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FCA remuneration reform: what private capital investors need to know

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The FCA's proposed overhaul of the remuneration rules is relevant not only to regulated firms, but also to private capital investors buying, financing or selling them.

CP26/27 would replace the separate MIFIDPRU, AIFM and UCITS remuneration codes with a single regime. It would also remove much of the prescription around deferral, malus and clawback, guaranteed remuneration, governance and reporting.

For sponsors, the attraction is clear. Management incentive arrangements may become easier to structure and there should be more scope to align pay with the investment thesis.

The difficulty is that greater flexibility will sit alongside greater management responsibility. Boards will need to decide what is appropriate for the business and be able to explain and evidence those decisions to the FCA.

The consultation paper is available at:

www.fca.org.uk/publication/consultation/cp26-27.pdf

Why this matters on a transaction

Remuneration regulation can affect a deal at several levels:

- the design of the management incentive plan;
- the treatment of bonuses, carried interest and deferred awards;
- leaver and good leaver arrangements;
- the ability to guarantee or replace forfeited remuneration;
- the extent to which value can be delivered at exit;
- the governance rights of the sponsor and management team; and
- the ease with which remuneration arrangements can be changed after completion.

The proposed reforms should give sponsors more room to structure arrangements which reflect the business plan and hold period. They will not, however, remove the need to understand the target's existing regulatory obligations and the contractual rights attaching to legacy awards.

Scope should be established early

The new code would initially apply to:

- full-scope UK AIFMs;
- UK UCITS management companies; and
- non-SNI MIFIDPRU investment firms (SNI MIFIDPRU investment firms are proposed to be removed from the remuneration requirements).

The scope for AIFMs would subsequently change as part of the FCA's wider reform of the UK AIFM regime.

This means that the remuneration analysis will continue to turn on the target's precise regulatory status. It should not be assumed that every regulated target will be subject to the same requirements.

A sponsor should therefore confirm early in the process:

- which group entities are regulated;
- which remuneration code currently applies;
- which entities are likely to fall within the new regime;
- whether employees outside the regulated entity provide services to it; and
- whether any proposed reorganisation would change the analysis.

Management incentive plans

The proposed regime should give firms more freedom over the form and timing of management remuneration.

The FCA's preferred approach proposes to allow the management body to determine whether deferral is required and, if so, the proportion deferred, the deferral period, the vesting profile and the form in which the award is delivered.

This may provide greater flexibility to use:

- growth shares;
- sweet equity;
- carried interest;
- performance-linked instruments;
- deferred cash;
- co-investment arrangements; and
- other forms of long-term participation.

That flexibility will be particularly relevant where a sponsor wants management economics to track value creation over the investment period.

The arrangements will still need to support sound risk management, conduct and client outcomes. A structure which creates an incentive to increase assets, revenue or enterprise value without proper regard to client interests may remain difficult to defend.

The regulatory analysis should therefore be built into the MIP design rather than addressed after the commercial terms have been agreed.

Deferral is not yet settled

The FCA’s preferred model is principles-based, but it is also consulting on an alternative under which mandatory deferral would continue for firms above specified thresholds.

The final position may therefore differ depending on the size and nature of the target.

This is relevant to:

- the proportion of incentive value which can vest at exit;
- whether value must continue to be held after a sale or refinancing;
- the treatment of accelerated vesting;
- management rollover;
- the design of good and bad leaver provisions; and
- the extent to which the sponsor can deliver liquidity during its ownership.

Like all of the proposed changes, these options are subject to the FCA’s consultation process, so a buyer should avoid assuming that the removal of mandatory deferral is a settled outcome.

Malus and clawback

Malus and clawback would no longer be mandatory. Firms would instead need to consider whether performance adjustment mechanisms are appropriate.

This should create more flexibility to tailor:

- the events which trigger adjustment;
- the individuals to whom the provisions apply;
- the period for which they remain effective;
- whether unvested or vested awards are affected; and
- the interaction with sponsor leaver and forfeiture provisions.

Many regulated businesses are likely to retain some form of malus and clawback. From a sponsor perspective, these protections may also remain commercially useful where conduct, regulatory or client liabilities emerge after value has been paid to management.

The drafting should distinguish clearly between regulatory performance adjustment and the wider sponsor protections applying under the MIP.

Guaranteed remuneration and recruitment

The proposals would allow guaranteed variable remuneration where it is used to recruit a new material risk taker or compensate that individual for remuneration forfeited on leaving a previous employer.

