

Chapter 19G

MIFIDPRU Remuneration Code

19G.4 Fixed and variable components of remuneration

Categorising fixed and variable remuneration

- 19G.4.1** R A MIFIDPRU investment firm must ensure that the *remuneration* policy makes a clear distinction between criteria for setting fixed and variable remuneration.
- 19G.4.2** G
- (1) The effect of ■ SYSC 19G.4.1R is that all *remuneration* paid to a staff member must be clearly categorised as either fixed or variable remuneration.
 - (2) In allocating individual *remuneration* components to fixed or variable remuneration, it is the quality and purpose of the component that is decisive, not the label applied to it.
 - (3) The FCA considers that:
 - (a) fixed remuneration:
 - (i) should primarily reflect a staff member's professional experience and organisational responsibility as set out in the staff member's job description and terms of employment; and
 - (ii) should be permanent, pre-determined, non-discretionary, non-revocable and not dependent on performance; and
 - (b) variable remuneration:
 - (i) should be based on performance or, in exceptional cases, other conditions;
 - (ii) where based on performance, should reflect the long-term performance of the staff member as well as performance in excess of the staff member's job description and terms of employment;
 - (iii) includes *discretionary pension benefits*; and
 - (iv) includes carried interest, as referred to in ■ SYSC 19G.1.27R.
- 19G.4.3** G Returns made by staff on co-investment arrangements are shares in the profits as a pro rata return on an investment. The FCA does not usually consider these returns to be *remuneration* for the purposes of the MIFIDPRU Remuneration Code. However, the FCA considers these returns will be *remuneration* if the investment was made using a loan provided by the firm or by an undertaking in the same group as the firm, and if the loan was

either not provided on commercial terms or had not been repaid in full by the date on which the returns on investment were paid.

19G.4.4 G

- (1) In relation to *remuneration* received by a *partner* or a member in a *limited liability partnership*, the *FCA*'s view on how to categorise certain payments received by those *individuals* is as follows:
 - (a) at the end of each year, the residual profits of a *partnership* or *limited liability partnership* are distributed among the *partners* or members. The level of ownership of each *partner* or member is reflected in the number of ownership shares they have. Residual profits are distributed according to the ownership shares, so are not linked to work or performance. In the *FCA*'s view, payments on this basis are not *remuneration*;
 - (b) a *partner* or member may receive an amount fixed at the beginning of the year and subject only to the *firm* making a profit. These are often called fixed profit shares. A *partner* or member usually takes drawings on it throughout the year, often monthly. If profits at year-end are insufficient, drawings may have to be paid back. The *FCA* considers that drawings on fixed profit shares are usually fixed *remuneration*;
 - (c) a *partner* or member may receive a discretionary share of the profit at the end of the year. These may be distributed to all *partners* or members but are usually dependent on the performance of the *individual* or their *business unit*. Awards may be at the discretion of the *remuneration* committee. The *FCA* considers that payments made on this basis are usually variable *remuneration*.
- (2) A *firm* that is a *partnership* or *limited liability partnership* may use a benchmarking approach instead of, or in addition to, the approach in (1) to categorise payments made to *partners* or members of *limited liability partnerships*. For example, it may take into account:
 - (a) the *remuneration* structures of other *individuals* performing similar tasks or working in similar businesses as the *partner* or member in question; or
 - (b) the return expected in a similar investment context where the *partner* or member has invested in a *fund* or *firm*.
- (3) Where a *partner* or member of a *limited liability partnership* works full-time for a *firm* the *FCA* would expect a reasonable portion of the *partner's* or member's profit share to be categorised as *remuneration*. Where a *partner* or member works part-time and receives less *remuneration* than a *partner* or member who works full-time, the *FCA* would expect a smaller proportion of the part-time *partner* or member's profit share to be classed as *remuneration*.

Balance of fixed and variable components of total remuneration

19G.4.5 R

- A *MIFIDPRU investment firm* must ensure that:
- (1) the fixed and variable components of the total *remuneration* are appropriately balanced; and

- (2) the fixed component represents a sufficiently high proportion of the total *remuneration* to enable the operation of a fully flexible policy on variable *remuneration*, including the possibility of paying no variable *remuneration* component.
- 19G.4.6** R For the purposes of ■ SYSC 19G.4.5R, a *non-SNI MIFIDPRU investment firm* must set an appropriate ratio between the variable component and the fixed component of the total *remuneration* in their *remuneration* policies.
- 19G.4.7** G
- (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of ■ SYSC 19G.4.5R and ■ SYSC 19G.4.6R respectively, 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 *material risk takers*, the impact that different categories of staff have on the risk profile of the *non-SNI MIFIDPRU investment firm* or of the assets it manages.
- (2) It may be appropriate for some staff to receive only fixed *remuneration*. The *FCA* does not consider it would be an appropriate balance for any *individual* to receive only variable *remuneration*.
- 19G.4.8** G A *non-SNI MIFIDPRU investment 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.
- 19G.4.9** G Ratios may differ from one performance period to the next.
- 19G.4.10** G 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.
- 19G.4.11** R When a *firm* is assessing whether the award of variable *remuneration* is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R, it may exclude from that calculation any amount of severance pay that:
- (1) exceeds the maximum amount of severance pay that can be paid under the *firm's remuneration policy* (in accordance with ■ SYSC 19G.6.12R(2)); and
 - (2) the *firm* has become obliged to pay as a result of a legal obligation that has arisen after the date on which the *firm* adopted the relevant version of its *remuneration* policy.

19G.4.12 **G**

As explained in ■ SYSC 19.6.12R(2), where severance pay is payable a *firm's remuneration* policy must set out the maximum level of severance pay or the criteria for determining the amount. *Firms* should therefore take these policies into account when establishing the ratio between variable and fixed *remuneration* in accordance with ■ SYSC 19G.4.6R. The *FCA* accepts that in rare circumstances, for reasons that wouldn't have been clear to a *firm* when setting its *remuneration* policy, a *firm* may become legally obliged to pay a higher amount of severance pay, for example as a result of legal proceedings. In these situations, ■ SYSC 19G.4.11 states that the difference between the maximum severance pay permitted under the *firm's remuneration* policy and the higher amount the *firm* is legally obliged to pay may be excluded from an assessment of whether an award of variable *remuneration* is consistent with the ratio set in accordance with ■ SYSC 19G.4.6R.