

PRA RULEBOOK: CRR FIRMS: REMUNERATION INSTRUMENT 2015

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) 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);
 - (3) section 137T (General supplementary powers); and
 - (4) section 138C (Evidential provisions).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) 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.

PRA Rulebook: CRR Firms: Remuneration Instrument 2015

- D. The PRA makes the rules in Annexes A to H to this instrument.

Commencement

- E. This instrument comes into force on 1 July 2015.

Citation

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Remuneration Instrument 2015.

By order of the Board of the Prudential Regulation Authority

19 June 2015

Annex A

REMUNERATION

Chapter content

1. APPLICATION AND DEFINITIONS
2. APPLICATION DATES
3. MATERIAL RISK TAKERS
4. GROUPS
5. PROPORTIONALITY
6. REMUNERATION POLICIES
7. GOVERNANCE
8. CONTROL FUNCTIONS
9. REMUNERATION AND CAPITAL
10. EXCEPTIONAL GOVERNMENT INTERVENTION
11. RISK ADJUSTMENT
12. PENSION POLICY
13. PERSONAL INVESTMENT STRATEGIES
14. NON-COMPLIANCE
15. REMUNERATION STRUCTURES
16. BREACH OF THE REMUNERATION RULES
17. REMUNERATION BENCHMARKING REPORTING REQUIREMENT
18. HIGH EARNERS REPORTING REQUIREMENT

Links:

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

- (1) a *CRR firm* in relation to its;
 - (a) *UK activities*;
 - (b) *passported activities* carried on from a *branch* in another *EEA State*; and
 - (c) other activities wherever they are carried on, in a *prudential context*; and
- (2) a *third country CRR firm* in relation to its activities carried on from an establishment in the *UK*.

1.2 This Part applies:

- (1) in relation to *regulated activities*;
- (2) in relation to the *regulated activity*, specified in Article 14 of the *Regulated Activities Order* (Dealing in investments as principal), disregarding the exclusion in Article 15 of the *Regulated Activities Order* (Absence of holding out etc.);
- (3) in relation to *ancillary activities* and (in relation to *MiFID business*) *ancillary services*;
- (4) in relation to the carrying on of *unregulated activities* in a *prudential context*; and
- (5) taking into account activities of other members of a *group* of which the *firm* is a member.

1.3 In this Part, the following definitions shall apply:

accounting reference date

means

- (1) (in relation to a *body corporate* incorporated in the *UK* under the Companies Acts) the accounting reference date of that *body corporate* determined in accordance with section 391 of the Companies Act 2006; or
- (2) (in relation to any other body) the last day of its financial year.

consolidation group entity

means an *institution* or *financial institution* which is, in relation to a *CRR firm* responsible for consolidation:

- (1) the *CRR firm* responsible for consolidation;
- (2) a *subsidiary* of the *CRR firm* responsible for consolidation; or
- (3) a *subsidiary* of the *EEA parent financial holding company* or *EEA parent mixed financial holding company* by which the *CRR firm* responsible for consolidation is controlled.

CRR firm responsible for consolidation

means a *CRR firm* which is either:

- (1) an *EEA parent institution*; or
- (2) controlled by an *EEA parent financial holding company* or by an *EEA parent mixed financial holding company* and to which supervision on a *consolidated basis* by the *PRA* applies in accordance with Article 111 of *CRD*.

high earner

means an *employee* (of a *firm* or of any *consolidation group entity*) whose total annual *remuneration* is €1 million or more per year or its equivalent in another currency determined by reference to the conversion rate applicable to the corresponding *High Earners Report* under Chapter 18.

High Earners Report

means the report by which a *firm* provides to the *PRA* the information required in Chapter 18.

material risk taker

has the meaning given in 3.1.

Material Risk Takers Regulation

means Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.

Remuneration Benchmarking Information Report

means the report by which a *firm* provides to the *PRA* the information required in Chapter 17.

remuneration requirements

means the requirements in 6 to 15.

share

means the investment specified in Article 76 of the *Regulated Activities Order* (Shares etc).

total assets

means:

- (1) in relation to a *CRR firm* or an *EEA bank*, its total assets as set out in its balance sheet on the relevant *accounting reference date*; and
- (2) in relation to a *third country CRR firm*, the total assets of the *third country CRR firm* as set out in its balance sheet on the relevant *accounting reference date* that cover the activities of the *branch* operation in the *UK*.

