

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODES) (No 7) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct 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)
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137H (General rules about remuneration);
 - (c) section 137T (General supplementary powers);
 - (d) section 138C (Evidential provisions)
 - (e) section 138D (Action for damages); and
 - (f) section 139A (Power of the FCA to give guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 3 May 2017.

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.

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Codes) (No 7) Instrument 2017.

By order of the Board
27 April 2017

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text, unless otherwise stated.

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

third country IFPRU 730k firm an *overseas firm* that:

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

Amend the following definitions as shown.

dual-regulated firm (in SYSC 19D) a *firm* that is a UK *bank*, a *building society* or a *UK designated investment firm*.

dual-regulated firms Remuneration Code SYSC 19D (Dual-regulated firms Remuneration Code) for:

- (1) dual-regulated firms; and
- (2) *overseas firms* in SYSC 19D.1.1R(1)(d) that would have been a UK *bank*, *building society* or *UK designated investment firm* if it had been a *UK domestic firm*.

dual-regulated firms Remuneration Code staff (in relation to a *dual-regulated firm* and an *overseas firm* in SYSC 19D.1.1R(1)(d) that would have been a UK *bank*, *building society* or *UK designated investment firm* if it had been a *UK domestic firm*) has the meaning in SYSC 19D.3.4R which is, in summary, an *employee* whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who is deemed to have a material impact on the *firm's* risk profile in accordance with Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers).

group ...

(3B) (for the purposes of SYSC 12 (Group risk systems and

controls requirement), as applicable to a firm to which the dual-regulated firms Remuneration Code applies and in relation to a person “A”), A and any person:

- (a) who falls into (1);
- (b) who is a member of the same financial conglomerate as A;
- (c) who has a consolidation Article 12(1) relationship with A;
- (d) who has a consolidation Article 12(1) relationship with any person in (a);
- (e) who is a subsidiary of a person in (c) or (d); or
- (f) whose omission from an assessment of the risks to A of A’s connection to any person coming within (a) to (e) or an assessment of the financial resources available to such persons would be misleading.

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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.

19A IFPRU Remuneration Code**19A.1 General application and purpose**

Who? What? Where?

19A.1.1 R (1) The *Remuneration Code* applies to:

...

(c) an *IFPRU investment firm*; and

(d) an *overseas firm* that:

...

(iii) would be a an *IFPRU investment firm* ~~referred to in (a), (b) or (c)~~ if it had been a *UK domestic firm*, had carried on all of its business in the *UK* and had obtained whatever authorisations for doing so as are required under the *Act*.

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When?

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19A.1.4 G Subject to the requirements of *SYSC* 19A.1.5R, in the ~~appropriate regulator's~~ *FCA's* view *SYSC* 19A.1.3R does not require a *firm* to breach requirements of applicable contract or employment law.

[**Note:** recital 14 ~~69~~ of the ~~Third Capital Requirements Directive (Directive 2010/76/EU)~~ *CRD*]

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Purpose

19A.1.6 G ...

(2) The *Remuneration Code* implements the main provisions of the *CRD*

which relate to *remuneration*. The Committee of European Banking Supervisors published Guidelines on Remuneration Policies and Practices on 10 December 2010. Provisions of the Capital Requirements Regulations 2013 (SI 2013/3115) together with the European Banking Authority's Guidelines to article 75(1) and (3) of the *CRD* relating to the collection of *remuneration* benchmarking information and *high earners* information have been implemented through *SUP 16 Annex 33AR* and *SUP 16 Annex 34AR*. The Guidelines can be found at <http://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-the-remuneration-benchmarking-exercise> and <http://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-the-data-collection-exercise-regarding-high-earners>. In applying the *Remuneration Code*, firms should comply with the Guidelines published by the *EBA* on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the *CRD* and on disclosures under article 450 of the *EU CRR*. The Guidelines can be found at: <http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b>.

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Notifications to the ~~appropriate regulator~~ FCA

- 19A.1.7 G (1) ~~The~~ In addition to the notification requirements in the *Remuneration Code* does not contain specific notification requirements. However, general circumstances in which the *appropriate regulator FCA* expects to be notified by *firms* of matters relating to their compliance with requirements under the *regulatory system* are set out in *SUP 15.3* (General notification requirements).

