Chapter 19G

MIFIDPRU Remuneration Code

19G.1 General application

Application: non-SNI MIFIDPRU investment firms

19G.1.1 R

(1) Subject to (2), the *MIFIDPRU Remuneration Code* applies to a *non-SNI MIFIDPRU investment firm*.

(2) The provisions in (4) do not apply to a *non-SNI MIFIDPRU investment firm*:

   (a) where the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £100 million or less; or

   (b) where:

      (i) the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £300 million or less; and

      (ii) the conditions in (3) are (where they are relevant to a *firm*) satisfied.

(3) The conditions referred to in (2)(b)(ii) are:

   (a) that the exposure value of the *firm's* on- and off-balance sheet *trading book* business is equal to or less than £150 million; and

   (b) that the exposure value of the *firm's* on- and off-balance sheet derivatives business is equal to or less than £100 million.

(4) The provisions referred to in (2) are:

   (a) SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements);

   (b) SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy);

   (c) SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and

   (d) SYSC 19G.6.35R(2) (Discretionary pension benefits).

(5) For the purposes of paragraph (2), paragraph (6) applies where a *non-SNI MIFIDPRU investment firm* does not have monthly data covering the 4-year period referred to in that paragraph.

(6) Where this paragraph applies, a *non-SNI MIFIDPRU investment firm* must calculate the rolling averages referred to in paragraph (2) using the data points that it does have.

19G.1.2 G

(1) For the purposes of SYSC 19G.1.1R(5), the *FCA* expects a *non-SNI MIFIDPRU investment firm* to have insufficient data for a period only where it did not carry on any *MiFID business* during that period, or where (for periods prior to the application of the *MIFIDPRU Remuneration Code*) the *firm* did not record the relevant data on a monthly basis.

(2) Where a *firm* doesn't have all the monthly data points, the *firm* should use the data points it has in the way that paints the most representative picture of the period in question. For example, if a *firm* has monthly data for 2 years of the 4-year period, but prior to that only recorded the relevant data on a quarterly basis, the *firm* could sensibly calculate its rolling average by using the quarterly figure for each of the 3 monthly data points in each quarter.

19G.1.3 R

(1) The amounts referred to in SYSC 19G.1.1R must be calculated on an individual basis, and:

(a) in the case of on-balance sheet assets, in accordance with the applicable accounting framework;

(b) in the case of *off-balance sheet items*, using the full nominal value.

(2) The value of the on-balance sheet assets and *off-balance sheet items* in SYSC 19G.1.1R(2)(a) and (b) must be an arithmetic mean of the assets and items over the preceding 4 years, based on monthly data points.

(3) A *firm* may choose the day of the *month* that it uses for the data points in (2), but once that day has been chosen the *firm* may only change it for genuine business reasons.

19G.1.4 R

(1) When calculating the amounts referred to in SYSC 19G.1.1R(2)(a) and (b), a firm must use the total amount of its on-balance sheet assets and off-balance sheet items.

(2) A *firm* must calculate the exposure values referred to in SYSC 19G.1.1R(3)(a) and (b) by adding together the following items:

(a) the positive excess of the *firm's* long positions over its short positions in all *trading book financial instruments*, using the approach specified for K-NPR in MIFIDPRU 4.12.2R to calculate the net position for each instrument; and

(b) the exposure value of contracts and transactions referred to in MIFIDPRU 4.14.3R, calculated using the approach specified for K-TCD in MIFIDPRU 4.14.8R.

(3) Any amounts in foreign currencies must be converted into pound sterling using the relevant conversion rate.

(4) A *firm* must determine the relevant conversion rate referred to in (3) by reference to an appropriate market rate and must record which rate was chosen.

19G.1.5 G The *FCA* considers that an example of an appropriate market rate for the purposes of SYSC 19G.1.4R(4) is the relevant daily spot exchange rate against pound sterling published by the Bank of England.

Application: SNI MIFIDPRU investment firms

19G.1.6 R

(1) The provisions in (2) apply to a *SNI MIFIDPRU investment firm*.

