CAPITAL REQUIREMENTS DIRECTIVE IV (GOVERNANCE AND REMUNERATION) INSTRUMENT 2013

Powers exercised by the Financial Conduct Authority

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) section 137A (The FCA's general rules);
(2) section 137H (General rules about remuneration);
(3) section 137T (General supplementary powers);
(4) section 138C (Evidential provisions); and
(5) 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 as follows:

(1) Annex A and Part 1 of Annex B come into force on 1 January 2014;
(2) Part 2 of Annex B comes into force on 1 July 2014.

Amendments to the FCA's 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 Annex B 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 Capital Requirements Directive IV (Governance and Remuneration) Instrument 2013.

By order of the Board of the Financial Conduct Authority
12 December 2013

Annex A

Amendments to the Glossary of definitions

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

BIPRU Remuneration Code	*SYSC* 19C (BIPRU Remuneration Code).
BIPRU Remuneration Code staff	for a *BIPRU firm* and a *third country BIPRU firm*, has the meaning given in *SYSC* 19C.3.4R.
BIPRU remuneration principles proportionality rule	(in *SYSC* 19C) has the meaning given in *SYSC* 19C.3.3R.
CRR firm	(for the purposes of *SYSC*) a *UK bank*, *building society* and an *investment firm* that is subject to the *EU CRR*.

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.

Part 1: Comes into force on 1 January 2014

1 Annex 1 Detailed application of SYSC

…

Part 3	Tables summarising the application of the common platform requirements to different types of firm

…

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
SYSC 4.1.1R [FCA] [PRA]	Rule ~~but *SYSC* 4.1.1R(2) applies only to a *BIPRU firm*~~	Rule ~~but *SYSC* 4.1.1R(2) applies only to a *BIPRU firm*~~	Rule ~~but *SYSC* 4.1.1R(2) applies only to a *BIPRU firm*~~	Rule ~~but *SYSC* 4.1.1R(2) applies only to a *third country BIPRU firm*~~
…				
<u>*SYSC* 4.1.1CR [FCA]</u>	<u>Rule for a *BIPRU firm*</u>	<u>Rule for a *BIPRU firm* that is a *UCITS investment firm*</u>	<u>Not applicable</u>	<u>Not applicable</u>
…				

SYSC 4.1.2AAR [FCA]	Rule for a *BIPRU firm*	Rule for a *BIPRU firm* that is a *UCITS investment firm*	Not applicable	Not applicable
…				
SYSC 4.1.3R [FCA] [PRA]	~~Rule applies only to a *BIPRU firm*~~ [deleted]	~~Rule for a *UCITS investment firm*; otherwise not applicable~~ [deleted]	~~Not applicable~~ [deleted]	~~Not applicable~~ [deleted]
…				
SYSC 4.3A.-1R [FCA]	Rule applicable to *CRR firms*	Rule for a *CRR* firm that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC 4.3A.1R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC 4.3A.2R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC 4.3A.3R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC 4.3A.4R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC 4.3A.5R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
…				
SYSC 4.3A.7R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC	Rule applicable	Rule for a *CRR*	Not applicable	Not

4.3A.8R [FCA] [PRA]	to *CRR firms*	*firm* that is a *UCITS investment firm*		applicable
SYSC 4.3A.9R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC 4.3A.10R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
SYSC 4.3A.11R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
…				

…

Provision SYSC 7	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
…				
SYSC 7.1.7BBG [FCA]	Guidance applies only to a *BIPRU firm*	Guidance applies only to a *BIPRU firm* that is a *UCITS investment firm*	Not applicable	Not applicable
…				
SYSC 7.1.8G ~~(1)(2)~~ [FCA] [PRA]	~~(1) Guidance applies to a *BIPRU firm* (2) Guidance~~ [deleted]	~~(1) Guidance for a *UCITS investment firm*; otherwise not applicable (2) Guidance~~	~~Not applicable~~ [deleted]	~~(1) Not applicable (2) Guidance~~ [deleted]

		[deleted]		
…				
SYSC 7.1.16CR [FCA]	Rule applies to a *CRR firm*	Not applicable	Not applicable	Not applicable
SYSC 7.1.17R [FCA] [PRA]	Rule applies to a *CRR firm*	Rule for a *UCITS investment firm* that is a *CRR firm*, otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.18R [FCA] [PRA]	Rule applies to a *CRR firm*	Rule for a *UCITS investment firm* that is a *CRR firm*, otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.18AG [FCA]	Guidance applies to a *CRR* firm	Guidance for a *UCITS investment firm* that is a *CRR firm*, otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.18BR [FCA]	Rule applies to a *CRR* firm	Rule for a *UCITS investment firm* that is a *CRR firm*, otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.19R [FCA] [PRA]	Rule applies to a *CRR firm*	Rule for a *UCITS investment firm* that is a *CRR firm*, otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.20R [FCA] [PRA]	Rule applies to a *CRR firm*	Rule for a *UCITS investment firm* that is a *CRR firm*, otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.21R [FCA] [PRA]	Rule applies to a *CRR firm*	Rule for a *UCITS investment firm* that is a *CRR firm*, otherwise	Not applicable	Not applicable

		not applicable		
SYSC 7.1.22R [FCA] [PRA]	Rule applies to a *CRR firm*	Rule for a *UCITS investment firm* that is a *CRR firm*, otherwise not applicable	Not applicable	Not applicable

…

4.1 General requirements

…

4.1.1 R …

(2) ~~A *BIPRU firm* and a *third country BIPRU firm* must comply with the *Remuneration Code*.~~ [deleted]

[**Note**: ~~article 22(1) of the *Banking Consolidation Directive*~~ article 74(1) of *CRD*, article 13(5) second paragraph of *MiFID*, article 12(1)(a) of the *UCITS Directive*, and article 18(1) of *AIFMD*]

…

4.1.1C R A *BIPRU firm* and a *third country BIPRU firm* must comply with the *BIPRU Remuneration Code.*

4.1.2 R For a *common platform firm*, the arrangements, processes and mechanisms referred to in *SYSC* 4.1.1R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the *common platform firm's* activities and must take into account the specific technical criteria described in *SYSC* 4.1.7R, *SYSC* 5.1.7R, *SYSC* 7 and (for a ~~*BIPRU firm* and a *third country BIPRU firm*~~ *firm* to which *SYSC* 19A applies) *SYSC* 19A.

[**Note**: ~~article 22(2) of the *Banking Consolidation Directive*~~ article 74(2) of *CRD*]

…

4.1.2AA R Where *SYSC* 4.1.2R applies to a *BIPRU firm*, it must take into account the specific technical criteria described in *SYSC* 19C.

…

Mechanisms and procedures for a ~~BIPRU~~ firm

4.1.3 R ~~A *BIPRU firm* must ensure that its internal control mechanisms and administrative and accounting procedures permit the verification of its compliance with *rules* adopted in accordance with the *Capital Adequacy*~~

~~*Directive* at all times.~~ [deleted]

~~[**Note**: article 35(1) final sentence of the *Capital Adequacy Directive*]~~

…

4.2 Persons who effectively direct the business

…

4.2.2 R A *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK* branch of a *non-EEA bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in *SYSC* 4.2.1R.

[**Note**: article 9(4) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and ~~11(1) first paragraph of the *Banking Consolidation Directive*~~ article 13(1) of *CRD*]

…

Insert the following new section after *SYSC* 4.3. The text is not underlined.

