

INVESTMENT FIRMS PRUDENTIAL REGIME ('IFPR'): FCA PUBLISHES ITS FINAL DISCLOSURE RULES ON PAY AND GOVERNANCE

The FCA has published its final rules on disclosure as part of its third Policy Statement on the new IFPR regime (PS 21/17). Among other matters, the disclosure rules cover governance and remuneration issues, which will be of interest to investment firms' reward, HR, corporate secretariat and legal teams. The new disclosure rules are set out in MiFIDPRU 8.

We've set out the key points on pay and governance disclosure below. All investment firms (save for the largest and most significant, which will be subject to UK CRD/CRR) will be impacted by the new rules, including PE firms and investment managers. A copy of PS 21/17 can be accessed [here](#). Our briefing on the substantive remuneration requirements of the MiFIDPRU Remuneration Code can be found [here](#).

The main change to the rules since the FCA's August Consultation Paper (CP 21/16) is the introduction of a new carve out from certain of the quantitative disclosure obligations, where only one or two MRTs only are impacted. This is intended to address confidentiality and data protection concerns (see further below). The rules also now make it clear that carried interest should be treated as variable remuneration. Although the FCA noted the feedback it received on the burden of disclosure on an individual entity basis, it ultimately decided to stick with that approach in the final rules.

Remuneration

The level of disclosure that applies to your firm will depend on how it is classified under the new IFPR regime. Investment firms are divided into the following categories:

- Smaller and non-interconnected firms ('SNIs').

Timings

- The rules come into effect on 1 January 2022 in respect of performance years beginning on or after that date.
- This means that the first date that disclosure will be required is at the same time as the first set of financial reports in 2023 (i.e., in respect of the 2022 performance year).
- Until then, an FCA investment firm must continue to make its remuneration disclosures in line with any disclosure rules to which the firm is currently subject, i.e. either BIPRU 11 or UK's CRR.
- Disclosures can be made on a firm's website; although the information must be clearly presented and easy to understand.

- Non-SNIs not categorised as 'Largest'; and
- Largest Non-SNIs³

Scope

- Certain qualitative and quantitative pay information of material risk takers ('MRTs') will need to be disclosed as part of an annual public disclosure process, as summarised in the table below.
- Disclosure will be required on an individual entity-level and the requirement to disclose is group wide. In response to points raised during consultation, the FCA has clarified that an MRT employed by a third country parent entity outside of the FCA investment group must still be included in the disclosure exercise. Notably, the FCA makes it clear that they expect the rules to apply to any form of remuneration awarded to those MRTs, whether or not it is derived from tasks that are related to the UK investment firm.

"Snap shot" of Remuneration disclosures

SNI Firms	
Qualitative disclosures	<ul style="list-style-type: none"> • Key elements of remuneration policies, for example, approach to remuneration for all staff, objectives of financial incentives, decision-making procedures and governance, composition and mandate of the remuneration committee (where applicable) • Components of remuneration and categorisation of each as fixed or variable • Summary of financial and non-financial performance criteria used to assess the performance of the firm, business units and individuals
Quantitative disclosures	<ul style="list-style-type: none"> • Total amount of remuneration awarded to all staff, split into: <ul style="list-style-type: none"> ○ fixed remuneration; and ○ variable remuneration
Non-SNIs (not classified as Largest non-SNIs) All 'SNI' disclosures and the following	
Qualitative disclosures	<ul style="list-style-type: none"> • Framework and criteria used for ex-ante and ex-post risk adjustment of remuneration (including (e.g.) risks identified and how malus and clawback are applied) • Policies and criteria applied for awards of guaranteed variable remuneration and severance pay • Types of staff identified as MRTs (minimum categories set out in SYSC 19G.5 and any additional criteria) • Disclosure on individual entity basis
Quantitative disclosures	<ul style="list-style-type: none"> • Total number of MRTs identified

³ Where the value of its balance sheet assets and off-balance sheet items over 4-years is a rolling average of: (i) more than £300m; or (ii) more than £100m but less than £300m and if it has trading book business of over £150m and/or derivatives business of over £100m.

