Threshold Conditions
Threshold Conditions

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Chapter 1

Introduction
To which threshold conditions does COND apply?

(1) Section 55C of the Financial Services Act 2012 (Power to amend Schedule 6) gave HM Treasury the power to amend Schedule 6 of the Act. HM Treasury exercised this power by making The Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013 which entered into force on 1 April 2013 (the “TC Order”). The TC Order’s main result is the creation of four sets of threshold conditions, namely:

(i) conditions for firms authorised and regulated by the FCA only (paragraphs 2B to 2F of Schedule 6 to the Act);

(ii) FCA specific conditions for firms authorised by the PRA and subject to dual regulation (paragraphs 3B to 3E of Schedule 6 to the Act);

(iii) PRA-specific conditions for insurers (paragraphs 4A to 4F of Schedule 6 to the Act); and

(iv) PRA-specific conditions for other PRA-authorised persons (paragraphs 5A to 5F of Schedule 6 to the Act).

(2) The guidance in COND is only applicable to the threshold conditions listed in COND 1.1A.1G (1) and (ii), above. These are the threshold conditions stated in paragraphs 2A and 3A of Schedule 6 to the Act as being relevant to the discharge by the FCA of its functions under the Act.

(3) In respect of a person which does not carry on, or seek to carry on, any PRA-regulated activities, the threshold conditions that are relevant to the discharge by the FCA of its functions under the Act are those set out in paragraphs 2B to 2F of Schedule 6 to the Act, subject to COND 1.1A.4G (1), below.

(4) In respect of a firm which does carry on, or seeks to carry on, a PRA-regulated activity, the threshold conditions that are relevant to the discharge by the FCA of its functions under the Act are those set out in paragraphs 3B to 3E of Schedule 6 to the Act, subject to COND 1.1A.4G (2), below.

(5) A reference to “FCA threshold conditions” in COND means a reference to the threshold conditions referred to in (3) and (4) that apply to a particular firm.
To whom does COND apply?

(1) COND applies to all firms, except where stated otherwise in this guidance.

(2) In COND, ‘firm’ includes an applicant for Part 4A permission unless the context otherwise requires.

To what extent does COND apply to firms authorised by the PRA (PRA-authorised persons) and subject to dual regulation?

(1) As a result of the new legal framework for threshold conditions described in COND 1.1A.1G (1), PRA-authorised persons and firms seeking to become PRA-authorised persons are subject to two sets of threshold conditions:

   (i) the FCA-specific conditions referred to in COND 1.1A.1G (1)(ii) and
   (ii) one of the two PRA-specific conditions referred to in COND 1.1A.1G (1)(iii) or (iv), depending on the PRA-regulated activities which the PRA-authorised person or firm carries on, or is seeking to carry on.

The FCA threshold conditions set out in paragraphs 3B to 3E of the Act seek to reflect this. In particular, these threshold conditions do not contain a condition relating to adequate financial resources. This is a matter that falls to be considered by the PRA under its threshold conditions.

(2) The majority of the guidance in COND is intended to assist all firms to understand how the FCA will approach its assessment of the applicable FCA threshold conditions, regardless of whether or not a firm is, or is seeking to become, a PRA-authorised person. This is because the FCA threshold conditions which apply to PRA-authorised persons and those which apply to firms authorised by the FCA only are, for the most part, the same.

(3) However, where guidance in COND refers to an assessment of a firm’s financial position or its compliance with prudential regulatory requirements, it is not intended to assist firms which are, or are seeking to become, PRA-authorised persons. This is because these are matters that are not covered by the FCA’s threshold conditions, but rather fall to be considered by the PRA under its threshold conditions.

(4) Although some of the PRA threshold conditions and FCA threshold conditions that apply to firms which are, or are seeking to become, PRA-authorised persons may appear to address similar subject matter, the FCA will approach the assessment of its threshold conditions with its unique statutory objectives in mind and in the light of the functions which the FCA is required to discharge in relation to them.

(5) For the avoidance of doubt, the guidance in COND is not intended to apply to the PRA’s assessment of its own threshold conditions in respect of a PRA-authorised person. This is a matter for the PRA alone.
To what extent does COND apply to incoming EEA firms and incoming Treaty firms?

1.1A.4

COND applies to incoming EEA firms and incoming Treaty firms as set out below:

(1) for an incoming EEA firm or an incoming Treaty firm which does not carry on any PRA-regulated activities, FCA threshold conditions 2C to 2F apply; and

(2) for an incoming EEA firm or an incoming Treaty firm which carries on a PRA-regulated activity, FCA threshold conditions 3B to 3E apply.

FCA threshold conditions apply to incoming EEA firms and incoming Treaty firms only in as far as relevant to the discharge by the FCA of its relevant functions in relation to an application for, or the exercise of its own-initiative powers in relation to, a top-up permission or the functions relating to the FCA’s consent or consultation rights relating to the exercise by the PRA of its powers in relation to an application for, or use of its own-initiative powers relating to, a top-up permission.

To what extent does COND apply to Swiss general insurance companies?

1.1A.5

FCA threshold conditions 3B, 3C and 3E apply to Swiss General Insurance Companies.

To what extent does COND apply to credit firms with limited permission?

1.1A.5A

(1) The FCA threshold conditions apply to a person that carries on, or seeks to carry on, only relevant credit activities (within paragraph 2G of Schedule 6 to the Act) and which therefore has, or is applying for, limited permission with a number of modifications (see article 10(19) of the Regulated Activities Amendment Order). Regulated activities a person carries on in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply as a result of section 39(1D) of the Act are disregarded for this purpose.

(2) For a person within (1), the FCA threshold conditions are modified as follows:

(a) in relation to paragraph 2C of Schedule 6 to the Act (Effective supervision), paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply (see COND 2.3);

(b) in relation to paragraph 2D of Schedule 6 to the Act (Appropriate resources), the person has adequate financial resources if it is capable of meeting its debts as they fall due (see COND 2.4);

(c) paragraph 2F of Schedule 6 to the Act (Business model) does not apply (see COND 2.7).

