

**GENERAL GUIDANCE ON PROPORTIONALITY:
THE REMUNERATION CODE (SYSC 19C) AND
PILLAR 3 DISCLOSURES ON REMUNERATION (BIPRU 11)**

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PART A: INTRODUCTION & INTERPRETATION

Introduction

Status of guidance statement

1. This statement is general *guidance* given under section 139A(1) of the Financial Services and Markets Act (FSMA). It relates both to:
 - (1) the *BIPRU Remuneration Code* of SYSC 19C of the *FCA Handbook*, and
 - (2) the requirement to make Pillar 3 disclosures in relation to *remuneration* (in accordance with *BIPRU 11* of the *Handbook*).
2. Paragraphs 14 and 15 make provision about the interpretation of this *guidance* statement. Expressions in italics either bear the meaning given in the *Handbook Glossary*, or in the table in paragraph 15.
3. This *guidance* statement has effect from 1 January 2014.

Remuneration principles proportionality rule

4. The *BIPRU remuneration principles proportionality rule* is set out in SYSC 19C.3.3R (2).
5. The *BIPRU Remuneration Code* requires (amongst other things) a *firm* to apply requirements in SYSC 19C.3 to *BIPRU Remuneration Code staff*. The *BIPRU remuneration principles proportionality rule* requires a *firm*, when establishing and applying the total *remuneration* policies for *BIPRU Remuneration Code staff*, to comply with SYSC 19C.3 in a way and to the extent that is appropriate to its size, internal organisation and the nature, the scope and the complexity of its activities.

Guidance on the remuneration principles proportionality rule

6. General *guidance* is given in relation to specific aspects of the *remuneration principles proportionality rule* in SYSC 19C.3 itself.¹
7. Part C of this *guidance* statement provides additional general *guidance* in relation to the application of the *BIPRU remuneration principles proportionality rule* to *BIPRU Remuneration Code staff* who have, in relation to a given performance year, been *BIPRU Remuneration Code staff* for only part of the year.
9. This *guidance* statement represents our *guidance* in a field that may be subject to change, we intend to keep the *guidance* set out here under review.

¹ The main provisions of guidance which specifically refer to the *remuneration principles proportionality rule* are SYSC 19C.3.34G (giving guidance in relation to *BIPRU Remuneration Code staff* and certain rules on *remuneration* structures).

Guidance on proportionality in relation to remuneration committees and Pillar 3 remuneration disclosures

10. The *BIPRU remuneration principles proportionality rule* does not apply to the requirement to establish a *remuneration* committee or to make disclosures in relation to *remuneration* under *BIPRU* 11 (as part of Pillar 3). But these requirements are governed by similar proportionality tests, on which *guidance* is given in Parts D and E of this *guidance* statement.

Individual guidance

11. We may give individual *guidance* to a *firm*, either on its own initiative or on the application of the *firm*. Our policy on individual *guidance* is set out in *SUP* 9. In consequence, we may give individual *guidance* to a *firm* in relation to the *remuneration principles proportionality rule* (*SYSC* 19C.3.3R). Such *guidance* may relate to the application of the *rule* by the *firm* generally, or in specific areas.

Arrangement of guidance statement

12. This general *guidance* statement is divided into five Parts:
- (1) This Part, Part A: Introduction & interpretation.
 - (2) Part B: Guidance to *BIPRU firms* on the application of proportionality
 - (3) Part C: Guidance about part-year Remuneration Code staff.
 - (4) Part D: Remuneration committees.
 - (5) Part E: Pillar 3 remuneration disclosures (*BIPRU* 11).
13. It is supplemented by one Appendix:
- (1) Appendix 1: Pillar 3 disclosure requirements by proportionality level.

Interpretation

14. This *guidance* statement is to be interpreted as if it was an Annex to *SYSC* 19C.3 (other than Part E and Appendix 1, which are to be interpreted as if they were an Annex to *BIPRU* 11). In consequence, *GEN* 2 (interpreting the Handbook) applies to the interpretation of this *guidance* statement.
15. In particular, an expression in italics which is defined in the *Glossary* has the meaning given there (*GEN* 2.2.7R). Where an expression in italics is not defined in the *Glossary*, it has the meaning given by the following table:

Table 1: Glossary of terms defined in this guidance statement

Defined expression	Definition
<i>group</i>	has the meaning given in the <i>Glossary</i> under paragraph (3).
<i>BIPRU Remuneration Code firm</i>	a <i>BIPRU firm</i> or <i>third country BIPRU firm</i> to which the <i>BIPRU Remuneration Code</i> applies (in accordance with <i>SYSC</i> 19C.1.1R).

