

Chapter 2

Competence

2.1 Assessing and maintaining competence

Assessment of competence and supervision

- 2.1.1 **R** (1) A *firm* must not assess an *employee* as competent to carry on an activity in ■ TC Appendix 1 until the *employee* has demonstrated the necessary competence to do so and has (if required by ■ TC Appendix 1) attained each module of an appropriate qualification. This assessment need not take place before the *employee* starts to carry on the activity.
- (2) [deleted]

- 2.1.2 **R** A *firm* must not allow an *employee* to carry on an activity in ■ TC Appendix 1 without appropriate supervision.

- 2.1.3 **G** *Firms* should ensure that *employees* are appropriately supervised at all times. It is expected that the level and intensity of that supervision will be significantly greater in the period before the *firm* has assessed the *employee* as competent, than after. A *firm* should therefore have clear criteria and procedures relating to the specific point at which the *employee* is assessed as competent in order to be able to demonstrate when and why a reduced level of supervision may be considered appropriate. At all stages *firms* should consider the level of relevant experience of an *employee* when determining the level of supervision required.

Supervisors

- 2.1.4 **G** *Firms* should ensure that those supervising *employees* carrying on an activity in ■ TC Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge and experience to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate to require those supervising *employees* not assessed as competent to attain an appropriate qualification as well (except where ■ TC 2.1.5R applies).

- 2.1.5 **R** Where an *employee* has not been assessed as competent to do so and:
- (1) gives *personal recommendations on retail investment products to retail clients*, the *firm* must ensure that the individual supervising and assessing that *employee* has attained an appropriate qualification; or
 - (2) gives *advice on P2P agreements to retail clients*, the *firm* must ensure that the individual supervising and assessing that *employee* has

attained an appropriate qualification for giving *personal recommendations on retail investment products to retail clients*; or

- (3) undertakes the activity of a *pension transfer specialist*, the *firm* must ensure that the individual supervising and assessing that *employee* has attained an appropriate qualification for undertaking the activity of a *pension transfer specialist* and an appropriate qualification for giving *personal recommendations on retail investment products to retail clients*.

Knowledge and competence requirements before starting MCD credit agreement activities

2.1.5A **R** ■ TC 2.1.5B R and ■ TC 2.1.5C R apply to a *firm* acting as an *MCD creditor* or an *MCD credit intermediary*.

2.1.5B **R** A *firm* must ensure that an *employee* does not carry on any of the activities 23A to 23E in ■ TC Appendix 1 without having an appropriate level of knowledge and competence, which includes an appropriate:

- (1) knowledge of *MCD credit agreements* and any ancillary services offered by the *firm* with them;
- (2) knowledge of the laws relating to *MCD credit agreements* for *consumers* (in particular, consumer protection);
- (3) knowledge and understanding of the property purchasing process;
- (4) knowledge of security valuation;
- (5) knowledge of the organisation and functioning of land registers;
- (6) knowledge of the market;
- (7) knowledge of business ethics standards;
- (8) knowledge of the process of assessing a *consumer's* creditworthiness or, where applicable, competence in assessing the *consumer's* creditworthiness; and
- (9) level of financial and economic competency.

[Note: article 9 and annex III (1) of the *MCD*]

2.1.5C **R** A *firm* must not assess knowledge and competence based solely on relevant professional experience. It should also take into account relevant professional qualifications, such as diplomas and degrees, training and competency tests.

[Note: annex III (3) of the *MCD*]

