

Threshold Conditions

Threshold Conditions

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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*.

To whom does COND apply?

1.1A.2

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- (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.

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

1.1A.3

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- (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.

To what extent does COND apply to incoming EEA firms and incoming Treaty firms?

1.1A.4 **G** COND applies to *incoming EEA firms* and *incoming Treaty firms* as set out below:

- (1) for an *incoming EEA firm* or an *incoming Treaty firm* which does not carry on any *PRA-regulated activities*, *FCA threshold conditions 2C* to *2F* apply; and
- (2) for an *incoming EEA firm* or an *incoming Treaty firm* which carries on a *PRA-regulated activity*, *FCA threshold conditions 3B* to *3E* apply.

FCA threshold conditions apply to *incoming EEA firms* and *incoming Treaty firms* only in as far as relevant to the discharge by the *FCA* of its relevant functions in relation to an application for, or the exercise of its *own-initiative powers* in relation to, a *top-up permission* or the functions relating to the *FCA's* consent or consultation rights relating to the exercise by the *PRA* of its powers in relation to an application for, or use of its *own-initiative powers* relating to, a *top-up permission*.

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

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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

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COND applies in relation to all of the *regulated activities* wherever they are carried on, except as stated in ■ COND 1.1A.4 G.

1.2 Purpose

- 1.2.1 **G** *COND* gives guidance on the *threshold conditions*. The *FCA threshold conditions* represent the minimum conditions for which the *FCA* is responsible, which a *firm* is required to satisfy, and continue to satisfy, in order to be given and to retain *Part 4A permission*. A *PRA-authorised person* or, as appropriate, a *firm* seeking to become a *PRA-authorised person* must also satisfy, and continue to satisfy, the *threshold conditions* for which the *PRA* is responsible in order to be given and to retain *Part 4A permission* (these *threshold conditions* are not the subject of the guidance in *COND*).

Applications for Part 4A permission or variation of Part 4A permission

- 1.2.2 **G**
- (1) Under section 55B(3) of the *Act*, in giving or varying a *Part 4A permission*, imposing or varying any *requirement* or giving consent, the *FCA* must ensure that the *firm* concerned will satisfy, and continue to satisfy, the *FCA threshold conditions* in relation to all of the *regulated activities* for which it has or will have *permission*.
 - (2) If, however, the applicant for *permission* is an *incoming firm* seeking *top-up permission*, or variation of *top-up permission*, under Part 4A of the *Act* (Permission to carry on regulated activities), then under paragraphs 6A and 7A of Schedule 6 to the *Act* (Threshold conditions), the *FCA* will have regard only to satisfaction of the *FCA threshold conditions* specified as applicable in ■ COND 1.1A.4 G, as relevant to the *regulated activities* for which the applicant has, or will have, *Part 4A permission*.

Exercise of the FCA's own-initiative powers

- 1.2.3 **G**
- (1) If, among other things, a *firm* is failing to satisfy any of the *FCA threshold conditions*, or is likely to fail to do so, the *FCA* may exercise its *own-initiative powers* under either section 55J (Variation or cancellation on initiative of regulator) or section 55L (Imposition of requirements by FCA) of the *Act*. Use of the *FCA's own-initiative powers* is explained in ■ SUP 7 (Individual requirements), and ■ EG 8 (Variation and cancellation of permission on the *FCA's* own initiative and intervention against incoming firms).
 - (2) If, when exercising its *own-initiative powers* under section 55J or section 55L of the *Act*, the *FCA* varies a *firm's permission*, or imposes or varies a *requirement*, then, under section 55B(3) of the *Act*, the *FCA* must ensure that the *firm* concerned will satisfy, and continue to satisfy, the *FCA threshold conditions* in relation to all of the relevant *regulated activities* for which it has or will have *permission*. However,

section 55B(4) of the *Act* states that the duty imposed by section 55B(3) of the *Act* does not prevent the *FCA* taking such steps as it considers necessary in relation to a particular *firm* in order to advance any of its operational objectives.

- (3) The *FCA* can also exercise its *own-initiative powers* under section 55J or section 55L of the *Act* in relation to the *top-up permission* of an *incoming firm*. But this is only on the grounds that the *incoming firm* is failing, or likely to fail, to satisfy the *FCA threshold conditions* specified as applying to *incoming firms* under ■ COND 1.1A.4 G.

1.2.4

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(1) [deleted]

(2) [deleted]

Approval of acquisitions or increases of control

1.2.5

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- (1) Under section 185 of the *Act* (Assessment: general) the *FCA* may, subject to consultation with the *PRA* where the conditions in section 187B of the *Act* are satisfied, object to an acquisition of an *FCA-authorised person* if there are reasonable grounds to do so on the basis of the matters set out in section 186 of the *Act* (Assessment: criteria) or if the information provided by the section 178 notice giver is incomplete. Section 186(d) of the *Act* (Assessment: criteria) specifies one such criteria as whether an *FCA-authorised person* will be able to comply with its prudential requirements (including the *threshold conditions* in relation to all of the *regulated activities* for which it has, or will have, *permission*.)
- (2) Under section 191A of the *Act* (Objection to control), subject to consultation with the *PRA* in the circumstances specified in that provision, the *FCA* may object to a *person's* existing control of an *FCA-authorised person* on the grounds specified under section 186 of the *Act*.