(3) Paragraph 2G of Schedule 6 to the Act defines relevant credit activity for the purposes of the FCA Threshold Conditions. The interpretation of some of the key expressions used in this specific context is as follows:
(a) "borrower" includes any person providing a guarantee or indemnity under an agreement, and a person to whom the rights and duties of the borrower have passed by assignment or operation of law;

(b) "supplier" means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement;

(c) "customer" means a person to whom a supplier sells goods or supplies services or agrees to do so;

(d) "domestic premises supplier" means a supplier who sells goods, offers or agrees to sell goods, or offers or contracts to supply services, to customers who are individuals while the supplier or the supplier’s representative is physically present in the dwelling of the customer (though a supplier who does so only on an occasional basis is not to be treated as a "domestic premises supplier" unless the supplier indicates to the public at large, or a section of it, the supplier’s willingness to attend, in person or through a representative, the dwelling of a potential customer in order to do any of those things).

(3A) Questions may arise over whether a supplier who visits a customer’s dwelling to take measurements or give an estimate is a "domestic premises supplier". For example:

(a) if the supplier, or the supplier’s representative, gives a quote or estimate to the customer during the visit that is sufficiently specific as to be capable of being accepted in a way that is binding on the supplier, then the quote or estimate is an offer; on that basis, the supplier falls within the definition of “domestic premises supplier”, irrespective of whether the customer accepts the offer during the visit;

(b) where the supplier, or the supplier’s representative, gives only a rough estimate or quote during the visit, with a view to submitting a refined estimate or a firm quote at a later time when the supplier is not at the customer’s dwelling, that rough estimate will not be an offer; on that basis, the supplier will not fall within the definition of “domestic premises supplier”, unless the customer and the supplier, or the supplier’s representative, do reach an agreement during the visit; and

(c) where an agreement is reached, the supplier will have sold, or agreed to sell, goods or contracted to supply services, and will therefore be a “domestic premises supplier”; this may be the case even if the agreement is subject to later specification of the price, the goods or the services.

It is immaterial whether the supplier carries on any credit broking (or other regulated activity) during the visit.

(4) In summary, the following credit-related regulated activities are relevant credit activities for the purposes of the FCA Threshold Conditions:

(a) credit broking when carried on:
(i) by a supplier (other than a domestic premises supplier) for
the purposes of or in connection with the sale of goods or
supply of services by the supplier to a customer (who need
not be the borrower under the credit agreement or the hirer
under the consumer hire agreement); or

(ii) in relation to a green deal plan; or

(iii) in relation to a consumer hire agreement or a hire-purchase
agreement;

although, other than where the credit broking is carried on by a
not-for-profit body, the credit broking will not be a relevant
credit activity where it relates to an agreement under which the
obligation of the borrower to repay or the hirer to pay is
secured, or is to be secured, by a legal mortgage on land;

(b) consumer credit lending if carried on by a local authority or if:

(i) it is carried on by a supplier;

(ii) no charge (by way of interest or otherwise) is payable by the
borrower in connection with the provision of credit (this
includes a charge payable in connection with a breach of the
agreement or on the occurrence of a specified event;
consumer credit lending under an agreement that contains
such a charge is not a relevant credit activity); and

(iii) the regulated credit agreement is not a hire purchase
agreement or a conditional sale agreement;

although, other than where the consumer credit lending is
carried on by a not-for-profit body, the consumer credit lending
will not be a relevant credit activity if it relates to an agreement
under which the obligation of the borrower to repay is secured,
or is to be secured, by a legal mortgage on land;

(c) entering into a regulated consumer hire agreement as owner or
exercising, or having the right to exercise, the owner's rights and
duties under a regulated consumer hire agreement although,
other than where these activities are carried on by a not-for-
profit body, entering into a regulated consumer hire agreement
as owner or exercising, or having the right to exercise, the
owner's rights and duties under a regulated consumer hire
agreement will not be a relevant credit activity if the obligation
of the hirer to pay under the agreement is secured, or is to be
secured, by a legal mortgage on land;

(d) debt adjusting or debt counselling when carried on:

(i) by a supplier who also carries on credit broking within (a)(i);

(ii) by a person in connection with an activity within (b) or (c)
which the person also carries on;

(iii) by a not-for-profit body;

although, other than where the debt adjusting or debt
counselling is carried on by a not-for-profit body, the debt
adjusting or debt counselling will not be a relevant credit activity
if it relates to an agreement under which the obligation of the
borrower to repay or the hirer to pay is secured, or is to be
secured, by a legal mortgage on land;
(e) providing credit information services where carried on by a person in connection with an activity within (a) to (d) which the person also carries on;

(f) agreeing to carry on an activity within (a) to (e).

To what extent does COND apply to regulated benchmark administrators?

1.1A.5B 1

1. The *threshold conditions* do not apply to a *firm* in relation to the regulated activity of administering a benchmark.

2. COND does not apply to *regulated benchmark administrators* who are solely authorised to *administer a benchmark* as they are not subject to the *threshold conditions*.

3. For *regulated benchmark administrators* who are also authorised to carry on activities other than *administering a benchmark*, they will be subject to the *threshold conditions* in relation to their other *regulated activities*. COND will apply to those *firms* in relation to the *regulated activities* to which the *threshold conditions* apply.

To which regulated activities does COND apply?

1.1A.6 1

Subject to the limitations referred to above, COND applies in relation to all of the *regulated activities* for which a *firm* has, or will have, *permission*.

Where does COND apply?

1.1A.7 1

COND applies in relation to all of the *regulated activities* wherever they are carried on, except as stated in COND 1.1A.4 G.
1.2 Purpose

1.2.1 COND gives guidance on the threshold conditions. The FCA threshold conditions represent the minimum conditions for which the FCA is responsible, which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain Part 4A permission. A PRA-authorised person or, as appropriate, a firm seeking to become a PRA-authorised person must also satisfy, and continue to satisfy, the threshold conditions for which the PRA is responsible in order to be given and to retain Part 4A permission (these threshold conditions are not the subject of the guidance in COND).

Applications for Part 4A permission or variation of Part 4A permission

1.2.2 (1) Under section 55B(3) of the Act, in giving or varying a Part 4A permission, imposing or varying any requirement or giving consent, the FCA must ensure that the firm concerned will satisfy, and continue to satisfy, the FCA threshold conditions in relation to all of the regulated activities for which it has or will have permission.

(2) If, however, the applicant for permission is an incoming firm seeking top-up permission, or variation of top-up permission, under Part 4A of the Act (Permission to carry on regulated activities), then under paragraphs 6A and 7A of Schedule 6 to the Act (Threshold conditions), the FCA will have regard only to satisfaction of the FCA threshold conditions specified as applicable in COND 1.1A.4 G, as relevant to the regulated activities for which the applicant has, or will have, Part 4A permission.

