code* to include, for example, employees of the *firm* itself, *partners* or members (in the case of partnership structures), *employees* of other entities in the *group*, *employees* of joint service companies, and secondees.

**Application: performance periods**  
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**19G.1.25** G

The rules in the *MIFIDPRU Remuneration Code* apply to each performance period, regardless of whether it is annual, quarterly, or another frequency. A *firm* must comply with the rules on performance assessment and risk adjustment in relation to each such performance period.



**Application: proportionality**

- 19G.1.26 **R** A firm must comply with the *MIFIDPRU Remuneration Code* in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

**Application: carried interest**

- 19G.1.27 **R**
- (1) The *MIFIDPRU Remuneration Code* applies to remuneration, including carried interest (which represents a share in the profits of a *fund* managed by the *firm's* staff, as compensation for the management of the *fund*).
  - (2) Where arrangements concerning carried interest meet the conditions in (3), the following provisions do not apply:
    - (a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
    - (b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);
    - (c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
    - (d) ■ SYSC 19G.6.30R to ■ SYSC 19G.6.34G (Performance adjustment).
  - (3) The conditions referred to in (2) are that:
    - (a) the value of the carried interest must be determined by the performance of the *fund* in which the carried interest is held;
    - (b) the period between the award of the carried interest and any payment under it must be at least 4 years; and
    - (c) there are provisions for the forfeiture or cancellation of carried interest that include at least the circumstances set out in ■ SYSC 19G.6.31R(3)(a) and ■ SYSC 19G.6.31R(3)(b).

- 19G.1.28 **R** For the purposes of the *MIFIDPRU Remuneration Code*, a carried interest must be valued at the time of its award.

**Application: general**

- 19G.1.29 **G** While the rules in the *MIFIDPRU Remuneration Code* set out the minimum regulatory requirements that a *MIFIDPRU investment firm* must comply with, the *FCA* considers it good practice for a *firm* to assess whether going beyond those regulatory requirements would contribute to sound risk management or a healthy firm culture.

**When?**

- 19G.1.30 **R** A firm must apply the *MIFIDPRU Remuneration Code* from the start of its first performance period that begins on or after 1 January 2022.



**19G.2 Remuneration policies and practices**

**General requirements**

**19G.2.1** **R** A MIFIDPRU investment firm must establish, implement and maintain remuneration policies and practices.

**19G.2.2** **G** The remuneration policies and practices referred to in **■ SYSC 19G.2.1R** should cover all aspects of remuneration within the scope of the MIFIDPRU Remuneration Code, and all staff.

**19G.2.3** **G** In line with the record-keeping requirements in **■ SYSC 9**, a firm should ensure that its remuneration policies and practices (including performance assessment processes and decisions) are clear and documented.

**Proportionality**

**19G.2.4** **R** A firm's remuneration policies and practices must be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the firm.

**19G.2.5** **G** The proportionality principle in **■ SYSC 19G.2.4R** means that the content and level of detail of a firm's remuneration policy may depend on a number of factors. These may include the number of staff it employs, the different types of roles, the activities it carries out, and whether the firm is part of a group with a group-wide remuneration policy.

**Gender neutral remuneration policies and practices**

**19G.2.6** **R** A firm must ensure that its remuneration policy is a gender neutral remuneration policy and the practices referred to in **■ SYSC 19G.2.1R** are gender neutral.

**19G.2.7** **G** Firms are reminded that the Equality Act 2010 prohibits discrimination on the basis of an individual's protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable remuneration. A firm must ensure that its remuneration policy complies with the Equality Act 2010.

**Risk management, business strategy and avoiding conflicts of interest**  
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- 19G.2.8** **R** A *firm* must ensure that its *remuneration* policies and practices are consistent with, and promote sound and effective, risk management.
- 19G.2.9** **R** A *firm* must ensure that its *remuneration* policies and practices are in line with the business strategy, objectives and long-term interests of the *firm*.
- 19G.2.10** **G** For the purposes of **■** SYSC 19G.2.9R, the business strategy, objectives and long-term interests of the *firm* should include consideration of:
- (1) the *firm's* risk appetite and strategy, including environmental, social and governance risk factors;
  - (2) the *firm's* culture and values; and
  - (3) the long-term effects of the investment decisions taken.
- 19G.2.11** **R** A *firm* must ensure that its *remuneration* policy:
- (1) contains measures to avoid conflicts of interest;
  - (2) encourages responsible business conduct; and
  - (3) promotes risk awareness and prudent risk taking.
- 19G.2.12** **R** A MIFIDPRU investment *firm* must not pay variable *remuneration* to members of the *management body* who do not perform any executive function in the *firm*.

## 19G.3 Governance and oversight

### ..... Oversight of remuneration policies and practices

- 19G.3.1** **R** A MIFIDPRU investment firm must ensure that its *management body in its supervisory function* adopts and periodically reviews the *remuneration policy* and has overall responsibility for overseeing its implementation.
- 19G.3.2** **G**
- (1) Each *firm* should assess the most appropriate frequency for the periodic reviews referred to in **■ SYSC 19G.3.1R**, taking into account all relevant factors.
  - (2) The development and review of the *remuneration policy* should be supported by the *control functions*, including (where they exist) risk management, compliance, internal audit and human resources, and by *business units*.
  - (3) The processes and decision-making around the development, review and amendment of *remuneration policies and practices* are subject to the general record-keeping requirements set out in **■ SYSC 9**.
- 19G.3.3** **R** A *firm's remuneration committee*, where it has one, must oversee the implementation of the *firm's remuneration policies and practices* established under **■ SYSC 19G.2.1R**.
- 19G.3.4** **R** A *non-SNI MIFIDPRU investment firm* must, at least annually, conduct a central and independent internal review of whether the implementation of its *remuneration policies and practices* complies with the *remuneration policy and practices* adopted by the *management body in its supervisory function*.
- 19G.3.5** **G**
- (1) The FCA would expect the central and independent internal review to assess whether the implementation of the *remuneration policies and practices*:
    - (a) results in *remuneration awards* that are in line with the *firm's business strategy*;
    - (b) reflects the risk profile, long-term objectives and other relevant goals of the *firm*; and
    - (c) complies with all relevant legal requirements.
  - (2) A *non-SNI MIFIDPRU investment firm* may outsource part or all of the independent review in **■ SYSC 19G.3.4R**. The *management body in its*

*supervisory function* remains responsible for ensuring the review is carried out and any necessary follow up actions are taken.

