

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; (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.</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] (8)A <i>board director</i> of: a <i>UK SMCR firm</i>.</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 5.2.26R 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
 - (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 *regulatory system* relating to Firm A's financial resources.
- 1.1.8 **G** (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 *approved person* for *firm X* and is employed by *firm Y* in a role that does not involve a *controlled function* or being a director.

(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*.

1.1.8A **R**

- (1) This rule applies to a *person (P)*:
 - (a) who is an *approved person* approved to perform a *controlled function* under ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives);
 - (b) for whom P's *authorised approved person employer* is an *SMCR firm (F)*; and
 - (c) to whom COCON also applies in P's capacity as a member of F's *conduct rules staff*.
- (2) COCON does not apply to conduct of P to the extent that:
 - (a) that conduct relates to the performance by P of functions:
 - (i) in (1)(a); or
 - (ii) in relation to the carrying on of a *regulated activity* by the *appointed representative* concerned; and
 - (b) APER applies to that conduct.

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 certification function (6)* (material risk takers) in the table in ■ SYSC 27.7.3R for a *UK SMCR firm*.

1.1.9A **G**

- (1) This paragraph deals with how ■ COCON 1.1.9R applies to a *certification employee (P)* who performs the material risk taker *FCA certification function* and another *FCA certification function* for the same *UK SMCR firm*.
- (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 <i>non-executive directors</i> (NEDs) of an <i>SMCR firm</i> .
COCON 1.2	This annex covers the role of a NED in performing the roles in (1) to (4), below: <ol style="list-style-type: none"> (1) the role of chair of the board of <i>directors</i>; (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 <i>designated senior management function</i>); (4) the general NED role.
COCON 1.3	The <i>FCA's</i> view of the role of a NED is consistent with the duties of directors included in <i>UK company law</i> and the description of the role of a NED in the <i>UK Corporate Governance Code</i> .
COCON 2	The general role of a NED
COCON 2.1	The role of a NED performing the general NED role is to: <ol style="list-style-type: none"> (1) provide effective oversight and challenge; and (2) help develop proposals on strategy.
COCON 2.2	To deliver this, their responsibilities include: <ol style="list-style-type: none"> (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: <ol style="list-style-type: none"> (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	<p>Subject to any specific governance arrangements, <i>rules</i> or requirements applicable to the board or particular committees, a NED's responsibility as chair of the board or a committee includes:</p> <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; (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	<p>The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with:</p> <ol style="list-style-type: none"> (1) the requirements in <i>SYSC 4.3A</i> about the nomination committee (if that part of <i>SYSC</i> 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	<p>Paragraph 3.2 of this annex is still relevant to a <i>firm</i>:</p> <ol style="list-style-type: none"> (1) that is not required by the <i>FCA Handbook</i> to have a nomination committee; or (2) for which being the chair of such a committee is not a <i>controlled function</i>; <p>if it has such a committee.</p>
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> 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	<p>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:</p> <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 <i>firm</i>, 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.