- 1.4 Unless otherwise defined, any italicised expression used in this Part and in the *CRD* or *CRR* has the same meaning as in the *CRD* or *CRR*.

2 APPLICATION DATES

- 2.1 Subject to 2.2 and 2.3, a *firm* must apply the *remuneration requirements* 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.
- 2.2 A *firm* must apply 15.9(3) and 15.10 in relation to *remuneration* awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before, on or after 31 December 2013.
- [Note: Art. 162(3) of the *CRD*]**
- 2.3 A *firm* must apply 15.17(1)(b) and (c), 15.20(2), (3) and (4), 15.23 and 16.1(3) in relation to *remuneration* awarded in relation to a performance year starting on or after 1 January 2016.

3 MATERIAL RISK TAKERS

- 3.1 A *firm* must, save where otherwise stated, apply the requirements of this Part in relation to a *person* (a “material risk taker”) who is:
- (1) an *employee* of a *CRR firm* whose professional activities have a material impact on the *firm’s* risk profile, including any *employee* who is deemed to have a material impact on the *firm’s* risk profile in accordance with criteria set out in articles 3 to 5 of the *Material Risk Takers Regulation*; or
 - (2) subject to 3.2, an *employee* of a *third country CRR firm* who would fall within 3.1(1) if it had applied in relation to him or her.
- 3.2 A *third country CRR firm* may deem an *employee* not to be a *material risk taker* where:
- (1) the *employee*:
 - (a) would meet any of the criteria in Article 4(1) of the *Material Risk Takers Regulation*,
 - (b) would not meet any of the criteria in Article 3 of the *Material Risk Takers Regulation*; and
 - (c) was awarded total *remuneration* of less than €750,000 in the preceding financial year; and

- (2) the *third country CRR firm* determines that the professional activities of the *employee* do not have a material impact on its risk profile on the grounds described in Article 4(2) of the *Material Risk Takers Regulation*.
- 3.3 Where a *third country CRR firm* deems an *employee* not to be a *material risk taker* as set out in 3.2, it must notify the *PRA*, applying exactly the approach described in Article 4(4) of the *Material Risk Takers Regulation*.
- 3.4 A *firm* must maintain a record of its *material risk takers* in accordance with the Record Keeping Part.
- 3.5 A *firm* must take reasonable steps to ensure that its *material risk takers* understand the implications of their status as such, including the potential for *remuneration* which does not comply with certain requirements of this Part to be rendered void and recoverable by the *firm*.

4 GROUPS

- 4.1 A *firm* must apply the requirements at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is not in an *EEA State*.
- 4.2 A *firm* must:
- (1) ensure that the risk management processes and internal control mechanisms of the other members of the *group* of which it is a member comply with the obligations set out in this Part on a *consolidated basis* or *sub-consolidated basis*; and
 - (2) ensure that compliance with (1) enables the members of the *group* of which it is a member to have arrangements, processes and mechanisms that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.

[Note: Arts. 92(1) and 109 of the CRD]

5 PROPORTIONALITY

- 5.1 A *firm* must comply with this Part 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, when establishing and applying the total *remuneration* policies for *material risk takers*.
- 5.2 5.1 does not apply to the requirement in 7.4 for significant *firms* to have a *remuneration* committee.

[Note: Art. 92(2) of the CRD]

6 REMUNERATION POLICIES

- 6.1 In this Chapter, 6.2 and 6.5 apply to *firms* in relation to *firms' remuneration* policies, practices and procedures generally, not only in relation to *material risk takers*.

- 6.2 A *firm* must establish implement and maintain a *remuneration* policy, practices and procedures which are consistent with and promote sound and effective risk management and do not encourage risk-taking that exceeds the level of tolerated risk of the *firm*.

[Note: Arts. 74(1) and 92(2)(a) of the CRD]

- 6.3 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: Art. 92(2)(b) of the CRD]

- 6.4 A *firm* must ensure that its *remuneration* policy includes measures to avoid conflicts of interest.