- (3) A *non-SNI MIFIDPRU investment firm* should document appropriately the results of the review and the actions taken to remedy any findings.

**Control functions**

**19G.3.6** **R** A *MIFIDPRU investment firm* must ensure that staff engaged in *control functions*:

- (1) are independent from the *business units* they oversee;
- (2) have appropriate authority; and
- (3) are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

**19G.3.7** **R** A *MIFIDPRU investment firm* must ensure that the *remuneration* of the senior officers in risk management and compliance functions is directly overseen by the *remuneration committee*, or, if such a committee has not been established, by the *management body in its supervisory function*.

**19G.3.8** **G** ■ SYSC 19G.3.6R and ■ SYSC 19G.3.7R are designed to manage the conflicts of interest which may arise if other business areas had undue influence over the *remuneration* of staff in *control functions*. Conflicts of interest can easily arise when staff members 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 *control functions* (in particular risk management, compliance and human resources functions).

## 19G.4 Fixed and variable components of remuneration

### Categorising fixed and variable remuneration

- 19G.4.1** **R** A MIFIDPRU investment firm must ensure that the *remuneration* policy makes a clear distinction between criteria for setting fixed and variable remuneration.
- 19G.4.2** **G**
- (1) The effect of **SYSC 19G.4.1R** is that all *remuneration* paid to a staff member must be clearly categorised as either fixed or variable remuneration.
  - (2) In allocating individual *remuneration* components to fixed or variable remuneration, it is the quality and purpose of the component that is decisive, not the label applied to it.
  - (3) The FCA considers that:
    - (a) fixed remuneration:
      - (i) should primarily reflect a staff member’s professional experience and organisational responsibility as set out in the staff member’s job description and terms of employment; and
      - (ii) should be permanent, pre-determined, non-discretionary, non-revocable and not dependent on performance; and
    - (b) variable remuneration:
      - (i) should be based on performance or, in exceptional cases, other conditions;
      - (ii) where based on performance, should reflect the long-term performance of the staff member as well as performance in excess of the staff member’s job description and terms of employment;
      - (iii) includes *discretionary pension benefits*; and
      - (iv) includes carried interest, as referred to in **SYSC 19G.1.27R**.
- 19G.4.3** **G** Returns made by staff on co-investment arrangements are shares in the profits as a pro rata return on an investment. The FCA does not usually consider these returns to be *remuneration* for the purposes of the MIFIDPRU Remuneration Code. However, the FCA considers these returns will be *remuneration* if the investment was made using a loan provided by the firm or by an *undertaking* in the same group as the firm, and if the loan was

either not provided on commercial terms or had not been repaid in full by the date on which the returns on investment were paid.

**19G.4.4** **G**

- (1) In relation to *remuneration* received by a *partner* or a member in a *limited liability partnership*, the *FCA's* view on how to categorise certain payments received by those *individuals* is as follows:
  - (a) at the end of each year, the residual profits of a *partnership* or *limited liability partnership* are distributed among the *partners* or members. The level of ownership of each *partner* or member is reflected in the number of ownership shares they have. Residual profits are distributed according to the ownership shares, so are not linked to work or performance. In the *FCA's* view, payments on this basis are not *remuneration*;
  - (b) a *partner* or member may receive an amount fixed at the beginning of the year and subject only to the *firm* making a profit. These are often called fixed profit shares. A *partner* or member usually takes drawings on it throughout the year, often monthly. If profits at year-end are insufficient, drawings may have to be paid back. The *FCA* considers that drawings on fixed profit shares are usually fixed *remuneration*;
  - (c) a *partner* or member may receive a discretionary share of the profit at the end of the year. These may be distributed to all *partners* or members but are usually dependent on the performance of the *individual* or their *business unit*. Awards may be at the discretion of the *remuneration* committee. The *FCA* considers that payments made on this basis are usually variable *remuneration*.
- (2) A *firm* that is a *partnership* or *limited liability partnership* may use a benchmarking approach instead of, or in addition to, the approach in (1) to categorise payments made to *partners* or members of *limited liability partnerships*. For example, it may take into account:
  - (a) the *remuneration* structures of other *individuals* performing similar tasks or working in similar businesses as the *partner* or member in question; or
  - (b) the return expected in a similar investment context where the *partner* or member has invested in a *fund* or *firm*.
- (3) Where a *partner* or member of a *limited liability partnership* works full-time for a *firm* the *FCA* would expect a reasonable portion of the *partner's* or member's profit share to be categorised as *remuneration*. Where a *partner* or member works part-time and receives less *remuneration* than a *partner* or member who works full-time, the *FCA* would expect a smaller proportion of the part-time *partner* or member's profit share to be classed as *remuneration*.

**Balance of fixed and variable components of total remuneration**

**19G.4.5** **R**

A *MIFIDPRU investment firm* must ensure that:

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

- (2) the fixed component represents a sufficiently high proportion of the total *remuneration* to enable the operation of a fully flexible policy on variable *remuneration*, including the possibility of paying no variable *remuneration* component.
- 19G.4.6** **R** For the purposes of ■ SYSC 19G.4.5R, a *non-SNI MIFIDPRU investment firm* must set an appropriate ratio between the variable component and the fixed component of the total *remuneration* in their *remuneration* policies.
- 19G.4.7** **G**
- (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of ■ SYSC 19G.4.5R and ■ SYSC 19G.4.6R respectively, 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 *material risk takers*, the impact that different categories of staff have on the risk profile of the *non-SNI MIFIDPRU investment firm* or of the assets it manages.
- (2) It may be appropriate for some staff to receive only fixed *remuneration*. The *FCA* does not consider it would be an appropriate balance for any *individual* to receive only variable *remuneration*.
- 19G.4.8** **G** A *non-SNI MIFIDPRU investment 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.
- 19G.4.9** **G** Ratios may differ from one performance period to the next.
- 19G.4.10** **G** 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.
- 19G.4.11** **R** When a *firm* is assessing whether the award of variable *remuneration* is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R, it may exclude from that calculation any amount of severance pay that:
- (1) exceeds the maximum amount of severance pay that can be paid under the *firm's remuneration policy* (in accordance with ■ SYSC 19G.6.12R(2)); and
  - (2) the *firm* has become obliged to pay as a result of a legal obligation that has arisen after the date on which the *firm* adopted the relevant version of its *remuneration* policy.



