

Code of Conduct (COCON)

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Chapter 1

Application and purpose

1.1 Application

1.1.1 **G** Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of certain *persons* working in *firms*.

To whom does it apply?

1.1.1A **R** COCON applies to the *persons* set out in the table in ■ COCON 1.1.2R.

1.1.2 **R** Table: To whom does COCON apply?

Persons to whom COCON applies	Comments
(1) An <i>SMF manager</i> .	
(2) An <i>employee</i> (“P”) of a <i>relevant authorised person</i> who: <ul style="list-style-type: none"> (a) performs the function of an <i>SMF manager</i>; (b) is not an <i>approved person</i> to perform the function in question; and (c) is required to be an <i>approved person</i> at the time P performs that function. 	
(3) An <i>employee</i> of a <i>relevant authorised person</i> who would be an <i>SMF manager</i> but for SUP 10C.3.13R (The 12-week rule).	
(4) A <i>certification employee</i> employed by a <i>relevant authorised person</i> .	This applies even if the <i>certification employee</i> has not been notified that COCON applies to them or notified of the <i>rules</i> that apply to them.
(5) An <i>employee</i> of a <i>relevant authorised person</i> who would be a <i>certification employee</i> but for SYSC 5.2.27R(1) (Scope: emergency appointments) or SYSC 5.2.28AR (Scope: temporary UK role).	
(6) Any <i>employee</i> of a <i>relevant authorised person</i> not coming within another row of this table, except one listed in column (2).	This row does not apply to an <i>employee</i> of a <i>relevant authorised person</i> who only performs functions falling within the scope of the following roles: <ul style="list-style-type: none"> (a) receptionists; (b) switchboard operators;

Persons to whom COCON applies	Comments
	(c)post room staff; (d)reprographics/print room staff; (e)property/facilities management; (f)events management; (g)security guards; (h)invoice processing; (i)audio visual technicians; (j)vending machine staff; (k)medical staff; (l)archive records management; (m)drivers; (n)corporate social responsibility staff; (o)data controllers or processors under the <i>data protection legislation</i> ; (p)cleaners; (q)catering staff; (r)personal assistant or secretary; (s)information technology support (ie, helpdesk); and (t)human resources administrators / processors.
(7) An FCA-approved person or PRA-approved person approved to perform a <i>controlled function</i> in a <i>Solvency II firm</i> or a <i>small non-directive insurer</i> .	This row does not apply to <i>approved persons</i> approved to perform a <i>controlled function</i> in SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives).
(8)A <i>standard non-executive director</i> of:	This row only applies to a <i>UK domestic firm</i> .
(a)a <i>relevant authorised person</i> ; (b)a <i>Solvency II firm</i> ; or (c)a <i>small non-directive insurer</i> .	
Note: In accordance with the <i>Glossary</i> , <i>Solvency II firm</i> includes a <i>large non-directive insurer</i> .	

1.1.2A **R** For *Swiss general insurers*, references in this sourcebook to parts of the *PRA Rulebook* for 'Solvency II firms' are to be read as references to the corresponding parts of the *PRA Rulebook* applying to *large non-directive insurers*.

1.1.3 **R** Rules 1 to 5 in ■ COCON 2.1 apply to all *conduct rules staff*.

1.1.4 **R** (1) Rules SC1 to SC4 in ■ COCON 2.2 apply to all *senior conduct rules staff members* (subject to (2)).

- (2) SC1 to SC3 in ■ COCON 2.2 do not apply to a *standard non-executive director* unless, as well as being a *standard non-executive director*, they also fall into one of the other categories of *senior conduct rules staff member*.
- 1.1.5 **G** (1) The *guidance* in ■ COCON 2.3 applies to *relevant authorised persons*.
- (2) [deleted]
- (3) ■ SYSC 5.2.26R provides that a function performed by a *non-executive director* of a *firm* acting as such is not an *FCA-specified significant-harm function* for that *firm*.

To what conduct does it apply?

- 1.1.6 **R** For a *person* (P) who is an *approved person*, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by the *firm* on whose application approval was given to P.
- [Note: sections 64A(4) and (5)(a) of the Act (Rules of conduct)]

- 1.1.7 **R** For a *person* (P) subject to COCON who is not an *approved person*, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by:
- (1) (in the case of a *board director* of a *firm*) that *firm*; or
- (2) (in any other case) P's *employer*.

[Note: sections 64A(4), (5)(ab) and (5)(b) of the Act (Rules of conduct)]

- 1.1.8 **G** (1) Both ■ COCON 1.1.6R and ■ COCON 1.1.7R may apply to the same individual performing several roles.
- (2) For example, say that an individual (A) is an *approved person* for *firm* X and is employed by *firm* Y in a role that does not involve a *controlled function*. Say that *firm* X is a *Solvency II firm* or a *small non-directive insurer* and that *firm* Y is a *relevant authorised person*.
- (3) ■ COCON 1.1.6R applies to A's role with *firm* X and ■ COCON 1.1.7R applies to A's role with *firm* Y.

