

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODE) (NO 4) INSTRUMENT 2011**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 139A (General rules about remuneration);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 January 2012.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Code) (No 4) Instrument 2011.

By order of the Board
2 November 2011

Annex A**Amendments to the Glossary of definitions**

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

*third country BIPRU
730k firm*

an *overseas firm* that:

- (a) is not an *EEA firm*;
- (b) has its head office outside the *EEA*; and
- (c) would be a *BIPRU 730k firm* if it had been a *UK domestic firm*, had carried on all its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Effect of breaches of the Remuneration Principles

- 19A.3.53 R SYSC 19A Annex 1 makes provision about voiding and recovery.
A
- 19A.3.54 R (1) ~~The Subject to (1A) to (3), the rules detailed provisions on voiding and recovery in SYSC 19A Annex 1 1.1R to 1.4R~~ apply in relation to the prohibitions on *Remuneration Code staff* being remunerated in the ways specified in:
- (a) SYSC 19A.3.40R (guaranteed variable remuneration);
 - (b) SYSC 19A.3.49R (non-deferred variable remuneration); and
 - (c) SYSC 19A Annex 1.7R (replacing payments recovered or property transferred).
- (1A) Paragraph (1) applies only to those prohibitions as they apply in relation to a firm that satisfies at least one of the conditions set out in (1B) to (1D).
- (1B) Condition 1 is that the firm is a UK bank or building society that had capital resources exceeding £1,000 million on its last accounting reference date.
- (1C) Condition 2 is that the firm is a relevant BIPRU 730k firm that had capital resources exceeding £750 million on its last accounting reference date.
- (1D) Condition 3 is that the firm:
- (a) is a full credit institution, a relevant BIPRU 730k firm or a relevant third country BIPRU 730k firm; and
 - (b) is part of a group containing a firm that is:
 - (i) a UK bank or building society that had capital resources exceeding £1,000 million on its last accounting reference date; or
 - (ii) a relevant BIPRU 730k firm that had capital resources exceeding £750 million on its last accounting reference date.

(1E) In condition 2 in (1C) and condition 3 in (1D)(a) and (b)(ii):

(a) a “relevant BIPRU 730k firm” is any BIPRU 730k firm that is not a limited activity firm or a limited licence firm;

(b) a “relevant third country BIPRU 730k firm” is any third country BIPRU 730k firm that is not a limited activity firm or a limited licence firm.

...

- 19A.3.55 G (1) Section 139A(9) of the *Act* enables the *FSA* to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision. SYSC 19A.3.53AR and SYSC 19A.3.54R (together with SYSC 19A Annex 1) is such a rule are such rules and renders 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. This is an exception to the general position set out in section 151(2) of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.
- (2) ~~SYSC TP3.6R provides that SYSC 19A.3.54R and SYSC 19A Annex 1 apply, until 1 January 2012, only in relation to a firm that was subject to the version of the *Remuneration Code* that applied before 1 January 2011. [deleted]~~

19A Annex 1 Detailed provisions on voiding and recovery (SYSC 19A.3.53AR and SYSC 19A.3.54R)

Rendering contravening provisions of agreements void		
1	R	Any provision of an agreement that contravenes a prohibition on <i>persons</i> being remunerated in a way specified in a <i>rule</i> to which this annex <u>rule</u> applies (a “contravening provision”) is void.
1A	R	A contravening provision does not cease to be void because:
		(1) <u>the firm concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D); or</u>
		(2) <u>the member of <i>Remuneration Code</i> staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>
2	R	A contravening provision that, at the time a <i>rule</i> to which this annex <u>rule</u> applies was made, is contained in an agreement made before that time is not rendered

		void by 1R unless it is subsequently amended so as to contravene such a <i>rule</i> .	
3	G	The effect of 2R, in accordance with section 139A(11) of the <i>Act</i> , is to prevent contravening provisions being rendered void retrospectively. Contravening provisions may however be rendered void if they are contained in an agreement made after the <i>rule</i> containing the prohibition is made by the <i>FSA</i> but before the <i>rule</i> comes into effect. <u>For further relevant transitional provisions, see SYSC TP3.6A.</u>	
3A	R	(1)	A pre-existing provision is not rendered void by 1R.
		(2)	<u>In this Annex a “pre-existing provision” is any provision of an agreement that would (but for this rule) be rendered void by 1R that was agreed at a time when either:</u>
		(a)	<u>the firm concerned did not satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D); or</u>
		(b)	<u>the member of Remuneration Code staff concerned satisfied both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>
		(3)	<u>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:</u>
		(a)	<u>the firm concerned satisfies at least one of the conditions set out in SYSC 19A.3.54(1B) to (1D); and</u>
		(b)	<u>the member of Remuneration Code staff concerned does not satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>
...			
5	R	In relation to any payment made or other property transferred in pursuance of a contravening provision <u>other than a pre-existing provision</u> , a <i>firm</i> must take reasonable steps to:	
		(1)	recover any such payment made or other property transferred by the <i>firm</i> ; and
		(2)	ensure than any other person (“P”) recovers any such payment made or other property transferred by that person.
5A	R	<u>Paragraph 5R continues to apply in one or both of the following cases:</u>	
		(1)	<u>the firm concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D);</u>
		(2)	<u>the member of Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>

...			
Replacing payments recovered or property transferred			
7	R	(1)	A <i>firm</i> must not award, pay or provide variable <i>remuneration</i> to a person whose <u>who has received remuneration in pursuance of</u> has caused the firm to breach a contravening provision <u>other than a pre-existing provision</u> (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>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)	<u>Paragraph (1) continues to apply in one or both of the following cases:</u>
		(a)	<u>the firm concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D);</u>
		(b)	<u>the member of <i>Remuneration Code</i> staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>

...

TP 3 Remuneration code

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6	R		Until 1 January 2012, SYSC 19A.3.54R and SYSC 19A Annex 1 (on voiding and recovery) apply only in relation to a <i>firm</i> that was subject to the version of the <i>Remuneration Code</i> that applied before 1 January 2011.
6A	R	(1)	<u>Paragraph (2) applies in relation to a <i>firm</i> that was not subject to the version of the <i>Remuneration Code</i> that applied before 1 January 2011 but satisfies at least one of the conditions set out in SYSC 19A.3.54R(1B) to (1D).</u>
		(2)	<u>Where this paragraph applies, a contravening provision that is contained in an agreement made before 3 November 2011 is not rendered void by SYSC 19A Annex 1.1R unless it is subsequently amended so as to contravene a rule to which SYSC 19A Annex 1.1R applies.</u>
6B	G		<u>The effect of 6R is to limit the provisions on voiding and recovery to <i>firms</i> which were subject to the version of the <i>Remuneration Code</i> which applied</u>

		<p><u>before 1 January 2011. That transitional provision comes to an end on 1 January 2012. A new limit providing for voiding to apply only in relation to certain types of firm is provided in SYSC 19A.3.54R(1B) to (1D). Paragraph 6AR applies to <i>firms</i> which become subject to the provisions on voiding after the transitional provision in 6R comes to an end. It prevents certain contravening provisions which predate the making of the new <i>rules</i> limiting the application of voiding from becoming void.</u></p>		
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