**19G.4.12** **G**

As explained in ■ SYSC 19.6.12R(2), where severance pay is payable a *firm's remuneration* policy must set out the maximum level of severance pay or the criteria for determining the amount. *Firms* should therefore take these policies into account when establishing the ratio between variable and fixed *remuneration* in accordance with ■ SYSC 19G.4.6R. The *FCA* accepts that in rare circumstances, for reasons that wouldn't have been clear to a *firm* when setting its *remuneration* policy, a *firm* may become legally obliged to pay a higher amount of severance pay, for example as a result of legal proceedings. In these situations, ■ SYSC 19G.4.11 states that the difference between the maximum severance pay permitted under the *firm's remuneration* policy and the higher amount the *firm* is legally obliged to pay may be excluded from an assessment of whether an award of variable *remuneration* is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R.

## 19G.5 Application of remuneration requirements to material risk takers

### Identifying material risk takers

- 19G.5.1** **R** A *material risk taker* is a staff member at a *non-SNI MIFIDPRU investment firm* whose professional activities have a material impact on the risk profile of the *firm* or of the assets that the *firm* manages.
- 19G.5.2** **R** A *non-SNI MIFIDPRU investment firm* must assess at least once a year which of its staff members are *material risk takers*.
- 19G.5.3** **R** For the purposes of **■ SYSC 19G.5.1R**, a staff member's professional activities are deemed to have a material impact on a *firm's* risk profile or the assets the *firm* manages if one or more of the following criteria are met:
- (1) the staff member is a *member of the management body* in its management function;
  - (2) the staff member is a *member of the management body* in respect of the *management body in its supervisory function*;
  - (3) the staff member is a member of the *senior management*;
  - (4) the staff member has *managerial responsibility* for *business units* that are carrying on at least one of the following *regulated activities*:
    - (a) *arranging (bringing about) deals in investments*;
    - (b) *dealing in investments as agent*;
    - (c) *dealing in investments as principal*;
    - (d) *managing investments*;
    - (e) *making investments with a view to transactions in investments*;
    - (f) *advising on investments (except P2P agreements)*; and/or
    - (g) *operating an organised trading facility*;
  - (5) the staff member has *managerial responsibilities* for the activities of a *control function*;
  - (6) the staff member has *managerial responsibilities* for the prevention of *money laundering* and terrorist financing;

- (7) the staff member is responsible for managing a material risk within the *firm*;
- (8) in a *firm* that has permission for carrying on at least one of the *regulated activities* in (4)(a) to (g), the staff member is responsible for managing one of the following activities:
  - (a) information technology;
  - (b) information security; and/or
  - (c) outsourcing arrangements of critical or important functions as referred to in article 30(1) of the *MiFID Org Regulation*; and
- (9) the staff member has authority to take decisions approving or vetoing the introduction of new products.

**19G.5.4** G The *FCA* considers the following are key indicators that the professional activities of a staff member (X) have a material impact on the risk profile of the *firm* or of the assets that the *firm* manages for the purposes of ■ SYSC 19G.5.1R:

- (1) there is no sufficiently senior and experienced *material risk taker* who supervises X on a day-to-day basis or to whom X reports;
- (2) X is responsible for key strategic decisions; and
- (3) X is responsible for significant revenue, material assets under management or for approving transactions.

**19G.5.5** G The *FCA* expects *individuals* in the following roles would usually be categorised as *material risk takers*:

- (1) in relation to portfolio management business, heads of key areas including equities, fixed income, alternatives, private equity;
- (2) heads of investment research;
- (3) *individuals* responsible for a high proportion of revenue;
- (4) senior advisors where they can exert key strategic influence;
- (5) chief market strategists, where media profile is linked to reputational risk and risk to market integrity;
- (6) heads of a trading or broking desk; and
- (7) all *individuals* with responsibility for information technology, information security and outsourcing where there is not a single person with responsibility for all three areas. For example, if there is a chief operating officer and a chief information technology officer who are both equally senior and have shared responsibility for these areas, then both should be identified as *material risk takers*.

**19G.5.6** G (1) A *firm* should update its assessment under ■ SYSC 19G.5.2R as necessary throughout the year.

- (2) It is important that *firms* consider all types of roles that may have a material impact on the *firm's* risk profile or on the assets it manages. The categories of staff referred to in ■ SYSC 19G.5.3R are intended to be a starting point only. A *firm* should develop its own additional criteria to identify further *individuals* based on the specific types of activities and risks relevant to the *firm*.
- (3) In identifying its *material risk takers*, a *firm* should consider all types of risks involved in its professional activities. These may include prudential, operational, market, conduct and reputational risks.
- (4) The decisive factor when identifying *material risk takers* is not the name of the function or role, but the authority and responsibility held by the *individual*.

**19G.5.7** R

- (1) If a *non-SNI MIFIDPRU investment firm* is part of an *FCA investment firm group* to which prudential consolidation applies, its *material risk takers* must be identified at both *individual* and consolidated level.
- (2) The *UK parent entity* of a *firm* is responsible for the *material risk taker* identification process at a consolidated level and must identify as *material risk takers*:
  - (a) all staff members whose professional activities have a material impact on the risk profile of the *investment firm group*; and
  - (b) all staff members of an *undertaking* in the *investment firm group* ('*undertaking A*') whose professional activities have a material impact on:
    - (i) the risk profile of another *undertaking* within the *investment firm group* to whom the *MIFIDPRU Remuneration Code* applies on an individual basis ('*undertaking B*'); or
    - (ii) the risk profile of any assets managed by *undertaking B*.

**19G.5.8** G

It may be helpful for the *UK parent entity* to coordinate the process for identifying *material risk takers* across the *group* entities.

**Exemption for individuals**

**19G.5.9** R

- (1) The provisions in (2) do not apply in relation to a *material risk taker* (X), where X's annual variable *remuneration*:
  - (a) does not exceed £167,000; and
  - (b) does not represent more than one-third of X's total annual *remuneration*.
- (2) The provisions referred to in (1) are:
  - (a) ■ SYSC 19G.6.19R to ■ SYSC 19G.6.21G (Shares, instruments and alternative arrangements);
  - (b) ■ SYSC 19G.6.22R and ■ SYSC 19G.6.23G (Retention policy);
  - (c) ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and
  - (d) ■ SYSC 19G.6.35R(2) (Discretionary pension benefits).