1.3 General

- 1.3.1** **G** The *guidance* in ■ COND 2 explains each *FCA threshold condition* in Schedule 6 (threshold conditions) to the *Act* and indicates how the *FCA* will interpret it in practice. This *guidance* is not, however, exhaustive and is written in very general terms. A *firm* will need to have regard to the obligation placed upon the *FCA* under section 55B (The threshold conditions) of the *Act*; that is, the *FCA* must ensure that the *firm* will satisfy, and continue to satisfy, the *FCA threshold conditions* in relation to each *regulated activity* for which it has, or will have, *permission*.
- 1.3.2** **G**
- (1) The *FCA* will consider whether a *firm* satisfies, and will continue to satisfy, the *FCA threshold conditions* in the context of the size, nature, scale and complexity of the business which the *firm* carries on or will carry on if the relevant application is granted.
 - (2) In relation to *threshold conditions* set out in paragraphs 2D to 2F of Schedule 6 to the *Act* in respect of *firms* which are not *PRA- authorised persons* and paragraphs 3C to 3E of Schedule 6 to the *Act* in respect of *firms* which are *PRA- authorised persons*, the *FCA* will consider whether a *firm* is ready, willing and organised to comply, on a continuing basis, with the requirements and standards under the *regulatory system* which apply to the *firm*, or will apply to the *firm*, and for which the *FCA* is responsible, if it is granted *Part 4A permission*, or a variation of its *permission*. These matters will also be considered if the *FCA* is exercising its *own-initiative powers* (see ■ COND 1.2.3 G). *Guidance* to *firms* on the implications of this is given under each of those *threshold conditions*.
- 1.3.3** **G** Although the *FCA* may consider that a matter is relevant to its assessment of a *firm*, the fact that a matter is disclosed to the *FCA*, for example in an application, does not necessarily mean that the *firm* will fail to satisfy the *FCA threshold conditions*. The *FCA* will consider each matter in relation to the *regulated activities* for which the *firm* has, or will have, *permission*, having regard to its *statutory objectives*. A *firm* should disclose each relevant matter but, if it is appropriate to do so, it is encouraged to discuss it with the *FCA*. This will enable the *FCA* to consider fully how material or significant the matter is and how it affects the ability of the *firm* to satisfy, and continue to satisfy, the *FCA threshold conditions*.

- 1.3.3A** **G** In determining the weight to be given to any relevant matter, the *FCA* will consider its significance in relation to the *regulated activities* for which the *firm* has, or will have, *permission*, in the context of its ability to supervise the *firm* adequately, having regard to the *FCA's statutory objectives*. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.
- 1.3.3B** **G** In determining whether the *firm* will satisfy, and continue to satisfy, the *FCA threshold conditions*, the *FCA* will have regard to all relevant matters, whether arising in the *United Kingdom* or elsewhere.
- 1.3.3C** **G** When assessing the *FCA threshold conditions*, the *FCA* may have regard to any *person* appearing to be, or likely to be, in a relevant relationship with the *firm*, in accordance with section 55R of the *Act* (Persons connected with an applicant). For example, a *firm's controllers*, its *directors* or *partners*, other *persons* with *close links* to the *firm* (see ■ COND 2.3), and other *persons* that exert influence on the *firm* which might pose a risk to the *firm's* satisfaction of the *FCA threshold conditions*, would be in a relevant relationship with the *firm*.
- 1.3.3D** **G** In making its assessment, the *FCA* will consider the individual circumstances of each *firm* on a case-by-case basis.
- 1.3.3E** **G** Notes on the contents of a business plan are given in the business plan section of the application pack for *Part 4A permission* on the *FCA's* website.

Statutory quotations

- 1.3.4** **G**
- (1) For ease of reference, the *FCA threshold conditions* in or under Schedule 6 to the *Act* have been quoted in full in ■ COND 2.
 - (1A) Paragraphs 2A and 3A of Schedule 6 of the *Act* have not been quoted. These set out the application of the *FCA threshold conditions* to *firms* which do not carry on, or are not seeking to carry on, a *PRA regulated activity* and *firms* which carry on, or are seeking to carry on, a *PRA regulated activity* respectively. This application is summarised in ■ COND 1.1A.
 - (2) As the *FCA threshold conditions* impose obligations, they are printed in bold type. The use of bold type is not intended to indicate that these quotations are *rules* made by the *FCA*.
 - (3) [deleted]
 - (4) Paragraph 1A of Schedule 6 of the *Act* sets out interpretative provisions that apply to the *threshold conditions*. These are repeated in ■ COND 1.3.5 G below for ease of reference.
- 1.3.5** **UK** **Paragraph 1A of Schedule 6 to the Act**
- (1) "assets" includes contingent assets;

"consolidated supervision" has the same meaning as in section 3M(a);

"consumer" has the meaning given by section 425A(b);

"financial crime" is to be read with section 1H(3)(c);

"functions", in relation to either the FCA or the PRA, means the functions conferred on that regulator by or under this Act;

"liabilities" includes contingent liabilities;

"relevant directives" has the same meaning as in section 3M;

"Society" means the society incorporated by Lloyd's Act 1871(d) by the name of Lloyd's;

"subsidiary undertaking" includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

- (2) For the purposes of this Schedule, the "non-financial resources" of a person include any systems, controls, plans or policies that the person maintains and the human resources that the person has available.
- (3) In this Schedule, references to "integrity of the UK financial system" are to be read with section 1D(2)(e).
- (4) The reference to the failure of a person is to be read in accordance with section 2J(3) and (4)(f).