PART B: GUIDANCE TO BIPRU FIRMS ON THE APPLICATION OF PROPORTIONALITY

BIPRU firms that are part of a group

16. Where a *BIPRU Remuneration Code firm* is part of a *group* comprised only of *BIPRU Remuneration Code firms*, each *firm* should apply this guidance.
17. Where a *BIPRU Remuneration Code firm* is part of a *group* in which a *firm* to which SYSC 19A applies is a member, this guidance does not apply, SYSC 19A and applicable guidance applies instead.

Disapplication of certain remuneration principles for BIPRU firms

18. It may not be necessary for *BIPRU firms* to apply *BIPRU remuneration* principles at all.
19. In our view, it will normally be appropriate for a *BIPRU firm* to disapply under the *BIPRU remuneration principles proportionality rule* the following *rules*—
 - (1) retained *shares* or other instruments (SYSC 19C.3.47R),
 - (2) deferral (SYSC 19C.3.49R),
 - (3) performance adjustment (SYSC 19C.3.51R), and
 - (4) the ratios between fixed and variable components of total remuneration (SYSC 19C.3.44R).

BIPRU firms may ‘take into account the specific features of their types of activities’ in applying the ‘requirement on the multi-year framework, in particular the accrual and ex-ante risk adjustment aspects of it’.¹

20. However, *BIPRU firms* should also note that some *remuneration* principles set specific numerical criteria (such as on the minimum period of deferral, the minimum portion to be deferred and the minimum portion to be issued in *shares*). The following *guidance* applies where such principles apply to *BIPRU Remuneration Code staff* and are not capable of disapplication under the approach set out above. In such circumstances, we do not consider that the *remuneration principles proportionality rule* permits a *firm* to apply lower numerical criteria. (For the avoidance of doubt, this *guidance* does not apply where a *firm* chooses to use deferral or issuance in *shares* more widely than required by SYSC 19C.3, for example in order to comply with the *BIPRU Remuneration Code general requirement*.)

PART C: GUIDANCE ABOUT PART-YEAR BIPRU REMUNERATION CODE STAFF

Introduction

21. SYSC 19C.3.34G provides *guidance* on when we do not generally consider it necessary for a *firm* to apply to certain *BIPRU Remuneration Code staff* certain *rules* relating to *remuneration* structures. This Part provides supplementary guidance on how certain *rules* on *remuneration* structures might normally be applied to *BIPRU Remuneration Code staff* who have, in relation to a given performance year, been *BIPRU Remuneration Code staff* for only part of the year.
22. In giving this *guidance*, we have taken account of the *remuneration principles*

¹ As per FSA’s Policy Statement 10/20. See link at http://www.fsa.gov.uk/pubs/policy/ps10_20.pdf.

proportionality rule.

Part-year Remuneration Code staff for more than three months

23. This paragraph applies where an individual (A) has, in relation to a given performance year, been *BIPRU Remuneration Code staff* for a period more than three months, but less than 12 months:
- (1) Sub-paragraphs (3) and (4) explain how the *guidance* in SYSC 19C.3.34G (as mentioned in the introduction to this Part) is to be applied in relation to A. Sub-paragraphs (5) and (6) provide that in certain circumstances it may be appropriate to apply certain *rules* to only a proportion of A's variable remuneration. Sub-paragraphs (7) to (9) provide examples.
 - (2) In this paragraph:
 - (a) 'relevant fraction' means the fraction derived by dividing the number of days in the given performance year for which A has been *BIPRU Remuneration Code staff* by the number of days in the year;
 - (b) 'qualifying fixed remuneration' means A's annual fixed remuneration in A's capacity as *BIPRU Remuneration Code staff* multiplied by the relevant fraction;
 - (c) 'qualifying variable remuneration' means:
 - (i) in the case where A was an *employee* of the *firm* for the whole of the given performance year, A's variable remuneration in relation to the performance year multiplied by the relevant fraction;
 - (ii) in the case where A was only ever employed in the given performance year as *BIPRU Remuneration Code staff*, A's actual variable remuneration;
 - (d) 'total qualifying remuneration' means qualifying fixed remuneration added to qualifying variable remuneration;
 - (e) 'threshold amount' means £500,000 multiplied by the relevant fraction.
 - (3) We do not generally consider it necessary for a *firm* to apply the rules referred to in (4) where, in relation to A, the following conditions are satisfied:
 - (a) Condition 1 is that A's qualifying variable remuneration is no more than 33% of total qualifying remuneration, and
 - (b) Condition 2 is that A's total qualifying remuneration is no more than the threshold amount.
 - (4) The rules referred to in (3) are those relating 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).