Where does it apply?

- 1.1.9 **R** (1) COCON applies to the conduct of *conduct rules staff* set out in (2) wherever it is performed.
- (2) This *rule* applies to:
- (a) a *senior conduct rules staff member*; and

- (b) a *certification employee performing FCA-specified significant-harm function (7)* (material risk takers) in the table in ■ SYSC 5.2.30R for a *UK relevant authorised person*.
- 1.1.10 **R** (1) This *rule* applies to members of a *firm's conduct rules staff* apart from *conduct rules staff* in ■ COCON 1.1.9R.
- (2) Subject to (3), *COCON* only applies to the conduct of *persons* to whom this *rule* applies (as set out in (1)) if that conduct:
- (a) is performed from an establishment maintained in the *United Kingdom* by:
- (i) (for a *relevant authorised person*) that *person's employer*; or
- (ii) (for a *Solvency II firm* or a *small non-directive insurer*) the *firm* in relation to whom that *person* carries out *controlled functions*; or
- (b) involves dealing with a *client* of the *firm* in the *United Kingdom* from an establishment overseas.
- (3) Paragraph (2)(b) only applies to a *UK relevant authorised person*.
- 1.1.11 **G** The *FCA* interprets the phrase 'dealing with' in ■ COCON 1.1.10R as including having contact with *customers* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the *Act* to describe, in general terms, the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.
- 1.1.11A **G** The *FCA* interprets the phrase 'a *client* of the *firm* in the *United Kingdom*' in ■ COCON 1.1.10R as referring to:
- (1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or
- (2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.
- 1.1.12 **R** A *person* will not be subject to *COCON* to the extent that it would be contrary to the *UK's* obligations under a *Single Market Directive*, the *auction regulation* or the *benchmarks regulation*.
- Purpose**
.....
- 1.1.13 **G** The purpose of this chapter is to set out *rules for conduct rules staff* and to provide *guidance* about those *rules* to *firms* whose staff are subject to them.
- 1.1.14 **G** ■ COCON 1 Annex 1 has *guidance* on the role and responsibilities of *non-executive directors* to whom *COCON* applies.

1.2 Investments

- 1.2.1 **G** COCON refers in a number of places to '*investments*'. The *Glossary* meaning of *investment* is wide and is not just limited to the ordinary dictionary meaning.
- 1.2.2 **G** Therefore, for example, an *approved person* performing *controlled functions* in a *Solvency II firm* or a *small non-directive insurer* should note that that term includes rights under a contract of insurance, meaning they should also take into account those parts of COCON which provide *guidance* on individual conduct rules that refer to '*investments*'.
- 1.2.3 **G** Where *guidance* refers to risks associated with *investments*, that will include risks applicable to rights under a contract of insurance including for example the risk of inadequate cover.

Guidance on the role and responsibilities of NEDs subject to COCON

COCON 1 Introduction

COCON 1.1 This annex applies to *non-executive directors* (NEDs) of:

- (1) a *relevant authorised person*;
- (2) a *Solvency II firm* (including a *large non-directive insurer*); or
- (3) a *small non-directive insurer*.

COCON 1.2 This annex covers the role of a NED in performing the roles in (1) to (4), below:

- (1) the role of chairman of the board of *directors*;
- (2) the role of chairman of the nomination committee;
- (3) the role of chairman of any other committee (irrespective of whether performing that role is itself a *designated senior management function*);
- (4) the general NED role.

COCON 1.3 The FCA's view of the role of a NED is consistent with the duties of directors included in UK company law and the description of the role of a NED in the *UK Corporate Governance Code*.

COCON 2 The general role of a NED

COCON 2.1 The role of a NED performing the general NED role is to:

- (1) provide effective oversight and challenge; and
- (2) help develop proposals on strategy.

COCON 2.2 To deliver this, their responsibilities include:

- (1) attending and contributing to board and committee meetings and discussions;
- (2) taking part in collective board and committee decisions, including voting and providing input and challenge; and
- (3) ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions.

COCON 2.3 Other key roles of a NED include:

- (1) scrutinising the performance of management in meeting agreed goals and objectives;
- (2) monitoring the reporting of performance;
- (3) satisfying themselves on the integrity of financial information;
- (4) satisfying themselves that financial controls and systems of risk management are robust and defensible;
- (5) scrutinising the design and implementation of the remuneration policy;
- (6) providing objective views on resources, appointments and standards of conduct; and

