Code of Conduct (COCON)

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Chapter 1

Application and purpose

1.1 Application

1.1.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of certain *persons* working in *firms*.

To whom does it apply?

1.1.1A R *COCON* applies to the *persons* set out in the table in COCON 1.1.2R.

1.1.2 R Table: To whom does COCON apply?

Persons to whom COCON applies	Comments
(1) An *SMF manager*.	
(2)An *employee* ("P") of an *SMCR firm* who:	
(a)performs the function of an *SMF manager*;	
(b)is not an *approved person* to perform the function in question; and	
(c)is required to be an *approved person* at the time P performs that function.	
(3) An *employee* of an *SMCR firm* who would be performing an *FCA-designated senior management function* but for SUP 10C.3.13R (The 12-week rule).	
(4) A *certification employee* of an *SMCR firm*.	This applies even if the *certification employee* has not been notified that *COCON* applies to them or notified of the *rules* that apply to them.
(5) An *employee* of an *SMCR firm* who would be performing an *FCA certification function* but for SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).	
(6) Any *employee* of an *SMCR firm* not coming within another row of this table, except one listed in column (2) of this row (6) of this table.	(A) This row (6) does not apply to an *employee* of an *SMCR firm* who only performs functions falling within the scope of the following roles: (a)receptionists; (b)switchboard operators;

Persons to whom COCON applies	Comments
	(c)post room staff;
	(d)reprographics/print room staff;
	(e)property/facilities management;
	(f)events management;
	(g)security guards;
	(h)invoice processing;
	(i)audio visual technicians;
	(j)vending machine staff;
	(k)medical staff;
	(l)archive records management;
	(m)drivers;
	(n)corporate social responsibility staff;
	(o) taking part in following activities of the *firm*:
	(i) the *firm's* activities as a data controller; or
	(ii) the *firm's* activities of data processing;
	as defined in the *data protection legislation*, but subject to Note (1) of this table;*data protection legislation*;
	(p)cleaners;
	(q)catering staff;
	(r)personal assistant or secretary;
	(s)information technology support (ie, helpdesk); and
	(t)human resources administrators / processors.
(7) [deleted]	
(8)A *board director* of: a *UK SMCR firm*.	
Note (1): A function is only within paragraph (o) of column (2) (Comments) of row (6) of this table if the function does not require the *employee* concerned to exercise a significant amount of discretion or judgment.	

1.1.2A R For *Swiss general insurers*, references in this sourcebook to parts of the *PRA Rulebook* for 'Solvency II firms' are to be read as references to the corresponding parts of the *PRA Rulebook* applying to *large non-directive insurers*.

1.1.3 R *Rules* 1 to 6 in ■ COCON 2.1 apply to all *conduct rules staff*.

1.1.4 R

(1) *Rules* SC1 to SC4 in ■ COCON 2.2 apply to all *senior conduct rules staff members* (subject to (2)).

(2) SC1 to SC3 in ■ COCON 2.2 do not apply to a *senior conduct rules staff member* within paragraph (d) of the definition of *senior conduct rules staff member* (P) unless P also falls into paragraph (a) or (b) of that definition.

1.1.5 G

(1) The *guidance* in ■ COCON 2.3 applies to *SMCR firms*.

(2) [deleted]

(3) ■ SYSC 27.6.3R provides that a function performed by a *non-executive director* of a *firm* acting as such is not an *FCA certification function* for that *firm*.

1.1.5A R

The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule* 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers):

(1) unless the corresponding *COCON firm activities* of the *firm* are within the scope of ■ PRIN 3.1 (Who?) so far as it applies to *Principle* 12; and

(2) except to the extent that *Principle* 12 applies to that *firm* under ■ PRIN 3.1.

To what conduct does it apply?

1.1.5B R

(1) The restrictions of the scope of *COCON* in ■ COCON 1.1.7AR to ■ COCON 1.1.7ER (when they apply) are in addition to those in ■ COCON 1.1.6R to ■ COCON 1.1.7R.

(2) The restrictions of the scope of *COCON* in ■ COCON 1.1.7AR to ■ COCON 1.1.7ER (when they apply) are cumulative.

1.1.5C G

(1) The effect of ■ COCON 1.1.5BR(1) is that conduct that is within the scope of ■ COCON 1.1.7AR to ■ COCON 1.1.7ER but outside the scope of ■ COCON 1.1.6R to ■ COCON 1.1.7R is outside the scope of *COCON* and vice versa.

(2) The effect of ■ COCON 1.1.5BR(2) is that conduct of a member of the *conduct rules staff* of a *firm*:

(a) is outside the scope of *COCON* even if it is excluded by only one of the *rules* in ■ COCON 1.1.7AR to ■ COCON 1.1.7ER; and

(b) is outside the scope of:

(i) *Rule* 4 in ■ COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) even if the only *rule* excluding it is ■ COCON 1.1.7ER; and

(ii) *Rule* 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers) even if the only *rule* excluding it is ■ COCON 1.1.7CR.

1.1.6 R For a *person* (P) who is an *approved person*, *COCON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by the *firm* (Firm A) on whose application approval was given to P.

[**Note:** sections 64A(4) and (5)(a) of the *Act* (Rules of conduct)]

1.1.6A R For a *person* (P) who is a *board director* of a *firm* (Firm A) but is not an *approved person* of Firm A, *COCON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by Firm A.

[**Note:** sections 64A(4) and (5)(ab) of the *Act* (Rules of conduct)]

1.1.7 R

(1) For a *person* (P) subject to *COCON* who is not an *approved person*, *COCON* applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not *regulated activities*) by P's *employer* (Firm A).

(2) This *rule* does not apply where ■ COCON 1.1.6A applies.

[**Note:** sections 64A(4) and (5)(b) of the *Act* (Rules of conduct)]

1.1.7-A R

(1) The term "*COCON firm activities*" means (in relation to conduct of P in relation to Firm A) the corresponding activities of Firm A as referred to in ■ COCON 1.1.6R to ■ COCON 1.1.7R (To what conduct does it apply?).

(2) A *person* is a member of the *conduct rules staff* of Firm A if they meet the description of P in relation to that *firm* in ■ COCON 1.1.6R to ■ COCON 1.1.7R.

(3) The terms "P" and "Firm A" have the same meaning as they do in ■ COCON 1.1.6R to ■ COCON 1.1.7R.

1.1.7A R

(1) Where Firm A in ■ COCON 1.1.6R to ■ COCON 1.1.7R is an *SMCR firm* other than an *SMCR banking firm*, the application of *COCON* is further restricted by this *rule*.

(2) *COCON* only applies to conduct that forms part of, or is for the purpose of, any of the following:

(a) the *SMCR financial activities* of Firm A; or

(b) any activities of Firm A that have, or might reasonably be regarded as likely to have, a negative effect on:

(i) the integrity of the *UK financial system*; or

(ii) the ability of Firm A to meet the "fit and proper" test in threshold condition 2E and 3D (Suitability); or

(iii) the ability of Firm A to meet the applicable requirements and standards under the *regulatory system* relating to Firm A's financial resources.

(3) This *rule* does not apply where ■ COCON 1.1.7BR applies.

(4) This *rule* does not apply to *Rule* 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers).