- 19G.5.10** **G** (1) ■ SYSC 19G.5.9R applies only to *material risk takers* of *non-SNI MIFIDPRU investment firms* that do not fall within ■ SYSC 19G.1.1R(2).
- (2) A *non-SNI MIFIDPRU investment firm* not falling within ■ SYSC 19G.1.1R(2) should therefore assess whether staff members are *material risk takers* before applying the thresholds in ■ SYSC 19G.5.9R.
- (3) As the provisions listed in ■ SYSC 19G.5.9R(2) don't apply on a consolidated basis (see ■ 19G.1.18R(4)(b)), the exemption for *individuals* in ■ SYSC 19G.5.9R(1) will not be relevant on a consolidated basis.
- 19G.5.11** **R** When considering whether an *individual* that becomes a *material risk taker* at a point during the *firm's* performance period falls within ■ SYSC 19G.5.9R, a *firm* must:
- (1) apply the full £167,000 variable *remuneration* threshold;
- (2) apply the requirement that the variable *remuneration* must not be more than one-third of the *individual's* total *remuneration* to the relevant portion of the total *remuneration* paid for the part of the performance period that the *individual* is a *material risk taker* at that *firm*; and
- (3) include any guaranteed variable *remuneration*, for example a 'sign-on bonus', in the *individual's* variable *remuneration* for the part of the performance period that the *individual* is a *material risk taker* at that *firm*.
- 19G.5.12** **G** (1) An *individual* may become a *material risk taker* at any point during the *firm's* performance period, either by changing role within the *firm* or by joining the *firm*.
- (2) The effect of ■ SYSC 19G.5.11R is illustrated by the following example:
- An *individual* ('X'), becomes a *material risk taker* 6 months into the *firm's* performance period. X receives annual fixed *remuneration* of £900,000. This means X will receive £450,000 for the 6 months of the performance period for which X is a *material risk taker*. X receives variable *remuneration* of £100,000 in respect of the first 6 months. X falls below the thresholds in ■ SYSC 19G.5.9R because X's variable *remuneration* of £100,000 is:
- (a) less than the £167,000 threshold in ■ SYSC 19G.5.9R(1)(a), and
- (b) less than one-third of the £450,000 fixed *remuneration* received (which would be £150,000) for the purposes of ■ SYSC 19G.5.9R(1)(b).
- 19G.5.13** **G** The FCA considers it good practice for a *firm* to consider whether applying any of the rules applicable to *material risk takers* to other members of *staff* would contribute to sound risk management or a healthy firm culture.

**19G.6 Variable remuneration**

**Remuneration and capital**

**19G.6.1** **R** A MIFIDPRU investment firm must ensure that variable remuneration does not affect the firm's ability to ensure a sound capital base.

**Exceptional government intervention**

**19G.6.2** **R** A MIFIDPRU investment firm that benefits from exceptional government intervention must ensure that:

- (1) no variable remuneration is paid to members of its management body, unless it is justified to do so; and
- (2) variable remuneration is limited to a portion of net revenue when its payment to staff that are not members of its management body would be inconsistent with:
  - (a) the maintenance of the firm's sound capital base; and
  - (b) its timely exit from exceptional government intervention.

**19G.6.3** **G** An example of where it may be justifiable to pay variable remuneration to a member of the management body of a MIFIDPRU investment firm that benefits from exceptional government intervention is where that person was not in office at the time the exceptional government intervention was first required.

**Assessment of performance**

**19G.6.4** **R** A non-SNI MIFIDPRU investment firm must ensure that where variable remuneration is performance-related:

- (1) the total amount of the variable remuneration is based on a combination of the assessment of the performance of:
  - (a) the material risk taker;
  - (b) the business unit concerned; and
  - (c) the overall results of the firm;
- (2) the assessment of performance is part of a multi-year framework that ensures:
  - (a) the assessment of performance is based on longer-term performance; and

- (b) the payment of performance-based *remuneration* is spread over a period that takes account of the business cycle of the *firm* and its business risks.

**19G.6.5** **R** When assessing individual performance to determine the amount of variable *remuneration* to be paid to an *individual*, a *MIFIDPRU investment firm* must take into account financial as well as non-financial criteria.

**19G.6.6** **G**

- (1) For some *firms* it may be appropriate to give equal weight to financial and non-financial criteria for the purposes of **SYSC 19G.6.5R**. For other *firms* a slightly different split may be appropriate.
- (2) Non-financial criteria under **SYSC 19G.6.5R** should:
  - (a) form a significant part of the performance assessment process;
  - (b) override financial criteria, where appropriate;
  - (c) include metrics on conduct, which should make up a substantial portion of the non-financial criteria; and
  - (d) include how far the *individual* adheres to effective risk management and complies with relevant regulatory requirements.
- (3) Examples of non-financial criteria under **SYSC 19G.6.5R** include:
  - (a) measures relating to building and maintaining positive customer relationships and outcomes, such as positive customer feedback;
  - (b) performance in line with firm strategy or values, for example by displaying leadership, teamwork or creativity;
  - (c) adherence to the *firm's* risk management and compliance policies;
  - (d) achieving targets relating to:
    - (i) environmental, social and governance factors; and
    - (ii) diversity and inclusion.
- (4) A *firm* should ensure that when it assesses individual performance, the assessment process and any variable *remuneration* awarded in accordance with **SYSC 19G.6.4R** does not discriminate on the basis of the protected characteristics of an *individual* in accordance with the Equality Act 2010.

**General requirements for awards of non-standard forms of variable remuneration**

**19G.6.7** **R**

- (1) A *non-SNI MIFIDPRU investment firm* must ensure that all guaranteed variable *remuneration*, retention awards, severance pay and buy-out awards falling under **SYSC 19G.6.8R** to **SYSC 19G.6.14G** are:
  - (a) subject to malus and clawback;
  - (b) in the case of *non-SNI MIFIDPRU investment firms* to which those rules apply:
    - (i) subject to the requirements in **SYSC 19G.6.19R** and **SYSC 19G.6.21G** (Shares, instruments and alternative arrangements), **SYSC 19G.6.22R** and **SYSC 19G.6.23G**

(Retention policy), and ■ SYSC 19G.6.24R to ■ SYSC 19G.6.29R (Deferral); and

(ii) included in the variable component of the variable to fixed ratio for the performance period in which the award is made.