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19A.2 General requirement

Remuneration policies must promote effective risk management

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- 19A.2.2 G (1) ~~If a *firm's remuneration* policy is not aligned with effective risk management it is likely that *employees* will have incentives to act in ways that might undermine effective risk management. [deleted]~~
- (2) The *Remuneration Code* covers all aspects of *remuneration* that could have a bearing on effective risk management including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements. ~~In applying the *Remuneration Code*, a *firm* should have regard to applicable good practice on~~

~~remuneration and corporate governance, such as guidelines on executive contracts and severance produced by the Association of British Insurers (ABI) and the National Association of Pension Funds (NAPF). In considering the risks arising from its remuneration policies, a firm will also need to take into account its statutory duties in relation to equal pay and non-discrimination.~~

...

- (4) ~~The principles in the Remuneration Code are used by the appropriate regulator to assess the quality of a firm's remuneration policies and whether they encourage excessive risk-taking by a firm's employees. [deleted]~~
- (5) The ~~appropriate regulator~~ FCA may also ask remuneration committees to provide ~~the appropriate regulator with~~ evidence of how well the firm's remuneration policies meet the Remuneration Code's principles, together with plans for improvement where there is a shortfall. The ~~appropriate regulator~~ FCA also expects relevant firms to use the principles in assessing their exposure to risks arising from their remuneration policies as part of the *internal capital adequacy assessment process (ICAAP)*.
- (6) ~~The Remuneration Code is principally concerned with the risks created by the way remuneration arrangements are structured, not with the absolute amount of remuneration, which is generally a matter for firms' remuneration committees. [deleted]~~

- 19A.2.3 G
- (1) ~~The specific remuneration requirements in this chapter may apply only in relation to certain categories of employee. But the appropriate regulator would expect firms, in complying with the Remuneration Code general requirement, to apply certain principles on a firm-wide basis. [deleted]~~
 - (2) ~~In particular, the appropriate regulator considers that firms should apply the principle relating to guaranteed variable remuneration on a firm-wide basis (Remuneration Principle 12(c); SYSC 19A.3.40R to SYSC 19A.3.43G). [deleted]~~
 - (3) The ~~appropriate regulator~~ FCA would also expect firms to apply, on a firm-wide basis, at least the principles relating to:
 - (a) risk management and risk tolerance (Remuneration Principle 1);
 - (b) supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2);
 - (c) conflicts of interest (Remuneration Principle 3);
 - (d) governance (Remuneration Principle 4);

- (e) risk adjustment (Remuneration Principle 8);
- (f) pension policy (Remuneration Principle 9);
- (g) personal investment strategies (Remuneration Principle 10);
- (h) payments related to early termination (Remuneration Principle 12(e)); and
- (i) deferral (Remuneration Principle 12(g)) ~~on a firm-wide basis.~~

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19A.3 Remuneration principles for IFPRU investment firms

Application: groups

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- 19A.3.2 G SYSC 12.1.13R(2)(dA) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or *non-EEA sub-group* of which a *firm* is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis. In the ~~appropriate regulator's~~ *FCA's* view, the ~~requirement to apply~~ application of this section at *group, parent undertaking* and *subsidiary undertaking* levels (as ~~provided for~~ in SYSC 19A.3.1R(1)) is in line with ~~the requirements in~~ article 109(2) of *CRD concerning* on the application of systems and controls requirements to *groups* (as ~~implemented~~ in SYSC 12.1.13R).

Application: categories of staff and proportionality

- 19A.3.3 R ...

[**Note:** In addition to the *guidance* in this section which relates to the *remuneration principles proportionality rule*, the ~~FSA gave~~ *FCA provides* guidance on the division of *firms* into categories for the purpose of providing a framework for the operation of the *remuneration principles proportionality rule*. This guidance ~~has been adopted by the FCA and~~ is available in the *FCA* website at ~~www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code~~ <http://www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code>]

...

- 19A.3.6 G (1) ~~In the appropriate regulator's view:~~
- (a) ~~a firm's staff includes its employees;~~
 - (b) ~~a person who performs a significant influence function for, or is a senior manager of, a firm would normally be expected to be part~~

of the *firm's Remuneration Code staff*;

- (c) the table in (2) provides a non-exhaustive list of examples of key positions that should, subject to (d), be within a *firm's* definition of staff who are risk takers;
- (d) *firms* should consider how the examples in the table in (2) apply in relation to their own organisational structure (as the description of suggested business lines in the first row may be most appropriate to a *firm* which *deals on its own account* to a significant extent);
- (e) *firms* may find it useful to set their own metrics to identify their risk takers based, for example, on trading limits; and
- (f) a *firm* should treat a *person* as being *Remuneration Code staff* in relation to *remuneration* in respect of a given performance year if they were *Remuneration Code staff* for any part of that year.