	(7) being involved in succession planning.
COCON 3	Role of a NED as chair of the board or a committee
COCON 3.1	Subject to any specific governance arrangements, <i>rules</i> or requirements applicable to the board or particular committees, a NED's responsibility as chairman of the board or a committee includes: <ol style="list-style-type: none"> (1) ensuring that the board or committee meets with sufficient frequency; (2) fostering an open, inclusive discussion which challenges executives, where appropriate; (3) ensuring that the board or committee devotes sufficient time and attention to the matters within its remit; (4) helping to ensure that the board or committee and its members have the information necessary to its and their tasks; (5) reporting to the main board on the committee's activities; and (6) facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; (7) in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.
COCON 3.2	The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with: <ol style="list-style-type: none"> (1) the requirements in SYSC 4.3A about the nomination committee (if that part of SYSC applies to the <i>firm</i>); and (2) any specific and relevant requirements relating to the committee or to the matters within the committee's responsibilities.
COCON 3.3	SYSC 4.3A.8R and SYSC 4.3A.9R deal with the nomination committee for <i>relevant authorised persons</i> . There is no equivalent material for <i>Solvency II firms</i> . Although being the chair of the nomination committee is not a <i>controlled function</i> for a <i>small non-directive insurer</i> , paragraph 3.2 of this annex is still relevant to a <i>small non-directive insurer</i> if it has such a committee.
COCON 4	General approach to the role of a NED
COCON 4.1	The <i>FCA</i> recognises that NEDs individually do not manage a <i>firm's</i> business in the same way as executive <i>directors</i> . Therefore, the responsibilities for which NEDs are accountable are likely to be more limited.
COCON 4.2	A NED is neither required nor expected to assume executive responsibilities.
COCON 4.3	Although NEDs who are subject to the senior management regime for <i>SMF managers</i> or the <i>approved persons</i> regime for insurers have individual duties under that regime, the <i>FCA</i> views the regime and its application as consistent with the principle of collective decision-making.
COCON 4.4	The standard of care, skill and diligence that the <i>FCA</i> would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with: <ol style="list-style-type: none"> (1) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the NED in relation to the firm, taking into account the standards in the <i>Handbook</i> (especially <i>COCON</i> and <i>DEPP</i>); and (2) the general knowledge, skill and experience that the NED has.

Chapter 2

Individual conduct rules

2.1 Individual conduct rules

- 2.1.1 **R** *Rule 1: You must act with integrity.*
- 2.1.2 **R** *Rule 2: You must act with due skill, care and diligence.*
- 2.1.3 **R** *Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.*
- 2.1.4 **R** *Rule 4: You must pay due regard to the interests of customers and treat them fairly.*
- 2.1.5 **R** *Rule 5: You must observe proper standards of market conduct.*

2.2 Senior manager conduct rules

- 2.2.1 **R** SC1: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.
- 2.2.2 **R** SC2: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*.
- 2.2.3 **R** SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- 2.2.4 **R** SC4: You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice.

2.3 Firms: training and breaches

- 2.3.1** **G** Under section 64B of the *Act*, a *relevant authorised person* must:
- (1) ensure that all *persons* subject to the *rules* in *COCON* are notified of the *rules* that apply to them; and
 - (2) take all reasonable steps to ensure that those *persons* understand how the *rules* in *COCON* apply to them.
- 2.3.2** **G**
- (1) The steps that a *relevant authorised person* must take to secure that its *conduct rules staff* understand how the *rules* in *COCON* apply to them include the provision of suitable training.
 - (2) Suitable training should always ensure that those who are subject to the *rules* in *COCON* have an awareness and broad understanding of all of the *rules* in *COCON*, and that they also have a deeper understanding of the practical application of the specific *rules* which are relevant to their work.
 - (3) For example:
 - (a) for individuals who trade in the markets, *rule 5* in ■ **COCON 2.1.5R** may apply in various circumstances arising in the individual's day-to-day activities and additional training may be appropriate to ensure that the individual knows how that *rule* applies to those activities in those various circumstances; or
 - (b) for individuals who deal directly with *customers*, *rule 4* in ■ **COCON 2.1.4R** may apply in various circumstances which makes additional training appropriate for such individuals.
- 2.3.3** **G** There are *rules* and *guidance* in ■ **SUP 15.3** (General notification requirements) and ■ **SUP 15.11** (Notification of *COCON* breaches and disciplinary action) that deal with reporting by a *relevant authorised person* of *COCON* breaches to the *FCA*.

Chapter 3

General factors for assessing compliance

3.1 General factors for assessing compliance

- 3.1.1** **G** Where descriptions of conduct are provided in this chapter which exemplify breaches of the *rules* in *COCON*, they are not intended to be an exhaustive list of the kind of conduct that may contravene the relevant *rule*.
- 3.1.2** **G** In assessing compliance with, or a breach of, a *rule* in *COCON*, the *FCA* will have regard to the context in which a course of conduct was undertaken, including:
- (1) the precise circumstances of the individual case;
 - (2) the characteristics of the particular function performed by the individual in question; and
 - (3) the behaviour expected in that function.
- 3.1.3** **G** Without prejudice to section 66A of the *Act*, a *person* will only be in breach of any of the *rules* in *COCON* where they are personally culpable. Personal culpability arises where:
- (1) a *person's* conduct was deliberate; or
 - (2) the *person's* standard of conduct was below that which would be reasonable in all the circumstances.
- 3.1.4** **G** In determining whether or not the particular conduct of a *person* complies with the *rules* in *COCON*, factors the *FCA* would expect to take into account include:
- (1) whether that conduct relates to activities that are subject to other provisions of the *Handbook*;
 - (2) whether that conduct is consistent with the requirements and standards of the *regulatory system* relevant to the *person's firm*.
- 3.1.5** **G** In determining whether or not the conduct of a *senior conduct rules staff member* complies with *rules* SC1 to SC4 in *COCON*, factors the *FCA* would expect to take into account include:
- (1) whether they exercised reasonable care when considering the information available to them;