1.1.7B R

(1) Where a member (M) of the *conduct rules staff* of Firm A as described in ■ COCON 1.1.6R to ■ COCON 1.1.7R meets the condition in (c) and Firm A meets the conditions in (a) and (b), the application of *COCON* to the conduct of M in relation to Firm A is further restricted by this *rule*:

(a) the *firm* is a *pure benchmark SMCR firm*;

(b) the *firm* is an *Annex II benchmark administrator* (whether or not it also administers other benchmarks); and

(c) M does not perform any functions described in ■ COCON 1.1.6R to ■ COCON 1.1.7R in relation to Firm A with respect to any *benchmark* that the *firm* administers except a *benchmark* that is subject to Annex II to the *benchmarks regulation.*

(2) (a) The only conduct to which the following *rules* apply is the conduct described in (2)(b):

(i) the *rules* in ■ COCON 2.1 (Individual conduct rules); and

(ii) *rule* SC4 in ■ COCON 2.2 (You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice).

(b) The *rules* in (2)(a) apply only to any of the following:

(i) the performance of a function by M in relation to the carrying on of a *regulated activity* by Firm A;

(ii) (if M is an *SMF manager*) the performance by M of a *controlled function* in relation to Firm A (whether or not approval has been sought and granted).

(3) *Rules* SC1 to SC3 in ■ COCON 2.2 (Senior manager conduct rules) apply only to conduct:

(a) that comes within (2)(b); or

(b) that comes within ■ COCON 1.1.7AR, but this paragraph (3)(b) only applies in a *prudential context*.

1.1.7C R

The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule* 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers) unless the corresponding *COCON firm activities* of the *firm* are within the scope of ■ PRIN 3.2 (What?) so far as it applies to *Principle* 12.

1.1.7D G

The effect of ■ COCON 1.1.7C is that a *person's* conduct is not within the scope of *Rule* 6 in ■ COCON 2.1 if the related activities of the *firm* fall outside the scope of *Principle* 12. If *Principle* 12 applies, *Rule* 6 in ■ COCON 2.1 only applies if the conduct is also within the scope of the other relevant *COCON* application *rules* (although one of the *COCON* application rules (■ COCON 1.1.7AR) does not apply to *Rule* 6).

1.1.7E R To the extent that *Rule* 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers) applies to the conduct of a *person*, *Rule* 4 in ■ COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) does not apply to that conduct of that *person*.

1.1.8 G

(1) More than one of ■ COCON 1.1.6R to ■ COCON 1.1.7ER may apply to the same individual performing several roles.

(2) For example, say that an individual (A) is an *approved person* for *firm* X and is employed by *firm* Y in a role that does not involve a *controlled function* or being a director.

(3) ■ COCON 1.1.6R applies to A's role with *firm* X and ■ COCON 1.1.7R applies to A's role with *firm* Y.

1.1.8A R

(1) This *rule* applies to a *person* (P):

(a) who is an *approved person* approved to perform a *controlled function* under ■ SUP 10A (FCA Approved Persons in Appointed Representatives);

(b) for whom P's *authorised approved person employer* is an *SMCR firm* (F); and

(c) to whom *COCON* also applies in P's capacity as a member of F's *conduct rules staff*.

(2) *COCON* does not apply to conduct of P to the extent that:

(a) that conduct relates to the performance by P of functions:

(i) in (1)(a); or

(ii) in relation to the carrying on of a *regulated activity* by the *appointed representative* concerned; and

(b) *APER* applies to that conduct.

Where does it apply?

1.1.8B R The restrictions of the scope of *COCON* in ■ COCON 1.1.9R to ■ COCON 1.1.10R on the one hand and ■ COCON 1.1.11C on the other are cumulative.

1.1.9 R

(1) *COCON* applies to the conduct of *conduct rules staff* set out in (2) wherever it is performed.

(2) This *rule* applies to:

(a) a *senior conduct rules staff member*; and

(b) a *certification employee* performing *FCA certification function* (6) (material risk takers) in the table in ■ SYSC 27.7.3R for a *UK SMCR firm*.

1.1.9A G

(1) This paragraph deals with how ■ COCON 1.1.9R applies to a *certification employee* (P) who performs the material risk taker *FCA certification function* and another *FCA certification function* for the same *UK SMCR firm*.

(2) If P's conduct relates to both *FCA certification functions* (because for example those two functions cover the same activities) *COCON* applies without territorial limitation to P's conduct.

(3) If part of P's conduct relates to the material risk taker *FCA certification function* and the rest of P's conduct relates to the other *FCA certification function*, *COCON* only applies without territorial limitation to P's conduct in relation to the material risk taker *FCA certification function*.

1.1.10 R

(1) This *rule* applies to members of a *firm's conduct rules staff* apart from *conduct rules staff* in ■ COCON 1.1.9R.

(2) Subject to (3), *COCON* only applies to the conduct of *persons* to whom this *rule* applies (as set out in (1)) if that conduct:

(a) is performed from an establishment maintained in the *United Kingdom* by the *SMCR firm*; or

(b) involves dealing with a *client* of the *firm* in the *United Kingdom* from an establishment overseas.

(3) Paragraph (2)(b) only applies to a *UK SMCR firm*.

1.1.11 G

The *FCA* interprets the phrase 'dealing with' in ■ COCON 1.1.10R as including having contact with *customers* and extending beyond 'dealing' as used in the phrase 'dealing in investments'. 'Dealing in' is used in Schedule 2 to the *Act* to describe, in general terms, the *regulated activities* which are specified in Part II of the *Regulated Activities Order*.

1.1.11A G

The *FCA* interprets the phrase 'a *client* of the *firm* in the *United Kingdom*' in ■ COCON 1.1.10R as referring to:

(1) for a *client* which is a body corporate, its office or *branch* in the *United Kingdom*; or

(2) for a *client* who is an individual, a *client* who is in the *United Kingdom* at the time of the dealing.

1.1.11B G

(1) The *Regulated Activities Order* has an effect on the territorial scope of *COCON*.

(2) This is because whether or not conduct involves *regulated activities* may affect how and whether *COCON* applies. Therefore where overseas activities are excluded from being *regulated activities* by the *Regulated Activities Order*, that will have an effect on *COCON*.

(3) An example of (1) is the territorial restriction relating to *regulated claims management activities*.

(4) As explained in ■ PERG 2.4A (Link between regulated claims management activities and Great Britain), a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.

(5) The result is that a claims management activity specified in the *Regulated Activities Order* carried on outside *Great Britain* is an *unregulated activity* for the purposes of *COCON*.

(6) This restriction:

(a) applies to *conduct rules staff* coming within ■ COCON 1.1.9R as well as to other *conduct rules staff*; and

(b) applies in addition to the restriction in ■ COCON 1.1.10R.

1.1.11C R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule* 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers) unless the corresponding *COCON firm activities* of the *firm* are within the scope of ■ PRIN 3.3 (Where?) so far as it applies to *Principle* 12.

1.1.11D G The effect of ■ COCON 1.1.8BR and ■ COCON 1.1.11CR is that conduct of a member of a *firm's conduct rules staff* is only within the territorial scope of *Rule* 6 in ■ COCON 2.1 if it is within the scope of ■ COCON 1.1.9R to ■ COCON 1.1.10R and the corresponding activity of their *firm* is within the territorial scope of *Principle* 12 as set out in■ PRIN 3.3.

1.1.12 R A *person* will not be subject to *COCON* to the extent that this would be contrary to the requirements of an *EU* measure passed or made before *IP completion day*, to the extent that those requirements continue to have effect after *IP completion day* under the *EUWA*.

Purpose

1.1.13 G The purpose of this chapter is to set out *rules* for *conduct rules staff* and to provide *guidance* about those *rules* to *firms* whose staff are subject to them.