- 2.1.5D** **G** For the purposes of assessing the *employee's* knowledge and competence, professional experience means their years of employment in areas relating to the origination, distribution or intermediation of *MCD credit agreements*.
[Note: annex III (3)(b) of the *MCD*]
- 2.1.5E** **R** A *firm* must, for the purposes of **TC 2.1.5B R**, take into account the nature of the *employee's* role and their level of responsibility within the *firm* and decide the appropriate level of knowledge and competence for that *employee*.
[Note: annex III (2) of the *MCD*]
- 2.1.5F** **G** Where an *employee*, carrying on an activity in relation to a *regulated mortgage contract*, has attained the appropriate qualification required by **TC Appendix 1**, a *firm* may for the purposes of **TC 2.1.5B R** assess that *employee* as having knowledge and competence. Additionally, *firms* will need to meet any other requirements in this or other sourcebooks that are applicable, taking into account the *employee's* role and responsibilities.
- Knowledge and competence requirements when advising on P2P agreements**
- 2.1.5G** **R** **TC 2.1.5HR** applies to a *firm* advising on *P2P agreements*.
- 2.1.5H** **R** A *firm* must not, for the purposes of **TC 2.1.1R**, assess an *employee* as competent to carry on activity 9A in **TC Appendix 1** until the *employee* has attained each module of an appropriate qualification for giving *personal recommendations on retail investment products to retail clients*.
- 2.1.5I** **G** An *employee* who only carries on activity 9A in **TC Appendix 1** is not a *retail investment adviser*. As such, the *rules* in this section applicable to *retail investment advisers* are not relevant to *employees* who only advise on *P2P agreements*.
- Knowledge and competence requirements for a pension transfer specialist**
- 2.1.5J** **R** **TC 2.1.5KR** applies to a *firm* advising on *pension transfers, pension conversions and pension opt-outs*.
- 2.1.5K** **R** A *firm* must not, for the purposes of **TC 2.1.1R**, assess an *employee* as competent to carry on activity 11 in **TC Appendix 1** until the *employee* has attained each module of an appropriate qualification for giving *personal recommendations on retail investment products to retail clients* (i.e. in addition to an appropriate qualification for activity 11).
- 2.1.5L** **G** The effect of **TC 2.1.5KR** is that an *employee* undertaking the activity of a *pension transfer specialist* must be qualified to the same standard as if that *employee* were providing investment advice to *retail clients* on *retail investment products* (in addition to attaining an appropriate qualification for activity 11).

2.1.5M **G** An *employee* who only carries on activity 11 of the activities included in ■ **TC Appendix 1** is not a *retail investment adviser*. As such, the *rules* in this section applicable to *retail investment advisers* are not relevant to *employees* who only *advise on pension transfers and pension opt-outs*.

Qualification requirements before starting activities

2.1.6 **R** A *firm* must ensure that an *employee* does not carry on an activity in ■ **TC Appendix 1** (other than an overseeing activity) for which there is a qualification requirement without first attaining the relevant regulatory module of:

- (1) (in respect of activities other than *advising on P2P agreements* (activity 9A in ■ **TC Appendix 1**)) an appropriate qualification; or
- (2) (in respect of *advising on P2P agreements* (activity 9A in ■ **TC Appendix 1**)) an appropriate qualification for giving *personal recommendations on retail investment products to retail clients*.

2.1.7 **R** A *firm* must ensure that an *employee* does not carry on any of the following activities without first attaining each module of an appropriate qualification:

- (1) [deleted]
- (1A) giving *personal recommendations* on and dealing in *securities* which are not *stakeholder pension schemes, personal pension schemes or broker funds*; or
- (1B) giving *personal recommendations* on and dealing in *derivatives*; or
- (2) the activity of a *broker fund adviser*; or
- (3) *advising on syndicate participation at Lloyd's*.
- (4) [deleted]

2.1.7A **R** A *firm* must ensure that an *employee* does not undertake the activity of a *pension transfer specialist* without first attaining each module of an appropriate qualification for undertaking the activity of a *pension transfer specialist* and each module of an appropriate qualification for giving *personal recommendations on retail investment products to retail clients*.

2.1.8 **G** [deleted]

2.1.8A **R** A *firm* must ensure that an *employee* who was assessed as competent as a *retail investment adviser* for the purposes of ■ **TC 2.1.1 R** at 30 June 2009 does not carry on the activity of a *retail investment adviser* without first attaining an appropriate qualification.

Exemption from appropriate qualification requirements

2.1.9 **R** (1) If a *firm* is satisfied that an *employee* meets the conditions in this *rule* then the requirements to have attained each module of an

appropriate qualification will only apply if that *employee* is carrying on one of the activities specified in this *rule*.

- (2) The conditions are that a *firm* should be satisfied that an *employee*:
 - (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
 - (b) has not previously been required to comply fully with the relevant qualification requirements in ■ TC 2.1.1 R; and
 - (c) has passed the relevant regulatory module of an appropriate qualification;

but (b) and (c) do not apply to an *employee* who is benefiting from the "30-day rule" exemption in ■ SUP 10A.10.8 R or the "30-day rule" exemption in ■ SYSC 27.5.3R, unless the *employee* benefits from that rule because they are giving *personal recommendations* to *retail clients* on *retail investment products*, are providing *advice on P2P agreements* to *retail clients* or are a *broker fund adviser*.
- (3) The relevant activities are:
 - (a) giving *personal recommendations* on *retail investment products* to *retail clients*; or
 - (aa) *advising on P2P agreements*, if that advice is given to *retail clients*; or
 - (b) the activity of a *broker fund adviser*; or
 - (c) *advising on syndicate participation at Lloyd's*; or
 - (d) the activity of a *pension transfer specialist*.