Exercise of the FCA’s own-initiative powers

1.2.3 (1) If, among other things, a firm is failing to satisfy any of the FCA threshold conditions, or is likely to fail to do so, the FCA may exercise its own-initiative powers under either section 55J (Variation or cancellation on initiative of regulator) or section 55L (Imposition of requirements by FCA) of the Act. Use of the FCA’s own-initiative powers is explained in SUP 7 (Individual requirements), and EG 8 (Variation and cancellation of permission on the FCA’s own initiative and intervention against incoming firms).

(2) If, when exercising its own-initiative powers under section 55J or section 55L of the Act, the FCA varies a firm’s permission, or imposes or varies a requirement, then, under section 55B(3) of the Act, the FCA must ensure that the firm concerned will satisfy, and continue to satisfy, the FCA threshold conditions in relation to all of the relevant regulated activities for which it has or will have permission. However,
section 55B(4) of the Act states that the duty imposed by section 55B(3) of the Act does not prevent the FCA taking such steps as it considers necessary in relation to a particular firm in order to advance any of its operational objectives.

(3) The FCA can also exercise its own-initiative powers under section 55J or section 55L of the Act in relation to the top-up permission of an incoming firm. But this is only on the grounds that the incoming firm is failing, or likely to fail, to satisfy the FCA threshold conditions specified as applying to incoming firms under COND 1.1A.4 G.

1.2.4

(1) [deleted]

(2) [deleted]

Approval of acquisitions or increases of control

1.2.5

(1) Under section 185 of the Act (Assessment: general) the FCA may subject to consultation with the PRA where the conditions in section 187 of the Act are satisfied, object to an acquisition of an FCA-authorised person if there are reasonable grounds to do so on the basis of the matters set out in section 186 of the Act (Assessment: criteria) or if the information provided by the section 178 notice giver is incomplete. Section 186(d) of the Act (Assessment: criteria) specifies one such criteria as whether an FCA-authorised person will be able to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has, or will have, permission.)

(2) Under section 191A of the Act (Objection to control), subject to consultation with the PRA in the circumstances specified in that provision, the FCA may object to a person’s existing control of an FCA-authorised person on the grounds specified under section 186 of the Act.
1.3 General

1.3.1 The guidance in COND 2 explains each FCA threshold condition in Schedule 6 (threshold conditions) to the Act and indicates how the FCA will interpret it in practice. This guidance is not, however, exhaustive and is written in very general terms. A firm will need to have regard to the obligation placed upon the FCA under section 55B (The threshold conditions) of the Act; that is, the FCA must ensure that the firm will satisfy, and continue to satisfy, the FCA threshold conditions in relation to each regulated activity for which it has, or will have, permission.

1.3.2 (1) The FCA will consider whether a firm satisfies, and will continue to satisfy, the FCA threshold conditions in the context of the size, nature, scale and complexity of the business which the firm carries on or will carry on if the relevant application is granted.

(2) In relation to threshold conditions set out in paragraphs 2D to 2F of Schedule 6 to the Act in respect of firms which are not PRA-authorised persons and paragraphs 3C to 3E of Schedule 6 to the Act in respect of firms which are PRA-authorised persons, the FCA will consider whether a firm is ready, willing and organised to comply, on a continuing basis, with the requirements and standards under the regulatory system which apply to the firm, or will apply to the firm, and for which the FCA is responsible, if it is granted Part 4A permission, or a variation of its permission. These matters will also be considered if the FCA is exercising its own-initiative powers (see COND 1.2.3 G). Guidance to firms on the implications of this is given under each of those threshold conditions.

1.3.3 Although the FCA may consider that a matter is relevant to its assessment of a firm, the fact that a matter is disclosed to the FCA, for example in an application, does not necessarily mean that the firm will fail to satisfy the FCA threshold conditions. The FCA will consider each matter in relation to the regulated activities for which the firm has, or will have, permission, having regard to its statutory objectives. A firm should disclose each relevant matter but, if it is appropriate to do so, it is encouraged to discuss it with the FCA. This will enable the FCA to consider fully how material or significant the matter is and how it affects the ability of the firm to satisfy, and continue to satisfy, the FCA threshold conditions.
In determining the weight to be given to any relevant matter, the FCA will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the FCA's statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.

In determining whether the firm will satisfy, and continue to satisfy, the FCA threshold conditions, the FCA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

When assessing the FCA threshold conditions, the FCA may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the FCA threshold conditions, would be in a relevant relationship with the firm.

In making its assessment, the FCA will consider the individual circumstances of each firm on a case-by-case basis.

Notes on the contents of a business plan are given in the business plan section of the application pack for Part 4A permission on the FCA's website.

Statutory quotations

(1) For ease of reference, the FCA threshold conditions in or under Schedule 6 to the Act have been quoted in full in COND 2.

(1A) Paragraphs 2A and 3A of Schedule 6 of the Act have not been quoted. These set out the application of the FCA threshold conditions to firms which do not carry on, or are not seeking to carry on, a PRA regulated activity and firms which carry on, or are seeking to carry on, a PRA regulated activity respectively. This application is summarised in COND 1.1A.

(2) As the FCA threshold conditions impose obligations, they are printed in bold type. The use of bold type is not intended to indicate that these quotations are rules made by the FCA.

(3) [deleted]

(4) Paragraph 1A of Schedule 6 of the Act sets out interpretative provisions that apply to the threshold conditions. These are repeated in COND 1.3.5 G below for ease of reference.

Paragraph 1A of Schedule 6 to the Act

(1) "assets" includes contingent assets;
"consolidated supervision" has the same meaning as in section 3M(a);
"consumer" has the meaning given by section 425A(b);
"financial crime" is to be read with section 1H(3)(c);
"functions", in relation to either the FCA or the PRA, means the functions conferred on that regulator by or under this Act;
"liabilities" includes contingent liabilities;
"relevant directives" has the same meaning as in section 3M;
"Society" means the society incorporated by Lloyd's Act 1871(d) by the name of Lloyd's;
"subsidiary undertaking" includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

(2) For the purposes of this Schedule, the "non-financial resources" of a person include any systems, controls, plans or policies that the person maintains and the human resources that the person has available.