1.1.14 G ■ COCON 1 Annex 1 has *guidance* on the role and responsibilities of *non-executive directors* to whom *COCON* applies.

1.2 Investments

1.2.1 G *COCON* refers in a number of places to '*investments*'. The *Glossary* meaning of *investment* is wide and is not just limited to the ordinary dictionary meaning.

1.2.2 G Therefore, for example, an *approved person* performing *controlled functions* in a *Solvency II firm* or a *small non-directive insurer* should note that that term includes rights under a contract of insurance, meaning they should also take into account those parts of *COCON* which provide *guidance* on individual conduct rules that refer to '*investments*'.

1.2.3 G Where *guidance* refers to risks associated with *investments*, that will include risks applicable to rights under a contract of insurance including for example the risk of inadequate cover.

Guidance on the role and responsibilities of non-executive directors of SMCR firms

COCON 1	**Introduction**	
COCON 1.1	This annex applies to *non-executive directors* (NEDs) of an *SMCR firm*.	
COCON 1.2	This annex covers the role of a NED in performing the roles in (1) to (4), below:	
	(1)	the role of chair of the board of *directors*;
	(2)	the role of chair of the nomination committee;
	(3)	the role of chair of any other committee (irrespective of whether performing that role is itself a *designated senior management function*);
	(4)	the general NED role.
COCON 1.3	The *FCA's* view of the role of a NED is consistent with the duties of directors included in *UK* company law and the description of the role of a NED in the *UK Corporate Governance Code*.	
COCON 2	**The general role of a NED**	
COCON 2.1	The role of a NED performing the general NED role is to:	
	(1)	provide effective oversight and challenge; and
	(2)	help develop proposals on strategy.
COCON 2.2	To deliver this, their responsibilities include:	
	(1)	attending and contributing to board and committee meetings and discussions;
	(2)	taking part in collective board and committee decisions, including voting and providing input and challenge; and
	(3)	ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions.
COCON 2.3	Other key roles of a NED include:	
	(1)	scrutinising the performance of management in meeting agreed goals and objectives;
	(2)	monitoring the reporting of performance;
	(3)	satisfying themselves on the integrity of financial information;
	(4)	satisfying themselves that financial controls and systems of risk management are robust and defensible;
	(5)	scrutinising the design and implementation of the remuneration policy;
	(6)	providing objective views on resources, appointments and standards of conduct; and
	(7)	being involved in succession planning.

COCON 3	**Role of a NED as chair of the board or a committee**	
COCON 3.1	Subject to any specific governance arrangements, *rules* or requirements applicable to the board or particular committees, a NED's responsibility as chair of the board or a committee includes:	
	(1)	ensuring that the board or committee meets with sufficient frequency;
	(2)	fostering an open, inclusive discussion which challenges executives, where appropriate;
	(3)	ensuring that the board or committee devotes sufficient time and attention to the matters within its remit;
	(4)	helping to ensure that the board or committee and its members have the information necessary to its and their tasks;
	(5)	reporting to the main board on the committee's activities;
	(6)	facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; and
	(7)	in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.
COCON 3.2	The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with:	
	(1)	the requirements in SYSC 4.3A about the nomination committee (if that part of *SYSC* applies to the *firm*); and
	(2)	any specific and relevant requirements relating to the committee or to the matters within the committee's responsibilities.
COCON 3.3	Paragraph 3.2 of this annex is still relevant to a *firm*:	
	(1)	that is not required by the *FCA Handbook* to have a nomination committee; or
	(2)	for which being the chair of such a committee is not a *controlled function*;
	if it has such a committee.	
COCON 4	**General approach to the role of a NED**	
COCON 4.1	The *FCA* recognises that NEDs individually do not manage a *firm's* business in the same way as executive *directors*. Therefore, the responsibilities for which NEDs are accountable are likely to be more limited.	
COCON 4.2	A NED is neither required nor expected to assume executive responsibilities.	
COCON 4.3	Although NEDs who are subject to the senior management regime for *SMF managers* have individual duties under that regime, the *FCA* views the regime and its application as consistent with the principle of collective decision-making.	
COCON 4.4	The standard of care, skill and diligence that the *FCA* would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:	
	(1)	the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the NED in relation to the firm, taking into account the standards in the *Handbook* (especially *COCON* and *DEPP*); and
	(2)	the general knowledge, skill and experience that the NED has.

Chapter 2

Individual conduct rules

2

2.1 Individual conduct rules

2.1.1 R *Rule* 1: You must act with integrity.

2.1.2 R *Rule* 2: You must act with due skill, care and diligence.

2.1.3 R *Rule* 3: You must be open and cooperative with the *FCA*, the *PRA* and other regulators.

2.1.4 R *Rule* 4: You must pay due regard to the interests of *customers* and treat them fairly.

2.1.5 R *Rule* 5: You must observe proper standards of market conduct.

2.1.6 R *Rule* 6: You must act to deliver good outcomes for *retail customers*.

[**Note**: See COCON 2.4 for what this means]

2.2 Senior manager conduct rules

2.2.1 R SC1: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible is controlled effectively.

2.2.2 R SC2: You must take reasonable steps to ensure that the business of the *firm* for which you are responsible complies with the relevant requirements and standards of the *regulatory system*.

2.2.3 R SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

2.2.4 R SC4: You must disclose appropriately any information of which the *FCA* or *PRA* would reasonably expect notice.

2.3 Firms: training and breaches

2.3.1 G Under section 64B of the *Act*, an *SMCR firm* must:

(1) ensure that all *persons* subject to the *rules* in *COCON* are notified of the *rules* that apply to them; and

() take all reasonable steps to ensure that those *persons* understand how the *rules* in *COCON* apply to them.

2.3.2 G

(1) The steps that an *SMCR firm* must take to ensure that its *conduct rules staff* understand how the *rules* in *COCON* apply to them include the provision of suitable training.

(2) Suitable training should always ensure that those who are subject to the *rules* in *COCON* have an awareness and broad understanding of all of the *rules* in *COCON*, and that they also have a deeper understanding of the practical application of the specific *rules* which are relevant to their work.

(3) For example:

(a) for individuals who trade in the markets, *rule* 5 in COCON 2.1.5R may apply in various circumstances arising in the individual's day-to-day activities and additional training may be appropriate to ensure that the individual knows how that *rule* applies to those activities in those various circumstances; or

(b) for individuals who deal directly with *customers*, *rule* 4 in COCON 2.1.4R may apply in various circumstances which makes additional training appropriate for such individuals.

2.3.3 G There are *rules* and *guidance* in SUP 15.3 (General notification requirements) and SUP 15.11 (Notification of *COCON* breaches and disciplinary action) that deal with reporting by an *SMCR firm* of *COCON* breaches to the *FCA*.

2.4 The Consumer Duty

Application

2.4.1 R This section applies to *Rule* 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers).

2.4.2 R In this section, the term "you" means a member of a *firm's conduct rules staff*.

Meaning of retail customer

2.4.3 R
(1) This *rule* describes how the definition of *retail customer* applies for the purposes of *Rule* 6.

(2) A *retail customer* means, in relation to a member of the *conduct rules staff* of a *firm*, a *retail customer* of that *firm* for the purposes of *PRIN*.

2.4.4 G A *person* may be a *retail customer* of a *firm* for the purposes of *Rule* 6 even though that *person* is not a direct client of that *firm* and there is no direct relationship between them. This is in particular the effect of paragraphs (2)(f) and (2)(g) of the definition of *retail customer*.

