SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS (REMUNERATION CODE) (NO 2) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority 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 138 (General rule-making power);
(2) section 139A (General rules about remuneration);
(3) section 149 (Evidential provisions);
(4) section 156 (General supplementary powers); and
(5) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 January 2011.

Amendments to the Handbook

D. The modules of the FSA Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
General Prudential sourcebook (GENPRU)	Annex C
Supervision manual (SUP)	Annex D

Notes

E. In the Annexes to this instrument, the "notes" (indicated by "**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 Code) (No 2) Instrument 2010.

By order of the Board
16 December 2010

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

discretionary pension benefit	(in *SYSC* 19A) enhanced pension benefits granted on a discretionary basis by a *firm* to an *employee* as part of that *employee's* variable *remuneration* package, but excluding accrued benefits granted to an *employee* under the terms of his company pension scheme. [**Note:** article 4(49) of the *Banking Consolidation Directive*]
FSB Compensation Standards	(in accordance with the definition of "the Implementation Standards" in section 139A(12) of the *Act*) the Implementation Standards for Principles for Sound Compensation Practices issued by the Financial Stability Board on 25 September 2009.
Remuneration Code staff	(for a *BIPRU firm* and a *third country BIPRU firm*) has the meaning given in *SYSC* 19A.3.4R.
remuneration principles proportionality rule	(in *SYSC* 19A) has the meaning given in *SYSC* 19A.3.3R.

Amend the following definitions as shown.

parent undertaking	(1) (in accordance with section 420 of the *Act* (Parent and subsidiary undertaking) and section 1162 of the Companies Act 2006 (Parent and subsidiary undertakings)): … (c) (for the purposes of … *SYSC* 12 (Group risk systems and controls requirement) and *SYSC* 19A (Remuneration Code) and in relation to whether an *undertaking* is a parent *undertaking*) an *undertaking* which has the following relationship to another *undertaking* ("S"): …
remuneration	any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind. [**Note:** paragraph 23 of Annex V to the *Banking Consolidation Directive*]
Remuneration Code	*SYSC* ~~19~~ 19A (Remuneration Code).

Remuneration Code general requirement	*SYSC* ~~19.2.1R~~ 19A.2.1R.
~~*remuneration committee*~~	~~a committee or other body responsible for a *firm's remuneration policy*.~~
~~*remuneration policy*~~	~~the policy, procedures and practices established, implemented and maintained in accordance with the *Remuneration Code general requirement*.~~
~~*third country BIPRU 730k firm*~~	~~an *overseas firm* that:~~ ~~(a) is not an *EEA firm*;~~ ~~(b) has its head office outside the *EEA*; and~~ ~~(c) would be a *BIPRU 730k firm* if it had been a *UK domestic firm*, had carried on all its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.~~

Annex B

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

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

1 Annex 1 Detailed application of SYSC

…

Part 3	Tables summarising the application of the common platform requirements to different types of firm	
3.1	G	The *common platform requirements* apply in the following two ways (subject to the provisions in Part 2 of this Annex).
3.2	G	For a *common platform firm*, they apply in accordance with Column A in the table below.
3.3	G	For all other *firms* apart from *insurers*, *managing agents* and the *Society*, they apply in accordance with Column B in the table below. For these *firms*, where a *rule* is shown modified in Column B as 'Guidance', it should be read as *guidance* (as if "should" appeared in that rule instead of "must") and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm's business.

Provision SYSC 4	COLUMN A Application to a common platform firm	COLUMN B Application to all other firms apart from insurers, managing agents and the Society
SYSC 4.1.1R	Rule <u>but *SYSC* 4.1.1R(2) applies only to a *BIPRU firm*</u>	Rule <u>but *SYSC* 4.1.1R(2) applies only to a *third country BIPRU firm*</u>

…

1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. …

Type of firm	Applicable chapters
…	
Every other *firm*	Chapters 4 to 12, 18, ~~19~~ <u>19A</u>

…

1.4 Application of SYSC 11 to SYSC ~~19~~ 19A

...

1.4.1 G The application of each of chapters *SYSC* 11 to *SYSC* ~~19~~ 19A is set out in those chapters.

…

1.4.2 R A contravention of a rule in *SYSC* 11 to *SYSC* ~~19~~ 19A does not give rise to a right of action by a *private person* …

…

4.1.1 R (1) A *firm* must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

(2) A *BIPRU firm* and a *third country BIPRU firm* must comply with the *Remuneration Code*.

[**Note**: article 22(1) of the *Banking Consolidation Directive*, article 13(5) second paragraph of *MiFID*]

4.1.2 R For a *common platform firm*, the arrangements, processes and mechanisms referred to in *SYSC* 4.1.1R must be comprehensive and proportionate to the nature, scale and complexity of the *common platform firm's* activities and must take into account the specific technical criteria described in *SYSC* 4.1.7R, *SYSC* 5.1.7R ~~and~~, *SYSC* 7 and (for a *BIPRU firm* and a *third country BIPRU firm*) *SYSC* 19A.

…

~~Remuneration policies~~

4.1.12 G ~~Certain *banks*, *building societies* and *BIPRU 730k firms* will need to comply with the *Remuneration Code* requirement to establish, implement and maintain an effective *remuneration policy* that is consistent with effective risk management. See *SYSC* 19.1 for details of the application of the *Remuneration Code*.~~ [deleted]

…

6.1.4-A G In setting the method of determining the *remuneration* of *relevant persons* involved in the compliance function, ~~certain *banks*, *building societies* and~~ *BIPRU* ~~*730k*~~ *firms* will also need to comply with the *Remuneration Code*.

~~See *SYSC* 19.1 for details of the application of the *Remuneration Code*.~~

…

7.1.7B G In setting the method of determining the *remuneration* of *employees* involved in the risk management function, ~~certain *banks*, *building societies* and~~ *BIPRU* ~~*730k*~~ *firms* will also need to comply with the *Remuneration Code*. ~~See *SYSC* 19.1 for details of the application of the *Remuneration Code*.~~

…

12.1.13 R If this *rule* applies under *SYSC* 12.1.14R to a *firm*, the *firm* must:

(1) comply with *SYSC* 12.1.8R(2) in relation to any *UK consolidation group* or *non-EEA sub-group* of which it is a member, as well as in relation to its *group*; and

(2) ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or *non-EEA sub-group* of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:

…

(da) the *Remuneration Code*;

…

The following new text is inserted after SYSC Chapter 19. SYSC Chapter 19 is deleted in its entirety. The deleted text is not shown struck through and the new text is not underlined.

