

Code of Conduct (COCON)

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

Persons to whom COCON applies	Comments
	<p>(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 <i>firm</i>: (i) the <i>firm's</i> activities as a data controller; or (ii) the <i>firm's</i> activities of data processing; as defined in the <i>data protection legislation</i>, but subject to Note (1) of this table; (p)cleaners; (q)catering staff; (r)personal assistant or secretary; (s)information technology support (ie, helpdesk); and (t)human resources administrators / processors. (B) This row (6) also does not apply to an <i>employee</i> of an <i>SMCR insurance firm</i> until 10 December 2019.</p> <p>(7) [deleted] (8)A <i>board director</i> of: a <i>UK SMCR firm</i>.</p> <p>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 <i>employee</i> concerned to exercise a significant amount of discretion or judgment.</p>

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 5 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*.
- To what conduct does it apply?**
- 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)]
- 1.1.7A **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

	<ul style="list-style-type: none"> (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 <i>regulatory system</i> relating to Firm A’s financial resources.
<p>1.1.8 G</p>	<ul style="list-style-type: none"> (1) More than one of ■ COCON 1.1.6R to ■ COCON 1.1.7AR may apply to the same individual performing several roles. (2) For example, say that an individual (A) is an <i>approved person</i> for <i>firm X</i> and is employed by <i>firm Y</i> in a role that does not involve a <i>controlled function</i> or being a director. (3) ■ COCON 1.1.6R applies to A’s role with <i>firm X</i> and ■ COCON 1.1.7R applies to A’s role with <i>firm Y</i>.
<p>1.1.8A R</p>	<ul style="list-style-type: none"> (1) This <i>rule</i> applies to a <i>person (P)</i>: <ul style="list-style-type: none"> (a) who is an <i>approved person</i> approved to perform a <i>controlled function</i> under ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives); (b) for whom P’s <i>authorised approved person employer</i> is an <i>SMCR firm (F)</i>; and (c) to whom <i>COCON</i> also applies in P’s capacity as a member of F’s <i>conduct rules staff</i>. (2) <i>COCON</i> does not apply to conduct of P to the extent that: <ul style="list-style-type: none"> (a) that conduct relates to the performance by P of functions: <ul style="list-style-type: none"> (i) in (1)(a); or (ii) in relation to the carrying on of a <i>regulated activity</i> by the <i>appointed representative</i> concerned; and (b) <i>APER</i> applies to that conduct.
	<p>Where does it apply?</p> <hr style="border-top: 1px dotted black;"/>
<p>1.1.9 R</p>	<ul style="list-style-type: none"> (1) <i>COCON</i> applies to the conduct of <i>conduct rules staff</i> set out in (2) wherever it is performed. (2) This <i>rule</i> applies to: <ul style="list-style-type: none"> (a) a <i>senior conduct rules staff member</i>; and (b) a <i>certification employee</i> performing <i>FCA certification function (6)</i> (material risk takers) in the table in ■ SYSC 27.7.3R for a <i>UK SMCR firm</i>.
<p>1.1.9A G</p>	<ul style="list-style-type: none"> (1) This paragraph deals with how ■ COCON 1.1.9R applies to a <i>certification employee (P)</i> who performs the material risk taker <i>FCA certification function</i> and another <i>FCA certification function</i> for the same <i>UK SMCR firm</i>.

- (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.
- 1.1.12** **R** A *person* will not be subject to *COCON* to the extent that it would be contrary to the *UK's* obligations under a *Single Market Directive*, the *auction regulation* or the *benchmarks regulation*.
- Purpose**
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- 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.