- (5) Sub-paragraph (6) applies where the conditions in (3) are not satisfied and the *firm* should apply the rules referred to in (6).
- (6) Where this sub-paragraph applies, we generally consider that it would be appropriate to apply the following rules to qualifying variable *remuneration* only:
 - (a) retained *shares* or other instruments (SYSC 19C.3.47R),
 - (b) deferral (SYSC 19C.3.49R), and
 - (c) performance adjustment (SYSC 19C.3.51R).
- (7) The examples in (8) and (9) illustrate this *guidance*. The performance year in each case is 1 January to 31 December.
- (8) Example 1:
 - (a) A1 is an *employee* of the *firm* through the performance year and is promoted to a *BIPRU Remuneration Code staff* role with effect from 1 September. A1's previous fixed *remuneration* was £150,000. In his *BIPRU Remuneration Code staff* role A1's fixed *remuneration* increases to £250,000. For the performance year, A1 is awarded variable *remuneration* of £130,000.
 - (b) The relevant fraction is 122/365. A1's qualifying fixed *remuneration* is £83,560 (£250,000 multiplied by 122/365). A1's qualifying variable *remuneration* is £43,452 (£130,000 multiplied by 122/365). A1's total qualifying *remuneration* is £127,012. The threshold amount is £167,120 (£500,000 multiplied by 122/365).
 - (c) A1's total qualifying *remuneration* is below the threshold amount, so condition 2 of (3) is satisfied. But A1's qualifying variable *remuneration* is more than 33% of A1's total qualifying *remuneration*, and condition 1 of (3) is not satisfied.
 - (d) The rule on guaranteed variable *remuneration* applies to A1. In addition, the *rules* on retained shares and other instruments, deferral and performance adjustment must be applied to A1's qualifying variable *remuneration* of £43,452.
- (9) Example 2:
 - (a) A2 joins the *firm* as a *BIPRU Remuneration Code staff* member with effect from 1 July. A2's annual fixed *remuneration* is £450,000. For period of 1 June to 31 December, A2 is awarded variable *remuneration* of £50,000.
 - (b) The relevant fraction is 184/365. A2's qualifying fixed *remuneration* is £226,850 (£450,000 multiplied by 184/365). A2's qualifying variable *remuneration* is £50,000 (the actual amount). A2's total qualifying *remuneration* is £276,850. The threshold amount is £252,050 (£500,000 multiplied by 184/365).
 - (c) A2's qualifying variable *remuneration* is not more than 33% of A2's total qualifying *remuneration*, and condition 1 of (3) is satisfied. But A2's total qualifying *remuneration* is more than the threshold amount, so condition 2 of (3) is not satisfied.

- (d) The rule *on* guaranteed variable *remuneration* applies to A2. In addition, the *rules* on retained shares and other instruments, deferral and performance adjustment must be applied to A2's qualifying variable *remuneration* of £50,000.

Certain part-year Remuneration Code staff for three months or less

- 24. Paragraphs 25 and 26 apply where:
 - (1) an individual (B) has, in relation to a given performance year, been *BIPRU Remuneration Code staff* for a period of three months or less, and
 - (2) an exceptional or irregular payment (such as a sign-on award) has not been or is not to be made in relation to B's appointment as *BIPRU Remuneration Code staff*.
- 25. Where this paragraph applies, we do not generally consider it necessary to apply the following rules in relation to B for the performance year in question:
 - (1) retained *shares* or other instruments (SYSC 19C.3.47R),
 - (2) deferral (SYSC 19C.3.49R), and
 - (3) performance adjustment (SYSC 19C.3.51R).
- 26. Where this paragraph applies, the guidance in paragraph 23(2), (3) and (4)(a) should be applied for the purposes of determining whether or not it will generally be necessary to apply the rule on guaranteed variable *remuneration* to B (substituting in that paragraph, for references to 'A', references to 'B').