Chapter 2

The threshold conditions

2.2 Location of offices

2.2.1 UK [deleted]

Paragraph 2B of Schedule 6 to the Act

- 2.2.1A UK
- (1) Unless sub-paragraph (3), (4)(a) or (7) applies, if A is a body incorporated in the United Kingdom -
 - (a) A's head office, and
 - (b) if A has a registered office, that office, must be in the United Kingdom.
 - (2) If A is not a body corporate but A's head office is in the United Kingdom, A must carry on business in the United Kingdom.
 - (3) If-
 - (a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,
 - (b) A is a body corporate with no registered office, and
 - (c) A's head office is in the United Kingdom,A must carry on business in the United Kingdom.
 - (4) If A is seeking to carry on, or is carrying on, an insurance distribution activity-
 - (a) where A is a body corporate incorporated in the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;
 - (b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2), as having a head office in the United Kingdom if A's residence is resident in the United Kingdom.
 - (5) "Insurance distribution activity" means any of the following activities-
 - (a) dealing in rights under a contract of insurance as agent;
 - (b) arranging deals in rights under a contract of insurance;
 - (c) assisting in the administration and performance of a contract of insurance;
 - (d) advising on buying or selling rights under a contract of insurance;
 - (e) agreeing to do any of the activities specified in paragraph (a) to (d).

- (6) Sub-paragraph (5) must be read with-
 - (a) section 22
 - (b) any relevant order under that section; and
 - (c) Schedule 2.

- (7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A's head office and registered office must be in the United Kingdom.

- 2.2.1B** G Paragraph 2B of Schedule 6 to the *Act* sets out the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

- 2.2.1C** G The *FCA* is not responsible for the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

- 2.2.2** G Paragraph 2B(1) of Schedule 6 to the *Act* implements article 7(1)(d) of the *UCITS Directive*, paragraphs 2B(1) to 2B(23) of Schedule 6 to the *Act* implement article 5(4) of *MiFID*, paragraph 2B(4) of Schedule 6 to the *Act* implements article 2(1)(10) of the *IDD* and paragraph 2B(7) of Schedule 6 to the *Act* implements article 8(1)(e) of *AIFMD*, although the *Act* extends the *threshold condition* set out in paragraph 2B of Schedule 6 of the *Act* to *authorised persons* that are not *PRA-authorised persons* who are outside the scope of these *Single Market Directives*.

- 2.2.3** G Neither the *UCITS Directive*, *MiFID*, the *IDD*, *AIFMD* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FCA* will judge each application on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:
 - (1) the *directors* and other senior management, who make decisions relating to the *firm's* central direction, and the material management decisions of the *firm* on a day-to-day basis; and
 - (2) the central administrative functions of the *firm* (for example, central compliance, internal audit).

2.3 Effective supervision

2.3.1 UK [deleted]

Paragraph 2C of Schedule 6 to the Act

2.3.1A UK

- (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
- (a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
 - (b) the complexity of any products that A provides or will provide in carrying on those activities;
 - (c) the way in which A's business is organised;
 - (d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;
 - (e) whether A is subject to consolidated supervision required under any of the relevant directives;
 - (f) if A has close links with another person ("CL")-
 - (i) the nature of the relationship between A and CL;
 - (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A; and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.
- (1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-
- (a) relevant credit activities, and
 - (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.
- (2) A has close links with CL if-
- (a) CL is a parent undertaking of A;
 - (b) CL is a subsidiary undertaking of A;

- (c) CL is a parent undertaking of a subsidiary undertaking of A;
- (d) CL is a subsidiary undertaking of a parent undertaking of A;
- (e) CL owns or controls 20% or more of the voting rights or capital of A; or
- (f) A owns or controls 20% or more of the voting rights or capital of CL.

2.3.1B G Paragraph 2C of Schedule 6 to the *Act* sets out the effective supervision *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.3.1BA G For the purposes of paragraph 2C (1A) of Schedule 6 to the *Act*, relevant credit activity is defined in paragraph 2G of Schedule 6 to the *Act*. Guidance on the meaning of relevant credit activity is given in ■ **COND 1.1A.5A G**.

Paragraph 3B of Schedule 6 to the Act

- 2.3.1C** UK
- (1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
 - (a) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;
 - (b) the complexity of any products that B provides or will provide in carrying on those activities;
 - (c) the way in which B’s business is organised;
 - (d) if B is a member of a group, whether membership of the group is likely to prevent the FCA’s effective supervision of B;
 - (e) whether B is subject to consolidated supervision required under any of the relevant directives;
 - (f) if B has close links with another person (“CL”)-
 - (i) the nature of the relationship between B and CL;
 - (ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of B; and
 - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of B.
 - (2) B has close links with CL if-
 - (a) CL is a parent undertaking of B;
 - (b) CL is a subsidiary undertaking of B;
 - (c) CL is a parent undertaking of a subsidiary undertaking of B;
 - (d) CL is a subsidiary undertaking of a parent undertaking of B;
 - (e) CL owns or controls 20% or more of the voting rights or capital of B; or

(f) B owns or controls 20% or more of the voting rights or capital of CL.

