

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“FCA”) 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 137A (The FCA’s general rules);
 - (2) section 137H (General rules about remuneration);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 8 December 2023.

Amendments to the FCA 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 Annex to this instrument, the notes (indicated by “*Editor’s 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 Instrument 2023.

By order of the Board
4 December 2023

Annex A

Amendments to the Glossary of definitions

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

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

sub-consolidated basis (in relation to a *group* to which the *UK CRR* applies) has the meaning given in Article 4(1)(49) of the *UK CRR*.

Amend the following definitions as shown.

average total assets means the ~~arithmetic mean of the firm's total assets on~~ recent average of the firm's total assets calculated as follows:

- (1) for a *firm* within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), ~~each of its last four *accounting reference dates*; or:~~
 - (a) by identifying the occasions (due dates) in the preceding 36 months by which the firm was required to report its total assets; and
 - (b) by calculating the arithmetic mean of the total assets that the firm was required to report on those occasions; or
- (2) for a *firm* within the scope of SYSC 19D.1.1R(1)(d), ~~31 December of each of the preceding four years~~ by calculating the arithmetic mean of the firm's total assets on each of the last 3 *accounting reference dates*.

control functions (1) ~~(except in 2) has the meaning in article 3 of the *Material Risk Takers Regulation 2020*. [deleted]~~

...

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 the *Material Risk Takers Regulation 2020* means a 'material risk taker' as defined in Chapter 3 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time).~~

[*Editor's note*: insert link to <https://www.prarulebook.co.uk/rulebook/Content/Chapter/292169/12-01-2023#292195>]

*managerial
responsibility*

(1) ~~(except in SYSC 19G) has the meaning in article 2 of the *Material Risk Takers Regulation 2020*. [deleted]~~

...

*material business
unit*

~~has the meaning in article 4 of the *Material Risk Takers Regulation 2020* means a 'material business unit' as defined in Chapter 1 of the Remuneration Part of the *PRA Rulebook* (as amended from time to time).~~

~~<https://www.prarulebook.co.uk/rulebook/Content/Chapter/292167/12-01-2023>~~

Delete the following definition. The text is not shown struck through.

*Material Risk Takers
Regulation 2020*

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 *EBA* on 18 June 2020, which is applied subject to the omission of the final sentence of article 7(4).

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, unless otherwise stated.

19D Dual-regulated firms Remuneration Code

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19D.3 Remuneration principles

Application: groups

- 19D.3.1 R (1) ~~A firm that is a member of a group 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 outside the United Kingdom.;~~
- (a) comply with this section on an individual basis; and
- (b) comply, and ensure that the other members of the group comply, with this section on a consolidated basis or sub-consolidated basis, including in respect of those subsidiaries established in a country or territory which is outside the United Kingdom.
- ...
- 19D.3.1 G (1) Where the dual-regulated firms Remuneration Code applies on a consolidated basis, this means treating the firms in the UK consolidation group as if they formed a single firm.
- A (2) Where the dual-regulated firms Remuneration Code applies on a sub-consolidated basis, this means treating the firms in the UK consolidation group to which sub-consolidation applies as if they formed a single firm.
- ...
- 19D.3.2 R (1) For a firm within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), B the ~~rules~~ provisions in (3) do not apply if:
- (a) ~~the firm is not a large institution; and [deleted]~~
- (b) ~~the firm's average total assets, calculated on an individual basis in accordance with the UK legislation that implemented~~

~~CRD V and the UK CRR, are less than or equal to £4 billion;~~
firm:

- (i) has average total assets of less than or equal to £4 billion; or
 - (ii) has average total assets of less than or equal to £20 billion, and meets the conditions set out in Chapter 2A.1 of the Remuneration Part of the PRA Rulebook (as amended from time to time); and
- (c) where the firm is part of a group that contains any other firm which is subject to these rules on an individual basis, the requirements of (1A) are met.