Obligations: Introduction

2.4.5 R
(1) ■ COCON 2.4.6R to ■ COCON 2.4.8R exhaust what is required by *Rule* 6.

(2) Any reference in the *Handbook* to the obligations on a member of a *firm's conduct rules staff* under *Rule* 6 is a reference to the requirements imposed by ■ COCON 2.4.6R to ■ COCON 2.4.8R.

Obligations: Rules

2.4.6 R
(1) You must act in good faith towards *retail customers*.

(2) Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of *retail customers*.

2.4.7 R You must avoid causing foreseeable harm to *retail customers*.

2.4.8 R You must enable and support *retail customers* to pursue their financial objectives.

Reasonable application of Individual Conduct Rule 6

2.4.9 R The obligations in *Rule* 6 must be interpreted in accordance with the standard that could reasonably be expected of a prudent *person* subject to *COCON* (as set out in ■ COCON 1 (Application)):

(1) carrying on the same activity in relation to the same *product*; and

(2) taking appropriate account of the needs and characteristics of *retail customers* based on the needs and characteristics of *retail customers* in the relevant target market or of individual *retail customers* as the context requires.

References to Principle 12

2.4.10 R Any reference in *COCON* to *Principle* 12 must be read in accordance with ■ PRIN 2A.1.1R and ■ PRIN 2A.1.2R (Application) and ■ PRIN 2A.2.26R (Interaction between Principle 12 and cross-cutting obligations).

Chapter 3

General factors for assessing compliance

3.1 General factors for assessing compliance

3.1.1 G Where descriptions of conduct are provided in this chapter which exemplify breaches of the *rules* in *COCON*, they are not intended to be an exhaustive list of the kind of conduct that may contravene the relevant *rule*.

3.1.2 G In assessing compliance with, or a breach of, a *rule* in *COCON*, the *FCA* will have regard to the context in which a course of conduct was undertaken, including:

(1) the precise circumstances of the individual case;

(2) the characteristics of the particular function performed by the individual in question; and

(3) the behaviour expected in that function.

3.1.3 G Without prejudice to section 66A of the *Act*, a *person* will only be in breach of any of the *rules* in *COCON* where they are personally culpable. Personal culpability arises where:

(1) a *person's* conduct was deliberate; or

(2) the *person's* standard of conduct was below that which would be reasonable in all the circumstances.

3.1.4 G In determining whether or not the particular conduct of a *person* complies with the *rules* in *COCON*, factors the *FCA* would expect to take into account include:

(1) whether that conduct relates to activities that are subject to other provisions of the *Handbook*;

(2) whether that conduct is consistent with the requirements and standards of the *regulatory system* relevant to the *person's firm*.

3.1.5 G In determining whether or not the conduct of a *senior conduct rules staff member* complies with *rules* SC1 to SC4 in *COCON*, factors the *FCA* would expect to take into account include:

(1) whether they exercised reasonable care when considering the information available to them;

(2) whether they reached a reasonable conclusion upon which to act;

(3) the nature, scale and complexity of the *firm's* business;

(4) their role and responsibility as determined by reference to the relevant *statement of responsibility*;

(5) the knowledge they had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities.

3.1.6 G In assessing whether a *senior conduct rules staff member* may have breached a *rule* in *COCON*, the nature, scale and complexity of the business and the role and responsibility of the individual undertaking the activity in question within the *firm* will be relevant in assessing whether that *person's* conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be.

3.1.7 G *UK domestic firms* with a *premium listing* are subject to the *UK Corporate Governance Code*, whose internal control Provisions are explained in the publication entitled 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)' issued by the Financial Reporting Council. Therefore, *firms* in this category will be subject to that code, as well as to the *rules* in *COCON*. In forming an opinion as to whether a *senior conduct rules staff member* has complied with the *rules* in *COCON*, the *FCA* will give due credit if they followed corresponding Provisions in the *UK Corporate Governance Code* and related guidance.

Chapter 4

Specific guidance on conduct rules

4.1 Specific guidance on individual conduct rules

Rule 1: You must act with integrity

4.1.1 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* 1.

(1) Misleading (or attempting to mislead) by act or omission:

(a) a *client*; or

(b) the *firm* for whom the *person* works (or its auditors); or

(c) the *FCA* or;

(d) the *PRA*.

(2) Falsifying *documents*.

(3) Misleading a *client* about:

(a) the risks of an *investment*;

(b) the charges or surrender penalties of products;

(c) the likely performance of products by providing inappropriate projections of future returns.

(4) Misleading a *client* by informing the *client* that products, require only a single payment when that is not the case.

(5) Mismarking the value of *investments* or trading positions.

(6) Procuring the unjustified alteration of prices on illiquid or *off-exchange* contracts, or both.

(7) Misleading others within the *firm* about the credit-worthiness of a borrower.

(8) Providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience.

(9) Providing false or inaccurate information to:

(a) the *firm* (or to the *firm's* auditors); or

(b) the *FCA* or the *PRA*.

(10) Destroying, or causing the destruction of, *documents* (including falsified documentation), or tapes or their contents, relevant to

misleading (or attempting to mislead) a *client*, the *firm* for whom the *person* works, or the *FCA* or the *PRA*.

(11) Failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.

(12) Misleading others in the *firm* about the nature of risks being accepted.

(13) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *person* knows that they are unable to justify its suitability for that *customer*.

(14) Failing to inform, without reasonable cause:

(a) a *customer*; or

(b) the *firm* for whom the *person* works (or its auditors); or

(c) the *FCA*; or

(d) the *PRA*.

of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, including, but not limited to, deliberately failing to:

(i) disclose the existence of falsified documents; and

(ii) rectify mismarked positions immediately.

(15) Preparing inaccurate or inappropriate records or returns, including, but not limited to preparing:

(a) performance reports for transmission to *customers* which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);

(b) inaccurate training records or inaccurate details of qualifications, past employment record or experience; and

(c) inaccurate trading confirmations, contract notes or other records of *transactions* or holdings of *securities* for a *customer*, whether or not the *customer* is aware of these inaccuracies or has requested such records.

(16) Misusing the assets or confidential information of a *client* or of their *firm* including, but not limited to, deliberately:

(a) front running *client* orders;

(b) carrying out unjustified trading on *client* accounts to generate a benefit (whether direct or indirect) to the *person* (that is, churning);

(c) misappropriating a *client's* assets, including wrongly transferring to personal accounts cash or *securities* belonging to *clients*;

(d) wrongly using one *client's* funds to settle margin calls or to cover trading losses on another *client's* account or on *firm* accounts;

(e) using a *client's* funds for purposes other than those for which they were provided;

(f) retaining a *client's* funds wrongly; and

(g) pledging the assets of a *client* as security or margin in circumstances where the *firm* is not permitted to do so.

(17) Designing *transactions* to disguise breaches of requirements and standards of the *regulatory system*.

(18) Not paying due regard to the interests of a *customer*.

(19) Acts, omissions or business practices that could be reasonably expected to cause *customer* detriment.

Rule 2: You must act with due skill, care and diligence

4.1.2 G Due skill, care and diligence are required, especially where activities might affect *customers* or the integrity of the financial system.

4.1.3 G The following is a non-exhaustive list of examples of conduct by any *conduct rules staff* that would be in breach of *rule* 2.

