

Appendix 1

Made rules (legal instrument)

Appendix 2

Draft Handbook text

Appendix 1

Made rules (legal instrument)

**CONSUMER CREDIT (HIGH-LEVEL STANDARDS AND INTERIM REGIME)
INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- 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 137A (FCA’s general rule-making power);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (FCA’s power 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 1 April 2014.

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).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
General Provisions (GEN)	Annex D
Consumer Credit sourcebook (CONC)	Annex E

Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Consumer Credit (High-level Standards and Interim Regime) Instrument 2013.

By order of the Board of the Financial Conduct Authority
26 September 2013

Annex A

Amendments to the Glossary of definitions

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

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

<i>Consumer Credit Directive</i>	Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.
<i>credit firm</i>	a firm with <i>permission</i> to carry on a <i>credit-related regulated activity</i> .
<i>credit information agency</i>	a person who carries on by way of business one or more of the following activities specified in the <i>Regulated Activities Order</i> : <ul style="list-style-type: none"> (a) <i>credit broking</i> (article 36A); (b) <i>debt adjusting</i> (article 39D); (c) <i>debt counselling</i> (article 39E); (d) <i>debt collecting</i> (article 39F); (e) <i>debt administration</i> (article 39G); (f) <i>entering into a regulated credit agreement as lender</i> (article 60B(1) (disregarding the effect of article 60F)); (g) <i>exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement</i> (article 60B(2) (disregarding the effect of article 60F)); (h) <i>entering into a regulated consumer hire agreement as owner</i> (article 60N(1) (disregarding the effect of article 60P)); (i) <i>exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement</i> (article 60N(2) (disregarding the effect of article 60P)); (j) <i>providing credit references</i> (article 89B).
<i>credit reference agency</i>	a person providing credit references.

credit repair firm

a *firm* which carries on the activity of *providing credit information services* with a view to securing or advising on the correction of or omission of anything from, or making of any modification of, information relevant to financial standing of an *individual* held by a *credit information agency* or to securing that the agency stops holding the information or does not provide it to another *person*.

credit-related regulated activity

(in accordance with section 22 of the *Act* (the classes of activity and categories of investments)) any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order* (Specified Activities):

- (a) *entering into a regulated credit agreement as lender* (article 60B(1));
- (b) *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* (article 60B(2));
- (c) *credit broking* (article 36A);
- (d) *debt adjusting* (article 39D(1) and (2));
- (e) *debt counselling* (article 39E(1) and (2));
- (f) *debt collecting* (article 39F(1) and (2));
- (g) *debt administration* (article 39G(1) and (2));
- (h) *entering into a regulated consumer hire agreement as owner* (article 60N(1));
- (i) *exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement* (article 60N(2));
- (j) *providing credit information services* (article 89A);
- (k) *providing credit references* (article 89B);
- (l) *operating an electronic system in relation to lending* (article 36H);
- (m) *agreeing to carry on a regulated activity* (article 64) so far as relevant to any of the activities in (a) to (l);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (j) and (k), relates to information about a *person's* financial standing.

<i>debt adjusting</i>	a <i>regulated activity</i> of the kind specified in article 39D of the <i>Regulated Activities Order</i> .
<i>debt administration</i>	a <i>regulated activity</i> of the kind specified in article 39G of the <i>Regulated Activities Order</i> .
<i>debt collecting</i>	a <i>regulated activity</i> of the kind specified in article 39F of the <i>Regulated Activities Order</i> .
<i>debt counselling</i>	a <i>regulated activity</i> of the kind specified in article 39E of the <i>Regulated Activities Order</i> .
<i>debt management firm</i>	<p>(a) a <i>firm</i> which carries on the activities of <i>debt counselling</i> or <i>debt adjusting</i>, alone or together, with a view to an <i>individual</i> entering into a particular <i>debt solution</i>; or</p> <p>(b) a <i>firm</i> which carries on the activity of <i>debt counselling</i> where an <i>associate</i> carries on <i>debt adjusting</i> with the aim in (a) in view; or</p> <p>(c) a <i>firm</i> which carries on the activity of <i>debt adjusting</i> where an <i>associate</i> carries on <i>debt counselling</i> with the aim in (a) in view; and</p> <p>in each case, other than a <i>not-for-profit debt advice body</i>.</p>
<i>debt solution</i>	an arrangement, scheme or procedure, whether statutory or not, the aim of which is to discharge or liquidate a <i>customer's</i> debts.
<i>entering into a regulated credit agreement as lender</i>	the <i>regulated activity</i> specified in article 60B(1) of the <i>Regulated Activities Order</i> .
<i>entering into a regulated consumer hire agreement as owner</i>	the <i>regulated activity</i> specified in article 60N(1) of the <i>Regulated Activities Order</i> .
<i>exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement</i>	the <i>regulated activity</i> specified in article 60B(2) of the <i>Regulated Activities Order</i> .
<i>exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement</i>	the <i>regulated activity</i> specified in article 60N(2) of the <i>Regulated Activities Order</i> .
<i>interim permission</i>	in accordance with article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, subject to article 59 of that Order, to be treated as:

	(a) in relation to a person who is a <i>firm</i> immediately before 1 April 2014, a variation of permission;
	(b) in any other case, a <i>Part 4 permission</i> .
<i>not-for-profit body</i>	a body which by virtue of its constitution or any enactment: <ul style="list-style-type: none"> (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and (b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes).
<i>not-for-profit debt advice body</i>	a body which is a <i>not-for-profit body</i> with a <i>limited permission</i> to carry on <i>debt counselling</i> alone or together with either or both <i>debt adjusting</i> and <i>providing credit information services</i> , and <i>agreeing to carry on a regulated activity</i> so far as relevant to those activities, where no <i>associate</i> (other than a <i>not-for-profit debt advice body</i>) of the body carries on <i>debt adjusting</i> or <i>debt counselling</i> or <i>providing credit information services</i> .
<i>operating an electronic system in relation to lending</i>	a <i>regulated activity</i> of the kind specified in article 36H of the <i>Regulated Activities Order</i> .
<i>providing credit information services</i>	a <i>regulated activity</i> of the kind specified in article 89A of the <i>Regulated Activities Order</i> .
<i>providing credit references</i>	the <i>regulated activity</i> specified in article 89B of the <i>Regulated Activities Order</i> .
<i>P2P agreement</i>	(in relation to a <i>borrower</i>) in accordance with article 36H of the <i>Regulated Activities Order</i> , an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning of article 60L of the <i>Regulated Activities Order</i>) and in relation to which the borrower is an <i>individual</i> and either: <ul style="list-style-type: none"> (a) the lender provides credit (within that meaning) of less than or equal to £25,000; or (b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

Amend the following definitions as shown.

agreeing to carry on a regulated activity

the *regulated activity*, specified in article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II or Part 3A of that Order other than:

...

associate

(A) in the *PRA Handbook*:

...

(3) ...

- (c) any other *person* whose business or domestic relationship with A or his *associate* might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interests in dealings with third parties.

(B) in the *FCA Handbook*:

(1) (in *LR*) (in relation to a *director, substantial shareholder, or person exercising significant influence, who is an individual*):

- (a) that individual's spouse, civil partner or child (together the "individual's family");
- (b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an *occupational pension scheme* or an *employees' share scheme* which does not, in either case, have the effect of conferring benefits on persons, all or most of whom are related parties;
- (c) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or

would on the fulfilment of the condition or the occurrence of the contingency be) able:

(i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or

(ii) to appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters;

(d) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

(i) a voting interest greater than 30% in the partnership; or

(ii) at least 30% of the partnership.

For the purpose of paragraph (c), if more than one *director* of the *listed company*, its *parent undertaking* or any of its *subsidiary undertakings* is interested in the *equity securities* of another *company*, then the interests of those *directors* and their *associates* will be aggregated when determining whether that *company* is an associate of the *director*.

(2) (in LR) (in relation to a *substantial shareholder* or *person exercising significant influence* which is a *company*):

(a) any other *company* which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

(b) any *company* whose *directors* are

accustomed to act in accordance with the *substantial shareholder's* or *person exercising significant influence's*, directions or instructions;

(c) any *company* in the capital of which the *substantial shareholder* or *person exercising significant influence* and any other *company* under paragraph (1) or (2) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (1)(c)(i) or (ii) of this definition.

(2A) (in *CONC* or in relation to a *credit-related regulated activity*), as defined in article 60L of the *Regulated Activities Order*, in relation to a person (“P”):

(a) where P is an individual any *person* who is or who has been:

(i) P’s spouse or P’s civil partner;

(ii) a relative of P, P’s spouse or P’s civil partner;

(iii) the spouse or civil partner of a relative of P or P’s spouse or civil partner;

(iv) if P is a member of a *partnership*, any of P’s *partners* and the spouse or civil partner of any such *person*;

(b) where P is a *body corporate*:

(i) any *person* who is a *controller* (“C”) of P;

(ii) any other *person* for whom C is a *controller*.

(3) (except in *LR* or in relation to a *credit-related regulated activity*) (in relation to a *person* (“A”)):

(a) an *affiliated company* of A;

- (b) an appointed representative of A, or a tied agent of A, or of any affiliated company of A;
- (c) any other person whose business or domestic relationship with A or his associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties.
- borrower*
- (1) in accordance with article 60L of the *Regulated Activities Order*, in relation to a *credit agreement* other than a *regulated mortgage contract*, a person who receives *credit* under a *credit agreement* or a person to whom the rights and duties of a *borrower* under a *credit agreement* have passed by *assignment* or operation of law; or
- (2) in relation to a P2P agreement other than a credit agreement or a regulated mortgage contract, an individual who receives credit under a P2P agreement and under which the lender provides credit to the individual of less than or equal to £25,000 or the agreement is not entered into by the individual for the purposes of a business carried on by the individual.
- client*
- (A) in the PRA Handbook:
- ...
- (8) ...
- (b) an individual who is an *unauthorised SRB agreement provider* or potential *unauthorised SRB agreement provider* and who does not have, or would not be required to have, *permission* to enter into a *regulated sale and rent back agreement*.
- (B) in the FCA Handbook:
- (1) (except in PROF, in relation to a credit-related regulated activity and in relation to a home finance transaction) has the meaning given in COBS 3.2, that is (in summary and without prejudice to the detailed effect of COBS 3.2) a person to whom a firm provides, intends to provide or has provided a service in the course

of carrying on a regulated activity, or in the case of MiFID or equivalent third country business, an ancillary service:

- (a) every client is a customer or an eligible counterparty;
- (b) “client” includes:
 - (i) a potential client;
 - (ii) a client of an appointed representative of a firm with or for whom the appointed representative acts or intends to act in the course of business for which the firm has accepted responsibility under section 39 of the Act (Exemption of appointed representatives) or, where applicable, a client of a tied agent of a firm;
 - (iii) a fund even if it does not have separate legal personality;
 - (iv) any person to whom collective portfolio management services are provided, irrespective of whether or not it is authorised;
 - (v) if a person (“C1”), with or for whom the firm is conducting or intends to conduct designated investment business, is acting as agent for another person (“C2”), either C1 or C2 in accordance with the rule on agent as client COBS 2.4.3R;
 - (vi) for a firm that is establishing, operating or winding up a personal pension scheme, a member or beneficiary of that scheme;

- (c) “client” does not include:
- (i) a trust beneficiary not in (b)(v);
 - (ii) a corporate finance contact;
 - (iii) a venture capital contact.
- (2) (in PROF) (as defined in section 328(8) of the Act (Directions in relation to the general prohibition)) (in relation to members of a profession providing financial services under Part XX of the Act (Provision of Financial Services by Members of the Professions)):
- (a) a person who uses, has used or may be contemplating using, any of the services provided by the member of a profession in the course of carrying on exempt regulated activities (including, where the member of the profession is acting in his capacity as a trustee, a person who is, has been or may be a beneficiary of the trust); or
 - (b) a person who has rights or interests which are derived from, or otherwise attributable to, the use of any such services by other persons; or
 - (c) a person who has rights or interests which may be adversely affected by the use of any such services by persons acting on his behalf or in a fiduciary capacity in relation to him.
- (3) (in relation to a regulated mortgage contract, except in PROF) the individual or trustee who is the borrower or potential borrower under that contract.
- (4) (in relation to a home purchase plan, except in PROF) the home purchaser or potential home purchaser.
- (5) (in relation to a home reversion plan, except in PROF):
- (a) the reversion occupier or potential reversion occupier; or

(b) an individual who is an *unauthorised reversion provider* and who is not, or would not, be required to have *permission to enter into a home reversion plan*.

(6) (in relation to a *dormant account transferred to a dormant account fund operator*) a person entitled to the *balance in the dormant account held with a bank or building society* which was transferred to a *dormant account fund operator*.

(7) (in relation to a *regulated sale and rent back agreement*, except in *PROF*):

(a) the individual or trustee who is the *SRB agreement seller* or potential *SRB agreement*; or

(b) an individual who is an *unauthorised SRB agreement provider* or potential *unauthorised SRB agreement provider* and who does not have, or would not be required to have, *permission to enter into a regulated sale and rent back agreement*.

(8) (in relation to a *credit-related regulated activity*) a *customer*.

customer

(A) in the *PRA Handbook*:

...

(4) ...

(B) in the *FCA Handbook*:

(1) (except in relation to *ICOBS*, a *credit-related regulated activity*, *MCOB 3* and *CASS 5*) a *client* who is not an *eligible counterparty* for the relevant purposes.

(2) (in relation to *MCOB 3*) a *person* in (1) or a *person* who would be such a *person* if he were a *client*.

(3) (in relation to *ICOBS*) a *person* who is a *policyholder*, or a *prospective policyholder* but (except in *ICOBS 2* (general matters) and (in

respect of that chapter) *ICOBS 1* (application))
excluding a *policyholder* or prospective
policyholder who does not make the
arrangements preparatory to him concluding
the *contract of insurance*.

- (4) (in relation to *CASS 5*) a *client*.
- (5) (in relation to a *credit-related regulated activity*) an *individual* who enters, may enter or has entered into a *credit agreement* or a *consumer hire agreement*; and:
- (a) (in relation to *credit broking*) an *individual* who uses, may use or has used the services of a *firm* in carrying on that *regulated activity*;
- (b) (in relation to *operating an electronic system in relation to lending*) an *individual* who is, may be, has been or may have been the *borrower* under a *P2P agreement*;
- (c) (in relation to *debt adjusting*) an *individual* who uses, may use or has used the services of a *firm* in carrying on that *regulated activity*;
- (d) (in relation to *debt counselling*) an *individual* who uses, may use or has used the services of a *firm* in carrying on that *regulated activity*;
- (e) (in relation to *debt collecting*) a *person* within (i) to (iv) in relation to whom the *firm* takes steps to procure the payment of a debt due under a *credit agreement* or a *consumer hire agreement* or a *P2P agreement* (whether or not that *person* is a party to the *credit agreement* or *consumer hire agreement* or *P2P agreement*):
- (i) an *individual* who is or has been the *borrower* under a *credit agreement*, or is or has been the *hirer* under a *consumer hire agreement*, or is or has been the *borrower* under a *P2P agreement*;

- (ii) an individual who the firm treats as a person within (i);
 - (iii) a person providing a guarantee or indemnity under the agreement; and
 - (iv) a person to whom the rights and duties of a person within (iii) have passed by assignment or operation of law;
- (f) (in relation to debt administration) a person within (i) to (iv) in relation to whom the firm takes steps to perform duties or exercise or enforce rights under a credit agreement on behalf of the lender or under a consumer hire agreement on behalf of the owner or under a P2P agreement on behalf of the lender:
- (i) an individual who is or has been the borrower under a credit agreement, or is or has been the hirer under a consumer hire agreement, or is or has been the borrower under a P2P agreement;
 - (ii) an individual who the firm treats as a person within (i);
 - (iii) a person providing a guarantee or indemnity under the agreement; and
 - (iv) a person to whom the rights and duties of a person within (iii) have passed by assignment or operation of law;
- (g) (in relation to providing credit information services) an individual who uses, may use or has used the services of a firm in carrying on that regulated activity; and

- (h) (in relation to *providing credit references*) an individual about whom information relevant to the individual's financial standing is or was, may be or may have been held by the credit reference agency.
- lender*
- (A) in the PRA Handbook:
- ...
- (b) ...
- (B) in the FCA Handbook:
- (a) the person providing credit under a credit agreement; or
- (b) a person who exercises, or has the right to exercise, the rights and duties of a person who provided credit under such an agreement; or
- (c) in relation to a P2P agreement other than a credit agreement or a regulated mortgage contract, the person providing credit under the P2P agreement.
- regulated activity*
- (A) in the PRA Handbook;
- ...
- (B) in the FCA Handbook:
- as in (A) with the addition of:
- (a) accepting deposits (article 5);
- (aa) issuing electronic money (article 9B);
- (b) effecting contracts of insurance (article 10(1));
- (c) carrying out contracts of insurance (article 10(2));
- (d) dealing in investments as principal (article 14);
- (e) dealing in investments as agent (article 21);
- (ea) bidding in emissions auctions (article 24A);
- (f) arranging (bringing about) deals in investments (article 25(1));

- (g) making arrangements with a view to transactions in investments (article 25(2));
- (ga) arranging (bringing about) regulated mortgage contracts (article 25A(1));
- (gb) making arrangements with a view to regulated mortgage contracts (article 25A(2));
- (gc) arranging (bringing about) a home reversion plan (article 25B(1));
- (gd) making arrangements with a view to a home reversion plan (article 25B(2));
- (ge) arranging (bringing about) a home purchase plan (article 25C(1));
- (gf) making arrangements with a view to a home purchase plan (article 25C(2));
- (gg) operating a multilateral trading facility (article 25D);
- (gh) arranging (bringing about) a regulated sale and rent back agreement (article 25E(1));
- (gi) making arrangements with a view to a regulated sale and rent back agreement (article 25E(2));
- (h) managing investments (article 37);
- (ha) assisting in the administration and performance of a contract of insurance (article 39A);
- (i) safeguarding and administering investments (article 40); for the purposes of the permission regime, this is sub-divided into:
 - (i) safeguarding and administration of assets (without arranging);
 - (ii) arranging safeguarding and administration of assets;
- (j) sending dematerialised instructions (article 45(1));
- (k) causing dematerialised instructions to be sent

(article 45(2));

- (l) establishing, operating or winding up a collective investment scheme (article 51(1)(a)); for the purposes of the permission regime, this is sub-divided into:
 - (i) establishing, operating or winding up a regulated collective investment scheme;
 - (ii) establishing, operating or winding up an unregulated collective investment scheme;
- (m) acting as trustee of an authorised unit trust scheme (article 51(1)(b));
- (ma) acting as the depositary of an authorised contractual scheme (article 51(1)(bb));
- (n) acting as the depositary or sole director of an open-ended investment company (article 51(1)(c));
- (o) establishing, operating or winding up a stakeholder pension scheme (article 52(a));
- (oa) providing basic advice on stakeholder products (article 52B);
- (ob) establishing, operating or winding up a personal pension scheme (article 52(b));
- (p) advising on investments (article 53); for the purposes of the permission regime, this is sub-divided into:
 - (i) advising on investments (except pension transfers and pension opt-outs);
 - (ii) advising on pension transfers and pension opt-outs;
- (pa) advising on regulated mortgage contracts (article 53A);
- (pb) advising on a home reversion plan (article 53B);
- (pc) advising on a home purchase plan (article 53C);

- (pd) advising on a regulated sale and rent back agreement (article 53D);
- (q) advising on syndicate participation at Lloyd's (article 56);
- (r) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's (article 57);
- (s) arranging deals in contracts of insurance written at Lloyd's (article 58);
- (sa) entering into a regulated mortgage contract (article 61(1));
- (sb) administering a regulated mortgage contract (article 61(2));
- (sc) entering into a home reversion plan (article 63B(1));
- (sd) administering a home reversion plan (article 63B(2));
- (se) entering into a home purchase plan (article 63F(1));
- (sf) administering a home purchase plan (article 63F(2));
- (sg) entering into a regulated sale and rent back agreement (article 63J(1));
- (sh) administering a regulated sale and rent back agreement (article 63J(2));
- (si) meeting of repayment claims (article 63N(1)(a));
- (sj) managing dormant account funds (including the investment of such funds) (article 63N(1)(b));
- (t) entering as provider into a funeral plan contract (article 59);
- (ta) providing information in relation to a specific benchmark (article 63O(1)(a));
- (tb) administering a specified benchmark (article

63O(1)(b));

- (tc) credit broking (article 36A);
- (td) operating an electronic system in relation to lending (article 36H);
- (te) debt adjusting (article 39D);
- (tf) debt counselling (article 39E);
- (tg) debt collecting (article 39F);
- (th) debt administration (article 39G);
- (ti) entering into a regulated credit agreement as lender (article 60B(1));
- (tj) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B(2));
- (tk) entering into a regulated consumer hire agreement as owner (article 60N(1));
- (tl) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement (article 60N(2));
- (tm) providing credit information services (article 89A);
- (tn) providing credit references (article 89B);

which is carried on by way of business and, except for (ta) and (tb), relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing;

- (u) agreeing to carry on a regulated activity (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing.

retail client

- (A) in the *PRA Handbook*

...

(2) ...

(B) in the *FCA Handbook*:

(1) (other than in relation to the provision of basic advice on stakeholder products or to credit-related regulated activities) in accordance with COBS 3.4.1R, a client who is neither a professional client nor an eligible counterparty;
or

[Note: article 4(1)(12) of MiFID]

(2) (in relation to the provision of basic advice on a stakeholder product and in accordance with article 52B of the RAO) any person who is advised by a firm on the merits of opening or buying a stakeholder product where the advice is given in the course of a business carried on by that firm and it is received by a person not acting in the course of a business carried on by him; or

(3) (in relation to credit-related regulated activities) a customer.

Annex B

Amendments to the Principles for Businesses (PRIN)

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

1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not eligible counterparties). The approach that a firm (other than for credit-related regulated activities in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business or other activities, as described in PRIN 1.2.3G and PRIN 1.2.4G.*

1.2.3 G (1) ...

(1A) Client categorisation under COBS 3 or PRIN 1 Annex 1R is not relevant to credit-related regulated activities and therefore the guidance on client categorisation does not apply in relation to a credit-related regulated activity. The definitions of client and customer in relation to those regulated activities reflect the modified meaning of “consumer” in articles 36J, 39M and 89E of the Regulated Activities Order, as well as the definitions of “individual” and of “relevant recipient of credit” in that Order.

...

...

3.1 Who?

...

3.1.8 G The Principles will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive*, *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* and *Electronic Money Directive* to credit institutions (see Parts 5 and 6 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or applied by the *Consumer Credit Directive* (see, for

example, the information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)).

3.2 What?

3.2.1 R ~~*PRIN* applies with respect to the carrying on of:~~

- ~~(1) *regulated activities*~~
- ~~(2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and~~
- ~~(3) *ancillary activities in relation to designated investment business, home finance activity, insurance mediation activity and accepting deposits.*~~

3.2.1A R *PRIN* applies with respect to the carrying on of:

- (1) *regulated activities;*
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
- (3) *ancillary activities in relation to designated investment business, home finance activity, credit-related regulated activity, insurance mediation activity and accepting deposits.*

...

3.2.2A R *PRIN* 1 Annex 1R, *PRIN* 3.4.1R and *PRIN* 3.4.2R do not apply with respect to the carrying on of *credit-related regulated activities.*

...

3.4 General

...

3.4.3 G ...

- (3) *PRIN* 3.4.1R and *PRIN* 3.4.2R do not apply with respect to the carrying on of *credit-related regulated activities*. Client categorisation does not apply in relation to carrying on a *credit-related regulated activity*. The definitions of *client* and *customer* in relation to those regulated activities reflect the modified meaning of “consumer” in articles 36J, 39M and 89E of the *Regulated Activities*

Order, as well as the definitions of “individual” and of “relevant recipient of credit” in that Order.

...

Annex C

**Amendments to the Senior Management Arrangements, Systems and Controls
sourcebook (SYSC)**

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

1 Application and purpose

...

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
2.10	R	The provisions on record-keeping in SYSC 9 apply as set out in SYSC 1 Annex 1.2.8R, except that they only apply to the carrying on of <i>ancillary activities</i> that are performed in relation to:
	(1)	<i>designated investment business</i> ;
	(2)	<i>home finance activity</i> ; and
	(3)	<i>insurance mediation activity</i> ;
	(4)	<i>credit-related regulated activity</i> .
...		
<u>2.13A</u>	<u>R</u>	<u>SYSC 6.3 only applies to a firm in relation to carrying on a credit-related regulated activity to which the Money Laundering Regulations also apply.</u>
<u>2.13B</u>	<u>R</u>	<u>SYSC 6.3.8R and SYSC 6.3.9R do not apply to a firm with a limited permission for entering into a regulated credit agreement as lender.</u>
<u>2.13C</u>	<u>G</u>	<u>The persons to whom the Money Laundering Regulations apply are set out in regulation 3 of the Money Laundering Regulations. The persons include credit institutions (for example, banks) and financial institutions (for example, persons who carry on regulated activities which consist of or include entering into regulated credit agreements as lender). These expressions are defined in regulation 3 of those Regulations.</u>
...		

Part 3 Tables summarising the application of the common platform requirements to different types of firm

...

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs
...				
SYSC 4.4.1R	Not applicable	Not applicable	Not applicable	<p>Rule applies this section only to:</p> <p>(1) an <i>authorised professional firm</i> in respect of its <i>non-mainstream regulated activities</i> unless the firm is also conducting other <i>regulated activities</i> and has appointed <i>approved persons</i> to perform the <i>governing functions</i> with equivalent responsibilities for the <i>firm's non-mainstream regulated activities</i> and other <i>regulated activities</i>;</p> <p>2) activities carried on by a <i>firm</i> whose principal purpose is to carry on activities other than <i>regulated activities</i> and which is:</p> <p>(a) an <i>oil market participant</i>;</p> <p>(b) a <i>service company</i>;</p> <p>(c) an <i>energy market participant</i>;</p> <p>(d) a wholly owned</p>

				<p>subsidiary of:</p> <p>(i) a local authority;</p> <p>(ii) a registered social landlord;</p> <p>(e) a <i>firm</i> with permission to carry on <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i> but no other <i>regulated activity</i>;</p> <p>3) an <i>incoming Treaty firm</i>, an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i>, (but only SYSC 4.4.5 R (2) applies for these firms); and</p> <p>(4) a <i>sole trader</i>, but only if he employs any <i>person</i> who is required to be approved under section 59 of the Act (Approval for particular arrangements).</p>
<u>SYSC 4.4.1AR</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<p><u>Rule applies this section only to:</u></p> <p>(1) an <u>authorised professional firm</u> in respect of its <u>non-mainstream regulated activities</u> unless the <u>firm</u> is also conducting <u>other regulated activities</u> and has appointed <u>approved persons</u> to perform the <u>governing functions</u> with <u>equivalent responsibilities</u> for the <u>firm's non-mainstream regulated activities</u> and other <u>regulated activities</u>;</p> <p>(2) activities carried on by a <u>firm</u> whose <u>principal purpose</u> is to carry on <u>activities other than regulated activities</u> and which is:</p> <p>(a) an <u>oil market</u></p>

				<p><u>participant;</u></p> <p><u>(b) a service company;</u></p> <p><u>(c) an energy market participant;</u></p> <p><u>(d) a wholly-owned subsidiary of:</u></p> <p><u>(i) a local authority;</u></p> <p><u>(ii) a registered social landlord;</u></p> <p><u>(e) a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity;</u></p> <p><u>(2A) a credit firm which holds a limited permission (other than a not-for-profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission;</u></p> <p><u>(3) an incoming Treaty firm, an incoming EEA firm and a UCITS qualifier, (but only SYSC 4.4.5R(2) applies for these firms); and</u></p> <p><u>(4) a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements).</u></p>
SYSC 4.4.2 G [FCA] [PRA]	...	...	...	Guidance only applying to the firms specified in SYSC 4.4.1R or SYSC 4.4.1AR
SYSC 4.4.3 R [FCA] [PRA]	...	...	...	Rule only applying to the firms specified in SYSC 4.4.1R or SYSC 4.4.1AR

SYSC 4.4.4 G [FCA] [PRA]	...	...	...	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R or <u>SYSC 4.4.1AR</u>
SYSC 4.4.5 R [FCA] [PRA]	...	...	...	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R or <u>SYSC 4.4.1AR</u>
SYSC 4.4.6 G [FCA] [PRA]	...	...	...	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R or <u>SYSC 4.4.1AR</u>
...				

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs
...				
<u>SYSC 6.1.4CR</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule for <i>debt management firms</i> and <i>credit repair firms</i>.</u>
...				
SYSC 6.3.1R	Rule	Rule	Rule	Rule <u>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. (FCA Handbook only)</u>

SYSC 6.3.2G	Guidance	Guidance	Guidance	Guidance <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. (FCA Handbook only)</u>
SYSC 6.3.3R	Rule	Rule	Rule	Rule <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. (FCA Handbook only)</u>
SYSC 6.3.4G	Guidance	Guidance	Guidance	Guidance <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. (FCA Handbook only)</u>
SYSC 6.3.5G	Guidance	Guidance	Guidance	Guidance. <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm.</u>
SYSC 6.3.6G	Guidance	Guidance	Guidance	Guidance <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. (FCA Handbook only)</u>

SYSC 6.3.7G	Guidance	Guidance	Guidance	Guidance <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. (FCA Handbook only)</u>
SYSC 6.3.8R	Rule	Rule	Rule	Rule <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. Rule does not apply to firm with a limited permission for entering into a regulated credit agreement as lender. (FCA Handbook only)</u>
SYSC 6.3.9R	Rule	Rule	Rule	Rule <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. Rule does not apply to firm with a limited permission for entering into a regulated credit agreement as lender. (FCA Handbook only)</u>
SYSC 6.3.10G	Guidance	Guidance	Guidance	Guidance <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. (FCA</u>

				<u>Handbook only)</u>
SYSC 6.3.11G	Guidance	Guidance	Guidance	Guidance <u>For firms carrying on a credit-related regulated activity, applies only where Money Laundering Regulations apply to the firm. (FCA Handbook only)</u>

...

4.4 Apportionment of responsibilities

Application

4.4.1 R This section applies to:

- (1) ~~an authorised professional firm in respect of its non-mainstream regulated activities unless the firm is also conducting other regulated activities and has appointed approved persons to perform the governing functions with equivalent responsibilities for the firm's non-mainstream regulated activities and other regulated activities;~~
- (2) ~~activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:~~
 - (a) ~~an oil market participant; or~~
 - (b) ~~a service company; or~~
 - (c) ~~an energy market participant; or~~
 - (d) ~~a wholly owned subsidiary of:~~
 - (i) ~~a local authority; or~~
 - (ii) ~~a registered social landlord; or~~
 - (e) ~~a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity;~~
- (3) ~~{deleted}~~
- (4) ~~{deleted}~~

- ~~(5) [deleted]~~
 - ~~(a) [deleted]~~
 - ~~(b) [deleted]~~
- ~~(6) [deleted]~~
- ~~(7) an incoming Treaty firm, an incoming EEA firm or a UCITS qualifier (but only SYSC 4.4.5R(2) applies for these firms); and~~
- ~~(8) a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements).~~

4.4.1A R This section applies to:

- (1) an authorised professional firm in respect of its non-mainstream regulated activities unless the firm is also conducting other regulated activities and has appointed approved persons to perform the governing functions with equivalent responsibilities for the firm's non-mainstream regulated activities and other regulated activities;
- (2) activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:
 - (a) an oil market participant; or
 - (b) a service company; or
 - (c) an energy market participant; or
 - (d) a wholly-owned subsidiary of:
 - (i) a local authority; or
 - (ii) a registered social landlord; or
 - (e) a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity;
- (3) a credit firm which holds only a limited permission (other than a not-for-profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission;
- (4) an incoming Treaty firm, an incoming EEA firm or a UCITS qualifier (but only SYSC 4.4.5R(2) applies for these firms); and
- (5) a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular

arrangements).

...

6.1 Compliance

...

6.1.4C R A debt management firm and a credit repair firm must appoint a compliance officer to be responsible for ensuring the firm meets its obligations under SYSC 6.1.1R for any compliance function the firm has and for any reporting as to compliance which may be made under SYSC 4.3.2R.

Annex D

Amendments to the General Provisions (GEN)

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

1.2 Referring to approval by the appropriate regulator

...

GEN 1.2.2R is deleted in its entirety. The deleted text is not shown.

- 1.2.2A R (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the *appropriate regulator* or another competent authority.
- (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
- (a) the *firm* is an *authorised person*;
- (b) the *firm* has a *limited permission*;
- (c) the *firm* has *permission* to carry on a specific activity;
- (d) an *authorisation order* has been made in relation to an *AUT*, *ACS* or *ICVC*;
- (e) a *recognised scheme* has that status;
- (f) the *firm's approved persons* have been approved by the *appropriate regulator* for the purposes of section 59 of the *Act* (Approval for particular arrangements);
- (g) the *firm* has been given express written approval by the *appropriate regulator* in respect of a specific aspect of the *firm's affairs*.
- (3) Paragraph (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*.
- (4) Where a *firm* with a *limited permission* refers to its permission in a public statement or in relation to a *client*, it must explain in a fair, clear and not misleading way that the permission is a *limited permission*.

...

4 Statutory status disclosure

...

4.2 Purpose

...

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

...

- (6) for *equity release transactions*, initial disclosure requirements in *MCOB* 8.4, pre-application disclosure requirements in *MCOB* 9.4 and disclosure at the offer stage in *MCOB* 9.5; ~~and~~
- (7) for *regulated sale and rent back agreements*, initial disclosure requirements in *MCOB* 4.11, pre-sale disclosure requirements in *MCOB* 5.9 and disclosure at the offer stage requirements in *MCOB* 6.9; and
- (8) for regulated credit agreements, the pre-contract information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013) and in the Consumer Credit (Disclosure of Information) Regulations 2004 (SI 2004/1481).

4.3 Letter disclosure

...

Exception: credit firms

4.3.7 R GEN 4.3.1R (Disclosure in letters to retail clients) does not apply to a credit firm (other than a firm with a limited permission) with respect to the activity of entering into a regulated credit agreement as lender to which the Consumer Credit Directive applies, to the extent it would be contrary to the United Kingdom's obligations under an EU instrument.

4.3.8 G A credit firm which carries on the activity of entering into a regulated credit agreement as lender to which articles 5 and 6 of the Consumer Credit Directive apply is under an obligation to disclose pre-contract information in the form and to the extent required by the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013) or the Consumer Credit (Disclosure of Information) Regulations (SI 2004/1481), as the case may be. Firms which carry on credit broking may take on the same obligation. A credit firm must also ensure specified information is included in credit agreements in the form and to the extent required by the Consumer Credit

(Agreements) Regulations 2010 (SI 2010/1014) or the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553), as the case may be.

- 4.3.9 G The effect of GEN 4.3.7R is that a *credit firm* in relation to a *regulated credit agreement* covered by the *Consumer Credit Directive* does not need to comply with GEN 4.3.1R in relation to those letters (or electronic equivalents) that accompany the information required under the Regulations referred to in GEN 4.3.8G.
- 4.3.10 G *Regulated activities* covered by a *limited permission* (see the “relevant credit activities” set out in paragraph 2G of Schedule 6 to the *Act*) do not fall within the scope of articles 5 and 6 of the *Consumer Credit Directive*, therefore GEN 4.3.7R and the guidance related to it are not relevant to those activities.

Annex E

Amendment to the Consumer Credit sourcebook (CONC)

Handbook requirements for Interim Permitted Credit-Related Regulated Activities

In this Annex, new provisions relevant to firms with interim permission for credit-related regulated activities are inserted into the *CONC* sourcebook. All the text is new and is not underlined.

12 Requirements for firms with interim permission for credit-related regulated activities

12.1 Application and purpose

12.1.1 R This Chapter applies to a *firm* with an *interim permission*.

12.1.2 G The purpose of these *rules* is to provide that certain provisions of the *Handbook*:

- (1) that would otherwise apply to *persons* with an *interim permission* are not to apply; or
- (2) are to apply to those *persons* with the modifications specified in the table in *CONC* 12.1.4R.

Disapplication or modification of certain modules or provisions of the Handbook

12.1.3 R The modules or parts of the modules of the *appropriate regulator's Handbook* of *rules* and guidance listed in the table in *CONC* 12.1.4R to this chapter:

- (1) do not apply, to the extent set out in the table, to a *person* with an *interim permission* with respect to the carrying on of a *credit-related regulated activity*; or
- (2) are to apply to such a *person* with respect to the carrying on of a *credit-related regulated activity* with the modifications specified in the table in *CONC* 12.1.4R.

12.1.4 R Table: Disapplied or modified modules or provisions of the Handbook

Module	Disapplication or modification
Senior Management Arrangements, Systems and Control sourcebook (<i>SYSC</i>) [FCA]	<i>SYSC</i> 6.1.4CR (requirement of debt management firm or credit repair firm to appoint a compliance officer) does not apply to a <i>firm</i> with an <i>interim permission</i> .

	<p><i>SYSC 6.3.8R</i> (responsibility for anti-money laundering systems and controls) does not apply to a <i>firm</i> with only an <i>interim permission</i>.</p> <p><i>SYSC 6.3.9R</i> (requirement to appoint a money laundering reporting officer) does not apply to a <i>firm</i> with only an <i>interim permission</i>.</p>
<p>Fees manual (<i>FEES</i>) [FCA]</p>	<p>The Fees manual does not apply in respect of the fee provided for in <i>FEES 8.1.1R(1)</i>, except for the rules and guidance in <i>FEES 2.3</i> and <i>FEES 8.1</i>.</p>

Interpretation

- 12.1.5 R In this section 12.1, the expression “interim permission” means a permission which a *person* is to be treated as having under article 56(9)(a) or (b) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013.

Appendix 2

Draft Handbook text

CONSUMER CREDIT INSTRUMENT 2013

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the rules and guidance and varies the standard terms in Annex G to this instrument for Voluntary Jurisdiction participants in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 226A (Consumer credit jurisdiction);
 - (2) section 227 (Voluntary Jurisdiction);
 - (3) paragraph 8 (Information, advice and guidance) of Schedule 17 (The Ombudsman Scheme); and
 - (4) paragraph 18 (The Voluntary Jurisdiction) of Schedule 17.
- B. The making of these rules and the variation of the standard terms by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (c) section 137C (FCA general rules: cost of credit and duration of credit agreements);
 - (d) section 137R (Financial promotion rules);
 - (e) section 137T (General supplementary powers);
 - (f) section 138D (Actions for damages);
 - (g) section 139A (Power of the FCA to give guidance);
 - (h) section 226 (Compulsory jurisdiction);
 - (i) section 395 (The Authority’s procedures) as applied by article 3(11) The Financial Services Act 2012 (Consumer Credit) Order 2013; and
 - (j) paragraph 13(4) (FCA’s procedural rules) of schedule 17 (The Ombudsman Scheme) to the Act;
 - (2) article 4 (Statements of policy) of the Financial Services Act 2012 (Consumer Credit) Order 2013; and
 - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

E. This instrument comes into force on 1 April 2014.

Amendments to the Handbook

F. 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).

(1)	(2)
Consumer Credit sourcebook	Annex A
Glossary of definitions	Annex B
Threshold Conditions (COND)	Annex C
Client Assets sourcebook (CASS)	Annex D
Supervision manual (SUP)	Annex E
Decision Procedure and Penalties manual (DEPP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G

Material outside the Handbook

- G. The Enforcement Guide (EG) is amended in accordance with Annex H to this instrument.
- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex I to this instrument.
- I. The Unfair Contract Terms Regulatory Guide (UNFCOG) is amended in accordance with Annex J to this instrument.

Notes

J. The Annexes to this instrument contain notes (indicated by “**Note:**”) indicating where certain provisions which are included in the instrument were previously set out. These notes are included for the convenience of readers but do not form part of the legislative text.

The notes include the following abbreviations in relation to guidance previously issued by the Office of Fair Trading or to secondary legislation:

- (a) Irresponsible Lending Guidance (ILG);
- (b) Debt Management (and credit repair services) Guidance (DMG);
- (c) Credit Brokers and Intermediaries Guidance (CBG)
- (d) Debt Collection Guidance (DCG);
- (e) Mental Capacity Guidance (MCG);
- (f) Second Charge Lending Guidance (SCLG);
- (g) FSA/OFT Joint Guidance on Payment Protection Products (JGPPI);
- (h) Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970 (CCAR);
and
- (i) Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484 (CCAR).

Citation

K. This instrument may be cited as the Consumer Credit Instrument 2013.

By order of the Board of the Financial Ombudsman Service Limited
[]

By order of the Board of the Financial Conduct Authority
[]

Annex A

Consumer Credit sourcebook (CONC)

In this Annex, all the text is new and is not underlined, except in CONC 12, where additions are shown underlined.

1 Application and purpose

1.1 Application, purpose and guidance on financial difficulties

Application

- 1.1.1 G (1) The Consumer Credit sourcebook (*CONC*) is the specialist sourcebook for *credit-related regulated activities*.
- (2) *CONC* applies as described in this Chapter, unless the application of a section or a *rule* is described differently in the sections and *rules* in *CONC*.

Purpose

- 1.1.2 G The purpose of *CONC* is to set out the detailed obligations that are specific to *credit-related regulated activities* and activities connected to those activities carried on by *firms*. These build on and add to the high-level obligations, for example, in *PRIN*, *GEN* and *SYSC*, and the requirements in or under the *CCA*.
- 1.1.3 G *Firms* are reminded that other parts of the *FCA Handbook* and *PRA Handbook* also apply to *credit-related regulated activities*. For example, the arrangements for supervising *firms*, including applicable reporting obligations, are described in the Supervision manual (*SUP*) and the detailed requirements for handling complaints are set out in the Dispute Resolution: Complaints sourcebook (*DISP*). The Client Assets sourcebook (*CASS*) also contains rules about client money that apply in certain circumstances.

The Principles for Businesses: a reminder

- 1.1.4 G The Principles for Businesses (*PRIN*) apply as a whole to *firms* with respect to *credit-related regulated activities* and *ancillary activities* in relation to *credit-related regulated activities* (see *PRIN* 3). In carrying on their activities, *firms* should pay particular attention to their obligations under:
- (1) *Principle 1* (a *firm* must conduct its business with integrity);
- (2) *Principle 2* (a *firm* must conduct its business with due skill, care and diligence);
- (3) *Principle 3* (a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management

systems);

- (4) *Principle 6* (a *firm* must pay due regard to the interests of its *customers* and treat them fairly);
- (5) *Principle 7* (a *firm* must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading);
- (6) *Principle 9* (a *firm* must take reasonable care to ensure the suitability of its advice and discretionary decisions for any *customer* who is entitled to rely upon its judgment);
- (7) *Principle 10* (a *firm* must arrange adequate protection for *clients' assets* when it is responsible for them); and
- (8) *Principle 11* (a *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice).

1.2 Who? What? Where?

1.2.1 R *CONC* applies:

- (1) unless otherwise stated in, or in relation to, a particular *rule* to a *firm*:
 - (a) except where (b) applies, with respect to carrying on *credit-related regulated activities*;
 - (b) with respect to *operating an electronic system in relation to lending* in relation to a *borrower* or prospective *borrower* under a *P2P agreement*.
- (2) with respect to activities connected to the activities in (a) and (b).

1.2.2 R A *firm* must ensure that employees and agents or other persons acting on its behalf comply with *CONC*.

1.2.3 R *CONC* does not apply to an *incoming ECA provider* acting as such.

Guidance on appointed representatives

1.2.4 G (1) Although *CONC* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of *CONC*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted

by the *firm* (section 39(4) of the *Act*).

- (2) *Firms* should refer to SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.

- 1.2.5 G The *credit-related regulated activities* comprise *consumer credit lending, credit broking, debt counselling, debt adjusting, debt administration, debt collecting, providing credit information services, providing credit references, operating an electronic system in relation to lending and consumer hiring*.

Where?

- 1.2.6 R *CONC*, except in relation to *CONC 3*, applies with respect to activities carried on by a *firm*:
 - (1) with a customer whose habitual residence is in the *UK* from an *establishment* maintained by the *firm* (or its *appointed representative*) in the *UK*; or
 - (2) with a *customer* whose habitual residence is in the *UK* from an *establishment* of the *firm* (or its *appointed representative*) outside the *UK*.

EEA territorial scope rule: compatibility with European law

- 1.2.7 R
 - (1) *CONC* does not apply to an *incoming ECA provider* where, in providing a service, the provider is acting as such.
 - (2) The territorial scope of *CONC* is otherwise modified to the extent necessary to be compatible with European law.
 - (3) This *rule* overrides every other *rule* in this sourcebook.

[**Note:** article 3(3) of, and the Annex to, the Electronic Commerce Directive]

1.3 Guidance on financial difficulties

- 1.3.1 G In *CONC* (unless otherwise stated in or in relation to a particular *rule*), the following matters, among others, of which a *firm* is aware or ought reasonably to be aware, may indicate that a *customer* is in financial difficulties:
 - (1) consecutively failing to meet minimum *repayments* in relation to a credit card or store card;
 - (2) adverse accurate entries on a credit file;
 - (3) outstanding county court judgments for non-payment of debt;

- (4) recently having been turned down for mainstream *credit* which is, for example, *credit* other than *high-cost short-term credit*, a *home credit loan agreement* or a *regulated credit agreement* subject to a *pledge*;
- (5) inability to meet *repayments* out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the *customer* taking out additional *credit* to repay existing debts, or the *customer* only being able to meet *repayments* of debts by the disposal of assets or security;
- (6) consecutively failing to meet *repayments* when due;
- (7) agreement to a *debt management plan* or other *debt solution*;
- (8) evidence of discussions with a *firm* (including a *not-for-profit debt advice body*) with a view to entering into a *debt management plan* or other *debt solution* or to seeking *debt counselling*.

2 Conduct of business standards: general

2.1 Application

- 2.1.1 G This chapter applies as stated in the sections which follow.

2.2 General principles for credit-related regulated activities

General principles

- 2.2.1 G *Principle 6* requires a *firm* to pay due regard to the interest of its *customers* and treat them fairly.
 [Note: paragraphs 2.3 of *ILG*, 2.2 of *CBG* and 2.3 of *DMG*]
- 2.2.2 G Examples of behaviour by or on behalf of a *firm* which is likely to contravene *Principle 6* include:
- (1) targeting *customers* with *regulated credit agreements* which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason;
 - (2) subjecting *customers* to high pressure selling, aggressive or oppressive behaviour, or coercion;
 - (3) not allowing *customers* who are unable to make payments a reasonable time and opportunity to meet *repayments*;
 - (4) taking steps to repossess a *customer's* home, other than as a last resort.

[Note paragraph 7.14 of *ILG* and 6.3 of *SCLG*]

[Note: paragraphs 2.3 of *ILG* and 2.2 of *CBG*]

Duty not to use misleading names

- 2.2.3 R A *firm* must not carry on a *credit-related regulated activity* under a name which is likely to mislead *customers* about the status of the *firm* or the nature of its business, or in any other way.

[Note: section 25(1AD) of *CCA*]

- 2.2.4 G (1) In relation to *CONC* 2.2.3R, an example of where a name may mislead is if the average *customer* of the *firm* is likely to be misled by the name of the *firm*.
- (2) Examples of the matters concerning a *firm*'s status or the nature of its business about which its name should not mislead *customers* include:
- (a) the identity or nature of the *firm* which implies that it is a public body
 - (b) its commercial status;
 - (c) its role, including any relationship with any other *person*; for example, that the *firm* is related or connected in some way to a charitable, not-for-profit or governmental organisation or to the courts;
 - (d) the extent of its authority;
 - (e) implying that a *firm* is a public body;
 - (f) the nature of the products or services supplied;
 - (g) the cost of those products or services; and
 - (h) the scale of the business including its geographical scope.

Effect on other rules and legislation

- 2.2.5 R Any specific rule or piece of guidance in *CONC* is without prejudice to the application of *PRIN*, any other *rules* in the *Handbooks*, the Consumer Credit Act 1974 and secondary legislation made and things done under it, the Consumer Protection from Unfair Trading Regulations 2008 and the Unfair Terms in Consumer Contracts Regulations 1999 and Part 8 of the Enterprise Act 2002 and any other applicable consumer protection legislation.

2.3 General conduct for consumer credit lenders

Application

2.3.1 R This section applies to a *firm* with respect to *consumer credit lending*.

General conduct

2.3.2 R A *firm* must explain the key features of a *regulated credit agreement* to enable the particular *customer* to make an informed choice as required by CONC 4.3.4R (adequate explanations).

[Note: paragraph 2.2 of *ILG*]

2.3.3 R A *firm* must monitor a *customer's repayment* record during the course of a *regulated credit agreement*, offering assistance where a *customer* appears to be experiencing difficulty.

[Note: paragraph 2.2 of *ILG*]

2.3.4 R A *firm* must take reasonable steps to satisfy itself that any *credit brokers* with whom the *firm* deals are *authorised persons or appointed representatives* under the *Act*.

[Note: paragraph 1.27 of *CBG*]

2.4 Credit references - conduct of business - lenders and owners

Application

2.4.1 R CONC 2.4.2R applies:

- (1) to a *firm* with respect to *consumer credit lending*;
- (2) to a *firm* with respect to *consumer hiring*.

Disclosure of name and address of credit reference agencies consulted

2.4.2 R (1) Not later than the *lender* (“L”) informs a *credit broker* that L is not willing to make a *regulated credit agreement*, L must, unless L informs the *customer* directly that L is not willing to make the agreement, inform the *credit broker* of the name and address (including an appropriate e-mail address) of any *credit reference agency* from which L has, during the negotiations relating to the proposed agreement, applied for information about the financial standing of the *customer*.