- 2.3.1D** G Paragraph 3B of Schedule 6 to the *Act* sets out the effective supervision *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.
- 2.3.1E** G The guidance in ■ COND 2.3 should be read as applying to both paragraph 2C of Schedule 6 of the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3B of Schedule 6 of the *Act*.
- 2.3.1F** G *Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is also responsible for assessing effective supervision under its own *threshold conditions*. Paragraphs 4F and 5F of Schedule 6 to the *Act* set out the effective supervision *threshold conditions* which are relevant to the discharge by the *PRA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*. For the avoidance of doubt, this *guidance* does not apply to the *threshold conditions* set out in paragraphs 4F and 5F of Schedule 6 to the *Act*.
- 2.3.2** G Paragraphs 2C and 3B of Schedule 6 to the *Act* implements requirements of the *Single Market Directives*, but the *Act* extends this condition to *firms* from outside the *EEA* and other *firms* which are outside the scope of the *Single Market Directives*.
- 2.3.3** G In assessing the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, factors which the *FCA* will take into consideration include, among other things, whether:

 - (1) it is likely that the *FCA* will receive adequate information from the *firm*, and those *persons* with whom the *firm* has *close links*, to enable it to determine whether the *firm* is complying with the requirements and standards under the *regulatory system* for which the *FCA* is responsible and to identify and assess the impact on its *statutory objectives*; this will include consideration of whether the *firm* is ready, willing and organised to comply with *Principle 11* (Relations with regulators and the *rules* in *SUP* on the provision of information to the *FCA*;
 - (2) the structure and geographical spread of the *firm*, the *group* to which it belongs and other *persons* with whom the *firm* has *close links*, might hinder the provision of adequate and reliable flows of information to the *FCA*; factors which may hinder these flows include the fact there may be branches or connected *companies* in territories which supervise *companies* to a different standard or territories with laws which restrict the free flow of information, although the *FCA* will consider the totality of information available from all sources; and
 - (3) [deleted]

- (4) in respect of a *firm* not carrying on, or seeking to carry on, a *PRA-regulated activity*, it is possible to assess with confidence the overall financial position of the *group* at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a *group*, if companies in the same *group* as the *firm* have different financial years and accounting dates and if they do not share common auditors.

2.3.4 G [deleted]

2.3.5 G [deleted]

Meaning of "parent undertaking" and "subsidiary undertaking"

2.3.6 G (1) Section 420(1) of the *Act* (Parent and subsidiary undertaking) states that, except in relation to an *incorporated friendly society*, '*parent undertaking*' and '*subsidiary undertaking*' have the same meaning as in the Companies Acts (see section 1162 of, and schedule 7 to, the Companies Act 2006). These are the cases referred to in ■ COND 2.3.7 G (1)(a) to ■ (f).

(2) Section 420(2) of the *Act* supplements these definitions in two ways; these are the cases referred to in ■ COND 2.3.7 G (1)(g) and ■ (h).

(3) Paragraph 1A of Schedule 6 to the *Act* extends the meaning of '*subsidiary undertaking*' for the purposes of the *threshold conditions* to all the cases in articles 1(1) and (2) of the *Seventh Company Law Directive* in which one *undertaking* may be a *subsidiary* of another *undertaking* (see ■ COND 2.3.11 G).

2.3.7 G (1) For the purposes of the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, and except in relation to an *incorporated friendly society*, an *undertaking* is a *parent undertaking* of another *undertaking* (a *subsidiary undertaking*) if any of the following apply to it:

- (a) it holds a majority of the voting rights in the *subsidiary undertaking*; or
- (b) it is a member of the *subsidiary undertaking* and has the right to appoint or remove a majority of its board of *directors*; or
- (c) it has the right to exercise a dominant influence over the *subsidiary undertaking* through:
 - (i) provisions contained in the *subsidiary undertaking's* memorandum or articles; or
 - (ii) a control contract; or
- (d) it is a member of the *subsidiary undertaking* and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in the *subsidiary undertaking*; or
- (e) it has the power to exercise, or actually exercises, dominant influence or control over it, or it and the *subsidiary undertaking* are managed on a unified basis; or

- (f) it is a *parent undertaking* of a *parent undertaking* of the *subsidiary undertaking*; or
 - (g) it is an individual and would be a *parent undertaking* if it were an *undertaking*; or
 - (h) it is incorporated in or formed under the law of another *EEA State* and is a *parent undertaking* within the meaning of any rule of law in that State for purposes connected with implementation of the *Seventh Company Law Directive*.
- (2) [deleted]
- 2.3.8 G (1) In relation to ■ COND 2.3.7 G (1)(b) and ■ (d), an *undertaking* is treated as a member of another *undertaking* if any of its *subsidiary undertakings* is a member of that *undertaking*, or if any shares in that other *undertaking* are held by a *person* acting on behalf of the *undertaking* or any of its *subsidiary undertakings*.
- (2) [deleted]
- (3) [deleted]
- 2.3.9 G The provisions of Schedule 7 to the Companies Act 2006 (Parent and subsidiary undertakings: supplementary provisions) explain and supplement the provisions of section 1162 of the Companies Act 2006 (outlined in ■ COND 2.3.7 G (1)(a) to ■ (f)).
- 2.3.10 G Section 420(3) of the *Act* (Parent and subsidiary undertaking) states that an *incorporated friendly society* is a *parent undertaking* of another *body corporate* (a *subsidiary undertaking*) if it has the following relationship to it:
- (1) it holds a majority of the voting rights in the *subsidiary undertaking*; or
 - (2) it is a member of the *subsidiary undertaking* and has the right to appoint or remove a majority of the *subsidiary undertaking's* board of *directors*; or
 - (3) it is a member of the *subsidiary undertaking* and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in it.
- 2.3.11 G For the purposes of the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, an *undertaking* is a *subsidiary undertaking* of another *undertaking* if:
- (1) the other undertaking (its parent) is a member of the *undertaking*;
 - (2) a majority of the *undertaking's* board of *directors* who have held office during the financial year and during the preceding financial year have been appointed solely as a result of the exercise of the parent's voting rights; and

- (3) no one else is the *parent undertaking* of the *undertaking* under
■ COND 2.3.7 G (1)(a) or ■ COND 2.3.10 G (1).