19A Remuneration Code

19A.1 General application and purpose

Who? What? Where?

19A.1.1 R (1) The *Remuneration Code* applies to a *BIPRU firm* and a *third country BIPRU firm*.

(2) In relation to a *third country BIPRU firm*, the *Remuneration Code* applies only in relation to activities carried on from an establishment in the *United Kingdom*.

(3) Otherwise, the *Remuneration Code* applies to a *firm* within (1) in the same way as *SYSC* 4.1.1R (General Requirements).

19A.1.2 G Part 2 of *SYSC* 1 Annex 1 provides for the application of *SYSC* 4.1.1R (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in *SYSC* 12, this means that:

(1) in relation to what the *Remuneration Code* applies to, it:

(a) applies in relation to *regulated activities*, activities that constitute *dealing in investment as principal* (disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc)), *ancillary activities* and (in relation to *MiFID business*) *ancillary services*;

(b) applies with respect to the carrying on of *unregulated activities* in a *prudential context*; and

(c) takes into account activities of other *group* members; and

(2) in relation to where the *Remuneration Code* applies, it applies in relation to:

(a) a *firm's UK* activities;

(b) a *firm's passported activities* carried on from a *branch* in another *EEA State*; and

(c) a *UK domestic firm's* activities wherever they are carried on, in a *prudential context*.

When?

19A.1.3 R A *firm* must apply the *remuneration* requirements in *SYSC* 19A.3 in relation to:

(1) *remuneration* awarded, whether pursuant to a contract or otherwise, on or after 1 January 2011;

(2) *remuneration* due on the basis of contracts concluded before 1 January 2011 which is awarded or paid on or after 1 January 2011; and

(3) *remuneration* awarded, but not yet paid, before 1 January 2011, for services provided in 2010.

[**Note:** article 3(2) of the Third Capital Requirements Directive (Directive 2010/76/EU)]

19A.1.4 G Subject to the requirements of *SYSC* 19A.1.5R, in the *FSA's* view *SYSC* 19A.1.3R does not require a *firm* to breach requirements of applicable contract or employment law.

[**Note:** recital 14 of the Third Capital Requirements Directive (Directive

2010/76/EU)]

19A.1.5 R (1) This *rule* applies to a *firm* that is unable to comply with the *Remuneration Code* because of an obligation it owes to a *Remuneration Code staff member* under a provision of an agreement made on or before 29 July 2010 (the "provision").

(2) A *firm* must take reasonable steps to amend or terminate the provision referred to in (1) in a way that enables it to comply with the *Remuneration Code* at the earliest opportunity.

(3) Until the provision referred to in (1) ceases to prevent the *firm* from complying with the *Remuneration Code*, the *firm* must adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the provision.

Purpose

19A.1.6 G (1) The aim of the *Remuneration Code* is to ensure that *firms* have risk-focused *remuneration* policies, which are consistent with and promote effective risk management and do not expose them to excessive risk. It expands upon the general organisational requirements in *SYSC* 4.

(2) The *Remuneration Code* implements the main provisions of the Third Capital Requirements Directive (Directive 2010/76/EU) which relate to *remuneration*. The Committee of European Banking Supervisors published 'Guidelines on Remuneration Policies and Practices' on 10 December 2010. Provisions of the Third Capital Requirements Directive relating to Pillar 3 disclosures of information relating to remuneration have been implemented through amendments to *BIPRU* 11 (specifically the *rules* and *guidance* in *BIPRU* 11.5.18R to *BIPRU* 11.5.21G).

(3) The *Remuneration Code* also fulfils the *FSA's* duty under section 139A of the *Act* (General rules about remuneration) to have *rules* requiring certain *firms* to have and act in accordance with a *remuneration* policy which is consistent with the effective management of risks and with the *FSB Compensation Standards*.

Notifications to the FSA

19A.1.7 G (1) The *Remuneration Code* does not contain specific notification requirements. However, general circumstances in which the *FSA* expects to be notified by *firms* of matters relating to their compliance with requirements under the *regulatory system* are set out in *SUP* 15.3 (General notification requirements).

(2) In particular, in relation to *remuneration* matters such circumstances should take into account *unregulated activities* as well as *regulated activities* and the activities of other members of a *group* and would

include each of the following:

(a) significant breaches of the *Remuneration Code*, including any breach of a *rule* to which the detailed provisions on voiding and recovery in *SYSC* 19A Annex 1 apply;

(b) any proposed *remuneration* policies, procedures or practices which could:

(i) have a significant adverse impact on the *firm's* reputation; or

(ii) affect the *firm's* ability to continue to provide adequate services to its *customers* and which could result in serious detriment to a *customer* of the *firm*; or

(iii) result in serious financial consequences to the *financial system* or to other *firms*;

(c) any proposed changes to *remuneration* policies, practices or procedures which could have a significant impact on the *firm's* risk profile or resources;

(d) fraud, errors and other irregularities described in *SUP* 15.3.17R which may suggest weaknesses in, or be motivated by, the *firm's remuneration* policies, procedures or practices.

(3) Such notifications should be made immediately the *firm* becomes aware, or has information which reasonably suggests such circumstances have occurred, may have occurred or may occur in the foreseeable future.

Individual guidance

19A.1.8 G The *FSA's* policy on individual *guidance* is set out in *SUP* 9. *Firms* should in particular note the policy on what the *FSA* considers to be a reasonable request for *guidance* (see *SUP* 9.2.5G). For example, where a *firm* is seeking *guidance* on a proposed *remuneration* structure the *FSA* will expect the *firm* to provide a detailed analysis of how the structure complies with the *Remuneration Code*, including the general requirement for *remuneration* policies, procedures and practices to be consistent with and promote sound and effective risk management.

19A.2 General requirement

Remuneration policies must promote effective risk management

19A.2.1 R A *firm* must establish, implement and maintain *remuneration* policies, procedures and practices that are consistent with and promote sound and effective risk management.

[**Note:** Article 22(1) of the *Banking Consolidation Directive*]

19A.2.2 G (1) If a *firm's remuneration policy* is not aligned with effective risk management it is likely that *employees* will have incentives to act in ways that might undermine effective risk management.

(2) The *Remuneration Code* covers all aspects of *remuneration* that could have a bearing on effective risk management including salaries, bonuses, long-term incentive plans, options, hiring bonuses, severance packages and pension arrangements. In applying the *Remuneration Code*, a *firm* should have regard to applicable good practice on *remuneration* and corporate governance, such as guidelines on executive contracts and severance produced by the Association of British Insurers (ABI) and the National Association of Pension Funds (NAPF). In considering the risks arising from its *remuneration* policies, a *firm* will also need to take into account its statutory duties in relation to equal pay and non-discrimination.

