

**EXITING THE EUROPEAN UNION: SENIOR MANAGEMENT ARRANGEMENTS,
SYSTEMS AND CONTROLS (REMUNERATION CODES) (AMENDMENTS)
INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
 - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. Annex A to this instrument comes into force on the 11 December 2020. The rest of this instrument comes into force on IP completion day within the meaning of section 39 of the European Union (Withdrawal Agreement) Act 2020.

Revocation of earlier instruments

- C. Annex A to this instrument revokes in part certain instruments made previously by the FCA.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex B to this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex C 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 Exiting the European Union: Senior Management Arrangements, Systems and Controls (Remuneration Codes) (Amendments) Instrument 2020.

By order of the Board
10 December 2020

Annex A

Revocation in part of earlier FCA instruments

Annex B of The Exiting the European Union: High Level Standards (Amendments) Instrument 2019 (FCA 2019/20) is revoked insofar as it amends section 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC).

Part 1 of Annex A of The Exiting the European Union: Miscellaneous (Amendments) Instrument 2019 The Exiting the European Union: High Level Standards (Amendments) Instrument 2019 (FCA 2019/29) is revoked insofar as it amends section 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (see Part 1 of Annex A of that instrument).

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

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

Amend the following definitions as shown.

<i>large institution</i>	has the meaning in article 4(1)(146) of the EU-CRR <u>UK CRR</u> .
<i>Material Risk Takers Regulation 2020</i>	means the draft regulatory technical standards on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material impact on an institution's risk profile, published by the <i>EBA</i> on 18 June 2020, <u>which is applied subject to the omission of the final sentence of article 7(4).</u>

Annex C

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

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

19D Dual-regulated firms Remuneration Code

19D.1 Application and purpose

Who? What? Where?

- 19D.1.1 R (1) ...
- (d) an *overseas firm* that;
- (i) ~~is not an EEA firm;~~
- (ii) ~~has its head office outside the EEA; and~~
- (iii) would be a *firm* in (a), (b) or (c) 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*.
- (2) ...
- (a) its *UK activities*; and
- (b) ~~its passported activities carried on from a branch in another EEA State; and [deleted]~~
- ...
- ...
- ...
- 19D.1.6 G (1) ...
- (2) The *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *rules* in the *dual-regulated firms Remuneration Code*, *firms* should comply with the EBA “Guidelines on sound remuneration policies under articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under article 450 of Regulation (EU) No 575/2013”, 21 December 2015 (EBA/GL/2015/22). ~~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

...

- 19D.1.9 G Except as provided in the *Glossary*, any expression used in, or for the purpose of, this chapter which is defined or used in *EU-CRR* UK CRR has the meaning given by, or used in, those Regulations.

...

19D.3 Remuneration principles

Application: groups

- 19D.3.1 R (1) A *firm* must apply the requirements of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is ~~not an EEA State~~ outside the United Kingdom.
- (2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the *dual-regulated firms Remuneration Code* within *UK consolidation groups* and ~~non-EEA sub-groups~~ non-UK sub-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~~ non-UK sub-group of which a *firm* is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the *FCA*'s view, the application of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels in SYSC 19D.3.1R(1) is in line with ~~article 109(2) of the CRD~~ on the application of systems and controls requirements to *groups* (as in SYSC 12.1.13R).

...

...

- 19D.3.2 R (1) ...
- B
- (a) ...
- (b) the *firm's average total assets*, calculated on an individual basis in accordance with the UK legislation that

implemented CRD V, and the ~~EU-CRR~~ UK CRR, are less than or equal to ~~€5 billion~~ £4 billion;

- (2) For a *firm* within the scope of SYSC 19D.1.1R(1)(d), the *rules* in (3) do not apply if the *average total assets* that relate to the activities of the *UK branch* are less than or equal to ~~€5~~£4 billion.

...

19D.3.2 R (1) The value in SYSC 19D.3.2BR(1)(b) or (2) is increased to ~~€15 billion~~ £13 billion if:
C

- (a) the *firm* meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the ~~EU-CRR~~ UK CRR; and
- (b) ...

...

Application: categories of staff and proportionality

...

19D.3.4 R ...

(1A) ...

(a) ...

...

(c) ...

(i) ...

(A) ~~€500,000~~ £440,000; and

...

...

(2) ...

(a) ...

(i) ...

...

(ii) was awarded total *remuneration* of less than ~~€750,000~~ £658,000 in the previous year;

...

...

- 19D.3.5 G Where an *overseas firm* in SYSC 19D1.1.R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) wishes to deem an *employee* who earns more than ~~€750,000~~ £658,000 not to be *dual-regulated firms Remuneration Code staff*, the *overseas firm* may apply for a *waiver* of the requirement in SYSC 19D.3.4R in respect of that *employee*.

...

Remuneration Principle 11: Non-compliance with the dual-regulated firms Remuneration Code

- 19D.3.3 R A *firm* must ensure that variable *remuneration* is not paid through
4 vehicles or methods that facilitate non-compliance with obligations arising from the *Remuneration Code*, the ~~EU-CRR~~ UK CRR or the UK legislation that implemented the CRD.

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

Remuneration Principle 12: Remuneration structures - introduction

- 19D.3.3 R (1) ...
5
- (a) ...
- (b) Condition 2 is that X's total annual variable *remuneration* is no more than ~~€50,000~~ £44,000.

...

...

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

...

- 19.3.50 R ...
- (1) ...
- ...
- (3) the *firm* must:
- ...
- (b) demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the

UK legislation that implemented the CRD and the EU-CRR UK CRR, having particular regard to the *firm's own funds* obligations;

...

...

19D.3.5 R A *firm* may apply a discount rate to a maximum of 25% of an *employee's*
2 total variable *remuneration* provided it is paid in instruments that are deferred for a period of not less than five years.

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

[**Note:** on 27 March 2014, the *EBA* published “Guidelines on the applicable notional discount rate for variable remuneration”, 27 March 2014 (EBA/GL/2014/01).]

19D.3.5 R In applying the discount rate in SYSC 19D.3.52R, a *firm* must apply the
3 ~~*EBA Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014.*~~ [deleted]

~~**Note:** the *EBA Guidelines on the applicable notional discount rate for variable remuneration* can be found at:
<http://www.eba.europa.eu/documents/10180/643987/EBA-GL-2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9>~~

...

Effect of breaches of the Remuneration Principles

...

19D.3.6 R (1) ...
7

...

(7) ...

(a) ...

(b) Condition 2 is that X's annual variable *remuneration* is no more than €50,000 £44,000.

...