(1A) The requirements of this paragraph are met where:

- (a) both of the following criteria are satisfied:
 - (i) each firm in the group to which these rules apply on an individual basis has average total assets less than or equal to £4 billion; and
 - (ii) where any firm in the group to which these rules apply on an individual basis is a member of a UK consolidation group, the UK consolidation group has average total assets less than or equal to £4 billion on a consolidated basis; or
- (b) all of the following criteria are satisfied:
 - (i) each firm in the group to which these rules apply on an individual basis has average total assets that are less than or equal to £20 billion;
 - (ii) where any firm in the group to which these rules apply on an individual basis is a member of a UK consolidation group, the UK consolidation group has average total assets that are less than or equal to £20 billion on a consolidated basis;
 - (iii) each firm in the group to which these rules apply on an individual basis meets the following conditions in the Remuneration Part of the PRA Rulebook (as amended from time to time):
 - (A) for a firm within the scope of SYSC 19D.1.1R(1)(a), (1)(b) or (1)(c), the conditions in Chapter 2A.1; or

- (B) for a firm within the scope of SYSC 19D.1.1R(1)(d), the conditions in Chapter 2B.1; and
- (iv) where any firm in the group to which these rules apply on an individual basis is a member of a UK consolidation group, the UK consolidation group meets the conditions in (1), (2) and (3) of Chapter 2A.1 of the Remuneration Part of the PRA Rulebook (as amended from time to time) on a consolidated basis.
- (1B) References in (1A) to a firm's average total assets are, for any firm within the scope of SYSC 19D.1.1R(1)(d), to be read as references to the average total assets that relate to the activities of the UK branch.
- (2) For a firm within the scope of SYSC 19D.1.1R(1)(d), the ~~rules~~ provisions 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 £4 billion;~~:
- (a) either:
- (i) the average total assets that relate to the activities of the UK branch are less than or equal to £4 billion; or
- (ii) the average total assets that relate to the activities of the UK branch are less than or equal to £20 billion and the conditions set out in Chapter 2B.1 of the Remuneration Part of the PRA Rulebook (as amended from time to time) are met; and
- (b) where the firm is part of a group that contains any other firm which is subject to these rules on an individual basis, the requirements of (1A) are met.
- (3) The ~~rules~~ provisions referred to in (1) and (2) are:
- (a) SYSC 19D.3.31R(2) and (3) (pension policy);
- (b) SYSC 19D.3.56R (retained shares or other instruments); ~~and~~
- (c) SYSC 19D.3.59R (deferral); and
- (d) SYSC 19D.3.61R(2), (3), (3A), (4) and (5), SYSC 19D.3.62R, SYSC 19D.3.63E and SYSC 19D.3.64R (performance adjustment (affordability, malus, clawback)).

~~[Note: article 94(3)(a) of CRD V]~~

- (4) If a firm has not yet been required to report its total assets, the calculations in respect of average total assets shall instead be done

on the basis of the *firm's* reasonable forecast of its total assets as at the first occasion on which it will be required to report them.

- 19D.3.2 R (1) The value in SYSC 19D.3.2BR(1)(b) or (2) is increased to £13 billion
C if:
- (a) the *firm* meets the criteria set out in points (145)(c), (d) and (e) of Article 4(1) of the *UK CRR*; and
 - (b) the increase is appropriate taking into account the *firm's* nature, the scope and complexity of its activities, its internal organisation and (if applicable) the characteristics of the *group* to which it belongs.
- (2) For a *firm* within the scope of SYSC 19D.1.1R(1)(d), the criteria referred to in (1)(a) must be assessed on the basis of the activities of the *UK branch*.