[Note: Art. 92(2)(b) of the CRD]

- 6.5 A *firm* must ensure that its *remuneration* policies, practices and procedures, including performance appraisal processes and decisions, are clear and documented.

7 GOVERNANCE

- 7.1 In this Chapter, 7.4 applies generally, not only in relation to *material risk takers*.

- 7.2 A *firm* must ensure that its *management body* in its *supervisory function* adopts and periodically reviews the general principles of the *remuneration* policy and is responsible for overseeing its implementation.

[Note: Art. 92(2)(c) of the CRD and Standard 1 of the FSB Compensation Standards]

- 7.3 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 *management body* in its *supervisory function*.

[Note: Art. 92(2)(d) of the CRD and Standard 1 of the FSB Compensation Standards]

- 7.4 A *CRR firm* that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities must establish a *remuneration* committee, and ensure that the committee:

- (1) is 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;
- (2) comprises a chairman and members who are members of the *management body* who do not perform any executive function in the *firm*;
- (3) is 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 *management body*; and
- (4) takes into account, when preparing such decisions, the long-term interests of shareholders, investors and other stakeholders in the *firm* as well as the public interest.

[Note: Art. 95 of the CRD and Standard 1 of the FSB Compensation Standards]

- 7.5 A *firm* that maintains a website must explain on the website how the *firm* complies with this Part.

[Note: Art. 96 of the CRD]

8 CONTROL FUNCTIONS

- 8.1 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 *employees*; 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: Art. 92(2)(e) of the CRD and Standard 2 of the FSB Compensation Standards]

- 8.2 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 7.4, or, if such a committee has not been established, by the *governing body* in its *supervisory function*.

[Note: Art. 92(2)(f) of the CRD]

9 REMUNERATION AND CAPITAL

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

[Note: Art. 94(1)(c) of the CRD and Standard 3 of the FSB Compensation Standards]

10 EXCEPTIONAL GOVERNMENT INTERVENTION

- 10.1 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 members of its *management body*; and
- (3) no variable or discretionary *remuneration* of any kind is paid to members of its *management body* unless this is justified.

[Note: Art. 93 of the CRD and Standard 10 of the FSB Compensation Standards]

11 RISK ADJUSTMENT

- 11.1 (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: Arts. 94(1)(j) and (k) of the CRD and Standard 4 of the FSB Compensation Standards]

- 11.2 A *firm* must have a clear and verifiable mechanism for measuring performance, with risk adjustment applied thereafter in a clear and transparent manner.
- 11.3 A *firm* must base assessments of financial performance used to calculate variable *remuneration* components or pools of variable *remuneration* components principally on profits. To determine profits for this purpose, a *firm* (other than a *branch*) must adjust its fair valuation accounting model profit figure by the incremental change in its regulatory prudent valuation adjustment figure across the relevant performance period.
- 11.4 A *firm*'s risk-adjustment approach must reflect both ex-ante adjustment (which adjusts *remuneration* for intrinsic risks that are inherent in its business activities) and ex-post adjustment (which adjusts *remuneration* for crystallisation of specific risk events).
- 11.5 A *firm* must not base the ex-ante risk adjustments referred to in 11.4 on revenue-based measures, except as part of a balanced, risk-adjusted scorecard.
- 11.6 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, including through malus or clawback arrangements.

[Note: Art. 94(1)(n) of the CRD and Standard 5 of the FSB Compensation Standards]

12 PENSION POLICY

- 12.1 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 15.15; and

- (3) when an *employee* reaches retirement, discretionary pension benefits are paid to the *employee* in the form of instruments referred to in 15.15 and subject to a five-year retention period.

[Note: Art. 94(1)(o) of the CRD]

13 PERSONAL INVESTMENT STRATEGIES

- 13.1 (1) A *firm* must ensure that its *employees* undertake not to use personal hedging strategies to undermine the risk alignment effects embedded in their *remuneration* arrangements.
- (2) A *firm* must ensure that its *employees* undertake not to use *remuneration*-related or liability-related *contracts of insurance* to undermine the risk alignment effects embedded in their *remuneration* arrangements.
- (3) A *firm* must maintain effective arrangements designed to ensure that *employees* comply with their undertaking.

