

Code of Conduct (COCON)

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
<p>(1) An <i>SMF manager</i>.</p> <p>(2) An <i>employee</i> (“P”) of a an <i>SMCR firm</i> who:</p> <p>(a) performs the function of an <i>SMF manager</i>;</p> <p>(b) is not an <i>approved person</i> to perform the function in question; and</p> <p>(c) is required to be an <i>approved person</i> at the time P performs that function.</p> <p>(3) An <i>employee</i> of an <i>SMCR firm</i> who would be performing an <i>FCA-designated senior management function</i> but for SUP 10C.3.13R (The 12-week rule).</p> <p>(4) A <i>certification employee</i> of an <i>SMCR firm</i>.</p> <p>(5) An <i>employee</i> of an <i>SMCR firm</i> who would be performing an <i>FCA certification function</i> but for SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).</p> <p>(6) Any <i>employee</i> of an <i>SMCR firm</i> not coming within another row of this table, except one listed in column (2) of this row (6) of this table.</p>	<p>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.</p> <p>(A) This row (6) does not apply to an <i>employee</i> of an <i>SMCR firm</i> who only performs functions falling within the scope of the following roles:</p> <p>(a) receptionists;</p> <p>(b) switchboard operators;</p>

Persons to whom COCON applies	Comments
	<p>(c)post room staff;</p> <p>(d)reprographics/print room staff;</p> <p>(e)property/facilities management;</p> <p>(f)events management;</p> <p>(g)security guards;</p> <p>(h)invoice processing;</p> <p>(i)audio visual technicians;</p> <p>(j)vending machine staff;</p> <p>(k)medical staff;</p> <p>(l)archive records management;</p> <p>(m)drivers;</p> <p>(n)corporate social responsibility staff;</p> <p>(o) taking part in following activities of the <i>firm</i>:</p> <p>(i) the <i>firm's</i> activities as a data controller; or</p> <p>(ii) the <i>firm's</i> activities of data processing;</p> <p>as defined in the <i>data protection legislation</i>, but subject to Note (1) of this table;</p> <p>(p)cleaners;</p> <p>(q)catering staff;</p> <p>(r)personal assistant or secretary;</p> <p>(s)information technology support (ie, helpdesk); and</p> <p>(t)human resources administrators / processors.</p> <p>(B) This row (6) also does not apply to an <i>employee</i> of an <i>SMCR insurance firm</i> until 10 December 2019.</p> <p>(7) [deleted]</p> <p>(8)A <i>board director</i> of: a <i>UK SMCR firm</i>.</p> <p>Note (1): A function is only within paragraph (o) of column (2) (Comments) of row (6) of this table if the function does not require the <i>employee</i> concerned to exercise a significant amount of discretion or judgment.</p>

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 *senior conduct rules staff member* within paragraph (d) of the definition of *senior conduct rules staff member* (P) unless P also falls into paragraph (a) or (b) of that definition.
- 1.1.5 **G** (1) The *guidance* in ■ COCON 2.3 applies to *SMCR firms*.
- (2) [deleted]
- (3) ■ SYSC 27.6.3R provides that a function performed by a *non-executive director* of a *firm* acting as such is not an *FCA certification 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* (Firm A) on whose application approval was given to P.
- [Note: sections 64A(4) and (5)(a) of the Act (Rules of conduct)]
- 1.1.6A **R** For a *person* (P) who is a *board director* of a *firm* (Firm A) but is not an *approved person* of Firm A, 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 Firm A.
- [Note: sections 64A(4) and (5)(ab) of the Act (Rules of conduct)]
- 1.1.7 **R** (1) 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 P's *employer* (Firm A).
- (2) This *rule* does not apply where ■ COCON 1.1.6A applies.
- [Note: sections 64A(4) and (5)(b) of the Act (Rules of conduct)]
- 1.1.7A **R** (1) Where Firm A in ■ COCON 1.1.6R to ■ COCON 1.1.7R is an *SMCR firm* other than an *SMCR banking firm*, the application of COCON is further restricted by this *rule*.
- (2) COCON only applies to conduct that forms part of, or is for the purpose of, any of the following:
- (a) the *SMCR financial activities* of Firm A; or
 - (b) any activities of Firm A that have, or might reasonably be regarded as likely to have, a negative effect on:
 - (i) the integrity of the *UK financial system*; or