[Note: regulation 2 of SI 1977/330]

- (2) Not later than the *owner* (“O”) informs a *credit broker* that O is not willing to make a *regulated consumer hire agreement*, O must, unless O informs the *customer* directly that O is not willing to make the agreement, inform the *credit broker* of the name and address (including an appropriate e-mail address) of any *credit reference agency* from which O has, during the negotiations relating to the proposed agreement, applied for information about the financial

standing of the *customer*.

[**Note:** regulation 2 of SI 1977/330]

Searching credit files

- 2.4.3 G A *customer* is entitled to compare offers of *credit* without prejudicing the *customer's* ability to obtain *credit*. To this end, a *firm* undertaking a search should not leave evidence of an application on a credit file where a *customer* is not yet ready to apply.

[**Note:** paragraph 3.13 (box 2) of ILG]

2.5 Conduct of business credit broking

Application

- 2.5.1 R This section applies to a *firm* with respect to *credit broking*.
- 2.5.2 G The scope of *credit broking* for the introducing activities (article 36A(a) to (c) of the *Regulated Activities Order*) covers, in addition to *regulated credit agreements* and *regulated consumer hire agreements*, exempt agreements under article 60B (other than agreements in article 60F (exempt agreements: exemptions relating to the number of repayments to be made)) and exempt agreements under article 60N (other than agreements in article 60P (exempt agreements: exemptions relating to supply of essential services)).

Conduct of business

- 2.5.3 R A *firm* must:
- (1) where it has responsibility for doing so, explain the key features of a *regulated agreement* to enable the *customer* to make an informed choice as required by *CONC* 4.3.5R.
[**Note:** paragraphs 4.27 to 4.30 of CBG and 2.2 of *ILG*]
 - (2) take reasonable steps to satisfy itself that a product it wishes to recommend to a *customer* is not unsuitable for the *customer's* needs and circumstances;
[**Note:** paragraph 4.22 of *CBG*]
 - (3) advise a *customer* to read, and allow the *customer* sufficient opportunity to consider, the terms and conditions of a *credit agreement* or *consumer hire agreement* before entering into it;
[**Note:** paragraph 3.91 of *CBG*]
 - (4) obtain the consent of a *customer* before referring the *customer* to a third party which carries on *regulated activities* or to a claims management service (within the meaning of section 4 of the

Compensation Act 2006) or other services;

[Note: paragraph 3.9r of *CBG*]

- (5) before effecting an introduction of a *customer* to a *lender* or *owner* in relation to a *credit agreement* or *consumer hire agreement*, or before entering into such an agreement on behalf of the *lender*, disclose the fact that the *lender* or *owner* is linked to the *firm* by being a member of the same *group* as the *firm*.

[Note: paragraph 3.9y of *CBG*]

- (6) bring to the attention of a *customer* how the *firm* uses the *customer's* personal data it collects in a manner appropriate to the means of communication used;

[Note: paragraph 3.9q of *CBG*]

- (7) provide *customers* with a clear and simple method to cancel their consent for the processing of their personal data;

[Note: paragraph 3.9u of *CBG*]

- (8) at the request of a *customer*, disclose from where the *customer's* personal data was obtained;

[Note: paragraph 3.9w of *CBG*]

- (9) take reasonable steps not to pass a *customer's* personal data to a business which carries on a *credit-related regulated activity* which has no *permission* for that activity.

[Note: paragraph 3.9x of *CBG*]

- 2.5.4 G A *firm* may comply with *CONC 2.5.3R(6)* by presenting to the *customer* a privacy notice. The Information Commissioner's Office has prepared the Privacy Notices Code of Practice.

Conduct of business: credit references

- 2.5.5 R Where a *credit broker* ("B") is a negotiator (within the meaning of section 56(1) of the *CCA*), B must, at the same time as B gives notice under section 157(1) of the *CCA* (which relates to the duty to disclose on request the name and address of any *credit reference agency* consulted by B) to a *customer*, also give the *customer* notice of the name and address of any *credit reference agency* of which B has been informed under *CONC 2.4.2R*.

[Note: regulation 3 of SI 1977/ 330]

- 2.5.6 R Where a *credit broker* ("B") is not a negotiator (within the meaning of section 56(1) of the *CCA*), B must, within seven working days after receiving a request in writing for any such information, which is made by the customer within 28 days after the termination of any negotiations relating to a *regulated credit agreement* or a *regulated consumer hire agreement* whether on the making of the agreement or otherwise, give to the *customer*

notice of:

- (1) the name and address of any *credit reference agency* from which B has during those negotiations applied for information about the financial standing of the *customer*; and
- (2) the name and address of any *credit reference agency* of which B has been informed under *CONC 2.4.2R*.

[**Note:** regulation 4 of SI 1977/ 330]

Searching credit files

- 2.5.7 G A *customer* is entitled to compare offers of *credit* without prejudicing the *customer's* ability to obtain *credit*. To this end, a *firm* undertaking a search should not leave evidence of an application on a credit file where a *customer* is not yet ready to apply.

[**Note:** paragraph 3.13 (box 2) of *ILG*]

Unfair business practices - credit brokers

- 2.5.8 R A *firm* must not:

- (1) make or cause to be made unsolicited calls to numbers entered on the register kept under regulation 25 or 26 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 or to a *customer* who has notified the *firm* not to call the number being used to call;

[**Note:** paragraph 3.9a of *CBG*]

- (2) other than where:

- (a) the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product or service to C;
- (b) the direct marketing is in respect of the *firm's* similar products and services only; and
- (c) C has been given a simple means of refusing (free of charge, except for the costs of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication;

send or cause to be sent an *electronic communication*, for the purposes of marketing, to C, or make or cause to be made by means of an automated calling system (see *CONC 2.5.3R* (11)) a call to C, for the purposes of marketing, unless in either case C has previously notified the *firm* that C consents for the time being to such calls or communications being sent or made or caused to be sent or made by

the *firm*;

[**Note** paragraph 3.9b of *CBG*]

- (3) stop making or causing to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called) a call to a *customer*, for the purposes of marketing, after the *firm* has received a request from the *customer* to stop doing so;

[**Note**: paragraph 3.9c of *CBG*]

- (4) stop sending, or causing to be sent, an *electronic communication* to a *customer*, for the purposes of marketing, after the *firm* has received a request from the *customer* to stop doing so;

[**Note**: paragraph 3.9c of *CBG*]

- (5) visit a *customer* at a time that is known to be, or reasonably likely to be, inconvenient or particularly undesirable to the *customer*;

[**Note**: paragraph 3.9f of *CBG*]

- (6) refuse to end a visit to a *customer* or to leave the *customer's* home, when requested to do so;

[**Note**: paragraph 3.9g of *CBG*]

- (7) unfairly request, suggest or direct a *customer* to make contact on a premium rate telephone number;

[**Note**: paragraph 3.9h of *CBG*]

- (8) conduct a telephone call with a *customer* who has called on a premium rate number for an unreasonable period;

[**Note**: paragraph 3.9i of *CBG*]

- (9) inappropriately offer a financial or other incentive or inducement to a *customer* to enter into a *credit agreement* or *consumer hire agreement* to which this section applies, immediately or quickly;

[**Note**: paragraph 3.9j of *CBG*]

- (10) effect an introduction of a *customer* to a *lender* with a view to the *lender* entering into a *credit agreement* to which this section applies, where it is or should be apparent to the *firm* that the *customer* does not meet the *lender's* lending criteria;

[**Note**: paragraph 3.9aa of *CBG*]

- (11) suggest to a *customer* that an application for *credit* will be met in full when a lower amount may be offered;

[Note: paragraph 4.26d of *CBG*]

- (12) secure more *credit* for a *customer* than was requested where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interest of the *customer*;

[Note: paragraph 4.26e of *CBG*]

- (13) give preference to the credit products of a particular *lender* where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interest of the *customer*;

[Note: paragraph 4.41k of *CBG*]

- (14) in relation to a product or service linked to the *credit agreement* or *consumer hire agreement* (whether the service or product is optional or required as a condition of the *credit agreement* or *consumer hire agreement*):

- (a) pressurise the *customer* to buy the product or service; or

[Note: paragraph 2.62, 2nd bullet of *JGPPI*]

- (b) offer undue incentives to the *customer* to buy a product or service; or

[Note: paragraph 2.62, 2nd bullet of *JGPPI*]

- (c) discourage the *customer* seeking or obtaining the product or service from another source;

[Note: paragraph 4.26f of *CBG*]

- (15) encourage a *customer* to enter into a *credit agreement* which is secured in any way, to which this section applies, to replace an unsecured *credit agreement* or to consolidate other debts where the *firm* knows, or ought reasonably to know, that it is not in the best interests of the *customer*;

[Note: paragraph 4.26g of *CBG*]

- (16) unfairly encourage a *customer* to increase, consolidate or refinance (which expression has the same meaning as in *CONC* 6.7.17R) an existing debt to the extent that repayments under an agreement would be *unsustainable* for the *customer*;

[Note: paragraph 4.26h of *CBG*]

- (17) charge a fee to a *customer* for effecting an introduction to a *lender* or *owner* that provides a type of *credit* or hire of a different type to that promised to the *customer*, promoted by the *firm* to the *customer* or which the *firm* is aware the *customer* is seeking, unless the *customer* subsequently gives informed consent to such an introduction;

[Note: paragraph 4.17f of *CBG*]

- (18) take a fee from a *customer's* bank account without the *customer's* express authorisation to do so;

[Note: paragraph 4.17c of *CBG*]

- (19) unfairly pass a *customer's* personal data to a third party without obtaining the *customer's* consent to do so;

[Note: paragraph 3.9s of *CBG*]

- (20) unfairly pass a *customer's* personal data to a third party for a purpose other than that for which consent was sought and given.

[Note: paragraph 3.9t of *CBG*]

Guidance on unfair business practices

- 2.5.9 G (1) It is likely to be an inappropriate offer of an inducement or incentive to enter into an *regulated credit agreement* or a *regulated consumer hire agreement* to state that the offer will be withdrawn or the terms and conditions of the offer will worsen if the agreement is not signed immediately or within a stated period after the communication, unless the *firm's* offer on those terms and conditions will in fact be withdrawn in the period indicated to the *customer*.

[Note: paragraph 3.9j (box) of *CBG*]

- (2) An example of unfairly requesting, suggesting or directing a *customer* to a premium rate telephone number may be to do so in relation to a *customer* wishing to complain about the *firm's* service or to request a refund, including under section 155 of the *CCA*.

[Note: paragraph 6.19f of *CBG*]

- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make more than one telephone call exceeding 15 minutes to a *firm* to apply for *credit*. Where a longer call is required, the *firm* should ensure the call is not made on a premium rate telephone number.

[Note: paragraph 3.9i (box) of *CBG*]

- (4) It is unlikely to be reasonable to request, suggest or direct a *customer* to call the *firm* repeatedly to check on the status of an application. A call to check on the status of an application should not last more than five minutes.

[Note: paragraph 3.9i (box) of *CBG*]

- (5) A *firm* should disclose to a *customer* the amount, or likely amount, of any fee payable for its services as early as practicable in the *firm's* dealings with the *customer*. *CONC* 4.5.2R requires a *credit broker* to disclose any such fee agreed with the *customer* in writing or in another *durable medium*.

[Note: paragraphs 2.2, 7th bullet, 3.7l and 4.9 of CBG]

- (6) Where a *firm* makes an introduction of the type referred to in CONC 2.5.8R(17) the *firm* should ensure that the *customer's* consent is preceded by a full explanation of the key features and key risks of the credit product to which the introduction applies.

[Note: paragraph 4.17f of CBG]

- (7) A *customer's* personal data must be processed fairly and lawfully and only for specified purposes. While it may be possible to pass personal data in specified circumstances to certain third parties without the *customer's* consent where a condition of the Data Protection Act 1998 is satisfied, a *firm* (other than where it is under a statutory obligation to pass personal data to a third party) should generally seek the *customer's* consent before passing personal data to a third party.

[Note: paragraph 3.9t (box) of CBG]

- (8) An example of where it is likely to be unfair for a *credit broker* in receipt of the *customer's* personal data to pass it to a third party, is where the personal data is passed on in return for a fee to a claims management firm, without the *customer's* consent.

2.6 Conduct of business: debt counselling, debt adjusting and providing credit information services

Application

- 2.6.1 R This section applies to a *firm* with respect to:

- (1) *debt counselling*;
- (2) *debt adjusting*;
- (3) *providing credit information services*.

Conduct of business

- 2.6.2 R A *firm* (other than a *not-for-profit debt advice body*) must:

- (1) tell a *customer* in its first written or oral communication that free *debt counselling, debt adjusting and providing of credit information services* is available to *customers* and that the *consumer* can find out more by contacting the Money Advice Service;
- (2) include on its web-site a link to the Money Advice Service web-site (www.moneyadviceservice.org.uk/en/articles/where-to-go-to-get-freedebt-advice).

[Note: paragraph 1.7 of Debt Management Protocol]

- 2.6.3 R A *firm* must bring to the attention of a *customer* how the *firm* uses the *customer's* personal data it collects in a manner appropriate to the means of communication used.

[Note: paragraph 2.5e of *DMG*]

Unfair business practices

- 2.6.4 R A *firm* must not:
- (1) by any means, including during a visit to a *customer*, coerce or use pressure to sell its services;
[Note: paragraph 3.12o of *DMG*]
 - (2) take advantage of a *customer's* lack of knowledge or understanding of the law relating to consumer credit or to insolvency or to otherwise dealing with debts in order to sell its services;
[Note: paragraph 3.12o of *DMG*]
 - (3) in relation to a visit to a *customer*:
 - (a) make an appointment to visit or visit at a time which is unreasonable or inconvenient from the *customer's* point of view, unless the *consumer* expressly consents;
[Note: paragraph 3.15a of *DMG*]
 - (b) refuse to end the visit, refuse to leave the *customer's* home or refuse not to return there, at the request of the *customer*;
[Note: paragraph 3.15b of *DMG*]
 - (c) make a visit which is unreasonably or unnecessarily long;
[Note: paragraph 3.15c of *DMG*]
 - (4) conduct a telephone call with a *customer* who has called on a premium rate number for an unreasonable period.
[Note: paragraph 3.18x of *DMG*]

Guidance on unfair business practices

- 2.6.5 G (1) It is an offence for a *person* carrying on the business of *debt counselling, debt adjusting* or *providing credit information services* to canvass its service off trade premises under section 154 of the *CCA*. The definition of canvassing in section 153 of the *CCA* would include an unsolicited personal visit to a *customer's* home.
[Note: paragraph 3.13 of *DMG*]
- (2) Where a long telephone call is required, the *firm* should ensure the call is not made on a premium rate number.

- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make more than one call exceeding 15 minutes to a *firm* in relation to *debt counselling* or *debt adjusting*. Where a call longer than 15 minutes is required for the *firm* to provide its service to the *customer*, the *firm* should ensure the call is not made on a premium rate phone number.
- (4) It is unlikely to be reasonable for a call by the *customer* to check on the status of the *customer's* case to last more than five minutes.

2.7 Distance marketing

Application

- 2.7.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK* or another *EEA State*.

The distance marketing disclosure rules

- 2.7.2 R (1) Subject to (2), (3) and (4), a *firm* must provide a *consumer* with the distance marketing information (*CONC 2 Annex 1R*) in good time before the *consumer* is bound by a *distance contract* or offer.
 [Note: regulation 7(1) of SI 2004/2095]
 [Note: articles 3(1) and 4(5) of the Distance Marketing Directive]
- (2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of *CONC 2 Annex 1R*.
- (3) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (*CONC 2 Annex 2R*) in *CONC 2.7.11R* do not apply to a *distance contract* which is also a credit agreement (other than an *authorised non-business overdraft agreement*) in respect of which the *firm* has disclosed the pre-contract credit information required by regulations 3, 4 or 5, as the case may be, and 7, of the *disclosure regulations* (information to be disclosed to a debtor before a regulated consumer credit agreement is made) in accordance with the *disclosure regulations*.
 [Note: regulation 7(6) of SI 2004/2095]
- (4) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (*CONC 2 Annex 2R*) in *CONC 2.7.11R* do not apply to a *distance contract* which is also an *authorised non-business overdraft agreement* in respect of which:

- (a) the *firm* has disclosed the information required by regulation 10(2) of the *disclosure regulations* (authorised non-business overdraft agreements) by means of the European Consumer Credit Information form in accordance with the *disclosure regulations* and, unless *CONC 2.7.12R* would otherwise apply, a copy of the contractual terms and conditions; or
- (b) in the case of a voice telephone communication, the *firm* has:
 - (i) disclosed the information required by regulation 10(5) of the *disclosure regulations* in accordance with the *disclosure regulations*; and
 - (ii) provided a copy of the written agreement in accordance with section 61B(2)(b) of the *CCA*; or
- (c) in the case of an agreement made using a means of distance communication, other than voice telephone communication, where a *firm* is unable to provide the information required by regulation 10(2) of the *disclosure regulations*, the *firm* has:
 - (i) provided a copy of the written agreement in accordance with section 61B(2)(c) of the *CCA*, and
 - (ii) unless *CONC 2.6.12R* would otherwise apply, in relation to the prospective *distance contract*, provided information which accurately reflects the contractual obligations which would arise under the law presumed to be applicable to that contract.

[**Note:** regulation 7(6) of SI 2004/2095]

- 2.7.3 R A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent, such as minors.
- [**Note:** regulation 7(2) and (3) of SI 2004/2095]
- [**Note:** article 3(2) of the Distance Marketing Directive]
- 2.7.4 R When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.
- [**Note:** regulation 7(4) of SI 2004/2095]
- [**Note:** article 3(3)(a) of the Distance Marketing Directive]
- 2.7.5 R A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase conforms with

the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[**Note:** regulation 7(5) of SI 2004/2095]

[**Note:** article 3(4) of the Distance Marketing Directive]

Terms and conditions, and form

- 2.7.6 R A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (*CONC 2.7.2R* to *CONC 2.7.5R*) in a durable medium. That information must be made available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** regulation 8(1) of SI 2004/2095]

[**Note:** articles 4(5) and 5(1) of the Distance Marketing Directive]

- 2.7.7 G A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

- 2.7.8 R The performance of the *distance contract* may only begin after the *consumer* has given approval.

[**Note:** article 7(1) of the Distance Marketing Directive]

Exception: successive operations

- 2.7.9 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the initial agreement.

[**Note:** regulation 5(1) of SI 2004/2095]

[**Note:** article 1(2) of the Distance Marketing Directive]

- 2.7.10 R (1) If there is no initial service agreement but the successive or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (*CONC 2.7.2R* to *CONC 2.7.5R*) will only apply:
- (a) when the first operation is performed; and
 - (b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[**Note:** regulation 5(2) of SI 2004/2095]

[**Note:** recital 16 and article 1(2) of the Distance Marketing Directive]

(2) In this section:

- (a) "initial service agreement" includes the opening of a bank account or the making of a *credit token agreement*;
- (b) "operations" includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or a store card; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing retail banking service, does not constitute an "operation" but an additional contract to which the rules in this chapter apply.

[**Note:** regulation 5 of SI 2004/2095]

[**Note:** recital 17 of the Distance Marketing Directive]

Exception: voice telephony communications

- 2.7.11 R In the case of voice telephony communication, and subject to the explicit consent of the consumer, only the abbreviated distance marketing information (*CONC 2 Annex 2R*) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (*CONC 2 Annex 1R*) in a *durable medium* that is available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

[**Note:** regulation 4(b) of SI 2004/2095]

[**Note:** articles 3(3)(b) and 5(1) of the Distance Marketing Directive]

Exception: means of distance communication not enabling disclosure

- 2.7.12 R A *firm* may provide the distance marketing information (*CONC 2 Annex 1R*) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** article 5(2) of the Distance Marketing Directive]

Exception: contracts for payment services

- 2.7.13 G Where a *distance contract* covers both payment services and non-payment services, the exception in *CONC 2.7.2R(2)* applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception

will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

Customer's right to request paper copies and change the means of communication

- 2.7.14 R At any time during the contractual relationship, the *consumer* is entitled, at request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[**Note:** regulation 8(2) and (4) of SI 2004/2095]

[**Note:** article 5(3) of the Distance Marketing Directive]

Unsolicited services

- 2.7.15 R (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer* in the event of an unsolicited supply of services. The absence of a reply does not constitute consent.

(2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[**Note:** regulation 15 of SI 2004/2095]

[**Note:** article 9 of the Distance Marketing Directive]

Mandatory nature of consumer's right

- 2.7.16 R If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the Distance Marketing Directive]

Contracts governed by law of a third party state

- 2.7.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the territory of one or more *EEA States*.

[**Note:** regulation 16(3) of SI 2004/2095]

[**Note:** articles 12 and 16 of the Distance Marketing Directive]

2.8 E-commerce

Application

- 2.8.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *UK* with or for a *person* in the *UK* or another *EEA State*.

Information about the firm and its products or services

- 2.8.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *Financial Services Register* and includes its firm reference number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
 - (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the E-Commerce Directive]

- 2.8.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the E-Commerce Directive]

- 2.8.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the person on whose behalf the commercial communication is made

must be clearly identifiable;

- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the E-Commerce Directive]

- 2.8.5 R An unsolicited commercial communication sent by e-mail by a *firm* established in the *UK* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the E-Commerce Directive]

Requirements relating to the placing and receipt of orders

- 2.8.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filled in by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
 - (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means) acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
 - (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[**Note:** articles 10(1) and 11(1) and (2) of the E-Commerce Directive]

- 2.8.7 R For the purposes of *CONC* 2.8.6R(3), an order and an acknowledgement of

receipt are deemed to be received when the parties to whom they are addressed are able to access them.

- 2.8.8 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the E-Commerce Directive]

Exception: contract concluded by e-mail

- 2.8.9 R The requirements relating to the placing and receipt of orders (*CONC* 2.8.6R(3)) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** articles 10(4) and 11(3) of the E-Commerce Directive]

2.9 Prohibition of unsolicited credit-tokens

Application

- 2.9.1 R This section applies to any *firm*.

Prohibition

- 2.9.2 R (1) A *firm* must not give a *person* a *credit-token* if he has not asked for it.
[**Note:** section 51 of *CCA*]

(2) A request in (1) must be in a document signed by the *person* making the request, unless the *credit-token agreement* is a *small borrower-lender-supplier agreement*.

(3) Paragraph (1) does not apply to the giving of a *credit-token* to a *person*:

- (a) for use under a *credit-token agreement* already made; or
- (b) in renewal or replacement of a *credit-token* previously accepted by that *person* under a *credit-token agreement* which continues in force, whether or not varied.

2.10 Dealing with particularly vulnerable customers (Mental Capacity Guidance)

Application: Who? What?

- 2.10.1 G This section applies:

(1) to a *firm*;

- (2) in relation to the following decisions:
- (a) granting *credit* under a *regulated credit agreement*;
 - (b) significantly increasing the amount of *credit* under a *regulated credit agreement*; and
 - (c) setting a *credit limit* for *running account credit*.

2.10.2 G (1) The Mental Capacity Act 2005 sets out the legal framework concerning mental capacity. The Ministry of Justice has issued the Mental Capacity Act Code of Practice which, among other things, includes information on indications of mental capacity limitations and on how to assist people with making decisions.

- (2) References in this section to a *firm's* knowledge, understanding, observation, suspicion, assumption or belief includes that of the *firm's* employees, *appointed representatives*, agents and any others who act for the *firm*.

[**Note:** footnote 2 of *MCG*]

Mental capacity

2.10.3 G Mental capacity is a person's ability to make a decision. Whether or not a *customer* has the ability to understand, remember, and weigh up relevant information will determine whether the *customer* is able to make a responsible borrowing decision based on that information.

[**Note:** paragraph 2.1 of *MCG*]

2.10.4 G A *firm* should assume a *customer* has mental capacity at the time the decision has to be made, unless the *firm* knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the *customer* lacks capacity.

[**Note:** paragraph 3.1 of *MCG*]

2.10.5 G Where a *firm* reasonably suspects a *customer* has, or may have, some form of mental capacity limitation which would constrain the *customer's* ability to make a decision to borrow, the *firm* should not regard the *customer* as lacking capacity to take the decision unless the *firm* has taken reasonable steps to assist the *customer* to make a decision without success.

[**Note:** paragraph 3.2 of *MCG*]

2.10.6 G Amongst the most common potential causes of mental capacity limitations are the following examples, a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication.

[**Note:** paragraph 2.9 of *MCG*]

- 2.10.7 G Where a *firm* reasonably suspects a *customer* has a condition of the type in *CONC* 2.10.6G, the *firm* should not assume the *customer* does not have the mental capacity to make an informed borrowing decision. See also *CONC* 2.10.15G.

[**Note:** paragraph 2.10 of *MCG*]

Indications that a person may have some form of mental capacity limitation

- 2.10.8 G A *firm* is likely to have reasonable grounds to suspect a *customer* may have some form of mental capacity limitation if the *firm* observes a specific indication (behavioural or otherwise) that could be indicative of some form of limitation of the *customer's* mental capacity. Examples (amongst others) of indications might include:
- (a) where a *firm* has an existing relationship with a *customer*, the *customer* making a decision that appears to the *firm* to be unexpected or out of character;
 - (b) a person who is likely to have an informed view of the matter, such as a relative, close friend, carer or clinician raising a concern with the *firm* as to the capacity of the *customer* to make a decision about borrowing;
 - (c) the *firm* understands or has reason to believe the *customer* has been diagnosed as having an impairment which led to the *customer* not having had mental capacity for similar decisions in the past;
 - (d) the *firm* understands or has reason to believe the *customer* does not understand what the *customer* is applying for;
 - (e) the *firm* understands or has reason to believe the *customer* is unable to understand the information and explanations provided by the *firm*, in particular concerning the key risks of entering into the agreement;
 - (f) the *firm* understands or has reason to believe the *customer* is unable to retain information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
 - (g) the *firm* understands or has reason to believe the *customer* is unable to weigh up the information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
 - (h) the *customer* is unable to communicate a decision to borrow by any reasonable means;
 - (i) the *customer* being confused about the personal information that the *firm* requires, such as date of birth or address.

[**Note:** paragraphs 3.14 and 3.15 of *MCG*]

Practices and procedures

- 2.10.9 G A *firm* should not unfairly discriminate against a *customer* who it understands, or reasonably suspects, has mental capacity limitations, in particular, by inappropriately denying the *customer* access to *credit*.
[Note: paragraph 4.8 of *MCG*]
- 2.10.10 G In accordance with *Principle 6*, *firms* should take reasonable steps to ensure they have suitable business practices and procedures in place for the fair treatment of *customers* who they understand, or reasonably suspect, have or may have mental capacity limitations.
[Note: paragraph 4.1 of *MCG*]
- 2.10.11 G A *firm* should document practices and procedures to set out the steps that it takes when it receives applications for *credit* from such *customers*.
[Note: paragraph 4.2 of *MCG*]
- 2.10.12 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have mental capacity limitations the *firm* should use its business practices and procedures to:
- (a) assist the *customer*, where possible, to make an informed borrowing decision; and
 - (b) ensure its lending decision is informed and responsible in the circumstances and mitigates the potential risks to the *customer*.
- [Note: paragraphs 4.3 and 4.5 of *MCG*]
- 2.10.13 G As stated in the Mental Capacity Act Code of Practice, it is important to balance a person's right to make a decision with that person's right to safety and protection when they are unable to make decisions to protect themselves.
[Note: paragraph 4.5 (box) of *MCG*]
- 2.10.14 G *Firms* should present clear, jargon-free information in explaining *credit agreements* in a way that makes it as easy as possible for the *customer* to understand. *Firms* should consider ways to present information in alternative, more 'user-friendly' formats where it appears appropriate to do so.
[Note: paragraph 4.20 of *MCG*]
- 2.10.15 G Where a *firm* knows, or reasonably suspects, that a *customer* has or may have one of the conditions in *CONC 2.10.6G* this could justifiably act as a trigger for a *firm* to consider the potential specific steps in giving effect to the *firm's* practices and procedures for assessing:
- (1) whether or not the *customer* appears able to understand, remember, and weigh-up the information and explanations provided and, when

having done so, make an informed borrowing decision;

- (2) whether the *customer* appears able to afford to make repayments under the *credit agreement* in a *sustainable* manner without adverse consequences to the *customer's* financial circumstances; and
- (3) whether the *credit* the *customer* is seeking is clearly unsuitable (given the *customer's* individual circumstances and, to the extent that the *firm* is aware, the *customer's* intended use of the *credit*).

[**Note:** paragraphs 2.5 and 2.11 of *MCG*]

- 2.10.16 G *Firms' practices and procedures should be designed to assist customers that firms understand have, or reasonably suspect of having, mental capacity limitations to overcome, to the extent possible, the effect of the limitations and place them, to the extent possible, on an equivalent basis to customers who do not have such limitations, to increase the likelihood of customers being able to make informed borrowing decisions.*

[**Note:** paragraph 4.4 of *MCG*]

Allowing sufficient time for decisions

- 2.10.17 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should consider allowing the *customer*:
- (1) sufficient time in the circumstances to weigh up the information and explanations the *firm* has given;
 - (2) sufficient time in the circumstances to make an informed borrowing decision.
 - (3) to defer a decision to borrow to a later date.

[**Note:** paragraphs 4.26, 4.27 and 4.28 of *MCG*]

Sustainability of borrowing

- 2.10.18 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have mental capacity limitations it should apply a high level of scrutiny to the *customer's* application for *credit*, in order to mitigate the risk of the *customer* entering into *unsustainable* borrowing (see *CONC* 5.2 and 5.3).

[**Note:** paragraphs 4.32 and 4.33 of *MCG*]

- 2.10.19 G *A firm should balance the risk of a customer taking on unsustainable borrowing against inappropriately or unnecessarily denying credit to a customer a firm understands has or may have, or reasonably suspects of having, mental capacity limitations by undertaking an appropriate and effective and stringent creditworthiness assessment. It would be appropriate not to place over-reliance on information provided by the customer for the creditworthiness assessment.*

[Note: paragraph 4.34 of MCG]

- 2.10.20 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have mental capacity limitations a *firm* should take particular care that the *customer* is not provided with *credit* which the *firm* knows, or reasonably believes, to be unsuitable to the *customer's* needs, even where the *credit* would be affordable.

[Note: paragraph 4.43 of MCG].

2 Annex 1R Distance marketing information

This Annex belongs to CONC 2.7.2R. (The distance marketing disclosure rules)

Information about the firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's</i> EEA State of residence, the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
(3)	Where the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant to the <i>consumer's</i> relations with that professional.
(4)	The particulars of the public register in which the <i>firm</i> is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (<i>GEN</i> 4), a statement that the <i>firm</i> is on the <i>Financial Services Register</i> and its firm reference number.
Information about the financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(7)	Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.

(8)	Notice of the possibility that other taxes or costs may exist that are not paid via the <i>firm</i> or imposed by it.
(9)	Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a <i>firm's</i> offer applies as it stands.
(10)	The arrangements for payment and performance.
(11)	Details of any specific additional cost to the <i>consumer</i> for using a means of distance communication.
Information about the contract	
(12)	The existence or absence of any right to cancel under section 66A or section 67 of the <i>CCA</i> or the cancellation rules in <i>CONC</i> 11.1 and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the consumer) in accordance with those rules, as well as the consequences of not exercising the right to cancel.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
(16)	The <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
(17)	Any contractual clause on the law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its

	liabilities.
[Note: Recitals 21 and 23 to, and article 3(1) of, the Distance Marketing Directive]	

2 Annex **Abbreviated distance marketing information**

2R

This Annex belongs to *CONC 2.7.11R*.

(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all taxes paid via the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes and/or costs may exist that are not paid via the <i>firm</i> or imposed by the <i>firm</i> .
(5)	The existence or absence of a right to cancel in accordance with the cancellation rules (in sections 66A or 67 of the <i>CCA</i> or in <i>CONC 11.1</i>) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay on the basis of the cancellation rules.
(6)	That other information is available on request and the nature of that information
[Note: article 3(3)(b) of the Distance Marketing Directive]	

3 **Financial promotions and communications with customers**

3.1 **Application**

Who? What?

- 3.1.1 R This chapter, unless a rule in *CONC 3* specifies differently, applies to a *firm*.
- 3.1.2 G Under section 39(3) of the *Act*, a *firm* is responsible for *financial promotions* communicated by its *appointed representatives* when acting as such.
- 3.1.3 R This chapter, unless a *rule* in *CONC 3* specifies differently, applies to:
- (1) a communication with a *customer* in relation to a *credit agreement*;

- (2) the *communication* or *approval* for *communication* of a *financial promotion* in relation to a *credit agreement*;
 - (3) a communication with a *customer* in relation to *credit broking*;
 - (4) the *communication* or *approval* for *communication* of a *financial promotion* in relation to *credit broking*;
 - (5) a communication with a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*;
 - (6) the *communication* or *approval* for *communication* of a *financial promotion* to a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*.
- 3.1.4 R The clear fair and not misleading *rule* in *CONC* 3.3.1R and the general requirements rule in *CONC* 3.3.2R, 3.3.5G to 3.3.11G also apply to:
- (1) a communication with a *customer* in relation to *debt counselling* or *debt adjusting*;
 - (2) the *communication* or *approval* for *communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting*.
- 3.1.5 R *CONC* 3.3.1R also applies to:
- (1) a communication with a *customer* in relation to a *consumer hire agreement*;
 - (2) the *communication* or *approval* for *communication* of a *financial promotion* in relation to a *consumer hire agreement*; and
 - (3) a communication with a *customer* in relation to *providing credit information services*.
- 3.1.6 R *CONC* 3 does not apply to:
- (1) a *financial promotion* or a communication which clearly indicates that it is solely promoting *credit agreements* or *consumer hire agreements* or *P2P agreements* for the purposes in each case of a *customer's* business;
 - (2) a *financial promotion* or a communication the extent that it relates to *qualifying credit*; and
 - (3) an *excluded communication*.
- 3.1.7 R (1) *CONC* 3 does not apply (apart from the provisions in (2)) to a *financial promotion* or communication that consists of only one or more of the following:

- (a) the name of the *firm* (or its *appointed representative*);
 - (b) a logo;
 - (c) a contact point (address (including e-mail address), telephone, facsimile number and website address);
 - (d) a brief, factual description of the type of *credit* provided by the *firm*.
- (2) The provisions in *CONC 3* which apply to a *financial promotion* or communication which falls within (1) are:
- (a) *CONC 3.1*, 3.5.1R and 3.6.1R (application);
 - (b) *CONC 3.3.1R* (clear, fair and not misleading);
 - (c) *CONC 3.3.3R* (credit regardless of status);
 - (d) *CONC 3.5.4R*, 3.5.6R, 3.6.6R (requirement for representative example or typical APR etc);
 - (e) *CONC 3.5.8R* (other financial promotions requiring a representative APR);
 - (f) *CONC 3.5.12R* (restricted expressions) and 3.6.7R (restricted expressions); and
 - (g) any other rules in *CONC* which are necessary or expedient to apply the rules in (a) to (e).

3.1.8 G *CONC 3.1.7R* (1) does not enable detailed information to be given about *credit* available from the *firm*. *Firms* should note that the image advertisement exclusion in *CONC 3.1.7R*(1) is subject to compliance with the rules specified in (2), including the *rules* which require the inclusion of a representative APR in specified circumstances. A name or logo may trigger the requirement to include a representative APR. *Firms* should not include any information not referred to in *CONC 3.1.7R*(1) and should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

Where?

3.1.9 R This chapter applies to a *firm* in relation to:

- (1) a communication with, or the *communication* or *approval* for *communication* of a *financial promotion* to, a *person* in the *UK*;
- (2) the *communication* of an *unsolicited real time financial promotion*, unless it is made from a place, and for the purposes of a business which is only carried on, outside the *UK*;

- (3) the *communication* or *approval for communication* of a *financial promotion* that is an *electronic commerce communication* to a person in an *EEA state* other than in the *UK*;

and for the purposes of the application of this chapter, it is immaterial whether the *credit agreement* or the *consumer hire agreement* to which the *financial promotion* or communication relates is subject to the law of a country outside the *UK*.

3.2 Financial promotion general guidance

- 3.2.1 G The *rules* in this chapter adopt various concepts from the restriction on *financial promotion by unauthorised persons* in section 21(1) of the *Act* (Restrictions on financial promotion). Guidance on that restriction and the communications which are exempt from it is contained in *PERG 8* (Financial promotion and related activities) and that guidance will be relevant to interpreting these rules. In particular, guidance on the meaning of:
- (1) 'communicate' is in *PERG 8.6* (Communicate); and
 - (2) 'invitation or inducement' and 'engage in investment activity' (two elements which, with 'communicate', make up the definition of 'financial promotion') is in *PERG 8.4* (Invitation or inducement).
- 3.2.2 G The Privacy and Electronic Communications (EC Directive) Regulations 2003 apply to unsolicited telephone calls, fax messages and electronic mail messages for direct marketing purposes. The Information Commissioner's Office has produced guidance on the Regulations.

3.3 The clear fair and not misleading rule and general requirements

- 3.3.1 R (1) A *firm* must ensure that a communication or a *financial promotion* is clear, fair, and not misleading.
- [**Note:** paragraphs 2.2 of *ILG*, 3.16 of *DMG* and 3.1 of *CBG*]
- (2) If, for a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with (1), a contravention does not give rise to a right of action under section 138D of the *Act*.

General requirements

- 3.3.2 R A *firm* must ensure that a communication or a *financial promotion*:
- (1) uses plain and intelligible language;
 - (2) is easily legible (or, in the case of any information given orally, clearly audible);

- (3) specifies the name of the *person* making the communication or communicating the *financial promotion* or the person on whose behalf the financial promotion is made; and
- (4) in the case of a communication or *financial promotion* in relation to *credit broking*, indicate to the *customer* the identity of the *lender* (where it is known).

[**Note:** paragraph 4.8a of *CBG*]

[**Note:** regulation 3 of *CCAR 2004* and regulation 3 of *CCAR 2010*]

- 3.3.3 R A *firm* must not in a *financial promotion* or a communication to a *customer* suggest or state, expressly or by implication, that *credit* is available regardless of the *customer's* financial circumstances or status.

[**Note:** paragraphs 3.7o of *CBG* and 5.2 *ILG*]

- 3.3.4 G A *firm's* trading name, internet address or logo, in particular, could fall within *CONC* 3.3.3R.

[**Note:** paragraph 5.2 (box) of *ILG*]

Guidance on clear, fair and not misleading

- 3.3.5 G A *firm* should ensure that each communication and each *financial promotion*:

- (1) is accurate and, in particular, should not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
- (2) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
- (3) does not disguise, diminish or obscure important information, statements or warnings; and
- (4) is clearly identifiable as such.

[**Note:** paragraphs 3.7p of *CBG* and 3.18q of *DMG*]

- 3.3.6 G If a communication or a *financial promotion* names the *FCA*, *PRA* or both as the regulator of a *firm* and refers to matters not regulated by the *FCA*, *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, *PRA* or both.

- 3.3.7 G When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *customer* being insufficient, unclear, unfair or misleading.

- 3.3.8 G If a communication or a *financial promotion* compares a credit product with one or more other products (whether or not provided by the *firm*), the *firm* should ensure that the comparison is meaningful and presented in a fair and balanced way.
- 3.3.9 G A *firm* should in a *financial promotion* or other communication indicate to the *customer* in a prominent way the likely total cost of a premium rate telephone call including the price per minute of a call, the likely duration of calls and the total cost the *customer* would incur if the *customer* calls for the full estimated duration.

[**Note:** paragraphs 3.9h of *CBG* and 3.18x (box) of *DMG*]

Unfair business practices: financial promotions and communications

- 3.3.10 G Examples of practices that are likely to contravene the clear, fair and not misleading rule in *CONC* 3.3.1R include:
- (1) stating or implying that the *firm* is a *lender* (where this is not the case);
[**Note:** paragraph 3.7e (box) of *CBG*]
 - (2) misleading a *customer* as to the availability of a particular credit product;
[**Note:** paragraph 3.9p of *CBG*]
 - (3) concealing or misrepresenting the identity or name of the *firm*;
[**Note:** paragraph 3.7g (box) of *CBG*]
 - (4) using false testimonials, endorsements or case studies;
[**Note:** paragraph 3.18s of *DMG*]
 - (5) using false or unsubstantiated claims as to the *firm*'s size or experience or pre-eminence;
[**Note:** paragraph 3.18t of *DMG*]
 - (6) in relation to *debt solutions*, claiming or implying that a *customer* will be free of debt in a specified period of time or making statements emphasising a debt-free life or that a *debt solution* is a stress free or immediate solution;
[**Note:** paragraphs 3.18u and 3.18v of *DMG*]
 - (7) providing online tools, which recommend a particular *debt solution* as suitable for a *customer*, such as, budget calculators or advice websites:
 - (a) which do not carry out a sufficiently full assessment of a *customer*'s financial position;

- (b) which failing to provide clear warnings to a *customer* that financial data entered into a tool has to be accurate;

[Note: paragraph 3.20c of *DMG*]

- (8) emphasising any savings available to a *customer* by proposing to reschedule a *customer's* debts, without explaining that a *lender* is not obliged to accept less in settlement of the *customer's* debts than it is entitled to, nor to freeze interest and charges and that the result may be to increase the total amount to be repaid over a longer period and to impair the *customer's* credit rating;

[Note: paragraph 3.18l of *DMG*]

- (9) suggesting that a *customer's* repayments will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the total amount payable will be higher;

[Note: paragraph 5.13 of *ILG*]

- (10) failing to make it sufficiently clear in an early communication with a *customer* that the *firm's* service is offered by a commercial organisation and is chargeable.

[Note: paragraph 3.18a of *DMG*]

Guidance on misleading introductions

- 3.3.11 G Misleading a *customer* as to the availability of a particular credit product is likely to include stating or implying that the *firm* will introduce the *customer* to a provider of a standard personal loan based on repayments by instalment or of an overdraft facility on a current account (for example, a bank or building society) or of a credit card, but instead introducing the *customer* to a provider of *high-cost short-term credit*.

[Note: paragraph 3.9p (box) of *CBG*]

3.4 Risk warning for high-cost short-term credit

Application

- 3.4.1 R This section applies to a *firm* with respect to *consumer credit lending* or *credit broking* or *operating an electronic system in relation to lending* in relation to *high-cost short-term credit*.

Risk warnings

- 3.4.2 R (1) *A financial promotion* must contain the following risk warning:
“Think! Is this loan right for you?
Over 2 million short term loans were not paid off on time in 2011-12.

This can lead to serious money problems.

If you're struggling go to www.moneyadviceservice.org.uk/payday for free and impartial help."

- (2) Each warning must be included in a *financial promotion* in a prominent way.

3.5 Financial promotions about credit agreements not secured on land

Application

3.5.1 R This section applies:

- (1) in relation to a *firm* carrying on *consumer credit lending*, to *financial promotions* in relation to *regulated credit agreements*;
- (2) in relation to a *firm* carrying on *consumer credit lending* to *financial promotions* in relation to *credit agreements* that would be *regulated credit agreements* but for the *relevant provisions*;
- (3) in relation to a *firm* carrying on *credit broking* to *financial promotions* in relation to *regulated credit agreements*;
- (4) in relation to a *firm* carrying on activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* to *financial promotions* in relation to *credit agreements* that would be *regulated credit agreements* but for the *relevant provision*, but only where the *firm* also carries on such activities in relation to *regulated credit agreements*;

and in each case, other than to *financial promotions* to the extent that they relate to agreements secured on land.

Duty to indicate selling price for cash

3.5.2 R Where a *financial promotion* indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* relating to *goods* or services to be supplied by any *person*, the *firm*, at the time the *financial promotion* is *communicated*, must hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[**Note:** section 45 of *CCA*]

Content of financial promotions

3.5.3 R (1) Where a *financial promotion* includes a rate of interest or an amount relating to the *cost of credit* whether expressed as a sum of money or a proportion of a specified amount, the *financial promotion* must also:

- (a) include a representative example in accordance with *CONC 3.5.5R*, and
- (b) specify a postal address at which the person making the *financial promotion* may be contacted.

[**Note:** regulation 4(1) of *CCAR 2010*]

(2) Paragraph (1)(a) does not apply where the financial promotion:

- (a) falls within *CONC 3.5.7R*; and
- (b) does not indicate a rate of interest or other amount relating to the *cost of credit* other than the *representative APR*.

[**Note:** regulation 4(2) of *CCAR 2010*]

(3) Paragraph (1)(b) does not apply to *financial promotions*:

- (a) communicated by means of television or radio broadcast;
- (b) in any form on the premises of a *dealer* or *lender*, other than *financial promotions* in writing which customers are intended to be able to take away;
- (c) which include the name and address of a *dealer*; or
- (d) which include the name and postal address of a *credit broker*.

[**Note:** regulation 4(1)b of *CCAR 2010*]

Guidance on showing interest rates and cost of credit

- 3.5.4 G A rate of interest for the purpose of *CONC 3.5.3R(1)* is not limited to an annual rate of interest but would include a monthly or daily rate or an *APR*. It would also include reference to 0% credit. An amount relating to the *cost of credit* would include the amount of any fee or charge, or any repayment of credit (where it includes interest or other charges).

[**Note:** paragraph 6.7 of BIS Guidance on *CCAR 2010*]

Representative example

- 3.5.5 R (1) The representative example in *CONC 3.5.3R(1)* must comprise the following items of information:
- (a) the rate of interest, and whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of *credit* drawn down;
 - (b) the nature and amount of any other charge included in the *total charge for credit*;

- (c) the *total amount of credit*;
- (d) the *representative APR*;
- (e) in the case of *credit* in the form of a deferred payment for specific *goods*, services, *land* or other things, the *cash price* and the amount of any *advance payment*;
- (f) the duration of the agreement;
- (g) the *total amount payable* by the *borrower*; and
- (h) the amount of each *repayment of credit*.

[**Note:** regulation 5(1) of *CCAR 2010*]

[**Note:** article 4 of the Consumer Credit Directive]

- (2) The items of information required by (1)(a), (b), (c), (e), (f) and (g) must be those which the *firm communicating or approving the financial promotion* reasonably expects at the date on which the *financial promotion* is made to be representative of *credit agreements* to which the *representative APR* applies and which are expected to be entered into as a result of the promotion.

[**Note:** regulation 5(2) of *CCAR 2010*]

- (3) For (1)(e), the reference in (2) to “*credit agreements to which the representative APR applies*” is to agreements providing credit for the purchase of specific *goods*, services, *land* or other things, to which the *representative APR* applies.

[**Note:** regulation 5(3) of *CCAR 2010*]

- (4) For the purposes of (1)(a), where the *credit agreement* provides for different ways of draw down with different rates of interest, the rate of interest shall be assumed to be the highest rate applied to the most common draw-down mechanism for the product to which the agreement relates.

[**Note:** regulation 5(4) of *CCAR 2010*]

- (5) The information required by (1) must be:
 - (a) specified in a clear and concise way;
 - (b) accompanied by the words “representative example”;
 - (c) presented together with each item of information being given equal prominence; and
 - (d) given greater prominence than:

- (i) any other information relating to the *cost of credit* in the *financial promotion*, except for any statement relating to an obligation to enter into a contract for an *ancillary service* referred to in *CONC 3.5.9R*; and
- (ii) any indication or incentive of the kind referred to in *CONC 3.5.7R*.

[**Note:** regulation 5(6) of *CCAR 2010*]

- (6) A *financial promotion* for a *credit agreement* with no fixed duration is not required to include the duration of the agreement or the *total amount payable* by the *borrower* or the amount of each *repayment of credit*.

[**Note:** regulation 5(1)f of *CCAR 2010*]

- (7) A *financial promotion* for an *authorised non-business overdraft agreement* is not required to include in the promotion a *representative APR*.

[**Note:** regulation 5(5) of *CCAR 2010*]

Guidance on the representative example

- 3.5.6 G (1) The representative example in *CONC 3.5.5R* should not be limited to being representative of agreements featured in the *financial promotion* if the *firm communicating or approving the financial promotion* expects other agreements to be entered into as a result of the *financial promotion*, whether with that person or with a third party.

[**Note:** paragraph 6.8 of BIS Guidance on regulations implementing the Consumer Credit Directive]

- (2) Where the agreement provides for compounding, the rate of interest in *CONC 3.5.3R(1)* should be the effective annual interest rate and *lenders* should use the same assumptions to calculate the interest rate as they do for the *APR*; the assumptions set out in *CONC App 1.2*.

[**Note:** paragraph 6.13 of BIS Guidance on regulations implementing the Consumer Credit Directive]

- (3) If a rate of interest or a charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.

[**Note:** paragraph 6.13 of BIS Guidance on regulations implementing the Consumer Credit Directive]

- (4) For charges other than the rate of interest which are included in the *total charge for credit* in each case, the *financial promotion* should make clear the nature of the charge and the amount of the charge if ascertainable or a reasonable estimate of the charge, making clear in

that case it is an estimate.

[**Note:** paragraph 6.13 of BIS Guidance on regulations implementing the Consumer Credit Directive]

- (5) The *total amount of credit* equates to the sum available to the *borrower* to use and does not include charges which are financed by the *credit agreement*, those are part of the *total cost of credit*.
- (6) For showing the *cash price*, the total *cash price* of all items should be shown, together with the price of each item individually.

Other financial promotions requiring a representative APR

3.5.7 R (1) A *financial promotion* must include the *representative APR* if it:

(a) indicates or implies in any way, including by means of the name given to the business or the product or of an address used by a business for the purposes of electronic communication, that:

- (i) *credit* is available to persons who might otherwise consider their access to *credit* restricted; or
- (ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lenders*; or
- (iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lenders*; or

[**Note:** regulation 6 of *CCAR 2010*]

(b) includes an incentive, including but not limited to gifts, special offers, discounts, rewards and statements about the speed or ease of, processing, considering or granting an application or of making funds available, to apply for *credit* or to enter into an agreement under which *credit* is provided.

