

Threshold Conditions

Chapter 1

Introduction

1.1A Application

To which threshold conditions does COND apply?

1.1A.1

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- (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)(i) 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*.

1.1A.2

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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.

1.1A.3

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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.

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

- 1.1A.5 **G** *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 **G**
- (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

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(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

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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

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COND applies in relation to all of the *regulated activities* wherever they are carried on.

1.2 Purpose

- 1.2.1** **G** *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** **G**
- (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) [deleted]

Exercise of the FCA's own-initiative powers

- 1.2.3** **G**
- (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) [deleted]

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(1) [deleted]

(2) [deleted]

Approval of acquisitions or increases of control

1.2.5

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(1) Under section 185 of the Act (Assessment: general) the FCA may, subject to consultation with the PRA where the conditions in section 187B 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** **G** 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** **G**
- (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** **G** 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*.

- 1.3.3A** **G** 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.
- 1.3.3B** **G** 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.
- 1.3.3C** **G** 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*.
- 1.3.3D** **G** In making its assessment, the *FCA* will consider the individual circumstances of each *firm* on a case-by-case basis.
- 1.3.3E** **G** 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

- 1.3.4** **G**
- (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.
- 1.3.5** **UK** **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).