(2) A *non-SNI MIFIDPRU investment firm* must ensure that each decision it makes to award variable remuneration falling within the scope of (1) is appropriate, taking all relevant circumstances into account.

### Guaranteed variable remuneration

19G.6.8

**R**

A *non-SNI MIFIDPRU investment firm* must not award, pay or provide guaranteed variable remuneration to a *material risk taker* unless:

- (1) it occurs in the context of hiring a new *material risk taker*;
- (2) it is limited to the first year of service; and
- (3) the *firm* has a strong capital base.

19G.6.9

**G**

(1) Guaranteed variable remuneration is sometimes referred to as a 'sign-on bonus' or 'golden handshake'.

(2) Guaranteed variable remuneration can be used as a way to compensate new staff members where they have lost the opportunity to receive variable remuneration by leaving their previous employment during the performance period. These awards may be called 'lost opportunity bonuses'.

(3) The *FCA* expects *non-SNI MIFIDPRU investment firms* to award guaranteed remuneration only rarely and not as common practice.

### Retention awards

19G.6.10

**R**

Retention awards must only be paid to *material risk takers*:

- (1) after a defined event; or
- (2) at a specified point in time.

19G.6.11

**G**

(1) Retention awards are bonuses which are dependent on an *individual* remaining in a role until a defined event or for a set period of time. For example, retention bonuses can be used under restructurings, in wind-down or in the context of specific projects within a *firm*.

(2) The payment of a retention award may be made dependent on the *material risk taker* meeting certain performance criteria that have been defined in advance.

(3) The *FCA* expects *non-SNI MIFIDPRU investment firms* to make retention awards to *material risk takers* only rarely and not as common practice.



**Severance pay**

- 19G.6.12** **R** (1) A *non-SNI MIFIDPRU investment firm* must ensure that payments to *material risk takers* relating to the early termination of an employment contract reflect the *individual's* performance over time and do not reward failure or misconduct.
- (2) A *non-SNI MIFIDPRU investment firm* must set out in its *remuneration policy* whether severance payments may be paid, and any maximum amount or criteria for determining the amount.

**Buy-out awards**

- 19G.6.13** **R** A *non-SNI MIFIDPRU investment firm* must ensure that *remuneration packages* relating to compensation for, or buy out from, a *material risk taker's* contracts in previous employment:
- (1) align with the long term interests of the *firm*; and
- (2) contain provisions on periods of retention, deferral, vesting and ex post risk adjustment that are no shorter than any corresponding periods that applied to unvested variable *remuneration* under the previous contract of employment, and which remained outstanding.

- 19G.6.14** **G** Buy-out awards involve a *firm* compensating a new staff member, or 'buying out' their previous contract with another employer, where the deferred variable *remuneration* of the staff member was reduced, revoked or cancelled by the previous employer. This could be because they terminated their contract or because the *individual* has to pay back some money, for example where the employer has paid for a training course or qualification for the *individual* that was attached to a retention clause.

**Risk adjustment**

- 19G.6.15** **R** A *non-SNI MIFIDPRU investment firm* must ensure that any measurement of performance used as a basis to calculate pools of variable *remuneration* takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with *MIFIDPRU*.

- 19G.6.16** **R** A *non-SNI MIFIDPRU investment firm* must ensure that the allocation of variable *remuneration* components within the *firm* takes into account all types of current and future risks.

- 19G.6.17** **R** For the purposes of ■ SYSC 19G.6.15R and ■ SYSC 19G.6.16R, a *non-SNI MIFIDPRU investment firm* must:
- (1) determine at what level the adjustments should be applied (for example at *business unit*, trading desk or individual level), which risks are relevant, and which risk adjustment techniques and measures are most appropriate; and
- (2) in considering all types of current and future risks, include both financial risks (for example economic profit or economic capital) and

non-financial risks (for example reputation, conduct and customer outcomes, values and strategy).

- 19G.6.18** **R** A *non-SNI MIFIDPRU investment firm* must ensure that its total variable remuneration is generally considerably contracted, including through malus or clawback arrangements, where the financial performance of the *firm* is subdued or negative.

### Shares, instruments and alternative arrangements

- 19G.6.19** **R** A *non-SNI MIFIDPRU investment firm* to which this rule applies must ensure that at least 50% of the variable remuneration paid to a *material risk taker* in relation to a performance period consists of any of the following *eligible instruments*:

- (1) *shares*, or subject to the *firm's* legal structure, equivalent ownership interests;
- (2) *share-linked instruments*, or subject to the *firm's* legal structure, equivalent non-cash instruments;
- (3) instruments that comply with the requirements in **■ SYSC 19G Annex 1R**; or
- (4) non-cash instruments (including those settled in cash) which reflect the instruments of the portfolios managed.

- 19G.6.20** **R** Where an *eligible instrument* that falls within the scope of **■ SYSC 19G.6.19R(1)** or **■ (2)** relates to an ownership interest in a *parent undertaking* of the *MIFIDPRU investment firm*, it will only satisfy the requirements of **■ SYSC 19G.6.19R** where its value moves in line with the value of an equivalent ownership interest in the *MIFIDPRU investment firm*.

- 19G.6.21** **G**
- (1) Where a *MIFIDPRU investment firm* is unable to issue *eligible instruments*, the *firm* may apply to the *FCA* for a modification under section 138A of the *Act* to permit the *firm* to use alternative arrangements. The *firm* will need to provide a detailed explanation in its application of the alternative arrangements it is proposing to operate.
  - (2) The *FCA* may grant a modification under section 138A of the *Act* for these purposes only where it is satisfied that:
    - (a) compliance by the *firm* with the requirement to issue variable remuneration in *eligible instruments* would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
    - (b) granting the modification would not adversely affect the advancement of any of the *FCA's* objectives.
  - (3) As part of its assessment of whether the modification would adversely affect the advancement of its objectives, the *FCA* will consider whether the proposed alternative arrangements for variable remuneration achieve similar outcomes to the standard requirements

applicable to *eligible instruments*. In particular, the *FCA* will normally consider the following non-exhaustive list of factors:

- (a) whether the proposed alternative arrangement ensures suitable alignment between the interests of the staff member and the long-term interests of the *firm*, its *clients* and creditors;
  - (b) whether the proposed alternative arrangement is subject to a retention policy that is of sufficient length to align the incentives of the staff member with the long-term interests of the *firm*, its *clients* and creditors;
  - (c) whether the proposed alternative arrangement is clear and transparent to the staff member and contains sufficient detail on the applicable conditions;
  - (d) whether the *firm* will ensure that any amounts that are subject to deferral and retention arrangements cannot be accessed, transferred or redeemed by the staff member during the deferral and retention periods;
  - (e) whether the proposed alternative arrangement would facilitate the appropriate application of malus and clawback requirements;
  - (f) whether the proposed alternative arrangements adequately ensure that the value of the variable *remuneration* received does not increase during the deferral period through distributions or other payments on the instrument; and
  - (g) where the proposed alternative arrangements allow for predetermined changes of the value received as variable *remuneration* during deferral and retention periods, based on the performance of the *firm* or the managed assets, whether the following conditions would be met:
    - (i) the change of the value is based on predefined performance indicators that are based on the credit quality of the *firm* or the performance of the managed assets;
    - (ii) where deferral and retention must be applied, value changes are calculated at least annually and at the end of the retention period;
    - (iii) the rate of possible positive and negative value changes is equally based on the level of positive or negative credit quality changes or performance measured;
    - (iv) where the value change under (i) is based on the performance of assets managed, the percentage of value change should be limited to the percentage of value change of the managed assets;
    - (v) where the value change under (i) is based on the credit quality of the *firm*, the percentage of value change should be limited to the percentage of the annual total gross revenue in relation to the *firm's* total own funds.
- (4) If a *firm* cannot issue *eligible instruments* because of its legal structure, that is likely to be a reason for the *FCA* to conclude that requiring the *firm* to comply with ■ SYSC 19G.6.19R would not achieve the purpose for which that *rule* was made.

**Retention policy**

**19G.6.22** **R** A *non-SNI MIFIDPRU investment firm* to which this rule applies must establish an appropriate retention policy for *eligible instruments* that is designed to align the interests of the staff member with the longer-term interests of the *firm*, its creditors and clients.

**19G.6.23** **G**

- (1) In considering what is an appropriate retention policy for the purposes of **SYSC 19G.6.22R**, a *firm* should consider at least the following:
  - (a) the length of the deferral period referred to in **SYSC 19G.6.24R(1)**;
  - (b) the length of the *firm's* business cycle;
  - (c) the types of risks relevant to the role of the staff member; and
  - (d) how long it could take for the risks underlying the staff member's performance to crystallise.
- (2) The greater the impact of the *material risk taker* on the risk profile of the *firm* and of the assets managed, the longer the retention period should be. Different retention periods for different *material risk takers* may be appropriate, particularly where the applicable deferral periods differ.

**Deferral**

**19G.6.24** **R**

- (1) A *non-SNI MIFIDPRU investment firm* to which this rule applies must not award, pay or provide a variable *remuneration* component unless at least 40% is deferred over a period which is at least 3 years.
- (2) Where the variable *remuneration* is a particularly high amount, and in all cases where the variable *remuneration* is £500,000 or more, at least 60% of the amount must be deferred.
- (3) Deferred variable *remuneration* must vest no faster than on a pro-rata basis.
- (4) The first deferred portion of the variable *remuneration* must not vest sooner than a year after the start of the deferral period.

**19G.6.25** **R**

- (1) A *non-SNI MIFIDPRU investment firm* must take into account the factors in (2) when determining:
  - (a) the amount of variable *remuneration* to be deferred under **SYSC 19G.6.24R(1)** and (2);
  - (b) the length of the deferral period under **SYSC 19G.6.24R(1)**; and
  - (c) the speed of vesting of the variable *remuneration* for the purposes of **SYSC 19G.6.24R(3)**.
- (2) The factors referred to in (1) are:
  - (a) the *firm's* business cycle, the nature of its business and its risk profile;

- (b) the activities and responsibilities of the staff member in question and how these may impact the risk profile of the *firm* or the assets the *firm* manages;
- (c) whether the deferred variable *remuneration* is paid out in instruments or cash;
- (d) the amount of the variable *remuneration*; and
- (e) the ratio of variable to fixed *remuneration*.
- 19G.6.26** G (1) Where appropriate, a *firm* should tailor the proportion of deferred variable *remuneration*, the deferral period and the speed of vesting in different ways for different categories of *material risk taker*.
- (2) The *FCA* considers that it may be appropriate for the most senior *material risk takers* at a *firm* (for example members of the *management body*), to be subject to a deferral period longer than the 3-year minimum.
- (3) It may be appropriate for *firms* to apply different proportions of deferred variable *remuneration*, deferral periods or vesting arrangements to the portion of variable *remuneration* paid out in cash and the portion paid out in instruments.
- (4) In the *FCA*'s view, the higher the amount of the variable *remuneration*, and the higher the ratio of variable to fixed *remuneration*, the more appropriate it is likely to be to defer a greater proportion of the variable *remuneration*.
- (5) In certain circumstances variable *remuneration* below £500,000 may still be considered 'particularly high' and so subject to 60% deferral. A *firm* should take into account the average *remuneration* at the *firm*, the ratio of the variable to fixed *remuneration* of the *material risk taker*, and the amount of variable *remuneration* compared to that of other staff at the *firm*.
- (6) After the first deferred portion of the variable *remuneration* vests in accordance with ■ SYSC 19G.6.24R(4), the *FCA* does not expect vesting to take place more often than once a year.
- 19G.6.27** R A non-SNI MIFIDPRU investment firm must pay out at least 50% of the variable *remuneration* deferred under ■ SYSC 19G.6.24R in instruments falling within ■ SYSC 19G.6.19R.
- 19G.6.28** G The *FCA* considers it good practice for the deferred portion to contain a higher proportion of instruments than the non-deferred portion.
- 19G.6.29** R A non-SNI MIFIDPRU investment firm may only pay to a *material risk taker* interest or dividends on an instrument which is subject to deferral under SYSC 19G.24R where:

- (1) the rate of interest or level of dividends paid on that instrument is no higher than would have been paid to an ordinary holder of such an instrument; and
- (2) payment is not made before the date on which the instrument vests.

**Performance adjustment**

**19G.6.30** **R**

A *non-SNI MIFIDPRU investment 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 *material risk taker* concerned.

**19G.6.31** **R**

A *non-SNI MIFIDPRU investment firm* must:

- (1) ensure that all of the total variable remuneration is subject to in-year adjustments, 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 *material risk taker*:
  - (a) participated in or was responsible for conduct which resulted in significant losses to the *firm*; and/or
  - (b) failed to meet appropriate standards of fitness and propriety.