[**Note:** The *FSA* gave *guidance* on the application of particular rules on *remuneration* structures in relation to individuals who are *Remuneration Code staff* for only part of a given performance year. This *guidance* has been adopted by the *FCA* and is available in the *FCA* website at www.fca.org.uk/your-fca/documents/finalised-guidance/remuneration-code]

(2)	High-level category	Suggested business lines
	Heads of significant business lines (including regional heads) and any individuals or groups within their control who have a material impact on the <i>firm's</i> risk profile	Fixed income Foreign exchange Commodities Securitisation Sales areas Investment banking (including mergers and acquisitions advisory) Commercial banking Equities Structured finance Lending quality Trading areas Research
	Heads of support and control functions and other individuals within their control	Credit / market / operational risk Legal Treasury controls

who have a material impact on the <i>firm's</i> risk profile	Human resources Compliance Internal audit
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[deleted]

...

Remuneration Principle 4: Governance

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- 19A.3.12 R (1) A ~~CRR~~ firm that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a *remuneration* committee.

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[Note: article 95 of *CRD* and Standard 1 of the *FSB Compensation Standards*]

~~[Note: The *guidance* referred to in the Note to *SYSC 19A.3.3R* also gives *guidance* on proportionality in relation to *remuneration* committees.]~~

...

- 19A.3.12B R In *SYSC 19A.3.12R* a '~~CRR~~ firm that is significant' means a *significant IFPRU* firm.

- 19A.3.13 G ...

- (3) ~~The periodic review of the implementation of the *remuneration* policy should assess compliance with the *Remuneration Code*. [deleted]~~

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Remuneration Principle 5: Control functions

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- 19A.3.17 G ...

- (2) ~~The need to avoid undue influence is particularly important where *employees* from the control functions are embedded in other business areas. This *Remuneration Principle* does not prevent the views of other business areas being sought as an appropriate part of the assessment process. [deleted]~~
- (3) ~~The *appropriate regulator* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other~~

~~business areas whose potential bonus is a significant proportion of their remuneration. Firms should nevertheless ensure that the total remuneration package offered to those employees is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the remuneration of relevant persons involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see SYSC 6.1.4R(4)). [deleted]~~

Remuneration Principle 6: Remuneration and capital

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- 19A.3.19 G ~~This Remuneration Principle underlines the link between a firm's variable remuneration costs and the need to manage its capital base, including forward-looking capital planning measures. Where a firm needs to strengthen its capital base, its variable remuneration arrangements should be sufficiently flexible to allow it to direct the necessary resources towards capital building. [deleted]~~

Remuneration Principle 7: Exceptional government intervention

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- 19A.3.21 G The ~~appropriate regulator~~ FCA would normally expect it to be appropriate for the ban on paying variable remuneration to members of the *management body* of a firm that benefits from exceptional government intervention to apply only in relation to members of the *management body* who were in office at the time that the intervention was required.

Remuneration Principle 8: Profit-based measurement and risk adjustment

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- 19A.3.23 G (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying ~~judgment~~ judgement and common sense. ~~A The FCA expects a firm should ask to apply qualitative judgements and common sense in the risk management function to validate and assess risk adjustment techniques, and to attend a meeting final decision about the performance-related components of the governing body or variable remuneration committee for this purpose pools.~~
- (2) A number of risk-adjustment techniques and measures are available, and a firm should choose those most appropriate to its circumstances. The FCA considers good practice for this Principle to be represented by firms who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered. ~~The appropriate~~

~~regulator expects a firm to be able to provide it with details of all adjustments that the firm has made under a formulaic approach, including non-financial risks such as reputation, conduct, client outcomes, values and strategy.~~

- (3) ~~The appropriate regulator expects that a firm will apply qualitative judgments and common sense in the final decision about the performance-related components of variable remuneration pools. The FCA expects a firm to be able to provide it with details of all adjustments that the firm has made through application of formulae or the exercise of discretion. This will enable the FCA to consider if the firm's risk adjustment framework is sufficiently robust. Where discretion has been applied, the firm should be able to provide a clear explanation for, and quantification of, such adjustments.~~
- (4) ~~A firm's governing body (or remuneration committee where appropriate) should take the lead in determining the measures to be used. It should offer the appropriate checks and balances to prevent inappropriate manipulation of the measures used. It should consult closely and frequently with the firm's risk management functions, in particular those relating to operational, market, credit and liquidity risk. A firm should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the governing body or remuneration committee for this purpose.~~