(3) As with other aspects of a *firm's* systems and controls, in accordance with *SYSC* 4.1.2R *remuneration* policies, procedures and practices must be comprehensive and proportionate to the nature, scale and complexity of the *common platform firm's* activities. What a *firm* must do in order to comply with the *Remuneration Code* will therefore vary. For example, while the *Remuneration Code* refers to a *firm's remuneration* committee and risk management function, it may be appropriate for the *governing body* of a smaller *firm* to act as the *remuneration* committee, and for the *firm* not to have a separate risk management function.

(4) The principles in the *Remuneration Code* are used by the *FSA* to assess the quality of a *firm's remuneration* policies and whether they encourage excessive risk-taking by a *firm's employees*.

(5) The *FSA* may also ask *remuneration* committees to provide the *FSA* with evidence of how well the *firm's remuneration* policies meet the *Remuneration Code's* principles, together with plans for improvement where there is a shortfall. The *FSA* also expects relevant *firms* to use the principles in assessing their exposure to risks arising from their *remuneration* policies as part of the *internal capital adequacy assessment process* (*ICAAP*).

(6) The *Remuneration Code* is principally concerned with the risks created by the way *remuneration* arrangements are structured, not with the absolute amount of *remuneration*, which is generally a matter for *firms' remuneration* committees.

19A.2.3 G (1) The specific *remuneration* requirements in this chapter may apply only in relation to certain categories of *employee*. But the *FSA* would expect *firms*, in complying with the *Remuneration Code* *general requirement*, to apply certain principles on a *firm*-wide basis.

(2) In particular, the *FSA* considers that *firms* should apply the principle relating to guaranteed variable *remuneration* on a *firm*-wide basis (Remuneration Principle 12(c); *SYSC* 19A.3.40R to *SYSC* 19A.3.43G).

(3) The *FSA* would also expect *firms* to apply at least the principles relating to risk management and risk tolerance (Remuneration Principle 1); supporting business strategy, objectives, values and long-term interests of the firm (Remuneration Principle 2); conflicts of interest (Remuneration Principle 3); governance (Remuneration Principle 4); risk adjustment (Remuneration Principle 8); pension policy (Remuneration Principle 9); personal investment strategies (Remuneration Principle 10); payments related to early termination (Remuneration Principle 12(e)) and deferral (Remuneration Principle 12(g)) on a *firm*-wide basis.

Record-keeping

19A.2.4 G In line with the record-keeping requirements in *SYSC* 9, a *firm* should ensure that its *remuneration* policies, practices and procedures are clear and documented. Such policies, practices and procedures would include performance appraisal processes and decisions.

Interpretation of references to remuneration

19A.2.5 R (1) In this chapter references to *remuneration* include *remuneration* paid, provided or awarded by any *person* to the extent that it is paid, provided or awarded in connection with *employment* by a *firm*.

(2) Paragraph (1) is without prejudice to the meaning of *remuneration* elsewhere in the *Handbook*.

19A.2.6 G *Remuneration* includes, for example, payments made by a seconding organisation which is not subject to the *Remuneration Code* to a secondee in respect of their *employment* by a *firm* which is subject to the *Remuneration Code*.

19A.3 Remuneration principles for banks, building societies and investment firms

Application: groups

19A.3.1 R (1) A *firm* must apply the requirements of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is not an *EEA State*.

(2) Paragraph (1) does not limit *SYSC* 12.1.13R(2)(da) (which relates to the application of the *Remuneration Code* within *UK consolidation*

groups and *non-EEA sub-groups*).

[**Note:** Paragraph 23 (final, unnumbered point) of Annex V to the *Banking Consolidation Directive*]

19A.3.2 G SYSC 12.1.13R(2)(da) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or *non-EEA sub-group* of which a *firm* is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis. In the *FSA's* view, the requirement to apply this section at *group*, *parent undertaking* and *subsidiary undertaking* levels (as provided for in *SYSC* 19A.3.1R(1)) is in line with the requirements in article 73(3) of the *Banking Consolidation Directive* concerning the application of systems and controls requirements to *groups* (as implemented in *SYSC* 12.1.13R).

Application: categories of staff and proportionality

19A.3.3 R (1) This section applies in relation to *Remuneration Code staff*, except as set out in (3).

(2) When establishing and applying the total *remuneration* policies for *Remuneration Code staff*, a *firm* must comply with this section 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 (the *remuneration principles proportionality rule*).

(3) Paragraphs (1) and (2) do not apply to the requirement for significant *firms* to have a *remuneration* committee (*SYSC* 19A.3.12R).

[**Note:** Paragraph 23 of Annex V to the *Banking Consolidation Directive*]

[**Note:** In addition to the *guidance* in this section which relates to the *remuneration principles proportionality rule*, the *FSA* has given *guidance* on the division of *firms* into categories for the purpose of providing a framework for the operation of the *remuneration principles proportionality rule*. This *guidance* was published in Policy Statement 10/20 'Revising the Remuneration Code' and is available at http://www.fsa.gov.uk/Pages/Library/Policy/Policy/index.shtml.]

19A.3.4 R *Remuneration Code staff* comprises categories of staff including senior management, risk takers, staff engaged in control functions and any *employee* receiving total remuneration that takes them into the same *remuneration* bracket as senior management and risk takers, whose professional activities have a material impact on the *firm's* risk profile.

[**Note**: paragraph 23 of Annex V to the *Banking Consolidation Directive*]

19A.3.5 R A *firm* must:

(1) maintain a record of its *Remuneration Code staff* in accordance with the general record-keeping requirements (*SYSC* 9); and

(2) take reasonable steps to ensure that its *Remuneration Code staff* understand the implications of their status as such, including the potential for *remuneration* which does not comply with certain requirements of the *Remuneration Code* to be rendered void and recoverable by the *firm*.

19A.3.6 G (1) In the *FSA's* view:

(a) a *firm's* staff includes its *employees*;

(b) a *person* who performs a *significant influence function* for, or is a *senior manager* of, a *firm* would normally be expected to be part of the *firm's Remuneration Code staff*;

(c) the table in (2) provides a non-exhaustive list of examples of key positions that should, subject to (d), be within a *firm's* definition of staff who are 'risk takers';

(d) *firms* should consider how the examples in the table in (2) apply in relation to their own organisational structure (as the description of suggested business lines in the first row may be most appropriate to a *firm* which *deals on its own account* to a significant extent);

(e) *firms* may find it useful to set their own metrics to identify their 'risk takers' based, for example, on trading limits; and

(f) a *firm* should treat a *person* as being *Remuneration Code staff* in relation to *remuneration* in respect of a given performance year if they were *Remuneration Code staff* for any part of that year.

