

**INDIVIDUAL CONDUCT RULES (NON-EXECUTIVE DIRECTORS)  
INSTRUMENT 2017**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 64A (Rules of conduct);
  - (2) section 64C (Requirements for relevant authorised persons to notify regulator of disciplinary action);
  - (3) section 137A (The FCA’s general rules);
  - (4) section 137T (General supplementary powers); and
  - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 3 July 2017.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Code of Conduct sourcebook (COCON)	Annex B
Supervision manual (SUP)	Annex C

**Citation**

- E. This instrument may be cited as the Individual Conduct Rules (Non-Executive Directors) Instrument 2017.

By order of the Board  
27 April 2017

## Annex A

## Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

- board director* (in relation to a *firm*) has the same meaning as “director” in section 64A(7) of the *Act* (Rules of conduct).
- standard non-executive director* (in relation to a *firm*) any of the following:
- (1) a *board director* of that *firm* who:
    - (a) has no responsibility for implementing the decisions or the policies of the board of *directors*, or if there is no such board, of the equivalent body responsible for the management of the *firm*; and
    - (b) is not:
      - (i) an *SMF manager*; or
      - (ii) an *approved person* whose approval is to perform an *FCA significant-influence function*; or
      - (iii) an *approved person* whose approval is to perform a senior insurance management function as defined in the *PRA Rulebook*;
  - of that *firm*; or
  - (2) a *non-executive director* of that *firm* who is an *employee* (as defined in paragraph (4) of the *Glossary* definition of *employee*) of that *firm*.

Amend the following definition as shown. Underlining indicates new text and striking through indicates deleted text.

- senior conduct rules staff member* (in *COCON*) a *person* who ~~is~~:
- (a) comes within row (1) of the table in *COCON* 1.1.2R (an *SMF manager*);

- (b) comes within row (2) of the table in COCON 1.1.2R (an employee of a relevant authorised person who performs the function of an SMF manager as specified in COCON 1.1.2R(1)(b); or
- (c) meets the following conditions:
  - (i) they come within row (7) of the table in COCON 1.1.2R (an approved person performing a controlled significant-influence function (including a PRA controlled function) in a Solvency II firm (including a large non-directive insurer) or a small non-directive insurer); and
  - (ii) that controlled function is a significant-influence function; or
- (d) comes within row (8) of the table in COCON 1.1.2R (a standard non-executive director of a relevant authorised person, a Solvency II firm (including a large non-directive insurer) or a small non-directive insurer).

Delete the following definition. The text is not shown struck through.

*other conduct rules staff*

a person who:

- (a) meets the requirement in COCON 1.1.2R(1)(b) (*employee of a relevant authorised person who performs the function of an SMF manager*);
- (b) meets the requirement in COCON 1.1.2R(1)(c) (*employee of a relevant authorised person who would be an SMF manager but for SUP 10C.3.13R (The 12-week rule)*);
- (c) meets the requirement in COCON 1.1.2R(1)(e) (*employee of a relevant authorised person who would be a certification employee but for SYSC 5.2.27R(1) (Scope: emergency appointments)*); or
- (d) comes within COCON 1.1.2R(1)(f).

**Annex B**

**Amendments to the Code of Conduct sourcebook (COCON)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**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 ~~*approved certain persons*~~ and ~~*persons who are employees of relevant authorised 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 ~~(1) COCON applies to:~~ Table: To whom does COCON apply?