- (2) The *representative APR* must be given greater prominence than any indication or incentive in (1).
- (3) This *rule* does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

Annual percentage rate of charge

3.5.8 R In a *financial promotion*:

- (1) an *APR* must be shown as “%APR”;
- (2) where an *APR* is subject to change it must be accompanied by the word “variable”;
- (3) the *representative APR* must be accompanied by the word “representative”.

[**Note:** regulation 7 of *CCAR 2010*]

Ancillary services

- 3.5.9 R (1) A *financial promotion* must include a clear and concise statement in respect of any obligation to enter into a contract for an *ancillary service* where:
- (a) the conclusion of that contract is compulsory in order to obtain the *credit* or to obtain it on the terms and conditions promoted; and
 - (b) the cost of that *ancillary service* cannot be determined in advance.

[**Note:** regulation 8 of *CCAR 2010*]

- (2) The statement in (1) must:
 - (a) be no less prominent than any information in *CONC 3.5.5R(1)* to be included in the *financial promotion*; and
 - (b) be presented together with any *representative APR* included in the *financial promotion*.
- (3) This *rule* does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

Security

- 3.5.10 R Where a *financial promotion* concerns a facility for which *security* is or may be required, the promotion must state:
- (1) that *security* is or may be required; and
 - (2) the nature of the *security*.

[**Note:** regulation 9 of *CCAR 2010*]

Restricted expressions

- 3.5.11 R (1) A *financial promotion* must not include:
- (a) the word “overdraft” or any similar expression as describing

any agreement for *running-account credit*, except where an agreement enables a *borrower* to overdraw on a *current account*;

- (b) the expression “interest free” or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* by the *borrower* does not exceed the *cash price*;
- (c) the expression “no deposit” or any similar expression, except where no *advance payments* are to be made;
- (d) the expression “loan guaranteed”, “pre-approved” or “no credit checks” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the *borrower*; or
- (e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the borrower to repay the credit or return the item that is the subject of the claim.

[**Note:** regulation 10 of *CCAR 2010*]

- (2) A *financial promotion* must not include for the *repayment* of *credit* the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly repayments or other periodical payments are provided for under the agreement.
- (3) In this *rule*, “cash purchaser” means a person who, for money consideration, acquires goods, *land* or other things or is provided with services under a transaction which is not financed by *credit*.

Total charge for credit and APR

- 3.5.12 R (1) Where a *financial promotion* is about *running-account credit* and the *credit limit* applicable is not yet known on the date the *financial promotion* is made, but it is known that it will be less than £1,200, the *credit limit* must be assumed to be an amount equal to that maximum limit.

[**Note:** paragraph 1 of schedule to *CCAR 2010*]

- (2) The assumption in (1) applies in place of the assumption in *CONC App 1.2.5R* for the purpose of calculating the *total charge for credit*.

Total charge for credit and APR - tolerances for APR

- (3) For a *financial promotion*, it is sufficient to show an *APR* if there is

included in the promotion:

- (a) a rate which exceeds the *APR* by not more than one;
- (b) a rate which falls short of the *APR* by not more than 0.1; or
- (c) where applicable, a rate determined in accordance with (4) or (5).

[**Note:** paragraph 2 of schedule to *CCAR 2010*]

Total charge for credit and APR - tolerance where repayments are nearly equal

- (4) Where an agreement under which all *repayments of credit* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments of credit*, there may be included in a *financial promotion* about the agreement a rate found under *CONC App 1.2.4R* as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[**Note:** paragraph 3 of schedule to *CCAR 2010*]

Total charge for credit and APR - tolerance regarding interval between relevant date and first repayment

- (5) Where a *credit agreement* provides that:
 - (a) three or more *repayments* are to be made at equal intervals; and
 - (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;

a *financial promotion* about the agreement may include a rate found under *CONC App 1.2.4R* as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between the *repayments*.

[**Note:** paragraph 4 of schedule to *CCAR 2010*]

- (6) The relevant date in (5) is:
 - (a) where a date on which the *borrower* is entitled to require provision of the subject of a *credit agreement* is specified in or can be determined from the agreement, the earliest such date;
 - (b) in any other case, the date of making the agreement.

3.6 Financial promotions about credit agreements secured on land

Application

- 3.6.1 R This section applies:
- (1) in relation to a *firm* carrying on *consumer credit lending*, to *financial promotions* in relation to *regulated credit agreements* secured on *land*; and
 - (2) in relation to a *firm* carrying on *credit broking*, to *financial promotions* in relation to *regulated credit agreements* secured on *land*;
- and in both cases other than *financial promotions* to the extent that they relate to *qualifying credit*.

Definitions

- 3.6.2 R In *CONC* 3.6.3R to *CONC* 3.6.9R, for a *financial promotion* relating to *credit* to be provided under a *credit agreement* “relevant date” means:
- (1) in a case where a date is specified in or determinable under the agreement at the date of its making as that on which the *borrower* is entitled to require provision of anything the subject of the agreement, the earliest such date; and
 - (2) in any other case, the date of the making of the agreement.

Duty to indicate selling price for goods

- 3.6.3 R Where a *financial promotion* indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* secured on *land* and relating to *goods* or services to be supplied by any *person*, the *firm*, at the time the *financial promotion* is *communicated*, must hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[**Note:** section 45 of *CCA*]

Content of financial promotions

- 3.6.4 R (1) Where a *financial promotion* includes any of the amounts referred to in (5) to (7) of *CONC* 3.6.9R the promotion must also:
- (a) include all the other items of information (other than any item inapplicable to the particular case) listed in *CONC* 3.6.9R; and
 - (b) specify a postal address at which the person making the promotion may be contacted, except in the case of a *financial promotion*:
 - (i) communicated by means of television or radio

broadcast;

- (ii) in any form on the premises of a *lender* (not being a *financial promotion* in writing which *customers* are intended to take away); and
- (iv) which includes the name and a postal address of a *credit broker*.

[**Note:** article 4(1) of *CCAR 2004*]

- (2) The items of information listed in *CONC 3.6.9R* must be given equal prominence and must be shown together as a whole.

[**Note:** article 4(2) of *CCAR 2004*]

- (3) Any information in any book, catalogue, leaflet or other document which is likely to vary from time to time must be taken for the purpose of (2) to be shown together as a whole if:

- (a) it is set out together as a whole in a separate document issued with the book, catalogue, leaflet or other document;
- (b) the other information in the *financial promotion* is shown together as a whole in the book, catalogue, leaflet or other document, and
- (c) the book, catalogue, leaflet or other document identifies the separate document in which the information likely to vary is set out.

[**Note:** regulation 4(3) of *CCAR 2004*]

Statements in relation to security

- 3.6.5 R (1) Where the subject-matter of a *financial promotion* is a facility for which *security* is or may be required, the promotion must:

- (a) state that *security* is or may be required; and
- (b) specify the nature of the *security*.

[**Note:** regulation 7(1) of *CCAR 2004*]

- (2) Where, in the case of a *financial promotion*, the *security* comprises or may comprise a mortgage or charge on the *borrower's* home:

- (a) except where (c) applies, the *financial promotion* must contain a warning in the form:

“YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT”;

- (b) where the *financial promotion* indicates that *credit* is available for the payment of debts due to other *lenders*, the warning in (a) must be preceded by the words:

“THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME.”

- (c) where the *credit agreement* is or would be an agreement of a kind described in (3), the *financial promotion* must contain a warning in the form:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN ANY DOUBT, SEEK INDEPENDENT ADVICE”.

[**Note:** regulation 7(2) of *CCAR 2004*]

- (3) The kinds of agreement in (2)(c) are:

- (a) any *credit agreement* under which no instalment repayments secured by the mortgage on the *borrower's* home, and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by the *borrower*), are due or capable of becoming due while the *borrower* continues to occupy the mortgaged land as the *borrower's* main residence; and

- (b) any *credit agreement*:

- (i) which is secured by a mortgage which the *lender* cannot enforce by taking possession of or selling (or concurring with any other person in selling) the mortgaged land or any part of it while the *borrower* continues to occupy it as the *borrower's* main residence; and

- (ii) under which, although interest payments may become due, no full or partial repayment of the *credit* secured by the mortgage is due or capable of becoming due while the *borrower* continues to occupy the mortgaged land as the *borrower's* main residence.

[**Note:** article 7(3) of *CCAR 2004*]

- (4) Where a *financial promotion* is for a mortgage or other loan secured on property and repayments are to be made in a currency other than sterling, the *financial promotion* shall contain a warning in the form:

“CHANGES IN THE EXCHANGE RATE MAY INCREASE THE STERLING EQUIVALENT OF YOUR DEBT”.

[**Note:** regulation 7(4) of *CCAR 2004*]

- (5) The warnings provided for in (2) and (4):
- (a) must be given greater prominence in a *financial promotion* than is given to:
 - (i) any rate of charge other than the *typical APR*; or
 - (ii) any indication or incentive of a kind referred to in *CONC 3.6.6R (1)(c) and (d)*; and
 - (b) must be given no less prominence in a *financial promotion* than is given to any of the items listed in *CONC 3.6.9R* that appear in the *financial promotion*.
- [**Note:** regulation 7(6) of *CCAR 2004*]
- (6) Paragraphs (2), (3), (4) and (5) do not apply in the case of a *financial promotion* which:
- (a) is communicated by means of television or radio broadcast in the course of programming the primary purpose of which is not *financial promotion*; or
 - (b) is communicated by exhibition of a film (other than exhibition by television broadcast); or
 - (c) contains only the name of the *firm communicating the financial promotion*.
- [**Note:** regulation 7(8) of *CCAR 2004*]

Annual Percentage Rate of charge

- 3.6.6 R (1) A *financial promotion* must specify the *typical APR* if the promotion:
- (a) specifies any other rate of charge;
 - (b) includes any of the items of information listed in *CONC 3.6.8R(5) to (7)*;
 - (c) indicates in any way, including by means of the name given to a business or of an address used by a business for the purposes of *electronic communication*, that:
 - (i) *credit* is available to *persons* who might otherwise consider their access to *credit* restricted; or
 - (ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lenders*; or

(iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lenders*; or

(d) includes any incentive, including but not limited to, gifts, special offers, discounts, rewards and statements about the speed or ease of processing, considering or granting an application or of making funds available, to apply for *credit* or to enter into an agreement under which *credit* is provided.

[**Note:** regulation 8(1) of *CCAR 2004*]

(2) A *financial promotion* may not indicate the range of *APRs* charged where *credit* is provided otherwise than by specifying, with equal prominence, both:

(a) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at the date on which the promotion is *communicated or approved*, would be the lowest *APR* at which *credit* would be provided under not less than 10% of the agreements which will be entered into as a result of that promotion; and

(b) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at that date, would be the highest *APR* at which *credit* would be provided under any of the agreements which will be entered into as a result of that promotion.

[**Note:** regulation 8(2) of *CCAR 2004*]

(3) An *APR* must be shown as “%APR”.

[**Note:** regulation 8(3) of *CCAR 2004*]

(4) Where an *APR* is subject to change it must be accompanied by the word “variable”.

[**Note:** regulation 8(4) of *CCAR 2004*]

(5) The *typical APR* in the *financial promotion* must be:

(a) accompanied by the word “typical”;

(b) presented together with any of the items listed in *CONC 3.6.9R* that are included in the promotion;

(c) given greater prominence in the promotion than:

(i) any other rate of charge;

(ii) any items listed in *CONC 3.6.9R*;

(iii) any indication or incentive of the kind referred to in (1); and

(d) in the case of a promotion in printed or electronic form which includes any of the items listed in *CONC 3.6.8R*, shown in characters at least one and a half times the size of the characters in which those items appear.

[**Note:** regulation 8(5) of *CCAR 2004*]

(6) In the case of a *financial promotion* relating to a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account under which the *lender* is the Bank of England or an *authorised* person with permission to accept deposits, there may be substituted for the *typical APR* a reference to the statement of:

(a) a rate, expressed to be a rate of interest, being a rate determined as the rate of the *total charge for credit* calculated on the assumption that only interest is included in the *total charge for credit*, and

(b) the nature and amount of any other charge included in the *total charge for credit*.

[**Note:** regulation 8(6) of *CCAR 2004*]

Restricted expressions

3.6.7 R (1) *A financial promotion* must not include:

(a) the word “overdraft” or any similar expression as describing any agreement for *running-account credit*, except where an agreement enables a *borrower* to overdraw on a *current account*; or

(b) the expression “interest free” or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* by the *borrower* does not exceed the *cash price*; or

(c) the expression “no deposit” or any similar expression, except where no *advance payments* are to be made; or

(d) the expression “loan guaranteed” or “pre-approved” or “no credit checks” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the *borrower*; or

(e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the

borrower to repay the credit or return the item that is the subject of the claim.

[**Note:** regulation 9 of *CCAR 2004*]

- (2) A *financial promotion* must not include for the *repayment* of *credit* the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly repayments or other periodical payments are provided for under the agreement.
- (3) In this *rule* “cash purchaser” means a person who for money consideration acquires goods, *land* or other things or is provided with services, under a transaction which is not financed by *credit*.

Total charge for credit and any APR: assumptions about running account credit

3.6.8 R (1) In the case of a *financial promotion* about *running-account credit*, the following assumptions have effect for the purpose of calculating the *total charge for credit* and any *APR*, notwithstanding the terms of the transaction advertised and in place of any assumptions in *CONC* App 1.1.11R to 1.1.18R that might otherwise apply:

- (a) the amount of the *credit* to be provided must be taken to be £1,500 or, in a case where *credit* is to be provided subject to a *credit limit* of less than £1,500, an amount equal to that limit;
- (b) it must be assumed that the *credit* is provided for a period of one year beginning with the relevant date;
- (c) it must be assumed that the *credit* is provided in full on the relevant date;
- (d) where the rate of interest will change at a time provided in the transaction within a period of three years beginning with the relevant date, the rate must be taken to be the highest rate at any time obtaining under the transaction in that period;
- (e) where the agreement provides *credit* to finance the purchase of *goods*, services, *land* or other things and also provides one or more of:
 - (i) *cash loans*;
 - (ii) *credit* to refinance existing indebtedness of the *borrowers*, whether to the *lender* or another *person*;
and
 - (iii) *credit* for any other purpose;

and either or both different rates of interest and different charges are payable for the *credit* provided for all or some of

these purposes, it must be assumed that the rate of interest and charges payable for the whole of the *credit* are those applicable to the provision of *credit* for the purchase of *goods*, *services*, *land* or other things; and

- (f) it must be assumed that the *credit* is repaid:
 - (i) in twelve equal instalments; and
 - (ii) at monthly intervals, beginning one month after the relevant date.

[**Note:** paragraph 1 of schedule 1 to *CCAR 2004*]

Total charge for credit and any APR: tolerances in disclosure of an APR

- (2) For the purposes of *CONC 3.6*, it is sufficient compliance with the requirement to show an *APR* if there is included in the *financial promotion*:
 - (a) a rate which exceeds the *APR* by not more than one; or
 - (b) a rate which falls short of the *APR* by not more than 0.1;

or in a case to which (3) or (4) applies, a rate determined in accordance with those sub-paragraphs or whichever of them applies to that case.

[**Note:** paragraph 2 of schedule 1 to *CCAR 2004*]

Total charge for credit and any APR: tolerance where repayments are nearly equal

- (3) In the case of an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments* of *credit*, there may be included in a *financial promotion* about the agreement a rate found under *CONC App 1.1.9R* as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[**Note:** paragraph 3 of schedule 1 to *CCAR 2004*]

Total charge for credit and any APR: tolerance of interval between relevant date and first repayment

- (4) In the case of an agreement under which:
 - (a) three or more *repayments* are to be made at equal intervals; and
 - (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;

there may be included in the *financial promotion* about the agreement a rate found under *CONC* App 1.1.9R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between *repayments*.

[**Note:** paragraph 4 of schedule 1 to *CCAR 2004*]

Information required in a financial promotion

- 3.6.9 R (1) The amount of *credit* which may be provided under a *credit agreement* or an indication of one or both of the maximum amount and the minimum amount of *credit* which may be provided.

[**Note:** paragraph 1 of schedule 2 to *CCAR 2004*]

Information required in a financial promotion: deposit of money in an account

- (2) A statement of any requirement to place on deposit any sum of money in any account with any *person*.

[**Note:** paragraph 2 of schedule 2 to *CCAR 2004*]

Information required in a financial promotion: cash price

- (3) In the case of a *financial promotion* about *credit* to be provided under a *borrower-lender-supplier agreement*, where the *financial promotion* specifies *goods*, services, *land* or other things having a particular *cash price*, the acquisition of which from an identified *dealer* may be financed by the *credit*, the *cash price* of such *goods*, services, *land* or other things.

[**Note:** paragraph 3 of schedule 2 to *CCAR 2004*]

Information required in a financial promotion: advance payment

- (4) A statement as to whether an *advance payment* is required and, if so, the amount or minimum amount of the payment expressed as a sum of money or a percentage.

[**Note:** paragraph 4 of schedule 2 to *CCAR 2004*]

Information required in a financial promotion: frequency, number and amount of repayments of credit

- (5) (a) In the case of a *financial promotion about running-account credit*, a statement of the frequency of the *repayments* of *credit* under the transaction and of the amount of each *repayment* stating whether it is a fixed or minimum amount, or a statement indicating the manner in which the amount will be determined.

- (b) In the case of other *financial promotions*, a statement of the

frequency, number and amounts of *repayments* of credit.

- (c) The amount of any *repayment* under this sub-paragraph may be expressed as a sum of money or as a specified proportion of a specified amount (including the amount outstanding from time to time).

[**Note:** paragraph 5 of schedule 2 to *CCAR 2004*]

Information required in a financial promotion: other payments and charges

- (6)
 - (a) Subject to (b) and (c), a statement indicating the description and amount of any other payments and charges which may be payable under the agreement promoted in the *financial promotion*.
 - (b) Where the liability of the *borrower* to make any payment cannot be ascertained at the date the *financial promotion* is *communicated*, a statement indicating the description of the payment in question and the circumstances in which the liability to make it will arise.
 - (c) Paragraphs (a) and (b) do not apply to any charge payable under the transaction to the *lender* or any other *person* on behalf of the *lender* upon failure by the *borrower* or a relative of the *borrower* to do or refrain from doing anything which the *borrower* is required to do or refrain from doing, as the case may be.

[**Note:** paragraph 6 of schedule 2 to *CCAR 2004*]

Information required in a financial promotion: total amount payable by the borrower

- (7) In the case of a *financial promotion* about *fixed-sum credit* to be provided under a *credit agreement* which is repayable at specified intervals or in specified amounts and other than cases under which the sum of the payments within (a) to (c) is not greater than the *cash price* referred to in (3), the *total amount payable* by the *borrower*, being the total of:
 - (a) *advance payments*;
 - (b) the amount of *credit* repayable by the *borrower*, and
 - (c) the amount of the *total charge for credit*.

[**Note:** paragraph 7 of schedule 2 to *CCAR 2004*]

3.7 Credit brokers' financial promotions and communications

Application

- 3.7.1 R This section applies to a *firm* with respect to *credit broking*:
- (1) *communicating* with a *customer* in relation to a *regulated credit agreement*;
 - (2) *communicating* or *approving* a *financial promotion* in relation to a *regulated credit agreement*.
- 3.7.2 R CONC 3.7.5G also applies to a *firm* with respect to the activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* to:
- (1) *communicating* with a *customer* in relation to a *credit agreement* that would be a *regulated credit agreement* but for the *relevant provisions*;
 - (2) *communicating* or *approving* a *financial promotion* about a *credit agreement* that would be a *regulated credit agreement* but for the *relevant provisions*.

Credit brokers' status

- 3.7.3 R A *firm* must, in a *financial promotion* or a document which is intended for *individuals* which relates to its *credit broking*, indicate the extent of its powers and in particular whether it works exclusively with one or more *lenders* or works independently.
- [Note: section 160A(3) of CCA]

[Note: article 21(a) of the *Consumer Credit Directive*.]

- 3.7.4 G A *firm* should:
- (1) in a *financial promotion* or other communication make clear, to the extent an average *customer* of the *firm* would understand, the nature of the service that the *firm* provides;
[Note: paragraphs 3.7e and 4.8b of CBG]
 - (2) in a *financial promotion* or other communication indicate to the *customer* in a prominent way the existence of any financial arrangements with a *lender* that might impact upon the *firm's* impartiality in promoting a credit product to a *customer*;
[Note: paragraphs 2.2, 6th bullet and 4.6 of CBG]
 - (3) only describe itself as independent in a *financial promotion* or a document if it is able to provide access to a representative range of credit products from the relevant product market on competitive terms and is not constrained in providing such access, for example, because of one or more agreements with *lenders*;

[Note: paragraph 4.5 of *CBG*]

- (4) ensure that any disclosure about the extent of its independence is prominent and in accordance with the clear, fair not misleading rule in *CONC 3.3.1R*, clear and easily comprehensible.

[Note: paragraph 4.6 of *CBG*]

3.8 Consumer credit lenders' financial promotions and communications

Application

- 3.8.1 R This section applies to a *firm* with respect to *consumer credit lending*:
- (a) *communicating* with a *customer* about a *regulated credit agreement*;
 - (b) *communicating* or *approving* a *financial promotion* about a *regulated credit agreement*.

Unfair business practices: financial promotions and communications

- 3.8.2 R A *firm* must not in a *financial promotion* or a communication to a *customer*:
- (1) provide an application for *credit* with a pre-completed amount of *credit* which is not based on having carried out a *creditworthiness* assessment or an assessment required by *CONC 5.2.2(2)R*; or
[Note: paragraph 5.3 of *ILG*]
 - (2) suggest or state, expressly or by implication, that providing *credit* is dependent solely upon the value of the equity in property on which the agreement is to be secured; or
[Note: paragraph 5.4 of *ILG*]
 - (3) promote *credit* where the *firm* knows, or has reason to believe, that the agreement would be unsuitable for that *customer* in the light of the *customer's* financial circumstances or, if known, intended use of the *credit*.
[Note: paragraph 5.5 of *ILG*]
- 3.8.3 G An agreement is likely to be unsuitable for the purposes of *CONC 3.8.2R(3)* including in the following situations where a *firm*:
- (1) promotes, suggests or advises taking out a secured loan or to take out a secured loan to replace or convert an unsecured loan when it is clearly not in that *person's* best interest to do so at that time; or
 - (2) promotes, suggests or advises taking out *high-cost short-term credit* which would be expensive as a means of longer term borrowing, as being suitable for sustained borrowing over a longer period.

[Note: paragraph 5.5 (box) of *ILG*]

- 3.8.4 G For the purposes of *CONC* 3.8.2R(3) the unsuitability of an agreement does not apply to the question of whether a *customer* should enter into a *regulated credit agreement* at all.

[Note: paragraph 5.5 (box) of *ILG*]

3.9 Financial promotions and communications by debt counsellors and debt adjusters

Application

- 3.9.1 R This section applies to *firms* with respect to *debt counselling* and to *debt adjusting*:

- (1) *communicating* with a *customer*;
- (2) *communicating* or *approving* a *financial promotion*.

Financial promotions and communications

- 3.9.2 G (1) The clear, fair and not misleading rule in *CONC* 3.3.1R applies to *debt counsellors* and *debt adjusters* and in relation to communications to *customers* by *providers of credit information services*.
- (2) In the light of the complexity of *debt counselling*, it is unlikely that media which provide restricted space for messages would be a suitable means of making *financial promotions* about *debt solutions*.

Contents of financial promotions and communications

- 3.9.3 R A *firm* must ensure that a *financial promotion* or a communication (to the extent a previous communication to the same *customer* has not included the following information) includes:
- (1) the services the *firm* offers;
 - (2) any relationship with a business associate which is relevant to the services offered in the promotion;
[Note: paragraph 2.5a of *DMG*]
 - (3) a statement setting out the level of fees charged for the *firm's* services, how they are calculated, what service they cover, where it is not possible to state an exact amount, the *firm* must provide a reasonable estimate of the anticipated fees, or state the average level of its fees, for the service in question;
[Note: paragraphs 2.5c and 3.18f of *DMG*]

- (4) whether any aspect of the services is provided by a third party or at extra cost;
[Note: paragraphs 2.5a and 3.18f of *DMG*]
- (5) a statement that a *customer* may be eligible under the *Financial Ombudsman Scheme* and referring by a link or otherwise to the information the *firm* is required to publish under *DISP* 1.2.1R(1);
[Note: paragraph 2.5b of *DMG*]
- (6) a statement that the *firm*'s service is commercial and is offered in return for payment;
[Note: paragraphs 2.5c and 3.18a of *DMG*]
- (7) a reference to impartial sources of assistance and to *not-for-profit debt advice bodies*;
[Note: paragraph 2.5d of *DMG*]
- (8) where the *financial promotion* or communication sets out detail of how a *customer* might resolve debt problems by explaining options, the most important actual or potential advantages, disadvantages and risk of each option, including those of the *debt solution* offered by the *firm*;
[Note: paragraphs 2.5d and 3.18h of *DMG*]
- (9) a statement setting out the likely adverse effect of entering into the *debt solution* in question on the *customer's* credit rating;
[Note: paragraph 3.18g of *DMG*]
- (10) a statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;
[Note: paragraph 3.18g of *DMG*]
- (11) where applicable, a statement setting out that a *debt solution* is only available in a particular country of the *UK*;
[Note: paragraph 3.18i of *DMG*]
- (12) a warning that where entry into a *debt solution* with the *firm* will lead to a period when payments to a *customer's lenders* (in whole or in part) are not made or are retained by the *firm*, of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to *lenders*;
[Note: paragraph 3.18n of *DMG*]
- (13) a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including

of the following risks:

- (a) if the arrangement or deed fails the risk of bankruptcy;
- (b) homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
- (c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
- (d) the customer's *lenders* may not approve the individual voluntary arrangement or the protected trust deed;
- (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding; and

[**Note:** paragraph 3.18o of *DMG*]

- (14) a statement that where another option for dealing with a *customer's* debts is available, that another option is available and may be suitable for the *customer*.

[**Note:** paragraph 3.18r of *DMG*]

3.9.4 R A *financial promotion* or a communication by a *firm* must not:

- (1) falsely claim or imply that the help and debt advice is provided on a free, impartial or independent basis, where the *firm* has a profit-seeking motive;
[**Note:** paragraph 3.18b of *DMG*]
- (2) falsely claim in any way that the *firm* is, or represents, a charitable or *not-for-profit body* or government or local government organisation;
[**Note:** paragraph 3.18c of *DMG*]
- (3) promote a claims management service (within the meaning of section 4 of the Compensation Act 2006) as a way of managing a *customer's* debts;
[**Note:** paragraph 3.18k of *DMG*]
- (4) claim or imply that the *firm* can guarantee a favourable outcome in negotiations with a *lender* concerning the *customer's* debts;
[**Note:** paragraph 3.18m of *DMG*]
- (5) unfairly request, suggest or direct a *customer* to call the *firm* using a

premium rate telephone number.

[**Note:** paragraph 3.18w of *DMG*]

- 3.9.5 G An example of unfairly directing a *customer* to a premium rate telephone number may be to direct a *person* wishing to complain to such a line.

On-line promotion of debt solutions

- 3.9.6 R A *firm* must not:

- (1) unless it is a *not-for-profit debt advice body* or a person who will provide such services, operate a look-a-like website designed to attract customers seeking free, charitable, not-for-profit or government debt advice;

[**Note:** paragraph 3.20a of *DMG*]

- (2) seek to use internet search tools or search engines so as to mislead a customer into visiting its website when the customer is seeking free, not-for-profit, charitable or governmental debt advice.

[**Note:** paragraph 3.20b of *DMG*]

3.10 Promotions not in writing

Application

- 3.10.1 R This section applies:

- (1) to a *firm* with respect to *consumer credit lending, credit broking, debt counselling, operating an electronic systems in relation to lending in relation to prospective borrowers under P2P agreements and debt adjusting*;

- (2) in relation to the communication of a *financial promotion* that is not in writing.

Promotions that are not in writing

- 3.10.2 R A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *customer* outside the *firm's* premises, unless the *person communicating* it:

- (1) only does so at an appropriate time of the day;

- (2) identifies that person and the *firm* represented at the outset and makes clear the purpose of the communication.

[**Note:** paragraphs 3.9d of *CBG* and 3.12b *DMG*]

3.11 Not approving certain financial promotions

- 3.11.1 R This section applies to a *firm* with respect to the *approval* for communication of a *financial promotion* in relation to a *credit agreement*, *credit broking*, *debt counselling*, *debt adjusting* and *operating an electronic system in relation to lending* in relation to prospective *borrowers or borrowers* under *P2P agreements*.

Requirement not to approve certain financial promotions

- 3.11.2 R A *firm* must not *approve a financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

4 Pre-contractual disclosure (including content of quotations)

4.1 Provision of credit card cheques

Application

- 4.1.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Credit card cheques

- 4.1.2 R (1) A *firm* may provide *credit card cheques* only to a *customer* who has asked for them.
[Note: section 51A(2) of *CCA*]
- (2) A *firm* may provide *credit card cheques* only on a single occasion in respect of each request that is made.
[Note: section 51A(3) of *CCA*]
- (3) The number of *credit card cheques* provided in respect of a request must not exceed three (or, if less, the number requested).
[Note: section 51A(4) of *CCA*]
- (4) Where a single request is made for the provision of *credit card cheques* in connection with more than one *credit-token agreement*, (2) and (3) apply as if a separate request had been made for each agreement.
[Note: section 51A(5) of *CCA*]
- (5) Where more than one request for the provision of *credit card cheques* is made in the same document or at the same time:
- (a) they may be provided in respect of only one of the requests, but

- (b) if the requests relate to more than one *credit-token agreement*, in relation to each agreement they may be provided only in respect of one of the requests made in relation to that agreement.

[**Note:** section 51A(6) of *CCA*]

- (6) This rule does not apply to *credit card cheques* provided in connection with a *credit-token agreement* that is entered into by the *customer* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *customer*.

[**Note:** section 51B(1) of *CCA*]

- (7) If a *credit-token agreement* includes a declaration made by the *customer* to the effect that the agreement is entered into as mentioned in (6), the agreement is treated for the purposes of (6) as having been so entered into.

[**Note:** section 51B(2) of *CCA*]

- (8) The declaration in (7) must be in the form and content set out in *CONC* Appendix 1 for the exemption relating to business.

- (9) Paragraph (7) does not apply if, when the agreement is entered into:

- (a) the *lender*; or
- (b) any *person* who has acted on behalf of the *lender* in connection with the entering into of the agreement;

knows, or has reasonable cause to suspect, that the agreement is not entered into as mentioned in (6).

[**Note:** section 51B(3) of *CCA*]

- (10) Where an agreement has two or more *lenders*, references in (9) to the *lender* are to any one or more of them.

[**Note:** section 51B(5) of *CCA*]

4.2 Content of quotations

Application

- 4.2.1 R This section, apart from *CONC* 4.2.4R, applies to:

- (1) a *firm* with respect to *consumer credit lending*; or
- (2) a *firm* with respect to *consumer hiring*;

including where the *firm* provides a quotation acting on behalf of a *customer*.

- 4.2.2 R *CONC* 4.2.4R applies to a *firm* with respect to *credit broking*, including where the *firm* provides a quotation acting on behalf of a *customer*.

Lenders and owners: contents of quotation for certain agreements

- 4.2.3 R (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would, or might be, secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.

[**Note:** regulation 3a of SI 1999/2725]

- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home under which, while C continues to occupy the home as C's main residence:

- (a) no instalment *repayments* of the *credit* secured by a mortgage on C's home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due;
- (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other persons in selling) the home or any part of it while the C continues to occupy it as the C's main residence; and
- (c) although interest payments may become due, no full or partial *repayment* of the *credit* secured by a mortgage is due or capable of becoming due.

[**Note:** regulation 3B of SI 1999/2725]

the *firm* must include (or cause to be included) in the quotation the following statement:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”

[**Note:** regulation 3A of SI 1999/2725]

- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would, or might be, secured on the C's home, other than an agreement to which (2) applies, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”

[**Note:** regulation 3b of SI 1999/2725]

- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would be secured on *land* and under which *repayments* would be made in a currency other than sterling, the *firm* must include (or cause to be included) in the quotation the following statement:
- “THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”
- [**Note:** regulation 4 of SI 1999/2725]
- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer’s* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.
- [**Note:** regulation 5a of SI 1999/2725]
- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of goods which would or might be secured on the *customer’s* home, the *firm* must include (or cause to be included) in the quotation the following statement:
- “YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”
- [**Note:** regulation 5b of SI 1999/2725]

Credit brokers: contents of quotation for certain agreements

- 4.2.4 R (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would, or might be, secured on the *customer’s* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.
- [**Note:** regulation 6 of SI 1999/2725]
- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would, or might be, secured on C’s home under which, while C continues to occupy the home as C’s main residence:
- (a) no instalment *repayments* of the *credit* secured by a mortgage on C’s home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due;
- (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other persons in selling) the home or any part of it while the C continues to occupy it as the C’s main residence; and

- (c) although interest payments may become due, no full or partial *repayment* of the credit secured by a mortgage is due or capable of becoming due;

the *credit broker* must include (or cause to be included) in the quotation the following statement:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”

- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would, or might be, secured on C’s home, other than an agreement to which (2) applies, the *credit broker* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”

- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would be secured on *land* and under which *repayments* would be made in a currency other than sterling, the *credit broker* must include (or cause to be included) in the quotation the following statement:

“THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”

- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would, or might be, secured on the *customer’s* home, the *credit broker* must include (or cause to be included) in the quotation a statement that such security would or might be required.

- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer’s* home, the *credit broker* include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

Interpretation: quotations

- 4.2.5 R (1) Paragraphs (2) to (5) apply to *CONC 4.2.3R* and *CONC 4.2.4R* (rules on content of quotations).
- (2) “Quotation” means any document by which a *person* gives a *customer*

information about the terms on which the *person* is prepared to do business, but it does not include:

- (a) a communication which is also a *financial promotion*;
 - (b) any document given to a *customer* under section 58 of the *CCA* (opportunity for withdrawal from prospective land mortgage);
 - (c) any document sent to a *customer* for signature which embodies the terms or such of them as it is intended to reduce to writing of a *credit agreement* or a *consumer hire agreement*; or
 - (d) any copy of an unexecuted agreement delivered or sent to a *customer* under section 62 of the *CCA* (duty to supply copy of unexecuted agreement).
- (3) Where the words of a statement which must be included in a quotation are specified, the statement must be:
- (a) in capital letters;
 - (b) clear and legible; and
 - (c) prominent.
- (4) Providing a quotation includes making a quotation available temporarily.
- (5) In these *rules* as they apply to Scotland:
- (a) any reference to bailment is a reference to hiring;
 - (b) any reference to a mortgage or a charge on land is a reference to a standard security over land within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970.

4.3 Initial disclosure requirements

Application

- 4.3.1 R This section applies, unless stated otherwise in or in relation to a *rule*, to:
- (1) a *firm* with respect to *consumer credit lending*;
 - (2) a *firm* with respect to *credit broking* where the *firm* has or takes on responsibility for providing the disclosures to *customers* required by this section.
- 4.3.2 R In relation to:

- (1) an agreement under which the *lender* provides the *customer* with *credit* which exceeds £60,260; or
- (2) an agreement secured on *land*; or
- (3) a *borrower-lender agreement* enabling the *customer* to overdraw on a current account other than such an agreement which would be an *authorised non-business overdraft agreement*, but for the fact that the agreement is not repayable on demand within three months;

[**Note:** section 74(1D) of *CCA*]

this section applies as if *rules* are guidance (and as if “should” appeared in the *rules* instead of “must”).

[**Note:** section 55A(6) of *CCA* and paragraph 3.1 *ILG*]

Scope of the adequate explanations rules

- 4.3.3 G (1) *Firms* should consider the extent to which they can provide adequate explanations in relation to the regulated credit agreements referred to in *CONC* 4.3.2R.
- [**Note:** paragraph 3.1 (box) of *ILG*]
- (2) An example of how a *firm* might comply with the *Principles* by taking the *rules* in (1) into account as guidance would be where, before the *firm* enters into a *regulated credit agreement* secured on *land* (other than by a first legal mortgage), it highlights key risks to the *customer*, such as the potential consequences of missing payments or under paying, including the risk of repossession of the *customer’s* property.
- [**Note:** paragraphs 3.1 (box) of *ILG* and 3.5 of *SCLG*]

Other disclosure requirements

- (3) The *disclosure regulations* made under section 55 of the *CCA* which require information to be disclosed before a regulated agreement is made remain in force.
- (4) Failure to comply with the *disclosure regulations* has the effect that agreements are enforceable against a borrower or hirer (as defined in the *CCA*) only with an order of court and enforcement for that purpose includes a retaking of goods or *land* to which the agreement relates.
- (5) Other relevant disclosure requirements are found in *CONC* 2.7 (distance marketing) and *CONC* 2.8 (electronic commerce), the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/ 1277) and the Cancellation of Contracts made in the Consumer’s home etc Regulations 2008.

- 4.3.4 R The pre-contractual information that must be disclosed under the *disclosure regulations* must take into account any preferences expressed, or information provided by, an *individual seeking credit*.

[**Note:** paragraph 3.13 (box) of *ILG*]

Pre-contractual explanations

- 4.3.5 R (1) Before making a *regulated credit agreement* the *firm* must:
- (a) provide the *customer* with an adequate explanation of the matters referred to in (2) in order to place the *customer* in a position to assess whether the agreement is adapted to the *customer's* needs and financial situation;
 - (b) advise the *customer*:
 - (i) to consider the information which is required to be disclosed under section 55 of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *customer* is able to take it away;
 - (c) provide the *customer* with an opportunity to ask questions about the agreement; and
 - (d) advise the *customer* how to ask the *firm* for further information and explanation.

[**Note:** section 55A(1) of *CCA*]

- (2) The matters referred to in (1)(a) are:
- (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *customer* will have pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *customer* in a way which the *customer* is unlikely to foresee;
 - (d) the principal consequences for the *customer* arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable:
 - (i) the total cost of the debt growing;
 - (ii) incurring any default charges or interest, including reference to the approximate level of charges or interest

in the event of default;

- (iii) impaired credit rating and its effect on future access to or cost of *credit*;
 - (iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;
 - (v) implications of insolvency;
 - (vi) repossession of the customer's home or other property; and
 - (vii) where an article is taken in *pawn*, that the article might be sold, if not redeemed; and
- (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

[**Note:** section 55A(2) of *CCA*]

- (3) The adequate explanation and advice in (1) may be given orally or in writing, except where (4) applies.

[**Note:** section 55A(3) of *CCA*]

- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the *customer* in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the *customer*.

[**Note:** section 55A(4) of *CCA*]

- (5) Paragraphs (1) to (4) do not apply to a *lender* if a *credit broker* has complied with those sub-paragraphs in respect of the agreement.

[**Note:** section 55A(5) of *CCA*]

- (6) Where the *regulated credit agreement* is an agreement under which a person takes an article in pawn:

(a) the requirement in (1)(a) only relates to the matters in (2)(d) and (e); and

(b) the requirements in (1)(b) and (d) do not apply.

[**Note:** section 55A(7) of *CCA*]

- (7) This *rule* does not apply to:

(a) a *non-commercial agreement*;

(b) a *small borrower-lender-supplier agreement* for *restricted-use credit*.

[**Note:** section 74(1) of *CCA*]

- (8) Where this rule applies to a *borrower-lender agreement* to finance the making of the payments arising or connected with the death of a person, the payments in question are set out in (9).

[**Note:** section 74(1F) of *CCA*]

- (9) The payments referred to in (8) are:
- (a) inheritance tax chargeable in the *UK* on the death of any person;
 - (b) fees payable to a court:
 - (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
 - (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
 - (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[**Note:** regulation 2 of SI 1983/1554]

[**Note:** article 5(6) of the *Consumer Credit Directive*]

- 4.3.6 R The explanation provided by a *lender* or a *credit broker* under *CONC* 4.3.5R must enable the *customer* to make a reasonable assessment as to whether the *customer* can afford the *credit* and to understand the key associated risks.

[**Note:** paragraph 3.3 (box) of *ILG*]

- 4.3.7 R In deciding on the level and extent of explanation required by *CONC* 4.3.5R, the *lender* or *credit broker* must consider (and each of them must ensure that anyone acting on their behalf must consider) factors including:

- (1) the type of *credit* being sought;
- (2) the amount of *credit* to be provided and the associated cost and risk to the *customer*;
- (3) to the extent it is evident and discernible, the *customer's* level of understanding of the explanation provided; and

(4) the channel or medium through which the credit transaction takes place.

[Note: paragraph 3.4 of *ILG*]

4.3.8 R Where the *regulated credit agreement* is *high-cost short-term credit*, the *lender* or a *credit broker* must explain under *CONC 4.3.5R(1)(a)* that entering into that agreement would be unsuitable to support sustained borrowing over long periods and would be expensive as a means of longer term borrowing.

[Note: paragraph 3.13 (box) of *ILG*]

4.3.9 R Even where a *customer* states or implies that there is no need for an explanation of the *regulated credit agreement*, the *lender* or *credit broker* must continue to comply with *CONC 4.3.5R*.

[Note: paragraph 3.10 of *ILG*]

4.3.10 R A *lender* or a *credit broker* must not encourage or induce a *customer* to waive the rights in *CONC 4.3.5R*.

[Note: paragraph 3.10 of *ILG*]

4.3.11 R Before a *lender* concludes that *CONC 4.3.5R(1)* to (4) do not apply to it in relation to a *regulated credit agreement*, the *lender* must take reasonable steps to satisfy itself that an explanation of that agreement complying with *CONC 4.3.5R* has been provided to the *customer* by the *credit broker*.

[Note: paragraph 3.11 (box) of *ILG*]

4.3.12 R The *lender* or the *credit broker* must enable a *customer* to request and obtain further information and explanation about a *regulated credit agreement* without incurring undue cost or delay.

[Note: paragraph 3.16 (box) of *ILG*]

4.3.13 R Neither a *lender* nor a *credit broker* may require a *customer* to acknowledge that the information and explanations it has provided are adequate to satisfy the requirements of *CONC 4.3.5R*.

[Note: paragraph 3.30 (box) of *ILG*]

4.3.14 G A *lender* or *credit broker* may require an acknowledgement that it has provided an explanation, and of receipt of any written information that forms a part of the explanation, but not an acknowledgement as to its adequacy. *CONC 4.3.12R* does not prevent the *lender* or *credit broker* asking if the *customer* has understood an explanation given.

[Note: paragraph 3.30 (box) of *ILG*]

Adequate explanations in relation to particular regulated credit agreements

4.3.15 R The following information must be provided by the *lender* or a *credit broker* as part of, and in addition to that provided under, the adequate explanation required by *CONC 4.3.5R* in the specified cases:

- (1) for *credit token agreements*:
 - (a) the different rates of interest and different charges that may apply to different element of the credit provided;
 - (b) the implications of only making minimum *repayments*;
 - (c) the circumstances in which interest rates may be increased;
 - (d) where applicable, the interest rates may be increased based on the risks presented by the individual borrower;
 - (e) the limitations on any zero percentage or low interest or other introductory offer; and
 - (f) conditions on any balance transfers, including any fees and charges which may apply;
- (2) for credit card cheques, the higher associated costs relative to payment by credit card;
- (3) for *home credit loan agreements* and *high-cost short-term credit*, the effect of refinancing (within the meaning in *CONC 6.7.17R*) extending the duration of the credit or of the *credit agreement*;
- (4) for *credit agreements* where the *lender* has required the *customer* to enter into a bill of sale:
 - (a) the risk of losing the asset which is the subject of the bill of sale and the loss this could entail;
 - (b) that repossession can take place without a court order;
 - (c) that repossession may not clear the debt owed;
 - (d) unlike in the case of *hire-purchase agreements* and *conditional sale agreements*, the *customer* is not protected under this arrangement from repossession of the asset where one third or more of the *total amount payable* has been paid off;
- (5) for *hire purchase agreements* and *conditional sale agreements*:
 - (a) the *customer* does not own the *goods* until the sums required under the agreements have been paid, including any option to purchase fee and any other conditions have been satisfied;
 - (b) *goods* can be repossessed without a court order in the event of default, unless in relation to a regulated credit agreement the *customer* has paid a third or more of the *total amount payable*;
- (6) for a *credit agreement* which is used to consolidate existing debts of the *customer* (whether to the same *lender* or to another *person*) and

where applicable in each case:

- (a) the effect of consolidating the debts will involve payment of a higher rate of interest or charges or both (if the relevant information about existing debts is known to the *lender*);
 - (b) the effect of consolidating the debts will involve increasing the period required for repayment (if the relevant information about existing debts is known to the *lender*);
 - (c) the *credit agreement* would be secured on the *customer's* property;
- (7) for a *credit agreement* which includes a condition requiring a guarantor, the requirement for the *customer* to provide a guarantor.

[Note: paragraph 4.26c of *CBG*]

[Note: paragraph 3.13 of *ILG*]

- 4.3.16 G Where a *customer* does not have a good understanding of the English language, the *lender* may need to present relevant information concerning the explanation required by *CONC* 4.3.5R to persons with such understanding who can assist the customer, for example, the *customer's* friends or relatives.

[Note: paragraph 3.4 (box) of *ILG*]

Guidance for adequate explanations where agreements are marketed by distance or electronic means

- 4.3.17 G Since the use of distance means of communication (such as the internet) by their nature limit the *lender's* ability to ascertain the *customer's* level of understanding of explanations provided, a *lender* using those means may, for example, wish to provide local rate telephone contact details for *customers* who wish to seek further explanation.

[Note: paragraph 3.6 (box) of *ILG*]

- 4.3.18 G Interaction is an important part of compliance with the requirement in *CONC* 4.3.5R(1), for example, where the agreement is marketed and concluded by *electronic means*. For an online application, the requirement in *CONC* 4.3.5R(1)(c) (the right to ask questions) may be complied with by the *customer* being able to access an appropriately comprehensive set of answers to frequently asked questions about the agreement or by being able to speak to a representative of the online provider.

[Note: paragraph 3.8 (box) of *ILG*]

- 4.3.19 G For a *regulated credit agreement* marketed and concluded by *electronic means* to comply with *CONC* 4.3.5R the *customer* should pass through screens containing the required information and explanations, giving the *customer* the opportunity to see and read the explanations provided. Merely providing a link to where such information can be found may not satisfy the requirements in

CONC 4.3.5R.

[Note: paragraph 3.15 (box) of *ILG*]

- 4.3.20 G For telephone or face-to-face transactions, interaction between the *customer* and the *firm*'s representative is also important and, for example, the representative solely providing the *customer* with a written explanation of an agreement, or relying on a written script in relation to an agreement, is unlikely to comply with the requirement in CONC 4.3.5R.

[Note: paragraph 3.9 (box) of *ILG*]

- 4.3.21 G Where a *regulated credit agreement* is a modifying agreement under section 82(2) of the *CCA*, the requirements in CONC 4.3 apply before the agreement is made.

[Note: paragraph 3.12 of *ILG*]

4.4 Adequate explanations: operators of electronic systems in relation to lending

Pre-contractual explanations: application

- 4.4.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.

- 4.4.2 R In relation to:

- (1) an agreement under which the *lender* provides the prospective *borrower* with *credit* which exceeds £60,260; or
- (2) an agreement secured on *land*;

this section (except for CONC 4.4.5R which applies as a rule) applies as if *rules* are guidance (and as if “should” appeared in the *rules* instead of “must”).

[Note: section 55A(6) of *CCA* and paragraph 3.1 *ILG*]

Adequate explanations

- 4.4.3 R (1) Before a *P2P agreement* is made, the *firm* must:
- (a) provide the prospective *borrower* with an adequate explanation of the matters referred to in (2) in order to place the *borrower* in a position to assess whether the agreement is adapted to a *borrower*'s needs and financial situation;
 - (b) where the *P2P agreement* is not a *non-commercial agreement*, advise the *customer*:
 - (i) to consider the information which is required to be disclosed under section 55(1) of the *CCA*; and

- (ii) where the information is disclosed in person, that the *customer* is able to take it away;
 - (c) provide the prospective *borrower* with an opportunity to ask questions about the agreement; and
 - (d) advise the prospective *borrower* how to ask the *firm* for further information and explanation.
- (2) The matters referred to in (1)(a) are:
- (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *borrower* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *borrower* in a way which the prospective *borrower* is unlikely to foresee;
 - (d) the principal consequences for the *borrower* arising from a failure to make payments under the agreement at the times required by the agreement, including legal proceedings and, where this is a possibility, repossession of the *borrower's* home; and
 - (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.
- (3) The adequate explanation and advice in (1) may be given orally or in writing.
- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the customer in person, the explanation of the matters in (2)(c) and (d) and the advice required (1)(b) must be given orally to the customer.
- (5) Where this *rule* applies to a *borrower-lender agreement* to finance the making of payments arising or connected with the death of a person, this rule applies to the agreement to the extent the payments are:
- (a) inheritance tax chargeable in the *UK* on the death of any person;
 - (b) fees payable to a court:
 - (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;

- (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
- (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[**Note:** section 74(1F) of *CCA* and SI 1983/1554]

- 4.4.4 R Where *CONC* 4.4.2R applies to a *firm*, the *firm* must comply with the rules, and observe the guidance, in *CONC* 4.3 to the same extent as if it were the *lender* under an agreement to which those rules apply.
- 4.4.5 R Before a *P2P agreement* which is secured on the prospective *borrower's* home is made, a *firm* must in a prominent way give the following warning:
 “YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY DEBT SECURED ON IT”

4.5 Pre-contractual information: credit brokers

Application: Who? What?

- 4.5.1 R *CONC* 4.5.2R applies to a *firm* carrying on *credit broking* in relation to a *regulated credit agreement*.