4.3A CRR firms

Management body

4.3A.-1 R In *SYSC* 4.3A.6R and *SYSC* 4.3A.8R a '*CRR firm* that is *significant*' means a *significant IFPRU firm.*

4.3A.1 R A *CRR firm* must ensure that the *management body* defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the *firm*, including the segregation of duties in the organisation and the prevention of conflicts of interest. The *firm* must ensure that the *management body*:

(1) has overall responsibility for the *firm*;

(2) approves and oversees implementation of the *firm's* strategic objectives, risk strategy and internal governance;

(3) ensures the integrity of the *firm's* accounting and financial reporting systems, including financial and operational controls and compliance with the *regulatory system*;

(4) oversees the process of disclosure and communications;

(5) has responsibility for providing effective oversight of *senior management*; and

(6) monitors and periodically assesses the effectiveness of the *firm's* governance arrangements and takes appropriate steps to address any deficiencies.

[**Note**: article 88(1) of *CRD*]

4.3A.2 R A *CRR firm* must ensure that the chairman of the *firm's management body* does not exercise simultaneously the *chief executive function* within the same *firm*, unless justified by the *firm* and authorised by the *appropriate regulator*.

[**Note**: article 88(1)(e) of *CRD*]

4.3A.3 R A *CRR firm* must ensure that the members of the *management body* of the *firm*:

(1) are of sufficiently good repute;

(2) possess sufficient knowledge, skills and experience to perform their duties;

(3) possess adequate collective knowledge, skills and experience to understand the *firm's* activities, including the main risks;

(4) reflect an adequately broad range of experiences;

(5) commit sufficient time to perform their functions in the *firm*; and

(6) act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of *senior management* where necessary and to effectively oversee and monitor management decision-making.

[**Note**: article 91(1)-(2) and (7)-(8) of *CRD*]

4.3A.4 R A *CRR firm* must devote adequate human and financial resources to the induction and training of members of the *management body*.

[**Note**: article 91(9) of *CRD*]

4.3A.5 R A *CRR firm* must ensure that the members of the *management body* of the *firm* do not hold more directorships than is appropriate, taking into account the individual circumstances and the nature, scale and complexity of the *firm's* activities.

[**Note**: article 91(3) of *CRD*]

4.3A.6 [to follow]

4.3A.7 R For the purposes of *SYSC* 4.3A.5R and *SYSC* 4.3A.6R:

(1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and

(2) the following shall count as a single directorship:

(a) executive or non-executive directorships held within the same *group*; or

(b) executive or non-executive directorships held within:

(i) *firms* that are members of the same institutional protection scheme provided that the conditions set out in article 113(7) of the *CRR* are fulfilled; or

(ii) *undertakings* (including non-financial entities) in which the *firm* holds a *qualifying holding*.

[**Note**: article 91(4) and (5) of *CRD*]

Nomination Committee

4.3A.8 R A *CRR firm* that is *significant* must:

(1) establish a nomination committee composed of members of the *management body* who do not perform any executive function in the *firm*;

(2) ensure that the nomination committee is able to use any forms of resources the nomination committee deems appropriate, including external advice; and

(3) ensure that the nomination committee receives appropriate funding.

[**Note**: article 88(2) of *CRD*]

4.3A.9 R A *CRR firm* that has a nomination committee must ensure that the nomination committee:

(1) engage a broad set of qualities and competences when recruiting members to the *management body* and puts in place a policy promoting diversity on the *management body*;

(2) identifies and recommends for approval, by the *management body* or by general meeting, candidates to fill *management body* vacancies, having evaluated the balance of knowledge, skills, diversity and experience of the *management body*;

(3) prepares a description of the roles and capabilities for a particular appointment, and assesses the time commitment required;

(4) decides on a target for the representation of the underrepresented gender in the *management body* and prepares a policy on how to

increase the underrepresented gender in the *management body* to meet that target;

(5) periodically, and at least annually, assesses the structure, size, composition and performance of the *management body* and makes recommendations to the *management body* with regard to any changes;

(6) periodically, and at least annually, assesses the knowledge, skills and experience of individual members of the *management body* and of the *management body* collectively, and reports this to the *management body*;

(7) periodically reviews the policy of the *management body* for selection and appointment of *senior management* and makes recommendations to the *management body*; and

(8) in performing its duties, and to the extent possible, on an ongoing basis, takes account of the need to ensure that the *management body's* decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interest of the *firm* as a whole.

[**Note**: article 88(2) and article 91(10) of *CRD*]

4.3A.10 R A *CRR firm* that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the *management body* and for that purpose a *CRR firm* that does not have a nomination committee must put in place a policy promoting diversity on the *management body*.

[**Note**: article 91(10) of *CRD*]

Website

4.3A.11 R A *CRR firm* that maintains a website must explain on the website how it complies with the requirements of *SYSC* 4.3A.1R to *SYSC* 4.3A.3R and *SYSC* 4.3A.4R to *SYSC* 4.3A.11R.

[**Note**: article 96 of *CRD*]

Amend the following as shown.

7.1 Risk control

…

7.1.4 R The ~~*senior personnel*~~ <u>*management body*</u> of a *common platform firm* must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the *firm* is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

[**Note**: ~~annex V paragraph 2 of the *Banking Consolidation Directive*~~ article 76(1) of *CRD*]

…

7.1.7B G In setting the method of determining the *remuneration* of *employees* involved in the risk management function, ~~*BIPRU firms*~~ *firms* that *SYSC* 19A applies to will also need to comply with the *Remuneration Code*.

…

7.1.7BB G In setting the method of determining the *remuneration* of *employees* involved in the risk management function, *BIPRU firms* will also need to comply with the *BIPRU Remuneration Code.*

…

7.1.8 G (1) ~~*SYSC* 4.1.3R requires a *BIPRU firm* to ensure that its internal control mechanisms and administrative and accounting procedures permit the verification of its compliance with *rules* adopted in accordance with the *Capital Adequacy Directive* at all times. In complying with this obligation, a *BIPRU firm* should document the organisation and responsibilities of its risk management function and it should document its risk management framework setting out how the risks in the business are identified, measured, monitored and controlled.~~ [deleted]

…

~~Credit and counterparty risk~~

7.1.9 R …

~~[**Note**: annex V paragraph 3 of the *Banking Consolidation Directive*]~~

7.1.10 R …

~~[**Note**: annex V paragraph 4 of the *Banking Consolidation Directive*]~~

7.1.11 R …

~~[**Note**: annex V paragraph 5 of the *Banking Consolidation Directive*]~~

…

Residual risk

7.1.13 R …

~~[**Note**: annex V paragraph 6 of the *Banking Consolidation Directive*]~~

Market risk

7.1.14 R …

~~[**Note**: annex V paragraph 10 of the *Banking Consolidation Directive*]~~

Interest rate risk

7.1.15 R …

~~[**Note**: annex V paragraph 11 of the *Banking Consolidation Directive*]~~

Operational risk

7.1.16 R …

~~[**Note**: annex V paragraph 12 of the *Banking Consolidation Directive*]~~

…

Additional rules for *CRR firm*s

7.1.16C R In *SYSC* 7.1.18R a '*CRR firm* that is *significant*' means a *significant IFPRU firm.*

7.1.17 R (1) The *management body* of a *CRR firm* has overall responsibility for risk. It must devote sufficient time to the consideration of risk issues.

(2) The *management body* of a *CRR firm* must be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in the *rules* implementing *CRD* and the *EU CRR*, as well as in the valuation of assets, the use of external ratings and internal models related to those risks.