**19G.6.32** **R**

A *non-SNI MIFIDPRU investment firm* must:

- set minimum malus and clawback periods as part of its remuneration policies;
- ensure that malus can be applied until the award has vested in its entirety; and
- ensure that the clawback period spans at least the combined length of any deferral and retention periods.

**19G.6.33** **G**

- (1) The effect of **SYSC 19G.6.31R(1)** is that (save in the circumstances explained in (2)) a *non-SNI MIFIDPRU investment firm* must include in its remuneration policy the possibility of applying in-year adjustments, malus and clawback to the variable remuneration of its *material risk takers*. Where performance adjustment is required, the appropriate tool or tools (in-year adjustments, malus or clawback) should then be applied.
- (2) A *non-SNI MIFIDPRU investment firm* that is not required by **SYSC 19G.6.24R** to apply deferral will not be able to apply malus, so should foresee the use of in-year adjustments and clawback arrangements only. Alternatively, the *firm* may choose to use deferral, which would enable the use of malus arrangements in addition to in-year adjustments and clawback.

- (3) A *non-SNI MIFIDPRU investment firm* should ensure that the malus and clawback periods it sets and applies allow sufficient time for any potential risks to crystallise. This may mean that different periods are set for different categories of *material risk takers*.
- (4) In setting appropriate malus and clawback periods, a *non-SNI MIFIDPRU investment firm* should take into account all relevant factors, including:
  - the nature of the *material risk taker's* activities;
  - the *material risk taker's* impact on the risk profile of the *firm* or of the assets it manages; and
  - the length of the business cycle that is relevant for the *material risk taker's* role.
- (5) For a *non-SNI MIFIDPRU investment firm* that satisfies the conditions in ■ SYSC 19G.1.1R(2)(a) or ■ (b), the *FCA* considers that 3 years will generally be an appropriate starting point for the *firm's* consideration of the appropriate clawback period.
- (6) The *FCA's* 'General guidance on the application of ex-post risk adjustment to variable remuneration' provides further detail of the *FCA's* expectations on *firms'* use of malus and clawback arrangements.

**19G.6.34** G

- (1) In the *FCA's* view, malus should be applied when, as a minimum:
  - (a) there is reasonable evidence of staff member misbehaviour or material error;
  - (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) In the *FCA's* view, clawback should, in particular, be applied in cases of fraud or other conduct with intent or severe negligence which led to significant losses.

**Discretionary pension benefits**  
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**19G.6.35** R

- (1) A *non-SNI MIFIDPRU investment firm* must ensure that:
  - (a) any *discretionary pension benefits* it awards or pays to *material risk takers* are:
    - (i) in line with its business strategy, objectives, values and long-term interests; and
    - (ii) paid only in *eligible instruments*;
  - (b) it applies malus and clawback arrangements to *discretionary pension benefits* in the same way as to other elements of variable remuneration.
- (2) A *non-SNI MIFIDPRU investment firm* to which this paragraph applies must ensure that:

- (a) where a *material risk taker* leaves the *firm* before retirement age, any *discretionary pension benefits* are held by the *firm* for a period of 5 years; and
- (b) where a *material risk taker* reaches retirement age, any *discretionary pension benefits* are subject to a 5-year retention period by that *individual*.

**Personal investment strategies**

**19G.6.36** R A *non-SNI MIFIDPRU investment firm* must take all reasonable steps to ensure that *material risk takers* do not use personal hedging strategies or *remuneration-* and liability-related *contracts of insurance* to undermine the *remuneration rules* in the *MIFIDPRU Remuneration Code*.

**19G.6.37** G Actions a *firm* may take under ■ SYSC 19G.6.36R include requesting an undertaking or declaration from its *material risk takers* and implementing policies regarding dealing in *financial instruments*.

**Avoidance of the MIFIDPRU Remuneration Code**

**19G.6.38** R A *non-SNI MIFIDPRU investment firm* must not pay *variable remuneration* through financial vehicles or methods that facilitate non-compliance with the *MIFIDPRU Remuneration Code* or *MIFIDPRU*.





## 19G.7 Remuneration committee

19G.7.1

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- (1) ■ MIFIDPRU 7.3.3R(1) requires a *non-SNI MIFIDPRU investment firm* to establish a *remuneration committee*, unless ■ MIFIDPRU 7.3.3R(2) applies.
- (2) The *FCA* encourages *non-SNI MIFIDPRU investment firms* that are not required to establish a *remuneration committee* under ■ MIFIDPRU 7.3.3R(1) to consider whether establishing and maintaining a *remuneration committee* would contribute to the better alignment of risk and individual reward across the *firm*.



## Other instruments for use in variable remuneration

	Purpose	
1.1	G	SYSC 19G.6.19R requires that at least 50% of variable <i>remuneration</i> must be paid in <i>eligible instruments</i> . Under SYSC 19G.6.19R(3), <i>eligible instruments</i> include instruments that meet the requirements set out in this Annex. The instruments within the scope of this Annex include <i>additional tier 1 instruments</i> , <i>tier 2 instruments</i> and other instruments which can be fully converted to <i>common equity tier 1 instruments</i> , or written down, and that adequately reflect the <i>firm's</i> credit quality.
	Requirements for instruments	
1.2	R	An instrument under SYSC 19G.6.19R(3) must satisfy the following requirements <ol style="list-style-type: none"> <li>(1) the instrument must be issued by the <i>firm</i>;</li> <li>(2) the instrument must not be secured or subject to a guarantee or any other arrangement that enhances the seniority of the claims of its holder in insolvency;</li> <li>(3) the terms of the instrument must provide that any distributions on the instrument will be paid on at least an annual basis and will be paid to the holder;</li> <li>(4) the instrument must be priced at its value at the time of issuance under the accounting framework applicable to the <i>firm</i>;</li> <li>(5) the valuation of the instrument in (4) must be subject to independent review;</li> <li>(6) if the instrument is part of an issuance which has the sole purpose of being used for variable <i>remuneration</i>, the price at which the instrument is redeemed, called, repurchased or converted must be subject to an independent valuation in accordance with the accounting framework applicable to the <i>firm</i>;</li> <li>(7) if the instrument is not perpetual, at the time at which it is awarded as variable <i>remuneration</i>, the remaining period before the maturity of the instrument must be at least equal to the sum of any deferral and retention periods that would apply to the staff member to whom the instrument is awarded;</li> <li>(8) the instrument must not be subject to redemption, call or repurchase during any deferral and retention periods that would apply to the <i>material risk taker</i> to whom the instrument is awarded;</li> <li>(9) any right to redeem, call or repurchase the instrument must be exercisable only at the sole discretion of the <i>firm</i>;</li> <li>(10) the holder of the instrument must have no rights to accelerate the future scheduled payment of interest or principal, except in the insolvency or liquidation of the <i>firm</i>;</li> <li>(11) the terms of the instrument must provide that the claim on the principal amount of the instrument is wholly subordinated to the claim of all non-subordinated creditors;</li> <li>(12) one of the requirements in SYSC 19G Annex 1.3R must be satisfied; and</li> <li>(13) the instrument must be either:</li> </ol>