(2) The provisions referred to in (1) are:

(a) SYSC 19G.2 (Remuneration policies and practices);

(b) SYSC 19G.3.1R to SYSC 19G.3.3R (Oversight of remuneration policies and practices);

(c) SYSC 19G.3.6R to SYSC 19G.3.8G (Control functions);

(d) SYSC 19G.4.1R to SYSC 19G.4.5R and SYSC 19G.4.7G(1) and (2) (Fixed and variable components of remuneration);

(e) SYSC 19G.6.1R (Remuneration and capital);

(f) SYSC 19G.6.2R (Exceptional government intervention); and

(g) SYSC 19G.6.5R to SYSC 19G.6.6G (Assessment of performance).

Application: summary of application to MIFIDPRU investment firms

19G.1.7 G The effect of the application provisions in SYSC 19G.1.1R to 19G.1.6R is summarised in the following table.

Type of firm	Applicable sections
Non-SNI MIFIDPRU investment firm not falling within SYSC 19G.1.1R(2)	The *MIFIDPRU Remuneration Code*
Non-SNI MIFIDPRU investment firm falling within SYSC 19G.1.1R(2)	The *MIFIDPRU Remuneration Code* except for: SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements); SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy); SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and SYSC 19G.6.35R(2) (Discretionary pension benefits)
SNI MIFIDPRU investment firm	SYSC 19G.2 (Remuneration policies and practices); SYSC 19G.3.1R to SYSC 19G.3.3R (Oversight of remuneration policies and practices); SYSC 19G.3.6R to SYSC 19G.3.8G (Control functions); SYSC 19G.4.1R to SYSC 19G.4.5R and SYSC 19G.4.7G(1) and SYSC 19G.4.7G(2) (Fixed and variable components of remuneration); SYSC 19G.6.1R (Remuneration and capital); SYSC 19G.6.2R (Exceptional government intervention); and

SYSC 19G.6.5R to SYSC 19G.6.6G (Assessment of performance)

MIFIDPRU 1.2 contains provisions regarding the classification of a *firm* as a *SNI MIFIDPRU investment firm* and *non-SNI MIFIDPRU investment firm*.

Application: where the application of SYSC 19G.1.1R changes in relation to a firm

19G.1.8 R

(1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that did not meet either condition in SYSC 19G.1.1R(2)(a) or (b) but subsequently does.

(2) The provisions referred to in SYSC 19G.1.1R(2) cease to apply to the *firm* in (1) if:

(a) the *firm* has met the conditions in either SYSC 19G.1.1R(2)(a) or (b) for a continuous period of at least 6 *months* (or such longer period as may have elapsed before the firm submits the notification in (b)); and

(b) it has notified the *FCA* that it has met the conditions in (a).

(3) The notification in (2)(b) must be submitted through the *online notification and application system* using the form in MIFIDPRU 7 Annex 3R.

19G.1.9 G

The effect of SYSC 19G.1.8R(2)(a) is that a *firm* may move between meeting the conditions in SYSC 19G.1.1R(2)(a) and (b) during the 6-*month* period.

19G.1.10 R

Where a *non-SNI MIFIDPRU investment firm* has met the conditions in SYSC 19G.1.1R(2)(a) or (b) but then ceases to do so, it must comply with the provisions referred to in SYSC 19G.1.1R(2) within 12 *months* from the date on which the *firm* ceased to meet the conditions.

19G.1.11 R

(1) Where a *non-SNI MIFIDPRU investment firm* ceases to meet the conditions in SYSC 19G.1.1R(2)(a) or (b), it must promptly notify the *FCA*.

(2) The notification in (1) must be submitted through the *online notification and application system* using the form in MIFIDPRU 1 Annex 3R.

19G.1.12 G

Where a *firm* ceases to meet the conditions in SYSC 19G.1.1R(2)(a) or (b), but subsequently meets the conditions again within a period of 6 *months*, the *firm* will still be subject to the provisions referred to in SYSC 19G.1.1R(2) for 12 *months* after the date on which it first ceased to meet the conditions. The *firm* only ceases to be subject to the provisions referred to in SYSC 19G.1.1R(2) where it meets the conditions in SYSC 19G.1.8R(2).

19G.1.13 R

The requirements in SYSC 19G.1.8R(2)(b) and SYSC 19G.1.11R(1) do not apply where a *non-SNI MIFIDPRU investment firm* has notified the *FCA* in accordance with the requirements of MIFIDPRU 7.1.9R(2)(b) or MIFIDPRU 7.1.12R(1) of the same event.