Selecting an appropriate qualification

2.1.10

E

- (1) This *rule* applies for the purposes of ■ TC 2.1.1 R, ■ TC 2.1.5 R, ■ TC 2.1.5HR, ■ TC 2.1.5KR, ■ TC 2.1.6 R, ■ TC 2.1.7 R, ■ TC 2.1.7AR, ■ TC 2.1.9 R, ■ TC 2.2A.1 R, ■ TC 2.2A.3 R and ■ TC 2.2A.6 R.
- (2) To ensure that a qualification is appropriate, a *firm* should select an appropriate qualification from the list of qualifications set out in ■ TC Appendix 4E.
- (3) Contravention of (2) may be relied on as tending to establish contravention of the *rules* referred to in (1).

2.1.10A

G

■ TC Appendix 5G sets out:

- (1) the criteria which the *FCA* may take into account when assessing a qualification provider; and
- (2) the information the *FCA* will expect the qualification provider to provide if it asks the *FCA* to add a qualification to the list of appropriate qualifications in ■ TC Appendix 4E.

- 2.1.10B** **G** (1) ■ TC Appendix 6G sets out *guidance* in relation to *accredited bodies*.
- (2) ■ TC Appendix 7G sets out *guidance* on gap-filling in relation to appropriate qualifications and the function of *accredited bodies* in that regard.
- 2.1.11** **G** **Training needs**
.....
Firms should ensure that their *employees'* training needs are assessed at the outset and at regular intervals (including if their role changes). Appropriate training and support should be provided to ensure that any relevant training needs are satisfied. *Firms* should also review at regular intervals the quality and effectiveness of such training.
- 2.1.12** **R** **Maintaining competence**
.....
A *firm* must review on a regular and frequent basis *employees'* competence and take appropriate action to ensure that they remain competent for their role.
[Note: article 9(1) of the MCD]
- 2.1.13** **G** A *firm* should ensure that maintaining competence for an *employee* takes into account such matters as:
- (1) technical knowledge and its application;
 - (2) skills and expertise; and
 - (3) changes in the market and to products, legislation and regulation.
- 2.1.14** **G** A *firm* may choose to establish, implement and maintain a training and competence scheme.
- 2.1.15** **R** **Continuing professional development for retail investment advisers**
.....
Subject to ■ TC 2.1.17 R, a *firm* must ensure that a *retail investment adviser* who has been assessed as competent for the purposes of ■ TC 2.1.1 R remains competent by completing a minimum of 35 hours of appropriate continuing professional development in each 12 *month* period.
- 2.1.16** **G** In order to meet the requirement in ■ TC 2.1.15 R, a *retail investment adviser* should complete no less than 21 hours of structured continuing professional development activities.
- 2.1.17** **R** A *firm* is permitted to suspend the requirements of ■ TC 2.1.15 R in respect of a *retail investment adviser* for the period of time during which the *retail investment adviser* is continuously absent from work, if that absence is due to:
- (1) maternity, paternity or adoption leave;

- (2) long-term illness or disability;
 - (3) caring responsibilities for a family member who has a long-term illness or disability; or
 - (4) any other absence allowed in order for the *firm* to meet its statutory duties in relation to equality and diversity.
- 2.1.18** G In ■ TC 2.1.17R (3), a family member includes a partner, parent, grandparent, sibling or child.
- 2.1.19** G In deciding whether to suspend the requirements of ■ TC 2.1.15 R, a *firm* should take into account:
- (1) the *retail investment adviser's* individual circumstances;
 - (2) the length of time the *retail investment adviser* is likely to be absent from carrying on the activity; and
 - (3) its statutory duties in relation to equality and diversity.
- 2.1.20** G Examples of structured continuing professional development activities include participating in courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning.
- 2.1.21** G Examples of unstructured continuing professional development activities include:
- (1) conducting research relevant to the individual's role;
 - (2) reading industry or other relevant material;
 - (3) participating in professional development coaching or mentoring sessions.
- 2.1.22** G All continuing professional development should:
- (1) be relevant to the *retail investment adviser's* current role and any anticipated changes to that role;
 - (2) maintain the *retail investment adviser's* knowledge by reference to current qualification standards relevant to the *retail investment adviser's* role;
 - (3) contribute to the *retail investment adviser's* professional skill and knowledge;
 - (4) address any identified gaps in the *retail investment adviser's* technical knowledge;
 - (5) have written learning objectives based on learning needs and a documented learning outcome;