[Note: Art. 94(1)(p) of the CRD and Standard 14 of the FSB Compensation Standards]

14 NON-COMPLIANCE

- 14.1 A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with obligations arising from *CRR*, *CRD* or this Part.

[Note: Art. 94(1)(q) of the CRD]

15 REMUNERATION STRUCTURES

General Requirement

- 15.1 A *firm* must ensure that the structure of an *employee's remuneration* is consistent with and promotes effective risk management.
- 15.2 A *firm* must ensure that its *remuneration* policy makes a clear distinction between criteria for setting:
- (1) basic fixed *remuneration* that primarily reflects an *employee's* professional experience and organisational responsibility as set out in the *employee's* job description and terms of employment; and
- (2) variable *remuneration* that reflects performance in excess of that required to fulfil the *employee's* job description and terms of employment and that is subject to performance adjustment in accordance with this Part.

[Note: Art. 92(2)(g) of the CRD]

- 15.3 A *firm* must not award variable *remuneration* to a *non-executive director* in relation to his or her role as such.

Assessment of performance

15.4 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: Art. 94(1)(a) of the CRD and Standard 6 of the FSB Compensation Standards]

15.5 A *firm* must clearly explain the performance assessment process referred to in 15.4 to relevant *employees*.

15.6 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: Art. 94(1)(b) of the CRD]

Specific award structures: guaranteed variable remuneration and buy-outs

15.7 A *firm* must ensure that guaranteed variable *remuneration* is not part of prospective *remuneration* plans. A *firm* must not award, pay or provide guaranteed variable *remuneration* unless:

- (1) it is exceptional;
- (2) it occurs in the context of hiring a new *employee*;
- (3) the *firm* has a sound and strong capital base; and
- (4) it is limited to the first year of service.

[Note: Arts. 94(1)(d) and (e) of the CRD and Standard 11 of the FSB Compensation Standards]

15.8 A *firm* must ensure that *remuneration* packages relating to compensation for, or buy out from, an *employee's* contracts in previous *employment* align with the long-term interests of the *firm* including appropriate retention, deferral and performance and clawback arrangements.

[Note: Art. 94(1)(i) of the CRD]

Ratio between fixed and variable components of total remuneration

15.9 A *firm* must set an appropriate ratio between the fixed and variable components of total *remuneration* and ensure that:

- (1) fixed and variable components of total *remuneration* are appropriately balanced;

- (2) the level of 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; and
- (3) subject to 15.10, the level of the variable component of total *remuneration* must not exceed 100% of the fixed component of total *remuneration* for each *material risk taker*.

[Note: Arts. 94(1)(f) and 94(1)(g)(i) of the CRD]

- 15.10 A *firm* may set a higher maximum level of the ratio between the fixed and variable components of *remuneration* provided:
- (1) the overall level of the variable component does not exceed 200% of the fixed component of the total *remuneration* for each *material risk taker*; and
 - (2) is approved by the shareholders or owners or members of the *firm* in accordance with 15.11.
- 15.11 A *firm* must ensure that any approval by the shareholders or owners or members of the *firm* for the purposes of 15.10 is carried out in accordance with the following procedure:
- (1) the *firm* must give reasonable notice to all shareholders or owners or members of the *firm* that the *firm* intends to seek approval of the proposed higher ratio;
 - (2) the *firm* must make a detailed recommendation to all shareholders or owners or members of the *firm* giving the reasons for, and the scope of, the approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;
 - (3) the *firm* must, without delay, inform the *PRA* of the recommendation to its shareholders or owners or members, including the proposed higher ratio and the reasons therefor and must demonstrate to the *PRA* that the proposed higher ratio does not conflict with the *firm's* obligations under the *CRD* and the *CRR*, having regard in particular to the *firm's* *own funds* obligations;
 - (4) the *firm* must ensure that *employees* who have an interest in the proposed higher ratio are not allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the *firm* in respect of the approval sought; and
 - (5) the higher ratio is approved by:
 - (a) at least 66% of the shares or equivalent ownership rights represented, if at least 50% of the shares or equivalent ownership rights in the *firm* are represented; or
 - (b) at least 75% of the shares or equivalent ownership rights represented if less than 50% of the shares or equivalent ownership rights in the *firm* are represented.