- 19A.3.24 G (1) ~~Long-term incentive plans should be treated as pools of variable remuneration. Many common measures of performance for long-term incentive plans, such as earnings per share (EPS), are not adjusted for longer term risk factors. Total shareholder return (TSR), another common measure, includes in its measurement dividend distributions, which can also be based on unadjusted earnings data. If incentive plans mature within a two to four year period and are based on EPS or TSR, strategies can be devised to boost EPS or TSR during the life of the plan, to the detriment of the true longer term health of a firm. For example, increasing leverage is a technique which can be used to boost EPS and TSR. Firms should take account of these factors when developing risk-adjustment methods.~~
- (2) ~~Firms that have long-term incentive plans should structure them with vesting subject to appropriate performance conditions, and at least half of the award vesting after not less than five years and the remainder after not less than three years.~~
- (3) ~~Long-term incentive plan awards may be included in the calculation of the deferred portion of variable remuneration only if upside incentives are adequately balanced by downside adjustments. The valuation of the award should be based on its value when the award is granted, and determined using an appropriate technique. [deleted]~~

- 19A.3.25 R ~~Assessments A firm must base assessments of financial performance used to calculate variable remuneration components or pools of variable~~

remuneration components ~~must be based~~ principally on profits.

19A.3.26 G ...

(2) ~~Management accounts should provide profit data at such levels within the *firm's* structure as to enable a *firm* to see as accurate a picture of contributions of relevant staff to a *firm's* performance as is reasonably practicable. If revenue or turnover is used as a component in performance assessment, processes should be in place to ensure that the quality of business undertaken or services provided and their appropriateness for *clients* are taken into account. [deleted]~~

...

19A.3.28 G ~~Where a *firm* makes a loss the *appropriate regulator* would generally expect no variable *remuneration* to be awarded. Variable *remuneration* may nevertheless be justified, for example, to incentivise *employees* involved in new business ventures which could be loss making in their early stages. [deleted]~~

...

Remuneration Principle 10: Personal investment strategies

...

19A.3.31 G In the ~~*appropriate regulator's*~~ FCA's view, circumstances in which a *person* will be using a personal hedging strategy include (and are not limited to) entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that *person* that are linked to or commensurate with the amounts by which the *person's remuneration* is subject to reductions.

Remuneration Principle 11: Non-compliance with the Remuneration Code

19A.3.32 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with the *Remuneration Code*, the *EU CRR* or *CRD*.

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

Remuneration Principle 12: Remuneration structures - introduction

...

19A.3.34 G ...

[**Note:** The ~~*FSA*~~ *FCA* provides guidance on the application of certain *rules* on *remuneration* structures in relation to individuals who are *Remuneration Code* staff for only part of a given performance year. This guidance ~~has been adopted by the *FCA*~~ and is available in the *FCA* website at <http://www.fca.org.uk/your->

fca/documents/finalised-guidance/remuneration-code.]

...

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

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19A.3.37 G ~~Non-financial performance metrics should form a significant part of the performance assessment process and should include adherence to effective risk management and compliance with the *regulatory system* and with relevant overseas regulatory requirements. Poor performance as assessed by non-financial metrics such as poor risk management or other behaviours contrary to *firm* values can pose significant risks for a *firm* and should, as appropriate, override metrics of financial performance. The performance assessment process and the importance of non-financial assessment factors in the process should be clearly explained to relevant *employees* and implemented. A balanced scorecard can be a good technique.~~

(1) The non-financial criteria in SYSC 19A.3.36R(2) should include:

- (a) the extent of the *employee's* adherence to effective risk management, and compliance with the *regulatory system* and with relevant overseas regulatory requirements; and
- (b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.

(2) Poor performance, such as poor risk management or other behaviours contrary to *firm* values, can pose significant risks for a *firm* and non-financial metrics should override metrics of financial performance where appropriate.

(3) Aligning variable awards to sustainable financial performance requires *firms* to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per *share* (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentivise highly leveraged activities.

...

19A.3.39 G ~~The requirement for assessment of performance to be in a multi-year framework reflects the fact that profits from a *firm's* activities can be volatile and subject to cycles. The financial performance of *firms* and individual *employees* can be exaggerated as a result. Performance assessment on a moving average of results can be a good way of meeting this requirement. However, other techniques such as good quality risk adjustment and deferral of a sufficiently large proportion of *remuneration* may also be useful.~~

[deleted]

- 19A.3.39 A G A firm should note that the requirement in SYSC 19A.3.36R(2) for financial and non-financial criteria to be taken into account applies wherever remuneration is performance-related including within any assessment of future performance.