	<ul style="list-style-type: none"> (ii) the ability of Firm A to meet the “fit and proper” test in threshold condition 2E and 3D (Suitability); or (iii) the ability of Firm A to meet the applicable requirements and standards under the <i>regulatory system</i> relating to Firm A’s financial resources.
<p>1.1.8 G</p>	<ul style="list-style-type: none"> (1) More than one of ■ COCON 1.1.6R to ■ COCON 1.1.7AR may apply to the same individual performing several roles. (2) For example, say that an individual (A) is an <i>approved person</i> for <i>firm X</i> and is employed by <i>firm Y</i> in a role that does not involve a <i>controlled function</i> or being a director. (3) ■ COCON 1.1.6R applies to A’s role with <i>firm X</i> and ■ COCON 1.1.7R applies to A’s role with <i>firm Y</i>.
<p>1.1.8A R</p>	<ul style="list-style-type: none"> (1) This <i>rule</i> applies to a <i>person (P)</i>: <ul style="list-style-type: none"> (a) who is an <i>approved person</i> approved to perform a <i>controlled function</i> under ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives); (b) for whom P’s <i>authorised approved person employer</i> is an <i>SMCR firm (F)</i>; and (c) to whom <i>COCON</i> also applies in P’s capacity as a member of F’s <i>conduct rules staff</i>. (2) <i>COCON</i> does not apply to conduct of P to the extent that: <ul style="list-style-type: none"> (a) that conduct relates to the performance by P of functions: <ul style="list-style-type: none"> (i) in (1)(a); or (ii) in relation to the carrying on of a <i>regulated activity</i> by the <i>appointed representative</i> concerned; and (b) <i>APER</i> applies to that conduct.
<p>1.1.9 R</p>	<p>Where does it apply?</p> <ul style="list-style-type: none"> (1) <i>COCON</i> applies to the conduct of <i>conduct rules staff</i> set out in (2) wherever it is performed. (2) This <i>rule</i> applies to: <ul style="list-style-type: none"> (a) a <i>senior conduct rules staff member</i>; and (b) a <i>certification employee</i> performing <i>FCA certification function (6)</i> (material risk takers) in the table in ■ SYSC 27.7.3R for a <i>UK SMCR firm</i>.
<p>1.1.9A G</p>	<ul style="list-style-type: none"> (1) This paragraph deals with how ■ COCON 1.1.9R applies to a <i>certification employee (P)</i> who performs the material risk taker <i>FCA certification function</i> and another <i>FCA certification function</i> for the same <i>UK SMCR firm</i>.

- (2) If P's conduct relates to both *FCA certification functions* (because for example those two functions cover the same activities) *COCON* applies without territorial limitation to P's conduct.
- (3) If part of P's conduct relates to the material risk taker *FCA certification function* and the rest of P's conduct relates to the other *FCA certification function*, *COCON* only applies without territorial limitation to P's conduct in relation to the material risk taker *FCA certification function*.
- 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 the *SMCR firm*; 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 SMCR firm*.
- 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**
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- 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 non-executive directors of SMCR firms

COCON 1 Introduction

COCON 1.1 This annex applies to *non-executive directors* (NEDs) of an *SMCR firm*.

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

- (1) the role of chair of the board of *directors*;
- (2) the role of chair of the nomination committee;
- (3) the role of chair 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, *rules* or requirements applicable to the board or particular committees, a NED's responsibility as chair of the board or a committee includes:

- (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;
- (6) facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; and
- (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:

- (1) the requirements in *SYSC 4.3A* about the nomination committee (if that part of *SYSC* applies to the *firm*); and
- (2) any specific and relevant requirements relating to the committee or to the matters within the committee's responsibilities.

COCON 3.3 Paragraph 3.2 of this annex is still relevant to a *firm*:

- (1) that is not required by the *FCA Handbook* to have a nomination committee; or
 - (2) for which being the chair of such a committee is not a *controlled function*;
- if it has such a committee.

COCON 4 General approach to the role of a NED

COCON 4.1 The *FCA* recognises that NEDs individually do not manage a *firm's* business in the same way as executive *directors*. 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 *SMF managers* have individual duties under that regime, the *FCA* 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 *FCA* would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:

- (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 *Handbook* (especially *COCON* and *DEPP*); and
- (2) the general knowledge, skill and experience that the NED has.