[Note: Art. 94(1)(g)(ii) of the CRD]

- 15.12 A *firm* must notify without delay the *PRA* of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio.

[Note: Art. 94(1)(g)(ii) of the CRD]

- 15.13 A *firm* may apply a discount rate to a maximum of 25% of an *employee's* total variable *remuneration* provided it is paid in instruments that are deferred for a period of not less than

five years. In applying this discount rate, *firms* must apply the EBA Guidelines on the applicable notional discount rate for variable remuneration of 27 March 2014.

[Note: Art. 94(1)(g)(iii) of the CRD]

Payments related to early termination

15.14 A *firm* must ensure that payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure or misconduct.

[Note: Art. 94(1)(h) of the CRD and Standard 12 of the FSB Compensation Standards]

Retained shares or other instruments

15.15 A *firm* must ensure that:

- (1) 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 possible other instruments which are eligible as *Additional Tier 1 instruments* or are eligible as *Tier 2 instruments* or other instruments that can be fully converted to *Common Equity Tier 1 instruments* or written down, that in each case adequately reflect the credit quality of the *firm* as a going concern and are appropriate for use as variable *remuneration*; and
- (2) the instruments referred to in paragraph (1) are subject to an appropriate retention policy designed to align incentives with the longer-term interests of the *firm*.

15.16 A *firm* must apply 15.15 to both the portion of the variable *remuneration* component deferred in accordance with 15.17 and 15.18 and the portion not deferred.

[Note: Art. 94(1)(l) of the CRD and Standard 8 of the FSB Compensation Standards]

Deferral

15.17 (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:

- (a) in the case of a *material risk taker* who is not subject to (b) or (c), three years, vesting no faster than on a pro-rata basis;
- (b) in the case of a *material risk taker* who does not perform a *PRA senior management function*, but whose professional activities meet the qualitative criteria set out in Article 3(1) to 3(9), 3(10) (but only by virtue of being responsible for a committee referred to therein), 3(13) or 3(15) of the *Material Risk Takers Regulation*, five years, vesting no faster than on a pro-rata basis; or
- (c) in the case of a *material risk taker* who performs a *PRA senior management function*, seven years, with no vesting to take place until three years after award, and vesting no faster than on a pro-rata basis thereafter.

15.18 In the case of a variable *remuneration* component:

- (1) of £500,000 or more; or
- (2) 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 on the basis set out in 15.17.

- 15.19 Subject to 15.17, 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: Art. 94(1)(m) of the CRD and Standards 6 and 7 of the FSB Compensation Standards]

Performance adjustment

- 15.20 A *firm* must ensure that:

- (1) 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 on the basis of the performance of the *firm*, the business unit and the individual concerned;
- (2) any variable *remuneration* is subject to clawback, such that it is only awarded if an amount corresponding to it can be recovered from the individual by the *firm* if the recovery is justified on the basis of the circumstances described in 15.21(2) or 15.22; and
- (3) any variable *remuneration* is subject to clawback for a period of at least 7 years from the date on which the variable *remuneration* is awarded;
- (4) in the case of a *material risk taker* who performs a *PRA senior management function*, the *firm* can, by notice to the *employee* to be given no later than 7 years after the variable *remuneration* was awarded, extend the period during which variable *remuneration* is subject to clawback to at least 10 years from the date on which the variable *remuneration* is awarded, where:
 - (a) the *firm* has commenced an investigation into facts or events which it considers could potentially lead to the application of clawback were it not for the expiry of the clawback period; or
 - (b) the *firm* has been notified by a regulatory authority (including an overseas regulatory authority) that an investigation has been commenced into facts or events which the *firm* considers could potentially lead to the application of clawback by the *firm* were it not for the expiry of the clawback period; and
- (5) it considers on an ongoing basis whether to use the power in (4).

[Note: Art. 94(1)(n) of the CRD and Standards 6 and 9 of the FSB Compensation Standards]

- 15.21 A *firm* must:

- (1) set specific criteria for the application of malus and clawback; and
- (2) 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.