<u>Persons to whom COCON applies</u>	<u>Comments</u>
<del>(a)</del> <del>an <u>An</u> SMF manager;</del> <u>(1)</u>	
<del>(b)</del> <del>an <u>An</u> employee (“P”) of a relevant authorised person who:</del> <u>(2)</u> <ul style="list-style-type: none"> <li><del>(i)</del> performs the function of an <u>(a)</u> SMF manager;</li> <li><del>(ii)</del> is not an <i>approved person</i> to perform the function in <u>(b)</u> question; and</li> <li><del>(iii)</del> is required to be an <i>approved person</i> at the time P performs that function; <del>and</del> <u>(c)</u></li> </ul>	
<del>(c)</del> <del>an <u>An</u> employee of a relevant authorised person who would be an SMF manager but for SUP 10C.3.13R (The 12-week rule);</del> <u>(3)</u>	
<del>(d)</del> <del>a <u>A</u> certification employee employed by a relevant authorised person;</del> <u>(4)</u>	<u>This applies</u> 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; 2
<p>(e) <del>an</del> <u>An</u> <i>employee of a relevant authorised person</i> who would be a <i>certification employee</i> but for SYSC 5.2.27R(1) (Scope: emergency appointments) or SYSC 5.2.28AR (Scope: temporary UK role); 2</p>	
<p>(f) <del>any other</del> <u>Any</u> <i>employee of a relevant authorised person not coming within another row of this table, except: one listed in column (2).</i></p> <p>(g) <del>(i) a non-executive director other than a senior conduct rules staff member; and</del></p> <p><del>(ii) an employee whose role is listed under COCON 1.1.2R(2); and</del></p>	<p>(2) <del>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.</del></p> <p><i>COCON</i> <u>This row</u> does not apply to an <i>employee of a relevant authorised person</i> who only performs functions falling within the scope of the following roles:</p> <ul style="list-style-type: none"> <li>(a) receptionists;</li> <li>(b) switchboard operators;</li> <li>(c) post room staff;</li> <li>(d) reprographics/print room staff;</li> <li>(e) property/facilities management;</li> <li>(f) events management;</li> <li>(g) security guards;</li> <li>(h) invoice processing;</li> <li>(i) audio visual technicians;</li> <li>(j) vending machine staff;</li> <li>(k) medical staff;</li> </ul>

	<ul style="list-style-type: none"> <li>(l) archive records management;</li> <li>(m) drivers;</li> <li>(n) corporate social responsibility staff;</li> <li>(o) data controllers or processors under the Data Protection Act 1998;</li> <li>(p) cleaners;</li> <li>(q) catering staff;</li> <li>(r) personal assistant or secretary;</li> <li>(s) information technology support (ie, helpdesk); and</li> <li>(t) human resources administrators /processors.</li> </ul>
<p><del>(g)</del> <u>(7)</u> <del>an</del> <u>An FCA-approved person or PRA-approved person</u> approved to perform a <i>controlled function</i> in a <i>Solvency II firm</i> <del>(including a large non-directive insurer)</del> or a <i>small non-directive insurer</i>.</p>	<p><del>(3)</del> <del>COCON</del> <u>This row</u> does not apply to <i>approved persons</i> approved to perform a <i>controlled function</i> in SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives).</p>
<p><u>(8)</u> <u>A standard non-executive director of:</u></p> <ul style="list-style-type: none"> <li><u>(a)</u> <u>a relevant authorised person;</u></li> <li><u>(b)</u> <u>a Solvency II firm; or</u></li> <li><u>(c)</u> <u>a small non-directive insurer.</u></li> </ul>	<p><u>This row only applies to a UK domestic firm.</u></p>
<p><b>Note:</b> <u>In accordance with the Glossary, Solvency II firm includes a large non-directive insurer.</u></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.

...

- 1.1.4 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 standard non-executive director unless, as well as being a standard non-executive director, they also fall into one of the other categories of senior conduct rules staff member.*

- 1.1.5 G ...
- (2) *The persons in COCON 1.1.2R(1)(a) and (b) are referred to as senior conduct rules staff members. An approved person performing a significant influence function (including a PRA controlled function) in a Solvency II firm or in a small non-directive insurer is also a senior conduct rules staff member. [deleted]*

...

To what conduct does it apply?

...

- 1.1.7 R 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:

- (1) (in the case of a board director of a firm) that firm; or
- (2) (in any other case) P's employer.

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

...

- 1.1.14 G COCON 1 Annex 1 has guidance on the role and responsibilities of non-executive directors ~~of relevant authorised persons~~ to whom COCON applies.

...

**1 Annex 1G Guidance on the role and responsibilities of NEDs ~~for relevant authorised persons~~ subject to COCON**

1	<b>Introduction</b>	
1.1	This annex applies to non-executive directors (NEDs) <del>of: who are performing a designated senior management function. It only applies where the individual performing that function is also a NED.</del>	
	(1)	<u>a relevant authorised person;</u>

	(2)	a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i> ); or
	(3)	a <i>small non-directive insurer</i> .
...		
3.3		<i>SYSC 4.3A.8R and SYSC 4.3A.9R deal with the nomination committee for relevant authorised persons. There is no equivalent material for Solvency II firms. Although being the chair of the nomination committee is not a controlled function for a small non-directive insurer, paragraph 3.2 of this annex is still relevant to a small non-directive insurer if it has such a committee.</i>
...		
4.3		Although NEDs who are subject to the senior management regime for <i>SMF managers</i> or the <i>approved persons regime for insurers</i> have individual duties under that regime, the <i>FCA</i> views the regime and its application as consistent with the principle of collective decision-making.