- (2) whether they reached a reasonable conclusion upon which to act;
- (3) the nature, scale and complexity of the *firm's* business;
- (4) their role and responsibility as determined by reference to the relevant *statement of responsibility*;
- (5) the knowledge they had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities.

3.1.6 **G** In assessing whether a *senior conduct rules staff member* may have breached a *rule* in *COCON*, the nature, scale and complexity of the business and the role and responsibility of the individual undertaking the activity in question within the *firm* will be relevant in assessing whether that *person's* conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be.

3.1.7 **G** *UK domestic firms* listed on the *London Stock Exchange* are subject to the *UK Corporate Governance Code*, whose internal control provisions are explained in the publication entitled 'Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)' issued by the Financial Reporting Council. Therefore, *firms* in this category will be subject to that code, as well as to the *rules* in *COCON*. In forming an opinion as to whether a *senior conduct rules staff member* has complied with the *rules* in *COCON*, the *FCA* will give due credit if they followed corresponding provisions in the *UK Corporate Governance Code* and related guidance.

Chapter 4

Specific guidance on individual conduct rules

4.1 Specific guidance on individual conduct rules

Rule 1: You must act with integrity

4.1.1

G

The following is a non-exhaustive list of examples of conduct that would be in breach of *rule 1*.

- (1) Misleading (or attempting to mislead) by act or omission:
 - (a) a *client*; or
 - (b) the *firm* for whom the *person* works (or its auditors); or
 - (c) the *FCA* or;
 - (d) the *PRA*.
- (2) Falsifying *documents*.
- (3) Misleading a *client* about:
 - (a) the risks of an *investment*;
 - (b) the charges or surrender penalties of products;
 - (c) the likely performance of products by providing inappropriate projections of future returns.
- (4) Misleading a *client* by informing the *client* that products, require only a single payment when that is not the case.
- (5) Mismarking the value of *investments* or trading positions.
- (6) Procuring the unjustified alteration of prices on illiquid or *off-exchange* contracts, or both.
- (7) Misleading others within the *firm* about the credit-worthiness of a borrower.
- (8) Providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience.
- (9) Providing false or inaccurate information to:
 - (a) the *firm* (or to the *firm's* auditors); or
 - (b) the *FCA* or the *PRA*.
- (10) Destroying, or causing the destruction of, *documents* (including falsified documentation), or tapes or their contents, relevant to

misleading (or attempting to mislead) a *client*, the *firm* for whom the *person* works, or the *FCA* or the *PRA*.

- (11) Failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.
- (12) Misleading others in the *firm* about the nature of risks being accepted.
- (13) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *person* knows that they are unable to justify its suitability for that *customer*.
- (14) Failing to inform, without reasonable cause:
 - (a) a *customer*; or
 - (b) the *firm* for whom the *person* works (or its auditors); or
 - (c) the *FCA*; or
 - (d) the *PRA*.
 - of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, including, but not limited to, deliberately failing to:
 - (i) disclose the existence of falsified documents; and
 - (ii) rectify mismarked positions immediately.
- (15) Preparing inaccurate or inappropriate records or returns, including, but not limited to preparing:
 - (a) performance reports for transmission to *customers* which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);
 - (b) inaccurate training records or inaccurate details of qualifications, past employment record or experience; and
 - (c) inaccurate trading confirmations, contract notes or other records of *transactions* or holdings of *securities* for a *customer*, whether or not the *customer* is aware of these inaccuracies or has requested such records.
- (16) Misusing the assets or confidential information of a *client* or of their *firm* including, but not limited to, deliberately:
 - (a) front running *client* orders;
 - (b) carrying out unjustified trading on *client* accounts to generate a benefit (whether direct or indirect) to the *person* (that is, churning);
 - (c) misappropriating a *client's* assets, including wrongly transferring to personal accounts cash or *securities* belonging to *clients*;
 - (d) wrongly using one *client's* funds to settle margin calls or to cover trading losses on another *client's* account or on *firm* accounts;
 - (e) using a *client's* funds for purposes other than those for which they were provided;
 - (f) retaining a *client's* funds wrongly; and

(g) pledging the assets of a *client* as security or margin in circumstances where the *firm* is not permitted to do so.

(17) Designing *transactions* to disguise breaches of requirements and standards of the *regulatory system*.