(3) A *CRR firm* must establish reporting lines to the *management body* that cover all material risks and risk management policies and changes thereof.

[**Note**: article 76(2) of *CRD*]

7.1.18 R (1) A *CRR firm* that is *significant* must establish a risk committee composed of members of the *management body* who do not perform any executive function in the *firm.* Members of the risk committee must have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the *firm.*

(2) The risk committee must advise the *management body* on the institution's overall current and future risk appetite and assist the *management body* in overseeing the implementation of that strategy

by senior management.

(3) The risk committee must review whether prices of liabilities and assets offered to clients take fully into account the *firm's* business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee must present a remedy plan to the *management body*.

[**Note:** article 76(3) of *CRD*]

…

7.1.18AA G A *CRR firm* which is not a *significant IFPRU firm* may combine the risk committee with the audit committee.

[**Note:** article 76(3) of *CRD*]

7.1.18B R Members of the combined risk and audit committee must have the knowledge, skills and expertise required for both committees.

[**Note:** article 76(3) of *CRD*]

7.1.19 R (1) A *CRR firm* must ensure that the *management body* in its supervisory function and, where a risk committee has been established, the risk committee, have adequate access to information on the risk situation of the *firm* and, if necessary and appropriate, to the risk management function and to external expert advice.

(2) The *management body* in its supervisory function and, where one has been established, the risk committee, must determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

[**Note:** article 76(4) of *CRD*]

7.1.20 R In order to assist in the establishment of sound remuneration policies and practices, the risk committee must, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

[**Note:** article 76(4) of *CRD*]

7.1.21 R (1) A *CRR firm's* risk management function (*SYSC* 7.1.6R) must be independent from the operational functions and have sufficient authority, stature, resources and access to the *management body*.

(2) The risk management function must ensure that all material risks are identified, measured and properly reported. It must be actively involved in elaborating the *firm's* risk strategy and, in all material risk management decisions, it must be able to deliver a complete view of

the whole range of risks of the *firm.*

(3) A *CRR firm* must ensure that the risk management function is able to report directly to the *management body* in its supervisory function, independent from senior management and that it can raise concerns and warn the *management body*, where appropriate, where specific risk developments affect or may affect the *firm*, without prejudice to the responsibilities of the *management body* in its supervisory and/or managerial functions pursuant to the *CRD* and the *EU CRR.*

[**Note**: article 76(5) of *CRD*]

7.1.22 R The head of the risk management function must be an independent *senior manager* with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the *CRR firm* do not justify a specially appointed person, another senior person within the *firm* may fulfil that function, provided there is no conflict of interest. The head of the risk management function must not be removed without prior approval of the *management body* and must be able to have direct access to the *management body* where necessary.

[**Note**: article 76(5) of *CRD*]

…

12.1 Application

…

~~BIPRU firms and other firms to which BIPRU 8 applies~~ CRR firms and non-CRR firms that are parent financial holding companies in a Member State

12.1.13 R If this *rule* applies under *SYSC* 12.1.14R to a *firm*, the *firm* must:

…

(2) 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 it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:

(a) *SYSC* 4.1.1R and *SYSC* 4.1.2R;

(b) *SYSC* 4.1.7R;

(bA) *SYSC* 4.3A;

(c) *SYSC* 5.1.7R;

(d) *SYSC* 7;

(dA) the *Remuneration Code*;

(e) *BIPRU* 12.3.4R, *BIPRU* 12.3.5R, *BIPRU* 12.3.7AR, *BIPRU* 12.3.8R~~(3)~~, *BIPRU* 12.3.22AR, *BIPRU* 12.3.22BR, *BIPRU* 12.3.27R, *BIPRU* 12.4.-2R, *BIPRU* 12.4.-1R, *BIPRU* 12.4.5AR, *BIPRU* 12.4.10R, ~~and~~ *BIPRU* 12.4.11R and *BIPRU* 12.4.11AR;

(f) ~~*BIPRU* 2.3.7R(1);~~ [deleted]

(g) ~~*BIPRU* 9.1.6R and *BIPRU* 9.13.21R (Liquidity Plans);~~ [deleted]

(h) ~~*BIPRU* 10.12.3R (Concerntration risk policies).~~ [deleted]

[**Note:** ~~article 73(3) of the *Banking Consolidation Directive*~~ article 109(2) of the *CRD*]

(3) ensure that compliance with the obligations in (2) enables the *consolidation group* or the non-*EEA sub-group* to have arrangements, processes and mechanisms that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.

[**Note**: article 109(2) of the *CRD*]

12.1.14 R *SYSC* 12.1.13R applies to a *firm* that is:

…

(2) ~~a *BIPRU firm*~~ a *CRR firm*; or

(3) a ~~non-*BIPRU firm*~~ non-*CRR firm* that is a *parent financial holding company in a Member State* and is a member of a *UK consolidation group*.

12.1.15 R In the case of a *firm* that:

(1) is a ~~*BIPRU firm*~~ *CRR firm*; and

…

the risk management processes and internal control mechanisms …

12.1.15A R *SYSC* 12.1.13R applies to a *BIPRU firm* as if it were a *CRR firm* but the reference to *Remuneration Code* is to the *BIPRU Remuneration Code.*

…

19A Remuneration Code

19A.1 General application and purpose

Who? What? Where?

19A1.1 R (1) The *Remuneration Code* applies ~~to a *BIPRU firm* and a *third country BIPRU firm*~~ to:

(a) a *building society*;

(b) a *bank*;

(c) an *investment firm*;

(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 its business in the *UK* and had obtained whatever authorisations for doing so as are required under the *Act*.

(2) In relation to a ~~*third country BIPRU firm*~~ *firm* that falls under (1)(d), the *Remuneration Code* applies only in relation to activities carried on from an establishment in the *United Kingdom*.

…

19A.1.1A G ~~The *AIFM Remuneration Code* (*SYSC* 19B) also applies to a *BIPRU firm* which is a *full-scope UK AIFM* (i.e. a *full-scope UK AIFM* that is an *AIFM investment firm*). Such a *full-scope UK AIFM* that complies with all of *SYSC* 19B will also comply with all of the provisions of *SYSC* 19A. In such cases, the *FCA* will not require the *full-scope UK AIFM* to demonstrate compliance with *SYSC* 19A.~~ [deleted]

…

19A.1.3 R (1) A *firm* must apply the *remuneration* requirements in *SYSC* 19A.3 other than *SYSC* 19A.3.44R(3) and *SYSC* 19.3.44AR in relation to:

~~(1)~~ (a) …

~~(2)~~ (b) …

~~(3)~~ (c) …

[**Note**: article 3(2) of the Third Capital Requirements Directive (Directive 2010/76/EU)]

(2) A *firm* must apply the *remuneration* requirements in *SYSC* 19A.3.44R(3) and *SYSC* 19.3.44AR in relation to *remuneration* awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before, on or after 31 December 2013.

[**Note**: article 162(3) of the *CRD*]

…

Purpose

19A.1.6 G …

(2) The *Remuneration Code* implements the main provisions of the ~~Third Capital Requirements Directive (Directive 2010/76/EU)~~ *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 Third Capital Requirements Directive relating to Pillar 3 disclosures of information relating to *remuneration* have been implemented through amendments to *BIPRU* 11 (specifically the *rules* and *guidance* in *BIPRU* 11.5.18R to *BIPRU* 11.5.21G).~~ Provisions of the Capital Requirements (Amendment) Regulations 2012 (SI 2012/917) together with the European Banking Authority's Guidelines to article 22(3) and (5) of the *Banking Consolidation Directive* 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/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-GL-2012-04---GL-4-on-remuneration-benchmarking-exercise-.pdf* and *http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2012/EBA-GL-2012-05---GL-5-on-remuneration-data-collection-exercise-.pdf*.