Pre-contractual requirements

- 4.5.2 R (1) A *firm* must disclose to the *customer* the fee, if any, payable by a *customer* to the *firm* for its services.
 [**Note:** section 160A(4) of *CCA*]
- (2) Any fee to be paid by the *customer* to the *firm* must be agreed between the *customer* and the *firm*, and that agreement must be recorded in writing or other *durable medium* before the *regulated credit agreement* is entered into.
 [**Note:** section 160A(4) of *CCA*]
- (3) A *firm* must disclose to the *lender* the fee, if any, for its activity payable by the *customer* for the purpose of enabling the *lender* to calculate the *annual percentage rate of charge* set out in *FCA rules* for

the *credit agreement*.

[**Note:** section 160A(5) of *CCA*]

- (4) A *firm* must disclose to the *customer* how and when any fee for its service is payable and in what circumstances a refund may be payable, including how and when a refund is available under section 155 of the *CCA*.

[**Note:** paragraphs 2.2 and 4.17b of *CBG*]

[**Note:** article 21(b) and (c) of the Consumer Credit Directive]

4.6 Commissions

Application

- 4.6.1 R (1) *CONC* 4.6.2R applies to a *firm* with respect to *consumer credit lending*.
- (2) *CONC* 4.6.3R applies to a *firm* with respect to *credit broking* only in relation to:
- (a) *regulated credit agreements*; and
 - (b) *regulated consumer hire agreements*.
- (3) *CONC* 4.6.3R applies to a *firm* carrying on the activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to:
- (a) *credit agreements* that would be *regulated credit agreements* but for the *relevant provisions*; and
 - (b) *consumer hire agreements* that would be *regulated consumer hire agreements* but for articles 60O and 60Q of the *Regulated Activities Order*.

Commissions for credit brokers by consumer credit lenders

- 4.6.2 G A *lender* should only offer to, or enter into with, a *firm* a commission agreement providing for differential commission rates or providing for payments based on the volume and profitability of business where such payments are justified based on the extra work of the *firm* involved in that business.

[**Note:** paragraph 5.5 (box) of *ILG*]

Commissions: credit brokers

- 4.6.3 R A *firm* must disclose to a *customer* in good time before a *credit agreement* or a *consumer hire agreement* is entered into, the existence of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner*

or a third party in relation to a *credit agreement* or a *consumer hire agreement*, where knowledge of the existence or amount of the commission could actually or potentially:

- (1) affect the impartiality of the *credit broker* in recommending a particular product; or
- (2) have a material impact on the *customer's* transactional decision.

[**Note:** paragraphs 3.7i (box), 3.7j and 5.5 (box) of *ILG*]

- 4.6.4 R At the request of the *customer*, a *credit broker* must disclose to the *customer*, in good time before a *regulated credit agreement* or a *regulated consumer hire agreement* is entered into, the amount (or if the precise amount is not known, the likely amount) of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party.

[**Note:** paragraph 3.7i (box) of *CBG*]

4.7 Pre-contract disclosure in relation to continuous payment authorities

Application

- 4.7.1 R (1) This section applies to:
- (a) a *firm* with respect to *consumer credit lending*; or
 - (b) a *firm* with respect to *consumer hiring*; or
 - (c) a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.

Disclosure of continuous payment authorities

- 4.7.2 R (1) Before entering into a *regulated credit agreement* or *regulated consumer hire agreement*, or before a *P2P agreement* is entered into, under which the *customer* may grant a *continuous payment authority*, the *firm* must provide the *customer* with an adequate explanation of the matters in (2).
- (2) The matters referred to in (1) are:
- (a) what a *continuous payment authority* is and how it works;
 - (b) how the *continuous payment authority* will be applied by the *firm*, including where the *firm* provides *high-cost short-term credit* that it may only be used twice to collect the whole sum due in each case in relation to the agreement;
 - (c) how the *customer* can cancel the *continuous payment authority*;

- (d) whether alternative repayment options are available;
- (e) the choice of an appropriate due date for payment;
- (f) the choice of an alternative payment date (if applicable);
- (g) the consequences if sufficient funds are not available on the due date (or an alternative payment date if agreed);
- (h) whether further attempts may be made to collect payment and, if so, the basis on which further attempts would be made, the days or period over which the further attempts would be made and the frequency of the further attempts;
- (i) other than in relation to *high-cost short-term credit*, whether part payment may be sought and, if so, the basis on which and frequency with which payment would be sought and whether part payments would be subject to a minimum amount or percentage; and
- (j) whether default fees and other charges may be added and, if so, the circumstances in which these may be incurred and the amount of such fees and charges and the basis on which they will be calculated.

[Note: paragraph 3.9miii of DCG]

4.7.3 R A *firm* must include the terms of the *continuous payment authority* as part of the *credit agreement* or *consumer hire agreement* presented to the *customer* or *P2P agreement* presented to the *borrower*.

[Note: paragraph 3.9miii of DCG]

4.7.4 R A *firm* must set out, in plain and intelligible language, the scope of the agreed authority and how it will operate.

[Note: paragraph 3.9miii of DCG]

4.8 Information to be provided on entering a current account agreement

Application

4.8.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Information on entering into current account

4.8.2 R (1) When a *firm* enters into a current account agreement where:

- (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and

- (b) if the account-holder did so, this would be a *regulated credit agreement*;

the current account agreement must contain the information in (2) and (3).

[Note: section 74A(1) of CCA]

(2) The information required by (1) is:

- (a) the rate of interest charged on the amount by which the account-holder overdraws on the current account or exceeds the pre-arranged overdraft limit;
- (b) any conditions applicable to that rate;
- (c) any reference rate on which that rate is based;
- (d) information on any changes to that rate of interest (including the periods that the rate applies to and any conditions or procedure applicable to changing that rate); and
- (e) any other charges payable by the *customer* under the agreement (and the conditions under which those charges may be varied).

[Note: section 74A(2) of CCA]

(3) Where different rates of interest are charged in different circumstances, the *firm* must provide the information in (2)(a) to (d) in respect of each rate.

[Note: section 74A(4) of CCA]

[Note: article 18 of the Consumer Credit Directive.]

4.9 Pre-contract: unfair business practices – consumer credit lending

Application

4.9.1 R This section applies to a *firm* carrying on *consumer credit lending* in relation to *regulated credit agreements*.

Practices

4.9.2 R A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* quickly without allowing the *customer* time to consider pre-contract information under section 55 of the CCA and the explanations provided under CONC 4.3.5R.

[Note: paragraph 5.10 of ILG]

4.9.3 G Stating an end date for a promotion would not amount to the behaviour in

CONC 4.9.2R.

[Note: paragraph 5.10(box) of *ILG*]

- 4.9.4 R A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* for an amount higher than the *customer* requests.

[Note: paragraph 5.11 of *ILG*]

- 4.9.5 G Merely offering a *customer* more *credit* than the *customer* requested would not amount to the behaviour in CONC 4.9.4R where:

- (1) the offer of the higher amount was based on a proper *creditworthiness assessment* or assessment required by CONC 5.2.2R(1); or
- (2) the *firm* offers more advantageous terms, conditions or prices to *customers* for larger loans, provided that such offers are sufficiently transparent and a proper *creditworthiness* assessment or assessment required by CONC 5.2.2R(1) has been carried out;

and the *customer* was not pressurised or unfairly coerced into accepting the higher amount of *credit*.

[Note: paragraph 5.11 (box) of *ILG*]

- 4.9.6 R A *firm* must not lead a *customer* to believe that the *customer's* current debt *repayments* can be reduced under a *regulated credit agreement* over the same term when this is not the case.

[Note: paragraph 5.13 of *ILG*]

5 Responsible lending

5.1 Application

- 5.1.1 R This chapter applies to a *firm* with respect to *consumer credit lending*, unless stated differently in, or in relation to, a *rule*.

5.2 Creditworthiness assessment: before agreement

- 5.2.1 R (1) Before making a *regulated credit agreement* the *firm* must undertake an assessment of the creditworthiness of the *customer*.

[Note: section 55B(1) of *CCA*]

- (2) A *firm* carrying out the assessment required in (1) must consider:
- (a) the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial

situation, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made; and

[**Note:** paragraph 4.1 of *ILG*]

- (b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, to make repayments within a reasonable period.

[**Note:** paragraph 4.3 of *ILG*]

- (3) A creditworthiness assessment must be based on sufficient information obtained from:

- (a) the *customer*, where appropriate; and
- (b) a *credit reference agency*, where necessary.

[**Note:** section 55B(3) of *CCA*]

- (4) This *rule* does not apply to:

- (a) an agreement secured on *land*;
- (b) an agreement under which a *person* takes an article in *pawn*.

[**Note:** section 55B(4) of *CCA*]

- (5) This *rule* does not apply, except to the agreements referred to in (6), to:

- (a) a *non-commercial agreement*;
- (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a *current account*;
- (c) a *small borrower-lender-supplier agreement for restricted-use credit*.

[**Note:** section 74 of *CCA*]

- (6) The agreements referred to in (5) and therefore to which this *rule* does apply are:

- (a) a *borrower-lender agreement* enabling the *borrower* to overdraw on a *current account* which is an *authorised business overdraft agreement* or an *authorised non-business overdraft agreement*; or

[**Note:** section 74(1B) and (1C) of *CCA*]

- (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a *current account* which would be an *authorised*

non-business overdraft agreement but for the fact that the agreement is not repayable on demand within three months.

[Note: section 74(1D) of *CCA*]

- (7) Where the *borrower-lender agreement* in question is to finance the making of payments arising or connected with the death of a person, this *rule* applies to the agreement to the extent the payments are:
- (a) inheritance tax chargeable in the *UK* on the death of any person;
 - (b) fees payable to a court:
 - (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
 - (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
 - (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[**Note:** section 74(1F) of *CCA* and SI 1983/1554]

[**Note:** article 8 of the *Consumer Credit Directive*]

Scope of the pre-contract assessments

- 5.2.2 R (1) Before entering into a *regulated credit agreement* which is excluded from *CONC* 5.2.1R (see (4), (5) and (6)), a *firm* must carry out an assessment of the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made.

[**Note:** paragraphs 1.14 and 4.1 of *ILG*]

- (2) The extent and scope of the assessment required by *CONC* 5.2.1R or by *CONC* 5.2.2R(1), in a given case, is dependent upon and proportionate to factors including the following:
- (a) the type of *credit*;
 - (b) the amount of the *credit*;

- (c) the cost of the *credit*;
- (d) the financial position of the *customer* at the time of seeking the *credit*;
- (e) the *customer's* credit history, including any indications that the *customer* is experiencing or has experienced financial difficulties (to the extent the *firm* is aware of the credit history);
- (f) the *customer's* existing financial commitments including any repayments due in respect of other *credit agreements*, *consumer hire agreements*, *regulated mortgage contracts*, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the *firm*;
- (g) any future financial commitments of the *customer* of which the *firm* is aware, having taken reasonable steps to obtain that information;
- (h) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the *customer* of which the *firm* is aware, having taken reasonable steps to obtain that information;
- (i) the vulnerability of the *customer*, in particular where the *firm* understands the *customer* has some form of mental capacity limitation or reasonably suspects this to be so because the *customer* displays indications of some form of mental capacity limitation (see *CONC* 2.10).

[**Note:** paragraph 4.10 of *ILG*]

Proportionality of assessments

- 5.2.3 G (1) To consider all of the factors set out in *CONC* 5.2.2R (2) in all cases is likely to be disproportionate.
- [**Note:** paragraph 4.11 of *ILG*]
- (2) A *firm* should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of the *credit* being sought and the potential risks to the *customer*. The risk of *credit* not being *sustainable* directly relates to the amount of *credit* granted and the *total charge for credit* relative to the *customer's* financial situation.
- [**Note:** paragraph 4.11 and part of 4.16 of *ILG*]
- (3) A high level of scrutiny in the assessment required by *CONC* 5.2.2R(1) would normally be expected before the *lender* enters into a *regulated credit agreement* secured by a second or subsequent

charge on the *customer's* home.

[Note: paragraph 4.17 of *ILG*]

5.3 Conduct of business in relation to creditworthiness and affordability

Creditworthiness and sustainability

- 5.3.1 G (1) In making the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)*, a *firm* should take into account more than assessing the *customer's* ability to repay the *credit*.
- [Note: paragraph 4.2 of *ILG*]
- (2) The *creditworthiness assessment* and the assessment required by *CONC 5.2.2R(1)* should include the *firm* taking reasonable steps to assess the *customer's* ability to meet *repayments* under a *regulated credit agreement* in a *sustainable* manner without the *customer* incurring financial difficulties or experiencing significant adverse consequences.
- [Note: paragraphs 4.1 (box) and 4.2 of *ILG*]
- (3) A *firm* in making its *creditworthiness assessment* and the assessment required by *CONC 5.2.2R(1)* may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the *repayments* are *sustainable* in the light of the change.
- [Note: paragraph 4.9 of *ILG*]
- (4) For the purposes of *CONC* “sustainable” means the *repayments* under the *regulated credit agreements* can be made by the *customer*:
- (a) without undue difficulties, in particular:
 - (i) the *customer* should be able to make *repayments* on time, while meeting other reasonable commitments; and
 - (ii) without having to borrow to meet the *repayments*;
 - (b) over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, within a reasonable period; and
 - (c) out of income and savings without having to realise security or assets; and

“unsustainable” has the opposite meaning.

[Note: paragraphs 4.3 and 4.4 of *ILG*]

- (5) For a *regulated credit agreement* which is an *open-end agreement* the *firm*, in making its *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)*, should, at the time the agreement is entered into:
- (a) make a reasonable assessment of whether the *customer* is able to meet the repayments in a *sustainable* manner over the duration of the agreement;
 - (b) make the assessment based on reasonable assumptions about the likely duration of the *credit*; and
 - (c) consider the *customer's* ability to pay off the maximum amount of *credit* available (equivalent to the *credit limit*) under the agreement.

[Note: paragraph 4.5 of *ILG*]

- (6) For a *regulated credit agreement* for *running account credit* the *firm*, in making its *creditworthiness assessment* or the assessment required by *CONC 5.5.2R(1)*, should:
- (a) use the assumption for the time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*; and
 - (b) not use the assumption of the amount necessary to make the minimum payment each month.

[Note: paragraph 4.6 of *ILG*]

- (7) For a *regulated credit agreement* for *running account credit* the *firm* should set the *credit limit* based on the *creditworthiness assessment* or the assessment required by *CONC 5.5.2R(1)* and taking into account the matters in *CONC 5.2.2R(2)*, and, in particular, the information it has on *customer's* current disposable income taking into account any reasonably foreseeable future changes.

[Note: paragraph 4.6 (box) *ILG*]

- (8) An example of a reasonably foreseeable future change in disposable income which a *firm* should take into account in setting a *credit limit* may include where a *customer* is close to retirement and faces a significant fall in disposable income.

[Note: paragraph 4.6 (box) of *ILG*]

- (9) It is not generally sufficient for a *firm* to rely solely for its *creditworthiness assessment* or its assessment required by *CONC 5.2.2R(1)*, of the *customer's* income and expenditure, on a statement made by the *customer*.

[Note: paragraph 4.15 of *ILG*]

- 5.3.2 R A *firm* must consider sufficient information to enable it to make a reasonable *creditworthiness assessment* or a reasonable assessment required by *CONC 5.2.2R(1)*.
[Note: paragraph 4.21 of *ILG*]
- 5.3.3 R A *firm* must establish and implement clear and effective policies and procedures to make a reasonable *creditworthiness assessment* and a reasonable assessment required by *CONC 5.2.2R(1)*.
[Note: paragraph 4.19 of *ILG*]
- 5.3.4 R A *firm* must take reasonable steps to ensure that information (including information supplied by the *customer*) on an application for *credit* relevant to a *creditworthiness assessment* or an assessment required by *CONC 5.2.2R(1)* is complete and correct.
[Note: paragraph 4.29 of *ILG*]

Unfair business practices: lenders irresponsible lending

- 5.3.5 R A *firm* must not base its *creditworthiness assessment* or the assessment required under *CONC 5.2.2R(1)*, primarily or solely on the value of any *security* provided by the *customer*, but this *rule* does not apply for a *regulated credit agreement* under which *the firm* takes an article in *pawn* and the *customer's* liability is limited to the value of the article plus interest on the credit and there are not additional charges.
[Note: paragraph 4.24 of *ILG*]
- 5.3.6 R A *firm* must not advise or encourage a *customer* to enter into a *regulated credit agreement* for an amount of *credit* higher than the *customer* initially requested if the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* indicates that *repayment* of the higher amount would not be *sustainable* or that the *firm* ought reasonably to suspect that that is the case.
[Note: paragraph 4.28 of *ILG*]
- 5.3.7 R A *firm* must not complete some or all of those parts of an application for *credit* under a *regulated credit agreement* intended to be completed by the *customer*, without the consent of the *customer*, unless the *customer* is permitted to check the application before signing the *regulated credit agreement*.
[Note: paragraph 4.30 of *ILG*]
- 5.3.8 R A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or ought reasonably to suspect that the *customer* has not been truthful in completing the application in relation to information supplied by the *customer* relevant to the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)*.
[Note: paragraph 4.31 of *ILG*]

- 5.3.9 G An example of where a *firm* ought reasonably to suspect that the *customer* has not been truthful may be that the information supplied by that *person* concerning income or employment status is not consistent with other available information.

5.4 Conduct of business: credit brokers

Application

- 5.4.1 R This section applies to a *firm* with respect to *credit broking*.

Conduct of business

- 5.4.2 R (1) In giving explanations or advice, or in making explanations, a *firm* must have regard to the *customer's* needs and circumstances.
- (2) In complying with (1) the *firm* must have regard to whether the credit product is affordable and whether there are any factors that the *firm* knows, or reasonably ought to know, that may make the product unsuitable for the particular *customer*.

[Note: paragraphs 4.32 to 4.36 of *CBG*]

- 5.4.3 R In complying with *CONC 5.4.2R*, *firms* must treat *CONC 5.2* and *5.3* as applying to them and, in relation to the *rules*, there as if they were guidance (and as if “should” appeared in the *rules* instead of “must”).

- 5.4.4 R A *firm* which undertakes to search the product market or a part of it before effecting an introduction must, before doing so, search the product market to the extent stated to the *customer*.

[Note: paragraph 4.41j of *CBG*]

Unfair business practices: credit brokers [CBG 4.41]

- 5.4.5 R A *firm* must not:
- (1) base its *creditworthiness assessment*, or the assessment required under *CONC 5.2.2R(1)*, primarily or solely on the value of any *security* provided by the *customer*, but this *rule* does not apply in relation to a *credit agreement* under which the *lender* takes an article in *pawn* and the *customer's* liability is limited to the value of the article plus interest on the *credit* and there are not additional charges;

[Note: paragraph 4.41b of *CBG*]

- (2) encourage or advise a *customer* to enter into a *credit agreement* for an amount of *credit* higher than the *customer* initially requested if the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* indicates that repayment of the higher amount would not be *sustainable* or that the *lender* ought reasonably to

suspect that that is the case;

[Note: paragraph 4.41f of *CBG*]

- (3) encourage a *customer* to take out additional *credit* or to extend the term of an existing *credit agreement* where to do so is, or is reasonably likely be, to the detriment of a *customer*;

[Note: paragraph 4.41h of *CBG*]

- (4) effect an introduction to a *lender* or an *owner* or another *credit broker* where the *credit broker* effecting the introduction knows, or ought reasonably to know, that the *customer* does not meet the lending or hiring criteria of the *person* to whom the *customer* is to be introduced.

[Note: paragraph 4.41i of *CBG*]

5.5 Creditworthiness assessment: operating electronic systems in relation to lending

Application

- 5.5.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.

- 5.5.2 G (1) This section contains *rules* that apply to the *person* operating the electronic system that facilitates persons becoming *lenders* and *borrowers* under *P2P agreements*, in contrast to *CONC 5.2* which applies to the *lender*.
- (2) A *P2P agreement* may also be a *credit agreement* or a *regulated credit agreement* in which case applicable provisions of the *CCA* or *CONC* will apply to such agreements, the extent to which *CCA* provisions apply to a *lender* will depend largely on whether the *lender* makes the *credit agreement* in the course of carrying on a business.

Creditworthiness assessment

- 5.5.3 R (1) Before a *P2P agreement* is made, the *firm* must undertake an assessment of the creditworthiness of the prospective *borrower*.
- (2) A *firm* carrying out the assessment in (1) must consider:
- (a) the potential for the commitments under the *P2P agreement* to adversely impact the prospective *borrower's* financial situation, taking into account the information of which the *firm* is aware at the time the *P2P agreement* is to be made; and

- (b) the ability of the prospective *borrower* to make *repayments* as they fall due over the life of the *P2P agreement*, or for such an agreement which is an *open-end agreement*, to make repayments within a reasonable period.
 - (3) A creditworthiness assessment must be based on sufficient information obtained from
 - (a) a prospective *borrower*, where appropriate; and
 - (b) a *credit reference agency*, where necessary.
 - (4) This rule does not apply to an agreement under which a *person* takes an article in *pawn*.
- 5.5.4 R Where *CONC 5.5.3R* applies to a *firm*, the *firm* must comply with *CONC 5.2.2R(2)*, *5.3.2R*, *5.3.3R*, *5.3.4R*, *5.3.5R*, *5.3.6R*, *5.3.8R*, *5.3.9R* and *5.3.10R* to the same extent as if it were the *lender* under an agreement to which those *rules* apply and should take the *guidance* in *CONC 5.2* and *CONC 5.3* to the same extent.
- 5.5.5 R Before a *P2P agreement* is entered into under which a *person* takes an article in *pawn*, the *firm* must:
- (1) undertake the assessment referred to in *CONC 5.2.2R(1)* of the prospective *borrower*; and
 - (2) the *firm* must comply with *CONC 5.2.2R(2)*, *5.3.2R*, *5.3.3R*, *5.3.4R*, *5.3.5R*, *5.3.6R*, *5.3.8R*, *5.3.9R* and *5.3.10R* to the same extent as if it were the *lender* under an agreement to which those *rules* apply and should take into account the *guidance* in *CONC 5.2* and *CONC 5.3* to the same extent.

6 Post contractual requirements

6.1 Application

- 6.1.1 R This chapter applies, unless stated differently in a *rule*, or in relation to a *rule*, to a *firm* with respect to *consumer credit lending*.
- 6.1.2 G *CONC 6.2*, *6.5* and *6.7* apply to *firms* with respect to *consumer credit lending*. *CONC 6.3* applies to current account agreements that would be *regulated credit agreements* if the *customer* overdraws on the account. *CONC 6.4* and *CONC 6.6* apply to *firms* which carry on *consumer credit lending* in relation to *regulated credit agreements* and *firms* which carry on *consumer hiring* in relation to *regulated consumer hire agreements*. *CONC 6.7.17R* to *CONC 6.7.26R* also apply to *firms* with respect to *operating an electronic system in relation to lending* in relation to a *P2P agreement*. *CONC 6.8* applies to *credit broking* in relation to *regulated credit*

agreements and agreements that would be such agreements but for the *relevant provisions* and *regulated consumer hire agreements* and agreements that would be such agreements but for articles 60O and 60Q of the *Regulated Activities Order*.

6.2 Assessment of creditworthiness: during agreement

- 6.2.1 R (1) Before significantly increasing:
- (a) the amount of *credit* to be provided under a *regulated credit agreement*; or
 - (b) a *credit limit* for *running-account credit* under a *regulated credit agreement*;

the *lender* must undertake an assessment of the *customer's* (B) *creditworthiness*.

[**Note:** section 55B(2) of *CCA*]

- (2) A *firm* carrying out the assessment in (1) must consider:
- (a) the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time that the increase in (1) is to be granted; and
 - (b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, to make repayments within a reasonable period.

[**Note:** paragraphs 4.1 and 4.3 of *ILG*]

- (3) A *creditworthiness assessment* must be based on sufficient information obtained from
- (a) B, where appropriate, and
 - (b) a *credit reference agency*, where necessary.
- (4) This rule does not apply to:
- (a) an agreement secured on *land*; or
 - (b) an agreement under which a *person* takes an article in *pawn*.
- (5) This *rule* does not apply, except to the agreements in (6), to:
- (a) a *non-commercial agreement*;

- (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a *current account*;
 - (c) a *small borrower-lender-supplier agreement* for *restricted-use credit*.
- (6) The agreements referred to in (5) and therefore to which this *rule* does apply are:
- (a) a *borrower-lender agreement* enabling the *borrower* to overdraw on a *current account* which is an *authorised business overdraft agreement* or an *authorised non-business overdraft agreement*; or
 [Note: section 74(1B)/(1C) of *CCA*]
 - (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a *current account* which would be an *authorised non-business overdraft agreement* but for the fact that the agreement is not repayable on demand within three months.
 [Note: section 74(1D) of *CCA*].

- 6.2.2 R Where *CONC* 6.2.1R applies to a *firm*, the *firm* must comply with *CONC* 5.2.2R(2), 5.3.2R, 5.3.3R, 5.3.4R, 5.3.5R, 5.3.6R, 5.3.8R, 5.3.9R and 5.3.10R to the same extent as if the agreement has not yet been entered into, to which those *rules* apply and should take into account the *guidance* in *CONC* 5.2 and *CONC* 5.3 to the same extent.
 [Note: paragraph 4.2 of *ILG*]

6.3 Information to be provided on a current account agreement and on significant overdrawings

Application

- 6.3.1 R This section applies:
- (1) to a *firm* with respect to *consumer credit lending*;
 - (2) where a *firm* has entered into a current account agreement where:
 - (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and
 - (b) if the account-holder did so, this would be a *regulated credit agreement*.
- 6.3.2 R *CONC* 6.3.1R does not apply where the overdraft or excess would be secured on *land*.

Current account information

- 6.3.3 R A *firm* must provide to the account-holder, in writing, the information in *CONC* 4.8.2R(2) at least annually.

[**Note:** section 74A of *CCA* (partial implementation of article 18 of the *Consumer Credit Directive*)]

Information to be provided on significant overdrawing without prior arrangement

- 6.3.4 R (1) A *firm* must inform the holder of a current account of the matters in (2) without delay where:

- (a) the account-holder overdraws on the account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, for a period exceeding one *month*;
- (b) the amount of that overdraft or excess is significant throughout that period;
- (c) the overdraft or excess is a *regulated credit agreement*; and
- (d) the account-holder has not been informed in writing of the matters in (2) within that period.

[**Note:** section 74B of *CCA*]

- (2) The matters in (1) are:

- (a) the fact that the account is overdrawn or the overdraft limit has been exceeded;
- (b) the amount of that overdraft or excess;
- (c) the rate of interest charged on it; and
- (d) any other charges payable by the *customer* in relation to it (including any penalties and any interest on those charges).

- (3) For the purposes of (1)(b) the amount of the overdraft or excess is significant if:

- (a) the account-holder is liable to pay a charge for which he would not otherwise be liable; or
- (b) the overdraft or excess is likely to have an adverse effect on the *customer's* ability to receive further *credit* (including any effect on the information about the *customer* held by a *credit reference agency*); or
- (c) it otherwise appears significant, having regard to all the circumstances.

- (4) Where the overdraft or excess is secured on *land*, (1)(a) is to be read as if the reference to one *month* were a reference to three *months*.

[**Note:** article 18 of the *Consumer Credit Directive*.]

6.4 Appropriation of payments

Application

- 6.4.1 R This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *consumer hiring*.

Appropriation

- 6.4.2 R (1) Where a *firm* is entitled to payments from the same *customer* in respect of two or more *regulated agreements*, the *firm* must allow the *customer*, on making any payment in respect of those agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum paid by him:

- (a) in or towards satisfaction of the sum due under any one of the agreements; or
- (b) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as the *customer* thinks fit.

[**Note:** section 81 of *CCA*]

- (2) If the *customer* fails to make any such appropriation where one or more of the agreements is:

- (a) a *hire-purchase agreement* or *conditional sale agreement*; or
- (b) a *consumer hire agreement*; or
- (c) an agreement in relation to which any *security* is provided;

the *firm* must appropriate the payment towards satisfaction of the sums due under the agreements in the proportions which those sums bear to one another.

6.5 Assignment of rights

Application

6.5.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Notice of assignment

6.5.2 R (1) Where rights of a *lender* under a *regulated credit agreement* are assigned to a *firm*, that *firm* must arrange for notice of the assignment to be given to the *borrower*:

(a) as soon as reasonably possible; or

(b) if, after the assignment, the arrangements for servicing the *credit* under the agreement do not change as far as the *customer* is concerned, on or before the first occasion they do.

[**Note:** section 82A of *CCA*]

(2) Paragraph (1) does not apply to an agreement secured on *land*.

(3) A *firm* may assign the rights of a *lender* under a *regulated credit agreement* to a third party only if:

(a) the third party is a *firm*; or

(b) where the third party does not require *authorisation*, the *firm* has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

[**Note:** article 17 of the *Consumer Credit Directive*.]

6.6 Pawn broking: conduct of business

Application

6.6.1 R This section applies to:

(1) a *firm* with respect to *consumer credit lending*;

(2) a *firm* with respect to *consumer hiring*.

Failure to supply copies of pledge agreement etc

6.6.2 G Sections 62 to 64 and 114(1) of the *CCA* continue to apply to a *regulated credit agreement* or a *regulated consumer hire agreement* to take any article in *pawn*. A *firm* which fails to observe its obligations under those provisions may be subject to disciplinary action by the *FCA*.

[**Note:** section 115 of *CCA*]

Pawn records: relating to articles under a regulated consumer credit agreement

- 6.6.3 R *A firm* which takes any article in *pawn* under a *regulated credit agreement* must keep such books or other records as are sufficient to show and explain readily at any time all dealings with the article, including:
- (1) the taking of the article in *pawn*;
 - (2) any redemption of the article; and
 - (3) where the article has become realisable by the *customer*, any sale of the article under section 121(1) of the *CCA*.
- [**Note:** regulation 2(1) of SI 1983/1565]

- 6.6.4 R Without prejudice to the generality of *CONC* 6.6.3R(1), the entries in the books or other records in respect of the dealings mentioned in *CONC* 6.6.3R(1) to (3) must contain the information in *CONC* 6.6.7R to *CONC* 6.6.9R.
- [**Note:** regulation 2(2) of SI 1983/1565]

- 6.6.5 R Where the entries in relation to any article taken in *pawn* in *CONC* 6.6.4R are not shown together as a whole but are shown in separate places, then in each place where entries are made the record must show:
- (1) the date and the number or other reference of the agreement under which the article was taken in *pawn* and, where separate from any document embodying the agreement, the number or other reference of the pawn-receipt;
 - (2) the date on which the article was taken in *pawn*; and
 - (3) the name of the *customer*.
- [**Note:** regulation 2(3) of SI 1983/1565]

- 6.6.6 R *A firm* must retain the books or other records required by *CONC* 6.6.3R at least until the expiration of whichever is the longer of the following periods:
- (1) five years from the date on which the article was taken in *pawn*; or
 - (2) where an article has become realisable by the *lender*, three years from the date of sale under section 121(1) of the *CCA* or the redemption of the article, as the case may be.
- [**Note:** regulation 2(4) of SI 1983/1565]

Information to be kept by a person who takes any article in pawn under a regulated consumer credit agreement

- 6.6.7 R The entries in the books or other records, in relation to the taking of the article in *pawn*, must contain the following information:
- (1) the date and the number or other reference of the agreement under which the article was taken in *pawn*, and of the pawn-receipt if

separate, sufficient to identify it or them;

- (2) the date on which the article was taken in *pawn*;
- (3) the name and a postal address and, where appropriate, other address of the *customer*;
- (4) the description that appears in the pawn-receipt of the article taken in *pawn*;
- (5) the amount of the *credit* secured by the *pledge*;
- (6) the date of the end of the redemption period;
- (7) the rate of interest, and the amount or rate of any other charges for *credit*, as provided for in the agreement under which the article was taken in *pawn*.

[**Note:** paragraph 1 to Schedule to SI 1983/1565]

6.6.8 R The entries in the books or other records in relation to any redemption of the article must contain the date of the redemption.

[**Note:** paragraph 2 to Schedule to SI 1983/1565]

6.6.9 R The entries in the books or other records, where the article has become realisable by the *lender*, in relation to any sale of the article under section 121(1) of the *CCA*, must contain the following information:

- (1) the date of the sale;
- (2) where the article was sold by auction, the name and a postal address of the auctioneer;
- (3) where the article was not sold by auction, the postal address of the premises at which the sale took place;
- (4) the gross amount realised;
- (5) the itemised expenses, if any, of the sale;
- (6) where (5) applies, the net proceeds of sale, being the difference between the gross amount shown in accordance with the requirement in (4) and the total of the expenses shown in accordance with the requirement in (5);
- (7) the amount which would have been payable under the agreement under which the article was taken in *pawn* if the article had been redeemed on the date of the sale;
- (8) where the net proceeds of sale are not less than the sum which, if the article taken in *pawn* had been redeemed on the date of the sale, would have been payable for its redemption, the amount of any

- surplus payable to the *customer*;
- (9) where (8) does not apply, the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the article taken in *pawn* on the date of the sale, being the amount for which the *customer* remains liable under section 121(4) of the *CCA*;
 - (10) the date on which any surplus shown in accordance with the requirement in (8) was paid to the *customer*;
 - (11) the date on which any amount for which the *customer* remained liable under section 121(4) of the *CCA* shown in accordance with the requirement in (9) was received from the *customer*.
- [**Note:** paragraph 3 to Schedule to SI 1983/1565]

6.7 Post contract: business practices

Application

- 6.7.1 R (1) This section applies to a *firm* with respect to *consumer credit lending*.
- (2) *CONC 6.7.17R* to *CONC 6.7.26R* also apply to a *firm* with respect to *operating an electronic systems in relation to lending* in relation to a *borrower* under a *P2P agreement*.

Business practices

- 6.7.2 R A *firm* must monitor a *customer's* repayment record.
[**Note:** paragraph 6.2 of *ILG*]
- 6.7.3 G Where a *customer* under a *regulated credit agreement*:
 - (a) fails to make minimum required *repayments*,
 - (b) makes a number of consecutive minimum required *repayments*, or
 - (c) seeks to make *repayments* for a credit card using another credit card,
 a *firm* should:
 - (d) notify the *customer* of the risk of escalating debt, resulting high levels of interest and of potential financial difficulties;
[**Note:** paragraph 6.16 of *ILG*]
 - (e) provide contact details for sources of not-for-profit providers of independent debt advice.

[Note: paragraph 6.2 (box) of *ILG*]

Credit card and store card requirements

- 6.7.4 R A *firm* must first allocate a *repayment* to the debt subject to the highest rate of interest for:
- (1) the outstanding balance on a credit card; or
 - (2) the outstanding balance on a store card; or
 - (3) a credit card or a store card, the agreement for which includes a *fixed-sum credit* agreement, to *repayments* beyond those required to satisfy the fixed instalments.

[Note: paragraph 6.3 of *ILG*]

- 6.7.5 R (1) A *firm* must set the minimum required *repayment* in a *regulated credit agreement* for a credit card or a store card at an amount equal to at least that amount which repays the interest, fees and charges that have been applied to the *customer's* account, plus one percentage of the amount outstanding.

[Note: paragraph 6.4 of *ILG*]

- (2) Where (1) applies and a *firm* applies interest to a period of more than one month, the amount of the interest part of the minimum required *repayment* should be proportionate to the period over which the *firm* accrues the interest.

[Note: paragraph 6.4 (box) of *ILG*]

- 6.7.6 R A *firm* under a *regulated credit agreement* for a credit card or a store card must provide a *customer* with the option to pay any amount they choose (equal to or more than the minimum required repayment but less than the full outstanding balance) on a regular basis, when making automated repayments.

[Note: paragraph 6.5 of *ILG*]

- 6.7.7 R A *firm* must not increase, nor offer to increase, the *customer's credit limit* on a credit card or store card where:

- (1) the *firm* has been advised that the *customer* does not wish to have any *credit limit* increases; or
- (2) a *customer* is at risk of financial difficulties.

[Note: paragraphs 6.6 and 6.7 of *ILG*]

- 6.7.8 R A *firm* under a *regulated credit agreement* for a credit card or a store card must:

- (a) permit a *customer* at any time to reduce or decline offers to increase

- the *credit limit*; or
- (b) permit a *customer* to decline to receive offers of *credit limit* increases.
- [**Note:** paragraphs 6.8 and 6.9 of *ILG*]
- 6.7.9 R A *firm* under a *regulated credit agreement* for a credit card or store card must notify the *customer* at least 30 days before a *credit limit* increase under the agreement comes into effect.
- [**Note:** paragraph 6.17 of *ILG*]
- 6.7.10 R Where a *customer* is at risk of financial difficulties, a *firm* under a *regulated credit agreement* for a credit card or a store card must not increase the rate of interest under the agreement.
- [**Note:** paragraph 6.10 of *ILG*]
- 6.7.11 G For the purposes of *CONC 6.7* a *customer* is at risk of financial difficulties if the *customer*:
- (1) has failed to make repayments when they fell due; or
 - (2) has agreed a *debt management plan* with the *firm* in question; or
 - (3) is in serious discussion with a *firm* which carries on *debt counselling* with a view to entering into a *debt management plan*.
- [**Note:** paragraph 6.10 (box) of *ILG*]
- 6.7.12 R A *firm* under a *regulated credit agreement* for a credit card or store card must notify a *customer* at least 30 days before an increase in the rate of interest under the agreement comes into effect.
- [**Note:** paragraph 6.18 of *ILG*]
- 6.7.13 R Where a *firm* proposes to exercise a power under a *regulated credit agreement* for a credit card or store card to increase the interest rate, the *firm* must:
- (1) permit the *customer* 60 days, from the date of the *firm*'s notice of the proposed increase during which period the *customer* may give notice to the *firm* that the *customer* wishes to close the account;
 - (2) permit the *customer* to pay off the outstanding balance at the rate of interest before the proposed increase and over a reasonable period; and
 - (3) give notice to the *customer* of the rights in (1) and (2).
- [**Note:** paragraphs 6.11 and 6.19 of *ILG*]
- 6.7.14 R Where a *firm* has a right to increase the interest rate under a *regulated credit agreement*, the *firm* must not increase the interest rate unless there is a valid

reason for doing so.

[Note: paragraph 6.20 of *ILG*]

6.7.15 G Examples of valid reasons for increasing the rate of interest in *CONC* 6.7.14R include:

- (1) recovering the genuine increased costs of funding the provision of *credit* under the agreement; and
- (2) a change in the risk presented by the *customer*, beyond merely missing one *repayment* or merely having failed to make one *repayment* in full but instead such as to justify the change in the interest rate.

[Note: paragraph 6.20 (box) of *ILG*]

6.7.16 R Where a *firm* increases a rate of interest based on a change in the risk presented by the *customer*, the *firm* must provide an explanation to the *customer* particular to the *customer's* circumstances of the reason for the increase in the rate of interest.

[Note: paragraph 6.20 (box) of *ILG*]

Rules on refinancing: general

6.7.17 R (1) In *CONC* 6.7.18R to *CONC* 6.7.23R “refinance” means to:

- (a) extend the period over which one or more *repayment* is to be made by a *customer*; or
- (b) change the date on which one or more *repayment* to be made by a *customer* is due (or expected) to a later date; or
- (c) purport to do either (a) or (b);

by agreeing with the *customer* to replace, vary or supplement an existing *regulated credit agreement* or by exercising a contractual power under an existing *regulated credit agreement* or otherwise.

(2) “Exercise forbearance” means to refinance a *credit agreement* where the *firm* does not receive any consideration in connection with refinancing and the effect is that no interest or other charges (other than where a charge is a reasonable estimate of the cost of the additional administration required as a result of the *customer* having refinanced the agreement) accrue from the date of refinancing.

6.7.18 R A *firm* must not encourage a *customer* to refinance a *regulated credit agreement* if the result would be the *customer's* commitments are not *sustainable*.

[Note: paragraph 4.27 of *ILG*]

6.7.19 R A *firm* must not refinance a *customer's* existing *credit* with the *firm* (other

than by exercising forbearance), unless:

- (1) the *firm* does so at the *customer's* request or with the *customer's* consent; and
- (2) the *firm* reasonably believes it is in the *customer's* best interests to do so.

[**Note:** paragraph 6.24 of *ILG*]

Rules on refinancing: high-cost short-term credit

6.7.20 R Before a *firm* agrees to refinance *high-cost short-term credit*, it must send an information sheet in substantially the same form as that required where section 86B of the *CCA* applies, but with the following modifications:

- (1) in place of the title and first sentence of the information sheet include:
“High-cost short-term loans
Missing your payment deadline
Not paying back your loan on time will significantly add to the cost and may continue to grow, here is some important information to help you.”; and
- (2) omit the bullet point concerning time orders.

6.7.21 G A *firm* should not refinance *high-cost short-term credit* where to do so is *unsustainable* or otherwise harmful.

[**Note:** paragraph 6.25 of *ILG*]

6.7.22 G A *firm* should not allow a *customer* to enter into consecutive agreements with the *firm* for *high-cost short-term credit* if the cumulative effect of the agreements would be that the *total amount payable* by the *customer* becomes *unsustainable*.

[**Note:** paragraph 6.25 (box) of *ILG*]

6.7.23 R A *firm* must not refinance *high-cost short-term credit* (other than by exercising forbearance) on more than two occasions.

Continuous payments authority: post agreement obligations

6.7.24 R A *firm* must not amend the terms of a *continuous payment authority* without first obtaining the *customer's* consent, after having fully explained to the *customer* the reason for the amendment.

[**Note:** paragraph 3.9miii of *DCG*]

6.7.25 R *CONC* 6.7.24R does not preclude the *firm* from:

- (1) making amendments pursuant to a variation clause to which the customer has previously given consent, after it was fully explained to

the *customer* the reason for the amendment; or

- (2) reducing or waiving payments unilaterally, for example, under a repayment plan, provided that this is explained to the *customer*.

[Note: paragraph 3.9miii of DCG]

- 6.6.26 R A *firm* must document any modifying agreement or unilateral variation and the same should be adequately explained to the *customer*.

[Note: paragraph 3.9miii of DCG]

- 6.7.27 R A *firm* must use the correct category code and identifier when presenting a payment request to the *payment service provider*.

[Note: paragraph 3.9miii of DCG]

6.8 Post contract business practices credit brokers

Application

- 6.8.1 R This section applies to a *firm* with respect to *credit broking*.

Business practices

- 6.8.2 G Where a *firm* takes on responsibility for giving information to a *customer* or receiving information from a *customer* in accordance with provisions of the CCA (for example, supplying a copy of an executed consumer credit agreement under section 61A of the CCA) the *firm* should ensure it is familiar with the relevant statutory requirements and has adequate system and procedures in place to comply with the provision in question.

Refunds

- 6.8.3 G (1) Under section 155 of the CCA an *individual* has a right to a refund of the *firm*'s fee (less £5) (or for that fee not to be payable) where, following an introduction to a source of *credit* or of bailment (or in Scotland) of hire, the *individual* has not entered into an agreement to which section 155 applies within six months of an introduction.

[Note: paragraph 6.1 of CBG]

- (2) It is immaterial for the purposes of section 155 of the CCA why no agreement has been entered into (for example, an *individual* should be entitled to a refund where the *individual* decides for any reason not to enter into an agreement within the relevant time period).

[Note: paragraph 6.2 of CBG]

- (3) Section 155 does not apply where the introduction is for a *regulated mortgage contract* or a *home purchase plan* and the *person* charging the fee is an *authorised person* or an *appointed representative*. Arranging and advising in relation to *regulated mortgages contracts*

and *regulated home purchase plans* are *regulated activities* under the *Regulated Activities Order* and carrying on those activities would require *permissions* covering those activities.

[**Note:** paragraph 6.4 of *CBG*]

- (4) In relation to a *credit agreement* the refund would apply to any sum paid or payable to the *credit broker* whether or not the *firm* describes it as a fee or commission if it is an amount that would enter in to the *total charge for credit*.

[**Note:** paragraph 6.11 of *CBG*]

- (5) Where an *individual* withdraws from a *regulated consumer credit agreement* under section 66A of the *CCA* or cancels a cancellable agreement (see section 67 of the *CCA*) under section 69 of the *CCA* the agreement is treated as never have been entered into and hence the period referred to in section 155 continues to apply in these circumstances .

[**Note:** paragraph 6.10 of *CBG*]

Conduct of business

- 6.8.4 R Where section 155 of the *CCA* applies, a *firm* must respond in writing to a request for a refund.

[**Note:** paragraph 6.17 of *CBG*]

- 6.8.5 G (1) An *individual* does not need to refer to the right under section 155 of the *CCA* in order to be entitled to a refund.
- (2) A *firm* should respond promptly to a request for a refund.
- (3) In circumstances where *individuals* request refunds and the *firm* knows, or ought to know, that agreements to which section 155 applies would not be entered into within six months, the *firm* should not make the *individuals* wait for the six-month period to elapse before making the refund.

[**Note:** paragraphs 6.17 and 6.18 of *CBG*]

7 Arrears, default and recovery (including repossessions)

7.1 Application

Who? What?

- 7.1.1 R *CONC 7*, unless a rule or section applies differently, applies to:

- (1) a *firm* with respect to *consumer credit lending*;

- (2) a *firm* with respect to *consumer hiring*;
- (2) a *firm* with respect to *operating an electronic system in relation to lending*, in relation to a *borrower* under a *P2P agreement*;
- (3) a *firm* with respect to *debt collecting*.

7.1.2 G The following sections provide differently for application:

- (1) *CONC 7.8* (set off) applies only to *firms* with respect to *consumer credit lending* as set out in that section;
- (2) *CONC 7.13* (lenders' responsibilities in relation to debt) applies only to *firms* in respect of *consumer credit lending*;
- (3) *CONC 7.18* to *CONC 7.20* apply only to *firms operating electronic systems in relation to lending* in relation to *borrowers* under *P2P agreements* as set out in those sections.

7.2 Clear effective and appropriate arrears policies and procedures

Arrears policies

7.2.1 R A *firm* must establish and implement clear, effective and appropriate policies and procedures for:

- (1) dealing with *customers* whose accounts fall into arrears;
[Note: paragraph 7.2 of *ILG*]
- (2) the fair and appropriate treatment of vulnerable *customers*, including for the treatment of *customers* the *firm* understands or reasonably suspects to have mental capacity limitations.

[Note: paragraphs 7.2 of *ILG* and 2.2 (box) of *DCG*]

7.2.2 G *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of vulnerable *customers*.

[Note: paragraph 2.2 (box) of *DCG*]

7.2.3 G In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* should have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt".

[Note: paragraph 3.7r (box) of *DCG*]

7.3 Treatment of customers in default and arrears (including repossessions):

lenders, owners and debt collectors

- 7.3.1 G (1) In relation to *debt collecting* and *debt administration*, the definition of *customer* refers to an *individual* from whom the payment of a debt is sought, this would include where a *firm* mistakenly treats an *individual* as the *borrower* under an agreement and mistakenly or wrongly pursues the *individual* for a debt.

[**Note:** paragraph 1.12 of *DCG*]

- (2) In relation to *debt collecting* and *debt administration*, the definitions of *customer* and *borrower* are given extended meanings to include, as well as those other people they generally include, a person providing a guarantee or indemnity under a *credit agreement* and also a person to whom rights and duties are under the agreement are passed by assignment or operation of law. This reflects article 39M of the *Regulated Activities Order*.

Dealing fairly with customers in arrears

- 7.3.2 G When dealing with *customers* in default or in arrears difficulties a *firm* should pay due regard to its obligations under *Principle 6* (Customers' interests) to treat its *customers* fairly.

[**Note:** paragraphs 7.12 of *ILG* and 2.2 of *DCG*]

Forbearance and due consideration

- 7.3.3 G (1) Where a *customer* under a *regulated credit agreement* fails to make a payment when it becomes due, a *firm* should, in accordance with *Principle 6*, allow for unpaid payments to be made within the original term of the *regulated credit agreement*.
- (2) Where a *customer* under a *regulated credit agreement* fails to make payments when they become due and the *firm* is entitled to extend the term of a *regulated credit agreement*, the *firm* must consider the matters in *CONC 5.2.2R* in relation to the date of the last failure to make the payment, to ensure the *total amount payable* is not increased to be *unsustainable* or otherwise cause a *customer* to be in financial difficulties.

[**Note:** paragraph 4.7 of *ILG*]

- 7.3.4 R A *firm* must treat *customers* in default or in arrears difficulties with forbearance and due consideration.

[**Note:** paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]

- 7.3.5 G Examples of treating a *customer* with forbearance would include the *firm* doing one or more of the following, as may be relevant in the circumstances:

- (1) considering suspending, reducing or stopping any further interest and charges (for example, when a *customer* provides evidence of financial difficulty and is unable to meet repayments as they fall due or is only

able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);

[**Note:** paragraph 7.4 (box) of *ILG*]

- (2) allowing deferment of payment of arrears, where immediate payment of arrears may increase the *customer's repayments* to an *unsustainable* level;
- (3) allowing deferment of payment of arrears, provided that doing so does not necessitate extending the term for the repayments to the extent the term becomes unreasonably excessive;
- (4) accepting token payments for a reasonable period of time from a *customer* who demonstrates that the *customer's* existing debts are more than the *customer* requires to spend on basic living expenses in order to allow the *customer* to recover from an unexpected income shock.

7.3.6 G Where a *customer* is in default or in arrears difficulties, a *firm* should allow the *customer* reasonable time and opportunity to repay the debt.

[**Note:** paragraph 2.2 of *DCG*]

7.3.7 G Where appropriate, a *firm* should direct a *customer* in default or in arrears difficulties to sources of free and independent debt advice.

[**Note:** paragraph 2.2 of *DCG*]

7.3.8 G An example of where a *firm* is likely to contravene *Principle 6* and *CONC 7.3.4R* is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* has default or arrears difficulties and the *customer* makes a reasonable proposal or a *debt counsellor* or another *person* acting on the *customer's* behalf makes a reasonable proposal.