[**Note:** article 94(4) of *CRD V*] [deleted]

Application: categories of staff and proportionality

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- 19D3.4 R (1) ~~*Dual-regulated firms Remuneration Code staff* comprises:~~
- (a) ~~an *employee* of a *dual-regulated firm* 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 the *Material Risk Takers Regulation 2020*; or~~
 - (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 6 or 7(1) of the *Material Risk Takers Regulation 2020* if it had applied to them.~~
- (1A) ~~For the purposes of paragraph (1), *dual-regulated firms Remuneration Code staff* must, at least, include:~~
- (a) ~~all members of the *firm's* *management body* and *senior management*;~~
 - (b) ~~staff members with *managerial responsibility* over the *firm's* *control functions* or *material business units*;~~

- (e) ~~staff members entitled to significant remuneration in the preceding financial year, provided that the following conditions are met:~~
- (i) ~~the staff member's remuneration is equal to or higher than:~~
 - (A) ~~£440,000; and~~
 - (B) ~~the average remuneration awarded to the members of the firm's management body and senior management referred to in point (a);~~
 - (ii) ~~the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile.~~

~~[Note: article 92(3) of CRD V]~~

(2) ~~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) may deem an employee not to be a dual-regulated firm's Remuneration Code staff where:~~

- (a) ~~the employee:~~
 - (i) ~~would meet the criteria in article 7(1) of the Material Risk Takers Regulation 2020;~~
 - (ii) ~~would not meet any of the criteria in article 6 of the Material Risk Takers Regulation 2020; and~~
 - (iii) ~~was awarded total remuneration of less than £658,000 in the previous year;~~

~~and~~

- (b) ~~the overseas firm determines that the professional activities of the employee do not have a material impact on its risk profile on the grounds described in article 7(2) of the Material Risk Takers Regulation 2020; and~~
- (c) ~~the overseas firm has obtained the prior written approval of the PRA in accordance with Chapter 3 of the Remuneration Part of the PRA Rulebook.~~

~~[Note: article 92(2) of CRD V and articles 6 and 7 of the Material Risk Takers Regulation 2020.] [deleted]~~

19D.3.4 G (1) Dual-regulated firms Remuneration Code staff is a term defined in
 A the Handbook Glossary by reference to the requirements of Chapter 3 of the Remuneration Part of the PRA Rulebook (as amended from time to time).

(2) Expectations in relation to the identification of dual-regulated firms Remuneration Code staff are considered further in non-Handbook guidance at [Editor’s note: insert link to <https://www.fca.org.uk/publication/finalised-guidance/fg23-4.pdf>]

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 £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. [deleted]~~

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

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19D.3.4 G ...
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(2) A 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~~ control functions than for the business units they control.

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Effect of breaches of the Remuneration Principles

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19D.3.6 R ...
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(8) In relation to (7):

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(b) the amount of any remuneration is:

...

(ii) otherwise, whichever of the following is greatest:

...

(C) the cost of providing it; at the time of the award;

...

...

19D Detailed provisions on voiding and recovery (SYSC 19D.3.66R and SYSC Annex 1 19D.3.67R)

Rendering contravening provisions of agreements void		
...		
6	R	For the purposes of this chapter <u>annex</u> , it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the <i>United Kingdom</i> , or a part of the <i>United Kingdom</i> .
...		

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27 Senior managers and certification regime: Certification regime

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27.8 Definitions of the FCA certification functions

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Material risk takers

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27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
(1) An <i>SMCR banking firm</i> , including an <i>EEA SMCR banking firm</i>	Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the <i>firm</i> in column (1) of this row (1). This includes any person who meets any of the criteria set out in articles 6 to 8 of the <i>Material Risk Takers</i>

	<i>Regulation 2020 (criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile).</i>
...	

...

Insert the following new section, SYSC TP 12, after SYSC TP 11 (MIFIDPRU Remuneration Code transitional provision). The text is not underlined.

TP 12 Updates to the dual-regulated firms Remuneration Code transitional provision

	Material to which the transitional provision applies	R/G	Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1	The changes made to SYSC 19D by the Senior Management Arrangements, Systems and Controls Instrument 2023.	R	<i>A firm must apply SYSC 19D in the form in which it applied on 7 December 2023 to remuneration awarded in respect of a performance year starting before 8 December 2023.</i>	8 December 2023	8 December 2023