This may help a sponsor recruit or retain senior management during a transaction or post-completion integration.

Any guarantee would still need to be time-limited and capable of adjustment, reduction or recovery in appropriate circumstances.

Buy-out awards and sign-on arrangements should therefore be addressed as part of the transaction and financing model, particularly where a new chief executive, investment head or distribution lead is expected to join shortly before or after completion.

Legacy awards

The transitional provisions may be one of the most important issues for buyers.

The proposed new code would apply only to performance periods beginning on or after commencement. Remuneration relating to earlier periods would remain subject to the existing rules.

A target may therefore need to operate two regimes in parallel for several years.

Due diligence should identify:

- outstanding deferred awards;
- carried interest and performance fee arrangements;
- applicable deferral and retention periods;
- malus and clawback rights;
- change of control and acceleration provisions;
- good and bad leaver treatment;
- the scope for amendment without consent;
- reporting obligations; and
- any arrangements which could restrict the buyer's intended MIP.

These issues can affect both valuation and transaction documentation.

Deal documentation

The remuneration analysis should feed into the SPA and ancillary documents.

Depending on the findings, the buyer may need:

- warranties covering compliance with the applicable remuneration code;
- disclosure of all regulated remuneration arrangements;
- covenants restricting awards or amendments before completion;
- protection against accelerated vesting or change of control payments;
- specific treatment of unpaid bonuses and deferred awards;
- confirmation of the ability to amend arrangements post-completion; and
- indemnity protection where historic non-compliance is material.

The buyer should also establish which payments fall into debt, leakage, transaction expenses or working capital under the purchase price mechanics.

In a competitive process, these points are often left until late. That can create avoidable uncertainty around both price and management economics.

Governance after completion

The removal of a mandatory remuneration committee will not remove the responsibility of the regulated firm’s management body.

The board will need to own the remuneration policy and record the basis for key decisions.

Sponsors should consider:

- the division of responsibility between the portfolio company board and sponsor remuneration committee;
- the role of independent directors;
- the input required from risk and compliance;
- which matters require regulated entity approval;
- how conflicts involving sponsor-appointed directors will be managed; and
- how group remuneration policies will apply to the regulated business.

The sponsor can set the commercial framework, but the regulated firm’s board must be able to demonstrate that it has exercised its own judgement.

Financing and distributions

Remuneration arrangements can also affect cash forecasting and debt capacity.

Deferred bonuses, carried interest liabilities and guaranteed awards may create cash requirements which are not obvious from headline EBITDA. They may also affect regulatory capital, liquidity, wind-down planning and the firm’s ability to make distributions.

These liabilities should be reflected in:

- quality of earnings work;
- debt modelling;
- regulatory capital analysis;

- liquidity forecasts;
- covenant headroom; and
- the buyer’s exit model.

The proposed reforms may reduce some of the rigidity, but they will not remove the need to assess whether the remuneration structure is sustainable.

Exit implications

The buyer should consider at entry how the remuneration arrangements will work on exit.

Relevant questions include:

- whether unvested awards accelerate;
- whether regulatory deferral continues after the sale;
- whether management can roll into the next ownership structure;
- whether clawback rights remain enforceable;
- who is responsible for administering legacy awards;
- whether buyer consent is required for changes; and
- whether management proceeds can be withheld against regulatory or conduct liabilities.

Where a firm has a mixture of legacy and new-code awards, the exit mechanics may be more complicated than the headline reform suggests.

What sponsors should do now

Private capital investors considering regulated financial services transactions should:

1. identify the target’s current and expected remuneration perimeter;
2. include remuneration regulation in legal and regulatory diligence;
3. review deferred awards, carried interest and change of control provisions;
4. test the proposed MIP against the target’s conduct and regulatory risks;
5. reflect remuneration liabilities in the valuation and financing model;
6. agree the post-completion governance framework early; and
7. preserve flexibility in the transaction documents pending the final rules.

The consultation closes on 16 September 2026. The FCA expects to publish its policy statement in the first quarter of 2027. The new code would apply from that date to remuneration relating to performance periods beginning on or after the commencement date.

For AIFMs, and to align with the wider proposed AIFM reforms, the new code would apply into two stages – initially to full scope UK AIFMs from the commencement date and subsequently to medium and large UK AIFMs once the AIFM reforms take effect.

Further details are available at:

www.fca.org.uk/publications/consultation-papers/cp26-27-remuneration-reform-solo-regulated-firms

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