…

…

19A.2 General requirement

Remuneration policies must promote effective risk management

19A.2.1 R …

[**Note:** ~~Article 22(1) of the *Banking Consolidation Directive*~~ article 74(1) of *CRD*]

…

19A.3 Remuneration principles for banks, building societies and investment firms

Application: groups

19A.3.1 R …

[**Note:** ~~Paragraph 23 (final, unnumbered point) of Annex V to the *Banking Consolidation Directive*~~ article 92(1) of *CRD*]

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* view, the requirement to apply 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 73(3) of the *Banking Consolidation Directive*~~ article 109(2) of *CRD* concerning 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:** ~~Paragraph 23 of Annex V to the *Banking Consolidation Directive*~~ article 92(2) of *CRD*]

…

[**Note:** In addition to the *guidance* in this section which relates to the *remuneration principles proportionality rule*, the *FSA* gave 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* was published in Policy Statement 10/20 Revising the Remuneration Code and is available at www.fca.org.uk/your-fca.~~ This *guidance* has been adopted by the *FCA* and is available in the *FCA* website at http://www.fca.org.uk/firms/markets/international-markets/remuneration-code.]

19A.3.4 R …

[**Note:** ~~paragraph 23 of Annex V to the *Banking Consolidation Directive*~~ article 92(2) of *CRD*]

…

19A.3.6 G …

[**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* was published in Policy Statement 10/20 Revising the Remuneration Code and is available at www.fca.org.uk/your-fca~~ This *guidance* has been adopted by the *FCA* and is available in the *FCA* website at http://www.fca.org.uk/firms/markets/international-markets/remuneration-code.]

…

…

19A.3.7 R …

[**Note:** ~~Paragraph 23(a) of Annex V to the *Banking Consolidation Directive*~~ article 92(2)(a) of *CRD*]

…

19A.3.8 R …

[**Note:** ~~Paragraph 23(b) of Annex V to the *Banking Consolidation Directive*~~ article 92(2)(b) of *CRD*]

…

19A.3.9 R …

[**Note:** ~~Paragraph 23(b) of Annex V to the *Banking Consolidation Directive*~~ article 92(2)(b) of *CRD*]

…

19A.3.10 R A *firm* must ensure that its ~~*governing body*~~ *management body* in its *supervisory function* adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for overseeing its implementation.

[**Note:** ~~Paragraph 23(c) of Annex V to the *Banking Consolidation Directive*~~ article 92(2)(c) of *CRD* and Standard 1 of the *FSB Compensation Standards*]

19A.3.11 R A *firm* must ensure that the implementation of the *remuneration* policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the ~~*governing body*~~ *management body* in its *supervisory function*.

[**Note:** ~~Paragraph 23(d) of Annex V to the *Banking Consolidation Directive*~~ article 92(2)(d) of *CRD* and Standard 1 of the *FSB Compensation Standards*]

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.

…

(3) The chairman and the members of the *remuneration* committee must be members of the ~~*governing body*~~ *management body* who do not perform any executive function in the *firm*.

(4) The *remuneration* committee must be responsible for the preparation of decisions regarding *remuneration*, including those which have implications for the risk and risk management of the *firm* and which are to be taken by the ~~*governing body*~~ *management body* ~~in its *supervisory function*~~.

(5) When preparing such decisions, the *remuneration* committee must take into account the long-term interests of shareholders, investors and other stakeholders in the *firm* and the public interest.

[**Note:** ~~Paragraph 24 of Annex V of the *Banking Consolidation Directive*~~ article 95 of *CRD* and Standard 1 of the *FSB Compensation Standards*]

…

19A.3.12A R A *firm* that maintains a website must explain on the website how it complies with the *Remuneration Code*.

[**Note:** article 96 of *CRD*]

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

…

19A.3.14 R …

[**Note:** ~~Paragraph 23(e) of Annex V to the *Banking Consolidation Directive*~~ article 92(2)(e) of *CRD* and Standard 2 of the *FSB Compensation Standards*]

…

19A.3.16 R …

[**Note:** ~~Paragraph 23(f) of Annex V to the *Banking Consolidation Directive*~~ article 92(2)(f) of *CRD*]

…

19A.3.18 R …

[**Note:** ~~Paragraph 23(i) of Annex V to the *Banking Consolidation Directive*~~

article 94(1)(c) of *CRD* and Standard 3 of the *FSB Compensation Standards*]

…

Remuneration Principle 7: Exceptional government intervention

19A.3.20 R A *firm* that benefits from exceptional government intervention must ensure that:

…

(2) it restructures *remuneration* in a manner aligned with sound risk management and long-term growth, including when appropriate establishing limits to the *remuneration* of ~~*senior personnel*~~ members of its *management body*; and

(3) no variable *remuneration* is paid to members of its ~~*senior personnel*~~ *management body* unless this is justified.

[**Note:** ~~Paragraph 23(k) of Annex V to the *Banking Consolidation Directive*~~ article 93 of *CRD* and Standard 10 of the *FSB Compensation Standards*]

19A.3.21 G The *appropriate regulator* would normally expect it to be appropriate for the ban on paying variable *remuneration* to ~~*senior personnel*~~ members of the *management body* of a *firm* that benefits from exceptional government intervention to apply only in relation to ~~*senior personnel*~~ 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

19A.3.22 R …

[**Note:** ~~Paragraph 23(n) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(j) and (k) of *CRD* and Standard 4 of the *FSB Compensation Standards*]

…

19A.3.27 R A *firm* must ensure that its total variable *remuneration* is generally considerably contracted where subdued or negative financial performance of the *firm* occurs, taking into account both current *remuneration* and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[**Note:** ~~Paragraph 23(q) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(n) of *CRD* and Standard 5 of the *FSB Compensation Standards*]

…

Remuneration Principle 9: Pension policy

19A.3.29 R A *firm* must ensure that:

…

(3) ~~in the case of~~ when an *employee* ~~reaching~~ reaches retirement, *discretionary pension benefits* are paid to the *employee* in the form of instruments referred to in *SYSC* 19A.3.47R(1) and subject to a five-year retention period.

[**Note:** ~~Paragraph 23(r) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(o) of *CRD*]

Remuneration Principle 10: Personal investment strategies

19A.3.30 R …

[**Note:** ~~Paragraph 23(s) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(p) of *CRD* and Standard 14 of the *FSB Compensation Standards*]

…

Remuneration Principle 11: ~~Avoidance of~~ 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 ~~the avoidance of~~ non-compliance with the *Remuneration Code*.

[**Note:** ~~Paragraph 23(t) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(q) of *CRD*]

…

Remuneration Principle 12: Remuneration structures – introduction

…

19A.3.34 G …

[**Note:** The *FSA* also gave *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 was published in Policy Statement 10/20 Revising the Remuneration Code and is available at www.fca.org.uk/your-fca~~ This *guidance* has been adopted by the *FCA* and is available in the *FCA* website at http://www.fca.org.uk/firms/markets/international-markets/remuneration-code.]

