

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(REMUNERATION CODES) (No 9) INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“the 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);
 - (4) section 138D (Action for damages); and
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 October 2023.

Amendments to the Handbook

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Notes

- E. In the Annex to this instrument, the “notes” (indicated by “**Note:**” and “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Codes) (No 9) Instrument 2023.

By order of the Board
12 September 2023

Annex

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

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

19D Dual-regulated firms Remuneration Code

19D.1 Application and purpose

...

When?

19D.1.3 R (1) Except as set out in ~~(2) and (3)~~, a *firm* must apply the *remuneration* requirements in SYSC 19D.3 (Remuneration principles) in relation to:

...

(2) ~~A *firm* must apply the *remuneration* requirements in SYSC 19D.3.48R(3) (1:1 ratio of variable to fixed components) and SYSC 19D.3.49R (1:2 ratio of fixed to variable components) 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 CRD] [deleted]~~

...

...

19D.3 Remuneration principles

...

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

19D.3.48 R A *firm* must set an appropriate ratio 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 level of 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 19D.3.49R, the level of the variable component of total remuneration must not exceed 100% of the fixed component of total remuneration for each dual-regulated firms Remuneration Code staff. [deleted]~~

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

19D.3.48 G (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of SYSC 19D.3.48R, a firm should consider all relevant factors, including:

- (a) the firm's business activities and associated prudential and conduct risks; and
- (b) the role of the individual in the firm and, in the case of dual-regulated firms Remuneration Code staff, the impact that different categories of staff have on the risk profile of the firm.

(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 than for the business units they control.

(3) Ratios may differ from one performance period to the next.

(4) When setting a ratio, a firm should consider all potential scenarios, including that a firm exceeds its financial objectives. The ratio should reflect the highest amount of variable remuneration that can be awarded in the most positive scenario. A firm should be satisfied that it has considered all relevant factors and should be able to explain its decision to the FCA if requested.

19D.3.49 R ~~A firm may set a higher maximum level of the ratio between the fixed and variable components of total remuneration provided:~~

- (1) ~~the overall level of the variable component does not exceed 200% of the fixed component of the total remuneration for each dual-regulated firms Remuneration Code staff; and~~
- (2) ~~is approved by the shareholders or owners or members of the firm in accordance with SYSC 19D.3.50R.~~

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

19D.3.50 R ~~A firm must ensure that any approval by its shareholders or owners or members, for the purposes of SYSC 19D.3.49R, is carried out in accordance with the following procedure:~~

- (1) ~~the *firm* must give reasonable notice to all its shareholders or owners or members of its intention to seek approval of the proposed higher ratio;~~
- (2) ~~the *firm* must make a detailed recommendation to all its shareholders or owners or members that includes:~~
 - (a) ~~the reasons for, and the scope of, the approval sought;~~
 - (b) ~~the number of staff affected and their functions; and~~
 - (c) ~~the expected impact on the requirement to maintain a sound capital base;~~
- (3) ~~the *firm* must:~~
 - (a) ~~without delay, inform the *FCA* of the recommendation to its shareholders or owners or members, including the proposed higher ratio and the reasons therefor; and~~
 - (b) ~~demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the *UK* legislation that implemented the *CRD* and the *UK CRR*, having particular regard 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 the shares or equivalent ownership rights represented, if at least 50% of the shares or equivalent ownership rights in the *firm* are represented; or~~
 - (b) ~~at least 75% of the shares or equivalent ownership rights represented, if less than 50% of the shares or equivalent ownership rights in the *firm* are represented.~~

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

19D.3.51 R ~~A *firm* must notify the *FCA* without delay 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*] [deleted]~~

19D.3.52 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]~~

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

...