[**Note:** The *FSA* has given *guidance* on the application of particular rules on *remuneration* structures in relation to individuals who are *Remuneration Code staff* for only part of a given performance year. This *guidance* was published in Policy Statement 10/20 'Revising the Remuneration Code' and is available at http://www.fsa.gov.uk/Pages/Library/Policy/Policy/index.shtml.]

(2)

High-level category	**Suggested business lines**
Heads of significant business lines (including regional heads) and any individuals or groups within their control who have a material impact on the *firm's* risk profile	Fixed income Foreign exchange Commodities Securitisation

	Sales areas Investment banking (including mergers and acquisitions advisory) Commercial banking Equities Structured finance Lending quality Trading areas Research
Heads of support and control functions and other individuals within their control who have a material impact on the *firm's* risk profile	Credit / market / operational risk Legal Treasury controls Human resources Compliance Internal audit

Remuneration Principle 1: Risk management and risk tolerance

19A.3.7 R A *firm* must ensure that its *remuneration* policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the *firm*.

[**Note:** Paragraph 23(a) of Annex V to the *Banking Consolidation Directive*]

Remuneration Principle 2: Supporting business strategy, objectives, values and long-term interests of the firm

19A.3.8 R A *firm* must ensure that its *remuneration* policy is in line with the business strategy, objectives, values and long-term interests of the *firm*.

[**Note:** Paragraph 23(b) of Annex V to the *Banking Consolidation Directive*]

Remuneration Principle 3: Avoiding conflicts of interest

19A.3.9 R A *firm* must ensure that its *remuneration* policy includes measures to avoid conflicts of interest.

[**Note:** Paragraph 23(b) of Annex V to the *Banking Consolidation Directive*]

Remuneration Principle 4: Governance

19A.3.10 R A *firm* must ensure that its *governing body* in its *supervisory function* adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for its implementation.

[**Note:** Paragraph 23(c) of Annex V to the *Banking Consolidation Directive* and Standard 1 of the *FSB Compensation Standards*]

19A.3.11 R A *firm* must ensure that the implementation of the *remuneration* policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *governing body* in its *supervisory function*.

[**Note:** Paragraph 23(d) of Annex V to the *Banking Consolidation Directive* and Standard 1 of the *FSB Compensation Standards*]

19A.3.12 R (1) A *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.

(2) The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgment on *remuneration* policies and practices and the incentives created for managing risk, capital and liquidity.

(3) The chairman and the members of the *remuneration* committee must be members of the *governing body* who do not perform any executive function in the *firm*.

(4) The *remuneration* committee must be responsible for the preparation of decisions regarding *remuneration*, including those which have implications for the risk and risk management of the *firm* and which are to be taken by the *governing body* in its *supervisory function*.

(5) When preparing such decisions, the *remuneration* committee must take into account the long-term interests of shareholders, investors and other stakeholders in the *firm*.

[**Note:** Paragraph 24 of Annex V of the *Banking Consolidation Directive* and Standard 1 of the *FSB Compensation Standards*]

[**Note:** The *guidance* referred to in the Note to *SYSC* 19A.3.3R also gives *guidance* on proportionality in relation to *remuneration* committees.]

19A.3.13 G (1) A *firm* should be able to demonstrate that its decisions are consistent with an assessment of its financial condition and future prospects. In particular, practices by which *remuneration* is paid for potential future revenues whose timing and likelihood remain uncertain should be evaluated carefully and the *governing body* or *remuneration* committee (or both) should work closely with the *firm's* risk function in evaluating the incentives created by its *remuneration* system.

(2) The *governing body* and any *remuneration* committee are responsible for ensuring that the *firm's remuneration* policy complies with the *Remuneration Code* and where relevant should take into account relevant guidance, such as that issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).

(3) The periodic review of the implementation of the *remuneration* policy should assess compliance with the *Remuneration Code*.

(4) Guidance on what the *supervisory function* might involve is set out in *SYSC* 4.3.3G.

Remuneration Principle 5: Control functions

19A.3.14 R A *firm* must ensure that *employees* engaged in control functions:

(1) are independent from the business units they oversee;

(2) have appropriate authority; and

(3) are *remunerated*:

(a) adequately to attract qualified and experienced staff; and

(b) in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

[**Note:** Paragraph 23(e) of Annex V to the *Banking Consolidation Directive* and Standard 2 of the *FSB Compensation Standards*]

19A.3.15 E (1) A *firm's* risk management and compliance functions should have appropriate input into setting the *remuneration* policy for other business areas. The procedures for setting *remuneration* should allow risk and compliance functions to have significant input into the setting of individual *remuneration* awards where those functions have concerns about the behaviour of the individuals concerned or the riskiness of the business undertaken.

(2) Contravention of (1) may be relied on as tending to establish contravention of the *rule* on *employees* engaged in control functions having appropriate authority (*SYSC* 19A.3.14R(2)).

19A.3.16 R A *firm* must ensure that the *remuneration* of the senior officers in risk management and compliance functions is directly overseen by the *remuneration* committee referred to in *SYSC* 19A.3.12R, or, if such a committee has not been established, by the *governing body* in its *supervisory* *function*.

[**Note:** Paragraph 23(f) of Annex V to the *Banking Consolidation Directive*]

19A.3.17 G (1) This Remuneration Principle is designed to manage the conflicts of interest which might arise if other business areas had undue influence over the *remuneration* of *employees* within control functions. Conflicts of interest can easily arise when *employees* are involved in the determination of *remuneration* for their own business area. Where these could arise they need to be managed by having in place independent roles for control functions (including, notably, risk management and compliance) and human resources. It is good practice to seek input from a *firm's* human resources function when setting *remuneration* for other business areas.

(2) The need to avoid undue influence is particularly important where *employees* from the control functions are embedded in other business areas. This Remuneration Principle does not prevent the views of other business areas being sought as an appropriate part of the assessment process.

(3) The *FSA* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. *Firms* should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration* of *relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see *SYSC* 6.1.4R(4)).

Remuneration Principle 6: Remuneration and capital

19A.3.18 R A *firm* must ensure that total variable *remuneration* does not limit the *firm's* ability to strengthen its capital base.

