

Threshold Conditions

Chapter 1

Introduction

1.1A Application

To which threshold conditions does COND apply?

1.1A.1

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- (1) Section 55C of the Financial Services Act 2012 (Power to amend Schedule 6) gave HM Treasury the power to amend Schedule 6 of the Act. HM Treasury exercised this power by making The Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013 which entered into force on 1 April 2013 (the "TC Order"). The TC Order's main result is the creation of four sets of *threshold conditions*, namely:
 - (i) conditions for *firms* authorised and regulated by the FCA only (paragraphs 2B to 2F of Schedule 6 to the Act)
 - (ii) FCA specific conditions for *firms* authorised by the PRA and subject to dual regulation (paragraphs 3B to 3E of Schedule 6 to the Act);
 - (iii) PRA-specific conditions for *insurers* (paragraphs 4A to 4F of Schedule 6 to the Act); and
 - (iv) PRA-specific conditions for other *PRA-authorised persons* (paragraphs 5A to 5F of Schedule 6 to the Act).
- (2) The *guidance* in COND is only applicable to the *threshold conditions* listed in ■ COND 1.1A.1G(1)(i) and (ii), above. These are the *threshold conditions* stated in paragraphs 2A and 3A of Schedule 6 to the Act as being relevant to the discharge by the FCA of its functions under the Act.
- (3) In respect of a *person* which does not carry on, or seek to carry on, any *PRA-regulated activities*, the *threshold conditions* that are relevant to the discharge by the FCA of its functions under the Act are those set out in paragraphs 2B to 2F of Schedule 6 to the Act, subject to ■ COND 1.1A.4G (1), below.
- (4) In respect of a *firm* which does carry on, or seeks to carry on, a *PRA-regulated activity*, the *threshold conditions* that are relevant to the discharge by the FCA of its functions under the Act are those set out in paragraphs 3B to 3E of Schedule 6 to the Act, subject to ■ COND 1.1A.4G (2), below.
- (5) A reference to "*FCA threshold conditions*" in COND means a reference to the *threshold conditions* referred to in (3) and (4) that apply to a particular *firm*.

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To whom does COND apply?

- (1) *COND* applies to all *firms*, except where stated otherwise in this *guidance*.
- (2) In *COND*, '*firm*' includes an applicant for *Part 4A permission* unless the context otherwise requires.

1.1A.3

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To what extent does COND apply to firms authorised by the PRA (PRA-authorised persons) and subject to dual regulation?

- (1) As a result of the new legal framework for *threshold conditions* described in ■ COND 1.1A.1G (1), *PRA-authorised persons* and *firms* seeking to become *PRA-authorised persons* are subject to two sets of *threshold conditions*:
 - (i) the *FCA-specific conditions* referred to in ■ COND 1.1A.1G (1)(ii) and
 - (ii) one of the two *PRA-specific conditions* referred to in ■ COND 1.1A.1G (1)(iii) or ■ (iv), depending on the *PRA-regulated activities* which the *PRA-authorised person* or *firm* carries on, or is seeking to carry on.

The *FCA threshold conditions* set out in paragraphs 3B to 3E of the *Act* seek to reflect this. In particular, these *threshold conditions* do not contain a condition relating to adequate financial resources. This is a matter that falls to be considered by the *PRA* under its *threshold conditions*.

- (2) The majority of the *guidance* in *COND* is intended to assist all *firms* to understand how the *FCA* will approach its assessment of the applicable *FCA threshold conditions*, regardless of whether or not a *firm* is, or is seeking to become, a *PRA-authorised person*. This is because the *FCA threshold conditions* which apply to *PRA-authorised persons* and those which apply to *firms* authorised by the *FCA* only are, for the most part, the same.
- (3) However, where *guidance* in *COND* refers to an assessment of a *firm's* financial position or its compliance with prudential regulatory requirements, it is not intended to assist *firms* which are, or are seeking to become, *PRA-authorised persons*. This is because these are matters that are not covered by the *FCA's threshold conditions*, but rather fall to be considered by the *PRA* under its *threshold conditions*.
- (4) Although some of the *PRA threshold conditions* and *FCA threshold conditions* that apply to *firms* which are, or are seeking to become, *PRA-authorised persons* may appear to address similar subject matter, the *FCA* will approach the assessment of its *threshold conditions* with its unique *statutory objectives* in mind and in the light of the functions which the *FCA* is required to discharge in relation to them.
- (5) For the avoidance of doubt, the *guidance* in *COND* is not intended to apply to the *PRA's* assessment of its own *threshold conditions* in respect of a *PRA-authorised person*. This is a matter for the *PRA* alone.

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

- 1.1A.5 **G** *FCA threshold conditions 3B, 3C and 3E apply to Swiss General Insurance Companies.*

To what extent does COND apply to credit firms with limited permission?