2.3.11A **G** Paragraphs 2C(2)(e) and (f) and 3B(2)(e) and (f) of Schedule 6 to the Act reflect legislation initially introduced in the *Post-BCCI Directive*, which defines close links, in part, by reference to participation. Recital 5 of the *Post-BCCI Directive* gives further guidance on what is meant by 'participation' for the purposes of the directive. It states that the sole fact of having acquired a significant proportion of a company's capital does not constitute participation for the purposes of the directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking.

2.3.12 **G** The *guidance* in ■ COND 2.3 is not comprehensive and is not a substitute for consulting the relevant legislation, for example the Companies Act 2006, the Friendly Societies Act 1992 and the *Seventh Company Law Directive*, or obtaining appropriate professional advice.

2.4 Appropriate resources

2.4.1 UK [deleted]

Paragraph 2D of Schedule 6 to the Act

2.4.1A UK

- (1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.
- (2) The matters which are relevant in determining whether A has appropriate resources include-
 - (a) the nature and scale of the business carried on, or to be carried on, by A;
 - (b) the risks to the continuity of the services provided by, or to be provided by, A; and
 - (c) A's membership of a group and any effect which that membership may have.
- (3) Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether A has appropriate financial resources include-
 - (a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities; and
 - (b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A's business.

(3A) Where the only regulated activities that A carries on, or seeks to carry on, are-

 - (a) relevant credit activities, and
 - (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by A, A has adequate financial resources if A is capable of meeting A's debts as they fall due.
- (4) The matters which are relevant in determining whether A has appropriate non-financial resources include-
 - (a) the skills and experience of those who manage A's affairs;
 - (b) whether A's non-financial resources are sufficient to enable A to comply with -

- (i) requirements imposed or likely to be imposed on A by the FCA in the course of the exercise of its functions;
- (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purposes of any provision of Part 14 of this Act.

2.4.1B G Paragraph 2D of Schedule 6 to the *Act* sets out the appropriate resources *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.4.1BA G For the purposes of paragraph 2D (3A) of Schedule 6 to the *Act*, relevant credit activity is defined in paragraph 2G of Schedule 6 to the *Act*. Guidance on the meaning of relevant credit activity is given in ■ **COND 1.1A.5A G**.

Paragraph 3C of Schedule 6 to the Act

2.4.1C UK

- (1) The non-financial resources of B must be appropriate in relation to the regulated activities that B carries on or seeks to carry on, having regard to the operational objectives of the FCA.
- (2) The matters which are relevant in determining whether the condition in sub-paragraph (1) is met include-
 - (a) the nature and scale of the business carried on, or to be carried on, by B;
 - (b) the risks to the continuity of the services provided by, or to be provided by, B;
 - (c) B's a member of a group and any effect which that membership may have;
 - (d) the skills and experience of those who manage B's affairs;
 - (e) whether B's non-financial resources are sufficient to enable B to comply with-
 - (i) requirements imposed or likely to be imposed on B by the FCA in the exercise of its functions; or
 - (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

2.4.1D G Paragraph 3C of Schedule 6 to the *Act* sets out the appropriate non-financial resources *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.4.1E G The guidance in ■ **COND 2.4** should be read as applying to both paragraph 2D of Schedule 6 of the *Act* and, as far as relevant to the discharge by the *FCA* of its functions in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity* under the *Act*, paragraph 3C of Schedule 6 of the *Act*.

- 2.4.1F** **G** As the *threshold condition* set out in paragraph 3C of Schedule 6 to the Act does not relate to financial resources, the *guidance* in **COND 2.4** relating to appropriate financial resources only applies to the FCA's assessment of the *threshold condition* set out in paragraph 2D of Schedule 6 of the Act.
- 2.4.1G** **G** Firms carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is responsible for assessing their financial resources. Paragraphs 4D and 5D of Schedule 6 to the Act contain the *threshold conditions* relating to financial resources which are relevant to the discharge by the *PRA* of its functions under the Act in relation to firms carrying on, or seeking to carry on, a *PRA-regulated activity* (in addition to additional non-financial resources *threshold conditions* which are also relevant to the discharge by the *PRA* of its functions). For the avoidance of doubt, this *guidance* does not apply to *threshold conditions* set out in paragraphs 4D and 5D of Schedule 6 to the Act.
- 2.4.2** **G**
- (1) [deleted]
 - (2) In this context, the FCA will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a *PRA-regulated activity*), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
 - (2A) Paragraph 1A(2) of Schedule 6 to the Act provides that "non-financial resources" of a firm for the purposes of the *threshold conditions* include any systems, controls, plans or policies that the firm maintains and the human resources that the firm has available.
 - (3) High level systems and control requirements are in SYSC. The FCA will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the *threshold conditions* set out in paragraphs 2D and 3C to Schedule 6 of the Act. For a *Solvency II firm*, the PRA Rulebook: Solvency II firms: Conditions Governing Business and *Solvency II Regulation* (EU) 2015/35 of 10 October 2014 also contain systems and control requirements and the FCA will take these into account.
 - (4) Detailed financial resources requirements are in the relevant section of the Prudential Standards part of the *FCA Handbook*, including specific provisions for particular types of *regulated activity*. The FCA will consider whether firms (other than firms carrying on, or seeking to carry on, *PRA-regulated activities*) are ready, willing and organised to comply with these requirements when assessing if they have appropriate financial resources for the purposes of the *threshold condition* set out in paragraph 2D of Schedule 6 to the Act.
- 2.4.3** **G**
- (1) [deleted]
 - (2) Although it is the firm that is being assessed, the FCA may take into consideration the impact of other members of the firm's group on the adequacy of its resources, where relevant to the discharge of the FCA's functions. For example, in relation to a firm other than a firm carrying on, or seeking to carry on, a *PRA-regulated activity*, the FCA