…

Remuneration Principle 12(a): Remuneration structures – general requirement

…

19A.3.35A R A *firm* must ensure that the *remuneration* policy makes a clear distinction between criteria for setting:

(1) basic fixed *remuneration* that primarily reflects an *employee's* professional experience and organisational responsibility as set out in the *employee's* job description and terms of employment; and

(2) variable *remuneration* that reflects performance in excess of that required to fulfil the *employee's* job description and terms of employment and that is subject to performance adjustment in accordance with the *Remuneration Code*.

[**Note:** article 92(2)(g) of *CRD*]

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

19A.3.36 R …

[**Note:** ~~Paragraph 23(g) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(a) of *CRD* and Standard 6 of the *FSB Compensation Standards*]

…

19A.3.38 R …

[**Note:** ~~Paragraph 23(h) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(b) of *CRD*]

…

Remuneration Principle 12(c): Remuneration structures – guaranteed variable remuneration

19A.3.40 R A *firm* must ensure that guaranteed variable *remuneration* is not part of prospective *remuneration* plans. A *firm* must not award, pay or provide guaranteed variable *remuneration* unless ~~it~~:

(1) it is exceptional;

(2) it occurs in the context of hiring new *Remuneration Code staff*; ~~and~~

(3) the *firm* has a sound and strong capital base; and

(4) it is limited to the first year of service.

[**Note:** ~~Paragraph 23(j) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(d) to (e) of *CRD* and Standard 11 of the *FSB Compensation Standards*]

19A.3.40A R A *firm* must ensure that *remuneration* packages relating to compensation for, or buy out from, an *employee's* contracts in previous employment align with the long term interests of the *firm* and are subject to appropriate retention, deferral and performance adjustment arrangements.

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

…

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

19A.3.44 R A *firm* must set appropriate ratios between the fixed and variable components of total *remuneration* and ensure that:

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

(2) the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component; and

(3) subject to *SYSC* 19A.3.44AR, the ratio of the variable component of total *remuneration* to the fixed component does not exceed 1:1.

19A.3.44A R A *firm* may set a ratio between the fixed and the variable components of total *remuneration* that exceeds 1:1 provided the ratio:

(1) does not exceed 1:2; and

(2) is approved by the shareholders or owners or members of the *firm* in accordance with *SYSC* 19A.3.44BR.

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

19A.3.44B R A *firm* must ensure that any approval by the shareholders or owners or members of the *firm* of a ratio that exceeds 1:1 is carried out in accordance with the following procedure:

(1) the *firm* must give reasonable notice to all shareholders or owners or members of the *firm* that the *firm* intends to seek approval of a ratio that exceeds 1:1;

(2) the *firm* must make a detailed recommendation to all shareholders or owners or members of the *firm* giving the reasons for, and the scope of, the approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;

(3) the *firm* must, without delay, inform the *appropriate regulator* of the recommendation to its shareholders or owners or members, including

the proposed ratio and the reasons therefor and must demonstrate to the *appropriate regulator* that the proposed higher ratio does not conflict with the *firm's* obligations under the *CRD* and the *CRR*, having regard in particular to the *firm's own funds* obligations;

(4) the *firm* must ensure that *employees* who have an interest in the proposed higher ratio are not allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the *firm* in respect of the approval sought; and

(5) the higher ratio is approved by a majority of:

(a) at least 66% of shareholders or owners or members of the *firm*, provided that at least 50% of the shareholders or owners or members are represented; or

(b) at least 75% of shareholders or owners or members if less than 50% of the shareholders, members or owners are represented.

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

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

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

19A.3.44D R A *firm* may apply a discount rate to a maximum of 25% of an *employee's* 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*]

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

19A.3.45 R A *firm* must ensure that payments ~~related~~ relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct.

[**Note:** ~~Paragraph 23(m) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(h) of *CRD* and Standard 12 of the *FSB Compensation Standards*]

…

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

19A.3.47 R (1) A *firm* must ensure that a substantial portion, which is at least 50%, of any variable *remuneration* consists of an appropriate balance of:

…

(b) where ~~appropriate, *capital instruments* which are eligible for inclusion at stage B1 of the calculation in the *capital resources table*, where applicable that~~ possible other instruments which are eligible as Additional Tier 1 instruments or are eligible as Tier 2 instruments or other instruments that can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately ~~reflects~~ reflect the credit quality of the *firm* as a going concern and are appropriate for use as variable remuneration.

…

[**Note:** ~~Paragraph 23(o) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(l) of *CRD* and Standard 8 of the *FSB Compensation Standards*]

…

19A.3.49 R …

[**Note:** ~~Paragraph 23(p) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(m) of *CRD* and Standards 6 and 7 of the *FSB Compensation Standards*]

…

…

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

19A.3.51 R A *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 ~~according to~~ on the basis of the performance of the *firm*, the business unit and the individual concerned.

[**Note:** ~~Paragraph 23(q) of Annex V to the *Banking Consolidation Directive*~~ article 94(1)(n) of *CRD* and Standards 6 and 9 of the *FSB Compensation Standards*]

19A.3.51A R A *firm* must:

(1) ensure that any of the total variable *remuneration* is subject to 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 *employee*:

(a) participated in or was responsible for conduct which resulted in significant losses to the *firm*;

(b) failed to meet appropriate standards of fitness and propriety.

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

…

19A.3.54 R …

(1B) Condition 1 is that the *firm* is a *UK bank*, a *building society*, a *designated investment firm* or a relevant ~~*BIPRU 730k firm*~~ *IFPRU 730k firm* that has relevant total assets exceeding £50 billion.

…

(1D) Condition 2 is that the *firm*:

(a) is a *full credit institution*, a *designated investment firm*, a relevant ~~*BIPRU 730k firm*~~ *IFPRU 730k firm* or a relevant *third country* ~~*BIPRU 730k firm*~~ *IFPRU 730k firm*; and

(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*, a *designated investment firm* or a relevant ~~*BIPRU 730k firm*~~ *IFPRU 730k firm*.

(1E) In this rule:

(a) a "relevant ~~*BIPRU 730k firm*~~ *IFPRU 730k firm*" is any ~~*BIPRU 730k firm*~~ *IFPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm*;

(b) a "relevant *third country* ~~*BIPRU 730k firm*~~ *IFPRU 730k firm*" is any *third country* ~~*BIPRU 730k firm*~~ *IFPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm* ; and

(c) …

…

Insert the following new section after SYSC 19B. The text is not underlined.

19C BIPRU Remuneration Code

19C.1 General application and purpose

Who? What? Where?

19C.1.1 R (1) The *BIPRU Remuneration Code* applies to a *BIPRU firm* and a *third country BIPRU firm*.

(2) In relation to a *third country BIPRU firm*, the *BIPRU Remuneration Code* applies only in relation to activities carried on from an establishment in the *United Kingdom*.

19C.1.2 G Part 2 of *SYSC* 1 Annex 1 provides for the application of *SYSC* 4.1.1R and *SYSC* 4.1.1CR (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in *SYSC* 12, this means that:

(1) the *BIPRU Remuneration Code*:

(a) applies to *regulated activities, ancillary activities* and applicable *ancillary services*;

(b) applies to the carrying on of *unregulated activities* in a *prudential context*; and

(c) takes into account activities of other *group* members; and

(2) where the *BIPRU Remuneration Code* applies, it applies to:

(a) a *firm's UK* activities;

(b) a *firm's passported activities* carried on from a *branch* in another *EEA State*; and

(c) a *UK domestic firm's* activities wherever they are carried on, in a *prudential context*.

When?