(3) In this Schedule, references to "integrity of the UK financial system" are to be read with section 1D(2)(e).

(4) The reference to the failure of a person is to be read in accordance with section 2J(3) and (4)(f).
Threshold Conditions

Chapter 2

The threshold conditions
2.2 Location of offices

Paragraph 2B of Schedule 6 to the Act

(1) Unless sub-paragraph (3), (4)(a) or (7) applies, if A is a body incorporated in the United Kingdom -

(a) A’s head office, and

(b) if A has a registered office, that office,

must be in the United Kingdom.

(2) If A is not a body corporate but A’s head office is in the United Kingdom, A must carry on business in the United Kingdom.

(3) If-

(a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,

(b) A is a body corporate with no registered office, and

(c) A’s head office is in the United Kingdom,

A must carry on business in the United Kingdom.

(4) If A is seeking to carry on, or is carrying on, an insurance distribution activity-

(a) where A is a body corporate incorporated in the United Kingdom, A’s registered office, or if A has no registered office, A’s head office, must be in the United Kingdom;

(b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2), as having a head office in the United Kingdom if A’s residence is resident in the United Kingdom.

(5) “Insurance distribution activity” means any of the following activities-

(a) dealing in rights under a contract of insurance as agent;

(b) arranging deals in rights under a contract of insurance;

(c) assisting in the administration and performance of a contract of insurance;

(d) advising on buying or selling rights under a contract of insurance;

(e) agreeing to do any of the activities specified in paragraph (a) to (d).
(6) Sub-paragraph (5) must be read with-
   (a) section 22
   (b) any relevant order under that section; and
   (c) Schedule 2.

(7) If A is seeking to carry on, or is carrying on, the regulated activity of
managing an AIF and is, or upon being granted Part 4A permission to
carry on that regulated activity would be, a full-scope UK AIFM, A's
head office and registered office must be in the United Kingdom.

2.2.1B Paragraph 2B of Schedule 6 to the Act sets out the location of offices
threshold condition for firms carrying on, or seeking to carry on, regulated
activities which do not include a PRA-regulated activity.

2.2.1C The FCA is not responsible for the location of offices threshold condition for
firms carrying on, or seeking to carry on, regulated activities which include a
PRA-regulated activity.

2.2.2 Paragraph 2B(1) of Schedule 6 to the Act implements article 7(1)(d) of the
UCITS Directive, paragraphs 2B(1) to 2B(23) of Schedule 6 to the Act
implement article 5(4) of MiFID, paragraph 2B(4) of Schedule 6 to the Act
implements article 2(1)(10) of the IDD and paragraph 2B(7) of Schedule 6 to
the Act implements article 8(1)(e) of AIFMD, although the Act extends the
threshold condition set out in paragraph 2B of Schedule 6 of the Act to
authorised persons that are not PRA-authorised persons who are outside the
scope of these Single Market Directives.

2.2.3 Neither the UCITS Directive, MiFID, the IDD, AIFMD nor the Act define what
is meant by a firm's 'head office'. This is not necessarily the firm's place of
incorporation or the place where its business is wholly or mainly carried on.
Although the FCA will judge each application on a case-by-case basis, the key
issue in identifying the head office of a firm is the location of its central
management and control, that is, the location of:

(1) the directors and other senior management, who make decisions
    relating to the firm's central direction, and the material management
decisions of the firm on a day-to-day basis; and

(2) the central administrative functions of the firm (for example, central
    compliance, internal audit).
2.3 Effective supervision

2.3.1 UK [deleted]

2.3.1A UK

Paragraph 2C of Schedule 6 to the Act

(1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-

(a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;

(b) the complexity of any products that A provides or will provide in carrying on those activities;

(c) the way in which A’s business is organised;

(d) if A is a member of a group, whether membership of the group is likely to prevent the FCA’s effective supervision of A;

(e) whether A is subject to consolidated supervision required under any of the relevant directives;

(f) if A has close links with another person (“CL”)-

(i) the nature of the relationship between A and CL;

(ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of A; and

(iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of A.

(1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

(2) A has close links with CL if-

(a) CL is a parent undertaking of A;

(b) CL is a subsidiary undertaking of A;
COND 2 : The threshold conditions

Section 2.3 : Effective supervision

2.3.1B Paragraph 2C of Schedule 6 to the Act sets out the effective supervision threshold condition for firms carrying on, or seeking to carry on, regulated activities which do not include a PRA-regulated activity.

2.3.1BA For the purposes of paragraph 2C (1A) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance on the meaning of relevant credit activity is given in COND 1.1A.5A G.

Paragraph 3B of Schedule 6 to the Act

2.3.1C (1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including-

(a) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;

(b) the complexity of any products that B provides or will provide in carrying on those activities;

(c) the way in which B’s business is organised;

(d) if B is a member of a group, whether membership of the group is likely to prevent the FCA’s effective supervision of B;

(e) whether B is subject to consolidated supervision required under any of the relevant directives;

(f) if B has close links with another person (“CL”)-

   (i) the nature of the relationship between B and CL;

   (ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of B; and

   (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of B.

(2) B has close links with CL if-

(a) CL is a parent undertaking of B;

(b) CL is a subsidiary undertaking of B;

(c) CL is a parent undertaking of a subsidiary undertaking of B;

(d) CL is a subsidiary undertaking of a parent undertaking of B;

(e) CL owns or controls 20% or more of the voting rights or capital of B; or
(f) B owns or controls 20% or more of the voting rights or capital of CL.

2.3.1D Paragraph 3B of Schedule 6 to the Act sets out the effective supervision threshold condition which is relevant to the discharge by the FCA of its functions under the Act in relation to firms carrying on, or seeking to carry on, regulated activities which include a PRA-regulated activity.

2.3.1E The guidance in Section 2.3 should be read as applying to both paragraph 2C of Schedule 6 of the Act and, as far as relevant to the discharge by the FCA of its functions under the Act in respect of firms carrying on, or seeking to carry on, a PRA-regulated activity, paragraph 3B of Schedule 6 of the Act.