Part-year Remuneration Code staff for three months or less, but where exceptional etc. payments made

- 27. Paragraph 28 applies where an individual (C) has, in relation to a given performance year, been *BIPRU Remuneration Code staff* for a period of three months or less, but where an exceptional or irregular payment (such as a sign-on award) has or is to be made in relation to C's appointment.
- 28. The guidance in paragraph 23 applies in relation to C (substituting in that paragraph, for references to 'A', references to 'C'). The amount of exceptional or irregular payment is to be added to C's qualifying variable *remuneration* without pro rating.

PART D: REMUNERATION COMMITTEES

Remuneration Committee for BIPRU firms and third country BIPRU firms

29. Remuneration Principle 4 (Governance) provides, in SYSC 19C.3.12R(1), that a *BIPRU 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.
30. With regards to larger *BIPRU firms*, it would be desirable for a *remuneration* committee to be established under SYSC 19C.3.12R and we would normally expect such firms to do so.
However, we accept that it may be possible for such *firms* to justify on the ground of proportionality not establishing under SYSC 19C.3.12R at solo level a *remuneration* committee of the *BIPRU Remuneration Code firm*. In such circumstances it would be necessary to show how the functions which would otherwise have been performed by such a *remuneration* committee would be discharged with sufficient authority, and with sufficient independence from those performing executive functions within the *firm*. Where, for example, members of the *governing body* of the *firm* acted together with a *group remuneration* committee to discharge these functions, we would expect as a minimum to be satisfied that the operational arrangements ensured sufficient independence from those performing executive functions at *BIPRU Remuneration Code firm* or *group* level, and allowed the *governing body* of the *firm* to exercise sufficient authority in relation to the *BIPRU Remuneration Code firm*.

PART E: PILLAR 3 REMUNERATION DISCLOSURES (BIPRU 11)

Requirement to make Pillar 3 remuneration disclosures

31. *BIPRU 11* requires certain *Remuneration Code firms* to disclose a series of qualitative and quantitative information relating to *remuneration* (*BIPRU 11.3* and *BIPRU 11.5.18R*).
32. *BIPRU 11* applies only to *BIPRU firms*.

Pillar 3 remuneration disclosures & proportionality

33. Two proportionality tests apply in relation to the requirement to make Pillar 3 disclosures in relation to *remuneration*:
 - (1) A *BIPRU firm* that is significant in terms of its size, internal organisation and the nature, scope and the complexity of its activities must also disclose the quantitative information referred to in *BIPRU 11.5.18R* at the level of *senior personnel* (*BIPRU 11.5.20R(1)*).
 - (2) *BIPRU firms* must comply with the requirements set out in *BIPRU 11.5.18R* in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities (*BIPRU 11.5.20R (2)*).
34. In relation to the proportionality test referred to in paragraph 33(1), the *FCA* considers that a *firm* should be regarded as ‘significant’ if on *relevant date* a firm has *relevant total assets* exceeding £50bn.
35. In relation to the proportionality test set referred to in paragraph 33(2) the table in Appendix 1 sets out the categories of information that we consider *BIPRU firms* should typically disclose –where applicable.

APPENDIX 1: PILLAR 3 DISCLOSURE REQUIREMENTS BY PROPORTIONALITY LEVEL

BIPRU 11.5.18R disclosure requirement
BIPRU 11.5.18R (1) (<i>‘information concerning the decision-making process used for determining the remuneration policy, including if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders’</i>)
BIPRU 11.5.18R (2) (<i>‘information on link between pay and performance’</i>)
BIPRU 11.5.18R (6) (<i>‘aggregate quantitative information on remuneration, broken down by business area’</i>)
BIPRU 11.5.18R (7) (<i>‘aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the firm...’</i>)