19C.1.3 R A *firm* must apply the *remuneration* requirements in *SYSC* 19C.3 to:

(1) *remuneration* awarded, whether under a contract or otherwise, on or after 1 January 2014;

(2) *remuneration* due on the basis of contracts concluded before 1 January 2014 which is awarded or paid on or after 1 January 2014; and

(3) *remuneration* awarded, but not yet paid, before 1 January 2014, for services provided in 2013.

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

19C.1.5 R (1) This *rule* applies to a *firm* that is unable to comply with the *BIPRU Remuneration Code* because of an obligation it owes to a *BIPRU Remuneration Code staff member* under a provision of an agreement made on or before 29 July 2010.

(2) A *firm* must take reasonable steps to amend or terminate the provision in (1) in a way that enables it to comply with the *BIPRU Remuneration Code* at the earliest opportunity.

(3) Until the provision in (1) ceases to prevent the *firm* from complying with the *BIPRU Remuneration Code*, the *firm* must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.

Purpose

19C.1.6 G The aim of the *BIPRU Remuneration Code* is to ensure that *firms* have risk-focused *remuneration* policies, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in *SYSC* 4.

Notifications to the FCA

19C.1.7 G (1) The *BIPRU 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).

(2) In particular, in relation to *remuneration* matters, such circumstances should take into account *unregulated activities* as well as *regulated activities* and the activities of other members of a *group* and would include each of the following:

(a) significant breaches of the *BIPRU Remuneration Code*;

(b) any proposed *remuneration* policies, procedures or practices which could:

(i) have a significant adverse impact on the *firm's* reputation; or

(ii) affect the *firm's* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*; or

(iii) result in serious financial consequences to the *financial system* or to other *firms*;

(c) any proposed changes to *remuneration* policies, practices or procedures which could have a significant impact on the *firms* risk profile or resources; and

(d) fraud, errors and other irregularities described in *SUP* 15.3.17R which may suggest weaknesses in, or be motivated by, the *firm's remuneration* policies, procedures or practices.

(3) Such notifications should be made immediately the *firm* becomes aware of those circumstances, or has information which reasonably suggests that those circumstances have, or may have, occurred or may occur in the foreseeable future.

Individual guidance

19C.1.8 G The *FCA's* policy on individual *guidance* is set out in *SUP* 9. *Firms* should particularly note the policy on what the *FCA* considers to be a reasonable request for *guidance* (see *SUP* 9.2.5G). For example, where a *firm* is seeking *guidance* on a proposed *remuneration* structure, the *FCA* will expect the *firm* to provide a detailed analysis of how the structure complies with the *BIPRU Remuneration Code*, including the general requirement for *remuneration* policies, procedures and practices to be consistent with and promote sound and effective risk management.

19C.2 General requirement

Remuneration policies must promote effective risk management

19C.2.1 R A *firm* must establish, implement and maintain *remuneration* policies, procedures and practices that are consistent with and promote sound and effective risk management.

19C.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.

(2) The *BIPRU 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 *BIPRU 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.

(3) As with other aspects of a *firm's* systems and controls, in line with *SYSC* 4.1.2R and *SYSC* 4.1.2ABR, *remuneration* policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the *common platform firm's* activities. Therefore, what a *firm* must do to comply with the *BIPRU Remuneration Code* will vary. For example, while the *BIPRU Remuneration Code* refers to a *firm's remuneration* committee and risk

management function, it may be appropriate for the *governing body* of a smaller *firm* to act as the *remuneration* committee, and for the *firm* not to have a separate risk management function.

(4) The principles in the *BIPRU Remuneration Code* are used by the *FCA* to assess the quality of a *firm's remuneration* policies and whether they encourage excessive risk-taking by a *firm's employees*.

(5) The *FCA* may also ask *remuneration* committees to provide the *FCA* with evidence of how well the *firm's remuneration* policies meet the *BIPRU Remuneration Code's* principles, together with plans for improvement where there is a shortfall. The *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 *BIPRU 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.

19C.2.3 G (1) The specific *remuneration* requirements in this chapter may apply only to certain categories of *employee*. However, the *FCA* expects *firms*, in complying with the *BIPRU Remuneration Code general requirement*, to apply certain principles on a *firm*-wide basis.

(2) In particular, the *FCA* considers that *firms* should apply the principle relating to guaranteed variable *remuneration* on a *firm*-wide basis (Remuneration Principle 12(c); *SYSC* 19C.3.40R to *SYSC* 19C.3.43G).

(3) The *FCA* also expects *firms* to apply, as a minimum, the principles relating to risk management and risk tolerance (Remuneration Principle 1); supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2); conflicts of interest (Remuneration Principle 3); governance (Remuneration Principle 4); risk adjustment (Remuneration Principle 8); pension policy (Remuneration Principle 9); personal investment strategies (Remuneration Principle 10); payments related to early termination (Remuneration Principle 12(e)) and deferral (Remuneration Principle 12(g)) on a *firm*-wide basis.

Record-keeping

19C.2.4 G In line with the record-keeping requirements in *SYSC* 9, a *firm* should ensure that its *remuneration* policies, practices and procedures are clear and documented. Such policies, practices and procedures would include performance appraisal processes and decisions.

Interpretation of references to remuneration

19C.2.5 R (1) In this chapter, references to *remuneration* include *remuneration* paid, provided or awarded by any *person* to the extent that it is paid, provided or awarded in connection with *employment* by a *firm*.

(2) Paragraph (1) is without prejudice to the meaning of *remuneration* elsewhere in the *Handbook*.

19C.2.6 G *Remuneration* includes, for example, payments made by a seconding organisation which is not subject to the *BIPRU Remuneration Code* to a secondee in respect of their *employment* by a *firm* which is subject to the *BIPRU Remuneration Code*.

19C.3 Remuneration principles

Application: groups

19C.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*.

(2) Paragraph (1) does not limit *SYSC* 12.1.13R and *SYSC* 12.1.15R (which relate to the application of the *BIPRU Remuneration Code* within *UK consolidation groups* and *non-EEA sub-groups*).

19C.3.2 G The effect of *SYSC* 12.1.13R(2)(dA) and *SYSC* 12.1.15R is that the *firm* is required to ensure that the risk management processes and internal control mechanisms at the level of any *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.

Application: categories of staff and proportionality

19C.3.3 R (1) This section applies to *BIPRU Remuneration Code staff*, except as set out in (3).

(2) When establishing and applying the total *remuneration* policies for *BIPRU Remuneration Code staff*, a *firm* must comply with this section in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities (the *BIPRU remuneration principles proportionality rule*).

(3) Paragraphs (1) and (2) do not apply to the requirement for significant *firms* to have a *remuneration* committee (*SYSC* 19C.3.12R).

[**Note:** In addition to the *guidance* in this section which relates to the *BIPRU remuneration principles proportionality rule*, the *FCA* has published guidance on the operation of the *BIPRU remuneration principles proportionality rule*. This *guidance* is available at http://www.fca.org.uk/firms/markets/international-markets/remuneration-code.]

19C.3.4 R *BIPRU Remuneration Code staff* comprises categories of staff including senior management, risk-takers, staff engaged in control functions and any *employee* receiving total remuneration that takes them into the same *remuneration* bracket as senior management and risk-takers, whose professional activities have a material impact on the *firm's* risk profile.

19C.3.5 R A *firm* must:

(1) maintain a record of its *BIPRU Remuneration Code staff* in line with the general record-keeping requirements (*SYSC* 9); and

(2) take reasonable steps to ensure that its *BIPRU Remuneration Code staff* understand the implications of their status, including the potential for *remuneration* which does not comply with certain requirements of the *BIPRU Remuneration Code* to be rendered void and recoverable by the *firm*.

