



Regulatory Roundup

Remuneration Code Special

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Issue #18



In Brief:

With the release of CP10/19 'Revising the Remuneration Code', proposed new rules governing remuneration will be extended to apply to a far wider range of authorised firms.

This Regulatory Roundup Special describes some of the main provisions of the new Code, which categories of firm it will apply to, and the timeframe for implementation.

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If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact [Peter Carlisle](#).

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Useful Links:

[CP10/19: Revising the Remuneration Code](#)

[Financial Services Act 2010](#)

[Reg Roundup #17](#)

As you'll know from Regulatory Roundup #17 the FSA are reviewing SYSC 19 ('Remuneration Code') in the light of amendments to the Capital Requirements Directive ('CRD3') which comes into force 1 January 2011 (although see below for transitional provisions). The FSA advise that the CRD3 text 'contains several ambiguities' so the current CP can only offer a provisional interpretation on some aspects of CRD3.

When considering the impact on SYSC 19, the FSA will not only have to consider CRD3 but also sections 4 – 6 of the Financial Services Act 2010 which, amongst other things, gives the FSA powers to prohibit employees from being remunerated in a specific way. The Alternative Investment Fund Managers Directive, which could come into effect in 2012, will also deal with remuneration issues so any overlap will need to be addressed at that time.

Relatively good news for firms is that the FSA does not intend to be super-equivalent but rather mirror the CRD3 text.

Now the bad news for firms.

Currently SYSC 19 only applies to larger banks & building societies, BIPRU 730K firms with capital resources exceeding £750m or BIPRU 730K firms/credit institutions that are part of a group (SYSC 19.1.1 sets out full conditions). The scope of the 'new' Code (which will be effected amending SYSC 19) will be extended to include all banks, building societies and CAD investment firms (a reminder that the "CRD" is the CAD plus BCD); the FSA suggest that over 2,500 authorised firms will be in scope.

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The CP then goes on to confuse things by suggesting that it will capture ‘some’ corporate finance firms, vencap firms, firms which provide advice and UCITS investment firms (which is not the same thing as a UCITS firm) which may cause anxiety with some firms. It’s probably best to ignore the FSA’s description of the types of firm that will be subject to the extended Code and instead consider the firm’s categorisation. The new Code will apply to “a BIPRU firm and a third country BIPRU firm”. Therefore e.g. a vencap firm could be a BIPRU firm (if, say, it manages investments) and be subject to the Code *or* it could be an exempt CAD firm (if it advised but didn’t manage investments) and so *not* be subject to the Code.

For firms subject to SYSC 19 the remuneration requirements will apply to awards on or after 1 January 2011 *and* remuneration awarded before 1 January 2011 (if not yet paid) for services provided in 2010. There are 12 Remuneration Principles; Principle 12 concerns ‘Remuneration structures’.

The general requirement is for a firm to produce a (clear and documented) remuneration policy that is consistent with sound and effective risk management. The Code is concerned with the risks created by remuneration arrangements and not with the absolute amount of remuneration.

The staff affected by the Code (‘Remuneration Code staff’) include ‘senior management, risk takers, control functions ...’. See SYSC 19.3.4R for full description. SYSC 19.3.6G suggests that Remuneration Code staff will include a person who performs a ‘significant influence function’ (basically any controlled function bar the CF30 customer function) and also includes a table of examples of positions in a firm that would be regarded as ‘risk takers’. It is suggested that firms may find it useful to set their own metrics to identify their ‘risk takers’.

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Remuneration Code Special (cont.)



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A firm must ensure that implementation of the remuneration policy is subject to 'central and independent internal review' at least annually (SYSC 19.3.11R).

The area of most interest to firms subject to the amended SYSC 19 will be 'Remuneration Principle 12: Remuneration structures' (SYSC 19.3.33 – 52). Performance related remuneration will have to be based on a combination of individual, business unit and overall firm performance *and* when assessing individual performance financial as well as non-financial criteria will need to be taken into account.

A firm will be required to set appropriate ratios between the fixed and variable components of total remuneration (SYSC 19.3.42R).

At least 50% of any variable remuneration will have to consist of a balance of shares and, where appropriate, 'capital instruments' (SYSC 19.3.45R).

At least 40% of any variable remuneration will have to be deferred over a period 'not less than three to five years'. In the case of a director paid a 'particularly high amount' at least 60% will have to be deferred (SYSC 19.3.46 which also tells us that a 'particularly high amount' is £500,000, but could be lower – see also SYSC 19.3.47(2)).

Note that a proportionality approach can be adopted, although 4.7 of the CP warns that the FSA will expect all in scope firms to consider the application of the Code by way of a self-assessment (and the FSA will challenge such assessments 'where appropriate').

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Remuneration Code Special (cont.)



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Any firm considering proportionality should read Annex 5 of the CP which sets out the rules to be applied by *all* firms, as well as those rules which could be applied proportionally.

There are transitional provisions to recognise that firms who were not previously subject to SYSC 19 may require additional time to comply. Using the proportionality provisions of SYSC 19.3.3R such firms will be allowed a modest delay in implementation providing they take reasonable steps to comply but **must** comply by 1 July 2011. Note that any firms that *were* subject to SYSC 19 ‘... may be able to justify not complying with the requirements to pay 50% of variable remuneration in shares or other non-cash instruments (SYSC 19.3.45R)’.

We are advised in chapter 4 of the CP that a review of firms’ remuneration policies will be incorporated into the FSA’s existing supervisory approaches (firms subject to recent ARROW visits may have already experienced an FSA interest in this area). It is proposed that all firms in scope will be required to submit relevant data via GABRIEL. Firms should refer to 4.14 – 4.16 on the proposed supervisory approach for high, medium and low impact firms.

The proposed rules can be found in Appendix 1 of CP10/19.

The consultation period ends 8 October and a Policy Statement is expected to be published in November.

Although still in the consultation stage, it is certain that a Remuneration Code will come into being within the above time lines. Affected firms should therefore begin to consider how the proposed rules will affect their remuneration policies, procedures and practices.

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If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact

[Peter Carlisle](#)

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