[**Note:** Paragraph 23(i) of Annex V to the *Banking Consolidation Directive* and Standard 3 of the *FSB Compensation Standards*]

19A.3.19 G This Remuneration Principle underlines the link between a *firm's* variable *remuneration* costs and the need to manage its capital base, including forward-looking capital planning measures. Where a *firm* needs to strengthen its capital base, its variable *remuneration* arrangements should be sufficiently flexible to allow it to direct the necessary resources towards capital building.

Remuneration Principle 7: Exceptional government intervention

19A.3.20 R A *firm* that benefits from exceptional government intervention must ensure that:

(1) variable *remuneration* is strictly limited as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(2) it restructures *remuneration* in a manner aligned with sound risk management and long-term growth, including when appropriate establishing limits to the *remuneration* of *senior personnel*; and

(3) no variable *remuneration* is paid to its *senior personnel* unless this is justified.

[**Note:** Paragraph 23(k) of Annex V to the *Banking Consolidation Directive* and Standard 10 of the *FSB Compensation Standards*]

19A.3.21 G The *FSA* would normally expect it to be appropriate for the ban on paying variable *remuneration* to *senior personnel* of a *firm* that benefits from exceptional government intervention to apply only in relation to *senior personnel* who were in office at the time that the intervention was required.

Remuneration Principle 8: Profit-based measurement and risk adjustment

19A.3.22 R (1) A *firm* must ensure that any measurement of performance used to calculate variable *remuneration* components or pools of variable *remuneration* components:

(a) includes adjustments for all types of current and future risks and takes into account the cost and quantity of the capital and the liquidity required; and

(b) takes into account the need for consistency with the timing and likelihood of the firm receiving potential future revenues incorporated into current earnings.

(2) A *firm* must ensure that the allocation of variable *remuneration* components within the *firm* also takes into account all types of current and future risks.

[**Note:** Paragraph 23(n) of Annex V to the *Banking Consolidation Directive* and Standard 4 of the *FSB Compensation Standards*]

19A.3.23 G (1) This Remuneration Principle stresses the importance of risk adjustment in measuring performance, and the importance within that process of applying judgment and common sense. A *firm* should ask the risk management function to validate and assess risk-adjustment techniques, and to attend a meeting of the *governing body* or *remuneration* committee for this purpose.

(2) A number of risk-adjustment techniques and measures are available, and a *firm* should choose those most appropriate to its circumstances. Common measures include those based on economic profit or economic capital. Whichever technique is chosen, the full range of future risks should be covered. The *FSA* expects a *firm* to be able to provide it with details of all adjustments that the *firm* has made under a formulaic approach.

(3) The *FSA* expects that a *firm* will apply qualitative judgments and common sense in the final decision about the performance-related components of variable *remuneration* pools.

(4) A *firm's governing body* (or *remuneration* committee where appropriate) should take the lead in determining the measures to be used. It should offer the appropriate checks and balances to prevent inappropriate manipulation of the measures used. It should consult closely and frequently with the *firm's* risk management functions, in particular those relating to operational, market, credit and liquidity risk.

19A.3.24 G (1) Long-term incentive plans should be treated as pools of variable *remuneration*. Many common measures of performance for long-term incentive plans, such as earnings per *share* (EPS), are not adjusted for longer-term risk factors. Total shareholder return (TSR), another common measure, includes in its measurement dividend distributions, which can also be based on unadjusted earnings data. If incentive plans mature within a two to four year period and are based on EPS or TSR, strategies can be devised to boost EPS or TSR during the life of the plan, to the detriment of the true longer-term health of a *firm*. For example, increasing leverage is a technique which can be used to boost EPS and TSR. *Firms* should take account of these factors when developing risk-adjustment methods.

(2) *Firms* that have long-term incentive plans should structure them with vesting subject to appropriate performance conditions, and at least half of the award vesting after not less than five years and the remainder after not less than three years.

(3) Long-term incentive plan awards may be included in the calculation of the deferred portion of variable *remuneration* only if upside incentives are adequately balanced by downside adjustments. The valuation of the award should be based on its value when the award is granted, and determined using an appropriate technique.

19A.3.25 R Assessments of financial performance used to calculate variable *remuneration* components or pools of variable *remuneration* components must be based principally on profits.

19A.3.26 G (1) Performance measures based primarily on revenues or turnover are unlikely to pay sufficient regard to the quality of business undertaken or services provided. Profits are a better measure provided they are adjusted for risk, including future risks not adequately captured by accounting profits.

(2) Management accounts should provide profit data at such levels within the *firm's* structure as to enable a *firm* to see as accurate a picture of contributions of relevant staff to a *firm's* performance as is reasonably practicable. If revenue or turnover is used as a component in performance assessment, processes should be in place to ensure that the quality of business undertaken or services provided and their appropriateness for *clients* are taken into account.

19A.3.27 R A *firm* must ensure that its total variable *remuneration* is generally considerably contracted where subdued or negative financial performance of the *firm* occurs, taking into account both current *remuneration* and reductions in payouts of amounts previously earned.

[**Note:** Paragraph 23(q) of Annex V to the *Banking Consolidation Directive* and Standard 5 of the *FSB Compensation Standards*]

19A.3.28 G Where a *firm* makes a loss the *FSA* would generally expect no variable *remuneration* to be awarded. Variable *remuneration* may nevertheless be justified, for example, to incentivise *employees* involved in new business ventures which could be loss-making in their early stages.

Remuneration Principle 9: Pension policy

19A.3.29 R A *firm* must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests;

(2) when an *employee* leaves the *firm* before retirement, any *discretionary pension benefits* are held by the *firm* for a period of five years in the form of instruments referred to in *SYSC* 19A.3.47R(1); and

(3) in the case of an *employee* reaching retirement, *discretionary pension benefits* are paid to the *employee* in the form of instruments referred to in *SYSC* 19A.3.47R(1) and subject to a five-year retention period.

[**Note:** Paragraph 23(r) of Annex V to the *Banking Consolidation Directive*]

Remuneration Principle 10: Personal investment strategies

19A.3.30 R (1) A *firm* must ensure that its *employees* undertake not to use personal hedging strategies or *remuneration*- or liability-related *contracts of insurance* to undermine the risk alignment effects embedded in their *remuneration* arrangements.

(2) A *firm* must maintain effective arrangements designed to ensure that

employees comply with their undertaking.