(1) Failing to inform:

(a) a *customer*; or

(b) their *firm* (or its auditors);

of material information in circumstances where the member of *conduct rules staff* was aware, or ought to have been aware, of such information, and of the fact that they should provide it, including the following:

(i) failing to explain the risks of an *investment* to a *customer*;

(ii) failing to disclose to a *customer* details of the charges or surrender penalties of *investment* products;

(iii) mismarking trading positions;

(iv) providing inaccurate or inadequate information to a *firm* or its auditors;

(v) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*.

() Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for that *customer*.

() Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.

() Undertaking *transactions* without a reasonable understanding of the risk exposure of the *transaction* to the *firm*, including trading on the *firm's* own account without a reasonable understanding of the liability (either potential or actual) of the *transaction*.

() Failing to provide adequate control over a *client's* assets, including:

() failing to segregate a *client's* assets; and

() failing to process a *client's* payments in a timely manner.

() Continuing to perform a function having failed to meet the standards of knowledge and skill in the *Training and Competence sourcebook* (*TC*) for that function.

Acting with due skill, etc as a manager (rule 2)

4.1.4 G It is important for a manager to understand the business for which they are responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

4.1.5 G It is important for a manager to understand the risks of expanding the business into new areas and, before approving the expansion, they should investigate and satisfy themselves, on reasonable grounds, about the risks, if any, to the business.

4.1.6 G Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the *firm* beyond those reasonably anticipated, a manager should require explanations from those who report to them. Where those explanations are implausible or unsatisfactory, they should take steps to test the veracity of those explanations.

4.1.7 G Where a manager is not an expert in a business area, they should consider whether they (or those with whom they work) have the necessary expertise to provide an adequate explanation of issues within that business area. If not, they should seek an independent opinion from elsewhere, within or outside the *firm*.

4.1.8 G The following is a non-exhaustive list of examples of conduct by a manager that would be in breach of *rule* 2.

(1) Failing to take reasonable steps to ensure that the business of the firm for which the manager has responsibility:

(a) is controlled effectively;

(b) complies with the relevant requirements and standards of the *regulatory system* applicable to that area of the business; and

(c) is conducted in such a way to ensure that any delegation of responsibilities is to an appropriate person and is overseen effectively.

(2) Failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible, including:

(a) permitting *transactions* without a sufficient understanding of the risks involved;

(b) permitting expansion of the business without reasonably assessing the potential risks of that expansion;

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(c) inadequately monitoring highly profitable transactions or business practices, or unusual *transactions* or business practices;

(d) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations; and

(e) failing to obtain independent, expert opinion where appropriate.

(3) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that the manager has delegated to an individual or individuals (whether in-house or outside contractors).

Acting with due skill, etc as a member of the Board (rule 2)

4.1.8A G *Rule* 2 in ■ COCON 2.1.3R applies to a *director* (whether executive or non-executive) when taking part in the activities of the Board, other *governing body* or of its committees. This includes, for example, participating in meetings, preparing papers or other submissions for meetings and reporting to the body or committee.

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators

4.1.9 G For the purpose of *rule* 3 in ■ COCON 2.1.3R, regulators other than the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to activities to which *COCON* applies and have a power to call for information from the *firm* or from individuals performing certain functions in connection with those *regulated activities*. This may include an exchange or an *overseas regulator*.

4.1.10 G There is no duty on a *person* to report information directly to the regulator concerned unless they are one of the *persons* responsible within the *firm* for reporting matters to the regulator concerned. However, if a *person* takes steps to influence the decision not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the *appropriate regulator* will, in respect of that information, view them as being one of those within the *firm* who has taken on responsibility for deciding whether to report that matter to the regulator concerned.

4.1.11 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* 3.

(1) Failing to report promptly in accordance with their *firm's* internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the *FCA*, the *PRA*, or both the *PRA* and the *FCA*.

(2) Failing without good reason to:

(a) inform a regulator of information of which the *approved person* was aware in response to questions from that regulator;

(b) attend an interview or answer questions put by a regulator, despite a request or demand having been made; and

(c) supply a regulator with appropriate *documents* or information when requested or required to do so and within the time limits attaching to that request or requirement.

4.1.12 G For the purposes of ■ COCON 4.1.11G(2), good reasons could include, where applicable, a right to preserve legal professional privilege, a right to avoid self-incrimination, complying with an order of a court or complying with an obligation imposed by law or by a regulator.

4.1.12A G The *FCA* only expects a member of the *conduct rules staff* of an *Annex II benchmark administrator* when the *firm* is acting as such to disclose information under *rule* 3 which is relevant to the *firm's* compliance with its obligations under the *benchmarks regulation*.

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

4.1.13 G *Rule* 4 in ■ COCON 2.1.4R applies to all *conduct rules staff*, regardless of whether that *person* has direct contact or dealings with *customers* of the *firm*. *Persons* subject to the *rules* in *COCON* should consider how their actions (or their failure to act) can affect the interests of *customers* or result in *customers* being treated unfairly.

4.1.14 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* 4.

(1) Failing to inform a *customer* of material information in circumstances where they were aware, or ought to have been aware, of such information and of the fact that they should provide it, including the following:

(a) failing to explain the risks of an *investment* to a *customer*;

(b) failing to disclose to a *customer* details of the charges or surrender penalties of investment products; and

(c) providing inaccurate or inadequate information to a *customer* about a product or service.

(2) Recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer*, where they do not have reasonable grounds to believe that it is suitable for that *customer*.

(3) Undertaking, recommending or providing advice on *transactions* without a reasonable understanding of the risk exposure of the *transaction* to a *customer*, including recommending *transactions* in *investments* to a *customer* without a reasonable understanding of the liability (either potential or actual) of that *transaction*.

(4) Failing to provide adequate control over a *client's* assets, including:

(a) failing to segregate a *client's* assets; and

(b) failing to process a *client's* payments in a timely manner.

(5) Providing a *customer* with a product which is different to the one applied for by that *customer*, unless the *customer* understands the differences and understands the product they have purchased.

(6) Failing to acknowledge, or seek to resolve, mistakes in dealing with *customers*.

(7) Failing to provide terms and conditions to which a product or service is subject in a way which is clear and easy for the *customer* to understand.

4.1.14A G In general, the *customers* of a *benchmark administrator* are the users of the *benchmark* (as defined in the *benchmarks regulation*). A user of a *benchmark* will not however be a *customer* if the user does not have a licence to use it and the user has not made an agreement with the *benchmark administrator* about the way the *benchmark administrator* carries on the activities included in the *regulated activity* of *administering a benchmark*.

Rule 5: You must observe proper standards of market conduct.

4.1.15 G A general consideration about whether or not a *person's* conduct complies with the relevant requirements and standards of the market, is whether they, or the *firm*, comply with relevant market codes and exchange rules. Compliance with relevant market codes and exchange rules will tend to show compliance with *rule* 5 in ■ COCON 2.1.5R.

4.1.16 G Manipulating or attempting to manipulate a benchmark or a market, such as a foreign exchange market, or a benchmark is an example of failing to observe proper standards of market conduct.

4.1.17 G

(1) Markets include relevant markets as defined in section 1F of the Act (Meaning of "relevant markets" in strategic objective).

(2) Markets are not limited to *regulated markets* or formal markets such as one on a stock exchange.

(3) Nor are markets limited to markets for professionals (such as the wholesale foreign exchange markets) or ones that involve tradeable and transferable assets.

(4) Therefore markets include consumer markets (whether for products, services, credit or otherwise).

