Finalised guidance

# Guidance: ‘Buy out’ awards to new staff

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## Guidance: ‘Buy out’ awards to new staff

1. This guidance relates to the position where, in broad terms, a firm is hiring a new staff member (X) and is seeking to ‘buy out’ an existing award of deferred variable remuneration made by X’s previous employer.

2. Under the rule on guaranteed variable remuneration (SYSC 19A.3.40R), a firm must not award, pay or provide any guaranteed variable remuneration unless the award is exceptional, occurs in the context of hiring new staff and is limited to the first year of service. An evidential provision and guidance is provided in SYSC 19A.3.41E to SYSC 19A.3.43G.

3. The evidential provision of SYSC 19A.3.41E(1) provides:

    A *firm* should not award, pay or provide guaranteed variable *remuneration* in the context of hiring new *Remuneration Code* staff (‘X’) unless:

    (a) it has taken reasonable steps to ensure that the *remuneration* is not more generous in either its amount or terms (including any deferral or retention periods) than the variable *remuneration* awarded or offered by X’s previous employer; and

    (b) it is subject to appropriate performance adjustment requirements.

4. SYSC 19A.3.41E(2) then provides that contravention of (1) may be relied on as tending to establish contravention of the rule of guaranteed variable remuneration (in SYSC 19A.3.40R).

5. Although the FSA does not encourage the use of buy out awards, in the view of the FSA, such awards may normally be made without contravening the rule on guaranteed variable remuneration in circumstances where the firm is acting in conformity with SYSC 19A.3.41E(1).

6. The FSA gives the following non-comprehensive guidance on the reasonable steps referred to in SYSC 19A.3.41E(1)(a):

    - The FSA considers that they include taking reasonable steps to ensure that the award contains at least a similar proportion of non-cash instruments (such as shares) as the deferred award from the previous employer. The FSA considers that this also applies to ‘buy out’ awards offered by firms in proportionality tiers 3 and 4.

- The FSA further considers that they include taking reasonable steps to obtain evidence of the existing award. Where a firm asks X's previous employer for evidence of any existing award, the FSA would encourage the previous employer to provide as much information to the firm as it is able (within the boundaries of confidentiality).

7. The FSA further emphasises the importance of ensuring that the award is as required by SYSC 19A.3.41E(1)(b) subject to appropriate performance adjustment requirements. Otherwise a 'buy out' award could operate to remove performance adjustment requirements from an award, which would not be consistent with effective risk management. The FSA considers that this also applies to 'buy out' awards offered by firms in proportionality tiers 3 and 4.

8. Finally, the FSA emphasises that the firm must act in accordance with the Remuneration Code general requirement (of SYSC 19A.2.1R).