[**Note:** Paragraph 23(s) of Annex V to the *Banking Consolidation Directive* and Standard 14 of the *FSB Compensation Standards*]

19A.3.31 G In the *FSA's* view, circumstances in which a *person* will be using a personal hedging strategy include entering into an arrangement with a third party under which the third party will make payments, directly or indirectly, to that *person* that are linked to or commensurate with the amounts by which the *person's remuneration* is subject to reductions.

Remuneration Principle 11: Avoidance of the Remuneration Code

19A.3.32 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate the avoidance of the *Remuneration Code*.

[**Note:** Paragraph 23(t) of Annex V to the *Banking Consolidation Directive*]

Remuneration Principle 12: Remuneration structures – introduction

19A.3.33 G Remuneration Principle 12 consists of a series of *rules*, *evidential provisions* and *guidance* relating to *remuneration* structures.

19A.3.34 G (1) Taking account of the *remuneration principles proportionality rule*, the *FSA* does not generally consider it necessary for a *firm* to apply the *rules* referred to in (2) where, in relation to an individual ("X"), both the following conditions are satisfied:

(a) Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and

(b) Condition 2 is that X's total *remuneration* is no more than £500,000.

(2) The *rules* referred to in (1) are those relating to:

(a) guaranteed variable *remuneration* (*SYSC* 19A.3.40R);

(b) retained *shares* or other instruments (*SYSC* 19A.3.47R);

(c) deferral (*SYSC* 19A.3.49R); and

(d) performance adjustment (SYSC 19A.3.51R).

[**Note:** The *FSA* has also given *guidance* on the application of certain *rules* on *remuneration* structures in relation to individuals who are *Remuneration Code staff* for only part of a given performance year. This guidance was published in Policy Statement 10/20 'Revising the Remuneration Code' and is available at http://www.fsa.gov.uk/Pages/Library/Policy/Policy/index.shtml.]

Remuneration Principle 12(a): Remuneration structures – general requirement

19A.3.35 R A *firm* must ensure that the structure of an *employee's remuneration* is consistent with and promotes effective risk management.

Remuneration Principle 12(b): Remuneration structures – assessment of performance

19A.3.36 R A *firm* must ensure that where *remuneration* is performance-related:

(1) the total amount of *remuneration* is based on a combination of the assessment of the performance of:

(a) the individual;

(b) the business unit concerned; and

(c) the overall results of the *firm*; and

(2) when assessing individual performance, financial as well as non-financial criteria are taken into account.

[**Note:** Paragraph 23(g) of Annex V to the *Banking Consolidation Directive* and Standard 6 of the *FSB Compensation Standards*]

19A.3.37 G Non-financial performance metrics should form a significant part of the performance assessment process and should include adherence to effective risk management and compliance with the *regulatory system* and with relevant overseas regulatory requirements. Poor performance as assessed by non-financial metrics such as poor risk management or other behaviours contrary to *firm* values can pose significant risks for a *firm* and should, as appropriate, override metrics of financial performance. The performance assessment process and the importance of non-financial assessment factors in the process should be clearly explained to relevant *employees* and implemented. A 'balanced scorecard' can be a good technique.

19A.3.38 R A *firm* must ensure that the assessment of performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of *remuneration* is spread over a period which takes account of the underlying business cycle of the *firm* and its business risks.

[**Note:** Paragraph 23(h) of Annex V to the *Banking Consolidation Directive*]

19A.3.39 G The requirement for assessment of performance to be in a multi-year framework reflects the fact that profits from a *firm's* activities can be volatile and subject to cycles. The financial performance of *firms* and individual *employees* can be exaggerated as a result. Performance assessment on a moving average of results can be a good way of meeting this requirement. However, other techniques such as good quality risk adjustment and deferral of a sufficiently large proportion of *remuneration* may also be useful.

Remuneration Principle 12(c): Remuneration structures – guaranteed variable remuneration

19A.3.40 R A *firm* must not award, pay or provide guaranteed variable *remuneration* unless it:

(1) is exceptional;

(2) occurs in the context of hiring new *Remuneration Code staff*; and

(3) is limited to the first year of service.

[**Note:** Paragraph 23(j) of Annex V to the *Banking Consolidation Directive* and Standard 11 of the *FSB Compensation Standards*]

19A.3.41 E (1) A *firm* should not award, pay or provide guaranteed variable *remuneration* in the context of hiring new *Remuneration Code staff* ('X') unless:

(a) it has taken reasonable steps to ensure that the *remuneration* is not more generous in either its amount or terms (including any deferral or retention periods) than the variable *remuneration* awarded or offered by X's previous employer; and

(b) it is subject to appropriate performance adjustment requirements.

(2) Contravention of (1) may be relied on as tending to establish contravention of the *rule* on guaranteed variable *remuneration* (*SYSC* 19A.3.40R).

19A.3.42 G Guaranteed variable *remuneration* should be subject to the same deferral criteria as other forms of variable *remuneration* awarded by the *firm*.

19A.3.43 G In the *FSA's* view, variable *remuneration* can be awarded to *Remuneration Code staff* in the form of retention awards where it is compatible with the *Remuneration Code general requirement* to do so. The *FSA* considers this is likely to be the case only where a *firm* is undergoing a major restructuring and a good case can be made for retention of particular key staff members on prudential grounds. Proposals to give retention awards should form part of any notice of the restructuring proposals required in accordance with *Principle* 11 and the general notification requirements in *SUP* 15.3.

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

19A.3.44 R A *firm* must set appropriate ratios 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 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.

[**Note:** Paragraph 23(l) of Annex V to the *Banking Consolidation Directive*]

Remuneration Principle 12(e): Remuneration structures – payments related to early termination

19A.3.45 R A *firm* must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

[**Note:** Paragraph 23(m) of Annex V to the *Banking Consolidation Directive* and Standard 12 of the *FSB Compensation Standards*]

19A.3.46 G *Firms* should review existing contractual payments related to termination of employment with a view to ensuring that these are payable only where there is a clear basis for concluding that they are consistent with the *Remuneration Code general requirement*.

[**Note:** Standard 12 of the *FSB Compensation Standards*]

Remuneration Principle 12(f): Remuneration structures – retained shares or other instruments

19A.3.47 R (1) A *firm* must ensure that a substantial portion, which is at least 50%, of any variable *remuneration* consists of an appropriate balance of:

(a) *shares* or equivalent ownership interests, subject to the legal structure of the *firm* concerned, or *share*-linked instruments or equivalent non-cash instruments in the case of a non-listed *firm*; and

(b) where appropriate, *capital instruments* which are eligible for inclusion at stage B1 of the calculation in the *capital resources table*, where applicable that adequately reflects the credit quality of the *firm* as a going concern.