(18) Not paying due regard to the interests of a *customer*.

(19) Acts, omissions or business practices that could be reasonably expected to cause *customer* detriment.

Rule 2: You must act with due skill, care and diligence

4.1.2 **G** Due skill, care and diligence are required, especially where activities might affect *customers* or the integrity of the financial system.

4.1.3 **G** The following is a non-exhaustive list of examples of conduct by any *conduct rules staff* that would be in breach of *rule 2*.

(1) Failing to inform:

(a) a *customer*; or

(b) their *firm* (or its auditors);

of material information in circumstances where the member of *conduct rules staff* was aware, or ought to have been aware, of such information, and of the fact that they should provide it, including the following:

(i) failing to explain the risks of an *investment* to a *customer*;

(ii) failing to disclose to a *customer* details of the charges or surrender penalties of *investment* products;

(iii) mismarking trading positions;

(iv) providing inaccurate or inadequate information to a *firm* or its auditors;

(v) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.

() Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for that *customer*.

() Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.

() Undertaking *transactions* without a reasonable understanding of the risk exposure of the *transaction* to the *firm*, including trading on the *firm's* own account without a reasonable understanding of the liability (either potential or actual) of the *transaction*.

() Failing to provide adequate control over a *client's* assets, including:

() failing to segregate a *client's* assets; and

- () failing to process a *client's* payments in a timely manner.
- () Continuing to perform a function having failed to meet the standards of knowledge and skill in the *Training and Competence sourcebook (TC)* for that function.

Acting with due skill, etc as a manager (rule 2)

4.1.4 **G** It is important for a manager to understand the business for which they are responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

4.1.5 **G** It is important for a manager to understand the risks of expanding the business into new areas and, before approving the expansion, they should investigate and satisfy themselves, on reasonable grounds, about the risks, if any, to the business.

4.1.6 **G** Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the *firm* beyond those reasonably anticipated, a manager should require explanations from those who report to them. Where those explanations are implausible or unsatisfactory, they should take steps to test the veracity of those explanations.

4.1.7 **G** Where a manager is not an expert in a business area, they should consider whether they (or those with whom they work) have the necessary expertise to provide an adequate explanation of issues within that business area. If not, they should seek an independent opinion from elsewhere, within or outside the *firm*.

4.1.8 **G** The following is a non-exhaustive list of examples of conduct by a manager that would be in breach of *rule 2*.

- (1) Failing to take reasonable steps to ensure that the business of the firm for which the manager has responsibility:
 - (a) is controlled effectively;
 - (b) complies with the relevant requirements and standards of the *regulatory system* applicable to that area of the business; and
 - (c) is conducted in such a way to ensure that any delegation of responsibilities is to an appropriate person and is overseen effectively.
- (2) Failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible, including:
 - (a) permitting *transactions* without a sufficient understanding of the risks involved;
 - (b) permitting expansion of the business without reasonably assessing the potential risks of that expansion;

- (c) inadequately monitoring highly profitable transactions or business practices, or unusual *transactions* or business practices;
 - (d) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations; and
 - (e) failing to obtain independent, expert opinion where appropriate.
- (3) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that the manager has delegated to an individual or individuals (whether in-house or outside contractors).

Acting with due skill, etc as a member of the Board (rule 2)

- 4.1.8A G Rule 2 in ■ COCON 2.1.3R applies to a *director* (whether executive or non-executive) when taking part in the activities of the Board, other *governing body* or of its committees. This includes, for example, participating in meetings, preparing papers or other submissions for meetings and reporting to the body or committee.

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators

- 4.1.9 G For the purpose of rule 3 in ■ COCON 2.1.3R, regulators other than the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to activities to which *COCON* applies and have a power to call for information from the *firm* or from individuals performing certain functions in connection with those *regulated activities*. This may include an exchange or an *overseas regulator*.
- 4.1.10 G There is no duty on a *person* to report information directly to the regulator concerned unless they are one of the *persons* responsible within the *firm* for reporting matters to the regulator concerned. However, if a *person* takes steps to influence the decision not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the *appropriate regulator* will, in respect of that information, view them as being one of those within the *firm* who has taken on responsibility for deciding whether to report that matter to the regulator concerned.
- 4.1.11 G The following is a non-exhaustive list of examples of conduct that would be in breach of rule 3.
- (1) Failing to report promptly in accordance with their *firm's* internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the *FCA*, the *PRA*, or both the *PRA* and the *FCA*.
 - (2) Failing without good reason to:
 - (a) inform a regulator of information of which the *approved person* was aware in response to questions from that regulator;
 - (b) attend an interview or answer questions put by a regulator, despite a request or demand having been made; and

- (c) supply a regulator with appropriate *documents* or information when requested or required to do so and within the time limits attaching to that request or requirement.

4.1.12 G For the purposes of ■ COCON 4.1.11G(2), good reasons could include, where applicable, a right to preserve legal professional privilege, a right to avoid self-incrimination, complying with an order of a court or complying with an obligation imposed by law or by a regulator.