[**Note:** paragraphs 7.16 of *ILG* and 3.7j of *DCG*]

7.3.9 R A *firm* must not refuse to negotiate with a *customer* who is developing a repayment plan.

[**Note:** paragraph 3.9d (box) of *DCG*]

7.3.10 R A *firm* must not pressurise a *customer*:

- (1) to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the *customer's* financial circumstances;

[**Note:** paragraph 7.18 of *ILG*]

- (2) to pay a debt within an unreasonably short period of time; or

[**Note:** paragraphs 3.7i of *DCG* and 7.18 of *ILG*]

- (3) to raise funds to repay the debt by selling their property, borrowing

money or increasing existing borrowing.

[Note: paragraph 3.7b of DCG]

- 7.3.11 R A *firm* must suspend the active pursuit of recovery of a debt from a *customer* for a reasonable period where the *firm* is aware that the *customer* is developing a repayment plan either on their own or with the assistance of a *debt counsellor* or another person acting behalf of the *customer*.
[Note: paragraphs 7.12 of ILG and 3.7m of DCG]
- 7.3.12 G A *firm* should not take steps to enforce a debt if it is aware that the *customer* is subject to a debt relief order (or, in Scotland, a low income low asset order) or an individual voluntary arrangement (or, in Scotland, a protected trust deed or a Debt Arrangement Scheme).
[Note: paragraph 3.9h of DCG]
- 7.3.13 G A *firm* seeking to recover debts should have regard to the provisions in the common financial statement or equivalent guidance.
[Note: paragraphs 7.16 (box) of ILG and 3.7k of DCG]
- 7.3.14 R When contacting a *customer*, a *firm* must ensure that it does not act in a manner that could result in third parties becoming aware that the *customer* is being pursued in respect of a debt.
[Note: paragraph 3.7q of DCG]
- 7.3.15 G An example that may fall within CONC 7.3.14R includes a *firm* leaving messages, by any means and in any way, that may be read or listened to by a person other than the *customer* and which may reveal that the *customer* is being pursued for repayment of a debt.
[Note: paragraph 3.7q (box) of DCG]

Proportionality

- 7.3.16 R A *firm* must not take action against a *customer* in arrears or default, without first having fully explored any more proportionate options.
[Note: paragraphs 7.14 (box) of ILG and 3.7t of DCG]
- 7.3.17 G (1) Examples of action in relation to which a *firm* should consider and fully explore other actions before taking action, are applying to court for an order for sale or submitting a bankruptcy petition.
[Note: paragraph 7.14 (box) of ILG]
- (2) A *firm* should not make undue, excessive or otherwise unfair use of statutory demands (within the meaning of section 268 of the Insolvency Act 1986) when seeking to recover a debt from a *customer*.
[Note: paragraphs 7.10 of ILG and 3.7n of DCG]

Enforcement of debts

- 7.3.18 R A *firm* must not take steps to repossess a *customer's* home other than as a last resort, having explored all other possible options.
[**Note:** paragraphs 7.14 of *ILG*, 3.7t of *DCG* and 6.3 of *SCLG*]
- 7.3.19 R A *firm* must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a *customer* in default or arrears difficulties to pay more than they can reasonably afford.
[**Note:** paragraphs 7.14 of *ILG* and 3.7i (box) of *DCG*]
- 7.3.20 G *Firms* seeking to recover debts under *regulated credit agreements* secured by second or subsequent charges in England and Wales should have regard to the requirements of the Pre-action Protocol for Possession Claims Based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property (PAP) as set out by the Civil Justice Council in October 2008. The aims of the PAP are to ensure that a *firm* and a *customer* act fairly and reasonably with each other in resolving any matter concerning arrears, and to encourage more pre-action contact in an effort to seek agreement between the parties on alternatives to repossession. The Pre-action Protocol on Possession Proceedings applies to all mortgage repossession cases in Northern Ireland. The Home Owner and Debtor Protection (Scotland) Act 2010 provides for pre-action requirements to be placed on secured *lenders* in Scotland.
[**Note:** paragraphs 7.14 of *ILG* and 3.7s of *DCG*]

7.4 Information on status of debts

Status of debts

- 7.4.1 R A *firm* must provide the *customer* or another person acting on behalf of the *customer* with information on the status of a debt, including statements of account when reasonably requested.
[**Note:** paragraph 3.3f of *DCG*]
- 7.4.2 R Where:
- (1) a *customer* offers a settlement payment lower than the total amount owing; or
 - (2) a *lender* under a *regulated credit agreement* or an *owner* under a *regulated consumer hire agreement* decides to stop pursuing a *customer* in respect of a debt arising under the agreement;

and the debt (or part of it) continues to exist notwithstanding the acceptance of the *customer's* offer or the decision to cease to pursue the debt, the *lender* or *owner* must ensure that the continuing existence of the debt and the possibility of the *customer* being pursued by another *firm* who purchases the debt is explained in clear terms to the *customer*.

[Note: paragraph 3.3i of DCG]

7.5 Pursuing and recovering repayments

7.5.1 G (1) Failure to comply with *CONC* 6.5.2R, which sets out when a *firm* must give notice to a *customer* where a *regulated credit agreement* has been assigned to a third party, will be taken into account by the *FCA* in taking decisions about a *firm's permission* or about taking other action.

[Note: paragraph 3.7g of DCG]

(2) *CONC* 6.5.2R makes it clear that where arrangements for servicing the *credit* change at the time of the assignment of a *regulated credit agreement*, notice must be given to the *customer* as soon as reasonably possible. A *firm* should give notice as required under that *rule* in order that any change should not adversely impact on a *customer's* existing repayment arrangements.

[Note: paragraph 3.7h of DCG]

7.5.2 R A *firm* must not pursue a person who the *firm* knows or believes might not be liable under a *credit agreement* or a *consumer hire agreement* for a debt arising under the agreement.

[Note: paragraph 3.5f of DCG]

7.5.3 R A *firm* must not ignore or disregard a *customer's* claim that a debt has been settled or is disputed and continue to make demands for payment without providing clear justification and/or evidence as to why the *customer's* claim is not valid.

[Note: paragraph 3.7o of DCG]

7.5.4 R A *firm* acting on behalf of a *lender* or *owner* must refer a reasonable offer by the *customer* to pay by instalments to the *lender* or *owner*.

[Note: paragraph 3.9f of DCG]

7.5.5 R A *firm* acting on behalf of a *lender* or *owner* must pass on payments received from a *customer* and/or details of a *customer's* outstanding balance to the *lender* or *owner* in a timely manner.

[Note: paragraph 3.9g of DCG]

7.5.6 G A timely manner in *CONC* 7.5.5R would normally be within five working days of receipt of payment by the *firm*.

[Note: paragraph 3.9g of DCG]

7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc.

- 7.6.1 R A *firm* must not use a *continuous payment authority* other than in accordance with the terms of the *credit agreement* or the *P2P agreement* unless it has obtained the consent of the *customer* (or the *borrower* in relation to a *P2P agreement*) or a third party acting on behalf of the *customer* or *borrower*, after having fully explained to the *customer* the reason for doing so.
- [Note: paragraph 3.9mi of DCG]
- 7.6.2 R In accordance with *CONC* 7.6.1R a *firm* must not:
- (1) debit a higher amount than agreed or add default fees or other sums unless the amount (or the basis on which payments, default fees or others sums may be taken) was specified in the *credit agreement* or *P2P agreement* and referred to in the adequate explanation required by *CONC* 4.7.2R;
 - (2) debit a lesser sum than agreed, unless, where the practice is permissible, the *credit agreement* or *P2P agreement* and the adequate explanation specified the basis on which this may occur, the frequency of such requests for payment, any minimum amount or percentage and that a lesser sum could be debited if the full amount was not available;
 - (3) debit an account before the due date of payment as specified in the *credit agreement* or *P2P agreement*;
 - (4) debit an account after the due date on a date, or within a period, or with a frequency other than as specified in the *credit agreement* or *P2P agreement* and referred to in the adequate explanation;
 - (5) debit the account of a third party other than as specifically agreed with the third party or agreed with the *customer* following the third party's confirmation to the *firm* that the third party consents to the arrangement.
- [Note: paragraph 3.9mi of DCG]
- 7.6.3 R A *firm* must use a *continuous payment authority* in a manner which is reasonable, proportionate and not excessive and must exercise appropriate forbearance if it becomes aware that the *customer* is or may be experiencing financial difficulties.
- [Note: paragraph 3.9mii of DCG]
- 7.6.4 G Whether the use of a *continuous payment authority* is reasonable, proportionate and not excessive (as regards the frequency or period of collection attempts), will depend on the circumstances, including:
- (1) whether the *firm* is aware or has reason to believe that the *customer* is in actual or potential financial difficulties; and

- (2) whether the *customer* has been notified of the failure to collect the payment and has responded to contact from the *firm*.

[Note: paragraph 3.9mii of *DCG*]

7.6.5 G A *firm* is likely to contravene *CONC* 7.6.3R if it:

- (1) attempts to take payment from the account before income or other funds may reasonably be expected to reach the account, for example, this is likely to be relevant where a *firm* is aware of the *customer's* salary payment date; or
- (2) takes or attempts to take payment where it has reason to believe that there are insufficient funds in the account or that taking the payment would leave insufficient funds for priority debts, such as in relation to a mortgage, rent, food, utility bills or other essential living expenses; or
- (3) takes or attempts to take a part payment before it has made reasonable attempts to collect the full payment on the due date; or
- (4) continues to use the *continuous payment authority* for an unreasonable period after the payment due date without taking steps to establish the reason(s) for the payment failure.

[Note: paragraph 3.9mii of *DCG*]

7.6.6 G Where permissible, a *firm* should only make a reasonable number of attempts to collect a part payment, having regard to the possibility that the *customer* may be in financial difficulties.

[Note: paragraph 3.9mii (box) of *DCG*]

7.6.7 R A *firm* must not use a *continuous payment authority* if the *customer* provides reasonable evidence to the *firm* of being in financial difficulties and the *customer* cannot afford to repay the debt or the where *firm* otherwise becomes aware of the *customer* being in financial difficulties and the *customer's* inability to afford to repay the debt.

[Note: paragraph 3.9mii (box) of *DCG*]

7.6.8 G If a *firm* becomes aware that a *customer* is in financial difficulty, the *firm* should reassess the payment arrangement and should consider reasonable proposals to revise the payment schedule and alternative repayment arrangements.

[Note: paragraph 3.9mii (box) of *DCG*]

7.6.9 G In the *FCA's* view, a *firm's* inability to recover the whole of the amount due by the end of the next business day after the date on which it was due would indicate that the *customer* may be experiencing financial difficulty. In such a case, a *firm* should suspend use of the *continuous payment authority* until it has made reasonable efforts to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial

difficulties.

[**Note:** paragraph 3.9mii (box) of *DCG*]

- 7.6.10 G If the *firm* and the *customer* have agreed an alternative payment date as a contingency option if payment is not available on the due date, the *firm* should suspend the use of the *continuous payment authority* after the due date, and again after the alternative payment date (if the *firm* is unable to recover the amount due at the end of that day) and make reasonable efforts to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial difficulties.

[**Note:** paragraph 3.9mii (box) of *DCG*]

- 7.6.11 G If reasonable efforts to contact the *customer* are unsuccessful or a *customer* refuses to engage with the *firm* and there is no further evidence of financial difficulties, any subsequent use of the *continuous payment authority* should be reasonable and not excessive, having regard to the possibility that an unresponsive *customer* may nevertheless be in financial difficulties and that a *customer* who was not in financial difficulties at the time of contact may subsequently be in financial difficulties.

[**Note:** paragraph 3.9mii (box) of *DCG*]

Continuous payment authorities and high-cost short-term credit

- 7.6.12 R (1) A *firm* must not give an instruction to a *payment service provider* requesting the execution of a payment from the *customer's payment account* for the purpose of collecting any sum owed for *high-cost short-term credit* following two unsuccessful attempts to collect the sum, in connection with the same *high-cost short-term credit*.
- (2) For the purposes of (1):
- (a) if *high-cost short-term credit* has been refinanced, except in exercise of forbearance, the agreement is to be regarded as the same agreement; and
- (b) “refinance” and “exercise forbearance” have the same meaning as in *CONC* 6.7.17R.
- (3) A *firm* must not in any case in relation to *high-cost short-term credit* give an instruction to a *payment service provider* requesting the execution of a payment from the *customer's payment account* for the purpose of collecting a sum less than the full amount due and payable at the time the instruction is given.

Cancelling a continuous payment authority

- 7.6.13 R A *firm* must not by any means improperly or unfairly inhibit or discourage a *customer* from cancelling a *continuous payment authority* including by:
- (1) misleading the *customer*, expressly or by omission, regarding the right

to cancel and how it may be exercised; or

- (2) failing to respond promptly to requests by or on behalf of the *customer* to amend or cancel the *continuous payment authority*; or
- (3) intimidating a *customer* who wishes to cancel the *continuous payment authority*; or
- (4) requiring *customers* who wish to cancel the *continuous payment authority* to go through an unduly complicated process.

[Note: paragraph 3.9miv of DCG]

- 7.6.14 R A *firm* must cease use of the *continuous payment authority* once it is notified that the *continuous payment authority* has been cancelled.

[Note: paragraph 3.9miv of DCG]

7.7 Application of interest and charges

- 7.7.1 G When levying charges for debt recovery on *customers* in arrears *firms* should consider their obligation under *Principle 6* to pay due regard to the interests of *customers* and treat them fairly.

[Note: paragraphs 3.1 and 3.10 of DCG]

- 7.7.2 R A *firm* must not claim the costs of recovering a debt from a *customer* if it has no contractual right to claim such costs.

[Note: paragraph 3.11b of DCG]

- 7.7.3 R A *firm* must not cause a *customer* to believe that the *customer* is legally liable to pay the costs of recovery where no such right exists.

[Note: paragraph 3.11a of DCG]

- 7.7.4 G Where a *firm* has a contractual right to levy default charges, a *regulated credit agreement* must state the charges and the conditions for making the charge under, as the case may be, the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014) or the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553).

[Note: paragraphs 3.11c of DCG and 7.15 of ILG]

- 7.7.5 R A *firm* must not levy charges on *customers* in default or in arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the *firm*.

[Note: paragraphs 3.11 of DCG and 7.15 of ILG]

- 7.7.6 G Where a *customer* is in arrears or in default under a *regulated credit agreement* or a *regulated consumer hire agreement*, a *lender* or *owner* should reduce or cease to apply interest and charges if there is reasonable evidence

that the *customer* is in financial difficulties and is unable to meet *repayments* when they fall due or when the *customer* can only make token repayments, such that the level of debt would continue to increase if interest and charges continue to be applied.

[**Note:** paragraph 3.11 (box) of *DCG*]

7.8 Set off

Application

- 7.8.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Set-off rules

- 7.8.2 R (1) Before a *firm* exercises a right of set off in relation to a *customer*, a *firm* must carry out an assessment of the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made.

[**Note:** paragraph 7.19 of *ILG*]

- (2) *CONC 5.2.2R(2)* to *CONC 5.3.3R* apply to the assessment in (1) to the same extent as they would to an assessment required by *CONC 5.2.1R* or *CONC 5.2.2R(1)*.

- 7.8.3 G Where a *firm* proposes to use a right of set off against a *customer* whom the *firm* has established is in financial difficulties, the *firm* should ensure that following the use of set off the *customer* should be left with sufficient funds to meet the *customer's* reasonable day-to-day living expenses and priority debts, such as in relation to a mortgage, rent, food, utility bills or other essential living expenses, where these have been identified.

[**Note:** paragraph 7.19 (box) of *ILG*]

- 7.8.4 G A *firm* should take particular care in relation to a *customer* where the *firm* can identify that the *customer's* balance is made up wholly or partly of state benefits.

[**Note:** paragraph 7.19 (box) of *ILG*]

7.9 Jurisdictional requirements

- 7.9.1 R A *firm* dealing with a *customer* who is resident in a different jurisdiction to the jurisdiction of the *firm's* place of business must ensure that it takes appropriate account of any differences in law and court procedure that may have a significant impact on the *customer's* rights.

[Note: paragraph 2.3 of DCG]

- 7.9.2 G *CONC* 7.9.1R will apply, for example, where a *firm*'s place of business is in England and the *customer* resides in Scotland.

[Note: paragraph 2.3 of DCG]

- 7.9.3 R A *firm* must not commence proceedings or threaten to commence proceedings in the wrong jurisdiction.

[Note: paragraph 3.5g of DCG]

7.10 Contact with customers

Contacting customers

- 7.10.1 R A *firm* must ensure that a person contacting a *customer* on its behalf gives the *customer* an adequate explanation of the following matters:

- (1) who the person contacting the *customer* works for;
- (2) the person's role in or relationship with the *firm*; and
- (3) the purpose of the contact.

[Note: paragraph 3.3c of DCG]

- 7.10.2 R A *firm* must not in a communication with the *customer* make a statement which may induce the *customer* to contact the *firm* misunderstanding the reason for making contact.

[Note: paragraph 3.3d of DCG]

- 7.10.3 G An example of a misleading communication in *CONC* 7.10.2R is a calling card left at the *customer*'s address which states or implies that the *customer* has missed a delivery and encourages the *customer* to make contact.

[Note: paragraph 3.3d (box) of DCG]

- 7.10.4 R A *firm* must not contact *customers* at unreasonable times and must pay due regard to the reasonable requests of *customers* (for example, *customers* who work in a shift pattern) in respect of when, where and how they may be contacted.

[Note: paragraphs 3.3j and k of DCG]

- 7.10.5 R A *firm* must not require a *customer* to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number.

[Note: paragraph 3.3l of DCG]

Communication with third parties

- 7.10.6 R A *firm* must not unfairly disclose or threaten to disclose information relating to the *customer's* debt to a third party.
[**Note:** paragraph 3.7p of *DCG*]
- 7.10.7 R When contacting a *customer*, a *firm* must ensure that it does not act in a way likely to be publicly embarrassing to the *customer*.
[**Note:** paragraph 3.7q of *DCG*]
- 7.10.8 R A *firm* must not disclose details of a debt to an individual without first establishing (by suitably appropriate means) that the individual is liable in respect of the debt.
[**Note:** paragraph 3.9b of *DCG*]
- 7.10.9 G A *firm* which:
- (1) threatens debt recovery action against the “occupier” of particular premises; or
 - (2) sends a payment demand to all persons sharing the same name and date of birth or address as the *customer*;
- is likely to contravene *CONC* 7.10.8R.
[**Note:** paragraphs 3.9a (box) and 3.9b (box) of *DCG*]

Debt collection visits

- 7.10.10 R A *firm* must ensure that a person visiting a *customer* on its behalf:
- (1) clearly explains the purpose and intended outcome of the proposed visit to the *customer*; and
[**Note:** paragraph 3.12 of *DCG*]
 - (2) gives the *customer* adequate notice of the time and date of a visit.
[**Note:** paragraph 3.13g of *DCG*]
- 7.10.11 G Failure to give adequate notice prior to an initial visit to the *customer* may not infringe *CONC* 7.10.10R if the *customer* is happy to speak to the person pursuing recovery of the debt at that time. However, where, at the initial visit the *customer* indicates a preference to use the first visit to agree a more convenient time for a future visit, the *FCA* expects the person pursuing recovery of the debt to respect the *customer's* wishes.
[**Note:** paragraph 3.13g (box) of *DCG*]
- 7.10.12 R A *firm* must ensure that all persons visiting a *customer's* property act at all times in accordance with the requirements of *CONC* 7 and do not:
- (1) act in a threatening manner towards a *customer*;

- (2) visit a *customer* at a time when they know or suspect that the *customer* is, or may be, particularly vulnerable;
- (3) visit at an inappropriate location unless the *customer* has expressly consented to the visit.
- (4) enter a *customer's* property without the *customer's* consent or an appropriate court order;
- (5) refuse to leave a *customer's* property when it becomes apparent that the *customer* is unduly distressed or might not have the mental capacity to make an informed repayment decision or engage in the debt recovery process;
- (6) refuse to leave a *customer's* property when reasonably asked to do so;
- (7) visit or threaten to visit a *customer* without the *customer's* prior agreement when a debt is deadlocked or reasonably queried or disputed (see *CONC 7.18* (Disputed and deadlocked debts)).

[**Note:** paragraphs 3.12 and 3.13 of *DCG*]

- 7.10.13 G It would normally be inappropriate to visit a *customer* at the *customer's* place of work or at a hospital where the *customer* is a patient.

7.11 Treatment of vulnerable customers

- 7.11.1 R A *firm* must suspend (and must ensure that its agents suspend) the pursuit of recovery of a debt from a *customer* when:
- (1) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or engage in the debt recovery process at the time; or
 - (2) the *firm* understands or ought reasonably to be aware that the *customer* lacks mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or engage in the debt recovery process at the time.

[**Note:** paragraphs 3.7r of *DCG* and 7.13 of *ILG*]

- 7.11.2 G A *firm* should allow a *customer* or a person acting on behalf of the *customer* a reasonable period of time to provide evidence as to the likely impact of any mental capacity limitation on the *customer's* ability to engage with the *firm*.

[**Note:** paragraph 3.7r (box) of *DCG*]

- 7.11.3 G *CONC 7.11.1R* does not prevent a *firm* from pursuing the debt through a responsible third party acting on behalf of the *customer*, where the *customer*

has given prior consent, for example, pursuant to a registered lasting power of attorney.

[**Note:** paragraph 3.7r (box) of *DCG*]

7.12 Disclosures relating to “authority” or “status”

7.12.1 R When contacting *customers*, a *firm* must not (and must ensure that persons acting on its behalf do not) misrepresent its authority or its legal position with regards to the debt or debt recovery process.

[**Note:** paragraph 3.4 of *DCG*]

7.12.2 G For example, a person misrepresents authority or the legal position if they claim to work on instructions from the courts as bailiffs or, in Scotland, sheriff officers or messengers-at-arms, or in Northern Ireland, claiming to work on the instruction from the Enforcement or Judgement Office when this is untrue.

[**Note:** paragraph 3.5a of *DCG*]

7.12.3 R A *firm* must not use official looking documents which are designed to, or are likely to, mislead a *customer* as to the status of the *firm*.

[**Note:** paragraph 3.3a of *DCG*]

7.12.4 R A *firm* must not falsely suggest or state (and must ensure that persons acting on its behalf do not falsely suggest or state) that it is a member of a trade body or is accredited by a trade body.

[**Note:** paragraph 3.5c (box) of *DCG*]

7.12.5 G It is an offence under section 17 of the Legal Services Act 2007 to falsely imply that a person is entitled to carry on a reserved legal activity, for example, to conduct litigation or to appear before and address a court, to take or use any name, title or description, for example, “solicitor”.

[**Note:** paragraph 3.5c (box) of *DCG*]

7.12.6 R A *firm must* not suggest or state (and must ensure that persons acting on its behalf do not suggest or state) that action can, or will be taken when legally it cannot be taken.

[**Note:** paragraph 3.5b of *DCG*]

7.12.7 G Examples of where a *firm* is likely to contravene *CONC* 7.12.6R include where a *firm* or a person acting on its behalf:

(1) states or implies that bankruptcy or sequestration proceedings may be initiated when the balance of the outstanding debt is too low to qualify for such proceedings; or

(2) states or implies that steps will be taken to enforce a debt where the

customer is making payments under a Debt Payment Programme Arrangement agreed under the Debt Arrangement and Attachment (Scotland) Act 2002; or

- (3) claims a right of entry will be exercised when no court order to this effect has been granted; or
- (4) states that *goods* will be repossessed when they are “protected goods” (as defined under section 70(7) of the *CCA*) and no specific authorisation to repossess the *goods* has been granted by a court.

[**Note:** paragraph 3.5b (box) of *DCG*]

- 7.12.8 R *A firm must not suggest or state (and must ensure that persons acting on its behalf do not suggest or state) that it will commence proceedings for a warrant of execution, a charging order, attachment of earnings or take any other enforcement action when a court judgment has not been obtained.*

[**Note:** paragraph 3.5c of *DCG*]

- 7.12.9 R *A firm must not suggest or state (and must ensure that persons acting on its behalf do not suggest or state) that an action has been taken when no such action has been taken.*

[**Note:** paragraph 3.5d (box) of *DCG*]

7.13 Lenders’ responsibilities in relation to debt

Application

- 7.13.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Lenders’ responsibilities

- 7.13.2 R *A firm must not:*

- (1) refuse to deal with a *not-for-profit debt advice body, debt counsellor, debt adjuster* or with another person acting on behalf of a *customer*, unless there is an objectively justifiable reason for doing so;

[**Note:** paragraphs 3.9c of *DCG* and 3.48 of *DMG*]

- (2) refuse to accept a payment tendered to the *firm* by the *customer* or by a *person* acting on behalf of the *customer*;

[**Note:** paragraphs 3.8 of *DCG* and 3.49a of *DMG*]

- (3) refuse to deal with a *customer* who is developing a repayment plan or a *debt management plan* for the *customer’s* debts, unless there is an objectively justifiable reason for doing so;

[**Note:** paragraphs 3.9(c) of *DCG* and 3.49b of *DMG*]

- (4) where a person is acting on behalf of a *customer*, directly contact the *customer* without the *customer's* consent, unless there is an objectively justifiable reason for doing so;
[Note: paragraph 3.9d of *DCG*]
- (5) operate a policy:
 - (a) of only negotiating the freezing of interest and charges on a *customer's* debts where the *lender* has an existing arrangement with a person acting on behalf of the *customer*; or
[Note: paragraph 3.49e of *DMG*]
 - (b) of refusing to negotiate with certain third parties or with a *customer* developing their own repayment plan.
[Note: paragraph 3.49c (box) of *DMG*]
- (6) return or refuse a *repayment* or refuse to credit a *repayment* to a *customer's* account merely because the *repayment* is tendered by a *debt management firm*.
[Note: paragraph 3.49a of *DCG*]

- 7.13.3 G (1) Situations where it may be justified for a *firm* to refuse to deal with a person acting on behalf of a *customer* may include refusing to deal with that person where the *firm* is able to show that the person has failed to comply with consumer protection legislation or with *FCA* rules.
[Note: paragraph 3.48 of *DMG*]
- (2) It may be justified for a *firm* to contact a *customer* directly where repeated unsuccessful efforts have been made to contact a person acting on behalf of the *customer*.
[Note: paragraphs 3.9e of *DCG* and 3.49c (box) of *DMG*]
- (3) Where a *firm* is in dispute with a person acting on behalf of the *customer* it should make its position known to that person and to the *customer* as soon as practicable.
[Note: paragraph 3.49d of *DMG*]
- (4) The *FCA* does not believe it is justified to bypass contacting a person acting on behalf of a *customer* merely because that person has not agreed to comply with the Insolvency Service's Debt Management Protocol.

7.14 Data accuracy and outsourced activities

Data accuracy

- 7.14.1 G The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a *customer* and/or recovering a debt due under a *credit agreement* or *consumer hire agreement* will involve the processing of personal data. Accordingly *firms* processing such data are data controllers and are obliged to comply with the Data Protection Act 1998 and, in particular, to adhere to the eight data protection principles.
[Note: paragraph 3.16 of *DCG*]
- 7.14.2 R A *firm* must take reasonable steps to ensure that it maintains accurate and adequate data (including in respect of debt and repayment history) so as to avoid the risk that a person who is not the true *borrower* or *hirer* is not pursued for the repayment of a debt.
[Note: paragraphs 3.19 of *DCG* and 7.11 (box) of *ILG*]
- 7.14.3 R A *firm* must endeavour to ensure that the information it passes on to its agent or to a *debt collector* or to a tracing agent (a person that carries on the activity in article 54 of the *Exemption Order*) (whether for the *firm's* or another person's business) or to any other *person* involved in recovering the debt or, where appropriate, to a *credit reference agency* is accurate and adequate so as to facilitate the tracing and identification of the true *borrower* or *hirer*.
[Note: paragraphs 3.20 of *DCG* and 7.11 (box) *ILG*]
- 7.14.4 R Before pursuing a *customer* for the repayment of a debt, a *firm* must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true *customer* is pursued for the debt and that they are pursued for the correct amount.
[Note: paragraphs 3.7e and 3.23a of *DCG*]
- 7.14.5 G A *firm* should ensure that adequate and accurate information it holds about a *customer* in relation to a debt is made available to its agents or employees involved in the debt recovery process. Information which should be made available to agents or employees includes information relating to the *customer*:
- (1) being in financial difficulties; or
 - (2) being particularly vulnerable; or
 - (3) disputing the debt; or
 - (4) having a representative acting on the *customer's* behalf.
- [Note: paragraph 3.23 of *DCG*]
- 7.14.6 G A *firm* should not impose limitations on the number and the extent of reasonable applications that can be made to it for documents or other relevant information pertaining to a *customer* in respect of which it is, or has been, the *lender* or *owner*, by a *firm* seeking such information to facilitate its pursuance of the relevant debt.

[Note: paragraph 3.23i of DCG]

- 7.14.7 R Where a *firm* has established that an individual being pursued for a debt is not the true *borrower* or *hirer* under the *credit agreement*, *regulated credit agreement*, *consumer hire agreement* or *regulated consumer hire agreement* or that the debt has been paid, the *firm* must update its records and the data supplied to the *credit reference agencies* (where applicable).

[Note: paragraph 3.23f of DCG]

Outsourcing

- 7.14.8 G SYSC 8.1 includes *rules* and *guidance* on outsourcing with which *firms* must or should apply as appropriate.

- 7.14.9 G A *firm* seeking to instruct a third party to pursue the recovery of debts or to trace *customers* on its behalf should exercise due care in selecting the third party.

[Note: paragraph 2.5 of DCG]

- 7.14.10 G Where a *firm* has engaged a third party to recover debts or to trace *customers* on its behalf, it should properly investigate complaints about the third party.

[Note: paragraph 2.5 of DCG]

- 7.14.11 R A *firm* must ensure that a third party engaged by it, where required, has the appropriate *Part 4A permission* to engage in the *regulated activities* undertaken in the course of the third party's business.

[Note: paragraph 2.6 of DCG]

7.15 Settlements, disputed and deadlocked debt

Disputed debt

- 7.15.1 R A *firm* must suspend (and must ensure that its agents suspend) any steps it takes or its agent takes in the recovery of a debt from a *customer* where the *customer* disputes the debt on valid grounds or what may be valid grounds.

[Note: paragraph 3.9k of DCG]

- 7.15.2 G Valid grounds for disputing a debt include that:

- (1) the person being pursued for the debt is not the true *borrower* or *hirer* under the agreement in question; or
- (2) the debt does not exist; or
- (3) the amount of the debt being pursued is incorrect.

[Note: annex A3 of DCG]

- 7.15.3 R Where a *customer* disputes a debt on valid grounds or what may be valid grounds, the *firm* must investigate the dispute and provide details of the debt to the *customer* in a timely manner.
[Note: paragraph 3.9i of *DCG*]
- 7.15.4 R Where there is a dispute as to the identity of the *borrower* or *hirer* in default or as to the amount of the debt, it is for the *firm* (and not the *customer*) to establish that the *customer* is the correct *person* in relation to the debt or that the amount is the correct amount owed under the agreement.
[Note: paragraphs 3.9j of *DCG* and 7.11 (box) of *ILG*]
- 7.15.5 R A *firm* must provide a *customer* with information on the outcome of its investigations into a debt which the *customer* disputed on valid grounds.
[Note: paragraph 3.3g of *DCG*]
- 7.15.6 R Where a *customer* disputes a debt and the *firm* seeking to recover the debt is not the *lender* or the *owner*, the *firm* must pass the information provided by the *customer* to the *lender* or the *owner*, as the case may be.
[Note: paragraph 3.23h of *DCG*]

Settlements and deadlocked debt etc

- 7.15.7 G A debt repayment is deadlocked where the *customer* (or the *customer's* representative) has acknowledged the *customer's* liability for a debt and has proposed a repayment plan, but the proposed repayment plan is not acceptable to the *firm* seeking to recover the debt.
[Note: annex A4 of *DCG*]
- 7.15.8 R A *firm* must give due consideration to a reasonable offer of repayment made by the *customer* or the *customer's* representative.
[Note: annex A5 of *DCG*]
- 7.15.9 R Where a *firm* rejects a proposal from a *customer* in default or in arrears difficulties or another person acting on behalf of the *customer*, the *firm's* response must include a clear explanation of the reason for the rejection.
[Note: paragraph 7.16 (box) of *ILG*]
- 7.15.10 R If a *firm* rejects a repayment offer because it is unacceptable, the *firm* must not engage in any conduct intended to, or likely to, have the effect of intimidating the *customer* into increasing the offer.
[Note: annex A5 of *DCG*]
- 7.15.11 G In considering the *customer's* repayment offer, a *firm* should have regard to the provisions in the common financial statement.
[Note: annex A6 of *DCG*]
- 7.15.12 G A *firm* which makes a counter offer to a proposal made by or on behalf of

the *customer*, should allow the *customer* or a person acting on behalf of the *customer*, a reasonable period of time to consider and respond to the counter offer.

[Note: paragraph 7.16 of *ILG*]

- 7.15.13 R If a *firm* accepts a *customer's* offer to settle a debt, it must communicate formally and unequivocally that the offer accompanied by the relevant payment has been accepted as full and final settlement of the debt.

[Note: paragraph 3.3h of *DCG*]

7.16 Statute barred debts

- 7.16.1 G A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt. In Scotland, the limitation period is five years in relation to debt.

[Note: annex B1 of *DCG*]

- 7.16.2 G In England, Wales and Northern Ireland, a statute barred debt still exists and is recoverable.

[Note: paragraph 3.15a and annex B3 of *DCG*]

- 7.16.3 G In Scotland, a statute barred debt ceases to exist and is no longer recoverable if:

- (1) a relevant claim on behalf of the *lender* or *owner* has not been made during the relevant limitation period; and
- (2) the debt has not been acknowledged by, or on behalf of, the *customer* in the relevant limitation period.

[Note: annex B3 of *DCG*]

- 7.16.4 R Notwithstanding that a debt may be recoverable, a *firm* must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the *lender* or *owner* has not been in contact with the *customer* during the limitation period.

[Note: paragraph 3.15b of *DCG*]

- 7.16.5 G If the *lender* or *owner* has been in regular contact with the *customer* during the limitation period, the *firm* may continue to attempt to recover the debt.

[Note: paragraph 3.15b of *DCG*]

- 7.16.6 R A *firm* must endeavour to ensure that it does not mislead a *customer* as to the *customer's* rights and obligations.

[Note: paragraph 3.15b of *DCG*]

- 7.16.7 G It is misleading for a *firm* to suggest or state that a *customer* may be the subject of court action for the sum of the statute barred debt when the *firm* knows, or reasonably ought to know, that the relevant limitation period has expired.
[Note: paragraph 3.15b of *DCG*]
- 7.16.8 R A *firm* must not continue to demand payment from a *customer* after the *customer* has stated that he will not be paying the debt because it is statute barred.
[Note: paragraph 3.15b of *DCG*]
- 7.16.9 R A *firm* must identify for prospective purchasers of debts arising under *credit agreements* or *consumer hire agreements* those debts which it knows or ought reasonably to know are statute barred, so as to avoid a *firm* taking inappropriate action in relation to such debts against *customers*.
[Note: paragraph 3.23c of *DCG*]

Complaints to the Financial Ombudsman Service and initiating legal proceedings

- 7.16.10 R A *lender* must not initiate legal proceedings in relation to a *regulated credit agreement* where the *lender* is aware that the *customer* has submitted a valid complaint or what appears to the *firm* may be a valid complaint relating to the agreement in question that is being considered by the *Financial Ombudsman Service*.
[Note: paragraph 7.9 (box) of *ILG*]

7.17 Lead generator requirements

- 7.17.1 R A *firm* must not pass on a *customer's* details to third parties, including lead generators, *debt management firms*, *lenders*, *owners*, *debt collectors* or *credit brokers*, unless it is appropriate to do so.
[Note: paragraph 3.9e of *DCG*]
- 7.17.2 G The *FCA* expects a *firm* which is lawfully entitled to pass on a *customer's* details to a third party pursuant to the Data Protection Act 1998 to nonetheless obtain, as a matter of good practice, the *customer's* consent before passing on the information to the third party.
[Note: paragraph 3.9e of *DCG*]

7.18 Duty to give notice of sums in arrears under P2P agreements for fixed-sum credit

Application

- 7.18.1 R This section applies to a *firm* carrying on *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement* for *fixed-sum credit*.
- 7.18.2 R (1) This section does not apply where the *P2P agreement* provides for *credit* of less than £50.
- (2) Paragraph (1) does not apply where two or more *P2P agreements* in relation to the same *borrower* (but whether or not with the same *lender*) are entered into at or about the same time.
- (3) Where (2) applies, the *firm's* obligations in *CONC 7.18* apply as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.

Notice of sums in arrears under P2P agreements

- 7.18.3 R A *firm* must comply with this section where the following conditions are satisfied:
- (1) a *borrower* is required to have made at least two payments under the agreement before that time;
- (2) that the total sum paid under the agreement by the *borrower* is less than the total sum required to have been paid before that time;
- (3) that the amount of the shortfall is no less than the sum of the last two payments which he is required to have made before that time;
- (4) that the *firm* is not already under a duty to give the *borrower* notices under *CONC 7.18.4R* in relation to the agreement;
- (5) that the *lender* is not already under a duty to give the *borrower* notice under section 86B of the *CCA*; and
- (6) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the *borrower*.
- 7.18.4 R (1) The *firm* must, within the period of 14 days beginning with the day on which the conditions in *CONC 7.18.3R* are satisfied, give the *borrower* a notice including the information set out in *CONC 7.18.7R* and *7.18.8R*.
- (2) After giving that notice, the *firm* must give the *borrower* further notices including the information in *CONC 7.18.7R* and *7.18.8R* at intervals of not more than six months.
- 7.18.5 R (1) The duty of the *firm* to give the *borrower* notices under *CONC 7.18.4R* shall cease when either of the conditions mentioned in (2) is satisfied but, if either of those conditions is satisfied before the notice required

by *CONC 7.18.4R(1)* is given, the duty shall not cease until that notice is given.

- (2) The conditions referred to in (1) are:
 - (a) that the *borrower* ceases to be in arrears;
 - (b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the *borrower*.
- (3) For the purposes of (2)(a) the *borrower* ceases to be in arrears when:
 - (a) no payments, which the borrower has ever failed to make under the agreement when required, are still owing;
 - (b) no default sum, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing;
 - (c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and
 - (d) no other sum of interest, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing.
- (4) A *firm* must accompany the notice required by *CONC 7.18.4R* with a copy of the current arrears information sheet under section 86A of the *CCA* modified to omit the final bullet point on the front page concerning time orders.
- (5) The *firm* must not charge the *borrower* a fee in connection with preparation of or the giving of the notice required by *CONC 7.18.4R*.

7.18.6 R In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

Content of arrears notices: fixed sum credit

- 7.18.7 R The notice required by *CONC 7.18.4R* must contain the following information:
- (1) a form of wording to the effect that the notice is given in compliance with the *rules* because the *borrower* is behind with the sums payable under the agreement;
 - (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
 - (3) the date of the notice;

- (4) (a) the name, telephone number or numbers, the postal address, and, where appropriate, any other address of the *firm*; or
- (b) where the *firm* and the *borrower* have entered into an arrangement under which the *borrower* has been given details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all the *borrower's* dealings with the *firm*, the *firm* may, instead of including the telephone number or numbers in (a), refer to that arrangement;
- (5) a description sufficient to identify any agreements and the opening balance under any agreements at the date on which the duty to give the notice arose;
- (6) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:
- "Default sums and interest
- You may have to pay default sums and interest in relation to the missed or partly made payments referred to in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."
- (b) in any other case, a statement in the following form:
- "Default sums and interest
- You will not incur any default sums or extra interest in relation to the missed or partly made payments referred to in this notice. This notice does not take account of any payments received after the date of the notice.";
- (7) a statement in the following form:
- "Notices
- For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices.";
- (8) a statement in the following form:
- "Financial Conduct Authority Information Sheet
- This notice should include a copy of the current information sheet on arrears prepared by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example to think carefully before borrowing money to repay debts as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how

to get advice on dealing with your debt."

Content of first required arrears notices

- 7.18.8 R Where the notice is given under *CONC 7.18.4R(1)* the notice must also state the amount of the shortfall under the agreement which gave rise to the duty to give the notice and the *firm* must:
- (1) within 15 working days of receiving the *borrower's* request for further information about the shortfall which gave rise to the duty to give the notice, give the *borrower* in relation to each of the sums which comprise the shortfall, notice of:
 - (a) the amount of the sums due which comprise the shortfall;
 - (b) the date on which the sums became due; and
 - (c) the amounts the *borrower* paid in respect of the sums due and the dates of those payments;
 - (2) except where the original notice contained all the information specified in (1), include a statement in the following form:

"If you want more information about which payments you failed to make please get in touch with us. We are required to give you this information within fifteen working days of receiving your request for it.";
 - (3) where the *firm* and the *borrower* have entered into an agreement to aggregate, the references to sums due and the reference to amounts paid in (1) may be construed as a reference to the aggregated sums due to the *firm* (on behalf of the *lender*) and the aggregated amounts paid by the *borrower* in accordance with the terms of that agreement.

Content of required arrears notices except first required notices

- 7.18.9 R Where the notice is given under *CONC 7.18.4R(2)* the notice must also contain the following information:
- (1) that part of the opening balance referred to in *CONC 7.18.7R(5)* which comprises any sum which the *borrower* has failed to pay in full when it became due under the agreement, whether or not such sums have been included in a previous notice;
 - (2) the amount and date of any sums paid into the account by, or to the credit of, the *borrower* during the period to which the notice relates;
 - (3) the amount and date of any interest or other charges payable by the *borrower* which became due during the period to which the notice relates, whether or not the interest or other charges relate only to that period. But where the rate or rates of interest provided for under the agreement are not applicable on a per annum basis, this sub-paragraph

does not require amounts and dates of interest which became due during the period to which the notice relates to be set out separately in the notice;

- (4) the amount and date of any movement in the account during the period to which the notice relates which is not required to be included in the notice under (2) and (3);
- (5) the balance under the agreement at the end of the period to which the notice relates;
- (6) that part of the balance referred to in (5) which comprises any sum which the *borrower* has failed to pay in full when it became due under the agreement and which remains unpaid at the end of the period to which the notice relates, whether or not such a sum has been included in a previous notice;
- (7) add the following words to the end of the first sentence of the statement in *CONC 7.18.7R(6)(a)*: "(in addition to any default sums and interest included in this notice)."

7.18.10 R Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the *firm* must include wording explaining why it is not such a demand.

7.18.11 R The reference to the account in *CONC 7.18.9R(2)* and (4) are to be construed as a reference to all accounts maintained by the *firm* (on behalf of a *lender*) which relate to the agreement with the *borrower*.

7.19 Notice of sums in arrears under P2P agreements for running-account credit

Application

7.19.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement for running account credit*.

Notice of sums in arrears under P2P agreements for running account credit

7.19.2 R A *firm* must comply with this section where the following conditions are satisfied:

- (1) a *borrower* is required to have made at least two *repayments* under the agreement;
- (2) that the last two payments which the *borrower* is required to have made before that time have not been made;
- (3) that the *firm* has not already been required to give a notice under *CONC 7.19.3R* in relation to the agreement;

- (4) that the *lender* is not already under a duty to give the *borrower* notice under section 86C of the *CCA*; and
 - (5) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the *borrower*.
- 7.19.3 R (1) The *firm* must, when the *firm* next sends a statement to the *borrower*, give the *borrower* a notice including the information set out in *CONC 7.19.5R*.
- (2) A *firm* must accompany the notice required by (1) with a copy of the current arrears information sheet under section 86A of the *CCA* modified to omit the final bullet point on the front page concerning time orders.
 - (3) The *firm* must not charge the *borrower* a fee in connection with the preparation of or the giving of the notice required by (1).
 - (4) The notice required by (1) may be incorporated in a statement or other notice which the *firm* gives to the *borrower* in relation to the agreement by virtue of *FCA rules* or the *CCA*.

7.19.4 R In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

Content of arrears notices: running account credit

- 7.19.5 R The notice referred to in *CONC 7.19.3R* must contain the following information:
- (1) a form of wording to the effect that it is given in compliance with the *rules* because the *borrower* is behind with his payments under the agreement;
 - (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
 - (3) the date of the notice;
 - (4) a description of the agreement sufficient to identify it;
 - (5) (a) the name, telephone number, postal address and, where appropriate, any other address of the *firm*; or
 - (b) where the *firm* and the *borrower* have entered into an arrangement under which the *firm* has given the *borrower* details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all his dealings with the *firm*, the *firm* may, instead of including the telephone number or numbers referred to in (a), refer to that arrangement;

- (6) in relation to each of the last two payments which the *borrower* is required under the agreement to have made and which have not been paid or not fully paid:
- (a) the amount payable;
 - (b) the date on which that amount became due;
 - (c) in the event that the *borrower* has paid part of that amount, the amount the *borrower* has paid and the date on which that payment was made;
 - (d) the nature of the amount due; and
 - (e) the aggregate of the amounts payable as shown under (a), less the aggregate of the amounts paid as shown under (c);
- (7) a statement in the following form:
- "Missed and partly made payments
This notice does not give details of missed or partly made payments previously notified whether or not they remain unpaid.";
- (8) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:
- "Default sums and Interest
You may have to pay default sums and interest in relation to the missed or partly made payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice.";
- (b) in any other case, a statement in the following form:
- "Default sums and Interest
You will not incur any default sums or extra interest in relation to the missed or partly made payments indicated above. This notice does not take account of any payments received after the date of the notice.";
- (9) a statement in the following form:
- "Financial Conduct Authority Information Sheet
This notice should include a copy of the current information sheet on arrears issued by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example, to think carefully before borrowing money to repay debts, as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial

Conduct Authority information sheet for more information about how to get advice on dealing with your debt."

- 7.19.6 R Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the *firm* must include wording explaining why it is not such a demand.
- 7.19.7 R (1) Subject to (2), where the total amount which the *borrower* has failed to pay in relation to the last two payments due under the agreement prior to the date on which the *firm* came under a duty to give the *borrower* a notice under *CONC* 7.19.3R is not more than £2, the notice:
- (a) need not include any of the information or statements referred to in *CONC* 7.19.4R;
 - (b) but, in that event, shall contain a statement in the following form:
"You have failed to make two minimum payments

Failing to make minimum payments can mean that you have broken the terms of this credit agreement. This could result in your having to pay additional costs. A copy of the Financial Conduct Authority Arrears information sheet is enclosed, which contains more information about what to do when you get behind with your payments.";
- (2) Paragraph (1) does not apply where at the date on which the duty to give notice arose a default sum or other charge has become payable as a result of the *borrower's* failure to pay sums as set out in (1).

7.20 Duty to give notice of default sums under P2P agreements

Application

- 7.20.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement*.
- 7.20.2 R (1) This section does not apply where the *P2P agreement* provides for *credit* of less than £50.
- (2) Paragraph (1)(b) does not apply where two or more *P2P agreements* in relation to the same *borrower* (but whether or not with the same *lender*) are entered into at or about the same time.
- (3) Where (2) applies, the *firm's* obligation in *CONC* 7.20.4R applies as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.
- 7.20.3 R (1) In this section "default sum" means in relation to the *borrower* under a *P2P agreement*, a sum (other than a sum of interest) which is payable by the *borrower* under the agreement in connection with a breach of

the agreement by the *borrower*.

- (2) But a sum is not a default sum in relation to the *borrower* simply because as a consequence of the breach of the agreement the *borrower* is required to pay the sum earlier than would otherwise have been the case.

Notice of default sums

- 7.20.4 R Where a default sum becomes payable under a *P2P agreement* by the *borrower*, the *firm* must give notice to the *borrower* within 35 days of a default sum becoming payable by the *borrower*.
- 7.20.5 R The notice required by *CONC 7.20.4R* must contain:
- (1) a form of wording to the effect that it relates to default sums and is given in compliance with *FCA* rules;
 - (2) the date of the notice;
 - (3) a description of any agreement sufficient to identify any agreements;
 - (4) the *firm's* name, telephone number, postal address and, where appropriate, any other address;
 - (5) the amount and nature of each default sum payable under any agreement which has not been the subject of a previous notice of default sums;
 - (6) the date upon which each default sum referred to in the notice became payable under any agreement;
 - (7) The following statement:
"This Notice does not take account of default sums which we have already told you about in another default sum notice, whether or not those sums remain unpaid."; and
 - (8) the total amount of all the default sums included in the notice.

8 Debt advice

8.1 Application

Who? What?

- 8.1.1 R *CONC 8* applies (except for *CONC 8.10* (Conduct of business: providing credit information services)) to every *firm* with respect to:
- (1) *debt counselling*;

- (2) *debt adjusting*; and
 - (3) to the extent of giving the advice referred to in article 89A(2) of the *Regulated Activities Order*, *providing credit information services*.
- 8.1.2 G *CONC 8.10* (Conduct of business: providing credit information services) sets out that that section applies to every *firm* with respect to *providing credit information services* and with respect to *operating an electronic system in relation to lending*
- 8.1.3 G *CONC 8* covers all *firms* with respect to *debt counselling*, *debt adjusting* and *providing credit information services*, which includes profit-seeking as well as *not-for-profit bodies* which hold such *permissions* and in that case include those bodies with *permission* by virtue of article 62 of the *Regulated Activities Order*.
- [Note: paragraph 1.10 of *DMG*]
- 8.1.4 G The activities of *debt counselling* and *debt adjusting* apply to *credit agreements* and *consumer hire agreements* whether they are regulated or not.

8.2 Conduct standards: debt advice

Overarching principles

- 8.2.1 G The Principles for Businesses (*PRIN*) apply as a whole to *firms* with respect to *debt counselling*, *debt adjusting* and *providing credit information services*.
- 8.2.2 G (1) One aspect of conducting a *firm's* business with due skill, care and diligence under *Principle 2* is that a *firm* should ensure that it gives appropriate advice to *customers* residing in the different countries of the *UK*. Failure to pay proper regard to the differences in options for *debt solutions* available to those *customers* and to the differences in enforcement actions and procedures is likely to contravene *Principle 2* and may contravene other *Principles*.
- [Note: paragraph 3.23d of *DMG*]
- (2) Recommending a *debt solution* which a *firm* knows, believes or ought to suspect is unaffordable for the *customer* is likely to contravene *Principle 2*, *Principle 6*, *Principle 9* and may contravene other *Principles*.
- [Note: paragraph 3.26j of *DMG*]
- (3) An example of behaviour that is likely to contravene *Principle 6* and may contravene other *Principles* in this field is for a *firm* to actively discourage a *customer* from considering alternative sources of *debt counselling*.