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

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- 19A.3.41 E (1) ~~A firm should not award, pay or provide guaranteed variable remuneration in the context of hiring new Remuneration Code staff (X) unless:~~
- (a) ~~it has taken reasonable steps to ensure that the remuneration is not more generous in either its amount or terms (including any deferral or retention periods) than the variable remuneration awarded or offered by Xs previous employer; and~~
 - (b) ~~it is subject to appropriate performance adjustment requirements.~~
- (2) ~~Contravention of (1) may be relied on as tending to establish contravention of the rule on guaranteed variable remuneration (SYSC 19A.3.40R). [deleted]~~

- 19A.3.42 G ~~Guaranteed variable remuneration should be subject to the same deferral criteria as other forms of requirements applicable to variable remuneration awarded by the firm including deferral, malus and clawback.~~

- 19A.3.43 G ~~In the appropriate regulator's view, variable remuneration can be awarded to Remuneration Code staff in the form of retention awards where it is compatible with the Remuneration Code general requirement to do so. The appropriate regulator considers this is likely to be the case only where a firm is undergoing a major restructuring and a good case can be made for retention of particular key staff members on prudential grounds. Proposals to give retention awards should form part of any notice of the restructuring proposals required in accordance with Principle 11 and the general notification requirements in SUP 15.3. The FCA expects that guaranteed variable awards and retention awards should not be common practice for Remuneration Code staff and should be limited to rare, infrequent occurrences.~~

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

- 19A.3.44 C R A firm must notify without delay the appropriate regulator FCA of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio.

[Note: article 94(1)(g)(ii) of CRD]

...

- 19A.3.46 G ~~*Firms* should review existing contractual payments related to termination of employment with a view to ensuring that these are payable only where there is a clear basis for concluding that they are consistent with the *Remuneration Code* general requirement.~~

~~[Note: Standard 12 of the *FSB Compensation Standards*] [deleted]~~

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

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- 19A.3.48 G (1) ~~The Committee of European Banking Supervisors has given guidance on the interpretation of the Directive provision transposed by SYSC 19A.3.47R(3). Its Guidelines provide that this requirement means that the 50% minimum threshold for instruments must be applied equally to the non-deferred and the deferred components; in other words, *firms* must apply the same chosen ratio between instruments and cash for their total variable *remuneration* to both the upfront and deferred components. (Guidelines on Remuneration Policies and Practices, 10 December 2010, paragraph 133.)~~
- (2) ~~This simplified example illustrates the operation of (1). The variable remuneration of a material risk taker (X) is 100, and by SYSC 19A.3.49 R(3) X is required to defer 60%. Xs upfront component is 40 and Xs deferred component is 60. At least 20 of Xs upfront component, and at least 30 of Xs deferred component, must be in instruments referred to in SYSC 19A.3.47R(1). [deleted]~~

Remuneration Principle 12(g): Remuneration structures - deferral

19A.3.49 R ...

- (3) In the case of a variable *remuneration* component:
- (a) ~~of a particularly high amount, £500,000 or more; or~~
- ...
- (4) ~~Paragraph (3)(b) does not apply to a *non-executive director*. [deleted]~~
- ...
- (6) ~~500,000 is a particularly high amount for the purpose of (3)(a). [deleted]~~
- (7) ~~Paragraph (6) is without prejudice to the possibility of lower sums being considered a particularly high amount. [deleted]~~

- 19A.3.50 G (1) Deferred *remuneration* paid in:
- (a) *shares* or *share*-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of *shares*; and
 - (b) ~~Deferred remuneration paid in~~ cash should also be subject to performance criteria.
- (2) The ~~appropriate regulator~~ FCA would generally expect a *firm* to have a *firm*-wide policy (and *group*-wide policy, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable *remuneration* to fixed *remuneration* and with the amount of variable *remuneration*. While any variable *remuneration* component of £500,000 or more paid to *Remuneration Code staff* must be subject to 60% deferral, *firms* should also consider whether lesser amounts should be considered to be ‘particularly high’ taking account, for example, of whether there are significant differences within *Remuneration Code staff* in the levels of variable *remuneration* paid.

Remuneration Principle 12(h): Remuneration structures - performance adjustment, etc.

...