19C.3.6 G (1) In the *FCA'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 BIPRU 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 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 *BIPRU Remuneration Code staff* in relation to *remuneration* in respect of a given performance year if they were *BIPRU Remuneration Code staff* for any part of that year.

[**Note:** The *FCA* has published *guidance* on the application of particular rules on *remuneration* structures in relation to individuals who are *BIPRU Remuneration Code staff* for only part of a given performance year. This *guidance* is available at http://www.fca.org.uk/firms/markets/international-markets/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 *firm's* 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 who have a material impact on the *firm's* risk profile	Credit/market/operational risk Legal Treasury controls Human resources Compliance Internal audit

Remuneration Principle 1: Risk management and risk tolerance

19C.3.7 R A *firm* must ensure that its *remuneration* policy is consistent with and promotes sound and effective risk management, and does not encourage risk-taking that exceeds the level of tolerated risk of the *firm*.

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

19C.3.8 R A *firm* must ensure that its *remuneration* policy is in line with the business strategy, objectives, values and long-term interests of the *firm*.

Remuneration Principle 3: Avoiding conflicts of interest

19C.3.9 R A *firm* must ensure that its *remuneration* policy includes measures to avoid conflicts of interest.

Remuneration Principle 4: Governance

19C.3.10 R A *firm* must ensure that its *governing body*, in its *supervisory function*, adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for its implementation.

19C.3.11 R A *firm* must ensure that the implementation of the *remuneration* policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *governing body* in its *supervisory function*.

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

(2) The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgment on *remuneration* policies and practices and the incentives created for managing risk, capital and liquidity.

(3) The chairman and the members of the *remuneration* committee must be members of the *governing body* who do not perform any executive function in the *firm*.

(4) The *remuneration* committee must be responsible for the preparation of decisions regarding *remuneration*, including those which have implications for the risk and risk management of the *firm* and which are to be taken by the *governing body* in its *supervisory function*.

(5) When preparing such decisions, the *remuneration* committee must take into account the long-term interests of shareholders, investors and other stakeholders in the *firm*.

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

19C.3.13 G (1) A *firm* should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which *remuneration* is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the *governing body* or *remuneration* committee (or both) should work closely with the *firm's* risk function in evaluating the incentives created by its *remuneration* system.

(2) The *governing body* and any *remuneration* committee are responsible for ensuring that the *firm's remuneration* policy complies with the *BIPRU Remuneration Code* and, where relevant, should take into account relevant guidance, such as that issued by the International Organization of Securities Commissions (IOSCO).

(3) The periodic review of the implementation of the *remuneration* policy should assess compliance with the *BIPRU Remuneration Code*.

(4) Guidance on what the *supervisory function* might involve is set out in *SYSC* 4.3.3G.

Remuneration Principle 5: Control functions

19C.3.14 R A *firm* must ensure that *employees* engaged in control functions:

(1) are independent from the business units they oversee;

(2) have appropriate authority; and

(3) are *remunerated*:

(a) adequately to attract qualified and experienced staff; and

(b) in line with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

19C.3.15 E (1) A *firm's* risk management and compliance functions should have appropriate input into setting the *remuneration* policy for other business areas. The procedures for setting *remuneration* should allow risk and compliance functions to have significant input into the setting of individual *remuneration* awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.

(2) Contravention of (1) may be relied on as tending to establish contravention of the *rule* on *employees* engaged in control functions having appropriate authority (*SYSC* 19C.3.14R(2)).

19C.3.16 R A *firm* must ensure that the *remuneration* of the senior officers in risk management and compliance functions is directly overseen by the *remuneration* committee referred to in *SYSC* 19C.3.12R, or, if such a committee has not been established, by the *governing body* in its *supervisory function*.

19C.3.17 G (1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the *remuneration* of *employees* within control functions. Conflicts of interest can easily arise when *employees* are involved in the determination of *remuneration* for their own business area. Where these do arise they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a *firm's* human resources function when setting *remuneration* for other business areas.

(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.

(3) The *FCA* generally expects 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)).

Remuneration Principle 6: Remuneration and capital

19C.3.18 R A *firm* must ensure that total variable *remuneration* does not limit the *firm's* ability to strengthen its capital base.

19C.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.

Remuneration Principle 7: Exceptional government intervention

19C.3.20 R A *firm* that benefits from exceptional government intervention must ensure that:

(1) variable *remuneration* is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(2) it restructures *remuneration* in alignment with sound risk management and long-term growth, including when appropriate establishing limits to the *remuneration* of *senior personnel*; and

(3) no variable *remuneration* is paid to its *senior personnel* unless justified.

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

Remuneration Principle 8: Profit-based measurement and risk adjustment

19C.3.22 R (1) A *firm* must ensure that any measurement of performance used to calculate variable *remuneration* components or pools of variable *remuneration* components:

(a) includes adjustments for all types of current and future risks, taking into account the cost and quantity of the capital and the liquidity required; and

(b) takes into account the need for consistency with the timing and likelihood of the firm receiving potential future revenues incorporated into current earnings.

(2) A *firm* must ensure that the allocation of variable *remuneration* components within the *firm* also takes into account all types of current and future risks.

19C.3.23 G (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance of applying judgment and common sense. 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.

(2) A number of risk-adjustment techniques and measures are available, and a *firm* should choose those that are most appropriate to its circumstances. Common measures include those that are based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered. The *FCA* expects a *firm* to be able to provide it with details of all adjustments that the *firm* has made under a formulaic approach.

(3) The *FCA* expects a *firm* to apply qualitative judgments and common sense in the final decision about the performance-related components of variable *remuneration* pools.

(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.

19C.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) includes dividend distributions in its measurement, 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 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.

19C.3.25 R Assessments of financial performance used to calculate variable *remuneration* components or pools of variable *remuneration* components must be based principally on profits.

19C.3.26 G (1) Performance measures based primarily on revenues or turnover are unlikely to pay sufficient regard to the quality of business undertaken or services provided. Profits are a better measure provided they are adjusted for risk, including future risks not adequately captured by accounting profits.

(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 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.

19C.3.27 R A *firm* must ensure that its total variable *remuneration* is generally considerably contracted where subdued or negative financial performance of the *firm* occurs, taking into account both current *remuneration* and reductions in payouts of amounts previously earned.

[**Note:** Standard 5 of the *FSB Compensation Standards*]

19C.3.28 G Where a *firm* makes a loss, the *FCA* generally expects 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.

Remuneration Principle 9: Pension policy

19C.3.29 R A *firm* must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests;

(2) when an *employee* leaves the *firm* before retirement, any *discretionary pension benefits* are held by the *firm* for a period of five years in the form of instruments referred to in *SYSC* 19C.3.47R(1); and

(3) when *employees* reach retirement, *discretionary pension benefits* are paid to the *employee* in the form of instruments in *SYSC*

19C.3.47R(1) and subject to a five-year retention period.

Remuneration Principle 10: Personal investment strategies

19C.3.30 R (1) A *firm* must ensure that its *employees* undertake not to use personal hedging strategies or *remuneration*- or liability-related *contracts of insurance* to undermine the risk-alignment effects embedded in their *remuneration* arrangements.

(2) A *firm* must maintain effective arrangements designed to ensure that *employees* comply with their undertaking.

19C.3.31 G Circumstances in which a *person* will be using a personal hedging strategy include entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that *person* linked to, or commensurate with, the amounts by which the *person's remuneration* is subject to reductions.