[Note: paragraph 3.23m of *DMG*]

- 8.2.3 G A *firm* covered by *CONC 8* has obligations under the *FCA's* Dispute Resolution: Complaints sourcebook (*DISP*) to treat complainants fairly; these are set out in *DISP 1*.

Dealing with lenders of customers

- 8.2.4 R A *firm's* communications to *lenders* (or to *lenders'* representatives) on behalf of its *customers* must be transparent so as to ensure a *firm's customer's* interests are not adversely affected.

[Note: paragraph 2.5 of *DMG*]

- 8.2.5 R Where entry into a *debt solution* will lead to a period when payments to *lenders* (in part or in whole) are not made or are retained by the *firm*, the *firm* must, as soon as possible after the *customer* enters into the *debt solution*, notify the *customer's lenders* of the reason payments are not to be made to the *lender* and the period during which that will be the case.

[Note: paragraphs 3.9a and 3.18niv of *DMG*]

Vulnerable customers

- 8.2.6 R A *firm* must establish and implement clear and effective policies and procedures to identify particularly vulnerable *customers* and deal with such *customers* appropriately.

[Note: paragraph 2.4 of *DMG*]

- 8.2.7 G Most *customers* seeking advice on their debts under *credit agreements* or *consumer hire agreements* may be regarded as vulnerable to some degree by virtue of their financial circumstances. Of these *customers* some may be particularly vulnerable because they are less able to deal with *lenders* or *debt collectors* pursuing them for debts owed. *Customers* with mental health and mental capacity issues may fall into this category.

[Note: paragraph 2.4 of *DMG*]

8.3 Pre contract information and advice requirements

- 8.3.1 R A *firm* must (except where the contract is a *credit agreement* to which the *disclosure regulations* apply) provide sufficient information, on a *durable medium*, when the *customer* first enquires about the *firm's* services, about the following matters to enable the *customer* to make a reasonable decision:

- (1) the nature of the *firm's* service offered in the contract to the *customer*;

[Note: paragraph 3.38b of *DMG*]

- (2) the duration of the contract;

[Note: paragraph 3.38c of *DMG*]

- (3) the total cost of the *firm's* service or, where it is not possible to state the total cost, the formula the *firm* uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;
[Note: paragraph 3.40c of *DMG*]
- (4) any fee or deposit, such as an arrangement, a periodic, a management, or an administrative fee;
[Note: paragraph 3.38c of *DMG*]
- (5) any fee or charge which can be imposed on the customer in relation to cancellation of the contract;
[Note: paragraph 3.38c of *DMG*]
- (6) any other costs likely to be incurred under the contract and the circumstances in which these would be payable;
[Note: paragraph 3.38c of *DMG*]
- (7) where the *firm* bases its fees or charges on some percentage or an hourly rate or some other formula, an explanation of how the fees or charges are calculated;
[Note: paragraph 3.9c of *DMG*]
- (8) the elements of the service that the fees cover;
[Note: paragraph 3.38c of *DMG*]
- (9) the circumstances in which a *customer* may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the *customer* may be required to pay in that case;
[Note: paragraph 3.40d of *DMG*]
- (10) the consequences on the *customer's* credit rating, including how long the matter will show on the *customer's* credit file and that the *customer* may not be able to obtain *credit* or other financial services in the future;
[Note: paragraph 3.38e of *DMG*]
- (11) whether a right to cancel applies and, if so, the period and any conditions for exercising the right to cancel the contract and any amount the *customer* may be required to pay;
[Note: paragraph 3.38h of *DMG*]
- (12) how payments will be allocated to *lenders* and when payments will be made; and
[Note: paragraph 3.38k of *DMG*]
- (13) the period of time between payments being received from the *customer* and payments being made to *lenders*, including the date when the first

payment will be made to *lenders*.

[Note: paragraph 3.38l of *DMG*]

[Note: paragraphs 3.33, 3.35 and 3.38 of *DMG*]

8.3.2 R A *firm* must ensure that:

- (1) all advice given and action taken by the *firm* or its agent or its *appointed representative*:
 - (a) has regard to the best interests of the *customer*;
 - (b) is appropriate to the individual circumstances of the *customer*;
and
 - (c) is based on a sufficiently full assessment of the financial circumstances of the *customer*;

[Note: paragraph 2.6a of *DMG*]

- (2) *customers* receive sufficient information about the available options identified as suitable for the *customers*' needs;

[Note: paragraph 2.6b of *DMG*]

- (3) it explains the reasons why the *firm* considers the available options suitable and other options unsuitable.

[Note: paragraph 2.6b of *DMG*].

8.3.3 G The individual circumstances of the *customer* include, for example, the *customer's* financial position, the country in the *UK* to whose laws and procedures the *customer* and the *lender* in question is subject, and the level of understanding of the *customer*.

[Note: paragraph 2.6c of *DMG*]

8.3.4 R A *firm* must ensure that advice provided to a *customer*, whether before the *firm* has entered into contract with the *customer* or after, is provided on a *durable medium* and:

- (1) makes clear which debts will be included in any *debt solution* and which debts will be excluded from any *debt solution*;

[Note: paragraph 3.38j of *DMG*]

- (2) makes clear the actual or potential advantages, disadvantages, costs and risks of each option available to the *customer*, with any conditions that apply for entry into each option and which debts may be covered by each option;

[Note: paragraphs 3.23a and 3.38b of *DMG*]

- (3) warns the *customer*:

- (a) of the actual or potential consequences of failing to continue to pay taxes, fines, child support payments and debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the *customer's* home;
[Note: paragraph 3.38m of *DMG*]
 - (b) of the actual or potential consequences of not continuing to make repayments under *credit agreements* or *consumer hire agreements*;
[Note: paragraph 3.26k of *DMG*]
 - (c) of the actual or potential consequences of ignoring correspondence or other contact from *lenders* and those acting on behalf of *lenders*;
[Note: paragraph 3.38n of *DMG*]
 - (d) that action to recover debts may be commenced, which may involve further cost to the *customer*;
[Note: paragraph 3.38q of *DMG*]
 - (e) that by entering into a *debt management plan* or another non-statutory repayment arrangement there is no guarantee that any current recovery or legal action will be suspended or withdrawn;
[Note: paragraph 3.38r of *DMG*]
- (4) where relevant to the *debt solution*, makes clear the risks, including the following risks:
- (a) if the arrangement or deed fails the risk of bankruptcy;
 - (b) homeowners may need to release equity from the value of their homes to pay off debts; and that a remortgage may attract higher interest rates or that if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
 - (c) there are restrictions on the expenditure of a *person* who enters into an individual voluntary arrangement or protected trust deed;
 - (d) the *lender* may not approve the individual voluntary arrangement or protected trust deed;
 - (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding;
- [Note: paragraph 3.38s of *DMG*]
- (5) takes proper account of the individual needs of, and any requests made

by, a *customer*; and

[Note: paragraph 3.23f of *DMG*]

- (6) where relevant, explains an insolvency procedure and the role of the *firm*.

[Note: paragraph 3.23o of *DMG*]

[Note: paragraphs 3.23 and 3.38 of *DMG*]

- 8.3.5 G The information required by *CONC* 8.3.4R should be provided leaving sufficient time for the *customer* (taking into account the complexity of the information and the *customer's* financial position) to consider it before having to make a decision on the appropriate course of action.

- 8.3.6 G A *firm* should not unfairly incentivise debt advisors (whether employees, agents or *appointed representatives* of the *firm*) to the extent that an incentive might lead the *firm* not to comply with *CONC* 8.3.2R.

[Note: paragraph 3.22 (box) of *DMG*]

- 8.3.7 R A *firm* must:

- (1) provide the *customer* with a source of impartial information on the range of *debt solutions* available to the *customer* in the relevant country of the *UK*;

[Note: paragraph 3.23b of *DMG*]

- (2) before giving any advice or any recommendation on a particular course of action in relation to the *customer's debts*, carry out a full assessment of:

- (a) the *customer's* financial position (including the *customer's* income, capital and expenditure);
- (b) the *customer's* personal circumstances (including the reasons for the financial difficulty, whether it is temporary or longer term and whether the *customer* has entered into a *debt solution* previously and, if it failed, the reason for its failure); and
- (c) any other relevant factors (including any known or reasonably foreseeable changes in the *customer's* circumstances such as a change in employment status);

[Note: paragraph 3.23c of *DMG*]

- (3) refer a *customer* to a *not-for-profit debt advice body* in circumstances where the *customer*:

- (a) has problems related to debt requiring immediate attention with which the *firm* is unable or unwilling to assist the *customer*; or

[Note: paragraph 3.23gi of *DMG*]

(b) does not have enough disposable income to pay the *firm's* fees;

[Note: paragraph 3.23gii of *DMG*]

(4) refer a *customer* to, or provide contact details for, another *firm* in circumstances where the *firm* is unable to provide an appropriate *debt solution* for the *customer*; and

[Note: paragraph 3.23h of *DMG*]

(5) seek to ensure that a *customer* understands the options available and the implications and consequences for the *customer* of the *firm's* recommended course of action.

[Note: paragraph 3.23i of *DMG*]

8.3.8 G (1) The information and advice referred to in *CONC* 8.3 should be provided in a manner which is clear fair and not misleading to comply with *Principle 7* and *CONC* 3.3.1R, and should be in plain and intelligible language in accordance with *CONC* 3.3.2R. A *firm* should encourage a *customer* to read the information and allow sufficient time between providing the information and entering into the contract to enable the *customer* to seek independent advice if so desired.

[Note: paragraphs 3.21, 3.35 and 3.36 of *DMG*]

(2) The *firm's* services referred to in *CONC* 8.3 include any *debt solution* the *firm* offers to a *customer*. Therefore, in setting out fees or charges for a *firm's* services, the fees and charges the *firm* charges in relation to a *debt solution* should be included.

(3) The serious problems related to debt in *CONC* 8.3.7R are likely to include, where non-payment of a debt may result in the loss of a customer's home or loss of access to essential goods or services and, in particular, where legal action is threatened or legal action is taken in relation to debts which may have that effect.

[Note: paragraph 3.23gi of *DMG*]

8.4 Debt solution contracts

8.4.1 R A *firm* must provide a *customer* with a written contract setting out its terms and conditions for the provisions of its services.

[Note: paragraph 3.40a of *DMG*]

8.4.2 R A *firm* must include in its written contract (other than a credit agreement to which the Consumer Credit (Agreements) Regulations 2010 apply) the following matters:

(1) the nature of the service to be provided by the *firm*, including the specific *debt solution* to be offered to the *customer*;

[Note: paragraph 3.40b of *DMG*]

- (2) the duration of the contract;

[Note: paragraph 3.40c of *DMG*]

- (3) the total cost of the *firm's* service or, where it is not possible to state the total cost, the formula the *firm* uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;

[Note: paragraph 3.40c of *DMG*]

- (4) the circumstances in which a *customer* may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the *customer* may be required to pay in that case;

[Note: paragraph 3.40d of *DMG*]

- (5) set out the duration and conditions for exercise of any right to cancel that may apply and any fees or charges the *customer* may be required to pay.

[Note: paragraph 3.40e of *DMG*]

8.4.3 R A *firm* must not include the following terms in a contract with a *customer*:

- (1) a term requiring the *customer* to sign a declaration stating in any way that the *customer* understands the requirements of the contract;

[Note: paragraph 3.41a of *DMG*]

- (2) a term restricting or prohibiting the *customer* from corresponding with or responding to a *lender* or with any *persons* acting on behalf of a *lender*;

[Note: paragraph 3.41b of *DMG*]

- (3) a term which states or implies the *firm* has no liability to the *customer*; and

[Note: paragraph 3.41c of *DMG*]

- (4) a term which states or implies that there are no circumstances in which a *customer* is entitled to a refund.

[Note: paragraph 3.41d of *DMG*]

8.4.4 G A *firm* may be required to make a refund of its fees and charges, in whole or in part, if a *firm* fails to deliver its service in whole in part or it has carried out the service without reasonable care and skill.

8.5 Financial statements and debt repayment offers

8.5.1 R A *firm* must ensure that a financial statement sent to a *lender* on behalf of a

customer:

- (1) is accurate, realistic and must present a sufficiently clear and complete account of the *customer's* income and expenditure, debts and the availability of surplus income;

[Note: paragraph 3.24 of *DMG*]

- (2) state any fees or charges being made by the *firm*;

- (3) is sent only after having obtained the *customer's* consent to send the statement and the *customer's* confirmation as to the accuracy of the statement;

[Note: paragraph 3.26fg of *DMG*]

- (4) is provided to the *customer's lenders* as soon as practicable after the *customer* has confirmed its accuracy; and

[Note: paragraph 3.26e of *DMG*]

- (5) is also sent to the *customer*, together with any accompanying correspondence.

[Note: paragraph 3.26h of *DMG*]

8.5.2 G The format of the financial statement sent to *lenders* on behalf of the *customer* should be uniform and logically structured in a way that encourages consistent responses from *lenders* and reduces queries and delays. *Firms* may wish to use the common financial statement facilitated by the Money Advice Trust.

8.5.3 G (1) Where a *firm* makes an offer to a *lender* to repay a *customer's* debts on behalf of a *customer*, the offer should be realistic, sustainable and in accordance with *CONC* 8.3.2R should, in particular, have regard to the best interests of the *customer*.

- (2) A sustainable offer should enable the customer to meet repayments in full when they are due out of the *customer's* disposable income for the whole duration of the repayment proposal.

- (3) Setting the offer should take full account of a *customer's* obligations to pay taxes, fines, child support payments and those debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the *customer's* home.

- (4) In considering what are essential goods and services, the *firm* should consider the *customer's* personal circumstances, for example, for disabled persons debts for telecommunications services are likely to be essential.

[Note: paragraphs 3.25, 3.26c and 3.28d of *DMG*]

8.5.4 R A *firm* must:

- (1) take reasonable steps to verify the *customer's* identity, income and outgoings;
[Note: paragraph 3.26a of *DMG*]
- (2) seek explanations if a *customer* indicates expenditure which is particularly high or low; and
[Note: paragraph 3.26b of *DMG*]
- (3) where applicable, notify a *customer* that a particular *lender* will not deal with the *firm* (for whatever reason), as soon as possible after the *firm* becomes aware that the *customer* owes a debt to that *lender*.
[Note: paragraph 3.26l of *DMG*]

- 8.5.5 G What are reasonable steps for verification of the identity, income and expenditure of the *customer* depends on the circumstances of the case and the type of service offered by the *firm*. Estimates of expenditure would be reasonable where precise figures are not readily available. The common financial statement includes expenditure guidelines, but the use of expenditure guidelines needs to take into account the individual circumstances of the *customer*.
[Note: paragraph 3.26a (box) of *DMG*]

8.6 Changes to contractual payments

- 8.6.1 R (1) Where a *firm* gives advice to a *customer* not to make a contractual *repayment* or to cancel any means of making such a *repayment* before any *debt solution* is agreed or entered into, the *firm* must be able to demonstrate the advice is in the *customer's* best interests.
- (2) Where a *firm* gives advice of the type in (1), the *firm* must advise the *customer* (C) that if C adopts the advice C should notify C's *lenders* without delay and explain that C is following the *firm's* advice to this effect.
[Note: paragraph 3.27 of *DMG*]
- 8.6.2 R If the effect of advice the *firm* gives (if adopted by the *customer*) is that contractual *repayments* are not made or are not made in full (for one or more *repayments*), the *firm* must warn the *customer* of the actual or potential consequences of taking that course of action.
[Note: paragraph 3.28a of *DMG*]
- 8.6.3 R A *firm* must only advise a *customer* to make *repayments* at a rate lower than the rate necessary to repay interest and charges accruing where it is in the *customer's* best interests.
[Note: paragraph 3.28b of *DMG*]

8.6.4 G An example where it might be in the *customer's* best interests not to repay at the level in *CONC* 8.6.3R is where there is insufficient disposable income to meet essential expenditure of the type referred to in *CONC* 8.5.3G. Where that is the case, the *firm* should explain clearly to the *customer* why this course of action is necessary and the consequences of the course of action.

8.6.5 R Where a *firm* has advised a *customer* not to make contractual payments (in full or in part) or to cancel the means of making such payments or not to make *repayments* necessary to meet interest and charges accruing, the *firm* must advise the *customer* if it becomes clear that that course of action is not producing effects in the *customer's* best interest to enable the *customer* to take suitable action.

[Note: paragraph 3.28c of *DMG*]

8.6.6 G An example of an effect not in the *customer's* best interests would be if a *lender* has continued to apply interest and charges to the *customer's* debt.

[Note: paragraph 3.28c of *DMG*]

8.7 Charging for debt counselling, debt advice and related services

8.7.1 G (1) The distance marketing rules in *CONC* 2.6, including the right to cancel in *CONC* 11, apply to *firms* with respect to *distance contracts* which are credit agreements, consumer hire agreements and agreements the subject matter of which comprises, or relates to, *debt counselling*, *debt adjusting*, *providing credit information services* and *providing credit references*. *CONC* 11 excludes various credit agreements from the right to cancel.

(2) Where a *consumer* uses the right to cancel under *CONC* 11 or under the Financial Services (Distance Marketing) Regulations 2004 to cancel an agreement with a *firm* to set up or administer a *debt solution*, the *firm* should refund any sum paid, less a charge (if the *customer* requested the *firm* to begin to carry out its service within the cancellation period (see *CONC* 11.1.1R or regulation 10 of those Regulations) and the *firm* is otherwise entitled to impose a charge) that the *firm* is entitled to make under *CONC* 11.1.11R or regulation 13(6) to (9) of those Regulations.

[Note: paragraphs 3.29 and 3.31 of *DMG*]

8.7.2 R A *firm* must ensure that the obligations placed on the *customer* in relation to the amount, or the timing of payment, of its fees or charges:

(1) do not have the effect that the *customer* pays all, or substantially all, of those fees in priority to making repayments to *lenders* in accordance with the *debt management plan*; and

(2) do not undermine the *customer's* ability to make (through the *firm* acting on the *customer's* behalf) significant repayments of a consistent

amount to the *customer's lenders* throughout the duration of the *debt management plan*, starting with the first month of the plan; but

- (3) Paragraphs (1) and (2) do not prevent, to the extent the *firm* complies with all applicable *rules*, a *firm* operating a full and final settlement model, in which the *firm* holds money on behalf of the *customer* and does not distribute that money promptly, pending negotiating a settlement with the *customer's lenders*.

[Note: paragraphs 5.3 and 5.4 Debt Management Protocol]

8.7.3 R A *firm* must:

- (1) in good time before entering into a contract with the *customer*, disclose the existence of any commission or incentive payments relevant to the service provided to the *customer* between the *firm* and any third party and at any time, if the *customer* requests, to disclose the amount of any such commission or incentive payment;

[Note: paragraph 3.33c of *DMG*]

- (2) send a revised financial statement in the same format as that required under *CONC* 8.6.1R to the *customer's lenders* where the *firm's* fees or charges alter during an arrangement and would affect the amount available for distribution to *lenders*;

[Note: paragraph 3.33f of *DMG*]

- (3) at the earlier of, where the *firm* identifies or it is established that advice provided by the *firm* to the *customer* was incorrect or was not appropriate to the *customer*, the *firm* must refund or credit to the *customer's* account fees or charges imposed for that advice;

[Note: paragraph 3.34m of *DMG*]

- (4) make an appropriate refund of fees or charges paid where the whole or any part of the service as agreed with the *customer* has not been provided or not provided with a reasonable standard of skill and care.

[Note: paragraph 3.34o of *DMG*]

8.7.4 G A *firm*, in presenting its fees, costs and charges, should distinguish the fees payable for the *firm's* services from any charges payable for court proceedings or other insolvency proceedings.

8.7.5 R A *firm* must not:

- (1) without a reasonable justification, switch a *customer* from one *debt solution* to another while making a further charge for setting up or administering the new *debt solution* to the extent that some or all of that work has already been carried out by the *firm*;

[Note: paragraphs 3.32 and 34k of *DMG*]

- (2) switch a *customer* to a different *debt solution*, without obtaining the *customer's* consent after having fully explained to the *customer* the reason for the change;
[Note: paragraph 3.34l of *DMG*]
- (3) require or take any payment from a *customer* before the *firm* has entered into contract with the *customer* concerning a *debt solution*;
[Note: paragraph 3.34d of *DMG*]
- (4) request any payment from a *customer's payment account*, unless the *customer* has specifically authorised the *firm* to do so and not cancelled that authorisation;
[Note: paragraph 3.34d (box) of *DMG*]
- (5) accept payment for fees or charges by credit card or another form of *credit* (excluding a payment where a *firm* does not know and cannot be expected to know a *customer's* current account is in debit or would be taken into debit by the payment);
[Note: paragraph 3.34e of *DMG*]
- (6) impose cancellation charges that are unreasonable or disproportionate when compared to the actual costs necessarily incurred by the *firm* in reasonably providing its service;
[Note: paragraph 3.34h of *DMG*]
- (7) claim a fee or charge from a *customer* or take payment from a *customer's* current account which is not provided in the agreement with the *customer*, or where it is provided for but is, or is likely to be, unfair under the Unfair Terms in Consumer Contracts Regulations 1999;
[Note: paragraph 3.34i of *DMG*]
- (8) where the *firm* identifies that advice provided by the *firm* to the *customer* was incorrect or was not appropriate to the *customer*, charge an additional fee for further or revised advice;
[Note: paragraph 3.34m of *DMG*]
- (9) request, suggest or instruct *customers* seeking to recover refunds of fees from the *firm* to make contact with the *firm* on a premium rate telephone number.
[Note: paragraph 3.34n of *DMG*]

8.8 Debt management plans

8.8.1 R A *firm* in relation to a *customer* with whom it has entered into a *debt*

management plan must:

- (1) maintain contact with the *customer*;
[Note: paragraph 3.44 of *DMG*]
- (2) regularly monitor and review the financial position and circumstances of the *customer*;
[Note: paragraph 3.44 of *DMG*]
- (3) adapt the *debt management plan* to take into account relevant changes in the financial position and circumstances of the *customer*;
[Note: paragraph 3.44 of *DMG*]
- (4) inform the *customer* without delay of the outcome of negotiations with *lenders*, in particular, where the *lender* has:
 - (a) refused to deal with the *firm*; or
 - (b) returned payments to the *firm*; or
 - (c) refused the debt repayment offer; or
 - (d) refused to freeze interest or charges accruing;
[Note: paragraph 3.45a of *DMG*]
- (5) inform the *customer* of any material developments about the relationship between the *customer* and the *customer's lenders*;
[Note: paragraph 3.45b of *DMG*]
- (6) provide the *customer* with copies of correspondence or documentation relevant to the relationship between the *customer* and the *customer's lenders*;
[Note: paragraph 3.45b of *DMG*]
- (7) where the *firm* makes debt repayments on behalf of the *customer*:
 - (a) monitor the *customer's* repayments for evidence which suggests a change in the *customer's* financial circumstances;
 - (b) review, and amend or terminate, where appropriate, the *customer's debt management plan* at the earlier of:
 - (i) each anniversary of entering into the plan; or
 - (ii) as soon as the *firm* becomes aware of a material change in the *customer's* circumstances; and
 - (c) inform the *customer* of the outcome of any reassessment;
[Note: paragraph 3.45c of *DMG*]

- (8) provide a statement to the *customer* at the start of the *debt management plan*, and at least annually or at the *customer's* reasonable request, setting out:
- (a) a balance showing the amount owed by the *customer*, including any interest charges at the beginning of the statement period;
 - (b) fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract;
 - (c) a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;
 - (d) the duration or estimated duration of the contract;
 - (e) the total cost of the *firm's* service over the duration or estimated duration of the contract; and
 - (f) monthly or other periodic payments made to lenders;

[Note: paragraphs 3.45cde of *DMG*]

- (9) maintain adequate records relating to each *debt management plan* which the *firm* has administered for a *customer* until the contract between the *customer* and the *firm* is completed or terminated;

[Note: paragraph 3.45i of *DMG*]

- (10) check the accuracy of the details of a *customer's* accounts; and

[Note: paragraph 3.45j of *DMG*]

- (11) use reasonable endeavours not to send inaccurate information to *lenders*.

[Note: paragraph 3.45j of *DMG*]

- 8.8.2 G (1) Evidence that there may have been a material change in a *customer's* financial circumstances is likely to include where a *customer* who has not previously missed payments under the *debt management plan* misses such payments.

[Note: paragraph 3.45ci of *DMG*]

- (2) Where the *firm* informs a *customer* of the outcome of a review of a *debt management plan*, it should seek to discuss with the *customer* any changes to the plan or the *firm's* service at the earliest reasonably opportunity.

[Note: paragraph 3.45ciii of *DMG*]

8.9 Lead generators: including firm responsibility in dealing with lead generators

- 8.9.1 G The Principles for Businesses (in particular *PRIN 6* and *PRIN 7*) apply to actions of a *firm* dealing with a *customer* who has been referred to it through a *lead generator*. For example, where a *firm* acts on a sales lead and knows or ought to know that the *lead generator* is using misleading information, advice or actions to obtain a *customer's* personal data is likely to amount to a breach by the *firm* of *PRIN 6* and *PRIN 7*.
- 8.9.2 R A *firm* must take reasonable steps before entering into an agreement to accept sales leads for *debt counselling* or *debt adjusting* or *providing credit information services* from a *lead generator* to ensure:
- (1) that any of the *lead generator's* advice, any content of its website and advertising and any of its commercial practices comply with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008;
 - (2) that the *lead generator* is registered with the Information Commission's Office under the Data Protection Act 1998; and
 - (3) that the *lead generator* has processes in place to ensure it complies with that Act and with the Privacy and Electronic Communications (EC Directive) Regulations 2003.

[Note: paragraph 3.9 of *DMG*]

- 8.9.3 G The steps required to satisfy the requirement in *CONC 8.9.2R* should depend upon the regularity with which the *firm* intends to accept sales leads from the *lead generator*. If sales leads provided by a *lead generator* are likely to be on a single or occasional basis, less rigorous checks should be required than for a specialist sales *lead generator*.

[Note: paragraph 3.9 (box) of *DMG*]

- 8.9.4 R A *firm* must take reasonable steps, where it has agreed to accept sales leads from a *lead generator* for *debt counselling* or *debt adjusting* or *providing credit information services*, to ensure that the *lead generator*:
- (1) where it does not have a *Part 4A permission* for *debt counselling* and is not an *appointed representative* of a *firm* with such permission, does not carry on *debt counselling* in obtaining or passing on sales leads to the *firm*;
 - (2) where it carries on *debt counselling*, has and continues to have a *Part 4A permission* for *debt counselling* or is an *appointed representative* of a *firm* with such permission;

- (3) where it does not have a *Part 4A permission* covering the relevant activity, does not claim to or imply that it provide *debt counselling*, *debt adjusting* or be *providing credit information services*;
[Note: paragraph 3.12 of *DMG*]
- (4) complies with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008 in relation to any of its advice, any content of its website and any of its advertising and any of its commercial practices;
[Note: paragraph 3.9a of *DMG*]
- (5) makes the true nature of its services clear to *customers*, through any means of communication or promotion it uses;
[Note: paragraph 3.12 of *DMG*]
- (6) where it seeks a *customer's* personal data to pass on to a *firm* for a fee, it makes clear to the *customer* that the personal data will be passed on to the *firm*;
[Note: paragraph 3.12c of *DMG*]
- (7) makes clear to a *customer* any financial interest it has in passing on a sales lead to the *firm*;
[Note: paragraph 3.12d of *DMG*]
- (8) makes clear, if asked by a *customer*, the nature of its relationship with the *firm*;
[Note: paragraph 3.12e of *DMG*]
- (9) does not falsely claim or imply in any way that it is or represents a charitable or *not-for-profit body* or government or local government organisation;
[Note: paragraph 3.12f of *DMG*]
- (10) communicates with customers consistent with, and promotes, services the *firm* is able to provide;
[Note: paragraph 3.12h of *DMG*]
- (11) complies with the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Data Protection Act 1998;
[Note: paragraph 3.11 of *DMG*]
- (12) does not send, or cause to be sent, an *electronic communication* to a *customer* (C) unless C has previously notified the *lead generator* that C consents for the time being to such communications being sent or caused to be sent by the *lead generator*;
[Note: paragraph 3.12j of *DMG*]

- (13) does not make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called) a call to a *customer* (C), unless C has previously notified the caller that for the time being C consents to such communications being made by or caused to be made by the caller on the line in question;

[Note: paragraph 3.12j of *DMG*]

- (14) enables *customers* to cancel their consent using a clear and easy method to be called or sent any communication.

[Note: paragraph 3.12m of *DMG*]

[Note: paragraphs 3.7 and 3.8 of *DMG*]

Guidance for firms

- 8.9.5 G The *FCA* would expect *firms* that agree with lead generators to accept sales leads in relation to *debt counselling* or *debt adjusting* to be able to identify, upon request, all the lead generators from which they have received leads (with the *FCA* authorisation number, where applicable).
- 8.9.6 G Claiming or implying a person is or represents, for example, a charitable organisation is likely to include operating a website which looks like, or is designed to look like, the website of such an organisation.
- 8.9.7 G In complying with *CONC* 8.9.4R a *firm* that agrees with a lead generator to accept sale leads should:
- (1) check with the Information Commissioner's Office that the lead generator is appropriately registered under the Data Protection Act 1998; and
 - (2) check the lead generator's Privacy and Electronic Communications (EC Directive) Regulations 2003 process documentation.

8.10 Conduct of business: providing credit information services

Application

- 8.10.1 R This section applies to:
- (1) a *firm providing credit information services* in relation to information relevant to the financial standing of an *individual*;
 - (2) a *firm carrying on operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement*.

Conduct

- 8.10.2 G The *Principles* apply to a *firm* with respect to *providing of credit information services*. A *firm* providing such services should, for example, set out clearly in any communication to a *customer* the extent of the service it is able to offer.
- [**Note:** paragraph 3.46 of *DMG*]
- 8.10.3 R A *firm* must not:
- (1) claim to be able to remove negative but accurate information from a *customer's* credit file, including entries concerning adverse credit information and court judgments;
[**Note:** paragraph 3.47ai of *DMG*]
 - (2) mislead a *customer* about the length of time that negative information is held on the *customer's* credit file or any official register;
[**Note:** paragraph 3.47aii of *DMG*]
 - (3) claim that a new credit file can be created, such as by the *customer* changing address.
[**Note:** paragraph 3.47aiii of *DMG*]
- 8.10.4 G It is likely to be a contravention of the *Principles*, for example *Principles 6* and *Principle 7*, where a *firm*:
- (1) claims in a communication to a *customer* to be able to remove negative but accurate entries from a *customer's* credit file, but instead where the *customer* enquires about this service is offered the *firm's* service as a *lender* or a *credit broker*;
 - (2) fails to inform a *customer* that a *credit reference agency* will not respond to the *firm* taking steps in relation to the *customer's* credit file and will only send the *customer's* credit file to the *customer*.
[**Note:** paragraphs 3.47cd of *DMG*]

9 Credit reference agencies

9.1 Application

- 9.1.1 R This chapter applies to a *firm* with respect to *providing credit references*.

9.2 Conduct of business

Information about correction of entries in credit reference agency files

9.2.1 R Within 10 working days after any of the following events:

- (1) the *credit reference agency* giving notice under section 159(2) of the *CCA* that it has removed an entry from the file kept by it about an *individual* or has amended such an entry (including where it has amended an entry by removing information from it); or
- (2) the *credit reference agency* giving notice under section 159(4) of the *CCA* that it has received a notice under section 159(3) requiring it to add a notice of correction to the file and intends to comply with the notice; or
- (3) the expiry of the period specified in an order of the *FCA* or the Information Commissioner under section 159(5) of the *CCA* as the period within which the order is to be complied with;

the *credit reference agency* must give notice of the particulars specified in *CONC 9.2.2R* to each *person* to whom at any time since the relevant date it has furnished information relevant to the financial standing of the *individual* concerned.

[**Note:** regulation 5 of SI 1977/330]

9.2.2 R The particulars referred to in *CONC 9.2.1R* are:

- (1) in relation to information included in any entry which has been removed or amended or which is referred to in a notice of correction:
 - (a) particulars of any entry which has been removed from the file and a statement that it has been removed;
 - (b) particulars of any entry which has been amended and of the amendment, or of the entry as amended;
 - (c) particulars of the entry, together with a copy of the notice of correction;
- (2) where the information did not include the entry which has been removed or amended or which is referred to in a notice of correction, but which (whether in the form of a rating or opinion or otherwise) was based in whole or in part on any such entry and has been, or falls to be, modified by reason of the removal, amendment or notice:
 - (a) particulars of the modified information; and
 - (b) a statement that the information has been modified by reason of the removal, amendment or notice, as the case may be.

9.2.3 R In this section, "the relevant date" means the date six months immediately preceding the receipt by the *credit reference agency* from the *individual* of the request, particulars and fee referred to in section 158(1) of the *CCA*, or the request and fee (if a fee is payable) referred to in section 7(2) of the Data Protection Act 1998 and, if applicable, the receipt of any further information

requested by the *credit reference agency* referred to in section 7(3) of that Act.

10 Prudential rules for debt management firms

10.1 Application and purpose

Application

10.1.1 R This chapter applies to:

- (1) a *debt management firm*; and
- (2) a *not-for-profit debt advice body* that, at any point in the last 12 *months*, has held £1 million or more in *client money* or as the case may be, projects that it will hold £1 million or more in *client money* in the next 12 *months*.

Application: professional firms

10.1.2 R (1) This chapter does not apply to an *authorised professional firm*:

- (a) whose main business is the practice of its profession; and
 - (b) whose regulated activities covered by this chapter are incidental to its main business.
- (2) A *firm's* main business is the practice of its profession if the proportion of income it derives from professional fees is, during its annual accounting period, at least 50% of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this purpose).
- (3) Professional fees are fees, commissions and other receipts receivable in respect of legal, accountancy, conveyancing and surveying services provided to clients but excluding any items receivable in respect of *regulated activities*.

Purpose

10.1.3 G This chapter builds on the *threshold condition* referred to at *COND 2.4* (Appropriate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement. This chapter also builds on *Principle 4* which requires a *firm* to maintain adequate financial resources by setting out prudential requirements for a *firm* according to what type of *firm* it is.

10.1.4 G Prudential standards have an important role in minimising the risk of harm to consumers by ensuring that a *firm* behaves prudently in monitoring and managing business and financial risks.

10.1.5 G More generally, having adequate prudential resources gives the *firm* a degree

of resilience and some indication to consumers of creditworthiness, substance and the commitment of its owners. Prudential standards aim to ensure that a *firm* has prudential resources which can provide cover for operational and compliance failures and pay redress, as well as reducing the possibility of a shortfall in funds and providing a cushion against disruption if the *firm* ceases to trade.

10.2 Prudential resources requirements

General solvency requirement

- 10.2.1 R A *firm* must, at all times, ensure that it is able to meet its liabilities as they fall due.

General prudential resource requirement

- 10.2.2 R A *firm* must ensure that, at all times, its prudential resources are not less than its prudential resources requirement.

Prudential resources: relevant accounting principles

- 10.2.3 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its annual financial statements unless a *rule* requires otherwise.

Prudential resources requirement: firms carrying on other regulated activities

- 10.2.4 R The prudential resources requirement for a *firm* carrying on a *regulated activity* or activities in addition to those covered by this chapter, is the higher of:
- (1) the requirement which is applied by this chapter; and
 - (2) the prudential resources requirement which is applied by another *rule* or requirement to the *firm*.

Prudential resources requirement

- 10.2.5 R The prudential resources requirement for a *firm* to which this chapter applies is the higher of:
- (1) £5,000; and
 - (2) 0.25% of the total value of the *firm's relevant debts under management* outstanding.
- 10.2.6 R On its *accounting reference date* in each year, a *firm* must calculate 0.25% of the total value of its *relevant debts under management* outstanding on that date. The *firm* must use the result of this calculation to establish its prudential

resources requirement for the next 12 *months*.

What is not included as relevant debts under management

- 10.2.7 G *Debt adjusting* in relation to which a *firm* would be exempt from the *general prohibition* as a result of paragraph 52 of the Schedule to the *Exemption Order* (if it did not have *Part 4A permission*) does not affect the *firm's* prudential resources requirement under this section. A debt in relation to which a *person* is carrying on *debt adjusting* and is acting as an insolvency practitioner (within section 388 of the Insolvency Act 1986) is therefore excluded from the calculation of its *relevant debts under management* (but a debt in relation to which the same *person* is carrying on *debt-adjusting* that falls outside of that exemption is included in the calculation).

Determining the prudential resources requirement

- 10.2.8 R The total value of a *firm's relevant debts under management* outstanding is the number of *relevant debts under management* multiplied by the amount of each *relevant debt under management*.
- 10.2.9 G If a *firm* has 1000 *relevant debts under management* and each of those debts is £10,000, the total value of the *firm's relevant debts under management* is £10,000,000. If the *firm* does not carry on any other *regulated activity* to which another higher prudential resources requirement applies, its prudential resources requirement is:

$$0.25\% \times (1,000 \times 10,000) = \text{£}25,000$$

- 10.2.10 G If during the following year 20% (£200) of each *relevant debt under management* is paid off by the borrower or hirer leaving an outstanding balance of £800 on each *relevant debt under management*, and during that year the *firm* does not carry on *debt adjusting* in relation to any further debts due under *credit agreements* or *consumer hire agreements*, the total value of the *firm's relevant debt under management* is £8,000,000. If the *firm* does not carry on any other *regulated activity* to which another higher prudential resources requirement applies, its prudential resources requirement is:

$$0.25\% \times (800 \times 10,000) = \text{£}20,000$$

Recalculating the prudential resources requirement

- 10.2.11 R If a *firm* experiences a greater than 15% increase in the total value of its *relevant debts under management* within a 12 *month* period, it must recalculate its prudential resources requirement using the new total value of its *relevant debts under management*.
- 10.2.12 R A *firm* must notify the *FCA* of any change in its prudential resources requirement within 14 *days* of that change.

10.3 Calculation of prudential resources

10.3.1 R A *firm* must calculate its prudential resources only from the items which are eligible to contribute to a *firm's* prudential resources from which it must deduct certain items (see *CONC* 10.3.3R).

10.3.2 R Table: Items which are eligible to contribute to the capital resources of a firm

	Item	Additional explanation	
1	<i>Share capital</i>	This must be fully paid and may include:	
		(1)	ordinary <i>share capital</i> ; or
		(2)	preference <i>share capital</i> (excluding preference <i>shares</i> redeemable by shareholders within two years).
2	Capital other than <i>share capital</i> (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i> :	
		(1)	capital account, that is the account:
		(a)	into which capital contributed by the <i>partners</i> is paid; and
		(b)	from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:
			(i) he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i> ; or
			(ii) the <i>partnership</i> is otherwise dissolved or wound up; and
		(2)	current accounts according to the most recent financial

			statement.
		For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i> :	
		(1)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;
		(2)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one financial year.
3	Reserves (Note 1)	These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i> .	
		For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:	
		(1)	a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;
		(2)	a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
		(3)	in respect of a <i>defined benefit occupational pension scheme</i> :
		(a)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;
		(b)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one financial year.
4	Interim net profits (Note 1)	If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.	
5	Revaluation		

	reserves	
6	Subordinated loans/debt	Subordinated loans must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans.
Note:		
1	Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.	

10.3.3 R Table: Items which must be deducted from prudential resources

1	<i>Investments in own shares</i>
2	<i>Investments in subsidiaries</i> (Note 1)
3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 4)
Notes	<p>1 <i>Investments in subsidiaries</i> are the full balance sheet value.</p> <p>2 Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.</p> <p>3 The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the capital resources are being computed.</p>

Subordinated loans/debt

10.3.4 R A subordinated loan/debt must not form part of the prudential resources of the *firm* unless it meets the following conditions:

- (1) it has an original maturity of:
 - (a) at least five years; or
 - (b) it is subject to five years' notice of repayment;
- (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;

- (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm*;
- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated debt must be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (5) the subordinated debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;
- (8) the terms of the subordinated debt must be set out in a written agreement that contains terms that provide for the conditions set out in this *rule*; and
- (9) the debt must be unsecured and fully paid up.

10.3.5 R When calculating its prudential resources, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

a – b		
where:		
a	=	Items 1 - 5 in the Table of items which are eligible to contribute to a <i>firm</i> 's prudential resources (see <i>CONC</i> 10.3.2R)
b	=	Items 1 - 5 in the Table of items which must be deducted from a <i>firm</i> 's prudential resources (see <i>CONC</i> 10.3.3R)

10.3.6 G *CONC* 10.3.5R can be illustrated as follows:

(1)	Share Capital	£20,000
	Reserves	£30,000
	Subordinated loans/debts	£10,000
	Prudential resources	£10,000
As subordinated loans/debts (£10,000) are less than the total of share capital + reserves – intangible assets (£40,000) the <i>firm</i> need not exclude any of its subordinated loans/debts pursuant to <i>CONC</i> 10.3.5R. Therefore total prudential resources will be £50,000.		

(2)	Share Capital	£20,000
	Reserves	£30,000
	Subordinated loans/debts	£60,000
	Prudential resources	£10,000
<p>As subordinated loans/debts (£60,000) exceed the total of share capital + reserves – intangible assets (£40,000) by £20,000, the <i>firm</i> should exclude £20,000 of its subordinated loans/debts when calculating its prudential resources. Therefore total prudential resources will be £80,000.</p>		

11 Cancellation

11.1 The right to cancel

11.1.1 R Except as provided for in *CONC* 11.1.2R, a *customer* has a right to cancel a *distance contract* without penalty and without giving any reason, within 14 calendar days where that contract is:

- (1) a *consumer credit agreement*;
- (2) a *consumer hire agreement*;
- (3) an agreement between an *individual* and a *firm* the subject matter of which comprises or relates to *debt counselling*, *debt adjusting*, *providing credit information services* or *providing credit references*.

[**Note:** article 6(1) of the Distance Marketing Directive in relation to distance contracts that are consumer credit agreements.]

11.1.2 R (1) For a *credit agreement* there is no right to cancel under *CONC* 11.1.1R (except where (2) or (3) applies):

- (a) a regulated consumer credit agreement (within the meaning of that section) to which section 66A (right to withdraw) of the *CCA* applies;
- (b) a *credit agreement* under which a *lender* provides *credit* to a *consumer* and where the *consumer's* obligation to repay is secured by a legal mortgage on *land*;
- (c) a *credit agreement* cancelled under regulation of 15(1) of the Consumer Protection (Distance Selling) Regulations 2000 (automatic cancellation of a related credit agreement);
- (d) a *credit agreement* cancelled under regulation 23 of the Timeshare, Holiday Products, Resale and Exchange Contracts

Regulations 2010 (automatic termination of credit agreement); and

- (e) a *restricted-use credit agreement* to finance the purchase of *land* or an existing building, or an agreement for a bridging loan in connection with the purchase of *land* or an existing building.
- (2) There is a right to cancel under *CONC* 11.1.1R where the *lender* has not complied with *CONC* 2.7.6R, unless the *distance contract* falls with the exception in *CONC* 2.7.12R and the *firm* has complied with the requirements of that *rule*.
- (3) There is a right to cancel under *CONC* 11.1.1R where the circumstances in *CONC* 2.7.12R apply but the *lender* has not supplied all the contractual terms and conditions and information as required in *CONC* 2.7.12R.

11.1.3 G Section 66A of the *CCA* (right to withdraw) does not apply to an agreement for *credit* exceeding £60,260, an agreement secured on *land*, a *restricted-use credit agreement* to finance the purchase of *land* or an agreement for a bridging loan in connection with the purchase of *land*. Section 67 of the *CCA* (cancellable agreements) applies to *regulated consumer credit agreements* (apart from agreements secured on *land*, *restricted-use credit agreements* to finance the purchase of *land* or agreements for a bridging loan in connection with the purchase of *land* and agreements covered by section 66A) and *consumer hire agreements* in the circumstances specified in the section.

11.1.4 G A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *customer* as those in this chapter, unless the differences are clearly explained.

Beginning of cancellation period

- 11.1.5 R The cancellation period begins:
- (1) either from the day the *distance contract* is made; or
 - (2) from the day on which the *consumer* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under *CONC* 2.7.6R or under *CONC* 2.7.12R, if that is later than the date referred to in (1) above.

[**Note:** article 6(1) of the Distance Marketing Directive in relation to distance contracts]

Disclosing the right to cancel

- 11.1.6 R (1) The *firm* must disclose to a *consumer* in good time or, if that is not possible, immediately after the *consumer* is bound by a contract to which the right to cancel applies under *CONC* 11.1.1R, and in a *durable medium*, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not

exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.

- (2) This *rule* applies only where a *consumer* would not otherwise receive the information in (1) under a *rule* in this sourcebook from the *firm* (such as under *CONC 2.6.2R* to *CONC 2.6.5R* (the distance marketing disclosure rules)).

Exercising the right to cancel

- 11.1.7 R If a *consumer* exercises the right to cancel the *consumer* must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a *durable medium* available and accessible to the recipient, is dispatched before the cancellation period expires.

[**Note:** article 6(6) of the Distance Marketing Directive for distance contracts]

- 11.1.8 G The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

Record keeping

- 11.1.9 R The *firm* must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

Effects of cancellation

- 11.1.10 R By exercising a right to cancel, a *consumer* withdraws from the contract and the contract is terminated.

- 11.1.11 R (1) When a *consumer* exercises the right to cancel the *consumer* may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The amount payable must not:
- (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
 - (b) in any case be such that it could be construed as a penalty.

[**Note:** article 7(1), (2) and (3) of the Distance Marketing Directive in relation to distance contracts]

- (2) The *firm* may not require a *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable and, in the case of a contract which is a *distance contract*, in conformity with the distance marketing disclosure rules (*CONC 2.7.2R* to *CONC 2.7.5R*). However, in no case may the *firm*

require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *consumer's* prior request.

[**Note:** article 7(1), (2) and (3) of the Distance Marketing Directive in relation to distance contracts]

Firm's obligations on cancellation

- 11.1.12 R The *firm* must, without undue delay and within 30 calendar days, return to the *consumer* any sums it has received from the *consumer* except for any amount that the *consumer* may be required to pay under CONC 11.1.11R. This period begins from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(1), (2) and (3) of the Distance Marketing Directive in relation to distance contracts]

Consumer's obligations on cancellation

- 11.1.13 R The *firm* is entitled to receive from the *consumer* any sums or property the *consumer* has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *consumer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the Distance Marketing Directive in relation to distance contracts]

- 11.1.14 R Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

11.2 Duty to include a right to withdraw from a contract between lender and borrower: operating an electronic system in relation to lending

Application

- 11.2.1 R This section applies to a *firm* carrying on *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement*.
- 11.2.2 R This section does not apply to a *P2P agreement* under which *credit* exceeding £60,260 is, was or would be provided.

Right to cancel

- 11.2.3 R A *firm* must ensure that a *P2P agreement* that the *firm* makes available to a *borrower* and a *lender* provides for the following contractual rights and obligations and procedure for and effect of the exercise of those rights and obligations:

- (1) a right for the *borrower*:

- (a) to withdraw from the agreement (“the right to withdraw”);
 - (b) without giving any reason; and
 - (c) by giving oral or written notice of the withdrawal to the *firm* (on behalf of the *lender*) before the end of the period of 14 days:
 - (i) beginning with the day after the *P2P agreement* is made; or
 - (ii) beginning with the day on which the *borrower* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under *CONC 4.4*, if that is later than the date in (1);
- (2) where written notice is given for the right to withdraw by *electronic means*:
- (a) it may be sent to the number or electronic address specified for the purpose in the agreement; and
 - (b) where it is so sent, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time it is sent;
- (3) where written notice is given for the right to withdraw, other than by *electronic means*:
- (a) it may be sent by post to, or left at, the postal address specified for the purpose in the agreement; and
 - (b) where it is sent by post to that address, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time of posting;
- (4) where the *borrower* exercises the right to withdraw from a *P2P agreement*:
- (a) the *borrower* must repay to the *firm* (on behalf of the *lender*) or the *lender* any *credit* provided and the interest accrued on it (at the rate provided for under the agreement); but
 - (b) the *borrower* is not liable to pay to the *firm* (on behalf of the *lender*) or the *lender* any compensation, fees or charges, except any non-returnable charges paid by the *lender* or by the *firm* (on behalf of the *lender*) to a public administrative body;
- (5) the effect of exercising the right to withdraw is that the obligations of the *borrower* under the agreement cease to have effect except for the obligation in (4); and
- (6) where an amount is payable where (4) applies, the agreement may provide that the amount must be paid without undue delay and no later

than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period the agreement may provide that the sum may be recovered by the *borrower* as a debt).

- 11.2.4 R A *firm* must ensure that a *P2P agreement* that it makes available to a *lender* and a *borrower* does not provide for any other obligations of the *borrower* in connection with the exercise of the rights in *CONC 11.1.3R*

Amend the following as shown.

12 Requirements for firms with interim permission for credit-related regulated activities

...

- 12.1.4 R ...