- 19A.3.53 G (1) ~~Variable remuneration may be justified, for example, to incentivise employees involved in new business ventures which could be loss-making in their early stages. [deleted]~~
- (2) The *governing body* (or, where appropriate, the *remuneration committee*) should approve performance adjustment policies, including the triggers under which adjustment would take place. The ~~appropriate regulator~~ FCA may ask *firms* to provide a copy of their policies and expects *firms* to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles

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- 19A.3.54 R (1) Subject to (1A) to (3), the *rules* in SYSC 19A Annex 1.1R to 1.4R apply in relation to the prohibitions on *Remuneration Code staff* being *remunerated* in the ways specified in:
- ...
- (b) SYSC 19A.3.49R (~~non~~-deferred variable *remuneration*);
- ...

...

19A.3.55 G (1) Sections 137H and 137I of the *Act* enables the ~~appropriate regulator~~ FCA 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) are such *rules* and 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 138E(2) of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.

...

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

Rendering contravening provisions of agreements void		
...		
3	G	The effect of 2R, in accordance with sections 137H and 137I 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 appropriate regulator <u>FCA</u> but before the <i>rule</i> comes into effect. For further relevant transitional provisions, see SYSC TP 3.6A.
...		
Notification to the appropriate regulator <u>FCA</u>		
8	G	The appropriate regulator <u>FCA</u> considers any breach of a <i>rule</i> to which this annex applies to be a significant breach which should be notified to the appropriate regulator <u>it</u> in accordance with SUP 15.3.11R (Breaches of rules and other requirements in or under the <i>Act</i>). 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 5R.

...

19D **Dual-regulated firms Remuneration Code**

19D.1 Application and purpose

Who? What? Where?

- 19D.1.1 R (1) The *dual-regulated firms Remuneration Code* applies to:
- ...
- (b) a UK bank;
- ...
- ...
- (2) For a *firm* which falls under (1)(a), (1)(b) or (1)(c), the *dual-regulated firms Remuneration Code* applies, ~~in a prudential context,~~ in relation to:
- ...
- ...
- (4) Otherwise, the *dual-regulated firms Remuneration Code* applies to a *firm* within (1) in the same way as SYSC 4.1.1R (General requirements).
- 19D.1.1A G SYSC 19D.1.1R(2) is applied to the extent of the FCA's powers and regulatory responsibilities.
- 19D.1.2 R Subject Under Part 2 of SYSC 1 Annex 1 in relation to SYSC 4.1.1R (General requirements), and subject to the provisions on group risk systems and controls requirements in SYSC 12 (Group risk systems and controls requirements), the *dual-regulated firms Remuneration Code*:
- ...
- ...
- Purpose
- 19D.1.6 G ...
- (2) The *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. ~~The Committee of European Banking Supervisors published Guidelines on Remuneration Policies and Practices on 10 December 2010. Provisions of the Capital Requirements Regulations 2013 (SI 2013/3115) together with the EBA's Guidelines to article 75 of the CRD relating to the collection of *remuneration* benchmarking information and high earners information have been implemented through SUP 16 Annex 33AR and SUP 16 Annex 34AR. The Guidelines can be found at~~

~~<http://www.eba.europa.eu/documents/10180/757286/EBA-GL-2014-08+%28GLs+on+remuneration+benchmarking+%29.pdf/9d87e18b-ed79-4ceb-a3f6-64928cc26065>~~ and

~~<http://www.eba.europa.eu/documents/10180/757283/EBA-GL-2014-07+%28GLs+on+high+earners+data+collection%29.pdf/da42488f-09e1-4558-ae4e-6258e11b8345>~~. In applying the rules in the dual-regulated firms Remuneration Code, firms should comply with Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at:

<http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b>

Notifications to the FCA

- 19D.1.7 G (1) ~~The~~ In addition to the notification requirements in the dual-regulated firms Remuneration Code does not contain specific notification requirements. However, general circumstances in which the FCA expects to be notified by firms of matters relating to their compliance with requirements under the regulatory system are set out in SUP 15.3 (General notification requirements).

...

...

19D.3 Remuneration principles

Application: groups

...

- 19D.3.2 G SYSC 12.1.13R(2)(dA) requires the firm to ensure that the risk management processes and internal control mechanisms at the level of any UK consolidation group or non-EEA sub-group of which a firm is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the FCA's view, the application of this section at group, parent undertaking and subsidiary undertaking levels in SYSC 19D.3.1R(1) is in line with article 109(2) of the CRD on the application of systems and controls requirements to groups (as in SYSC 12.1.13R).

Application: categories of staff and proportionality

- 19D.3.3 R ...

[**Note:** In addition to the guidance in this section about the dual-regulated firms remuneration principles proportionality rule, the FSA gave FCA provides guidance on the division of firms into categories for the purpose of providing a framework for the operation of the dual-regulated firms

remuneration principles proportionality rule. This guidance is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.]