...

#### 4.1 Specific guidance on individual conduct rules

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

...

##### 4.1.3 G ...

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

...

##### 4.1.8 G ...

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

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

...



## Annex C

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 15.11 Notification of COCON breaches and disciplinary action

Reasons for making a notification to the FCA

- 15.11.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of *approved persons* and certain other persons who ~~are employees of relevant authorised persons~~ work for a firm.
- 15.11.2 G *COCON* sets out *rules* under section 64A of the *Act* and guidance ~~about the conduct of~~ conduct rules staff on those rules for relevant authorised persons and insurers.
- 15.11.4 G Under section 64C of the *Act*, a *firm* must notify the *FCA* if it takes disciplinary action against ~~any conduct rules staff~~ certain people working for a relevant authorised person and the reason for this action is a reason specified in *rules* made by the *FCA* (those rules are set out in SUP 15.11.6R).
- 15.11.5 G Disciplinary action against a person is defined in section 64C of the *Act* as the issuing of a formal written warning, the suspension or dismissal of a that person who is a member of a relevant authorised person's conduct rules staff or the reduction or recovery of any of such *person's* remuneration.
- 15.11.6 R If a reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of *COCON*, then the ~~firm~~ relevant authorised person is required to notify the *FCA* of the disciplinary action.
- 15.11.6A G The effect of section 64C of the *Act* and SUP 15.11.6R is that the reporting obligation in section 64C of the *Act* and in this section:
- (a) only applies to relevant authorised persons; and
  - (b) only covers persons who are subject to COCON (who are called conduct rules staff in the FCA Handbook) rather than to the whole workforce of a relevant authorised person.

...

Timing and form of notifications: ~~certification employees and other~~ conduct rules staff other than SMF managers

- 15.11.13 R (1) A *firm* must make any notifications required pursuant to section 64C of the *Act* relating to ~~a certification employee or other~~

*conduct rules staff other than SMF managers* in accordance with SUP 15.11.13R to SUP 15.11.15R.

...

...

- 15.11.14 R (1) A *firm* other than a *credit union* must make each notification pursuant to SUP 15.11.13R (notifications about section 64C of the Act relating to ~~a *certification employee* or other *conduct rules staff*~~ other than SMF managers) by submitting it online through the FCA's website using the electronic system made available by the FCA for this purpose.
- (2) A *firm* must use the version of Form H (named REP008 – Notification of Disciplinary Action) made available on the electronic system referred to in (1), which is based on the version found in SUP 15 Annex 7R.

...

...

- 15.11.15 R A *credit union* must make each notification pursuant to SUP 15.11.13R (notifications about section 64C of the Act relating to ~~a *certification employee* or other *conduct rules staff*~~ *conduct rules staff* other than SMF managers) in accordance with the *rules* and *guidance* in SUP 15.7, using Form H as set out in SUP 15 Annex 7R.

General guidance on notifications of rule breaches and disciplinary action

- 15.11.16 G ~~A *firm* is required to submit nil return notifications about section 64C of the Act in the case of *certification employees* and other *conduct rules staff* (see SUP 15.11.13R(5)). However, a *credit union* is not required to make a nil return. [deleted]~~

...

15 Annex 7R ~~Form H: The Notification of Conduct rules Breaches and Disciplinary Action~~ Form for the notification of disciplinary action relating to conduct rules staff (other than SMF managers) in relevant authorised persons



Application number  
(for FCA/PRA use only)

**Form H**

**Notification of ~~Conduct~~  
~~Rules Breaches~~ and  
Disciplinary Action relating  
to ~~certification employees~~  
and other conduct rules  
staff (other than SMF  
managers) in relevant  
authorised persons**

*FCA Handbook Reference: SUP 15 Annex 7R  
30 September 2016 3 July 2017*

...



Note 3.4:

(a) If the person about whom the notification is being made is appealing against the firm's decision, please include details here.

(b) If the firm is updating a previous notification, please include the details in this column. This includes (1) any appeal made by the subject of the notification subsequent to a previous notification or (2) the outcome of any appeal previously notified.

(c) The firm should specify which of the listed types of disciplinary action it has taken.