may assess the consolidated solvency of the *group*. The *FCA's* approach to the consolidated supervision of such a *firm*, and its *group*, is in the relevant part of the Prudential Standards part of the *FCA Handbook*.

2.4.4

G

- (1) [deleted]
- (2) Relevant matters to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* may include but are not limited to:
 - (a) (in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*), whether there are any indications that the *firm* may have difficulties if the application is granted, at the time of the grant or in the future, in complying with any of the *FCA's* prudential *rules* (see the relevant part of the Prudential Standards part of the *FCA Handbook*);
 - (b) (in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*, whether there are any indications that the *firm* will not be able to meet its debts as they fall due;
 - (c) whether there are any implications for the adequacy of the *firm's* resources arising from the history of the *firm*; for example, whether the *firm* has:
 - (i) been adjudged bankrupt; or
 - (ii) entered into liquidation; or
 - (iii) been the subject of a receiving or administration order; or
 - (iv) had a bankruptcy or winding-up petition served on it; or
 - (v) had its estate sequestrated; or
 - (vi) entered into a deed of arrangement or an individual voluntary agreement (or in Scotland, a trust deed) or other composition in favour of its creditors, or is doing so; or
 - (vii) within the last ten years, failed to satisfy a judgment debt under a court order, whether in the *United Kingdom* or elsewhere;
 - (d) whether the *firm* has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business (see ■ COND 2.4.6 G) and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times. For a *Solvency II firm*, the *PRA Rulebook: Solvency II firms: Conditions Governing Business and Solvency II Regulation (EU) 2015/35* of 10 October 2014 also contain systems and control requirements on these matters and the *FCA* will take these into account; and
 - (e) whether the *firm* has conducted enquiries into the financial services sector in which it intends to conduct business that are sufficient to satisfy itself that:
 - (i) it has access to adequate capital, by reference to the *FCA's* prudential requirements, to support the business including any losses which may be expected during its start-up period

(in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*); and

(ii) client money, *deposits*, *custody assets* and *policyholders'* rights will not be placed at risk if the business fails; and

(f) whether the resources of the *firm* are commensurate with the likely risks it will face.

(3) [deleted]

(4) [deleted]

2.4.5 **G** [deleted]

2.4.6 **G** (1) [deleted]

(2) [deleted]

(3) [deleted]



2.5 Suitability

2.5.1 UK [deleted]

Paragraph 2E to Schedule 6 of the Act

- 2.5.1A UK
- (1) A must be a fit and proper person having regard to all the circumstances, including-
 - (a) A’s connection with any person;
 - (b) the nature (including the complexity) of any regulated activity that A carries on or seeks to carry on;
 - (c) the need to ensure that A’s affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
 - (d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;
 - (e) whether those who manage A’s affairs have adequate skills and experience and act with probity;
 - (f) whether A’s business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and
 - (g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

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

Paragraph 3D to Schedule 6 of the Act

- 2.5.1C UK
- (1) B must be a fit and proper person, having regard to the operational objectives of the FCA.
 - (2) The matters which are relevant in determining whether B satisfies the condition in sub-paragraph (1) include-
 - (a) B’s connection with any person;

- (b) the nature (including the complexity) of any regulated activity that B carries on or seeks to carry on;
- (c) the need to ensure that B's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (d) whether B has complied and is complying with requirements imposed by the FCA in the exercise its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where B has so complied or is so complying, the manner of that compliance;
- (e) whether those who manage B's affairs have adequate skills and experience and act with probity; and
- (f) the need to minimise the extent to which it is possible for the business carried on by B, or to be carried on by B, to be used for a purpose connected with financial crime.

2.5.1D G Paragraph 3D of Schedule 6 to the *Act* sets out the suitability *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.5.1E G The *guidance* in ■ COND 2.5 should be read as applying to both paragraph 2E of Schedule 6 to the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3D of Schedule 6 of the *Act*.

2.5.1F G *Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is also responsible for assessing suitability under its own *threshold conditions*. Paragraphs 4E and 5E of Schedule 6 to the *Act* set out the suitability *threshold conditions* which are relevant to the discharge by the *PRA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*. For the avoidance of doubt, this *guidance* does not apply to the *threshold conditions* set out in paragraph 4E and 5E of Schedule 6 to the *Act*.

2.5.2 G

- (1) [deleted]
- (2) The *FCA* will also take into consideration anything that could influence a *firm's* continuing ability to satisfy the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act*. Examples include the *firm's* position within a *UK* or international *group*, information provided by *overseas regulators* about the *firm*, and the *firm's* plans to seek to vary its *Part 4A permission* to carry on additional *regulated activities* once it has been granted that *permission*.