			(a) a <i>convertible instrument</i> , in which case the requirements in SYSC 19 Annex 1.4R and SYSC 19 Annex 1.5R must be satisfied; or
			(b) a <i>write-down instrument</i> , in which case the requirements in SYSC 19 Annex 1.6R must be satisfied.
1.3	R	(1)	An instrument under SYSC 19G.6.19R(3) must meet either the conditions in (2) or the conditions in (4).
		(2)	The first set of conditions is as follows:
		(a)	the instrument must be part of an issuance which has the sole purpose of being used as variable <i>remuneration</i> ; and
		(b)	the terms of the instrument must ensure that any distributions payable on the instrument are paid at a rate which is:
		(i)	consistent with market rates for similar issuances issued by other <i>firms</i> with comparable credit quality; and
		(ii)	subject to (3), no higher than 8% above the Consumer Price Index 12-month rate as published by the UK Office of National Statistics from time to time.
		(3)	If the instrument has been awarded to a member of staff whose professional duties are predominantly performed outside the <i>UK</i> and the instruments are denominated in a currency other than pound sterling, a <i>firm</i> may substitute another similar independently-calculated consumer price index for a relevant <i>third country</i> in place of the rate specified in (2)(b)(ii).
		(4)	The second set of conditions is that, at the time at which the instrument was awarded as variable <i>remuneration</i> , at least 60% of that class of instrument in issuance was:
		(1)	issued other than for use as variable <i>remuneration</i> ; and
		(2)	not held by any <i>person</i> who has close links to:
		(i)	the <i>firm</i> ;
		(ii)	the <i>firm's group</i> ; or
		(iii)	a <i>connected undertaking</i> included within the <i>firm's investment firm group</i> .
		Additional requirements for convertible instruments	
1.4	R		A <i>firm</i> must satisfy the following requirements in relation to an instrument referred to SYSC 19G.6.19R(3) that is a <i>convertible instrument</i> :
		(1)	the instrument must contain a trigger event which, if it occurs, results in the full principal amount of the instrument being converted into <i>common equity tier 1 capital</i> of the <i>firm</i> ;
		(2)	the trigger event in (1) must occur where the <i>common equity tier 1 capital</i> of the <i>firm</i> falls below a specified level that is no lower than 64% of the <i>firm's own funds requirement</i> ;
		(3)	the <i>firm</i> issuing the instrument must ensure the following to the extent necessary to give full effect to the required conversion following the trigger event in (1):
		(a)	where applicable, the <i>firm</i> has sufficient authorised share capital;
		(b)	the <i>firm</i> has all necessary permissions, authorisations and corporate authorities; and

- (c) there are no other restrictions in the *firm's* constitutional documents, contractual arrangements or applicable national law that would prevent the *firm* from issuing the required *common equity tier 1 capital* instruments.
- 1.5 R The rate of conversion of the principal amount into *common equity tier capital* of the *firm* specified in the terms governing an instrument under SYSC 19G.6.19R(3) that is a *convertible instrument* must be set at a level that ensures that the value of the *common equity tier 1 capital* received by the holder upon conversion:
- (1) would not be higher than the value of the instrument at the time that it was originally awarded as variable *remuneration*; and
  - (2) if the *convertible instrument* is part of an issuance which has the sole purpose of being used as variable *remuneration*, would not be higher than the value of the instrument at the time of conversion.
- Additional requirements for write-down instruments
- 1.6 R A *firm* must satisfy the following requirements in relation to an instrument under SYSC 19G.6.19R(3) that is a *write-down instrument*:
- (1) the instrument must contain a trigger event which, if it occurs, results in the principal amount of the instrument being written down;
  - (2) the trigger event in (1) must occur where the *common equity tier 1 capital* of the *firm* falls below a specified level that is no lower than 64% of the *firm's own funds requirement*;
  - (3) the aggregate principal amount of *write-down instruments* that must be written down following the trigger event in (1) must be at least equal to the lower of the following:
    - (a) the amount required to ensure that the *common equity tier 1 capital* of the *firm* referenced in the trigger event is restored to a level that is higher than the specified trigger; or
    - (b) the full principal amount of the instrument;
  - (4) any write-down in the principal amount of the instrument following the trigger event in (1) must:
    - (a) apply on a pro rata basis across all *write-down instruments* that contain the same trigger event;
    - (b) generate items that, under the accounting framework applicable to the *firm*, qualify as *common equity tier 1 capital*;
    - (c) result in a proportional reduction in the holder's entitlement to receive:
      - (i) distributions paid in connection with the instrument;
      - (ii) payment if the instrument is called or redeemed; and
      - (iii) repayment in the insolvency or liquidation of the *firm*;
  - (5) any write-down in the principal amount of the instrument following the trigger event in (1) may be permanent or temporary, but if it is temporary, any subsequent write-up must comply with the following requirements:
    - (a) it cannot increase the principal amount of the instrument beyond its level before the write-down occurred;
    - (b) it must be at the absolute discretion of the *firm*;
    - (c) the *firm* must have a reasonable basis to conclude that the write-up is appropriate, having regard to the following factors, among others:

- (i) the importance of effectively aligning the interests of the recipient with the longer-term interests of the *firm*, its clients and its creditors;
  - (ii) the financial position of the *firm* and the effect of the write-up on the *firm's own funds*; and
  - (iii) if the *firm* or any member of its *group* has been subject to exceptional government intervention, whether the write-up is consistent with the objective of ensuring the timely exit from that support;
- (d) it must be applied on a pro rata basis between all recipients of instruments falling under SYSC 19G.6.19R(3) that are *write-down instruments* where those instruments have previously been subject to a write-down.