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

4.1.13 G *Rule 4* in ■ COCON 2.1.4R applies to all *conduct rules staff*, regardless of whether that *person* has direct contact or dealings with *customers* of the *firm*. *Persons* subject to the *rules* in COCON should consider how their actions (or their failure to act) can affect the interests of *customers* or result in *customers* being treated unfairly.

4.1.14 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule 4*.

- (1) Failing to inform a *customer* of material information in circumstances where they were aware, or ought to have been aware, of such information and of the fact that they should provide it, including the following:
 - (a) failing to explain the risks of an *investment* to a *customer*;
 - (b) failing to disclose to a *customer* details of the charges or surrender penalties of investment products; and
 - (c) providing inaccurate or inadequate information to a *customer* about a product or service.
- (2) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for that *customer*.
- (3) Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.
- (4) Failing to provide adequate control over a *client's* assets, including:
 - (a) failing to segregate a *client's* assets; and
 - (b) failing to process a *client's* payments in a timely manner.
- (5) Providing a *customer* with a product which is different to the one applied for by that *customer*, unless the *customer* understands the differences and understands the product they have purchased.
- (6) Failing to acknowledge, or seek to resolve, mistakes in dealing with *customers*.

- (7) Failing to provide terms and conditions to which a product or service is subject in a way which is clear and easy for the *customer* to understand.

Rule 5: You must observe proper standards of market conduct.

4.1.15

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A general consideration about whether or not a *person's* conduct complies with the relevant requirements and standards of the market, is whether they, or the *firm*, comply with relevant market codes and exchange rules. Compliance with relevant market codes and exchange rules will tend to show compliance with *rule 5* in ■ COCON 2.1.5R.

4.1.16

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Manipulating or attempting to manipulate a benchmark or a market, such as a foreign exchange market, or a benchmark is an example of failing to observe proper standards of market conduct.



4.2 Specific guidance on senior manager conduct rules

SC1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

- 4.2.1 G An *SMF manager's* role and responsibilities are set out in the *statement of responsibilities*.

- 4.2.2 G
 - (1) Strategy and plans will often dictate the risk which the business is prepared to take on and high-level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, *senior conduct rules staff members* should bear this in mind.

 - (2)
 - (a) Strategy and plans for the *branch* in the *United Kingdom* of an *overseas firm* will often be set by those parts of the *firm* which are based outside the *United Kingdom*.
 - (b) If an *overseas firm* proposes a significant strategy or change in strategy ('the proposal') for its *branch* in the *United Kingdom*, particularly to enter higher risk areas, the *senior conduct rules staff member* responsible for the matters likely to be affected by the strategy should assess its impact on the *branch* in the *United Kingdom*.
 - (c) The *senior conduct rules staff member* should ensure that they take reasonable steps to implement the proposal in a way that complies with the *regulatory system*.
 - (d) If the *firm* proposes to implement the proposal and the *senior conduct rules staff member* considers that it is likely to be non-compliant with the *regulatory system*, the *senior conduct rules staff member* should promptly inform the *appropriate regulator*.

- 4.2.3 G To comply with the obligations of *rule SC1* in ■ COCON 2.2.1R, *senior conduct rules staff members* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.

- 4.2.4 G The organisation of the business and the responsibilities of those within it should be clearly defined. Reporting lines should be clear to staff. Where

staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.

4.2.5 **G** Where members of staff have particular levels of authorisation, these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which they are aware.

4.2.6 **G** *Senior conduct rules staff members* should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

4.2.7 **G** If an individual's performance is unsatisfactory, the relevant *senior conduct rules staff member* should review carefully whether to allow that individual to continue in their position. In particular:

- (1) If the *senior conduct rules staff member* is aware of concerns relating to the compliance with requirements and standards of the *regulatory system* (or internal controls) of the individual concerned, or of staff reporting to that individual, the *senior conduct rules staff member* should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken.
- (2) An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The *senior conduct rules staff member* should be satisfied, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the *regulatory system*.

4.2.8 **G** As part of organising the business, a *senior conduct rules staff member* should ensure that there is an orderly transition when another *senior conduct rules staff member* under their oversight or responsibility ceases to perform that function and someone else takes up that function. It would be appropriate for the individual vacating such a position to prepare a comprehensive set of handover notes for their successor. Those notes should, at a minimum, specify any matter that is ongoing which the successor would reasonably expect to be aware of to:

- (1) perform their function effectively;
- (2) ensure compliance with the requirements and standards of the *regulatory system*; and
- (3) ensure that the individual with overall responsibility for that part of the business of the *firm* maintains effective control.