[Note: Art. 94(1)(n) of the CRD]

- 15.22 (1) A *firm* should reduce unvested deferred variable *remuneration* when, as a minimum:
- (a) there is reasonable evidence of *employee* misbehaviour or material error;
 - (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 a *firm* to reduce the number of *shares* or other non-cash instruments.
- (3) Contravention of any of (1) or (2) may be relied on as tending to establish contravention of 15.20(1). Contravention of (1) or (2) does not give rise to any of the consequences provided for by provisions of *FSMA* other than section 138C.
- 15.23 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 (including any part of such period occurring after the relevant employment has ceased):
- (1) there is reasonable evidence of *employee* misbehaviour or material error; or
 - (2) 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 (2) 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*.

16 BREACH OF THE REMUNERATION RULES

- 16.1 Subject to 16.2 to 16.7, the voiding provisions in 16.9 to 16.13 apply in relation to the prohibitions on *material risk takers* being *remunerated* in the ways specified in:
- (1) 15.7 (guaranteed variable *remuneration*);
 - (2) 15.17 to 15.19 (deferred variable *remuneration*);
 - (3) 15.20(2) (performance adjustment – clawback); and
 - (4) 16.16 (replacing payments recovered or property transferred).
- 16.2 16.1 applies only to those prohibitions as they apply in relation to a *firm* that satisfies either Condition 1 or Condition 2, as set out in 16.3 and 16.4.
- 16.3 Condition 1 is that the *firm* is a *CRR firm* that has relevant total assets exceeding £50 billion.

- 16.4 Condition 2 is that the *firm*:
- (1) is a *credit institution* or a *UK designated investment firm*; and
 - (2) is part of a *group* containing a *firm* that has relevant total assets exceeding £50 billion and that is a *CRR firm*.
- 16.5 For the purposes of 16.3 and 16.4 “relevant total assets” means the arithmetic mean of the *firm*’s total assets as set out in its balance sheet on its last three accounting reference dates.
- 16.6 The voiding provisions in 16.9 to 16.13 do not apply in relation to the prohibition on *material risk takers* being *remunerated* in the way specified in 15.7 (guaranteed variable *remuneration*) if both the conditions in paragraphs (2) and (3) of that *rule* are met.
- 16.7 The voiding provisions in 16.9 to 16.13 do not apply in relation to a *material risk taker* (X) in respect of whom both the following conditions are satisfied:
- (1) Condition 1 is that X’s variable *remuneration* is no more than 33% of total *remuneration*; and
 - (2) Condition 2 is that X’s total *remuneration* is no more than £500,000.
- 16.8 In relation to 16.7:
- (1) references to *remuneration* are to *remuneration* awarded or paid in respect of the relevant performance year;
 - (2) the amount of any *remuneration* is:
 - (a) if it is money, its amount when awarded;
 - (b) otherwise, whichever of the following is greatest: its value to the recipient when awarded; its market value when awarded; or the cost of providing it at the time of the award;
 - (3) 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
 - (4) it is to be assumed that the *material risk taker* will remain so for the duration of the relevant performance year.

Voiding provisions

- 16.9 Any provision of an agreement that contravenes a prohibition on *persons* being *remunerated* in a way specified in a *rule* to which this *rule* applies (a “contravening provision”) is void.
- 16.10 A contravening provision does not cease to be void because:
- (1) the *firm* concerned ceases to satisfy any of the conditions set out in 16.3 to 16.4; or
 - (2) the *material risk taker* concerned starts to satisfy both of the conditions set out in 16.7 (1) and (2).
- 16.11 A contravening provision that, at the time a *rule* to which this *rule* applies was first made (including any corresponding *rules* specified in SYSC 19A.3.54R of the *PRA Handbook*), is

contained in an agreement made before that time is not rendered void by 16.9 unless it is subsequently amended so as to contravene such a *rule*.