2.3.1F Firms carrying on, or seeking to carry on, a PRA-regulated activity, should note that the PRA is also responsible for assessing effective supervision under its own threshold conditions. Paragraphs 4F and 5F of Schedule 6 to the Act set out the effective supervision threshold conditions which are relevant to the discharge by the PRA of its functions under the Act in relation to firms carrying on, or seeking to carry on, a PRA-regulated activity. For the avoidance of doubt, this guidance does not apply to the threshold conditions set out in paragraphs 4F and 5F of Schedule 6 to the Act.

2.3.2 Paragraphs 2C and 3B of Schedule 6 to the Act implements requirements of the Single Market Directives, but the Act extends this condition to firms from outside the EEA and other firms which are outside the scope of the Single Market Directives.

2.3.3 In assessing the threshold conditions set out in paragraphs 2C and 3B of Schedule 6 to the Act, factors which the FCA will take into consideration include, among other things, whether:

1. it is likely that the FCA will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators and the rules in SUP on the provision of information to the FCA);

2. the structure and geographical spread of the firm, the group to which it belongs and other persons with whom the firm has close links, might hinder the provision of adequate and reliable flows of information to the FCA; factors which may hinder these flows include the fact there may be branches or connected companies in territories which supervise companies to a different standard or territories with laws which restrict the free flow of information, although the FCA will consider the totality of information available from all sources; and

(3) [deleted]
(4) in respect of a firm not carrying on, or seeking to carry on, a PRA-regulated activity, it is possible to assess with confidence the overall financial position of the group at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a group, if companies in the same group as the firm have different financial years and accounting dates and if they do not share common auditors.

2.3.4 [deleted]

2.3.5 [deleted]

Meaning of "parent undertaking" and "subsidiary undertaking"

2.3.6 (1) Section 420(1) of the Act (Parent and subsidiary undertaking) states that, except in relation to an incorporated friendly society, 'parent undertaking' and 'subsidiary undertaking' have the same meaning as in the Companies Acts (see section 1162 of, and schedule 7 to, the Companies Act 2006). These are the cases referred to in COND 2.3.7 G (1)(a) to (f).

(2) Section 420(2) of the Act supplements these definitions in two ways; these are the cases referred to in COND 2.3.7 G (1)(g) and (h).

(3) Paragraph 1A of Schedule 6 to the Act extends the meaning of 'subsidiary undertaking' for the purposes of the threshold conditions to all the cases in articles 1(1) and (2) of the Seventh Company Law Directive in which one undertaking may be a subsidiary of another undertaking (see COND 2.3.11 G).

2.3.7 (1) For the purposes of the threshold conditions set out in paragraphs 2C and 3B of Schedule 6 to the Act, and except in relation to an incorporated friendly society, an undertaking is a parent undertaking of another undertaking (a subsidiary undertaking) if any of the following apply to it:

(a) it holds a majority of the voting rights in the subsidiary undertaking; or

(b) it is a member of the subsidiary undertaking and has the right to appoint or remove a majority of its board of directors; or

(c) it has the right to exercise a dominant influence over the subsidiary undertaking through:

(i) provisions contained in the subsidiary undertaking's memorandum or articles; or

(ii) a control contract; or

(d) it is a member of the subsidiary undertaking and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in the subsidiary undertaking; or

(e) it has the power to exercise, or actually exercises, dominant influence or control over it, or it and the subsidiary undertaking are managed on a unified basis; or
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(2) [deleted]

2.3.8

(1) In relation to G G (1)(b) and G (d), an undertaking is treated as a member of another undertaking if any of its subsidiary undertakings is a member of that undertaking, or if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(2) [deleted]

(3) [deleted]

2.3.9

The provisions of Schedule 7 to the Companies Act 2006 (Parent and subsidiary undertakings: supplementary provisions) explain and supplement the provisions of section 1162 of the Companies Act 2006 (outlined in G G (1)(a) to G (f)).

2.3.10

Section 420(3) of the Act (Parent and subsidiary undertaking) states that an incorporated friendly society is a parent undertaking of another body corporate (a subsidiary undertaking) if it has the following relationship to it:

(1) it holds a majority of the voting rights in the subsidiary undertaking; or

(2) it is a member of the subsidiary undertaking and has the right to appoint or remove a majority of the subsidiary undertaking's board of directors; or

(3) it is a member of the subsidiary undertaking and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in it.

2.3.11

For the purposes of the threshold conditions set out in paragraphs 2C and 3B of Schedule 6 to the Act, an undertaking is a subsidiary undertaking of another undertaking if:

(1) the other undertaking (its parent) is a member of the undertaking;

(2) a majority of the undertaking's board of directors who have held office during the financial year and during the preceding financial year have been appointed solely as a result of the exercise of the parent's voting rights; and
(3) no one else is the parent undertaking of the undertaking under COND 2.3.7 G (1)(a) or COND 2.3.10 G (1).

2.3.11A Paragraphs 2C(2)(e) and (f) and 3B(2)(e) and (f) of Schedule 6 to the Act reflect legislation initially introduced in the Post-BCCI Directive, which defines close links, in part, by reference to participation. Recital 5 of the Post-BCCI Directive gives further guidance on what is meant by ‘participation’ for the purposes of the directive. It states that the sole fact of having acquired a significant proportion of a company's capital does not constitute participation for the purposes of the directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking.

2.3.12 The guidance in COND 2.3 is not comprehensive and is not a substitute for consulting the relevant legislation, for example the Companies Act 2006, the Friendly Societies Act 1992 and the Seventh Company Law Directive, or obtaining appropriate professional advice.
2.4 Appropriate resources

2.4.1 UK [deleted]

Paragraph 2D of Schedule 6 to the Act

(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A has appropriate resources include-

(a) the nature and scale of the business carried on, or to be carried on, by A;

(b) the risks to the continuity of the services provided by, or to be provided by, A; and

(c) A’s membership of a group and any effect which that membership may have.

(3) Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether A has appropriate financial resources include-

(a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities; and

(b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A’s business.

(3A) Where the only regulated activities that A carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by A,

A has adequate financial resources if A is capable of meeting A’s debts as they fall due.

(4) The matters which are relevant in determining whether A has appropriate non-financial resources include-

(a) the skills and experience of those who manage A’s affairs;

(b) whether A’s non-financial resources are sufficient to enable A to comply with -
COND 2 : The threshold conditions

(i) requirements imposed or likely to be imposed on A by the FCA in the course of the exercise of its functions;

(ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purposes of any provision of Part 14 of this Act.