2.5.3 G

- (1) The emphasis of the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 of the *Act* is on the suitability of the *firm* itself. The suitability of each *person* who performs a *controlled function* will be assessed by the *FCA* and/or the *PRA*, as appropriate, under the *approved persons* regime (in relation to an *FCA-approved person*, see

■ SUP 10A (FCA Approved Persons), ■ SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) and *FIT*). In certain circumstances, however, the *FCA* may consider that the *firm* is not suitable because of doubts over the individual or collective suitability of *persons* connected with the *firm*.

(2) [deleted]

(3) [deleted]

2.5.4

G

(1) [deleted]

(2) Examples of the kind of general considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act* include, but are not limited to, whether the *firm*:

(a) conducts, or will conduct, its business with integrity and in compliance with proper standards;

(b) has, or will have, a competent and prudent management; and

(c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

(3) [deleted]

(4) [deleted]

2.5.5

G

[deleted]

2.5.6

G

Examples of the kind of particular considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* include, but are not limited to, whether:

(1) the *firm* has been open and co-operative in all its dealings with the *FCA* and any other regulatory body (see *Principle 11* (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the *regulatory system* (such as the detailed requirements of *SYSC* and, in relation to a *firm* not carrying on, or seeking to carry on, a *PRA-regulated activity* only, the Prudential Standards part of the *FCA Handbook*) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the *regulated activities* which the *firm* has *permission*, or is seeking *permission*, to carry on;

(1A) the *firm* has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the *FCA* is responsible under the *regulatory system*;

(2) the *firm* has been convicted, or is connected with a *person* who has been convicted, of any criminal offence; this must include, where provided for by the *Rehabilitation Exceptions Orders* to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of

Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, *money laundering*, market manipulation and *insider dealing*, whether or not in the *United Kingdom*;

- (3) the *firm* has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings by the *FCA*, the *Society of Lloyd's* or by other regulatory authorities (including the *FCA's* predecessors), *clearing houses* or exchanges, professional bodies or government bodies or agencies; the *FCA* will, however, take both the nature of the *firm's* involvement in, and the outcome of, any investigation or enforcement proceedings into account in determining whether it is a relevant matter;
- (4) the *firm* has contravened, or is connected with a *person* who has contravened, any provisions of the *Act* or any preceding financial services legislation, the *regulatory system* or the rules, regulations, statements of principles or codes of practice (for example the *Society of Lloyd's* Codes) of other regulatory authorities (including the *FCA's* predecessors), *clearing houses* or exchanges, professional bodies, or government bodies or agencies or relevant industry standards (such as the Non-Investment Products Code); the *FCA* will, however, take into account both the status of codes of practice or relevant industry standards and the nature of the contravention (for example, whether a *firm* has flouted or ignored a particular code);
- (5) the *firm*, or a *person* connected with the *firm*, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; whether the *FCA* considers such a refusal relevant will depend on the circumstances;
- (6) [deleted]
- (7) the *firm* has put in place procedures which are reasonably designed to:
 - (a) ensure that it has made its *employees* aware of, and compliant with, those requirements and standards under the *regulatory system* that apply to the *firm* for which the *FCA* is responsible and the *regulated activities* for which it has, or will have *permission*;
 - (b) ensure that its *approved persons* and, in the case of *relevant authorised persons*, the rest of its *conduct rules staff* are aware of those requirements and standards under the *regulatory system* applicable to them, whether or not they are employed by the *firm*;
 - (c) determine that its *employees* are acting in a way compatible with the *firm* adhering to those requirements and standards; and
 - (d) determine that its *approved persons* and, in the case of *relevant authorised persons*, the rest of its *conduct rules staff*, are adhering to those requirements and standards;
- (8) the *firm* or a *person* connected with the *firm* has been dismissed from employment or a position of trust, fiduciary relationship or similar or

- has ever been asked to resign from employment in such a position; whether the *FCA* considers a resignation to be relevant will depend on the circumstances, for example if a *firm* is asked to resign in circumstance that cast doubt over its honesty or integrity;
- (9) the *firm* or a *person* connected with the *firm* has ever been disqualified from acting as a *director*;
 - (10) the *governing body* of the *firm* is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the *firm's regulated activities*;
 - (11) where appropriate, the *governing body* of the *firm* includes non-executive representation, at a level which is appropriate for the control of the *regulated activities* proposed, for example, as members of an audit committee;
 - (12) those *persons* who perform *controlled functions* under certain *arrangements* entered into by the *firm* or its contractors (including *appointed representatives* or, where applicable, *tied agents*) act with due skill, care and diligence in carrying out their *controlled function* (see ■ APER 4.2 (Statement of Principle 2) or managing the business for which they are responsible (see ■ APER 4.7 (Statement of Principle 7));
 - (13) the *firm*, or a *person* connected with the *firm*, has been a *director*, *partner* or otherwise concerned in the management of a *company*, *partnership* or other organisation or business that has gone into insolvency, liquidation or administration while having been connected with that organisation or within one year of such a connection;
 - (14) the *governing body* of the *firm* is organised in a way that enables it to address and control the *regulated activities* of the *firm*, including those carried on by *managers* to whom particular functions have been delegated;
 - (15) the *firm* has developed human resources policies and procedures that are reasonably designed to ensure that it employs only individuals who are honest and committed to high standards of integrity in the conduct of their activities;
 - (16) the *firm* has taken reasonable care to ensure that robust information and reporting systems have been developed, tested and properly installed;
 - (17) the *firm* has in place appropriate systems and controls against financial crime, including, for example, money laundering;
 - (18) in the case of a *firm* that carries on insurance distribution activity:
 - (a) employees or other *persons* within its management structure who are responsible for the *firm's insurance distribution activities*; and
 - (b) employees or other *persons* directly involved in the carrying on of the *firm's insurance distribution activities*; and
 - (ba) employees or other *persons* responsible for the supervision of a relevant employee acting in the capacity as set out in (b),

demonstrate the appropriate knowledge and ability in order to complete their tasks and perform their duties adequately (see

competent employee rule and ■ SYSC 28 (Insurance distribution: specific knowledge; ability and good repute requirements)); and