	<ul style="list-style-type: none"> • Fixed and variable remuneration amounts (and total amounts) to be split into: <ul style="list-style-type: none"> • senior management; • other MRTs; and • other staff • Total amount of guaranteed variable remuneration awards made (split into senior management and other MRTs) and the number of MRT's receiving awards • Total amount of severance payments awarded (split into senior management and other MRTs) and the number of MRTs receiving awards • The amount of the highest severance payment awarded to an individual MRT
<p>Largest non-SNI firms. All 'SNI' and 'Non-SNIs (not classified as Largest non-SNIs)' disclosures and the following</p>	
<p>Qualitative disclosures</p>	<ul style="list-style-type: none"> • The deferral and vesting policy, including at least: proportion of variable remuneration deferred, deferral period, retention period, vesting schedule and explanation of the rationale for these approaches • Description of the different forms in which fixed and variable remuneration are paid (e.g., cash, share-linked instruments, options, short or long-term incentive plans, carried interest)
<p>Quantitative disclosures</p>	<ul style="list-style-type: none"> • The following information, split into categories for senior management and other MRTs: <ul style="list-style-type: none"> ○ The amount and form of variable remuneration awarded (split into cash, shares, share-linked instruments, other forms of remuneration with each form of remuneration also split into deferred and non-deferred); ○ The amount of deferred remuneration awarded for previous performance periods (split into the amount due to vest in the financial year in which the disclosure is made and the amount due to vest in subsequent years); and ○ The amount of deferred remuneration that is due to vest in the financial year (split into the amount that is or will be paid out and the amount that was due to vest but has been withheld as a result of performance adjustment)

Ratio of fixed to variable

- Although there is a requirement for non-SNI firms to set an appropriate ratio, there is no requirement to disclose your firm's ratio of fixed to variable pay.

Quantitative remuneration data

- In order to address concerns on anonymity and data privacy, the final disclosure rules contain amendments requiring non-SNI firms to disclose most items of quantitative remuneration data as an aggregated total, split into categories ('senior management' and 'other

MRTs') where splitting the information between those two categories would lead to the disclosure of information about one or two MRTs only. Where the aggregated total of the categories would still contain information on only one or two MRTs, the firm is exempt from that particular disclosure requirement. The FCA has set out illustrated examples to guide firms in this area.

Governance

A non-SNI investment firm will also be subject to additional internal governance disclosures, including:

Risk committee

- whether or not it has a risk committee (including whether it has applied for any waiver or modification of the rule from the FCA on requiring a risk committee to be set up).

Directorships

- the directorships for each member of the management body (broken down into executive and non-executive directorships). This is however subject to a number of exemptions. Firms do not need to disclose: (i) directorships held in organisations which do not pursue predominantly commercial objectives; or (ii) separate directorships held within the same group or within undertakings (including non-financial sector entities) in which the firm holds a qualifying holding.

Diversity

- a summary of the policy promoting diversity on the management body, including explanations of: (i) the objectives of the policy and any target(s) set out in the policy; (ii) the extent to which the objectives and any target(s) have been achieved; and (iii) where the objectives or target(s) have not been achieved the reasons for the shortfall, the firm's proposed actions to address the shortfall including a timeline for proposed remedial actions. The summary can be specific to the entity or a policy set at group, consolidation group or any other level.

Clifford Chance Comment

- Most investment firms impacted by the rules are currently subject to the disclosure provisions of the UK CRR or BIPRU 11. While investment firms subject to the extended remuneration requirements may need to disclose more information than at present, others may well see their remuneration disclosure requirements decrease. Overall, the FCA considers that the disclosure rules are appropriate and proportionate to the risks an FCA investment firm poses to consumers and the market.
- Firms will welcome the amendment to allow for aggregated disclosures in certain situations so that a certain amount of anonymity for individual MRTs is protected.
- The rules also helpfully clarify that carried interest should be treated as 'variable remuneration' for both the MiFIDPRU Remuneration Code and for reporting purposes.
- The rules also highlight the importance of Diversity and Inclusion as a key issue for regulators in the financial service sector. The rules come in the wake of the FCA's Discussion Paper (21/2) in July which set out a number of policy options including the possibility of firms establishing 'diversity targets', D&I reporting obligations and the publication of D&I policies. DP (21/2) anticipates that when the proposed D&I regulatory regime is consulted on in 2022 it will include a requirement to report to the regulators on various issues like the socio-economic background for different categories of staff, any internal diversity targets for the Board and senior managers, the firm's progress in relation to any identified D&I targets as well as firm-wide data on demographic diversity characteristics and inclusion practices. This will clearly remain an area of real focus for the FCA and the scope of D&I reporting obligations will continue to evolve and expand.

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