- 16.12 (1) A pre-existing provision is not rendered void by 16.9.
- (2) In this Chapter, a pre-existing provision is any provision of an agreement that would (but for this *rule*) be rendered void by 16.9 that was agreed at a time when either:
- (a) the *firm* concerned did not satisfy any of the conditions set out in 16.3 to 16.4; or
 - (b) the *material risk taker* concerned satisfied both of the conditions set out in 16.7(1) and (2).
- (3) But an amendment to, or in relation to, a pre-existing provision is not to be treated as a pre-existing provision where the amendment is agreed at a time when both:
- (a) the *firm* concerned satisfies at least one of the conditions set out in 16.3 to 16.4; and
 - (b) the *material risk taker* concerned does not satisfy both of the conditions set out in 16.7(1) and (2).
- 16.13 For the purposes of this Chapter, it is immaterial whether the law which (apart from 16.9 to 16.16) governs a contravening provision is the law of the *UK*, or of a part of the *UK*.

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

- 16.14 In relation to any payment made or other property transferred in pursuance of a contravening provision other than a pre-existing 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* recovers any such payment made or other property transferred by that *person*.
- 16.15 16.14 continues to apply in one or both of the following cases:
- (1) the *firm* concerned ceases to satisfy any of the conditions set out in 16.3 to 16.4;
 - (2) the *material risk taker* concerned starts to satisfy both of the conditions set out in 16.7(1) and (2).

Replacing payments recovered or property transferred

- 16.16 (1) A *firm* must not award, pay or provide variable *remuneration* to a *person* who has received *remuneration* in pursuance of a contravening provision other than a pre-existing provision (the "contravening *remuneration*") unless the *firm* has obtained a legal opinion stating that the award, payment or provision of the *remuneration* complies with this Part.
- (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.

- (4) Paragraph (1) continues to apply in one or both of the following cases:
- (a) the *firm* concerned ceases to satisfy any of the conditions set out in 16.3 to 16.4;
 - (b) the *material risk taker* concerned starts to satisfy both of the conditions set out in 16.7(1) and (2).

17 REMUNERATION BENCHMARKING REPORTING REQUIREMENT

- 17.1 This Chapter applies to a *firm* to which this Part applies, which had *total assets* equal to or greater than £50 billion on an unconsolidated basis on the *accounting reference date* immediately prior to the *firm's* last complete financial year.
- 17.2 A *firm* must submit a *Remuneration Benchmarking Information Report* to the *PRA* annually.
- 17.3 The *firm* must provide to the *PRA*, by way of its *Remuneration Benchmarking Information Report*, the information disclosed in accordance with the criteria for disclosure established in points (g), (h) and (i) of Article 450(1) of the *CRR*.
- [Note: Art. 75(1) of the CRD]**
- 17.4 The *firm* must submit the *Remuneration Benchmarking Information Report* to the *PRA* within four months of the *firm's* *accounting reference date*.
- 17.5 A *firm* that is not, and does not have, an *EEA parent institution*, an *EEA parent financial holding company* or an *EEA parent mixed financial holding company* must complete that report on an unconsolidated basis in respect of *remuneration* awarded to *employees* of the *firm* in the last completed financial year.
- 17.6 A *firm* that is a *CRR firm responsible for consolidation* must complete that report on a consolidated basis in respect of *remuneration* awarded to all *employees* of all *consolidation group entities* in the last completed financial year.
- 17.7 The *firm* must ensure that the information in the *Remuneration Benchmarking Information Report* is denominated in euro, determined by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.

[Note: EBA/GL/2014/08]

18 HIGH EARNERS REPORTING REQUIREMENT

- 18.1 The Chapter applies in relation to *high earners* and not only in relation to *material risk takers*.
- 18.2 A *firm* must submit a *High Earners Report* to the *PRA* annually.
- 18.3 The *firm* must submit that report to the *PRA* within four months of the end of the *firm's* *accounting reference date*.
- 18.4 A *firm* that is not, and does not have, an *EEA parent institution*, an *EEA parent financial holding company* or an *EEA parent mixed financial holding company* must complete that report on an unconsolidated basis in respect of *remuneration* awarded in the last completed

financial year to all *high earners* of the *firm* who mainly undertook their professional activities within the *EEA*.