2.4.1B Paragraph 2D of Schedule 6 to the Act sets out the appropriate resources threshold condition for firms carrying on, or seeking to carry on, regulated activities which do not include a PRA-regulated activity.

2.4.1BA For the purposes of paragraph 2D (3A) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance on the meaning of relevant credit activity is given in §COND 1.1A.5A G.

Paragraph 3C of Schedule 6 to the Act

(1) The non-financial resources of B must be appropriate in relation to the regulated activities that B carries on or seeks to carry on, having regard to the operational objectives of the FCA.

(2) The matters which are relevant in determining whether the condition in sub-paragraph (1) is met include-

(a) the nature and scale of the business carried on, or to be carried on, by B;

(b) the risks to the continuity of the services provided by, or to be provided by, B;

(c) B’s a member of a group and any effect which that membership may have;

(d) the skills and experience of those who manage B’s affairs;

(e) whether B’s non-financial resources are sufficient to enable B to comply with-

(i) requirements imposed or likely to be imposed on B by the FCA in the exercise of its functions; or

(ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

2.4.1D Paragraph 3C of Schedule 6 to the Act sets out the appropriate non-financial resources threshold condition which is relevant to the discharge by the FCA of its functions under the Act in relation to firms carrying on, or seeking to carry on, regulated activities which include a PRA-regulated activity.

2.4.1E The guidance in §COND 2.4 should be read as applying to both paragraph 2D of Schedule 6 of the Act and, as far as relevant to the discharge by the FCA of its functions in respect of firms carrying on, or seeking to carry on, a PRA-regulated activity under the Act, paragraph 3C of Schedule 6 of the Act.
2.4.1F [COND 2] As the threshold condition set out in paragraph 3C of Schedule 6 to the Act does not relate to financial resources, the guidance in COND 2.4 relating to appropriate financial resources only applies to the FCA’s assessment of the threshold condition set out in paragraph 2D of Schedule 6 of the Act.

2.4.1G [COND 2] Firms carrying on, or seeking to carry on, a PRA-regulated activity, should note that the PRA is responsible for assessing their financial resources. Paragraphs 4D and 5D of Schedule 6 to the Act contain the threshold conditions relating to financial resources which are relevant to the discharge by the PRA of its functions under the Act in relation to firms carrying on, or seeking to carry on, a PRA-regulated activity (in addition to additional non-financial resources threshold conditions which are also relevant to the discharge by the PRA of its functions). For the avoidance of doubt, this guidance does not apply to threshold conditions set out in paragraphs 4D and 5D of Schedule 6 to the Act.

2.4.2 (1) [deleted]

(2) In this context, the FCA will interpret the term ‘appropriate’ as meaning sufficient in terms of quantity, quality and availability, and ‘resources’ as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

(2A) Paragraph 1A(2) of Schedule 6 to the Act provides that “non-financial resources” of a firm for the purposes of the threshold conditions include any systems, controls, plans or policies that the firm maintains and the human resources that the firm has available.

(3) High level systems and control requirements are in SYSC. The FCA will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the threshold conditions set out in paragraphs 2D and 3C to Schedule 6 of the Act. For a Solvency II firm, the PRA Rulebook: Solvency II firms: Conditions Governing Business and Solvency II Regulation (EU) 2015/35 of 10 October 2014 also contain systems and control requirements and the FCA will take these into account.

(4) Detailed financial resources requirements are in the relevant section of the Prudential Standards part of the FCA Handbook, including specific provisions for particular types of regulated activity. The FCA will consider whether firms (other than firms carrying on, or seeking to carry on, PRA-regulated activities) are ready, willing and organised to comply with these requirements when assessing if they have appropriate financial resources for the purposes of the threshold condition set out in paragraph 2D of Schedule 6 to the Act.

2.4.3 (1) [deleted]

(2) Although it is the firm that is being assessed, the FCA may take into consideration the impact of other members of the firm’s group on the adequacy of its resources, where relevant to the discharge of the FCA’s functions. For example, in relation to a firm other than a firm carrying on, or seeking to carry on, a PRA-regulated activity, the FCA
may assess the consolidated solvency of the group. The FCA’s approach to the consolidated supervision of such a firm, and its group, is in the relevant part of the Prudential Standards part of the FCA Handbook.

2.4.4

(1) [deleted]

(2) Relevant matters to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition may include but are not limited to:

(a) (in relation to a firm other than a firm carrying on, or seeking to carry on, a PRA-regulated activity), whether there are any indications that the firm may have difficulties if the application is granted, at the time of the grant or in the future, in complying with any of the FCA’s prudential rules (see the relevant part of the Prudential Standards part of the FCA Handbook);

(b) (in relation to a firm other than a firm carrying on, or seeking to carry on, a PRA-regulated activity, whether there are any indications that the firm will not be able to meet its debts as they fall due;

(c) whether there are any implications for the adequacy of the firm’s resources arising from the history of the firm; for example, whether the firm has:
   (i) been adjudged bankrupt; or
   (ii) entered into liquidation; or
   (iii) been the subject of a receiving or administration order; or
   (iv) had a bankruptcy or winding-up petition served on it; or
   (v) had its estate sequestrated; or
   (vi) entered into a deed of arrangement or an individual voluntary agreement (or in Scotland, a trust deed) or other composition in favour of its creditors, or is doing so; or
   (vii) within the last ten years, failed to satisfy a judgment debt under a court order, whether in the United Kingdom or elsewhere;

(d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business (see COND 2.4.6 G) and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times. For a Solvency II firm, the PRA Rulebook: Solvency II firms: Conditions Governing Business and Solvency II Regulation (EU) 2015/35 of 10 October 2014 also contain systems and control requirements on these matters and the FCA will take these into account; and

(e) whether the firm has conducted enquiries into the financial services sector in which it intends to conduct business that are sufficient to satisfy itself that:
   (i) it has access to adequate capital, by reference to the FCA’s prudential requirements, to support the business including any losses which may be expected during its start-up period.
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(in relation to a firm other than a firm carrying on, or seeking to carry on, a PRA-regulated activity); and

(ii) client money, deposits, custody assets and policyholders' rights will not be placed at risk if the business fails; and

(f) whether the resources of the firm are commensurate with the likely risks it will face.