4.2.9 **G** In organising the business, a *senior conduct rules staff member* should pay attention to any temporary vacancies which exist. They should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *senior conduct rules staff member* should assess the risk to compliance with the requirements and standards of the *regulatory system* as a result of the vacancy, and the higher the risk the greater the steps they should take to fill the vacancy. It may be appropriate to limit or suspend the activity if adequate cover for responsibilities cannot be arranged. To the extent that those vacancies are for *controlled functions*, they may only be filled by *persons* approved for that function.

4.2.10 **G** The following is a non-exhaustive list of examples of conduct that would be in breach of *rule SC1*.

- (1) Failing to take reasonable steps to apportion responsibilities for all areas of the business under the *approved person's* control.
- (2) Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated, which includes establishing confusing or uncertain:
 - (a) reporting lines; or
 - (b) authorisation levels; or
 - (c) job descriptions and responsibilities.
- (3) In the case of a manager who is responsible for dealing with the apportionment of responsibilities, failing to take reasonable care to maintain a clear and appropriate apportionment of responsibilities including:
 - (a) failing to review regularly the responsibilities which have been apportioned; and
 - (i) failing to act where that review shows that those responsibilities have not been clearly apportioned.
- (4) Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of *senior conduct rules staff member*, including the following:
 - (a) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable;
 - (b) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role; and
 - (c) allowing managerial vacancies which put compliance with the requirements and standards of the *regulatory system* at risk to remain, without arranging suitable cover for the responsibilities.

SC2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

- 4.2.11 G A *senior conduct rules staff member* must take reasonable steps to ensure their *firm's* compliance with the relevant requirements and standards of the *regulatory system* and to ensure that all staff are aware of the need for compliance.
- 4.2.12 G *Senior conduct rules staff members* do not themselves need to put in place the systems of control for the business, unless it is within their role and responsibilities. However, they should take reasonable steps to ensure that the business for which they are responsible has operating procedures and systems with well-defined steps for complying with the detail of relevant requirements and standards of the *regulatory system* and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the *regulatory system*, and the nature, scale and complexity of the business.
- 4.2.13 G Where a *senior conduct rules staff member* becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the *regulatory system* within their area of responsibility, they should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner. This may involve an adequate investigation to find out whether any systems or procedures have failed and why. They may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.
- 4.2.14 G If an issue raises questions of law or interpretation, *senior conduct rules staff members* may need to take legal advice. If appropriate legal expertise is not available in-house, they may need to consider appointing an appropriate external adviser.
- 4.2.15 G Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the *senior conduct rules staff member* responsible for that business area should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner. What is reasonable will depend on the nature of the issue to be addressed and the cost of the improvement. It will be reasonable for a *senior conduct rules staff member* to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.
- 4.2.16 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule SC2*.

 - (1) Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the *regulatory system* for the activities of the *firm*.

- (2) Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the *regulatory system* for the activities of the *firm* in question.
- (3) Failing to take reasonable steps to inform themselves adequately about the reason why significant breaches (suspected or actual) of the relevant requirements and standards of the *regulatory system* for the activities of the *firm* may have arisen (taking account of the systems and procedures in place). This would include failing to investigate whether systems or procedures may have failed and failing to obtain expert opinion on the adequacy of the systems and procedures where appropriate.
- (4) Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (suspected or actual) of the relevant requirements and standards of the *regulatory system* relating to the activities of the *firm*, including:
 - (a) unreasonably failing to implement recommendations for improvements in systems and procedures; and
 - (b) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.
- (5) For a manager with responsibility for overseeing the establishment and maintenance of appropriate systems and controls or the apportionment of responsibilities, any failure to take reasonable care to ensure that those obligations are discharged effectively.
- (6) For a *proprietary trader*, failing to maintain and comply with appropriate systems and controls in relation to that activity.
- (7) For a *money laundering reporting officer*, failing to discharge the responsibilities imposed on them by the firm for oversight of its compliance with the *FCA's rules* on systems and controls against *money laundering*.
- (8) For a *senior conduct rules staff member* who is responsible for the compliance function, failing to ensure that:
 - (a) the compliance function has the necessary authority, resources, expertise and access to all relevant information; or
 - (b) a compliance officer is appointed and is responsible for the compliance function and for any reporting as to compliance; or
 - (c) the *persons* involved in the compliance functions are not involved in the performance of services or activities they monitor; or
 - (d) the method of determining the remuneration of the *persons* involved in the compliance function does not compromise their objectivity; or
 - (e) the method of determining the remuneration complies, where applicable, with the *Remuneration Code* or, for a *Solvency II firm* or a *small non-directive insurer*, other relevant requirements in relation to remuneration.

SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively

- 4.2.17 G An *SMF manager* may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.
- 4.2.18 G A *senior conduct rules staff member* should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.
- 4.2.19 G The *FCA* recognises that a *senior conduct rules staff member* will have to exercise their own judgement in deciding how issues are dealt with and sometimes that judgement will, with the benefit of hindsight, be shown to have been wrong. The *senior conduct rules staff member* will not be in breach of *rule SC3* in ■ **COCON 2.2.3R** unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fail to reach a reasonable conclusion. If they are in doubt about how to deal with an issue or the seriousness of a particular compliance problem then, although they cannot delegate to the *FCA* the responsibility for dealing with the problem or issue, they can speak to the *FCA* to discuss his approach.
- 4.2.20 G *Senior conduct rules staff members* will not always manage the business on a day-to-day basis themselves. The extent to which they do so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The *FCA* will look to the *senior conduct rules staff member* to take reasonable steps to ensure that systems are in place to ensure that issues are being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.
- 4.2.21 G Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate has the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business indicates a failure to comply with *rule SC3* in ■ **COCON 2.2.3R**.
- 4.2.22 G Although a *senior conduct rules staff member* may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is that *person's* responsibility to ensure that they receive reports on progress and question those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, the *senior conduct rules staff member* may need to challenge the explanations they receive and, if necessary, take action

personally to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, *senior conduct rules staff members* should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities.

4.2.23 **G** The following is a non-exhaustive list of examples of conduct that would be in breach of *rule SC3*.

- (1) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that the *senior conduct rules staff member* has delegated to an individual(s) (whether in-house or outside contractors) including:
 - (a) disregarding an issue or part of the business once it has been delegated;
 - (b) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; and
 - (c) accepting implausible or unsatisfactory explanations from delegates without testing their accuracy.
- (2) Failing to supervise and monitor adequately the individual(s) (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated including any failure to:
 - (a) take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided; or
 - (b) review the performance of an outside contractor in connection with the delegated issue or business.

4.2.24 **G** In determining whether or not the conduct of a senior conduct rules staff member complies with *rule SC3* in ■ COCON 2.2.3R, the factors which the FCA would expect to take into account include:

- (1) the competence, knowledge or seniority of the delegate; and
- (2) the past performance and record of the delegate.

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

4.2.25 **G** For the purpose of *rule SC4* in ■ COCON 2.2.4R, regulators in addition to the FCA and the PRA are those which have recognised jurisdiction in relation to activities to which COCON applies and have a power to call for information from the relevant *person* in connection with their function or the business for which they are responsible. This may include an exchange or an overseas regulator.

4.2.26 **G** SC4 applies to *senior conduct rules staff members* in addition to *rule 3* in ■ COCON 2.1.3R. Although, the rules have some overlap, they are different. Rule 3 normally relates to responses from individuals to requests from the

regulator, whereas *rule SC4* imposes a duty on a *senior conduct rules staff member* to disclose appropriately any information of which the *appropriate regulator* would reasonably expect, including making a disclosure in the absence of any request or enquiry from the *appropriate regulator*. A *senior conduct rules staff member* is likely to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the *appropriate regulator* would reasonably expect notice.

4.2.27

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Where a *senior conduct rules staff member* is responsible within the *firm* (individually or with other *senior conduct rules staff members*) for reporting matters to the regulator, failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, constitutes a breach of *rule SC4* in ■ COCON 2.2.4R.

4.2.28

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- (1) If a *senior conduct rules staff member* comes across a piece of information that is something of which they think the *FCA* or *PRA* could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities:
 - (a) (for an *SMF manager*) by virtue of that *person's statement of responsibilities*; or
 - (b) (for an *approved person performing a significant influence function in a Solvency II firm or a small non-directive insurer*) including by reference to their scope of responsibilities document.
- (2) If it does, then they should ensure that, if it is otherwise appropriate to do so, it is disclosed to the *appropriate regulator*.

4.2.29

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In determining whether or not a *person's* conduct complies with *rule SC4* in ■ COCON 2.2.4R, the factors which the *FCA* would expect to take into account include:

- (1) whether it would be reasonable for the individual to assume that the information would be of material significance to the regulator concerned;
- (2) whether the information related to the individual themselves or to their *firm*; and
- (3) whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

Code of Conduct (COCON)

Schedule 1 Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in *COCON*.

Code of Conduct (COCON)

Schedule 2 Notification requirements

Sch 2.1 G

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

Sch 2.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COCON 2.2.4R	Any information of which the <i>FCA</i> or <i>PRA</i> would reasonably expect notice.	Appropriate disclosure	Any information of which the <i>FCA</i> or <i>PRA</i> would reasonably expect notice.	Appropriate

Code of Conduct (COCON)

Schedule 3 Fees and required payments

Sch 3.1 G

There are no requirements for fees or other payments in *COCON*.

Code of Conduct (COCON)

Schedule 4 Powers exercised

Sch 4.1 G

Section 64A (Rules of conduct)

Section 139A (Power of the *FCA* to give guidance)

Code of Conduct (COCON)

Schedule 5 Rights of action for damages

Sch 5.1 G

There is no right of action under section 138D of the *Act* (Actions for damages) for breach of the *rules* in *COCON*.

Code of Conduct (COCON)

Schedule 6 Rules that can be waived

Sch 6.1 G

Section 138A (Modification or waiver of rules) does not apply to *COCON*.

