

## Chapter 4

# Guidance on regulated activities connected with mortgages



4.14 Mortgage activities carried on by professional firms

Introduction

- 4.14.1

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*Professional firms* (broadly, firms of solicitors, accountants and actuaries) may carry on *regulated mortgage activities* in the course of their usual professional activities. The *regulated activities of advising on, arranging (bringing about), making arrangements with a view to and administering regulated mortgage contracts* are those most likely to be relevant.
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In the *FCA's* view, the following exclusions are likely, in many cases, to exclude the normal activities of *professional firms* from amounting to *regulated mortgage activities*:

(1)

article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business), which applies in relation to the advising and arranging activities (see ■ PERG 4.10.1 G);

(2)

article 66 of the *Regulated Activities Order* (Trustees, nominees and personal representatives) which applies in relation to each of the *regulated mortgage activities* (see ■ PERG 4.10.5 G); and

(3)

article 63 of the *Regulated Activities Order* (Administration pursuant to agreement with authorised person) which applies in relation to *administering a regulated mortgage contract* (see ■ PERG 4.8.7 G); in the *FCA's* view, this would exclude steps taken by a solicitor to recover payments due under a *regulated mortgage contract* if his instructions come from an *authorised person* with *permission* to administer a *regulated mortgage contract*.
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■ PERG 4.10A (Activities within scope of the Mortgage Credit Directive) explains that some of these exclusions do not apply to activities which fall within the scope of the *MCD*.
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In addition, a *professional firm* may, in certain circumstances, be able to use the *Part XX exemption* to avoid any need for *authorisation*. ■ PROF 2 (Status of exempt professional firm) contains general *guidance* on the *Part XX exemption*. In particular, ■ PROF 2.1.9 G explains that the Treasury have specified certain *regulated activities* to which the *Part XX exemption* cannot apply in the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities Order 2001 ("the Non-Exempt Activities Order").

■ PERG 4.14.4 G to ■ PERG 4.14.6 G explain which of the *regulated activities* relating to *regulated mortgage contracts* have been so specified.

**Part XX exemption: arranging regulated mortgage contracts**

4.14.4 G *Arranging (bringing about) a regulated mortgage contract and making arrangements with a view to a regulated mortgage contract* have not been specified in the *Non-Exempt Activities Order*. Accordingly, a *professional firm* may carry on these *regulated activities* without *authorisation*, provided the other conditions of the *Part XX exemption* are complied with.

**Part XX exemption: advising on regulated mortgage contracts**

4.14.5 G *Advising on regulated mortgage contracts* has been specified in the *Non-Exempt Activities Order*. However, a *professional firm* is prevented from using the *Part XX exemption* to advise on *regulated mortgage contracts* only if the advice it gives consists of a recommendation. This will be the case if the recommendation is made to an individual to enter into a *regulated mortgage contract* with a lender who would, in entering into the contract, carry on the *regulated activity* of *entering into a regulated mortgage contract*, irrespective of whether the lender is an *authorised* or *exempt person* or would carry on the activity by way of business. However, a *professional firm* is allowed to give advice that involves a recommendation of this kind provided the advice endorses a corresponding recommendation given to the borrower by an *authorised person* who has *permission* to *advise on regulated mortgage contracts* or an *exempt person* whose exemption covers that activity.

**Part XX exemption: entering into and administering a regulated mortgage contract**

4.14.6 G *Entering into a regulated mortgage contract and administering a regulated mortgage contract* have both been specified in the *Non-Exempt Activities Order*. As an exception, a *professional firm* is allowed under the *Part XX exemption* to carry on these *regulated activities* if the firm is acting as a trustee or personal representative. But this is provided that the borrower is a beneficiary under the trust, will or intestacy.