(3) [deleted]

(4) [deleted]

2.4.5 [deleted]

2.4.6 (1) [deleted]

(2) [deleted]

(3) [deleted]
2.5 Suitability

2.5.1 [deleted]

Paragraph 2E to Schedule 6 of the Act

(1) A must be a fit and proper person having regard to all the circumstances, including-

(a) A's connection with any person;

(b) the nature (including the complexity) of any regulated activity that A carries on or seeks to carry on;

(c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;

(e) whether those who manage A's affairs have adequate skills and experience and act with probity;

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and

(g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

Paragraph 3D to Schedule 6 of the Act

(1) B must be a fit and proper person, having regard to the operational objectives of the FCA.

(2) The matters which are relevant in determining whether B satisfies the condition in sub-paragraph (1) include-

(a) B's connection with any person;
(b) the nature (including the complexity) of any regulated activity that B carries on or seeks to carry on;

(c) the need to ensure that B’s affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether B has complied and is complying with requirements imposed by the FCA in the exercise its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where B has so complied or is so complying, the manner of that compliance;

(e) whether those who manage B’s affairs have adequate skills and experience and act with probity; and

(f) the need to minimise the extent to which it is possible for the business carried on by B, or to be carried on by B, to be used for a purpose connected with financial crime.

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2.5.1D Paragraph 3D of Schedule 6 to the Act sets out the suitability threshold condition which is relevant to the discharge by the FCA of its functions under the Act in relation to firms carrying on, or seeking to carry on, regulated activities which include a PRA-regulated activity.

2.5.1E The guidance in §COND 2.5 should be read as applying to both paragraph 2E of Schedule 6 to the Act and, as far as relevant to the discharge by the FCA of its functions under the Act in respect of firms carrying on, or seeking to carry on, a PRA-regulated activity, paragraph 3D of Schedule 6 of the Act.

2.5.1F Firms carrying on, or seeking to carry on, a PRA-regulated activity, should note that the PRA is also responsible for assessing suitability under its own threshold conditions. Paragraphs 4E and 5E of Schedule 6 to the Act set out the suitability threshold conditions which are relevant to the discharge by the PRA of its functions under the Act in relation to firms carrying on, or seeking to carry on, a PRA-regulated activity. For the avoidance of doubt, this guidance does not apply to the threshold conditions set out in paragraphs 4E and 5E of Schedule 6 to the Act.

2.5.2 (1) [deleted]

(2) The FCA will also take into consideration anything that could influence a firm’s continuing ability to satisfy the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 to the Act. Examples include the firm’s position within a UK or international group, information provided by overseas regulators about the firm, and the firm’s plans to seek to vary its Part 4A permission to carry on additional regulated activities once it has been granted that permission.

2.5.3 (1) The emphasis of the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 of the Act is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FCA and/or the PRA, as appropriate, under the approved persons regime (in relation to an FCA-approved person, see
COND 2 : The threshold conditions

Section 2.5 : Suitability

In certain circumstances, however, the FCA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

(2) [deleted]

(3) [deleted]

2.5.4 [G]

(1) [deleted]

(2) Examples of the kind of general considerations to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 to the Act include, but are not limited to, whether the firm:

(a) conducts, or will conduct, its business with integrity and in compliance with proper standards;

(b) has, or will have, a competent and prudent management; and

(c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

(3) [deleted]

(4) [deleted]

2.5.5 [deleted]

2.5.6 [G]

Examples of the kind of particular considerations to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition include, but are not limited to, whether:

(1) the firm has been open and co-operative in all its dealings with the FCA and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC and, in relation to a firm not carrying on, or seeking to carry on, a PRA-regulated activity only, the Prudential Standards part of the FCA Handbook) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on;

(1A) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the FCA is responsible under the regulatory system;

(2) the firm has been convicted, or is connected with a person who has been convicted, of any criminal offence; this must include, where provided for by the Rehabilitation Exceptions Orders to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of
Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, whether or not in the United Kingdom;

(3) the firm has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings by the FCA, the Society of Lloyd’s or by other regulatory authorities (including the FCA’s predecessors), clearing houses or exchanges, professional bodies or government bodies or agencies; the FCA will, however, take both the nature of the firm’s involvement in, and the outcome of, any investigation or enforcement proceedings into account in determining whether it is a relevant matter;

(4) the firm has contravened, or is connected with a person who has contravened, any provisions of the Act or any preceding financial services legislation, the regulatory system or the rules, regulations, statements of principles or codes of practice (for example the Society of Lloyd’s Codes) of other regulatory authorities (including the FCA’s predecessors), clearing houses or exchanges, professional bodies, or government bodies or agencies or relevant industry standards (such as the Non-Investment Products Code); the FCA will, however, take into account both the status of codes of practice or relevant industry standards and the nature of the contravention (for example, whether a firm has flouted or ignored a particular code);

(5) the firm, or a person connected with the firm, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; whether the FCA considers such a refusal relevant will depend on the circumstances;

(6) [deleted]

(7) the firm has put in place procedures which are reasonably designed to:

(a) ensure that it has made its employees aware of, and compliant with, those requirements and standards under the regulatory system that apply to the firm for which the FCA is responsible and the regulated activities for which it has, or will have permission;

(b) ensure that its approved persons and the rest of its conduct rules staff are aware of those requirements and standards under the regulatory system applicable to them, whether or not they are employed by the firm;

(c) determine that its employees are acting in a way compatible with the firm adhering to those requirements and standards; and

(d) determine that its approved persons and the rest of its conduct rules staff, are adhering to those requirements and standards;

(8) the firm or a person connected with the firm has been dismissed from employment or a position of trust, fiduciary relationship or similar or
has ever been asked to resign from employment in such a position; whether the FCA considers a resignation to be relevant will depend on the circumstances, for example if a firm is asked to resign in circumstance that cast doubt over its honesty or integrity;

(9) the firm or a person connected with the firm has ever been disqualified from acting as a director;

(10) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm’s regulated activities;

(11) where appropriate, the governing body of the firm includes non-executive representation, at a level which is appropriate for the control of the regulated activities proposed, for example, as members of an audit committee;

(12) those persons who perform controlled functions under certain arrangements entered into by the firm or its contractors (including appointed representatives or, where applicable, tied agents) act with due skill, care and diligence in carrying out their controlled function (see ■ APER 4.2 (Statement of Principle 2) or ■ COCON 2.1.2R or managing the business for which they are responsible (see ■ APER 4.7 (Statement of Principle 7) or ■ COCON 2.2.2R, as applicable);

