

Chapter 4

Guidance on regulated activities connected with mortgages

4.14 Mortgage activities carried on by professional firms

Introduction

- 4.14.1** **G** *Professional firms* (broadly, firms of solicitors, accountants and actuaries) may carry on *regulated mortgage activities* in the course of their usual professional activities. The *regulated activities* of *advising on, arranging (bringing about), making arrangements with a view to and administering regulated mortgage contracts* are those most likely to be relevant.
- 4.14.2** **G** In the *FCA's* view, the following exclusions are likely, in many cases, to exclude the normal activities of *professional firms* from amounting to *regulated mortgage activities*:
- (1) article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business), which applies in relation to the advising and arranging activities (see ■ PERG 4.10.1 G);
 - (2) article 66 of the *Regulated Activities Order* (Trustees, nominees and personal representatives) which applies in relation to each of the *regulated mortgage activities* (see ■ PERG 4.10.5 G); and
 - (3) article 63 of the *Regulated Activities Order* (Administration pursuant to agreement with authorised person) which applies in relation to *administering a regulated mortgage contract* (see ■ PERG 4.8.7 G); in the *FCA's* view, this would exclude steps taken by a solicitor to recover payments due under a *regulated mortgage contract* if his instructions come from an *authorised person* with *permission* to administer a *regulated mortgage contract*.
- 4.14.2A** **G** ■ PERG 4.10A (Activities within scope of the Mortgage Credit Directive) explains that some of these exclusions do not apply to activities which fall within the scope of the *MCD*.
- 4.14.3** **G** In addition, a *professional firm* may, in certain circumstances, be able to use the *Part XX exemption* to avoid any need for *authorisation*. ■ PROF 2 (Status of exempt professional firm) contains general *guidance* on the *Part XX exemption*. In particular, ■ PROF 2.1.9 G explains that the Treasury have specified certain *regulated activities* to which the *Part XX exemption* cannot apply in the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities Order 2001 ("the Non-Exempt Activities Order").

■ PERG 4.14.4 G to ■ PERG 4.14.6 G explain which of the *regulated activities* relating to *regulated mortgage contracts* have been so specified.

Part XX exemption: arranging regulated mortgage contracts

4.14.4

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Arranging (bringing about) a regulated mortgage contract and making arrangements with a view to a regulated mortgage contract have not been specified in the *Non-Exempt Activities Order*. Accordingly, a *professional firm* may carry on these *regulated activities* without *authorisation*, provided the other conditions of the *Part XX exemption* are complied with.

Part XX exemption: advising on regulated mortgage contracts

4.14.5

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Advising on regulated mortgage contracts has been specified in the *Non-Exempt Activities Order*. However, a *professional firm* is prevented from using the *Part XX exemption* to advise on *regulated mortgage contracts* only if the advice it gives consists of a recommendation. This will be the case if the recommendation is made to an individual to enter into a *regulated mortgage contract* with a lender who would, in entering into the contract, carry on the *regulated activity* of *entering into a regulated mortgage contract*, irrespective of whether the lender is an *authorised* or *exempt person* or would carry on the activity by way of business. However, a *professional firm* is allowed to give advice that involves a recommendation of this kind provided the advice endorses a corresponding recommendation given to the borrower by an *authorised person* who has *permission to advise on regulated mortgage contracts* or an *exempt person* whose exemption covers that activity.

Part XX exemption: entering into and administering a regulated mortgage contract

4.14.6

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Entering into a regulated mortgage contract and administering a regulated mortgage contract have both been specified in the *Non-Exempt Activities Order*. As an exception, a *professional firm* is allowed under the *Part XX exemption* to carry on these *regulated activities* if the firm is acting as a trustee or personal representative. But this is provided that the borrower is a beneficiary under the trust, will or intestacy.