- 19D.3.4 R (1) *Dual-regulated firms Remuneration Code* staff comprises:
- ...
- (b) subject to (2) and (3), an *employee* of an *overseas firm* in SYSC 19D.1.1R(1)(d) (i.e., an *overseas firm* that would have been a UK bank, building society or *UK designated investment firm* if it had been a *UK domestic firm*) whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who would meet any of the criteria set out in articles 3 or 4(1) of Regulation (EU) 604/2014 of 4 March 2014 if it had applied to him.
- ...

...

Remuneration Principle 5: Control functions

...

- 19D.3.18 G ...
- (2) ~~The need to avoid undue influence is particularly important where *employees* from the control functions are embedded in other business areas. This Remuneration Principle does not prevent the views of other business areas being sought as an appropriate part of the assessment process. [deleted]~~
- (3) ~~The FCA would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. Firms should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration* of *relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see SYSC 6.1.4R(4)). [deleted]~~

Remuneration Principle 6: Remuneration and capital

...

- 19D.3.20 G ~~A *firm* should have variable *remuneration* arrangements that are sufficiently flexible to allow it to direct the necessary resources towards capital building.~~

[deleted]

...

Remuneration Principle 8: Profit-based measurement and risk adjustment

...

19D.3.24 G ...

- (2) ~~A number of risk adjustment techniques and measures are available, and a *firm* should choose those most appropriate to its circumstances.~~ [deleted]
- (3) We consider good practice in this area to be represented by those *firms* who provide a quantitative reference or starting point that explicitly includes risk-adjusted metrics, before the application of more discretionary factors. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered, including non-financial risks such as reputation, conduct, *client* outcomes, values and strategy.
- (4) The *FCA* expects a *firm* to be able to provide it with details of all adjustments that the *firm* has made whether through application of formulae or the exercise of discretion. This will enable the *FCA* to ~~ensure that~~ consider whether the *firm's* risk adjustment framework is sufficiently robust. Where discretion has been applied, the *firm* should be able to provide a clear explanation for, and quantification of such adjustments.
- (5) A *firm* should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the *governing body* or *remuneration committee* for this purpose.

...

19D.3.28 G ...

- (2) ~~Management accounts should provide profit data at such levels within the *firm's* structure to enable it to see as accurate a picture of contributions of relevant staff to a *firm's* performance as is reasonably practicable.~~ [deleted]

...

19D.3.30 G (1)

- ~~Aligning variable awards to sustainable financial performance requires *firms* to make appropriate ex ante adjustments to take account of the potential for future unexpected losses. Performance measures commonly used (such as earnings per *share* (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer term risk factors and have a tendency to incentive~~

~~highly leveraged activities.~~

- (2) ~~Long term incentive plans should be treated as pools of variable remuneration. Firms that have long term incentive plans should ensure that the structure of the award is compliant with the dual-regulated firms Remuneration Code's deferral and vesting requirements and that performance conditions required for vesting are appropriate. The valuation of the award should be based on its value when the award is granted, and determined using an appropriate technique.~~
- (3) ~~Firms should demonstrate that both the ex-ante intrinsic risks and the ex-post crystallisation of risk event have been considered as part of their risk adjustment approach.~~

~~[Note: In addition to the guidance in this section on the Remuneration Principle 8 (Profit based measurement and risk adjustment), the FSA gave guidance on the application of the requirements on risk adjustments. This guidance is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.] [deleted]~~

...

Remuneration Principle 12: Remuneration structures - introduction

19D.3.35 G ...

~~[Note: The FSA also gave guidance on the application of certain rules on remuneration structures about individuals who are dual-regulated firms Remuneration Code staff for only part of a given performance year. This guidance is available on the FCA website at <https://www.fca.org.uk/firms/being-regulated/remuneration-codes>.]~~

...

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

...

- 19D.3.40 G (1) The non-financial criteria in SYSC 19D.3.39R(1)(b) should include;
- (a) the extent of the *employee's* adherence to effective risk management, and compliance with the *regulatory system* and with relevant overseas regulatory requirements; and
- (b) metrics relating to conduct, which should comprise a substantial portion of the non-financial criteria.
- (2) Aligning variable awards to sustainable financial performance requires firms to make appropriate ex-ante adjustments to take account of the potential for future unexpected losses. Performance

measures commonly used (such as earnings per share (EPS), total shareholder return (TSR) and return on equity (RoE)) are not suitably adjusted for longer-term risk factors and have a tendency to incentive highly leveraged activities.