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the *firm*.

(3) This *rule* applies to both the portion of the variable *remuneration* component deferred in accordance with *SYSC* 19A.3.49R and the portion not deferred.

[**Note:** Paragraph 23(o) of Annex V to the *Banking Consolidation Directive* and Standard 8 of the *FSB Compensation Standards*]

19A.3.48 G (1) The Committee of European Banking Supervisors has given guidance on the interpretation of the Directive provision transposed by *SYSC* 19A.3.47R(3). Its Guidelines provide that this requirement means that the 50% minimum threshold for instruments must be applied equally to the non-deferred and the deferred components; in other words, *firms* must apply the same chosen ratio between instruments and cash for their total variable *remuneration* to both the upfront and deferred components. (Guidelines on Remuneration Policies and Practices, 10 December 2010, paragraph 133.)

(2) This simplified example illustrates the operation of (1). The variable remuneration of a material risk taker (X) is 100, and by *SYSC* 19A.3.49R(3) X is required to defer 60%. X's upfront component is 40 and X's deferred component is 60. At least 20 of X's upfront component, and at least 30 of X's deferred component, must be in instruments referred to in *SYSC* 19A.3.47R(1).

Remuneration Principle 12(g): Remuneration structures – deferral

19A.3.49 R (1) A *firm* must not award, pay or provide a variable *remuneration* component unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than three to five years.

(2) *Remuneration* under (1) must vest no faster than on a pro-rata basis.

(3) In the case of a variable *remuneration* component:

(a) of a particularly high amount, or

(b) payable to a *director* of a *firm* that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities;

at least 60% of the amount must be deferred.

(4) Paragraph (3)(b) does not apply to a *non-executive director*.

(5) The length of the deferral period must be established in accordance with the business cycle, the nature of the business, its risks and the activities of the *employee* in question.

[**Note:** Paragraph 23(p) of Annex V to the *Banking Consolidation Directive* and Standards 6 and 7 of the *FSB Compensation Standards*]

(6) £500,000 is a particularly high amount for the purpose of (3)(a).

(7) Paragraph (6) is without prejudice to the possibility of lower sums being considered a particularly high amount.

19A.3.50 G (1) Deferred *remuneration* paid in *shares* or *share*-linked instruments should be made under a scheme which meets appropriate criteria, including risk adjustment of the performance measure used to determine the initial allocation of shares. Deferred *remuneration* paid in cash should also be subject to performance criteria.

(2) The *FSA* would generally expect a *firm* to have a *firm*-wide policy (and *group*-wide policy, where appropriate) on deferral. The proportion deferred should generally rise with the ratio of variable *remuneration* to fixed *remuneration* and with the amount of variable *remuneration*. While any variable *remuneration* component of £500,000 or more paid to *Remuneration Code staff* must be subject to 60% deferral, *firms* should also consider whether lesser amounts should be considered to be 'particularly high' taking account, for example, of whether there are significant differences within *Remuneration Code staff* in the levels of variable *remuneration* paid.

Remuneration Principle 12(h): Remuneration structures – performance adjustment, etc.

19A.3.51 R A *firm* must ensure that any variable *remuneration*, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the *firm* as a whole, and justified according to the performance of the *firm*, the business unit and the individual concerned.

[**Note:** Paragraph 23(q) of Annex V to the *Banking Consolidation Directive* and Standards 6 and 9 of the *FSB Compensation Standards*]

19A.3.52 E (1) A *firm* should reduce unvested deferred variable *remuneration* when, as a minimum:

(a) there is reasonable evidence of *employee* misbehaviour or material error; or

(b) the *firm* or the relevant business unit suffers a material downturn in its financial performance; or

(c) the *firm* or the relevant business unit suffers a material failure of risk management.

(2) For performance adjustment purposes, awards of deferred variable *remuneration* made in *shares* or other non-cash instruments should provide the ability for the *firm* to reduce the number of *shares* or other non-cash instruments.

(3) Contravention of (1) or (2) may be relied on as tending to establish contravention of the *rule* on performance adjustment (*SYSC* 19A.3.51R).

19A.3.53 G (1) Variable *remuneration* may be justified, for example, to incentivise *employees* involved in new business ventures which could be loss-making in their early stages.

(2) The *governing body* (or, where appropriate, the *remuneration* committee) should approve performance adjustment policies, including the triggers under which adjustment would take place. The *FSA* may ask *firms* to provide a copy of their policies and expects *firms* to make adequate records of material decisions to operate the adjustments.

Effect of breaches of the Remuneration Principles

19A.3.54 R (1) The detailed provisions on voiding and recovery in *SYSC* 19A Annex 1 apply in relation to the prohibitions on *Remuneration Code staff* being *remunerated* in the ways specified in:

(a) *SYSC* 19A.3.40R (guaranteed variable *remuneration*);

(b) *SYSC* 19A.3.49R (non-deferred variable *remuneration*); and

(c) *SYSC* 19A Annex 1.7R (replacing payments recovered or property transferred).

(2) This *rule* does not apply in relation to the prohibition on *Remuneration Code staff* being *remunerated* in the way specified in *SYSC* 19A.3.40R (guaranteed variable *remuneration*) if both the conditions in paragraphs (2) and (3) of that *rule* are met.

(3) This *rule* does not apply in relation to *Remuneration Code staff* (X) in respect of whom both the following conditions are satisfied:

(a) Condition 1 is that X's variable *remuneration* is no more than 33% of total *remuneration*; and

(b) Condition 2 is that X's total *remuneration* is no more than £500,000.

(4) In relation to (3):

(a) references to *remuneration* are to *remuneration* awarded or paid in respect of the relevant performance year;

(b) the amount of any *remuneration* is:

(i) if it is money, its amount when awarded;

(ii) otherwise, whichever of the following is greatest: its value to the recipient when awarded; its market value when awarded; and the cost of providing it;

(c) where *remuneration* is, when awarded, subject to any condition, restriction or other similar provision which causes the amount of the *remuneration* to be less than it otherwise would be, that condition, restriction or provision is to be ignored in arriving at its value; and

(d) it is to be assumed that the member of *Remuneration Code staff* will remain so for the duration of the relevant performance year.

19A.3.55 G (1) Section 139A(9) of the *Act* enables the *FSA* to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision. *SYSC* 19A.3.54R (together with *SYSC* 19A Annex 1) is such a *rule* and renders void provisions of an agreement that contravene the specified prohibitions on guaranteed variable *remuneration*, non-deferred variable *remuneration* and replacing payments recovered or property transferred. This is an exception to the general position set out in section 151(2) of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.