Application: collective portfolio management investment firms

19G.1.14 G The *MIFIDPRU Remuneration Code* applies to a *collective portfolio management investment firm*.

19G.1.15 G (1) A *collective portfolio management investment firm* must assess the thresholds in SYSC 19G.1.1R(2) and (3) on the basis of the total of both its *MiFID business* and *non-MiFID business*.

(2) SYSC 19G.1.20R to SYSC 19G.1.23G explain the position for *firms* subject to the *MIFIDPRU Remuneration Code* and another *FCA* remuneration code.

Application: levels of application

19G.1.16 G SYSC 19G.1.1R to SYSC 19G.1.15R and SYSC 19G.1.17R explain when the *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis. SYSC 19G.1.18R and 19G.1.19R explain when the *MIFIDPRU Remuneration Code* applies on a consolidated basis, and what that means.

19G.1.17 R The *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis where the *FCA* has granted a firm permission under MIFIDPRU 2.4.17R and MIFIDPRU 2.4.18R to apply the *group capital test*.

19G.1.18 R (1) Subject to (3), where MIFIDPRU 2.5 applies to a *UK parent entity*, the *MIFIDPRU Remuneration Code* applies to that *UK parent entity* on a consolidated basis.

(2) A *UK parent entity* that is treated as an *SNI MIFIDPRU investment firm* in accordance with MIFIDPRU 2.5.21R is also treated as an *SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.

(3) A *UK parent entity* that is treated as a *non-SNI MIFIDPRU investment firm* in accordance with MIFIDPRU 2.5.21R is also treated as a *non-SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.

(4) The following provisions only apply to a *firm* on an individual basis:

(a) SYSC 19G.1.1R(2), (3), (5) and (6);

(b) The provisions listed in SYSC 19G.1.1R(4);

(c) SYSC 19G.1.2G to 19G.1.5G; and

(d) SYSC 19G.1.8G to 19G.1.13G.

(5) For the purposes of the *MIFIDPRU Remuneration Code*, application on a consolidated basis means on the basis of the situation that results from applying the requirements in the *MIFIDPRU Remuneration Code* to a *UK parent entity* as if that *undertaking*, together with all the *investment firms*, *financial institutions*, *ancillary services undertakings*

and *tied agents* in the *investment firm group*, formed a single *MIFIDPRU investment firm*.

(6) For the purposes of (5), the terms *investment firm*, *financial institution*, *ancillary services undertaking* and *tied agent* apply to *undertakings* established in *third countries*, which, if established in the *UK*, would satisfy the definitions of those terms.

(7) Where an *undertaking* in a *third country* is included in the consolidated situation of a *UK parent entity* as a result of (6), the *MIFIDPRU Remuneration Code* only applies in relation to *material risk takers* at that *undertaking* who oversee or are responsible for business activities that take place in the *UK*.

19G.1.19 G

Where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the effect of SYSC 19G.1.18R(5) is that the *UK parent entity* and all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group* are treated for these purposes as a single *MIFIDPRU investment firm*. This means, for example, treating a staff member of an *undertaking* within the *investment firm group* as if they were a staff member of the *UK parent entity*.

(2) When considering which rules in the *MIFIDPRU Remuneration Code* apply on a consolidated basis, a *UK parent entity* must consider whether it is treated as an *SNI MIFIDPRU investment firm* or a *non-SNI MIFIDPRU investment firm* under MIFIDPRU 2.5.21R (which, as SYSC 19G.1.18R(2) and (3) explain, also determines its categorisation under the *MIFIDPRU Remuneration Code*).

(3) The effect of SYSC 19G.1.18R(4)(b) is that a *UK parent entity* need not comply with the provisions listed in SYSC 19G.1.1R(4) on a consolidated basis. These provisions apply on an individual basis where a *firm* exceeds the thresholds in SYSC 19G.1.1R(2)(a) or (b). As these thresholds are not relevant where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the provisions concerning them are also disapplied.

Application: firms subject to different remuneration requirements

19G.1.20 R

(1) Where a *firm* is subject to the *MIFIDPRU Remuneration Code* and, as a result of the application of any of the requirements listed in (2), to provisions imposing different *remuneration* requirements, only one of which can be complied with, it must comply with the most stringent of the relevant provisions.