- 1.1A.5A **G**
- (1) The *FCA threshold conditions* apply to a *person* that carries on, or seeks to carry on, only relevant credit activities (within paragraph 2G of Schedule 6 to the *Act*) and which therefore has, or is applying for, *limited permission* with a number of modifications (see article 10(19) of the *Regulated Activities Amendment Order*). *Regulated activities* a *person* carries on in relation to which sections 20(1) and (1A) and 23(1A) of the *Act* do not apply as a result of section 39(1D) of the *Act* are disregarded for this purpose.
 - (2) For a *person* within (1), the *FCA threshold conditions* are modified as follows:
 - (a) in relation to paragraph 2C of Schedule 6 to the *Act* (Effective supervision), paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply (see ■ COND 2.3);
 - (b) in relation to paragraph 2D of Schedule 6 to the *Act* (Appropriate resources), the *person* has adequate financial resources if it is capable of meeting its debts as they fall due (see ■ COND 2.4);
 - (c) paragraph 2F of Schedule 6 to the *Act* (Business model) does not apply (see ■ COND 2.7).
 - (3) Paragraph 2G of Schedule 6 to the *Act* defines relevant credit activity for the purposes of the *FCA Threshold Conditions*. The interpretation of some of the key expressions used in this specific context is as follows:
 - (a) "borrower" includes any *person* providing a guarantee or indemnity under an agreement, and a *person* to whom the rights and duties of the borrower have passed by assignment or operation of law;
 - (b) "supplier" means a *person* whose main business is to sell goods or supply services and not to carry on a *regulated activity*, other than *entering into a regulated consumer hire agreement as owner* or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;
 - (c) "customer" means a *person* to whom a supplier sells goods or supplies services or agrees to do so;
 - (d) "domestic premises supplier" means a supplier who sells goods, offers or agrees to sell goods, or offers or contracts to supply services, to customers who are individuals while the supplier or the supplier's representative is physically present in the dwelling of the customer (though a supplier who does so only on an occasional basis is not to be treated as a "domestic premises supplier" unless the supplier indicates to the public at large, or a section of it, the supplier's willingness to attend, in person or through a representative, the dwelling of a potential customer in order to do any of those things).

- (3A) Questions may arise over whether a supplier who visits a customer's dwelling to take measurements or give an estimate is a "domestic premises supplier". For example:
- (a) if the supplier, or the supplier's representative, gives a quote or estimate to the customer during the visit that is sufficiently specific as to be capable of being accepted in a way that is binding on the supplier, then the quote or estimate is an offer; on that basis, the supplier falls within the definition of "domestic premises supplier", irrespective of whether the customer accepts the offer during the visit;
 - (b) where the supplier, or the supplier's representative, gives only a rough estimate or quote during the visit, with a view to submitting a refined estimate or a firm quote at a later time when the supplier is not at the customer's dwelling, that rough estimate will not be an offer; on that basis, the supplier will not fall within the definition of "domestic premises supplier", unless the customer and the supplier, or the supplier's representative, do reach an agreement during the visit; and
 - (c) where an agreement is reached, the supplier will have sold, or agreed to sell, goods or contracted to supply services, and will therefore be a "domestic premises supplier"; this may be the case even if the agreement is subject to later specification of the price, the goods or the services.

It is immaterial whether the supplier carries on any *credit broking* (or other *regulated activity*) during the visit.

- (4) In summary, the following *credit-related regulated activities* are relevant credit activities for the purposes of the *FCA Threshold Conditions*:
- (a) *credit broking* when carried on:
 - (i) by a supplier (other than a domestic premises supplier) for the purposes of or in connection with the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the *credit agreement* or the hirer under the *consumer hire agreement*); or
 - (ii) in relation to a *green deal plan*; or
 - (iii) in relation to a *consumer hire agreement* or a *hire-purchase agreement*;although, other than where the *credit broking* is carried on by a *not-for-profit body*, the *credit broking* will not be a relevant credit activity where it relates to an agreement under which the obligation of the borrower to repay or the hirer to pay is secured, or is to be secured, by a legal mortgage on land;
 - (b) *consumer credit lending* if carried on by a *local authority* or if:
 - (i) it is carried on by a supplier;
 - (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of *credit* (this includes a charge payable in connection with a breach of the agreement or on the occurrence of a specified event; *consumer credit lending* under an agreement that contains such a charge is not a relevant credit activity); and

(iii) the *regulated credit agreement* is not a *hire purchase agreement* or a *conditional sale agreement*;

although, other than where the *consumer credit lending* is carried on by a *not-for-profit body*, the *consumer credit lending* will not be a relevant credit activity if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land;

(c) entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement although, other than where these activities are carried on by a *not-for-profit body*, entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement will not be a relevant credit activity if the obligation of the hirer to pay under the agreement is secured, or is to be secured, by a legal mortgage on land;

(d) *debt adjusting* or *debt counselling* when carried on:

(i) by a supplier who also carries on *credit broking* within (a)(i);

(ii) by a *person* in connection with an activity within (b) or (c) which the *person* also carries on;

(iii) by a *not-for-profit body*;

although, other than where the *debt adjusting* or *debt counselling* is carried on by a *not-for-profit body*, the *debt adjusting* or *debt counselling* will not be a relevant credit activity if it relates to an agreement under which the obligation of the borrower to repay or the hirer to pay is secured, or is to be secured, by a legal mortgage on land;

(e) *providing credit information services* where carried on by a *person* in connection with an activity within (a) to (d) which the *person* also carries on;

(f) agreeing to carry on an activity within (a) to (e).

To what extent does COND apply to regulated benchmark administrators?

1.1A.5B

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(1) The *threshold conditions* do not apply to a *firm* in relation to the *regulated activity of administering a benchmark*.

(2) COND does not apply to *regulated benchmark administrators* who are solely authorised to *administer a benchmark* as they are not subject to the *threshold conditions*.

(3) For *regulated benchmark administrators* who are also authorised to carry on activities other than *administering a benchmark*, they will be subject to the *threshold conditions* in relation to their other *regulated activities*. COND will apply to those *firms* in relation to the *regulated activities* to which the *threshold conditions* apply.

To which regulated activities does COND apply?.....

1.1A.6 **G** Subject to the limitations referred to above, *COND* applies in relation to all of the *regulated activities* for which a *firm* has, or will have, *permission*.

Where does COND apply?.....

1.1A.7 **G** *COND* applies in relation to all of the *regulated activities* wherever they are carried on.