(2) *SYSC* TP 3.6R provides that *SYSC* 19A.3.54R and *SYSC* 19A Annex 1 apply, until 1 January 2012, only in relation to a *firm* that was subject to the version of the *Remuneration Code* that applied before 1 January 2011.

19A Annex 1 Detailed provisions on voiding and recovery

Rendering contravening provisions of agreements void

1 R Any provision of an agreement that contravenes a prohibition on *persons* being *remunerated* in a way specified in a *rule* to which this annex applies (a "contravening provision") is void.

2 R A contravening provision that, at the time a *rule* to which this annex applies was made, is contained in an agreement made before that time is not rendered void by 1R unless it is subsequently amended so as to contravene such a *rule*.

3 G The effect of 2R, in accordance with section 139A(11) of the *Act*, is to prevent contravening provisions being rendered void retrospectively. Contravening provisions may however be rendered void if they are contained in an agreement made after the *rule* containing the prohibition is made by the *FSA* but before the *rule* comes into effect.

4 R For the purposes of this chapter it is immaterial whether the law which (apart from this annex) governs a contravening provision is the law of the *United Kingdom*, or of a part of the *United Kingdom*.

Recovery of payments made or property transferred pursuant to a void contravening provision

5	R	In relation to any payment made or other property transferred in pursuance of a contravening provision, a *firm* must take reasonable steps to: (1) recover any such payment made or other property transferred by the *firm*; and (2) ensure that any other *person* ("P") recovers any such payment made or other property transferred by that *person*.
6	G	The *rule* in 5R(2) would, for example, apply in the context of a secondment. Where a *group* member seconds an individual to a *firm* and continues to be responsible for the individual's *remuneration* in respect of services provided to the *firm*, the *firm* would need to take reasonable steps to ensure that the *group* member recovers from the secondee any *remuneration* paid in pursuance of a contravening provision.
	Replacing payments recovered or property transferred	
7	R	(1) A *firm* must not award, pay or provide variable *remuneration* to a *person* whose *remuneration* has caused the *firm* to breach a contravening provision (the "contravening *remuneration*") unless the *firm* has obtained a legal opinion stating that the award, payment or provision of the *remuneration* complies with the *Remuneration Code*. (2) This *rule* applies only to variable *remuneration* relating to a performance year to which the contravening *remuneration* related. (3) The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual.
	Notification to the FSA	
8	G	The *FSA* considers any breach of a *rule* to which this annex applies to be a significant breach which should be notified to the *FSA* in accordance with *SUP* 15.3.11R (Breaches of rules and other requirements in or under the Act). Such a notification should include information on the steps which a *firm* or other *person* has taken or intends to take to recover payments or property in accordance with 5R.

Amend the following as shown:

TP 3 Remuneration code

1	R	~~TP 3 applies to a *firm* that is unable to comply with the *Remuneration Code general requirement* because of an obligation it owes to an *employee* (the "obligation") under an agreement entered into on or before 18 March 2009~~

~~(the "agreement").~~ [deleted]

2	R	~~A *firm's* compliance with the obligation shall not cause it to be in breach of the *Remuneration Code general requirement* provided that the *firm* complies with 3R.~~ [deleted]	
3	R	~~(1)~~	~~Where a *firm* is entitled to amend the agreement in a way that enables it to comply with the *Remuneration Code general requirement* it must do so at the earliest opportunity and no later than 31 March 2010.~~
		~~(2)~~	~~Otherwise, a *firm* must:~~ ~~(a)~~ ~~take reasonable steps to amend the obligation or terminate the agreement at the earliest opportunity;~~ ~~(b)~~ ~~amend the obligation or terminate the agreement no later than 31 December 2010; and~~ ~~(c)~~ ~~adopt specific and effective arrangements, processes and mechanisms to manage the risks raised by the obligation.~~ [deleted]
4	G	~~By 1 January 2010, a *firm* should have at least initiated a review of the extent to which the measurement of performance for any existing long term incentive plans takes account of future risks. The *FSA* may discuss the timing of that review and any remedial action with the *firm*.~~ [deleted]	
5	G	(1)	The *FSA* recognises that *firms* may require additional time to comply in full with the requirements of the *Remuneration Code* where they were not subject to the version of the *Remuneration Code* that applied before 1 January 2011. The *FSA* considers that a *firm* may be able to rely on the proportionality provisions in *SYSC* 4.1.2R and the *remuneration principles proportionality rule* to justify not complying with the requirements of the *Remuneration Code* relating to *remuneration* structures by 1 January 2011 provided it takes reasonable steps to comply as soon as reasonably possible and in any event by 1 July 2011.
		(2)	On a similar basis and on the same timescales set out in (1), a *firm* which was subject to the previous version of the *Remuneration Code* may be able to justify not complying with the requirement to pay 50% of variable *remuneration* in *shares* or other non-cash instruments (*SYSC* 19A.3.47R).
6	R	Until 1 January 2012, *SYSC* 19A.3.54R and *SYSC* 19A Annex 1 (on voiding and recovery) apply only in relation to a *firm* that was subject to the version of the *Remuneration Code* that applied before 1 January 2011.	

Sch 4 Powers exercised

The following powers and related provisions in the *Act* have been exercised by the *FSA* to make *rules* in *SYSC*:
Section 138 (General rule-making power)
<u>Section 139A (General rules about remuneration)</u>
…

Sch 5 Rights of action for damages

…

Sch 5.4 G

…					
SYSC 11 to *SYSC* ~~19~~ <u>19A</u>					

Annex C

Amendments to the General Prudential sourcebook (GENPRU)

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

1.2.31 R …

(4) Business risk means any risk to a *firm* arising from changes in its business, including the risk that the *firm* may not be able to carry out its business plan and its desired strategy. It also includes risks arising from a *firm's remuneration policy* (see also the *Remuneration Code* which applies to ~~certain~~ ~~*banks, building societies*~~ ~~and~~ ~~*BIPRU 730k*~~ <u>*BIPRU*</u> *firms* and the detailed application of which is set out in *SYSC* 19<u>A</u>.1).

…

Annex D

Amendments to the Supervision manual (SUP)

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

13A Annex 1 Application of the Handbook to Incoming EEA Firms

…		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
…	…	…
SYSC	… *SYSC* 18 applies. *SYSC* 19<u>A</u> does not apply ~~to an *incoming EEA firm* when acting as such~~.	… *SYSC* 19<u>A</u> does not apply.
…	…	…