(2) The requirements referred to in (1) are:

(a) different requirements in the *MIFIDPRU Remuneration Code*;

(b) the *AIFM Remuneration Code*;

(c) the *Dual-regulated firms Remuneration Code*; and

(d) the *UCITS Remuneration Code*.

19G.1.21 G ■ SYSC 19G.1.20R states that where different *remuneration* requirements apply to a *firm* it must comply with the most stringent of the relevant provisions. Some non-exhaustive examples follow.

Example 1: A *firm* may be subject to different requirements under the *MIFIDPRU Remuneration Code* on an individual basis and on a consolidated basis. This scenario may arise because a *firm* is an *SNI MIFIDPRU investment firm* on an individual basis but a *non-SNI MIFIDPRU investment firm* on a consolidated basis.

Example 2: Different *remuneration* requirements may apply to a *firm* when an *investment firm group* contains both a *PRA-designated investment firm* and an *FCA investment firm* (but not a *credit institution*). This may lead to a *firm* being subject to both the *MIFIDPRU Remuneration Code* and the *Dual-regulated firms Remuneration Code*.

Example 3: A staff member at a *collective portfolio management investment firm* may be a *material risk taker* and also *AIFM Remuneration Code Staff* or *UCITS Remuneration Code Staff*. In this case the *material risk taker* will be subject to the *MIFIDPRU Remuneration Code* and the requirements of the *AIFM Remuneration Code* or the *UCITS Remuneration Code*.

19G.1.22 G The effect of ■ SYSC 19G.1.20R is that a *firm* must consider which requirement is the most stringent on a provision by provision basis.

19G.1.23 G ■ SYSC 19G.1.20R is not relevant where a *firm* can comply with both sets of *remuneration* requirements, for example requirements to establish, implement and maintain *remuneration* policies and practices on both an individual basis and a consolidated basis.

Application: staff

19G.1.24 G The term ‘staff’ should be interpreted broadly in the *MIFIDPRU Remuneration Code* to include, for example, employees of the *firm* itself, *partners* or members (in the case of partnership structures), *employees* of other entities in the *group*, *employees* of joint service companies, and secondees.

Application: performance periods

19G.1.25 G The rules in the *MIFIDPRU Remuneration Code* apply to each performance period, regardless of whether it is annual, quarterly, or another frequency. A *firm* must comply with the rules on performance assessment and risk adjustment in relation to each such performance period.

Application: proportionality

19G.1.26 R A *firm* must comply with the *MIFIDPRU Remuneration Code* in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

Application: carried interest

19G.1.27 R

(1) The *MIFIDPRU Remuneration Code* applies to *remuneration*, including carried interest (which represents a share in the profits of a *fund* managed by the *firm's* staff, as compensation for the management of the *fund*).

(2) Where arrangements concerning carried interest meet the conditions in (3), the following provisions do not apply:

(a) SYSC 19G.6.19R to SYSC 19G.6.21G (Shares, instruments and alternative arrangements);

(b) SYSC 19G.6.22R and SYSC 19G.6.23G (Retention policy);

(c) SYSC 19G.6.24R to SYSC 19G.6.29R (Deferral); and

(d) SYSC 19G.6.30R to SYSC 19G.6.34G (Performance adjustment).

(3) The conditions referred to in (2) are that:

(a) the value of the carried interest must be determined by the performance of the *fund* in which the carried interest is held;

(b) the period between the award of the carried interest and any payment under it must be at least 4 years; and

(c) there are provisions for the forfeiture or cancellation of carried interest that include at least the circumstances set out in SYSC 19G.6.31R(3)(a) and SYSC 19G.6.31R(3)(b).

19G.1.28 R

For the purposes of the *MIFIDPRU Remuneration Code*, a carried interest must be valued at the time of its award.

Application: general

19G.1.29 G

While the rules in the *MIFIDPRU Remuneration Code* set out the minimum regulatory requirements that a *MIFIDPRU investment firm* must comply with, the *FCA* considers it good practice for a *firm* to assess whether going beyond those regulatory requirements would contribute to sound risk management or a healthy firm culture.

When?

19G.1.30 R

A *firm* must apply the *MIFIDPRU Remuneration Code* from the start of its first performance period that begins on or after 1 January 2022.