(c) all the persons in the *firm's* management structure and any staff directly involved in insurance distribution activity are of good repute (see ■ SYSC 28.3 (Good repute));

natural persons working in the *firm*, responsible for ancillary *insurance distribution activities* are of good repute (see ■ SYSC 28.3.3R); and

(19) where appropriate, the *firm* has appointed auditors and actuaries, who have sufficient experience in the areas of business to be conducted.

2.5.7

G [deleted]

2.7 Business model

Paragraph 2F to Schedule 6 of the Act

- 2.7.1 UK
- (1) A's business model (that is, A's strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.
 - (2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include-
 - (a) whether the business model is compatible with A's affairs being conducted, and continuing to be conducted, in a sound and prudent manner;
 - (b) the interests of consumers;
 - (c) the integrity of the UK financial system.
 - (3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-
 - (a) relevant credit activities, and
 - (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

2.7.2 G Paragraph 2F of Schedule 6 to the *Act* sets out the business model *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.7.2A G For the purposes of paragraph 2F(3) of Schedule 6 to the *Act*, relevant credit activity is defined in paragraph 2G of Schedule 6 to the *Act*. Guidance on the meaning of relevant credit activity is given in ■ COND 1.1A.5A G.

Paragraph 3E to Schedule 6 of the Act

2.7.3 UK B's business model (that is, B's strategy for doing business) must be suitable for a person carrying on the regulated activities that B carries on or seeks to carry on, having regard to the FCA's operational objectives.

2.7.4 G Paragraph 3E of Schedule 6 to the *Act* sets out the business model *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

- 2.7.5** **G** The *guidance* in **COND 2.7** should be read as applying to both paragraph 2F of Schedule 6 to the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3E of Schedule 6 of the *Act*.
- 2.7.6** **G** *Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* states in its Approach Documents that analysis of such *firms'* business models will form an important part of the *PRA's* supervisory approach. For the avoidance of doubt, this guidance does not apply to the *PRA's* own assessment of the *firms'* business models.
- 2.7.7** **G** In assessing whether the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act* are satisfied, the *FCA* may consider all matters that might affect the design and execution of a *firm's* business model, taking into account the nature, scale and complexity of a *firm's* business.
- 2.7.8** **G** In deciding how they will satisfy and continue to satisfy the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act*, *firms* should consider matters including (but not limited to) the following:
- (1) the assumptions underlying the *firm's* business model and justification for it;
 - (2) the rationale for the business the *firm* proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business;
 - (3) the needs of and risks to *consumers*;
 - (4) the expectations of stakeholders, for example, shareholders and regulators;
 - (5) the products and services being offered and product strategy;
 - (6) the governance and controls of the *firm* and of any member of its *group* (if appropriate);
 - (7) the growth strategy and any risks arising from it;
 - (8) any diversification strategies; and
 - (9) the impact of the external macroeconomic and business environment.
- 2.7.9** **G** *Firms* should consider the manner in which they intend to bring their business model into operation. This plan could, for example, include matters such as procurement, outsourcing, and recruitment.
- 2.7.10** **G** *Firms* should consider scenarios which may negatively impact on the *firm's* business model with a view to ensuring the sustainability of the *firm* and, further, to consider the vulnerability of the business model to specific events and the risks and consequences that might arise. Where appropriate, this might include reverse stress-testing (see SYSC 20 'Reverse stress testing'). A *firm* should put in place a credible plan to minimise the risks that it identifies

from, or in relation to, its business model and a contingency plan for dealing with risks that have crystallised.

2.7.11

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Firms should ensure that any adjustments to its business model:

- (1) are approved at an appropriate level in the business;
- (2) are considered in the light of any potential risks, impacts and consequences of the proposed changes; and
- (3) appropriately take into account the needs of and risks to *clients* and relevant *consumers*.

2.7.12

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The *FCA's* assessment of a *firm's* satisfaction of the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act* will not necessarily be limited to a *firm's regulated activities* if the *FCA* believes the *firm's* other business activities, if any, may impact on a *firm's regulated activities*.

Chapter 3

Banking Act 2009 [deleted]

Threshold Conditions

COND TP 1 Transitional Provisions

There are no transitional provisions in *COND*.

GEN contains transitional provisions that apply throughout the *Handbook*.

Threshold Conditions

Schedule 1 Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in *COND*.

Threshold Conditions

Schedule 2 Notification requirements

Sch 2.1 G

There are no notification *rules* in *COND* but guidance is given in *COND* 1.3.3 G on disclosure to the *FCA* in connection with applications.

Threshold Conditions

Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in *COND*.

Threshold Conditions

Schedule 4 Powers exercised

Sch 4.1 G

The following power in the *Act* has been exercised by the *FSA* to give the *guidance* in *COND*:

Section 157(1) (Guidance).

Threshold Conditions

Schedule 5 Rights of action for damages

Sch 5.1 G

There are no rules in *COND*.

Threshold Conditions

Schedule 6 Rules that can be waived

Sch 6.1 G

There are no *rules* in *COND*.