18.5 A *firm* that is a *CRR firm responsible for consolidation* must complete that report on a *consolidated basis* in respect of *remuneration* awarded in the last completed financial year to all *high earners* who mainly undertook their professional activities within the *EEA* at:

- (1) the *EEA parent institution*, *EEA parent financial holding company* or the *EEA parent mixed financial holding company* of the *consolidation group*;
- (2) each *consolidation group entity* that has its registered office (or if it has no registered office, its head office) in an *EEA State*; and
- (3) each *branch* of any other *consolidation group entity* that is established or operating in an *EEA State*.

18.6 The *firm's High Earners Report* must report, in pay brackets of €1m, the number of *high earners*, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution. The number of *high earners* must be reported as the number of natural persons, independent of the number of working hours on which their contract is based.

[Note: Art. 75(3) of the CRD]

18.7 The *firm* must ensure that the information in the *High Earners Report* is denominated in euro, determined by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.

[Note: EBA/GL/2014/07]

Annex B

Amendments to the Glossary

In the Glossary Part of the PRA Rulebook, insert the following new definitions:

consolidation group

means the *undertakings* included in the scope of consolidation pursuant to Articles 18(1), 18(8), 19(1), 19(3) and 23 of the *CRR* and Groups 2.1 to 2.3.

EEA parent financial holding company

means a *parent financial holding company in an EEA State* which is not a *subsidiary* of an *institution* authorised in any *EEA State* or of another *financial holding company* or *mixed financial holding company* set up in any *EEA State*.

EEA parent institution

means a *parent institution in an EEA State* which is not a *subsidiary* of another *institution* authorised in an *EEA State* or of a *financial holding company* or *mixed financial holding company* set up in any *EEA State*.

EEA parent mixed financial holding company

means a *parent mixed financial holding company in an EEA State* which is not a *subsidiary* of an *institution* authorised in any *EEA State* or of another *financial holding company* or *mixed financial holding company* set up in any *EEA State*.

remuneration

means any form of remuneration, including salary, discretionary pension benefits and benefits of any kind.

third country CRR firm

means an *overseas firm* that:

- (1) is not an *EEA firm*;
- (2) has its head office outside the *European Economic Area*; and
- (3) would be a *CRR firm* if it had been a *UK undertaking*, had carried on all of its business in the *UK* and had obtained whatever authorisations for doing so as are required under *FSMA*.

Annex C

Amendments to the Remuneration Reporting Requirements Part

Remuneration Reporting Requirements is deleted in its entirety. This text is not shown.

Annex D

Amendments to the Internal Capital Adequacy Assessment Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

~~consolidation group~~

~~means the undertakings included in the scope of consolidation pursuant to Articles 18(1), 18(8), 19(1), 19(3) and 23 of the CRR and Groups 2.1-2.3.~~

...

Annex E

Amendments to the Notifications Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

~~consolidation group~~

~~means the undertakings included in the scope of consolidation pursuant to Articles 18(1), 18(8), 19(1), 19(3) and 23 of the CRR and Groups 2.1-2.3.~~

...

Annex F

Amendments to the Recovery Plans Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

~~EEA parent financial holding company~~

~~means a parent financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.~~

~~EEA parent institution~~

~~means a parent institution in an EEA State which is not a subsidiary of another institution authorised in an EEA State or of a financial holding company or mixed financial holding company set up in any EEA State.~~

~~EEA parent mixed financial holding company~~

~~means a parent mixed financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.~~

...

Annex G

Amendments to the Resolution Pack Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

~~EEA parent financial holding company~~

~~means a parent financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.~~

~~EEA parent institution~~

~~means a parent institution in an EEA State which is not a subsidiary of another institution authorised in an EEA State or of a financial holding company or mixed financial holding company set up in any EEA State.~~

~~EEA parent mixed financial holding company~~

~~means a parent mixed financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.~~

...

Annex H

Amendments to the Group Financial Support Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

~~EEA parent financial holding company~~

~~means a parent financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.~~

~~EEA parent institution~~

~~means a parent institution in an EEA State which is not a subsidiary of another institution authorised in an EEA State or of a financial holding company or mixed financial holding company set up in any EEA State.~~

~~EEA parent mixed financial holding company~~

~~means a parent mixed financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.~~

...