4.1.18 G For the purposes of *rule* 5 and the *regulated activity* of *administering a benchmark*, proper standards of market conduct means compliance with the *benchmarks regulation* and other requirements of the *regulatory system* or of legislation applicable to *administering a benchmark*. In the case of *administering a benchmark* there are no additional standards of market conduct for the purposes of *rule* 5.

Rule 6: You must act to deliver good outcomes for retail customers: Relevance of rules and guidance in PRIN

4.1.19 G The *guidance* in ■ PRIN 2A.2 (Cross-cutting obligations) will also be helpful in interpreting ■ COCON 2.4.6R to ■ COCON 2.4.8R and thus *Rule* 6.

4.1.20 G

(1) The *rules* in ■ PRIN 2A.2, insofar as not mirrored in *COCON*, will also be helpful in interpreting ■ COCON 2.4.6R to ■ COCON 2.4.8R and thus *Rule* 6.

(2) So for example, in line with ■ PRIN 2A.2.9R, in ■ COCON 2.4.7R:

(a) foreseeable harm may be caused by both act and omission;

(b) if the relationship of the *firm* for which the relevant member of its *conduct rules staff* works with a *retail customer* is through its role in a distribution chain, foreseeable harm may be caused even where another *firm* in that chain also contributes to the harm; and

(c) foreseeable harm may be caused even where another *person* working for the *firm* is also responsible for or contributes to the harm.

4.1.21 G The outcomes *rules* in ■ PRIN 2A.3 to ■ PRIN 2A.6 are also useful in defining what is required by *Rule* 6. However, the outcomes *rules* do not exhaust *Principle* 12 and ■ PRIN 2A.2 and so those *rules* are not a comprehensive guide to *Rule* 6.

4.1.22 G A reasonableness requirement applies to *Rule* 6 (see ■ COCON 2.4.9R). The *guidance* in ■ PRIN 2A.7 (General) on the corresponding *PRIN rule* will also be helpful in interpreting ■ COCON 2.4.9R.

4.1.23 G ■ PRIN 2A applies to the whole of the *firm*. Particularly for junior staff, this may mean that it sometimes imposes requirements or sets out expectations that are beyond the scope of the job of a member of a *firm's conduct rules staff*, thereby limiting its use as a guide to what is required under *Rule* 6. However, even when that is the case, it may still be useful as a guide to what a member of a *firm's conduct rules staff* should try to help their *firm* achieve within the scope of their job.

Rule 6: You must act to deliver good outcomes for retail customers: Relationship with Rule 4

4.1.24 G In general terms, *Rule* 6 imposes a higher and more exacting standard of conduct in relation to a *firm's retail market business* relative to what *Rule* 4 in ■ COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) would have otherwise required. *Rule* 6 also has a broader application in relation to a *firm's retail market business* relative to *Rule* 4, with a greater focus on consumer protection outcomes for *retail customers*, including where those *retail customers* do not stand in a *client* relationship with that *firm* in the distribution chain.

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4.1.25 G While the *guidance* on *Rule* 4 in ■ COCON 2.1 will remain relevant to someone in considering their obligations under *Rule* 6, a *person* should also take due account of the inherent limits of *guidance* on *Rule* 4 in light of the factors in ■ COCON 4.1.24G.

4.1.26 G To the extent that the *guidance* on *Rule* 4 in ■ COCON 2.1 says that behaviour would amount to a breach of *Rule* 4 in the event that *Rule* 4 had applied, that behaviour is likely to amount to a breach of *Rule* 6.

4.1.27 G Where a *person* is acting in accordance with *guidance* on *Rule* 4, that should not be relied on alone in considering how to comply with *Rule* 6. A *person* also needs to consider all their obligations not only under *COCON*, but under any other applicable law.

Rule 6: You must act to deliver good outcomes for retail customers: Scope

4.1.28 G *Rule* 6 applies to all *conduct rules staff*, regardless of whether the *person* has direct contact or dealings with *retail customers*. *Persons* subject to the *rules* in *COCON* should consider how their actions (or their failure to act) can affect the interests of *retail customers* or result in *retail customers* not obtaining a good outcome.

Rule 6: You must act to deliver good outcomes for retail customers: Reasonable application

4.1.29 G ■ COCON 2.4.9R says that *Rule* 6 must be interpreted in accordance with the standard that could reasonably be expected of a prudent member of a *firm's conduct rules staff*. Factors relevant to this standard (in addition to the factors referred to in the material referred to in ■ COCON 4.1.22G) include:

(1) their seniority;

(2) the scope of their job and in particular the degree to which the responsibilities of the job are able to affect the outcomes experienced by *retail customers*;

(3) their level of expertise and experience;

(4) the expertise and experience that their *firm* reasonably expects them to have;

(5) the expertise and experience that their *firm* should (under the *regulatory system*) ensure they have; and

(6) the degree of discretion and judgment the *person* has in their job, including, for example, whether they are bound to a script or process when dealing with *retail customers* and how much discretion and judgment any such script or process leaves to them.

4.1.30 G Someone in a management position is likely to have a greater ability to influence the outcomes experienced by *retail customers* than someone who is not. As described in ■ COCON 4.1.4G to ■ COCON 4.1.8G (Acting with due skill, etc as a manager (rule 2)) and, in the case of an *SMF manager*, ■ COCON 4.2

(Specific guidance on senior manager conduct rules), someone in a management position has a wide duty to understand, manage, control and oversee the business for which they are responsible. A manager should perform those duties with a view to ensuring that *retail customers* receive good outcomes.

4.1.31 G The ability of a manager of a business area to achieve good outcomes for *retail customers* is likely to reflect the ability of their business area to do so. So for example the head of a business area dealing with *retail customers* will have a correspondingly significant responsibility to ensure that those *retail customers* get good outcomes.

4.1.32 G Seniority may be relevant to the extent to which it is reasonable for a member of a *firm's conduct rules staff* to be expected to:

(1) analyse how their area of responsibilities fits into the overall systems and processes of the *firm* for ensuring good outcomes for *retail customers*;

(2) analyse the policies and procedures about *retail customers* the *firm* imposes on the *person* and on the part of the business in which they work; and

(3) make suggestions for changes to those things.

4.1.33 G Seniority may also be relevant to the extent to which it is reasonable to expect a member of a *firm's conduct rules staff* to be concerned with policies and procedures about *retail customers* on a *firm*-wide basis and not just for their area of direct responsibility. This is particularly the case for *SMF managers* who are members of their *firm's governing body* or other senior management forums and for other members of a *firm's governing body*.

4.1.34 G On the other hand, the scope of the job of a junior staff member carrying out a back office function may not give much of an opportunity to take steps to ensure good outcomes for a *retail customer* on the sale of a *product*.

4.1.35 G A salesperson or a member of the customer support staff is likely to have a significant influence on the outcomes that a *retail customer* receives. This is the case even if they are junior or subject to a detailed set of procedures.

4.2 Specific guidance on senior manager conduct rules

SC1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

4.2.1 G An *SMF manager's* role and responsibilities are set out in the *statement of responsibilities*.

4.2.2 G

(1) Strategy and plans will often dictate the risk which the business is prepared to take on and high-level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, *senior conduct rules staff members* should bear this in mind.

(2) (a) Strategy and plans for the *branch* in the *United Kingdom* of an *overseas firm* will often be set by those parts of the *firm* which are based outside the *United Kingdom*.