Remuneration Principle 11: Avoidance of the Remuneration Code

19C.3.32 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate the avoidance of the *BIPRU Remuneration Code*.

Remuneration Principle 12: Remuneration structures - introduction

19C.3.33 G This Remuneration Principle consists of a series of *rules*, *evidential provisions* and *guidance* relating to *remuneration* structures.

19C.3.34 G (1) Taking account of the *BIPRU remuneration principles proportionality rule*, the *FCA* does not generally consider it necessary for a *firm* to apply the *rules* in (2) where, in relation to an individual ("X"), both the following conditions are satisfied:

(a) condition 1 requires that X’s variable *remuneration* is no more than 33% of total *remuneration*; and

(b) condition 2 requires that X’s total *remuneration* is no more than 500,000.

(2) The *rules* referred to in (1) relate to:

(a) guaranteed variable *remuneration* (*SYSC* 19C.3.40R);

(b) retained *shares* or other instruments (*SYSC* 19C.3.47R);

(c) deferral (*SYSC* 19C.3.49R); and

(d) performance adjustment (*SYSC* 19C.3.51R).

[**Note:** The *FCA* has published *guidance* on the application of certain *rules* on *remuneration* structures in relation to individuals who are *BIPRU Remuneration Code staff* for only part of a given performance year. This guidance is available at http://www.fca.org.uk/firms/markets/international-markets/remuneration-code.]

Remuneration Principle 12(a): Remuneration structures - general requirement

19C.3.35 R A *firm* must ensure that the structure of an *employee's remuneration* is consistent with, and promotes, effective risk management.

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

19C.3.36 R A *firm* must ensure that where *remuneration* is performance-related:

(1) the total amount of *remuneration* is based on a combination of the assessment of the performance of:

(a) the individual;

(b) the business unit concerned; and

(c) the overall results of the *firm*; and

(2) when assessing individual performance, financial as well as non-financial criteria are taken into account.

19C.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.

19C.3.38 R A *firm* must ensure that the assessment of performance is set in a multi-year framework, to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of *remuneration* is spread over a period which takes account of the underlying business cycle of the *firm* and its business risks.

19C.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.

Remuneration Principle 12(c): Remuneration structures - guaranteed variable remuneration

19C.3.40 R A *firm* must not award, pay or provide guaranteed variable *remuneration* unless it:

(1) is exceptional;

(2) occurs in the context of hiring new *BIPRU Remuneration Code staff*; and

(3) is limited to the first year of service.

19C.3.41 E (1) A *firm* should not award, pay or provide guaranteed variable *remuneration* in hiring new *BIPRU Remuneration Code staff* (X) unless:

(a) it has taken reasonable steps to ensure that the *remuneration* is not more generous in its amount or terms (including any deferral or retention periods) than the variable *remuneration* awarded or offered by X's 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* 19C.3.40R).

19C.3.42 G Guaranteed variable *remuneration* should be subject to the same deferral criteria as other forms of variable *remuneration* awarded by the *firm*.

19C.3.43 G Variable *remuneration* can be awarded to *BIPRU Remuneration Code staff* in the form of retention awards where it is compatible with the *BIPRU Remuneration Code general requirement* to do so. The *FCA* 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.

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

19C.3.44 R A *firm* must set appropriate ratios between the fixed and variable components of total *remuneration* and ensure that:

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

(2) the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay

no variable *remuneration* component.

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

19C.3.45 R A *firm* must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

19C.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 *BIPRU Remuneration Code general requirement*.

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

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

19C.3.47 R (1) A *firm* must ensure that a substantial portion, at least 50%, of any variable *remuneration* consists of an appropriate balance of:

(a) *shares* or equivalent ownership interests, subject to the legal structure of the *firm* concerned, or *share*-linked instruments or equivalent non-cash instruments for a non-listed *firm*; and

(b) where appropriate, *capital instruments* which are eligible for inclusion at stage B1 of the calculation in the *capital resources table*, where applicable, adequately reflect the credit quality of the *firm* as a going concern.

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the *firm*.

(3) This *rule* applies to the portion of the variable *remuneration* component deferred, and not deferred, in line with *SYSC* 19C.3.49R.

[**Note:** Standard 8 of the *FSB Compensation Standards*]

19C.3.48 G (1) Regarding *SYSC* 19C.3.47R(3), 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.

(2) This simplified example illustrates the operation of (1). The variable remuneration of a material risk taker (X) is 100, and by *SYSC* 19C.3.49R(3) 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* 19C.3.47R(1).

Remuneration Principle 12(g): Remuneration structures - deferral

19C.3.49 R (1) A *firm* must not award, pay or provide a variable *remuneration* component unless a substantial portion of it, which is at least 40%, is deferred over a period of not less than three to five years.

(2) *Remuneration* under (1) must vest no faster than on a pro-rata basis.

(3) In the case of a variable *remuneration* component:

(a) of a particularly high amount; or

(b) payable to a *director* of a *firm* that is significant in its size, internal organisation and the nature, scope and complexity of its activities; at least 60% of the amount must be deferred.

(4) Paragraph (3)(b) does not apply to a *non-executive director*.

(5) The length of the deferral period must be established in line with the business cycle, the nature of the business, its risks and the activities of the *employee* in question.

[**Note:** Standards 6 and 7 of the *FSB Compensation Standards*]

(6) 500,000 is a particularly high amount for the purpose of (3)(a).

(7) Paragraph (6) is without prejudice to the possibility of lower sums being considered a particularly high amount.

19C.3.50 G (1) Deferred *remuneration* paid in *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. Deferred *remuneration* paid in cash should also be subject to performance criteria.

(2) The *FCA* generally expects 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 *BIPRU 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 *BIPRU Remuneration Code staff* in the levels of variable *remuneration* paid.

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

19C.3.51 R A *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 according to the performance of the *firm*, the business unit and the individual concerned.

[**Note:** Standards 6 and 9 of the *FSB Compensation Standards*]

19C.3.52 E (1) A *firm* should reduce unvested deferred variable *remuneration* when, as a minimum:

(a) there is reasonable evidence of *employee* misbehaviour or material error; or

(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) For performance adjustment purposes, awards of deferred variable *remuneration* made in *shares* or other non-cash instruments should provide the ability for the *firm* to reduce the number of *shares* or other non-cash instruments.

(3) Contravention of (1) or (2) may be relied on as tending to establish contravention of the *rule* on performance adjustment (*SYSC* 19C.3.51R).

19C.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.

(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 *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.

Part 2: Comes into force on 1 July 2014

1 Annex 1 Detailed application of SYSC

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Part 3	**Tables summarising the application of the common platform requirements to different types of firm**

…

Provision	COLUMN A Application to a	COLUMN A+ Application to a	COLUMN A++	COLUMN B Application

SYSC 4	common platform firm other than to a UCITS investment firm	UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
…				
SYSC 4.3A.6R [FCA] [PRA]	Rule applicable to *CRR firms*	Rule for a *CRR firm* that is a *UCITS investment firm*	Not applicable	Not applicable
…				

4.3A.6 R (1) ~~[to follow]~~ A *CRR firm* that is *significant* must ensure that the members of the *management body* of the *firm* do not hold more than one of the following combinations of directorship in any organisation at the same time:

(a) one executive directorship with two non-executive directorships; and

(b) four non-executive directorships.

(2) Paragraph (1) does not apply to members of the *management body* that represent the *United Kingdom*.

[**Note**: article 91(3) of the *CRD*]