

Chapter 2

The threshold conditions

2.5 Suitability

2.5.1 UK [deleted]

Paragraph 2E to Schedule 6 of the Act

2.5.1A UK (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.

2.5.1B G Paragraph 2E of Schedule 6 to the Act sets out the suitability *threshold condition* for firms carrying on, or seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity.

Paragraph 3D to Schedule 6 of the Act

2.5.1C UK (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.

2.5.1D **G** 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 **G** 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 **G** *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 paragraph 4E and 5E of Schedule 6 to the *Act*.

2.5.2 **G**

- (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 **G** (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

■ SUP 10A (FCA Approved Persons in Appointed Representatives),
 ■ SUP 10C (FCA senior managers regime for approved persons in SMCR firms) and *FIT*). 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]

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(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]

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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));
 - (d) 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.

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