Chapter 19G

MIFIDPRU Remuneration Code

Other instruments for use in variable remuneration

Purpose

1.1 G SYSC 19G.6.19R requires that at least 50% of variable *remuneration* must be paid in *eligible instruments*. Under SYSC 19G.6.19R(3), *eligible instruments* include instruments that meet the requirements set out in this Annex. The instruments within the scope of this Annex include *additional tier 1 instruments*, *tier 2 instruments* and other instruments which can be fully converted to *common equity tier 1 instruments*, or written down, and that adequately reflect the *firm's* credit quality.

Requirements for instruments

1.2 R An instrument under SYSC 19G.6.19R(3) must satisfy the following requirements

(1) the instrument must be issued by the *firm*;

(2) the instrument must not be secured or subject to a guarantee or any other arrangement that enhances the seniority of the claims of its holder in insolvency;

(3) the terms of the instrument must provide that any distributions on the instrument will be paid on at least an annual basis and will be paid to the holder;

(4) the instrument must be priced at its value at the time of issuance under the accounting framework applicable to the *firm*;

(5) the valuation of the instrument in (4) must be subject to independent review;

(6) if the instrument is part of an issuance which has the sole purpose of being used for variable *remuneration*, the price at which the instrument is redeemed, called, repurchased or converted must be subject to an independent valuation in accordance with the accounting framework applicable to the *firm*;

(7) if the instrument is not perpetual, at the time at which it is awarded as variable *remuneration*, the remaining period before the maturity of the instrument must be at least equal to the sum of any deferral and retention periods that would apply to the staff member to whom the instrument is awarded;

(8) the instrument must not be subject to redemption, call or repurchase during any deferral and retention periods that would apply to the *material risk taker* to whom the instrument is awarded;

(9) any right to redeem, call or repurchase the instrument must be exercisable only at the sole discretion of the *firm*;

(10) the holder of the instrument must have no rights to accelerate the future scheduled payment of interest or principal, except in the insolvency or liquidation of the *firm*;

(11) the terms of the instrument must provide that the claim on the principal amount of the instrument is wholly subordinated to the claim of all non-subordinated creditors;

(12) one of the requirements in SYSC 19G Annex 1.3R must be satisfied; and

(13) the instrument must be either:

(a) a *convertible instrument*, in which case the requirements in SYSC 19 Annex 1.4R and SYSC 19 Annex 1.5R must be satisfied; or

			(b)	a *write-down instrument*, in which case the requirements in SYSC 19 Annex 1.6R must be satisfied.	
1.3	R	(1)	An instrument under SYSC 19G.6.19R(3) must meet either the conditions in (2) or the conditions in (4).		
		(2)	The first set of conditions is as follows:		
			(a)	the instrument must be part of an issuance which has the sole purpose of being used as variable *remuneration*; and	
			(b)	the terms of the instrument must ensure that any distributions payable on the instrument are paid at a rate which is:	
				(i)	consistent with market rates for similar issuances issued by other *firms* with comparable credit quality; and
				(ii)	subject to (3), no higher than 8% above the Consumer Price Index 12-month rate as published by the UK Office of National Statistics from time to time.
		(3)	If the instrument has been awarded to a member of staff whose professional duties are predominantly performed outside the *UK* and the instruments are denominated in a currency other than pound sterling, a *firm* may substitute another similar independently-calculated consumer price index for a relevant *third country* in place of the rate specified in (2)(b)(ii).		
		(4)	The second set of conditions is that, at the time at which the instrument was awarded as variable *remuneration*, at least 60% of that class of instrument in issuance was:		
			(1)	issued other than for use as variable *remuneration*; and	
			(2)	not held by any *person* who has close links to:	
				(i)	the *firm*;
				(ii)	the *firm's group*; or
				(iii)	a *connected undertaking* included within the *firm's investment firm group*.
	Additional requirements for convertible instruments				
1.4	R	A *firm* must satisfy the following requirements in relation to an instrument referred to SYSC 19G.6.19R(3) that is a *convertible instrument*:			
		(1)	the instrument must contain a trigger event which, if it occurs, results in the full principal amount of the instrument being converted into *common equity tier 1 capital* of the *firm*;		
		(2)	the trigger event in (1) must occur where the *common equity tier 1 capital* of the *firm* falls below a specified level that is no lower than 64% of the *firm's own funds requirement*;		
		(3)	the *firm* issuing the instrument must ensure the following to the extent necessary to give full effect to the required conversion following the trigger event in (1):		
			(a)	where applicable, the *firm* has sufficient authorised share capital;	
			(b)	the *firm* has all necessary permissions, authorisations and corporate authorities; and	
			(c)	there are no other restrictions in the *firm's* constitutional documents, contractual arrangements or applicable national law that would prevent the *firm* from issuing the required *common equity tier 1 capital* instruments.	

1.5 R The rate of conversion of the principal amount into *common equity tier capital* of the *firm* specified in the terms governing an instrument under SYSC 19G.6.19R(3) that is a *convertible instrument* must be set at a level that ensures that the value of the *common equity tier 1 capital* received by the holder upon conversion:

(1) would not be higher than the value of the instrument at the time that it was originally awarded as variable *remuneration*; and

(2) if the *convertible instrument* is part of an issuance which has the sole purpose of being used as variable *remuneration*, would not be higher than the value of the instrument at the time of conversion.

Additional requirements for write-down instruments

1.6 R A *firm* must satisfy the following requirements in relation to an instrument under SYSC 19G.6.19R(3) that is a *write-down instrument*:

(1) the instrument must contain a trigger event which, if it occurs, results in the principal amount of the instrument being written down;

(2) the trigger event in (1) must occur where the *common equity tier 1 capital* of the *firm* falls below a specified level that is no lower than 64% of the *firm's own funds requirement*;

(3) the aggregate principal amount of *write-down instruments* that must be written down following the trigger event in (1) must be at least equal to the lower of the following:

(a) the amount required to ensure that the *common equity tier 1 capital* of the *firm* referenced in the trigger event is restored to a level that is higher than the specified trigger; or

(b) the full principal amount of the instrument;

(4) any write-down in the principal amount of the instrument following the trigger event in (1) must:

(a) apply on a pro rata basis across all *write-down instruments* that contain the same trigger event;

(b) generate items that, under the accounting framework applicable to the *firm*, qualify as *common equity tier 1 capital*;

(c) result in a proportional reduction in the holder's entitlement to receive:

(i) distributions paid in connection with the instrument;

(ii) payment if the instrument is called or redeemed; and

(iii) repayment in the insolvency or liquidation of the *firm*;

(5) any write-down in the principal amount of the instrument following the trigger event in (1) may be permanent or temporary, but if it is temporary, any subsequent write-up must comply with the following requirements:

(a) it cannot increase the principal amount of the instrument beyond its level before the write-down occurred;

(b) it must be at the absolute discretion of the *firm*;

(c) the *firm* must have a reasonable basis to conclude that the write-up is appropriate, having regard to the following factors, among others:

(i) the importance of effectively aligning the interests of the recipient with the longer-term interests of the *firm*, its clients and its creditors;

(ii) the financial position of the *firm* and the effect of the write-up on the *firm's own funds*; and

(iii) if the *firm* or any member of its *group* has been subject to exceptional government intervention, whether the write-up is consistent with the objective of ensuring the timely exit from that support;

(d) it must be applied on a pro rata basis between all recipients of instruments falling under SYSC 19G.6.19R(3) that are *write-down instruments* where those instruments have previously been subject to a write-down.