(b) If an *overseas firm* proposes a significant strategy or change in strategy ('the proposal') for its *branch* in the *United Kingdom*, particularly to enter higher risk areas, the *senior conduct rules staff member* responsible for the matters likely to be affected by the strategy should assess its impact on the *branch* in the *United Kingdom*.

(c) The *senior conduct rules staff member* should ensure that they take reasonable steps to implement the proposal in a way that complies with the *regulatory system*.

(d) If the *firm* proposes to implement the proposal and the *senior conduct rules staff member* considers that it is likely to be non-compliant with the *regulatory system*, the *senior conduct rules staff member* should promptly inform the *appropriate regulator*.

4.2.3 G To comply with the obligations of *rule* SC1 in ■ COCON 2.2.1R, *senior conduct rules staff members* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.

4.2.4 G The organisation of the business and the responsibilities of those within it should be clearly defined. Reporting lines should be clear to staff. Where

staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.

4.2.5 G Where members of staff have particular levels of authorisation, these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which they are aware.

4.2.6 G *Senior conduct rules staff members* should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

4.2.7 G If an individual's performance is unsatisfactory, the relevant *senior conduct rules staff member* should review carefully whether to allow that individual to continue in their position. In particular:

(1) If the *senior conduct rules staff member* is aware of concerns relating to the compliance with requirements and standards of the *regulatory system* (or internal controls) of the individual concerned, or of staff reporting to that individual, the *senior conduct rules staff member* should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken.

(2) An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The *senior conduct rules staff member* should be satisfied, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the *regulatory system*.

4.2.8 G As part of organising the business, a *senior conduct rules staff member* should ensure that there is an orderly transition when another *senior conduct rules staff member* under their oversight or responsibility ceases to perform that function and someone else takes up that function. It would be appropriate for the individual vacating such a position to prepare a comprehensive set of handover notes for their successor. Those notes should, at a minimum, specify any matter that is ongoing which the successor would reasonably expect to be aware of to:

(1) perform their function effectively;

(2) ensure compliance with the requirements and standards of the *regulatory system*; and

(3) ensure that the individual with overall responsibility for that part of the business of the *firm* maintains effective control.

4.2.9 G In organising the business, a *senior conduct rules staff member* should pay attention to any temporary vacancies which exist. They should take reasonable steps to ensure that suitable cover for responsibilities is arranged.

This could include taking on temporary staff or external consultants. The *senior conduct rules staff member* should assess the risk to compliance with the requirements and standards of the *regulatory system* as a result of the vacancy, and the higher the risk the greater the steps they should take to fill the vacancy. It may be appropriate to limit or suspend the activity if adequate cover for responsibilities cannot be arranged. To the extent that those vacancies are for *controlled functions*, they may only be filled by *persons* approved for that function.

4.2.10 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* SC1.

(1) Failing to take reasonable steps to apportion responsibilities for all areas of the business under the *approved person's* control.

(2) Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated, which includes establishing confusing or uncertain:

(a) reporting lines; or

(b) authorisation levels; or

(c) job descriptions and responsibilities.

(3) In the case of a manager who is responsible for dealing with the apportionment of responsibilities, failing to take reasonable care to maintain a clear and appropriate apportionment of responsibilities including:

(a) failing to review regularly the responsibilities which have been apportioned; and

() failing to act where that review shows that those responsibilities have not been clearly apportioned.

(4) Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of *senior conduct rules staff member*, including the following:

(a) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable;

(b) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role; and

(c) allowing managerial vacancies which put compliance with the requirements and standards of the *regulatory system* at risk to remain, without arranging suitable cover for the responsibilities.

SC2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

4.2.11 G A *senior conduct rules staff member* must take reasonable steps to ensure their *firm's* compliance with the relevant requirements and standards of the

regulatory system and to ensure that all staff are aware of the need for compliance.

4.2.12 G *Senior conduct rules staff members* do not themselves need to put in place the systems of control for the business, unless it is within their role and responsibilities. However, they should take reasonable steps to ensure that the business for which they are responsible has operating procedures and systems with well-defined steps for complying with the detail of relevant requirements and standards of the *regulatory system* and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the *regulatory system*, and the nature, scale and complexity of the business.

4.2.13 G Where a *senior conduct rules staff member* becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the *regulatory system* within their area of responsibility, they should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner. This may involve an adequate investigation to find out whether any systems or procedures have failed and why. They may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.

4.2.14 G If an issue raises questions of law or interpretation, *senior conduct rules staff members* may need to take legal advice. If appropriate legal expertise is not available in-house, they may need to consider appointing an appropriate external adviser.

4.2.15 G Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the *senior conduct rules staff member* responsible for that business area should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner. What is reasonable will depend on the nature of the issue to be addressed and the cost of the improvement. It will be reasonable for a *senior conduct rules staff member* to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.

4.2.16 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* SC2.

(1) Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the *regulatory system* for the activities of the *firm*.

(2) Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the *regulatory system* for the activities of the *firm* in question.

(3) Failing to take reasonable steps to inform themselves adequately about the reason why significant breaches (suspected or actual) of the relevant requirements and standards of the *regulatory system* for the activities of the *firm* may have arisen (taking account of the systems and procedures in place). This would include failing to investigate whether systems or procedures may have failed and failing to obtain expert opinion on the adequacy of the systems and procedures where appropriate.

(4) Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (suspected or actual) of the relevant requirements and standards of the *regulatory system* relating to the activities of the *firm*, including:

(a) unreasonably failing to implement recommendations for improvements in systems and procedures; and

(b) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.

(5) For a manager with responsibility for overseeing the establishment and maintenance of appropriate systems and controls or the apportionment of responsibilities, any failure to take reasonable care to ensure that those obligations are discharged effectively.

(6) For a *proprietary trader*, failing to maintain and comply with appropriate systems and controls in relation to that activity.

(7) For a *money laundering reporting officer*, failing to discharge the responsibilities imposed on them by the firm for oversight of its compliance with the *FCA's rules* on systems and controls against *money laundering*.

(8) For a *senior conduct rules staff member* who is responsible for the compliance function, failing to ensure that:

(a) the compliance function has the necessary authority, resources, expertise and access to all relevant information; or

(b) a compliance officer is appointed and is responsible for the compliance function and for any reporting as to compliance; or

(c) the *persons* involved in the compliance functions are not involved in the performance of services or activities they monitor; or

(d) the method of determining the remuneration of the *persons* involved in the compliance function does not compromise their objectivity; or

(e) the method of determining the remuneration complies, where applicable, with the remuneration codes set out in ■ SYSC 19B, ■ SYSC 19D, ■ SYSC 19E and ■ SYSC 19G or, for a *Solvency II firm* or a *small non-directive insurer*, other relevant requirements in relation to remuneration.

SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively

4.2.17 G An *SMF manager* may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.

4.2.18 G A *senior conduct rules staff member* should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.

4.2.19 G The *FCA* recognises that a *senior conduct rules staff member* will have to exercise their own judgement in deciding how issues are dealt with and sometimes that judgement will, with the benefit of hindsight, be shown to have been wrong. The *senior conduct rules staff member* will not be in breach of *rule* SC3 in ■ COCON 2.2.3R unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fail to reach a reasonable conclusion. If they are in doubt about how to deal with an issue or the seriousness of a particular compliance problem then, although they cannot delegate to the *FCA* the responsibility for dealing with the problem or issue, they can speak to the *FCA* to discuss his approach.

