Finalised guidance

Remuneration : retention periods

August 2011

Guidance on retention periods

1. This guidance relates to the appropriate retention policy under SYSC 19A.3.47R(2) (relating to Remuneration Principle 12(f): Remuneration structures: retained shares or other instruments). The FSA would normally consider a period of retention of six months to be sufficient, provided that other risk management techniques within the firm are operating to secure sound and effective risk management (including, in particular, those on profit-based measurement and risk adjustment in SYSC 19A.3.22R to SYSC 19A.3.28G and performance adjustment in SYSC 19A.3.51R to SYSC 19A.3.53G).
2. The retention period should apply to all shares or other instruments forming part of a variable remuneration award, beginning from the date at which the shares or other instruments vest.

Tax

3. A number of firms have raised queries regarding the tax treatment of the payments mentioned above. In our view, where all the tax owed is deducted at source (as is the case under the UK's PAYE system), the rule on retention may be applied on a 'net of tax' basis.
4. The following is a worked example of our view as expressed in paragraph 3, as applied to the undeferred portion:
    - Firm A employs Individual B, who is identified as Code staff.
    - B is awarded a bonus of 100. 60% of this is deferred, leaving an upfront bonus payment gross of tax of 40. For simplicity, we assume the bonus is all taxed at a marginal rate of 50%.
    - Firm A will need to pay 20 to HMRC under the PAYE system.
    - The bonus net of tax is 20.
    - In line with SYSC 19A.3.47R(1), at least 10 of the bonus must be paid to B in the form of shares or other instruments.
5. Where a tax liability arises under the PAYE system on the vesting of a deferred portion of shares, our view may be applied in a similar manner

6. We note that it is common for firms to fund the PAYE liability that arises from paying a bonus in shares, by selling shares to a third party and using the proceeds. Firms may consider adopting such an approach, and should, in particular, have regard to SYSC 19A.3.18R which requires them to ensure that total variable remuneration does not limit their ability to strengthen their capital bases.
7. There may be cases in certain jurisdictions where the tax rate on the shares is lower than the tax rate on cash. We will not consider it acceptable for firms to sell shares that are subject to retention in order to meet tax liabilities on the cash amount.
8. Note that we have extended the transitional period to allow certain qualifying firms up to a further 12 months to implement the rule to pay variable remuneration in shares or other instruments. Such firms must still take reasonable steps to comply as soon as possible and, in any event, by 1 July 2012. See pages 7-8 of the following link: http://www.fsa.gov.uk/pubs/handbook/hb_notice111.pdf.