- (6) be measurable and capable of being independently verified by an *accredited body*.
- 2.1.22A** **R**
- (1) *Firms* are unlikely to be able to demonstrate how the activities are appropriate continued professional development if the activities are so short in duration that they cannot reasonably be viewed as relevant to the aims set out in TC 2.1.22G. For example, an e-learning module of very short duration may not contribute to those aims when viewed in isolation.
- (2) Where the *retail investment adviser* completes a block of short activities within a reasonable time, then a *firm* may be able to demonstrate that these activities, taken as a whole, are relevant to the aims set out in ■ TC 2.1.22G.
- 2.1.23** **G**
- Continuing professional development completed by a *retail investment adviser* in relation to activities other than acting as a *retail investment adviser* should not be taken into account for the purposes of ■ TC 2.1.15 R unless it is also relevant to the activity of acting as a *retail investment adviser*.
- Continuing professional development for pension transfer specialists**
- 2.1.23A** **R**
- (1) A *firm* must ensure that a *pension transfer specialist* who has been assessed as competent for the purposes of ■ TC 2.1.1R remains competent by completing a minimum of 15 hours of appropriate continuing professional development in each 12-month period.
- (2) The 15 hours of appropriate continuing professional development must include:
- (a) 9 hours of structured professional development activities; and
 - (b) at least 5 hours provided by an external independent provider.
- (3) In the year in which they were assessed as competent, a *pension transfer specialist* need:
- (a) only complete the pro-rated proportion of the 15 hours (and 9 and 5 hours) that reflects the portion of the 12-month period;
 - (b) the 12-month period commences:
 - (i) immediately on the date the *pension transfer specialist* was assessed as competent; or
 - (ii) on another date during the year of the assessment to align with the *pension transfer specialist's* other continued professional learning year or period, if any.
- (4) The appropriate continuing professional development in (1) is in addition to any other continuing professional development completed. Continuing professional development completed by a *pension transfer specialist* in relation to activities other than acting as a *pension transfer specialist* must not be taken into account for the purposes of (1).

- 2.1.23B** G
- (1) Appropriate continuing professional development has the same meaning as given in ■ TC 2.1.22G(1) to ■ (5). Also see ■ TC 2.1.22AG. For this purpose, reference to *retail investment adviser* should be read as if it were a reference to a *pension transfer specialist*.
 - (2) An external independent provider is an organisation or person that is not associated with or influenced by the *firm's* own view.
 - (3) For examples of structured and unstructured professional development see ■ TC 2.1.20G and ■ TC 2.1.21G.
- 2.1.23C** R ■ TC 2.1.17R (suspending the continuing professional development requirement) and related *guidance* apply in relation to a *pension transfer specialist* and references to:
- (1) ■ TC 2.1.15R must be read as if it were a reference to ■ TC 2.1.23AR; and
 - (2) a *retail investment adviser* must be read as if it were a reference to a *pension transfer specialist*.
- Continuing professional development for persons involved in regulated funeral plan activities**.....
- 2.1.23D** R In this section, relevant employees are employees and other *persons*:
- (1) directly involved in *regulated funeral plan activities*; or
 - (2) within the management structure responsible for the *firm's regulated funeral plan activities*; or
 - (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).
- 2.1.23E** R In this section "employee":
- (1) is not restricted to an individual working under a contract of employment; and
 - (2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the *firm*, under an arrangement between the *firm* and a third party; and
 - (3) also includes *appointed representatives* and their employees.
- 2.1.23F** R A *firm* must ensure that each relevant employee who has been assessed as competent for the purposes of ■ TC 2.1.1R remains competent by completing a minimum of 15 hours of appropriate continuing professional development in each 12 *month* period.
- 2.1.23G** R The appropriate continuing professional development in ■ TC 2.1.23FR is in addition to any other continuing professional development completed. Continuing professional development completed by a relevant employee in

