SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS (REMUNERATION CODE) (NO 3) INSTRUMENT 2011

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of its powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

B. This instrument comes into force on 1 July 2011.

Amendments to the Handbook

C. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Code) (No 3) Instrument 2011.

By order of the Board
23 June 2011

Annex

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

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

TP 3 Remuneration code

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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 *SYSC* 19.3.3R 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* 19.3.47R).~~ [deleted]

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7 G (1) This *guidance* applies to a *firm* to which the *Remuneration Code* applies, where both of the following conditions are satisfied:

(a) condition 1 is that the *firm* is a non-listed *firm*; and

(b) condition 2 is that any *parent undertaking* of the *firm* is a non-listed *undertaking*.

(2) The *FSA* considers that, where each of the conditions set out below is satisfied, a *firm* to which this *guidance* applies might (but will not necessarily) be able to rely on the proportionality provisions of *SYSC* 4.1.2R and the *remuneration principles proportionality rule* (of *SYSC* 19A.3.3R) to justify not complying with the requirement to pay at least 50% of variable *remuneration* in *shares* or other non-cash instruments (*SYSC* 19A.3.47R).

(a) Condition 1 is that the *firm* is taking the necessary steps to comply with the requirement as soon as reasonably possible and, in any event, by 1 July 2012.

(b) Condition 2 relates to the proportion of cash that would have been issued in *shares* or other non-cash instruments had *SYSC* 19A.3.47R been complied with ("relevant cash"). The relevant cash should not be paid at the point in time that the *shares* or other non-cash instruments would have vested. This is because *shares* or other non-cash instruments continue to have risk-alignment features following vesting due to the requirement for the *firm* to apply an appropriate retention policy (*SYSC* 19A.3.47R(2)). Instead, the *firm* should pay the relevant cash following a period of deferral, the length of which should mirror the retention policy that would have been applied had *SYSC* 19A.3.47R been complied with. Where the relevant cash is already subject to deferral in accordance with *SYSC* 19A.3.49R, this period of deferral should be added to the period determined under *SYSC* 19A.3.49R. The relevant cash should be subject to performance adjustment in accordance with Remuneration Principle 12(h) (*SYSC* 19A.3.51R to *SYSC* 19A.3.53G) until it vests.

(c) Condition 3 is that the *firm* has adopted and is maintaining specific and effective arrangements, processes and mechanisms to manage the risks raised by its non-compliance with *SYSC* 19A.3.47R.

(3) The *guidance* in (1) to (2) ceases to have effect on 1 July 2012. As a result this *guidance* does not apply to *remuneration* which vests on or after 1 July 2012 (including *remuneration* awarded before 1 July 2012, but where deferral under *SYSC* 19A.3.49R leads to it vesting on or after 1 July 2012).