Module	Disapplication or modification		
Senior Management Arrangements, Systems and Control sourcebook (<i>SYSC</i>)	...		
Fees manual (<i>FEES</i>)	...		
<u>Threshold Conditions (<i>COND</i>)</u>	Guidance applies with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 1).		
	<table border="1"> <tr> <td style="vertical-align: top;">Note 1</td> <td><u>A firm is treated as having an <i>interim permission</i> on and after 1 April 2014 to carry on <i>credit related regulated activity</i> under the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 if it met the conditions set out in Chapter 4 of Part 8 of that Order. Section 55B(3) of the <i>Act</i> (satisfaction of threshold conditions) does not require the <i>FCA</i> or <i>PRA</i> to ensure that the <i>firm</i> will satisfy, and continue to satisfy, in relation to the <i>credit related regulated activities</i> for which it has an <i>interim permission</i>, the <i>threshold conditions</i> for which that regulator is responsible. The <i>FCA</i> or <i>PRA</i> can, however, exercise its power under section 55J of the <i>Act</i> (variation or cancellation on initiative of regulator) or under section 55L of the <i>Act</i> (in the case of the <i>FCA</i>) or section 55M of the <i>Act</i> (in the case of the <i>PRA</i>) (imposition of requirements by the regulator) in relation to a <i>firm</i> if, among other</u></td> </tr> </table>	Note 1	<u>A firm is treated as having an <i>interim permission</i> on and after 1 April 2014 to carry on <i>credit related regulated activity</i> under the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 if it met the conditions set out in Chapter 4 of Part 8 of that Order. Section 55B(3) of the <i>Act</i> (satisfaction of threshold conditions) does not require the <i>FCA</i> or <i>PRA</i> to ensure that the <i>firm</i> will satisfy, and continue to satisfy, in relation to the <i>credit related regulated activities</i> for which it has an <i>interim permission</i>, the <i>threshold conditions</i> for which that regulator is responsible. The <i>FCA</i> or <i>PRA</i> can, however, exercise its power under section 55J of the <i>Act</i> (variation or cancellation on initiative of regulator) or under section 55L of the <i>Act</i> (in the case of the <i>FCA</i>) or section 55M of the <i>Act</i> (in the case of the <i>PRA</i>) (imposition of requirements by the regulator) in relation to a <i>firm</i> if, among other</u>
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	<p><u>things, it appears to the FCA or PRA that the firm is failing, or is likely to fail, to satisfy the <i>threshold conditions</i> in relation to the <i>credit related regulated activities</i> for which it has an <i>interim permission</i> for which the regulator is responsible. The guidance in <i>COND</i> should be read accordingly.</u></p>
<p><u>Client Assets (CASS)</u></p>	<p><u>CASS does not apply:</u></p> <p><u>(1) to a firm with only an <i>interim permission</i>; or</u></p> <p><u>(2) with respect to <i>credit-related regulated activity</i> for which a firm has an <i>interim permission</i> that is treated as a variation of permission;</u></p> <p><u>if the firm acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</u></p>
<p><u>Supervision manual (SUP)</u></p>	<p><u>SUP 3 (Auditors), SUP 10A (FCA Approved persons) and SUP 12 (Appointed representatives) (see Note 2) do not apply:</u></p> <p><u>(1) to a firm with only an <i>interim permission</i>; or</u></p> <p><u>(2) with respect to a <i>credit-related regulated activity</i> for which a firm has an <i>interim permission</i> that is treated as a variation of permission.</u></p>
<p><u>Note 2</u></p>	<p><u>A firm may not be a <i>principal</i> in relation to a <i>regulated activity</i> for which it has <i>interim permission</i>. A firm with <i>interim permission</i> may, however, be an <i>appointed representative</i> in relation to a <i>regulated activity</i> which it does not have <i>interim permission</i> to carry on (article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</u></p>
	<p><u>SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies:</u></p> <p><u>(1) with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 3);</u></p> <p><u>(2) with the modifications to SUP 6.3.15D and SUP 6.4.5D set out in paragraph 1.2 of this Schedule.</u></p>
<p><u>Note 3</u></p>	<p><u>If a firm with <i>interim permission</i> applies to the appropriate regulator under section 55A of the Act for <i>Part 4A permission</i> to carry on a <i>regulated activity</i> or under section 55H or 55I of the Act to vary a <i>Part 4A permission</i> that the firm has otherwise than by virtue of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 by adding a <i>regulated activity</i> to those to which the <i>permission</i> relates, the application may be treated by the appropriate regulator as relating also to some or</u></p>

	<p>all of the <i>regulated activities</i> for which the <i>firm</i> has <i>interim permission</i>.</p>
	<p><i>SUP 11</i> (Controllers and close links) does not apply to a <i>firm</i> with only an <i>interim permission</i> (see Note 4).</p>
Note 4	<p>A <i>firm</i> is not to be regarded as an <i>authorised person</i> for the purposes of Part 12 of the <i>Act</i> (control over authorised person) if it has only an <i>interim permission</i> (see article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</p>
	<p>For a <i>firm</i> with only an <i>interim permission</i></p> <p>(1) <i>SUP 15.5.1R</i>, <i>SUP 15.5.2G</i>, <i>SUP 15.5.4R</i>, <i>SUP 15.5.5R</i> are modified so that the words “reasonable advance”, “and the date on which the <i>firm</i> intends to implement the change of name” and “and the date of the change” are omitted; and</p> <p>(2) <i>SUP 15.7.1R</i>, <i>SUP 15.7.4R</i> and <i>SUP 15.7.5AR</i> are modified so that a notification of a change in name, address or telephone number must be made using the online Consumer Credit Interim Permissions system available on the <i>FCA’s</i> website.</p>
	<p><i>SUP 16</i> (Reporting requirements) does not apply to a <i>firm</i> with only an <i>interim permission</i>.</p>
	<p><i>SUP 16.11</i> and <i>SUP 16.12</i> apply to a <i>firm</i>, which was an <i>authorised person</i> immediately before 1 April 2014, with an <i>interim permission</i> that is treated as a variation of <i>permission</i> with respect to <i>credit-related regulated activity</i> as if the changes to <i>SUP 16.11</i> and <i>SUP 16.12</i> effected by the Consumer Credit Instrument 2013 had not been made.</p>
Disputes Resolution: Complaints sourcebook (<i>DISP</i>)	<p><i>DISP 1.10</i> (Complaints reporting rules) and <i>DISP 1.10A</i> (Complaints data publication rules) do not apply to a <i>person</i> with only an <i>interim permission</i>.</p>
	<p><i>DISP 1.10</i> (Complaints reporting rules) and <i>DISP 1.10A</i> (Complaints data publication rules) apply to a <i>firm</i>, which was an <i>authorised person</i> immediately before 1 April 2014, with an <i>interim permission</i> that is treated as a variation of <i>permission</i> with respect to <i>credit-related regulated activity</i> as if the changes to <i>DISP 1.10</i> and <i>DISP 1.10A</i> effected by the Consumer Credit Instrument 2013 had not been made.</p>
Consumer Credit sourcebook (<i>CONC</i>)	<p><i>CONC 10</i> (Prudential requirements for debt management firms) does not apply:</p> <p>(1) to a <i>firm</i> with only an <i>interim permission</i>; or</p> <p>(2) with respect to <i>credit-related regulated activity</i> for which a <i>firm</i> has an <i>interim permission</i> that is treated as a variation of <i>permission</i>.</p>

- 12.1.5 D A *firm* with *interim permission* wishing to make an application to vary its *interim permission* by removing a *regulated activity* from those to which the *interim permission* relates or cancel its *interim permission* must apply using the online Consumer Credit Interim Permissions system available on the *FCA*'s website.

After CONC 12 insert the following new provisions. The text is not underlined.

13 Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974

13.1 Application

- 13.1.1 G This chapter applies to a *firm* with respect to *consumer credit lending* and a *firm* with respect to *consumer hiring*.

Guidance

- 13.1.2 G (1) The *FCA* takes the view that sections 77, 78 and 79 of the *CCA* should be read in a way that allows the *borrower* or *hirer* to obtain the information needed in order to be properly informed without imposing unnecessary burden on business.
- (2) The statement referred to in the relevant section must be prepared according to the information to which it is 'practicable' for the *firm* to refer. In the *FCA*'s view, this means practicable at the time of the request and includes information which can be obtained from third parties.
- (3) *Firms* should take steps to ensure that information is preserved and kept available to be used to give information to a *borrower* or *hirer*.

The request and the duty to give

- 13.1.3 G (1) A request must be from or on behalf of the *borrower* under sections 77 and 78 or from or on behalf of a *hirer* under section 79. This would include a friend or relative, a solicitor, a claims management company or other third party.
- (2) Where there are two or more *borrowers* or *hirers* and the request comes from one only, it must be nevertheless complied with, and the response must be given to both (or all) *borrowers* or *hirers*.
- (3) If the recipient considers that another person is the *lender* or *owner*, the recipient should either inform the applicant of who it considers is the correct recipient or pass the request on to that person.

- (4) In accordance with the sections the *firm* must 'give' a copy (guidance on what constitutes a copy is given below and found in the case of *Carey v HSBC Bank plc* [2009] EWHC 3417 (QB)) of the executed agreement and any other document referred to in it and the required statement. In the *FCA's* view, sending a copy of them by ordinary second class post will suffice.
- (5) The duty under the relevant section does not apply if no sum is, or will or may become, payable by the *borrower* or *hirer* under an agreement. This is irrespective of whether the agreement may have been terminated.

The copy agreement

- 13.1.4 G (1) The copy of the executed agreement must be a 'true copy' of the original. However, as confirmed in the case of *Carey v HSBC Bank plc* [2009] EWHC 3417 (QB), in this context the term 'true copy' does not necessarily mean a carbon, photocopy, microfiche copy or other exact copy of the signed *credit* agreement. There is no obligation to provide a copy which includes a copy of the signature.
- (2) The *firm* can reconstitute a copy. It can do this by re-populating a template of the relevant agreement form with the details of the specific agreement taken from its records. If the *firm* does provide a reconstituted copy, it should explain that that is what it has done, to avoid misleading the *borrower* or *hirer* that this is a contemporaneous copy.
 - (3) The terms and conditions should be those applicable at the time the agreement was executed. The name and address at the time of execution must be included.
 - (4) The reconstituted agreement must contain a heading stating it is a *credit* agreement regulated by the Consumer *Credit* Act 1974. It must contain the cancellation notice in the executed agreement.
 - (5) If the reason why no copy is given to a request under these sections is that there never was an executed agreement, the *firm* should acknowledge this in its response.
 - (6) If the agreement has been varied, the duty is to provide not only a copy of the agreement as originally executed but also either:
 - (a) a copy of the latest variation given in accordance with section 82(1) of the *CCA* relating to each discrete term of the agreement which has been varied; or,
 - (b) a clear statement of the terms of the agreement as varied.

The statement of account

- 13.1.5 G If the *firm* possesses insufficient information to enable it to ascertain the amount and date of any sum which is to become payable, it is sufficient to indicate the basis on which they would fall to be ascertained.

Failure to comply

- 13.1.6 G (1) Failure to comply with the provisions means that the agreement becomes unenforceable while the failure to comply persists, and the courts have no discretion to allow enforcement.
- (2) In such cases, a *firm* should in no way, either by act or omission, mislead a *borrower* or *hirer* as to the enforceability of the agreement.
- (3) In particular, a *firm* should not in such cases either threaten court action or other enforcement of the debt or imply that the debt is enforceable when it is not.
- (4) The *firm* should, in any communication or request for payment in such cases, make clear to the *borrower* or *hirer* that although the debt remains outstanding it is unenforceable.

14 Requirement in relation to agents

14.1 Application

- 14.1.1 R This section applies to a *firm* with respect to *consumer credit lending* or a *firm* with respect to *consumer hiring*.

Requirements

- 14.1.2 R A *firm* must not appoint an individual, who is not an *authorised person* or an *exempt person*, to act as an agent of the *firm*, in carrying on *regulated activities* of the *firm* unless all of the following conditions are met at the date of the individual's appointment and while the individual continues to act as the *firm's* agent:
- (1) the *firm* appoints the individual as the *firm's* agent;
- (2) the individual works as agent only for the *firm* and not as agent for any other principal;
- (3) the *firm* has a written agreement with the individual which:
- (a) sets out effective measures for the *firm* to control the individual's activities when acting on its behalf in the course of business;
- (b) require the individual to make clear to *customers* that the individual is representing the *firm* as the individual's principal

and the name of the *firm*;

- (4) (in the case of collecting debts) receipt of payments by the individual is treated as receipt by the *firm*; and
- (5) the *firm* accepts full responsibility for the conduct of the individual when the individual is acting on the *firm*'s behalf in the course of the *firm*'s business.

14.1.3 G A *firm* in CONC 14.1.2R would need to have a *Part 4A permission* for every activity the individual carries on as its agent for which the *firm* would need permission if it was carrying on the activity itself.

15 Second charge lending

15.1 Application

15.1.1 R This chapter applies to:

- (1) a *firm* with respect to *consumer credit lending* in relation to *regulated credit agreements* secured on *land*; and
- (2) a *firm* with respect to *credit broking* in relation to *credit agreements* secured on *land*.

15.1.2 G *Firms* which carry on *consumer credit lending* or *credit broking* should comply with all *rules* which apply to that *regulated activity* in CONC and other parts of the *Handbooks*. This chapter sets out specific requirements and guidance that apply in relation to agreements secured on *land*. *Regulated mortgage contracts* and *regulated home purchase plans* are not *regulated credit agreements* and are excluded, to the extent specified in article 36E of the *Regulated Activities Order*, from *credit broking*.

Conduct

15.1.3 G The financial promotion rules in CONC 3 apply to *firms*' *financial promotions* concerning credit agreements secured on land, apart from the extent to which a *financial promotion* or communication concerns *qualifying credit*. CONC 3.3.1R requires *financial promotions* to be clear fair and not misleading, *firms* should take particular care with respect to explaining the nature of the *credit* to be provided and the costs of borrowing.

[**Note:** paragraph 3.2 of *SCLG*]

15.1.4 R A *firm* must make clear in advance the purpose of any visit off trade premises (which has the same meaning as in section 48 of the *CCA*) at which the *customer* may enter into a *regulated credit agreement*.

[**Note:** paragraph 3.8 of *SCLG*]

15.1.5 R At an early stage, following introduction to a *customer*, a *firm* must:

- (1) disclose key contract terms and conditions of a prospective *credit agreement*;
[Note: paragraph 2.1 of *SCLG*]
 - (2) disclose all risks to the *customer* as a result of entering into the *credit agreement*;
[Note: paragraph 3.4 of *SCLG*]
 - (3) inform the *customer* of the consequences of missing payments or of making underpayments, including the imposition of default charges, the risk of repossession of the *customer's* home, in relation to the *customer's* credit record and of inability to obtain credit in the future;
[Note: paragraph 3.4 of *SCLG*]
 - (4) inform the *customer* about the circumstances in which the rates or charges may change, in particular, if they may be varied at the discretion of the *firm* or can vary subject to a reference rate of interest;
[Note: paragraphs 3.6 and 4.4 of *SCLG*]
 - (5) if the rate can vary subject to a reference rate of interest, other than that of the Bank of England's base rate, inform the *customer* of the rate in question and the rate to be applied;
[Note: paragraph 3.6 of *SCLG*]
- 15.1.6 G Where appropriate, the disclosure required by *CONC* 15.1.4R should be explained orally to the *customer*.
[Note: paragraph 3.4 of *SCLG*]
- 15.1.7 R Where a *firm* has reasonable grounds to suspect that the *customer* does not understand material aspects of the obligations they will take on and the resulting risks, under a regulated credit agreement, the *firm*:
- (1) must not enter into a *regulated credit agreement*; and
 - (2) must provide further explanation of any such obligations or risks.
[Note: paragraph 3.5 of *SCLG*]
- 15.1.8 R Before a *customer* enters into a *regulated credit agreement*, the *firm* must:
- (1) encourage the *customer* to read all contractual documentation carefully;
[Note: paragraph 4.2 of *SCLG*]
 - (2) ensure the *customer* has understood the nature of the obligations the customer will take on and the resulting risks;
[Note: paragraph 3.5 of *SCLG*]

- (3) encourage the *customer* to obtain independent advice; and
[Note: paragraphs 2.1 and 4.2 of *SCLG*]
 - (4) permit the *customer* an adequate opportunity to seek and obtain such advice.
[Note: paragraph 2.1 of *SCLG*]
- 15.1.9 G Before a *regulated credit agreement* secured on *land* is entered into:
- (1) the *firm* should consider the adequate explanations it should give to the *customer* under *CONC* 4.3; and
[Note: paragraph 3.1 (box) of *ILG*]
 - (2) the *firm* is required under *CONC* 5.2.2R(1) to assess the potential for commitments under the agreement to adversely impact the *customer's* financial situation.
[Note: paragraphs 1.14 and 4.1 of the *ILG*]
- 15.1.10 G In accordance with *PRIN* 9 (customer: relationships of trust):
- (1) a *firm* must take reasonable steps to ensure the suitability of its advice, which would include acting in the best interests of a *customer* where the *firm* makes a recommendation;
 - (2) if it appears to the *firm* that entering into a *regulated credit agreement* secured on *land* is not in the best interests of the *customer*, that fact should be made clear to the *customer*; and
 - (3) the *firm* should encourage the *customer* to consider whether the credit can be afforded, including in the event the *customer's* circumstances change, for example, through a change in employment or retirement.
[Note: paragraph 3.14 of *SCLG*]
- 15.1.11 R A *firm* must set out the nature and purpose of the fees and charges payable by the *customer*, including any fees or charges payable on the *customer's* default:
- (1) in the *credit agreement*; and
 - (2) in any booklet or leaflet relating to the agreement.
[Note: paragraph 4.3 of *SCLG*]
- 15.1.12 R Where rates and charges under a credit agreement are variable, a *firm* must:
- (1) before entering into the agreement, explain to the *customer* the consequences of such variations on the amount of periodic instalments payable and on the *total amount payable*;

(2) only increase rates or charges to recover genuine increases in costs of the *firm* which have an effect on the *credit* provided under the agreement; and

(3) explain to the *customer* before changing any rate or charge under the agreement.

[**Note:** paragraph 4.4 of *SCLG*]

15.1.13 R Where a *customer* wishes to make repayments ahead of time:

(1) a *firm's* charges for early repayment must be fair and reasonable and must reflect the *firm's* necessary costs in relation to such repayment;

(2) the *firm* must fully explain the process and costs involved in early repayment; and

(3) the *firm* must allow the *customer* to make part early repayment of the capital.

[**Note:** paragraph 4.5 of *SCLG*]

15.1.14 G Where a *firm* considers taking action to repossess a *customer's* home, it should, where permitted, establish contact with the holder of any charges in priority to the *firm's* charge to minimise adverse impacts on the *customer*.

[**Note:** paragraph 6.2 of *SCLG*]

15.1.15 R If a shortfall remains following the sale of a property, the *firm* must notify the *customer* as soon as possible of the amount of the shortfall.

[**Note:** paragraph 6.5 of *SCLG*]

TP 1 Transitional provisions in relation to corresponding rules

Application		
1.1	R	These transitional provisions apply to:
		(a) a <i>firm</i> which has a <i>Part 4A permission</i> for a <i>credit-related regulated activity</i> ;
		(b) a <i>firm</i> which is treated as having a <i>Part 4A permission</i> or a variation of permission for a <i>credit-related regulated activity</i> by virtue of article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment)(No.2) Order 2013; and
		(b) an <i>incoming firm</i> which carries on a <i>credit-related regulated activity</i> .
Purpose		

1.2	G	The <i>FCA</i> is aware that the introduction of <i>CONC</i> will impose an additional compliance burden on firms, even when there is an underlying continuity of policy. The <i>FCA</i> wishes to lighten that burden in a manner consistent with its regulatory objectives and the principles of good regulation under the <i>Act</i> . The following <i>rules</i> give <i>firms</i> additional time after 1 April 2014 to complete their preparations for the impact of certain provisions in <i>CONC</i> .
Definitions		
1.3	R	In these transitional provisions the following words are to have the meaning given to them below:
		"corresponding rule" means a provision or guidance set out, as they stand on 31 March 2014, in:
		the guidance issued by the Office of Fair Trading entitled "Debt collection OFT Guidance for businesses engaged in the recovery of consumer credit debts" (OFT664Rev2);
		the guidance issued by the Office of Fair Trading entitled "Irresponsible lending - OFT guidance for creditors" (OFT1107);
		the guidance issued by the Office of Fair Trading entitled "Debt management (and credit repair services) guidance" (OFT366 rev);
		the guidance issued by the Office of Fair Trading entitled "Credit brokers and intermediaries - OFT guidance form brokers, intermediaries and the consumer credit and hire businesses which employ or use their services" (OFT1388);
		the guidance issued by the Office of Fair Trading entitled "Mental capacity OFT guidance for creditors" (OFT1373);
		the guidance issued by the Office of Fair Trading entitled "Guidance on sections 77, 78 and 79 of the Consumer Credit Act 1974 – the duty to give information to debtors and the consequences of non-compliance on the enforceability of the agreement" (OFT 1272);
		sections 55A, 55B, 74A, 74B, 81, 82A, 115 and 160A of the <i>CCA</i> ;
		the Consumer Credit (Advertisements) Regulations 2004 (S.I. 2004/1484) and 2010 (S.I. 2010/1970);
		The Consumer Credit (Quotations)(Revocation) Regulations 1997 (S.I. 1997/211);
		that is substantially similar in purpose and effect to the relevant provision in <i>CONC</i> .
		a "credit firm" means a <i>firm</i> which has or is treated as having a <i>Part 4A permission</i> for a <i>credit-related regulated activity</i> ;

	an “EEA credit firm” means an <i>incoming firm</i> which carries on a <i>credit-related regulated activity</i> ;
	“transitional period” means the period starting on 1 April 2014 and finishing at midnight at the end of 30 September 2014.

TP 2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
2.1	<i>CONC</i> , to the extent there is a corresponding <i>rule</i> .	R	(1) A <i>credit firm</i> and an <i>EEA firm</i> with respect to carrying on a <i>credit-related regulated activity</i> will not contravene a <i>rule</i> in <i>CONC</i> to the extent that, on or after 1 April 2014, it is able to demonstrate that it has complied with the corresponding <i>rule</i> , with any necessary modification to take account of the coming into force of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 and the Financial Services Act 2012 (Consumer Credit) Order 2013.	The transitional period.	1 April 2014
2.2		G	(1) In order to benefit from the transitional provision, a <i>credit firm</i> or an <i>EEA firm</i> must ensure that the corresponding <i>rule</i> referred to in 1.3R with which it complies is substantially similar in purpose and effect to the provision in <i>CONC</i> to which it relates.		

			(2)	<p>For the assistance of <i>firms</i>, <i>CONC</i> includes notes which indicate particular <i>rules</i> or guidance for which there is a corresponding rule. <i>Firms</i> may wish to refer to these notes but in doing so should understand that they are not intended to be exhaustive and are produced merely as a guide.</p> <p><i>Firms</i> are advised that should they wish to take advantage of the transitional provisions set out in this section, the onus is on the <i>firm</i> to be able to demonstrate that in any given case it has in fact complied with the corresponding rules.</p>		
			(3)	<p><i>Firms</i> will have noted that they should treat the corresponding rules as modified to the extent necessary to ensure that the provision can operate effectively notwithstanding the enactment of the Orders in 1.1. <i>Firms</i> will need to adopt a commonsense approach in interpreting the corresponding rules and modify them accordingly. For example, references in such rules to the OFT should be read as if they referred to the <i>FCA</i>.</p>		

TP3

Transitional provisions in relation to high cost short term credit

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
3.1	CONC 3.4 (risk warnings)	R	CONC 3.4 (apart from in relation to an <i>electronic communication</i>) does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.2	CONC 6.7.20R (information sheets)	R	CONC 6.7.20R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.3	CONC 6.7.23R (repeat refinancing)	R	CONC 6.7.23R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.4	CONC 7.6.12R (continuous payment authority)	R	CONC 7.6.12R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014

TP 4 Transitional provisions in relation to operating an electronic system in relation to lending

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
4.1	Adequate explanations requirements	R	CONC 4.4.3R and 4.4.4R do not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.2	Creditworthiness requirements	R	CONC 5.5.3R, 5.5.4R and 5.5.5R do not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September	1 April 2014

				2014	
4.3	Arrears notice for fixed sum credit	R	<i>CONC</i> 7.18 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.4	Arrears notice for running account credit	R	<i>CONC</i> 7.19 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.5	Default sums notice	R	<i>CONC</i> 7.20 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.6	Right to withdraw from P2P agreement	R	<i>CONC</i> 11.2 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014

TP 5 Transitional provisions for prudential provisions in relation to debt management firms

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
5.1	<i>CONC</i> 10.3.3R	R	A <i>firm</i> can calculate its prudential resources without deducting items 2 and 3 in <i>CONC</i> 10.3.3R	From 1 April 2014 to 31 March 2017	1 April 2014
5.2	<i>CONC</i> 10.3.5R	R	b = items 1, 4 and 5 in the Table of items which must be deducted from a <i>firm's</i> prudential resources (see <i>CONC</i> 10.3.3 R)	From 1 April 2014 to 31 March 2017	1 April 2014
5.3	<i>CONC</i> 10.3.6G	G	The guidance at <i>CONC</i> 10.3.6G should be read in the	From 1 April 2014 to 31	1 April

		light of <i>TP 5. 2</i>	March 2017	2014
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Sch 1 Record keeping requirements

1.1	G	The aim of the <i>guidance</i> in the following table is to give the reader a quick overall view of the relevant record keeping requirements in <i>CONC</i> .
1.2	G	It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
6.6.3R	Actions concerning articles taken in <i>pawn</i> .	Specified details concerning taking articles in <i>pawn</i> , redemption and sale of articles in <i>pawn</i> .	Date of event referred to in section.	At least the longer of 5 years from the date on which an article is taken in <i>pawn</i> or 3 years from date of sale under section 121(1) of the <i>CCA</i> or the redemption of the article as the case may be.
7.14.2R	A person who is, or is treated as, a <i>borrower</i> under a <i>credit agreement</i> or <i>consumer hire agreement</i> .	Accurate and adequate data (including in respect of debt and repayment history) in relation to persons owing, or treated as owing, money under <i>credit agreements</i> or <i>consumer hire agreements</i> .	When a <i>firm</i> is notified in relation to a person whom it is to pursue for recovery of a debt.	Not specified.
7.14.7R	A person not being the <i>borrower</i> under a <i>credit agreement</i> or <i>consumer hire agreement</i> .	Record that the person is not the <i>borrower</i> and should not be pursued for debt.	Date on which firm aware of true state of affairs.	Not specified.
8.8.1R(9)	Record of <i>debt management plans</i> entered	An adequate record.	When <i>firm</i> enters into <i>debt management</i>	Until the contract between the customer and the

	into with <i>customers.</i>		<i>plan.</i>	firm is completed or terminated.
11.1.9R	Exercise of right to cancel under 4.10.1R.	Adequate record of use of right to cancel by consumer.	Date of exercise.	3 years.

Sch 2 Notification and reporting requirements (if any)

	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
G	<i>CONC</i> 10.2.12R	Any change in a <i>firm's</i> prudential resources requirement	The changed prudential resources requirement	The change in the <i>firm's</i> prudential resources requirement	Within 14 <i>days</i> of the trigger event

Sch 3 Fees and other required payment

Not used

Sch 4

Not used

Sch 5 Rights of action for damages

Sch 5.1	G	The table below sets out the rules in <i>CONC</i> contravention of which by an <i>authorised person</i> may be actionable under section 138D of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.			
Sch 5.2	G	If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a " <i>private person</i> " under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the <i>FCA</i> has removed the right of action under section 138D(2) of the <i>Act</i> . If so, a reference to the <i>rule</i> in which it is removed is also given.			
Sch 5.3	G	The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the rule may be actionable is given.			

			Right of action under section 138D			
Chapter/ Appendix	Section/ Annex	Paragraph	For private person?	Removed?	For other person?	
The clear, fair and not misleading <i>rule</i> in <i>CONC</i> 3.3.1R			Yes (Notes 2 & 3)	In part (Note 1)	No	
All other <i>rules</i> in <i>CONC</i>			Yes (Notes 2 & 3)	No	No	
Notes						
(1)	<i>CONC</i> 3.3.1R(2) provides that if, in relation to a particular communication or financial promotion, a firm takes reasonable steps to ensure it complies with the fair, clear and not misleading rule, a contravention of that rule does not give rise to a right of action under section 138D of the Act.					
(2)	The definition of private person includes a “relevant recipient of credit” which is defined on article 60L of the <i>Regulated Activities Order</i> as “a partnership consisting of two or three persons not all of whom are bodies corporate, or an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership”.					
(3)	The definition of private person includes a person who is, by virtue of article 36J of that Order, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by authorised persons in carrying on a regulated activity of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that activity.					

Sch 6 Rules that can be waived

6.1	As a result of section 138A of the <i>Act</i> (Modification or waiver of rules) the <i>FCA</i> has power to waive all its <i>rules</i> , other than <i>rules</i> made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the <i>Act</i> . However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FCA</i> to grant a waiver that would be incompatible with the <i>UK's</i> responsibilities under those directives.
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Annex B

Amendments to the Glossary of definitions

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

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

<i>advance payment</i>	includes any deposit but does not include a <i>repayment</i> of <i>credit</i> or any insurance premium or any amount entering in the <i>total charge for credit</i> .
<i>authorised business overdraft agreement</i>	a <i>borrower-lender agreement</i> which provides authorisation in advance for the <i>borrower</i> to overdraw on a current account, where the agreement is entered into by the <i>borrower</i> wholly or predominantly for the purposes of the <i>borrower's</i> business.
<i>authorised non-business overdraft agreement</i>	a <i>borrower-lender agreement</i> which provides authorisation in advance for the <i>borrower</i> to overdraw on a current account, where: <ul style="list-style-type: none">(a) the <i>credit</i> must be repaid on demand or within three months;(b) the agreement is not entered into by the <i>borrower</i> wholly or predominantly for the purposes of the <i>borrower's</i> business.
<i>bill of sale loan agreement</i>	a <i>regulated credit agreement</i> secured by a bill of sale under the Bills of Sale Act 1878, the Bills of Sale Act (1878) Amendment Act 1882 or the Bills of Sale Ireland Act (1878).
<i>canvassing off trade premises</i>	<ul style="list-style-type: none">(a) an activity by an individual (the canvasser) of soliciting the entry of another <i>individual</i> (“B”) into an agreement by making oral representations to B during a visit by the canvasser to any place (other than a place in (b)) where B is, being a visit made by the canvasser for the purpose of making such oral representations.(b) a place where a business is carried on (whether on a permanent or temporary basis) by:<ul style="list-style-type: none">(i) the <i>lender</i> or <i>owner</i>; or(ii) a <i>supplier</i>; or(iii) the canvasser; or(iv) a <i>person</i> who employs the canvasser or has appointed the canvasser as an agent; or(v) B; <p>is excluded from (a).</p>

<i>cash price</i>	in relation to any <i>goods</i> , services, <i>land</i> or other things means the price or charge at which the <i>goods</i> , services, <i>land</i> or any other things may be purchased by, or supplied to, the <i>borrower</i> for <i>cash</i> , account being taken of any discount generally available from the <i>dealer</i> or <i>supplier</i> in question.
<i>CASS debt management firm</i>	a <i>firm</i> which: <ul style="list-style-type: none"> (a) carries on the activities of <i>debt counselling</i> or <i>debt adjusting</i>, alone or together, with a view to an <i>individual</i> entering into a particular <i>debt solution</i>; or (b) carries on the activity of <i>debt counselling</i> where an <i>associate</i> carries on <i>debt adjusting</i> with the aim in (a) in view; or (c) carries on <i>debt adjusting</i> where an <i>associate</i> carries on <i>debt counselling</i> with the aim in (a) in view; or (d) is a <i>not-for-profit debt advice body</i>.
<i>CASS 11 resolution pack</i>	those documents and records specified in <i>CASS 11.12.4R</i> .
<i>CASS small debt management firm</i>	a <i>CASS debt management firm</i> falling within the classification of <i>CASS small debt management firm</i> in <i>CASS 11.2.3R</i> .
<i>CASS large debt management firm</i>	a <i>CASS debt management firm</i> falling within the classification of <i>CASS large debt management firm</i> in <i>CASS 11.2.3R</i> .
<i>CASS large debt management firm external client money reconciliation</i>	the external client money reconciliation that <i>CASS large debt management firms</i> are obliged to undertake pursuant to <i>CASS 11.11.20R</i> to <i>CASS 11.11.21R</i> .
<i>CASS large debt management firm internal client money reconciliation</i>	the internal client money reconciliation that <i>CASS large debt management firms</i> are obliged to undertake pursuant to <i>CASS 11.11.11R</i> to <i>CASS 11.11.15R</i> .
<i>CBG</i>	the Office of Fair Trading's Credit Brokers and Intermediaries Guidance.

<i>CCA Order</i>	the Financial Services Act 2012 (Consumer Credit) Order 2013.
<i>CCA Requirement</i>	a requirement imposed by or under Parts 2, 4, 5 and 6 to 12 of the <i>CCA</i> .
<i>CCAR 2004</i>	Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484.
<i>CCAR 2010</i>	Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970.
<i>consumer hiring</i>	in accordance with article 60N of the <i>Regulated Activities Order</i> , entering into a <i>regulated consumer hire agreement</i> as <i>owner</i> or exercising or having the right to exercise the <i>owner's</i> rights and duties under a <i>regulated consumer hire agreement</i> .
<i>consumer credit lending</i>	in accordance with article 60B of the <i>Regulated Activities Order</i> , entering into a <i>regulated credit agreement</i> as <i>lender</i> or exercising or having the right to exercise the <i>lender's</i> right and duties under a <i>regulated credit agreement</i> .
<i>continuous payment authority</i>	consent given by a <i>customer</i> to a <i>firm</i> , for the <i>firm</i> to give one or more instruction to a <i>payment services provider</i> requesting the execution of one or more payment from the <i>customer's payment account</i> , excluding a direct debit to which the Direct Debit Guarantee applies.
<i>cost of credit</i>	any costs, including interest, commission, taxes and any other kind of fees which are required to be paid by or on behalf of the <i>borrower</i> or a relative of the <i>borrower</i> in connection with the <i>credit agreement</i> , whether payable to the <i>lender</i> or to any other <i>person</i> , and which are known to the <i>lender</i> , except for notarial costs.
<i>credit card cheque</i>	a cheque (whether or not drawn on a banker) which, whenever used, will result in the provision of <i>credit</i> under a <i>credit-token agreement</i> , which does not include a cheque to be used only in connection with a current account.
<i>credit-sale agreement</i>	an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a <i>conditional sale agreement</i> (see section 189 of the <i>CCA</i>).
<i>credit-token</i>	a credit-token is a card, check, voucher, coupon, stamp, form, booklet or other document or thing <i>given</i> to an <i>individual</i> by a <i>person</i> carrying on a <i>credit-related regulated activity</i> ("the provider"), who undertakes: <ul style="list-style-type: none"> (a) that on production of it (whether or not some other action is also required) the provider will supply <i>cash</i>, <i>goods</i> or services (or any of them) on <i>credit</i>; or (b) that where, on the production of it to a third party (whether or not any other action is also required), the third party supplies <i>cash</i>, <i>goods</i> and services (or any of them), the provider will pay the third party for them (whether or not deducting any discount or

commission), in return for *payment* to the provider by the *individual* and the provider shall, without prejudice to the definition of *credit*, be taken to provide *credit* drawn on whenever a third party supplies the *individual* with *cash, goods* or services; and

the use of an object to operate a machine provided by the *person* giving the object or a third party shall be treated as the production of the object to that *person* or third party.

credit-token agreement is a *regulated agreement* for the provision of *credit* in connection with the use of a *credit-token*.

credit-worthiness assessment the assessment, including as to the affordability of *credit* by the *customer*, required by CONC 5.2.1R.

DCG the Office of Fair Trading's Debt Collection Guidance.

dealer in relation to a *hire-purchase agreement, credit-sale agreement* or *conditional sale agreement* under which this *person* is not the *lender*, a *person* who sells or proposes to sell *goods, land* or other things to the *lender* before they form the subject matter of any such agreements and, in relation to any other agreements, means a *supplier* or the *supplier's* agent.

debt adjuster a *person* who negotiates with a *lender* on behalf of a *customer* the terms of discharge of a debt due under a *credit agreement* or a *consumer hire agreement* or takes over the *customer's* obligations to discharge such debts in return for payments by the *customer* or carries on any similar activity concerned with the liquidation of such a debt, who has or ought to have a *Part 4A permission* to carry on the *regulated activity* of *debt adjusting*.

debt collector a *person* who takes steps to procure payment of debts due under *credit agreements* or *consumer hire agreements* who has or ought to have a *Part 4A permission* to carry on the *regulated activity* of *debt collecting*.

debt counsellor a *person* who gives advice to *borrowers* or *hirers* about the liquidation of debts under *credit agreements* or *consumer hire agreements* who has or ought to have a *Part 4A permission* to carry on the *regulated activity* of *debt counselling*.

debt management activity the activities of *debt counselling* or *debt adjusting*, alone or together, carried on with a view to an *individual* entering into a particular *debt solution* or in relation to any such *debt solution*, and activities connected with those activities.

debt management client money CASS 11.

chapter

debt management client money distribution rules the rules and guidance in *CASS 11.13*.

debt management client money rules the rules and guidance in *CASS 11.1* to *CASS 11.12*.

debt management plan a non-statutory agreement between a *customer* and one or more of the *customer's lenders* the aim of which is to discharge or liquidate the *customer's* debts, by making regular payments to a third party which administers the plan and distributes the money to the *lenders*.

disclosure regulations as the case may be, the Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013 or the Consumer Credit (Disclosure of Information) Regulations 2004, SI 2004/1481.

DMG the Office of Fair Trading's Debt Management (and credit repair services Guidance).

green deal plan an arrangement by the occupier or owner of a property for a person to make energy efficient improvements to the property wholly or partly paid for in instalments, as defined in section 1 of the Energy Act 2011.

high-cost short-term credit a *regulated credit agreement*:

- (a) which is a *borrower-lender agreement* or a *P2P agreement*;
- (b) in relation to which the *APR* is equal to or exceeds 100%;
- (c) either:
 - (i) in relation to which a *financial promotion* indicates (by express words or otherwise) that the *credit* is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the *credit* is to be provided for a short term; or
 - (ii) under which the *credit* is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the *credit* is advanced;
- (d) which is not secured by a mortgage, charge or pledge; and

- (e) which is not a *home credit loan agreement*, a *bill of sale loan agreement* or a *borrower-lender agreement* enabling a *borrower* to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.

home credit loan agreement

a *borrower-lender agreement* which either:

- (a) provides that all or most of the sums payable by the *customer* are to be collected by, or on behalf of, the *lender* at the *customer's* home or at the home of a natural person who makes payment to the *lender* on the *customer's* behalf (or, in either case, to be so collected if the *customer* so wishes); or
- (b) at the time the agreement is entered into, the *customer* could reasonably expect, from representations made by, or on behalf of, the *lender* at or before that time, that all or most of the sums payable would be so collected (or, in either case, would be collected as specified in (a) if the *customer* so wished).

ILG

the Office of Fair Trading's Irresponsible Lending Guidance.

JGPPI

the FSA/OFT Joint Guidance on Payment Protection Products.

lead generator

a *person* that acquires the personal contact details of *customers* and passes the *customers'* details to a *firm* in return for a fee.

MCG

the Office of Fair Trading's Mental Capacity Guidance.

non-commercial agreement

a *credit agreement* or a *consumer hire agreement* not made by the *lender* in the course of a business carried on by the *lender* or *owner*.

operator of an electronic system in relation to lending

a *person* who has *permission* or ought to have *permission* for *operating an electronic system in relation to lending*.

open-end agreement

a *credit agreement* with no fixed duration.

pawn

any article subject to a *pledge*.

pawnee

includes any *person* to whom the rights and duties of the original pawnee have passed by assignment or operation of law.

pawnor

includes any *person* to whom the rights and duties of the original pawnor have passed by assignment or operation of law.

<i>pawn-receipt</i>	has the meaning given by section 114 of the <i>CCA</i> .
<i>pledge</i>	a <i>pawnee's</i> rights over an article taken in <i>pawn</i> .
<i>provider of credit information services</i>	a person <i>providing credit information services</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>providing credit information services</i> .
<i>provider of credit references</i>	a person <i>providing credit references</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>providing credit references</i> .
<i>Regulated Activities Amendment Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (SI 2013/1881).
<i>regulated agreement</i>	is any <i>credit agreement</i> which is not an exempt agreement (see articles 60C to 60H of the <i>Regulated Activities Order</i>) or any <i>consumer hire agreement</i> which is not an exempt agreement (see articles 60O to 60Q of the <i>Regulated Activities Order</i>).
<i>relevant credit activity</i>	an activity of a kind specified as a <i>relevant credit activity</i> in paragraph 2G of Schedule 6 to the <i>Act</i> .
<i>relevant credit agreement</i>	a <i>credit agreement</i> (within the meaning given by article 60B of the <i>Regulated Activities Order</i>) other than a <i>regulated mortgage contract</i> (within the meaning of that Order) (see paragraph 28 of Schedule 1 to the <i>Financial Promotion Order</i>).
<i>relevant credit-related complaint</i>	a <i>relevant existing credit-related complaint</i> or a <i>relevant new credit-related complaint</i> .
<i>relevant debts under management</i>	in relation to a <i>firm</i> , a debt due under a <i>credit agreement</i> or a <i>consumer hire agreement</i> in relation to which the <i>firm</i> is carrying on <i>debt adjusting</i> or an activity connected to that activity, except <i>debt adjusting</i> in relation to which the <i>firm</i> would be exempt from the <i>general prohibition</i> as a result of paragraph 52 of the Schedule to the <i>Exemption Order</i> if it did not have <i>Part 4A permission</i> in relation to another <i>regulated activity</i> and connected activity.
<i>relevant existing credit-related complaint</i>	a complaint made under the ombudsman scheme before 1 April 2014 which was being dealt with under the <i>Consumer Credit Jurisdiction</i> .
<i>relevant new credit-related complaint</i>	(in accordance with the <i>Regulated Activities Amendment Order</i>) a complaint made under the ombudsman scheme on or after 1 April 2014:

- (a) which relates to an act or omission which took place before 1 April 2014;
- (b) which could have been dealt with under the *Consumer Credit Jurisdiction* (disregarding the effect of section 226A(2)(a) and (b) of the *Act*) but for the repeal of section 226A of the *Act*; and
- (c) in relation to which the complainant is eligible and wishes for the complaint to be dealt with under the *Financial Ombudsman Service*.

relevant provisions in accordance with article 36A of the *Regulated Activities Order*, articles 60C (exempt agreements: exemptions relating to the nature of the agreement), 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes), 60E (exempt agreements: exemptions relating to the nature of the lender), 60G (exempt agreements: exemptions relating to the total charge for credit) and 60H (exempt agreements: exemptions relating to the nature of the borrower) of that Order.

repayment includes repayment of *credit* with or without any other amount.

representative APR is an *APR* at or below which the *firm* communicating or approving the *financial promotion* reasonably expects, at the date on which the promotion is *communicated* or *approved*, that *credit* would be provided under at least 51% of the *credit agreements* which will be entered into as a result of the promotion.

SCLG the Office of Fair Trading's Second Charge Lending Guidance.

small borrower-lender-supplier agreement a *borrower-lender-supplier agreement* which is a small agreement within the meaning of section 17 of the *CCA*.

sustainable (in *CONC*) has the meaning given in *CONC* 5.2.

typical APR an *APR* at or below which the *firm* communicating or approving the *financial promotion* reasonably expects, at the date on which the *financial promotion* is *communicated* or *approved*, that *credit* would be provided under at least 66% of the agreements which will be entered into as a result of the *financial promotion*.

unsustainable (in *CONC*) has the meaning given in *CONC* 5.2.

Amend the following definitions as shown.

ancillary (1) (except in *CONC*) ...

service

(2) (in CONC) a service that relates to entering into a regulated credit agreement as lender and includes, in particular, an insurance or payment protection policy.

appointed
representative

(1) (in relation to cases apart from in (2)) in accordance with section 39 of the Act (other than an authorised person) who:

...

(2) (in relation to a firm with a Part 4A permission to carry on a regulated activity prescribed for the purposes of section 39(1E)(a) of the Act) in accordance with section 39 of the Act, a person (“A”) who only has a Part 4A permission to carry on one or more regulated activities prescribed for the purposes of section 39(1E)(a) of the Act:

(a) is a party to a contract with another authorised person (A’s principal) which:

(i) permits or requires A to carry on business of a description prescribed in the Appointed Representatives Regulations (“the relevant business”); and

(ii) complies with such requirements as are prescribed in those Regulations; and

(b) is someone for whose activities in carrying on the whole or part of the relevant business A’s principal has accepted responsibility in writing;

and, therefore, to whom sections 20(1) and (1A) and 23(1A) of the Act do not apply in relation to the carrying on by A of a regulated activity which is not one to which A’s permission relates and is comprised in the carrying on of the business for which A’s principal has accepted responsibility.

APR

(1) (except in CONC) ...

(2) (in CONC for a credit agreement secured on land) the annual percentage rate of charge for credit determined in accordance with the rules in CONC App 1.1 and CONC 3.6.8R.

(3) (in CONC for all other credit agreements) the annual percentage rate of charge for credit determined in accordance with the rules in CONC App 1.2 and CONC 3.5.9R.

borrower

...

	(3)	<u>(in relation to <i>debt collecting</i> and <i>debt administration</i> (and so far as relevant to those activities in relation to article 64 (agreeing to carry on a regulated activity) of the <i>Regulated Activities Order</i>)) “borrower” includes, in addition to the persons in (2), any <i>person</i> providing a guarantee or an indemnity under the <i>credit agreement</i> and a <i>person</i> to whom the rights and duties of a <i>person</i> providing a guarantee or an indemnity have passed by assignment or operation of law.</u>
<i>client bank account</i>	...	
	(3)	<u>(in CASS 11):</u>
	(a)	<u>an account at a bank which:</u>
	(i)	<u>holds the <i>money</i> of one or more <i>clients</i>;</u>
	(ii)	<u>is in the name of the <i>firm</i>;</u>
	(iii)	<u>includes in its title an appropriate description to distinguish the <i>money</i> in the account from the <i>firm’s money</i>; and</u>
	(iv)	<u>is a current or a deposit account.</u>
<i>client money</i>	...	
	(2B)	<u>(in CASS 11 and CONC 10) <i>money</i> which a <i>CASS debt management firm</i> receives or holds on behalf of a <i>client</i> in the course of or in connection with <i>debt management activity</i>.</u>
<i>complaint</i>	...	
	(4)	(in <i>DISP</i>) reference to a <i>complaint</i> includes:
		...
	(b)	under the <i>Compulsory Jurisdiction</i> , all or part of a <i>relevant complaint</i> <u>or a <i>relevant credit-related complaint</i>.</u>
<i>Consumer Credit Jurisdiction</i>		the jurisdiction of the <i>Financial Ombudsman Service</i> <u>which resulted</u> from section 226A (<u>repealed</u>) of the <i>Act</i> which applies to <i>licensees</i> .
<i>controlled activity</i>		(in accordance with section 21(9) of the <i>Act</i> (The classes of activity and investment)) any of the following activities specified in Part 1 of Schedule 1 to the Financial Promotions Order (Controlled Activities):
	...	

	(fab)	<u>credit broking (paragraph 4B);</u>
	(fac)	<u>operating an electronic system in relation to lending (paragraph 4C);</u>
	...	
	(ga)	<u>debt adjusting (paragraph 5A);</u>
	(gb)	<u>debt-counselling (paragraph 5B);</u>
	...	
	(na)	<u>providing relevant consumer credit (paragraph 10BA);</u>
	(nb)	<u>providing consumer hire (paragraph 10BB);</u>
	...	
<i>financial promotion rules</i>	...	
	(5)	<u>(in relation to CONC) any or all of the rules in CONC 3, that impose requirements in relation to a financial promotion but only to the extent that they apply to a financial promotion.</u>
<i>firm</i>	...	
	(7)	<u>(in DISP 2 and 3) includes, in accordance with the transitional provisions in article 10 of the Regulated Activities Amendment Order, unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant existing credit-related complaints and relevant new credit-related complaints.</u>
<i>limited permission</i>		a Part 4A permission for a relevant credit activity as defined in paragraph 2G of Schedule 6 to the Act (<u>guidance on which is given in COND 1.1A.5A</u>).
<i>owner</i>	...	
	(2)	<u>(in CONC relation to a credit-related regulated activity), as defined in article 60N(3) of the Regulated Activities Order.</u>
	...	
<i>primary pooling event</i>	...	
	(4)	<u>(in CASS 11) an event that occurs in the circumstances described in CASS 11.13.3R.</u>

- principal* (1) ...
- (b) (if the *person* is an *appointed representative* or, where applicable, a *tied agent*) the *authorised person* who is party to a contract with the *appointed representative*, or who is responsible for the acts of the *tied agent*, resulting in him being exempt, or in him carrying on a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply, under section 39 of the Act (Exemption of appointed representatives).
- private person* ...
- (a) ...
- (ii) any activity which would be a *regulated activity* apart from any exclusion made by article 72 of the *Regulated Activities Order* (Overseas persons); ~~and~~
- ...
- (c) a relevant recipient of credit (within the meaning of article 60L of the *Regulated Activities Order*) who is not an individual and who has suffered the loss in question in connection with an activity of the kind specified by article 36A, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of that Order or article 64 of that Order so far as relevant to any of those activities; and
- (d) a person who is, by virtue of article 36J of the *Regulated Activities Order*, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by *authorised persons* in carrying on a regulated activity of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that activity;
- ...
- respondent* (1) (in *DISP*, *FEES* 5 and *CREDS* 9) a *firm* (except a *UCITS qualifier*), *payment service provider*, *electronic money issuer*, ~~*licensee*~~ or *VJ participant* covered by the *Compulsory Jurisdiction*, ~~*Consumer Credit Jurisdiction*~~ or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP* 2 and 3 and *FEES* 5) includes, as a result of ~~sections~~ section 226 and 226A of the Act:
- ...