- relation to activities other than *regulated funeral plan activities* must not be taken into account for the purpose of ■ TC 2.1.23FR.
- 2.1.23H** **R** For the purposes of ■ TC 2.1.23FR, a *firm* must take into account the:
- (1) role and activity carried out by the relevant employee within the *firm*; and
 - (2) the nature of the products sold.
- 2.1.23I** **G**
- (1) Appropriate continuing professional development has the same meaning as given in ■ TC 2.1.22G(1), (3) to (5). Also see ■ TC 2.1.22AG. For this purpose, reference to *retail investment adviser* should be read as if it were a reference to a relevant employee (under ■ TC 2.1.23DR).
 - (2) In relation to ■ TC 2.1.23FR, the 15 hours of appropriate continuing professional development can include structured and unstructured training and need not consist of only formal classroom-based learning. For examples of structured and unstructured professional development see ■ TC 2.1.20G and ■ TC 2.1.21G.
- 2.1.23J** **R** ■ TC 2.1.17R (suspending the continuing professional development requirement) and related *guidance* apply in relation to a relevant employee and references to:
- (1) ■ TC 2.1.15R must be read as if it were a reference to ■ TC 2.1.23FR; and
 - (2) a *retail investment adviser* must be read as if it were a reference to a relevant employee (under ■ TC 2.1.23DR).
- 2.1.24** **R** **Continuing professional development record-keeping**.....
- A *firm* must, for the purposes of ■ TC 3.1.1 R (Record keeping), make and retain records of:
- (1) the continuing professional development completed by each:
 - (a) *retail investment adviser* (under ■ TC 2.1.15R);
 - (b) *pension transfer specialist* (under ■ TC 2.1.23AR);
 - (c) relevant employee (under ■ TC 2.1.23DR)
 and
 - (2) the dates of and reasons for any suspension of the continuing professional development requirements under ■ TC 2.1.17R, ■ TC 2.1.23CR or ■ TC 2.1.23JR.
- 2.1.25** **R** A *firm* must not prevent a *retail investment adviser* or a *pension transfer specialist* or a relevant employee from obtaining a copy of the records relating to them which are maintained by the *firm* for the purposes of ■ TC 2.1.24 R.

Annual declarations

2.1.26 **R** A *firm* must ensure that a *retail investment adviser* confirms annually in writing that the *retail investment adviser* has, in the preceding 12 months:

- (1) complied with *APER* or *COCON* (as applicable); and
- (2) if applicable, completed the continuing professional development required under **TC 2.1.15 R**.

Independent verification

2.1.27 **R** A *firm* must obtain from an *accredited body* independent verification of the *firm's* compliance with:

- (1) in respect of its *retail investment advisers* only, the requirement in **TC 2.1.1 R** to attain each module of an appropriate qualification;
- (2) **TC 2.1.15 R**; and
- (3) **TC 2.1.26 R**.

2.1.28 **R** The independent verification in **TC 2.1.27 R** must be obtained by a *firm*:

- (1) in respect of a competent *retail investment adviser* who began to carry on the activity of a *retail investment adviser* on or before 31 December 2012, within 60 days of that date and of the anniversary of that date thereafter;
- (2) in respect of a *retail investment adviser* who began to carry on the activity of a *retail investment adviser* on or after 1 January 2013, within 60 days of the date on which the *retail investment adviser* was assessed as competent as a *retail investment adviser* and of the anniversary of that date thereafter.

2.1.29 **G** Independent verification for the purposes of **TC 2.1.27 R** should take the form of a statement of professional standing issued by an *accredited body*.

2.1.30 **G** The *Glossary* definition of *accredited body* contains a list of bodies recognised by the *FCA* for the purpose of providing the independent verification required under **TC 2.1.27 R**. Information on *accredited bodies*, including *guidance* on the process for including a body in the list is set out in **TC Appendix 6G** and the obligation to pay the application fee is set out in **FEES 3.2**.

Notification requirements

2.1.31 **R** A *firm* must notify the *FCA* as soon as reasonably practicable after it becomes aware, or has information which reasonably suggests, that any of the following events has occurred or may have occurred in relation to any of its *retail investment advisers*, and the event is significant:

- (1) a *retail investment adviser*, who has been assessed as competent for the purposes of ■ TC 2.1.1 R, is no longer considered competent for those purposes;
- (2) a *retail investment adviser* has failed to attain an appropriate qualification within the time limit prescribed by ■ TC 2.2A.1R (1);
- (3) a *retail investment adviser* has failed to comply with *APER* or *COCON* (as applicable) in carrying out their *controlled function*; and
- (4) a *retail investment adviser* has performed an activity in ■ TC Appendix 1 before having demonstrated the necessary competence for the purposes of ■ TC 2.1.1 R and without appropriate supervision.

2.1.31A R Where a firm is required, pursuant to ■ TC 2.1.31R(3), to notify the *FCA* of a *retail investment adviser's* failure to comply with *APER* or *COCON*, the *firm* must also, within the same timeframe, send a similar notification to the *accredited body* that issued a statement of professional standing in respect of that *retail investment adviser*.

2.1.32 G When considering whether an event is significant a *firm* should include the following in its considerations:

- (1) the potential risk of consumer detriment as a result of the event;
- (2) whether the event or a pattern of events indicate recurrent issues in relation to one or more *retail investment advisers*; and
- (3) its obligations under *Principle 11*.

2.1.33 G The Retail Investment Adviser Competence Notification Form approved by the *FCA* for notifications under ■ TC 2.1.31 R may be found at the *FCA's* website www.fca.org.uk/firms/regulatory-reporting/adviser-reporting-requirements.