

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS (REMUNERATION
CODE – CLAWBACK) INSTRUMENT 2014**

Powers exercised

- A. The Prudential Regulation 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 137G (The PRA’s general rules);
 - (2) section 137H (General rules about remuneration); and
 - (3) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

Commencement

- D. This instrument comes into force on 1 January 2015.

Amendments to the Handbook

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

Notes and Guidance

- F. In the Annex 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

- G. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Code - Clawback) Instrument 2014.

By order of the Board of the Prudential Regulation Authority

25 July 2014

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

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

SYSC 19A	Remuneration Code	
...		
19A.1.3	R	<p>(1) A <i>firm</i> must apply the <i>remuneration</i> requirements in SYSC 19A.3, other than SYSC 19A.3.44R(3) and 19A.3.44AR, <u>19A.3.51R(2) and (3), 19A.3.51BR and 19A.3.54R(1)(c)</u>, in relation to:</p> <p>(a) <i>remuneration</i> awarded, whether pursuant to a contract or otherwise, on or after 1 January 2011;</p> <p>(b) <i>remuneration</i> due on the basis of contracts concluded before 1 January 2011 which is awarded or paid on or after 1 January 2011; and</p> <p>(c) <i>remuneration</i> awarded, but not yet paid, before 1 January 2011, for services provided in 2010.</p> <p>(2) ...</p> <p><u>(3) A <i>firm</i> must apply the <i>remuneration</i> requirements in SYSC 19A.3.51R(2) and (3), 19A.3.51BR and 19A.3.54R(1)(c) in relation to <i>remuneration</i> awarded on or after 1 January 2015.</u></p>
...		
19A.3.51	R	<p>A <i>firm</i> must ensure that:</p> <p><u>(1) any variable <i>remuneration</i>, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the <i>firm</i> as a whole, and justified on the basis of the performance of the <i>firm</i>, the business unit and the individual concerned;</u></p> <p><u>(2) any variable <i>remuneration</i> is subject to clawback, such that it is not awarded save where an amount corresponding to it can be recovered from the individual by the <i>firm</i> if the recovery is justified on the basis of the circumstances described in SYSC 19A.3.51AR(3) and 19A.3.51B; and</u></p> <p>[Note: article 94(1)(n) of CRD and Standards 6 and 9 of the FSB Compensation Standards]</p> <p><u>(3) variable <i>remuneration</i> is subject to clawback for a period of at least 7 years from the date on which it is awarded.</u></p>
...		

- 19A.3.51A R A *firm* must:
- (1) ~~ensure that any of the total variable remuneration is subject to malus or clawback arrangements; [deleted]~~
 - (2) set specific criteria for the application of malus and clawback; and
 - (3) ensure that the criteria for the application of malus and clawback in particular cover situations where the *employee*:
 - (a) participated in or was responsible for conduct which resulted in significant losses to the *firm*; or
 - (b) failed to meet appropriate standards of fitness and propriety.

...

- 19A.3.51B R A *firm* must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable remuneration where either of the following circumstances arise during the period in which clawback applies:
- (a) there is reasonable evidence of *employee* misbehaviour or material error; or
 - (b) the *firm* or the relevant business unit suffers a material failure of risk management.

A *firm* must take into account all relevant factors (including, where the circumstances described in (b) arise, the proximity of the *employee* to the failure of risk-management in question and the *employee*'s level of responsibility) in deciding whether and to what extent it is reasonable to seek recovery of any or all of their vested variable remuneration.

...

- 19A.3.54 R (1) Subject to (1A) to (3), the *rules* in SYSC 19A Annex 1.1R to 1.4R 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.3.51R(2) (performance adjustment - clawback); and
 - (ed) SYSC 19A Annex 1.7R (replacing payments recovered or property transferred).

...