19D.3.41 G Poor performance ~~assessed by non-financial metrics~~, such as poor risk management or other behaviours contrary to *firm* values, can pose significant risks for a *firm* and non-financial metrics should, ~~as appropriate,~~ override metrics of financial performance where appropriate.

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

...

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

...

19D.3.46 G ...

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

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

...

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

...

19D.3.55 G ~~A *firm* should review existing contractual payments related to termination of employment with a view to ensuring that these are payable only where there is a clear basis for concluding that they are consistent with SYSC 19D.2.1R, which states that remuneration policies must be consistent with, and promote, sound and effective risk management.~~

~~[Note: Standard 12 of the *FSB Compensation Standards*] [deleted]~~

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

...

- 19D.3.57 G ~~The FCA would normally consider a period of retention of six months to be sufficient, provided that other risk management techniques within the firm are operating to secure sound and effective risk management. [deleted]~~
- 19D.3.58 G (1) ~~The Committee of European Banking Supervisors has given guidance on the interpretation of the CRD provision transposed by SYSC 19D.3.56R(3). Its guidelines provide that this requirement means that the 50% minimum threshold for instruments must be applied equally to the non-deferred and the deferred components; i.e., firms must apply the same chosen ratio between instruments and cash for their total variable remuneration to both the upfront and deferred components. (Guidelines on Remuneration Policies and Practices, 10 December 2010, paragraph 133, <https://www.eba.europa.eu/documents/10180/106961/Guidelines.pdf>.)~~
- (2) ~~This simplified example illustrates the operation of (1). The variable remuneration of a material risk taker (X) is 100 and, under SYSC 19D.3.59R(2), X is required to defer 60%. X's upfront component is 40 and X's deferred component is 60. At least 20 of X's upfront component, and at least 30 of X's deferred component, must be in instruments referred to in SYSC 19D.3.56R(1). [deleted]~~

...

Effect of breaches of the Remuneration Principles

...

- 19D.3.67 R (1) Subject to (2) to (7), the rules in SYSC 19D Annex 1.1R to 1.6R apply in relation to the prohibitions on *dual-regulated firms Remuneration Code staff* being remunerated in the ways specified in:
- ...
- (b) SYSC 19D.3.59R (~~non~~-deferred variable remuneration);
- ...
- ...
- (4) Condition 2 is that the firm:
- ...
- (b) is part of a group containing a firm that has relevant total assets exceeding £50 billion and that is a UK bank, a building society or a UK designated investment firm.
- ...
- (6) This rule does not apply in relation to the prohibition on *dual-regulated firms Remuneration Code staff* being remunerated in the

way specified in SYSC 19D.3.44R (guaranteed variable remuneration) if both the conditions in paragraphs (2)(b) and (3) (2)(c) of that *rule* are met.

...

...

Sch 2 Notification requirements

Sch 2.1G ~~There are no notification or reporting requirements in SYSC.~~

(1) The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification requirements.

(2) It is not a complete statement of those requirements and should not be relied on as if it were.

(3) Table

<u>Handbook reference</u>	<u>Matter to be notified</u>	<u>Content of the notification</u>	<u>Trigger event</u>
<u>SYSC 19A.3.4R(3)</u>	<u>Where an <i>overseas firm</i> deems an <i>employee</i> not to be <i>Remuneration Code staff</i></u>	<u>Matter described in SYSC 19A.3.4R(3)</u>	<u>Matter described in SYSC 19A.3.4R(3)</u>
<u>SYSC 19A.3.44CR</u>	<u>The decision by the shareholders, members or owners of the <i>firm</i> to approve a <i>higher maximum ratio</i> between the <i>fixed and variable components</i> of total <i>remuneration</i></u>	<u>Matter as described in SYSC 19A.3.44CR</u>	<u>Matter as described in SYSC 19A.3.44CR</u>
<u>SYSC 19D.3.4R(3)</u>	<u>Where an <i>overseas firm</i> deems an <i>employee</i> not</u>	<u>Matter described in SYSC 19D.3.4R(3)</u>	<u>Matter described in SYSC 19D.3.4R(3)</u>

	to be <i>dual-regulated firms Remuneration Code staff</i>		
<u>SYSC 19D.3.51R</u>	<u>The decision by the shareholders, members or owners of the firm to approve a higher maximum ratio between the fixed and variable components of total remuneration</u>	<u>Matter as described in SYSC 19D.3.51R</u>	<u>Matter as described in SYSC 19D.3.51R</u>