4.2.20 G *Senior conduct rules staff members* will not always manage the business on a day-to-day basis themselves. The extent to which they do so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The *FCA* will look to the *senior conduct rules staff member* to take reasonable steps to ensure that systems are in place to ensure that issues are being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.

4.2.21 G Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate has the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business indicates a failure to comply with *rule* SC3 in ■ COCON 2.2.3R.

4.2.22 G Although a *senior conduct rules staff member* may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is that *person's* responsibility to ensure that they receive reports on progress and question those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, the *senior conduct rules staff member* may need to challenge the explanations they receive and, if necessary, take action

personally to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, *senior conduct rules staff members* should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities.

4.2.23 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* SC3.

(1) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that the *senior conduct rules staff member* has delegated to an individual(s) (whether in-house or outside contractors) including:

(a) disregarding an issue or part of the business once it has been delegated;

(b) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; and

(c) accepting implausible or unsatisfactory explanations from delegates without testing their accuracy.

(2) Failing to supervise and monitor adequately the individual(s) (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated including any failure to:

(a) take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided; or

(b) review the performance of an outside contractor in connection with the delegated issue or business.

4.2.24 G In determining whether or not the conduct of a senior conduct rules staff member complies with *rule* SC3 in ■ COCON 2.2.3R, the factors which the FCA would expect to take into account include:

(1) the competence, knowledge or seniority of the delegate; and

(2) the past performance and record of the delegate.

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

4.2.25 G For the purpose of *rule* SC4 in ■ COCON 2.2.4R, regulators in addition to the *FCA* and the *PRA* are those which have recognised jurisdiction in relation to activities to which *COCON* applies and have a power to call for information from the relevant *person* in connection with their function or the business for which they are responsible. This may include an exchange or an *overseas regulator*.

4.2.26 G SC4 applies to *senior conduct rules staff members* in addition to *rule* 3 in ■ COCON 2.1.3R. Although, the rules have some overlap, they are different. Rule 3 normally relates to responses from individuals to requests from the

regulator, whereas *rule* SC4 imposes a duty on a *senior conduct rules staff member* to disclose appropriately any information of which the *appropriate regulator* would reasonably expect, including making a disclosure in the absence of any request or enquiry from the *appropriate regulator*. A *senior conduct rules staff member* is likely to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the *appropriate regulator* would reasonably expect notice.

4.2.27 G Where a *senior conduct rules staff member* is responsible within the *firm* (individually or with other *senior conduct rules staff members*) for reporting matters to the regulator, failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, constitutes a breach of *rule* SC4 in ■ COCON 2.2.4R.

4.2.28 G

(1) If a *senior conduct rules staff member* comes across a piece of information that is something of which they think the *FCA* or *PRA* could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities. For an *SMF manager* those responsibilities will be set out in that *person's statement of responsibilities*.

(2) If it does, then they should ensure that, if it is otherwise appropriate to do so, it is disclosed to the *appropriate regulator*. If it does not fall within the scope of their responsibilities then, in the absence of any reason to the contrary, they might reasonably assume that its disclosure to the *appropriate regulator* was being dealt with by the *senior conduct rules staff member* with responsibility for dealing with information of that nature. If a *senior conduct rules staff member* was not sure that the matter was being dealt with by another *senior conduct rules staff member*, or if they were not sure whether this was in their area or not, the *FCA* would expect them to make enquiries to inform themselves, rather than disregard the matter.

4.2.29 G In determining whether or not a *person's* conduct complies with *rule* SC4 in ■ COCON 2.2.4R, the factors which the *FCA* would expect to take into account include:

(1) whether it would be reasonable for the individual to assume that the information would be of material significance to the regulator concerned;

(2) whether the information related to the individual themselves or to their *firm*; and

(3) whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

4.2.30 G The *FCA* only expects a *senior conduct rules staff member* of an *Annex II benchmark administrator* when the *firm* is acting as such to disclose information under *rule* SC4 which is relevant to the *firm's* compliance with its obligations under the *benchmarks regulation.*

4.2.31 G The fact that the *firm* for which an *SMF manager* works is under an obligation to report something to the *FCA* is relevant to the *SMF manager's* duties under SC4. So for example if the *firm* for which an *SMF manager* works is obliged by ■ PRIN 2A.9.17R to notify the *FCA* that another *firm* is not or may not be complying with *Principle* 12 or ■ PRIN 2A, the *SMF manager* should:

(1) ensure that the *firm* reports that to the *FCA* (or do so themselves) if the matter is within the scope of the *SMF manager's* responsibilities; or

(2) check whether the *firm* has notified the matter if the matter is outside the responsibilities of the *SMF manager* but the *SMF manager* is unable to assume that the *firm* has notified it.

Transitional provisions: Miscellaneous

COCON TP 1
Transitional provisions: Miscellaneous

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		**Transitional provision**	**Transitional provision: dates in force**	**Handbook provision coming into force**
1	Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)	R	Row (6) does not apply to an *employee* of an *SMCR firm* in SYSC TP 8.1.1R (Application, purpose and definitions).	During the *firm's* individual transitional period (as defined in SYSC TP 8.1.5R (Table: glossary of bespoke terms used in SYSC TP 8)).	The *rule* in column (2) applies from the end of the *firm's* individual transitional period (as defined in column (5)).
2	Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)	G	The effect of COCON TP 1.1R is that an *employee* described in column (1) of row (6) of the table in that *rule* is not subject to *COCON* during the *firm's* individual transitional period. If the *firm* does not have an individual transitional period (see SYSC TP 8.3.2G(3)), COCON TP 1.1R does not apply. The definition of individual transitional period for the purposes of COCON TP 1.1R takes into account the extension of the period referred to in	As stated in COCON TP 1.1R.	As stated in COCON TP 1.1R.

(1)	(2)	(3)	(4)	(5)	(6)
			SYSC TP 8.1.5R made by The Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) (Amendment) Regulations 2020 (SI 2020/929)		
3	Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)	R	Row (6) does not apply to an *employee* of a *pure benchmark SMCR firm*.	Between 7 December 2020 and 7 December 2021	The *rule* in column (2) applies from the end of the period defined in column (5).
4	Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)	G	The effect of COCON TP 1.3R is that an *employee* described in column (1) of row (6) of the table in COCON 1.1.2R is not subject to *COCON* until 7 December 2021.	As stated in COCON TP 1.3R.	As stated in COCON TP 1.3R.

Code of Conduct (COCON)

Schedule 1
Record keeping requirements

Sch 1.1 G
There are no record keeping requirements in *COCON*.

Code of Conduct (COCON)

Schedule 2
Notification requirements

Sch 2.1 G
The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

Sch 2.2 G
It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COCON 2.2.4R	Any information of which the *FCA* or *PRA* would reasonably expect notice.	Appropriate disclosure	Any information of which the *FCA* or *PRA* would reasonably expect notice.	Appropriate

Code of Conduct (COCON)

Schedule 3
Fees and required payments

Sch 3.1 G
There are no requirements for fees or other payments in *COCON*.

Code of Conduct (COCON)

Schedule 4
Powers exercised

Sch 4.1 G
Section 64A (Rules of conduct)

Section 139A (Power of the *FCA* to give guidance)

Code of Conduct (COCON)

Schedule 5
Rights of action for damages

Sch 5.1 G
There is no right of action under section 138D of the *Act* (Actions for damages) for breach of the *rules* in *COCON*.

Code of Conduct (COCON)

Schedule 6
Rules that can be waived

Sch 6.1 G
Section 138A (Modification or waiver of rules) does not apply to *COCON*.