(13) the firm, or a person connected with the firm, has been a director, partner or otherwise concerned in the management of a company, partnership or other organisation or business that has gone into insolvency, liquidation or administration while having been connected with that organisation or within one year of such a connection;

(14) the governing body of the firm is organised in a way that enables it to address and control the regulated activities of the firm, including those carried on by managers to whom particular functions have been delegated;

(15) the firm has developed human resources policies and procedures that are reasonably designed to ensure that it employs only individuals who are honest and committed to high standards of integrity in the conduct of their activities;

(16) the firm has taken reasonable care to ensure that robust information and reporting systems have been developed, tested and properly installed;

(17) the firm has in place appropriate systems and controls against financial crime, including, for example, money laundering;

(18) in the case of a firm that carries on insurance distribution activity:

(a) employees or other persons within its management structure who are responsible for the firm’s insurance distribution activities; and

(b) employees or other persons directly involved in the carrying on of the firm’s insurance distribution activities; and

(ba) employees or other persons responsible for the supervision of a relevant employee acting in the capacity as set out in (b),
demonstrate the appropriate knowledge and ability in order to complete their tasks and perform their duties adequately (see competent employee rule and SYSC 28 (Insurance distribution: specific knowledge; ability and good repute requirements)); and

(c) all the persons in the firm's management structure and any staff directly involved in insurance distribution activity are of good repute (see SYSC 28.3 (Good repute));

natural persons working in the firm, responsible for ancillary insurance distribution activities are of good repute (see SYSC 28.3.3R); and

(19) where appropriate, the firm has appointed auditors and actuaries, who have sufficient experience in the areas of business to be conducted.
2.7 Business model

Paragraph 2F to Schedule 6 of the Act

2.7.1 UK (1) A’s business model (that is, A’s strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include-

(a) whether the business model is compatible with A’s affairs being conducted, and continuing to be conducted, in a sound and prudent manner;

(b) the interests of consumers;

(c) the integrity of the UK financial system.

(3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are:

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

2.7.2 G Paragraph 2F of Schedule 6 to the Act sets out the business model threshold condition for firms carrying on, or seeking to carry on, regulated activities which do not include a PRA-regulated activity.

2.7.2A G For the purposes of paragraph 2F(3) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance on the meaning of relevant credit activity is given in COND 1.1A.5A G.

Paragraph 3E to Schedule 6 of the Act

2.7.3 UK B’s business model (that is, B’s strategy for doing business) must be suitable for a person carrying on the regulated activities that B carries on or seeks to carry on, having regard to the FCA’s operational objectives.

2.7.4 G Paragraph 3E of Schedule 6 to the Act sets out the business model threshold condition which is relevant to the discharge by the FCA of its functions under the Act in relation to firms carrying on, or seeking to carry on, regulated activities which include a PRA-regulated activity.
The guidance in COND 2 should be read as applying to both paragraph 2F of Schedule 6 to the Act and, as far as relevant to the discharge by the FCA of its functions under the Act in respect of firms carrying on, or seeking to carry on, a PRA-regulated activity, paragraph 3E of Schedule 6 of the Act.

Firms carrying on, or seeking to carry on, a PRA-regulated activity, should note that the PRA states in its Approach Documents that analysis of such firms’ business models will form an important part of the PRA’s supervisory approach. For the avoidance of doubt, this guidance does not apply to the PRA’s own assessment of the firms’ business models.

In assessing whether the threshold conditions set out in paragraphs 2F and 3E of Schedule 6 to the Act are satisfied, the FCA may consider all matters that might affect the design and execution of a firm’s business model, taking into account the nature, scale and complexity of a firm’s business.

In deciding how they will satisfy and continue to satisfy the threshold conditions set out in paragraphs 2F and 3E of Schedule 6 to the Act, firms should consider matters including (but not limited to) the following:

1. the assumptions underlying the firm’s business model and justification for it;
2. the rationale for the business the firm proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business;
3. the needs of and risks to consumers;
4. the expectations of stakeholders, for example, shareholders and regulators;
5. the products and services being offered and product strategy;
6. the governance and controls of the firm and of any member of its group (if appropriate);
7. the growth strategy and any risks arising from it;
8. any diversification strategies; and
9. the impact of the external macroeconomic and business environment.

Firms should consider the manner in which they intend to bring their business model into operation. This plan could, for example, include matters such as procurement, outsourcing, and recruitment.

Firms should consider scenarios which may negatively impact on the firm’s business model with a view to ensuring the sustainability of the firm and, further, to consider the vulnerability of the business model to specific events and the risks and consequences that might arise. Where appropriate, this might include reverse stress-testing (see SYSC 20 ‘Reverse stress testing’). A firm should put in place a credible plan to minimise the risks that it identifies.
from, or in relation to, its business model and a contingency plan for dealing with risks that have crystallised.

2.7.11 Firms should ensure that any adjustments to its business model:

1) are approved at an appropriate level in the business;

2) are considered in the light of any potential risks, impacts and consequences of the proposed changes; and

3) appropriately take into account the needs of and risks to clients and relevant consumers.

2.7.12 The FCA’s assessment of a firm’s satisfaction of the threshold conditions set out in paragraphs 2F and 3E of Schedule 6 to the Act will not necessarily be limited to a firm’s regulated activities if the FCA believes the firm’s other business activities, if any, may impact on a firm’s regulated activities.
Chapter 3

Banking Act 2009 [deleted]
Threshold Conditions

COND TP 1
Transitional Provisions

There are no transitional provisions in COND.
GEN contains transitional provisions that apply throughout the Handbook.
Threshold Conditions

Schedule 1
Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in COND.
Threshold Conditions

Schedule 2
Notification requirements

Sch 2.1 G

There are no notification rules in COND but guidance is given in COND 1.3.3 G on disclosure to the FCA in connection with applications.
Threshold Conditions

Schedule 3
Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in COND.
Threshold Conditions

Schedule 4
Powers exercised

Sch 4.1 G

The following power in the Act has been exercised by the FSA to give the guidance in COND:

Section 157(1) (Guidance).
Threshold Conditions

Schedule 5
Rights of action for damages

Sch 5.1 G

There are no rules in COND.
Threshold Conditions

Schedule 6
Rules that can be waived

Sch 6.1 G
There are no rules in COND.