

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.