(b) ~~a person who was formerly a licensee in respect of a complaint about an act or omission which occurred at the time when it was a licensee, provided the complaint falls within a description specified in the consumer credit rules in force at the time of the act or omission; [deleted]~~

...

(5) (in DISP 2 and 3 and FEES 5) includes, in accordance with article 10 of the Regulated Activities Amendment Order, unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant existing credit-related complaints and relevant new credit-related complaints.

secondary
pooling event

...

(4) (in CASS 11) an event that occurs in the circumstances described in CASS 11.13.10R.

security

(1) (except in LR and CONC) (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any of the following investments specified in that Order:

...

(3) (in CONC) in accordance with article 60L of the Regulated Activities Order, in relation to a credit agreement or a consumer hire agreement, a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the borrower or hirer at the implied or express request of the borrower or hirer to secure the carrying out of the obligations of the borrower or hirer under the agreement.

specified
investment

any of the following investments specified in Part III of the Regulated Activities Order (Specified Investments):

...

(of) credit agreement (article 88D) for the purposes of the permission regime with respect to the regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise rights and duties under a regulated credit agreement, this is sub-divided into:

(i) a credit agreement (excluding high-cost short-term credit, a home credit loan agreement and a bill of sale loan agreement);

(ii) high-cost short-term credit;

	(iii)	<u>a home credit loan agreement;</u>
	(iv)	<u>bill of sale loan agreement;</u>
	(og)	<u>consumer hire agreement (article 88E);</u>
	...	
<i>total amount payable</i>	(1)	<u>(except in CONC) ...</u>
	(2)	<u>(in CONC) the sum of the total charge for credit and the total amount of credit payable under the credit agreement, as well as any advance payment.</u>
<i>total charge for credit</i>	...	
	(3)	<u>(in CONC in relation to a financial promotion about a credit agreement secured on land) the sum calculated in accordance with the rules in CONC App 1.1 and, in relation to financial promotions, the rules in CONC 3.6.8R.</u>
	(4)	<u>(in CONC in relation to a financial promotion about all other credit agreements) the sum calculated in accordance with the rules in CONC App 1.2 and, in relation to financial promotions, the rules in CONC 3.5.13R.</u>

Delete the following definitions. The deleted text is not shown.

consumer credit activity

consumer credit prohibition

licensee

regulated consumer credit agreement

regulated consumer hire agreement

Amend the following definitions currently proposed in the draft Client Asset Sourcebook (Amendment No 4) Instrument 2013 appended to CP13/5:

<i>acknowledgement letter fixed text</i>	(1)	<u>(in CASS 7) the text in the template acknowledgement letters in CASS 7 Annex 2R and CASS 7 Annex 3R that is not in square brackets.</u>
	(2)	<u>in CASS 11 the text in the template acknowledgement letters in CASS 11 Annex 1R that is not in square brackets.</u>

Annex C

Amendments to Threshold Conditions (COND)

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

1A Application

To which threshold conditions does COND apply?

...

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

- 1.1A.5
A
- 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 subparagraph (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 or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”).

(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 where the goods being hired is a vehicle;

other than if the credit broking 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;

(b) consumer credit lending 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; and

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

other than if the consumer credit lending 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 other than if the obligation to repay 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 supplier who also carries on the activity within (b);

(iii) alongside the activity within (c);

(iv) by a not-for-profit body;

other than if the debt adjusting or debt counselling 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;

(e) providing credit information services where carried on by a person alongside an activity within (a) to (d);

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

...

2.3 Effective supervision

Paragraph 2C of Schedule 6 to the Act

2.3.1A UK ...

(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 relevant credit activities.

...

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.5AG.

...

2.4 Appropriate resources

...

2.4.1A UK ...

(3) ~~The~~ Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether A has appropriate financial resources include-

...

(3A) Where the only regulated activities that A carries on, or seeks to carry on, are relevant credit activities, A has adequate financial resources if A is capable of meeting A's debts as they fall due.

...

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.5AG.

...

2.7 Business model

Paragraph 2F to Schedule 6 of the Act

2.7.1 UK ...

(3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are relevant credit activities.

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.5AG.

Annex D

Amendments to the Client Assets sourcebook (CASS)

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

1.2 General application: who? what?

...

1.2.3 R CASS does not apply to:

...

(4) a credit firm, other than a CASS debt management firm.

...

General application: what?

1.2.7 G ...

(7) The debt management client money chapter applies to CASS debt management firms receiving or holding client money for or on behalf of a client in connection with debt management activity.

1.2.8 G ...

(5) The debt management client money chapter generally applies in respect of relevant dealings with the client category known as customers. In general, the client categories of retail clients, professional clients, as well as eligible counterparties, have no relevance to credit related regulated activities, including debt management activities.

...

1.2.11 R Where a firm is subject to two or more of the client money chapter, and the insurance client money chapter, and the debt management client money chapter, it must ensure segregation between money held under each chapter, including that money held under different chapters is held, in different, separately designated, *client bank accounts* or *client transactions accounts*.

...

1.4 Application: particular activities

...

Debt management activities

- 1.4.15 G (1) The debt management client asset chapter applies to CASS debt management firms receiving or holding client money.
- (2) The mandate rules apply, where relevant, to CASS debt management firms carrying on debt management activity.

...

8 Mandates

8.1 Application

- 8.1.1 R This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm*'s:

...

- (2) *insurance mediation activity*, except where it relates to a *reinsurance contract*;

- (3) *debt management activity*.

...

- 8.1.2A R The *mandate rules* do not apply to a *firm*:

- (1) in relation to *client money* that the *firm* is holding in accordance with CASS 5 or CASS 7 (including *client money* that the *firm* has allowed another person to hold or control in accordance with CASS 7.5.2R) or CASS 11; or

...

Insert the following new chapter after CASS 10. The text is new and is not underlined

11 Debt management client money chapter

11.1 Application

- 11.1.1 R This chapter (the *debt management client money chapter*) applies to a *CASS debt management firm* that receives or holds *client money* as set out in this chapter.

- 11.1.2 G The requirements imposed on a *CASS debt management firm* that holds *client money* vary depending on whether a *firm* is classified as a *CASS small debt management firm* or a *CASS large debt management firm* in CASS 11.2.3R (*CASS debt management firm types*). CASS 11.1.4R to CASS

11.1.6R indicate which rules in the *debt management client money chapter* apply to which category of *firm*.

11.1.3 G The *debt management client money chapter* applies to (to the extent indicated by CASS 11.1.4R to CASS 11.1.6R) to a *CASS debt management firm*, even if at the date of the determination or, as the case may be, the notification, referred to in CASS 11.2.4R, the *CASS debt management firm* is not holding *client money*, provided that:

- (1) it held *client money* in the previous calendar year; or
- (2) it projects to hold *client money* in the current calendar year.

Application to CASS small debt management firms

11.1.4 R Subject to CASS 11.1.6R, only the rules and guidance in the *debt management client money chapter* listed in the table below apply to *CASS small debt management firms*.

Reference	Rule
CASS 11.1.1G to CASS 11.1.6R	Application
CASS 11.2.1R to CASS 11.2.9R	Firm classification
CASS 11.3.1R to CASS 11.3.2R and CASS 11.3.6R	Responsibility for CASS operational oversight
CASS 11.4.1G to CASS 11.4.4G	Definition of client money and discharge of fiduciary duty
CASS 11.5.1R and CASS 11.5.2R	Organisational requirements
CASS 11.6.1R and CASS 11.6.2G	Statutory trust
CASS 11.7.1R and CASS 11.7.5G	Selecting a bank at which to hold client money
CASS 11.8.1R to CASS 11.8.12R	Client bank account acknowledgement letters
CASS 11.9.1R to CASS 11.9.13G	Segregation and the operation of client money accounts
CASS 11.10.1R to CASS 11.10.7G	Payments to creditors

CASS 11.11.1R to CASS 11.11.10R and CASS 11.11.25R	Records, accounts and reconciliations
CASS 11.12.1R to CASS 11.12.7R	CASS 11 resolution pack
CASS 11.13.1R to CASS 11.13.14R	Client money distribution in the event of a failure of a firm or a bank

Application to CASS large debt management firms

- 11.1.5 R Subject to CASS 11.1.6R, the rules and guidance in the *debt management client money chapter* apply to CASS large debt management firms except where indicated in the relevant rule.

Solicitors

- 11.1.6 R (1) An *authorised professional firm* regulated by the Law Society (of England and Wales), the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the following rules of its *designated professional body*, must comply with those rules and, if it does so, it will be deemed to comply with the *debt management client money chapter*.
- (2) The relevant rules are:
- (a) if the *firm* is regulated by the Law Society (of England and Wales):
- (i) the SRA Accounts Rules 2011; or
- (ii) where applicable, the Solicitors Overseas Practice Rules 1990;
- (b) if the *firm* is regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 and the Law Society of Scotland Practice Rules 2011; and
- (c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

11.2 Firm classification

- 11.2.1 R (1) A CASS *debt management firm* must, once every year and by the time it is required to make a notification in accordance with CASS 11.2.4R, determine whether it is a CASS *large debt management firm*

or a *CASS small debt management firm* according to the amount of *client money* which it held during the previous year or, if it did not hold *client money* during the previous year, according to the amount of *client money* it projects to hold in the following year, in each case using the limits set out in the table in *CASS 11.2.3R*.

- (2) For the purpose of determining its '*CASS debt management firm type*' in accordance with *CASS 11.2.3R*, a *CASS debt management firm* must:
- (a) if it currently holds *client money*, calculate the highest total amount of *client money* held during the previous calendar year ending on 31 December and use that figure to determine its '*CASS debt management firm type*';
 - (b) if it did not hold *client money* in the previous calendar year but projects that it will do so in the current calendar year, calculate the highest total amount of *client money* that it projects that it will hold during that year and use that figure to determine its '*CASS debt management firm type*'.

11.2.2 R For the purpose of calculating the value of the total amounts of *client money* that it holds on any given *day* during a calendar year (in complying with *CASS 11.2.1R*) a *CASS debt management firm* must base its calculation on accurate internal records of *client money* holdings. A *CASS large debt management firm* must do this using the internal reconciliations performed during the previous year that are prescribed in *CASS 11.11.11R*. A *CASS small debt management firm* must use the records used in carrying out checks required of it under *CASS 11.11.5R*.

11.2.3 R *CASS debt management firm types*

CASS debt management firm type	Highest total amount of <i>client money</i> held during the <i>CASS debt management firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year
<i>CASS large debt management firm</i>	An amount equal to or greater than £1 million
<i>CASS small debt management firm</i>	Less than £1 million

Notification

- 11.2.4 R Once every calendar year, a *CASS debt management firm* must notify the *FCA*, in writing, of the information in (1), (2) or (3), as applicable, and the information in (4), in each case no later than the *day* specified in (1) to (4):
- (1) if it held *client money* in the previous calendar year, the highest total amount of *client money* held during the previous calendar year,

notification of which must be made no later than the fifteenth *business day* of January; or

- (2) if it did not hold *client money* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total amount of *client money* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
- (3) in any other case, the highest total amount of *client money* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money*; and
- (4) in every case, of its '*CASS debt management firm type*' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).

11.2.5 R For the purpose of the annual notification in *CASS 11.2.4R*, a *CASS debt management firm* must apply the calculation rule in *CASS 11.2.2R* .

Option to be treated as a *CASS large debt management firm*

11.2.6 G *CASS 11.2.7R* provides a *CASS debt management firm* with the ability to opt in to a higher category of '*CASS debt management firm type*'. This may be useful for a *CASS debt management firm* whose holding of *client money* is near the upper categorisation limit for a *CASS small debt management firm*.

11.2.7 R (1) Notwithstanding *CASS 11.2.3R*, provided that the conditions in (2) are satisfied a *CASS debt management firm* that would otherwise be classified as a *CASS small debt management firm* under the limits provided for in *CASS 11.2.3R*, may elect to be treated as a *CASS large debt management firm*.

- (2) The conditions to which (1) refers are that in either case:
 - (a) the election is notified to the *FCA* in writing;
 - (b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and
 - (c) the *FCA* has not objected.

Effective date of firm type

11.2.8 R A *firm's* '*CASS debt management firm type*' and any change to it takes effect:

- (1) if the *firm* notifies the *FCA* in accordance with *CASS 11.2.4R*(1) or

CASS 11.2.4R(2), on 1 February following the notification; or

- (2) if the *firm* notifies the *FCA* in accordance with CASS 11.2.4R(3), on the *day* it begins to hold *client money*; or
- (3) if the *firm* makes an election under CASS 11.2.6R and provided the conditions in CASS 11.2.7R(2) are satisfied, on the *day* the notification made under CASS 11.2.6R(2)(a) states that the election is intended to take effect.

11.2.9 G Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Debt Management Client Assets Firm Classification".

11.3 Responsibility for CASS operational oversight

CASS small debt management firm other than a not-for-profit debt advice body

11.3.1 R A *CASS small debt management firm*, other than a *not-for-profit debt advice body*, must allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS 11;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return in accordance with SUP 16.12.29CR.

CASS small debt management firm that is a not-for-profit debt advice body

11.3.2 R A *CASS small debt management firm* that is a *not-for-profit debt advice body* must allocate to a *director* a *senior manager*:

- (1) oversight of the *firm's* operational compliance with CASS 11;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return in accordance with SUP 16.12.29CR.

CASS large debt management firm: the CASS operational oversight function (CF10a)

11.3.3 G CASS 11.3.4R describes the *FCA controlled function* known as the *CASS operational oversight function* (CF10a) in relation to *CASS large debt management firms*, including *not-for-profit debt advice bodies*. As a

consequence of CASS 11.3.4R (in conjunction with SUP 10A.4.1R and SUP 10A.7.9R), in a CASS large debt management firm (including a not-for-profit debt advice body fitting into that category) the function described in CASS 11.3.4R is required to be discharged by a director or senior manager who is an approved person under the approved persons regime provided for in SUP.

- 11.3.4 R A CASS large debt management firm must allocate to a director or senior manager the function of:
- (1) oversight of the operational effectiveness of that debt management firm's systems and controls that are designed to achieve compliance with CASS 11;
 - (2) reporting to the debt management firm's governing body in respect of that oversight; and
 - (3) completing and submitting a CCR005 return FCA in accordance with SUP 16.12.29CR.
- 11.3.5 R If, at the time a CASS debt management firm becomes a CASS large debt management firm in accordance with CASS 11.2.8R, the firm is not able to comply with CASS 11.3.4R because it has no director or senior manager who is an approved person in respect of the CASS operational oversight function, the firm must:
- (1) take the necessary steps to ensure that it complies with CASS 11.3.4R as soon as practicable, which must at least include submitting an application for a candidate in respect of the CASS operational oversight function within 30 business days of the firm becoming a CASS large debt management firm; and
 - (2) until such time as it is able to comply with CASS 11.3.4R, allocate to a director performing a significant influence function or a senior manager performing a significant influence function responsibility for:
 - (a) oversight of the firm's operational compliance with CASS 11;
 - (b) reporting to the firm's governing body in respect of that oversight; and
 - (c) completing and submitting a CCR005 return FCA in accordance with SUP 16.12.29CR.

Record of responsibility for CASS operational oversight

- 11.3.6 R (1) Subject to (2), a CASS debt management firm must make and retain an appropriate record of the person to whom responsibility is allocated in accordance with, as applicable, CASS 11.3.1R, CASS 11.3.2R, and CASS 11.3.4R.

- (2) A *CASS small debt management firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
- (3) A *CASS debt management firm* must ensure that a record made under this *rule* is retained for a period of five years after it is made.

11.4 Definition of client money and the discharge of fiduciary duty

- 11.4.1 G *CASS 11* provides important safeguards for the protection of *client money* held by *CASS debt management firms* that sit alongside the fiduciary duty owed by firms in relation to *client money*. *CASS 11.4.2R* to *CASS 11.4.3R* provide *guidance* and *rules* for when *money* ceases to be *client money* for the purposes of both those rules and of the fiduciary duty which *CASS debt management firms* owe to *clients* in relation to *client money*.
- 11.4.2 R *Money* ceases to be *client money* if:
- (1) it is paid to the *client*, or a duly authorised representative of the *client*; or
 - (2) it is:
 - (a) paid to a third party on the instruction of the *client*, or with the specific consent of the *client*; or
 - (b) paid to a third party further to an obligation on the *firm* under any applicable law; or
 - (3) it is paid into a bank account of the *client* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *client*;
 - (4) it is due and payable to the *firm* for its own account;
 - (5) it is paid to the *firm* as an excess in the *client bank account* (see *CASS 11.11.10R(2)* and *CASS 11.11.8R(3)*) (Remedying discrepancies).
- 11.4.3 R When a *CASS debt management firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid.
- 11.4.4 G *Money* is not *client money* when it is properly due and payable to the *firm* for its own account. The circumstances in which *money* may become due and payable to the *firm* could include when fees have become due and payable from the *client* to the *firm* under the agreement between the *client* and the *firm*.

11.5 Organisational requirements

- 11.5.1 R A *CASS debt management firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.
- 11.5.2 R A *CASS debt management firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

11.6 Statutory trust

- 11.6.1 R A *CASS debt management firm* receives and holds *client money* as trustee on the following terms:
- (1) for the purposes and on the terms of the *debt management client money rules* and the *debt management client money distribution rules*;
 - (2) subject to (3), for the *clients* for whom that *money* is held, according to their respective interests in it;
 - (3) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
 - (4) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.
- 11.6.2 G Section 137B(1) of the *Act* (Miscellaneous ancillary matters) provides that *rules* may make provision which result in *client money* being held by a *firm* on trust. *CASS 11.6.1R* creates such a rule in relation to *client money* held by a *CASS large debt management firm*. The consequence of this rule is there is a fiduciary relationship between a *CASS large debt management firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *CASS debt management firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

11.7 Selecting a bank at which to hold client money

- 11.7.1 G A *CASS debt management firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.

- 11.7.2 R Before a *CASS large debt management firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the *firm* to hold *client money* at the *approved bank* concerned.
- 11.7.3 G In complying with *CASS 11.7.2R* a *CASS large debt management firm* should consider as appropriate, together with any other relevant matters:
- (1) the amount of *client money* held by the *firm*;
 - (2) the amount of *client money* the firm anticipates holding at the *approved bank*; and
 - (3) the credit worthiness of the *approved bank*.
- 11.7.4 R A *CASS large debt management firm* must consider the risks of holding too much *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.
- 11.7.5. G A *CASS small debt management firm* can demonstrate compliance with *CASS 11.7.1R* by checking that the bank it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm*'s attention to cause it to believe that the bank is not an appropriate place at which to hold *client money*.
- 11.7.6 R A *CASS large debt management firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of an *approved bank*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the *approved bank* to hold *client money*.

11.8 Client bank account acknowledgement letters

- 11.8.1 R
- (1) When (or before) a *CASS debt management firm* opens a *client bank account*, the *firm* must complete and sign a *client bank account acknowledgement letter* clearly identifying the actual *client bank account(s)* to be opened at that time, and send it to the bank with whom the *client bank account* is to be opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.
 - (2) A *CASS debt management firm* must not deposit any *client money* into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the relevant bank that has not been inappropriately redrafted and clearly identifies the relevant *client bank account(s)* to be opened at that time.

- 11.8.2 R In drafting *acknowledgement letters* under CASS 11.8.1R a *CASS debt management firm* is required to use the relevant template in CASS 11 Annex 1.
- 11.8.3 R When completing an *acknowledgment letter* under CASS 11.8.1R(1) a *CASS debt management firm*:
- (1) must not amend any of the *acknowledgement letter fixed text*;
 - (2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and
 - (3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.
- 11.8.4 G CASS 11 Annex 2 contains *guidance* on using the template *acknowledgment letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.
- 11.8.5 R (1) If, on countersigning and returning the *acknowledgement letter* to a *firm*, the relevant *person* has also:
- (a) made amendments to any of the *acknowledgement letter fixed text*; and/or
 - (b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;
- the *acknowledgement letter* will have been inappropriately redrafted for the purposes of CASS 11.8.1R(2).
- 11.8.6 R A *CASS debt management firm* must use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter by the relevant *person*.
- 11.8.7 G The main purposes of an *acknowledgement letter* are:
- (1) to put the *approved bank* on notice of a *firm's clients'* interests in *client money* that has been deposited with or transferred to such *person*;
 - (2) to ensure that the *client bank account* has been opened in accordance with CASS 11.9.3R, and is distinguished from any account containing money that belongs to the *firm*; and
 - (3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to

such *person* (or *person* connected to such *person*).

- 11.8.8 R A *CASS debt management firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an *acknowledgment letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *person*).
- 11.8.9 R A *CASS debt management firm* must, periodically (at least annually, and whenever it becomes aware that something referred to in an *acknowledgement letter* has changed) review each of its countersigned *acknowledgement letters* to ensure that they remain accurate and up to date.
- 11.8.10 R Whenever a *CASS debt management firm* finds a countersigned *acknowledgement letter* to be inaccurate or out of date, the *firm* must promptly draw up a new replacement *acknowledgement letter* under *CASS 11.8.1R* and ensure that the new *acknowledgement letter* is duly countersigned by the relevant *person*
- 11.8.11 R A *CASS debt management firm* should update an *acknowledgement letter* when there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter.
- 11.8.12 R If a *CASS debt management firm's client bank account* is transferred to another *person*, the *firm* must promptly draw up a new *acknowledgement letter* under *CASS 11.8.1R* and ensure that the new *acknowledgement letter* is duly countersigned by the relevant *person* within twenty *business days* of the *firm* sending it to that *person*

11.9 Segregation and the operation of client money accounts

Requirement to segregate

- 11.9.1 R A *CASS debt management firm* must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an *approved bank*, rather than being first received into the *firm's* own account and then segregated.
- 11.9.2 G A *CASS debt management firm* should arrange for *clients* and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.
- 11.9.3 R A *CASS debt management firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.
- 11.9.4 R Cheques received by a *CASS debt management firm*, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.

- 11.9.5 R Where a *CASS debt management firm* receives *client money* in the form of cash, a cheque or other payable order, it must:
- (1) pay the *money* in accordance with *CASS 11.9.2R* promptly and no later than on the *business day* after it receives the *money*;
 - (2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle 10*; and
 - (3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of *CASS 11.11* (Records, accounts and reconciliations).

Mixed remittance

- 11.9.6 R If a *CASS debt management firm* receives a *mixed remittance* it must:
- (1) pay the full sum into a *client bank account* promptly and in accordance with *CASS 11.9.1R* to *CASS 11.9.5R*; and
 - (2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the money that is not *client money* out of the *client bank account*.

Allocation of client money receipts

- 11.9.7 R
- (1) A *CASS debt management firm* must allocate in its books and records any *client money* it receives to an individual *client* promptly, and in any case, no later than five *business days* following the receipt.
 - (2) Pending a *CASS debt management firm's* allocation of a client money receipt to an individual *client* under (1), it must record the received *client money* in its books and records as "unallocated client money".
- 11.9.8 R If a *CASS debt management firm* receives money (either in a *client bank account* or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:
- (1) take all necessary steps to identify the *money* as either *client money* or its own *money*;
 - (2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as "unallocated client money" while it performs the necessary steps under (1).
- 11.9.9 G If a *CASS debt management firm* is unable to allocate *client money* that it has received to an individual client under *CASS 11.9.7R*, or is unable to

identify money that it has received as either *client money* or its own *money* under CASS 11.9.8R(1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the banking institution). A *firm* should have regard to its fiduciary duties when considering such matters.

Money received by appointed representatives, tied agents, field representatives and other agents

- 11.9.10 R A *CASS debt management firm* must ensure that *client money* received by its *appointed representatives, field representatives* or other agents is:
- (1) received directly into a *client bank account* of the *firm*; or
 - (2) if it is received in the form of a cheque or other payable order:
 - (a) paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt; or
 - (b) forwarded to the *firm* or, in the case of a *field representative*, forwarded to a specified business address of the *CASS debt management firm*, to ensure that the *money* arrives at the specified business address promptly and, in any event, no later than the close of the third *business day* following the receipt of the *money* from the client;
 - (3) if it is received in the form of cash, paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt.

Interest

- 11.9.11 R A *CASS debt management firm* must pay a *client* any interest earned on *client money* held for that *client*.

Returning money to clients

- 11.9.12 R A *CASS debt management firm* must, on receipt of a written request to withdraw from a *debt management plan*, promptly return *client money* still held by it to the client.
- 11.9.13 G The *FCA* would expect compliance with the requirement in CASS 11.9.12R to return client money promptly to require *client money* to be returned to a *client* within five *business days* of the date on which a *client*'s withdrawal from a *debt management plan* takes effect.

11.10 Payments to creditors

- 11.10.1 R Where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, the *firm* must pay that *money* to creditors as soon as reasonably practicable, save in the circumstances in *CASS 11.10.3R*.
- 11.10.2 G In the *FCA's* view the payment to creditors in accordance with *CASS 11.10.1R* should normally be within five *business days* of the receipt of cleared funds.
- 11.10.3 R The circumstances referred to in *CASS 11.10.1R* are:
- (1) the contract between the *client* and the *CASS debt management firm* expressly provides that *client money* might be held for more than five *business days* without being distributed to creditors;
 - (2) the existence of such a term expressly providing that *client money* might be held for more than five *business days* without being distributed to creditors has been separately brought to the attention of the *client* prior to his entering into the contract; and
 - (3) the *CASS debt management firm* has explained to the *client* the risks and implications, if any, of payment to creditors being delayed prior to the entry into the contract.
- 11.10.4 R On each occasion a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors and it is proposed not to make a *client's* payment to creditors within five *business days* of receipt of the *client money* in the circumstances described in *CASS 11.10.3R(1)*, it must:
- (1) as soon as reasonably practicable and within the five *business day* period, inform the *client's* creditors of the fact that it has received *client money* from the *client* for the purpose of distribution to his or her creditors and that it will not distribute that *client money* to the creditors within the five *business day* period; and
 - (2) perform daily reconciliations of the money held for the *client* concerned in accordance with the provisions of *CASS 11.11*.
- 11.10.5 R On each occasion a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors and is unable for any reason other than in the circumstances described in *CASS 11.10.3R(1)* to make a payment to the *client's* creditors within five *business days* of receipt, it must:
- (1) inform the *client* of the delay and the reason for the delay;
 - (2) inform the *client* of the risks and implications of the late payments;
 - (3) inform the *client's* creditors of this delay as soon as reasonably practicable and within the period of five *business days* of the receipt

of the relevant *client money*; and

- (4) perform daily checks of its records of the money held for the *client* concerned in accordance with the provisions of CASS 11.11.
- 11.10.6 R (1) Subject to (2), where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, and it fails to pay that *money* to creditors as soon as reasonably practicable following its receipt (see CASS 11.10.1R and CASS 11.10.2G), it must put the *client* into the financial position he would have been in had the delay not occurred.
- (2) Paragraph (1) does not apply in the circumstances described in CASS 11.10.3R or where the delay is due to circumstances beyond the *firm's* control.
- 11.10.7 G Putting a *client* into the position he would have been in had the delay not occurred under CASS 11.10.6R should include paying to the *client* a sum equivalent to the amount of any additional interest which would not have accrued but for the delay and any default charges that have been applied to the account as a result of the delay.

11.11 Records, accounts and reconciliations

Records and accounts

- 11.11.1 R A *CASS debt management firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.
- 11.11.2 R A *CASS debt management firm* must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *clients*.
- 11.11.3 R A *CASS debt management firm* must maintain up-to-date records that detail all payments to, from, or made on behalf of *clients* and written and oral contact with *clients* and their creditors.

Checks and reconciliations of internal records

- 11.11.4 G So that a *CASS debt management firm* may check that it has sufficient *money* segregated in its *client bank accounts* to meet its obligations to *clients* for whom it is undertaking *debt management activity*, it is required periodically to carry out reconciliations of its internal records and accounts to check that the total amount of *client money* that it should hold for each *client* is equal to the total amount of *client money* it actually has segregated in *client bank accounts*. CASS 11.11.5R to CASS 11.11.18R provide *rules* that the different types of *CASS debt management firm* are obliged to follow

to meet this obligation.

Checks of internal records: CASS small debt management firm

- 11.11.5 G For a *CASS small debt management firm* to demonstrate it has maintained its records and accounts in a way envisaged by *CASS 11.11.2R*, it should carry out checks of its internal records and accounts that are reasonable and proportionate to its business. *CASS 11.11.6R* provides a rule that a *CASS small debt management firm* is obliged to follow to meet this obligation.
- 11.11.6 R A *CASS small debt management firm* must undertake checks of its internal accounts and records to ensure that the amount money it holds in its *client bank accounts* is equal to the amount of *client money* that should be held and segregated under *CASS 11.9*.
- 11.11.7 R In carrying out the checks required by *CASS 11.11.6R* a *CASS small debt management firm* must use internal records and ledgers (for example, its cash book or other internal accounting records), rather than the records it has obtained from banks and other third parties with whom it has placed *client money* (for example, bank statements).
- 11.11.8 G The checks that a *CASS small debt management firm* is expected to follow in complying with *CASS 11.11.6R* include checking that its internal records and accounts accurately record the balances of *client money* held in respect of individual *clients*, and that the aggregate of those individual *client money* balances are equal to the total *client money* segregated in its *client bank accounts*. In undertaking the comparison between the internal records of balances of *client money* and the *client money* segregated in *client bank accounts* a *firm* should use the previous day's closing *client money* balances and must compare those with other records relating to the same day. In determining an appropriate frequency for its record checks a *firm* should consider the volume and frequency of transactions in its *client bank accounts*.
- 11.11.9 G In seeking to comply with its obligation to carry out checks on its internal records and accounts a *CASS small debt management firm* may choose to follow the steps specifically required of *CASS large debt management firms* in undertaking a *CASS large debt management firm internal client money reconciliation* and *CASS large debt management firm external client money reconciliation* (see *CASS 11.11.11R* to *CASS 11.11.12R* and *CASS 11.11.19G* to *CASS 11.11.22G*). A *CASS small debt management firm* which follows that procedure is likely to be regarded by the *FCA* as having fulfilled its obligation under *CASS 11.11.6R*.

CASS small debt management firms: remedying discrepancies

- 11.11.10 R Where the check of its internal records and accounts that a *CASS small debt management firm* is required to undertake under *CASS 11.11.6R* reveals a difference between the amount of *money* it holds in its *client bank accounts* and the amount of *client money* that should be held and segregated under *CASS 11.9*, a *CASS small debt management firm* must:

- (1) ensure that any shortfall in the amount held in its *client bank accounts* as compared to the amount that should be held there is made up by a prompt payment into the *firm's client bank accounts*;
- (2) ensure that any excess in the amount held in its *client bank accounts* as compared to the amount that should be held there is promptly withdrawn from its *client bank accounts*; and
- (3) ensure that any correction of a shortfall or excess of the kind referred to in (1) and (2) is carried out, at the latest, before the end of the *business day* following the day on which difference was discovered.

CASS large debt management firms internal client money reconciliation

- 11.11.11 R A *CASS large debt management firm* must, as often as is necessary, but no less frequently than every five *business days*, carry out a *CASS large debt management firm internal client money reconciliation*.
- 11.11.12 R A *CASS large debt management firm internal client money reconciliation* requires a *CASS large debt management firm* to check whether its *client money* resource, as determined by *CASS 11.11.13R*, on the previous *business day*, was at least equal to the *client money* requirement, as determined by *CASS 11.11.14R* as at the close of business on that day.

Calculating the client money resource

- 11.11.13 R The *client money* resource for *client money* held in accordance with *CASS 11.11.12R* is:
- (1) the aggregate of the balances on the *firm's client money bank accounts*, as at the close of business on the previous *business day*;
 - (2) together with and including any *client money* received by its *appointed representatives, tied agents*; and *field representatives* or other agents in accordance with *CASS 11.9.10R(2)* and (3) and which, as at the date of the calculation, it is required to segregate in accordance with *CASS 11.9.1R* to *CASS 11.9.6R*.

Calculating the client money requirement

- 11.11.14 R A *firm's client money* requirement is:
- (1) the aggregate of all individual *client* balances calculated in accordance with *CASS 11.11.15R* and *CASS 11.11.16R* ; plus
 - (2) the amount of any unallocated *money* under *CASS 11.9.8R*.
- 11.11.15 R The individual *client* balance for each *client* must be calculated as follows:
- (1) the amount paid by a *client* to the *CASS debt management firm*; plus

(2) the amount of any interest, and any other sums, due to the *client*;

less:

(3) the aggregate of the amount of money:

(a) paid back to the *client*; and

(b) due and payable to the *firm*; and

(c) paid out to a third party for or on behalf of a *client*.

11.11.16 R Where the individual *client* balance calculated in respect of an individual *client* under CASS 11.11.15R is a negative figure (because the amounts paid by or due to a *client* under CASS 11.11.15R(1) and (2) are less than the amounts paid out or due from that *client* under CASS 11.11.15R(3)), that individual *client* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in CASS 11.11.14R.

11.11.17 G A debt management *firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* under CASS 11.9.5R into a *client bank account* promptly and no later than on the *business day* after it receives the *money* (see CASS 11.9.5R). Once deposited into a *client bank account*, that receipt of *client money* should form part of the *firm's client money* resource and the obligation arising from the receipt should be recorded as forming part of the *firm's client money requirement*.

Large debt management firms: remedying discrepancies

11.11.18 R When a CASS large debt management *firm internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a CASS large debt management *firm* must:

(1) identify the reason for the difference;

(2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which difference was discovered;

(3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

CASS large debt management firm external client money reconciliation

11.11.19 G The purpose of the reconciliation process required by CASS 11.11.20R is to ensure the accuracy of a *firm's* internal accounts and records against those

of any third parties by whom *client money* is held.

11.11.20 R A *CASS large debt management firm* should perform a *CASS large debt management firm external client money reconciliation*:

- (1) as regularly as is necessary; and
- (2) no less frequently than the *CASS large debt management firm internal client money reconciliations*; and
- (3) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom *client money* is held.

11.11.21 R A *CASS large debt management firm external client money reconciliation* requires a *CASS large debt management firm* to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.

11.11.22 G The *FCA* expects a *CASS large debt management firm* which carries out transactions for its clients on a daily basis to carry out a *CASS large debt management firm external client money reconciliation* on a daily basis.

11.11.23 R When any discrepancy is revealed by a *CASS large debt management firm external client money reconciliation* a *CASS large debt management firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.

11.11.24 R While a *CASS large debt management firm* is unable to resolve a discrepancy arising from the *CASS large debt management firm external client money reconciliation*, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant account.

Notification requirements

11.11.25 R A *CASS debt management firm* must inform the *FCA* in writing without delay if:

- (1) its *client money* records are materially out of date or materially inaccurate so that the *firm* is no longer able to comply with the requirements in *CASS 11.11.1R* to *CASS 11.11.3R*;
- (2) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money*

the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in CASS 11.9.

- 11.11.26 R A *CASS large debt management firm* must inform the *FCA* in writing without delay if:
- (1) after having carried out a *CASS large debt management firm internal client money reconciliation* in accordance with CASS 11.11.11R it will be unable to pay any shortfall into (or withdraw any excess from) a client bank account so that the *firm* is unable to comply with CASS 11.11.18R;
 - (2) having carried out a *CASS large debt management firm internal client money reconciliation* in accordance with CASS 11.11.11R it materially fails to pay any shortfall into (or withdraw any excess from) a client bank account so that the *firm* is unable to comply with CASS 11.11.18R;
 - (3) after having carried out a *CASS large debt management firm external client money reconciliation* in accordance with CASS 11.11.20R it will be unable to identify and correct any discrepancies in accordance with CASS 11.11.23R;
 - (4) having carried out a *CASS large debt management firm external client money reconciliation* in accordance with CASS 11.11.20R it materially fails to identify and correct any discrepancies in accordance with CASS 11.11.23R;
 - (5) it will be unable to or materially fails to conduct a *CASS large debt management firm internal client money reconciliation* in compliance with CASS 11.11.11R; or
 - (6) it will be unable to or materially fails to conduct a *CASS large debt management firm external client money reconciliation* in compliance with CASS 11.11.20R.

11.12 CASS 11 resolution pack

- 11.12.1 G The purpose of the *CASS 11 resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in dealing with *client money* in a timely manner.
- 11.12.2 R A *CASS debt management firm* which holds *client money* must maintain at all times and be able to retrieve, in the manner described in this section, a *CASS 11 resolution pack*.
- 11.12.3 R A *CASS debt management firm* must include within its *CASS 11 resolution pack* all those documents referred to in CASS 11.12.4R.

- 11.12.4 R The documents in *CASS 11.12.3R* that a *CASS debt management firm* must include within its *CASS 11 resolution pack* are:
- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS 11 resolution pack*;
 - (2) a document which identifies all the institutions with which *client money* may be held, including *approved banks*, money market funds or other third parties to whom *client money* may be passed;
 - (3) a document which identifies each *appointed representative, field representative* or other agent of the *firm* which may receive *client money* in its capacity as the *firm's agent*;
 - (4) a document which identifies each *senior manager and director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* under the *debt management rules*; and
 - (5) for all institutions identified in (2) the written acknowledgement or notification of trust letters sent and received in accordance with *CASS 11.8.1R*;
 - (6) records relating to the internal and external client money checks it is required to carry out under *CASS 11.11*.
- 11.12.5 R In relation to each document in a *CASS debt management firm's CASS 11 resolution pack* a *firm* must:
- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and in any event within 48 hours of that officer's appointment; and
 - (2) ensure that it is able to retrieve each document as soon as practicable, and in any event within 48 hours, where it has taken a decision to do so or as a result of an *FCA* request.
- 11.12.6 R
- (1) A *CASS debt management firm* must ensure that it reviews the content of its *CASS 11 resolution pack* on an ongoing basis to ensure that it remains accurate.
 - (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in *CASS 11.12.4R*, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.
- 11.12.7 R A *CASS debt management firm* must notify the *FCA* in writing immediately

if it has not complied with, or is unable to comply with, CASS 11.12.4R and CASS 11.12.6R.

11.13 Client money distribution in the event of a failure of a firm or bank).

Application

- 11.13.1 R This section (the *debt management client money distribution rules*) applies to a *CASS debt management firm* that holds *client money* which is subject to the *debt management client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

Purpose

- 11.13.2 G The *debt management client money distribution rules* seek, in the event of the *failure* of a *CASS debt management firm* or of an *approved bank* at which the *CASS debt management firm* holds *client money*, to protect *client money* and to facilitate the timely payment of sums to creditors or the timely return of *client money* to clients.

Failure of a CASS debt management firm: primary pooling event

- 11.13.3 R A *primary pooling event* occurs:
- (1) on the *failure* of a *CASS debt management firm*;
 - (2) on the vesting of assets in a *trustee* in accordance with an 'assets requirement' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act* where such a *requirement* is imposed in respect of all *client money* held by the *firm*.

Pooling and distribution after a primary pooling event

- 11.13.4 R If a *primary pooling event* occurs:
- (1) all client money:
 - (a) held in the *CASS debt management firm's client bank accounts*; and
 - (b) received by the *CASS debt management firm* on behalf of a *client* but not yet paid into the *firm's client bank accounts*;is treated as pooled together to form a notional pool;
 - (2) a *CASS debt management firm* must calculate the amount it should be holding on behalf of each individual client as at the time of the *primary pooling event* using the method of calculating individual client balance provided for by CASS 11.11.15R;

- (3) a *CASS debt management firm* must decide whether it is in the best interests of its *clients* to transfer all its *debt management activity* business to another *debt management firm*.

Distribution if client money not transferred to another firm

- 11.13.5 R Where a *primary pooling* event occurs and the *client money* is not transferred to another *firm* in accordance with *CASS 11.13.4G*, a *CASS debt management firm* must distribute client money comprising the notional pool so that each client receives a sum that is rateable to their entitlement to the notional pool calculated in *CASS 11.13.4R(2)*.

Transfer of client money to another firm

- 11.13.6 G If in the event of a *primary pooling* event occurring the *debt management activity* business undertaken by a *CASS debt management firm* (“the transferor”) is to be transferred to another *debt management firm* (“the transferee”), then the transferor may also move the *client money* associated with that business to the transferee.
- 11.13.7 R When the remaining *client money* is transferred in accordance with *CASS 11.13.6R*, it must be held by the transferee on the same basis it was held by the transferor, including in accordance with the statutory trust referred to in *CASS 11.6.1R*.
- 11.13.8 R If there is a *shortfall* in the *client money* transferred in accordance with *CASS 11.13.6G* then the *client money* must be allocated to each of the *clients* for whom the *client money* was held so that each client is allocated a sum which is rateable to that client’s *client money* entitlement in accordance with *CASS 11.13.4R(2)*. This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.
- 11.13.9 R The transferee must, within 7 *days* after the transfer of *client money* in accordance with *CASS 11.13.6G* notify *clients*:
- (1) that their *money* has been transferred to the transferee; and
 - (2) that they have the option of having *client money* returned to them or to their order by the transferee, otherwise the transferee will hold the *client money* for the *clients* and conduct *debt management activities* for those *clients*.

Failure of a bank: secondary pooling event

- 11.13.10 R A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *CASS debt management firm* holds *client money* in a *client bank account*.
- 11.13.11 R If a *secondary pooling event* occurs as a result of the *failure* of an *approved bank* where one or more *client bank accounts* are held then in relation to every *client bank account* of the *firm*, the provisions of *CASS 11.13.12R (1)*,

(2), and (3) will apply.

- 11.13.12 R *Money held in each client bank account of the firm must be treated as pooled and:*
- (1) any *shortfall* in *client money* held, or which should have been held, in *client bank accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all *clients* whose *client money* is held in a *client bank account* of the *firm*, rateably in accordance with their entitlements to the pool;
 - (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *CASS large debt management firm* must make and retain a record of each *client's* share of the *client money* shortfall at the *failed* bank until the *client* is repaid; and
 - (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in accordance with *CASS 11.11.14R*.
- 11.13.13 R The term 'which should have been held' is a reference to the failed bank's failure to hold the *client money* at the time of the pooling event.
- 11.13.14 R Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with *CASS 11.9.11R (Interest)*.

11 Annex 1R Acknowledgement Letter template

[Letterhead of CASS debt management firm subject to CASS 11.8.2R, including full name and address of firm]

[Name and Address of Bank]

[Date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

We refer to the following [current/deposit account[s]] which [*Name of CASS debt management firm*], authorised and regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), (“us”, “we” or “our”) [have opened or will open] [and/or] [have deposited or will deposit] with [*Name of Bank*] (“you” or “your”):

[Insert the account title[s], the account unique identifier[s] (such as sort code and account number, deposit number, reference code) and (if applicable) any abbreviated name of the account[s] as reflected in the Bank’s systems]

(collectively, the “Client Bank Account[s]”).

You acknowledge that you are on notice that:

- (a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;
- (b) we have opened the Client Bank Account[s] for the purpose of depositing money on behalf of our clients; and
- (c) we hold all money standing to the credit of the Client Bank Account[s] in our capacity as trustee (or, if relevant, as agent) under the laws applicable to us.

You agree that:

- (d) in relation to [each of] the Client Bank Account[s] above and in respect of any sum owed to you, or to any third party, on any other account, you do not have any recourse or right against money in the Client Bank Account[s], including but not limited to any right to combine the Client Bank Account[s] with any other account and any right of set-off or counterclaim against money in the Client Bank Account[s];
- (e) the title of [the/each] Client Bank Account[s] is as stated above and sufficiently distinguishes [the/each] account from any other account containing money that belongs to us or to any third party; and
- (g) you are required to release on demand all money standing to the credit of the Client Bank Accounts[s], upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy, (or similar procedure) in any relevant jurisdiction.

We acknowledge that you are not responsible for ensuring compliance by us with our own obligations, including as trustee (or, if relevant, as agent), in respect of the Client Bank Account[s].

The terms of this letter shall remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party. This letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter. In the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement shall prevail. No variation to the terms of this letter shall be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority.

This letter shall be governed by the laws of [England and Wales/Scotland/Northern Ireland] without regard to principles of choice of law.

The courts of [England and Wales/Scotland/Northern Ireland] shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

[Name of CASS debt management firm]

x _____
Authorised Signatory

[Signed by [Name of Third Party Administrator] on behalf of [CASS debt management firm]]

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank]

x _____

Authorised Signatory

Print Name:

Title:

Contact Information: [Insert signatory's phone number and email address]

Date:

11 Annex 2G

Guidance notes for acknowledgement Letters (CASS 11.8.4)

Introduction

- 1 This annex contains *guidance* on the use of the templates for *acknowledgment letters* in CASS 11 Annex 1.
- 2 Unless stated otherwise, a reference to ‘counterparty’ in this annex is (in the context of a *client bank account acknowledgment letter* (and CASS 11 Annex 1)), to the relevant bank where a client bank account is held or opened.

General

- 3 Under CASS 11.8.1R, *CASS debt management firms* are required to have in place a duly signed and countersigned *acknowledgment letter* for a *client bank account* before they are allowed to place *client money* in the account.
- 4 Before (or at the same time) a *firm* opens a *client bank account* a *CASS debt management firm* is required to complete, sign and send to the counterparty an *acknowledgment letter* in relation to that account and in the form set out in CASS 11 Annex 1 (Client bank account acknowledgment letter template).
- 5 When completing an *acknowledgment letter* using the appropriate template, a *CASS debt management firm* is reminded that it must not amend any of the text which is not in square brackets (*acknowledgment letter fixed text*). A *CASS debt management firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.

Clear identification of relevant accounts

- 6 A *CASS debt management firm* is reminded that for each *client bank account* it needs to have in place an *acknowledgment letter*. As a result, it is important that it is clear to which account or accounts each *acknowledgment letter* relates. As a result, the templates in CASS 11 Annex 1R require that the *acknowledgment letter* include the full title and a unique identifier, such as a sort code and account number, deposit number, reference code, for each *client bank account*.
- 7 The title and unique identifiers included in an *acknowledgment letter* for a *client bank account* or *client transaction account* should be the same as those reflected in both the records of the *CASS debt management firm* and the relevant counterparty, as appropriate, for that account. Where a counterparty’s systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

- (i) the account may continue to be appropriately identified in line with the requirements of *CASS 11* (for example, ‘segregated’ may be shortened to ‘seg’, ‘account’ may be shortened to ‘acct’ etc); and
- (ii) when completing an *acknowledgment letter*, such letter must include both the long and short versions of the account title.

8 A *CASS debt management firm* should ensure that all relevant account information is contained in the space provided in the body of the *acknowledgment letter*. Nothing should be appended to an *acknowledgment letter*.

9 In the space provided in the template letters for setting out the account title and a unique identifier for each relevant account/deposit, a *CASS debt management firm* may include the required information in the format of the following table:

Full account title	Unique identifier	Title reflected in [<i>name of bank</i>] systems
[<i>Debt Management Firm Client Bank Account</i>]	[00-00-00 12345678]	[DMFIRM CLIENT A/C]

Signature and countersignatures

- 10 A *CASS debt management firm* should ensure that each *acknowledgment letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or its counterparty may require more than one signatory).
- 11 Where an *acknowledgment letter* is signed or countersigned electronically, a *CASS debt management firm* should ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.

Completing an acknowledgment letter

- 12 A *CASS debt management firm* should use at least the same level of care and diligence when completing an *acknowledgment letter* as it would in managing its own commercial agreements.

- 13 A *CASS debt management firm* should ensure that each *acknowledgment letter* is legible (eg, any handwritten details should be easy to read), produced on the *firm's* own letter headed-paper, dated and addressed to the correct legal entity (eg, where the counterparty belongs to a group of companies).
- 14 A *CASS debt management firm* should also ensure each *acknowledgment letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).
- 15 A *CASS debt management firm* should similarly ensure that no square brackets remain in the text of each *acknowledgment letter* (e.g. after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the templates in *CASS 11 Annex 1*).
- 16 A *CASS debt management firm* should complete an *acknowledgment letter* so that no part of the letter can be easily altered (e.g. the letter should be signed in ink rather than pencil).
- 17 In respect of the *acknowledgment letter's* governing law and choice of forum, a *CASS debt management firm* should agree with its counterparty and reflect in the letter that either the laws of England and Wales, Scotland or Northern Ireland, as appropriate, will govern the *acknowledgment letter* and that the courts of that same jurisdiction will have exclusive jurisdiction to settle any disputes arising out of, or in connection with, the *acknowledgment letter*, its subject matter or formation.

Authorised signatories

- 18 A *CASS debt management firm* is required under *CASS 11.8.6R* to use reasonable endeavours to ensure that any individual that has countersigned an *acknowledgment letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant counterparty.
- 19 If an individual that has countersigned an *acknowledgment letter* does not provide the *CASS debt management firm* with sufficient evidence of his/her authority to do so then the *CASS debt management firm* is expected to make appropriate enquires to satisfy itself of that individual's authority.
- 20 Evidence of an individual's authority to countersign an *acknowledgment letter* may include a copy of the counterparty's list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *acknowledgment letter*.
- 21 A *CASS debt management firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *acknowledgment letter* as the *firm* would seek when managing its own commercial arrangements.

Third party administrators

- 22 If a *CASS debt management firm* uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgment letter*, the text “[Signed by [*Name of Third Party Administrator*] on behalf of [*CASS debt management Firm*]]” should be inserted to confirm that the *acknowledgment letter* was signed by the TPA on behalf of the *CASS debt management firm*.
- 23 In these circumstances, the *CASS debt management firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgment letter* on the *CASS debt management firm’s* behalf. A *CASS debt management firm* should also ensure that *acknowledgment letter* continues to be drafted on letter-headed paper belonging to the *firm*.
- 24 A *CASS debt management firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in *CASS 11.7* and the *Glossary*.
- 25 All references to the term “Client Bank Account[s]” in a *client bank account acknowledgment letter* should also be made in either the singular or plural, as appropriate.

Amend the Transitional Provisions and Schedules as shown.

Transitional Provisions

TP 1.1

(1)	Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
11	<u>CASS 11</u>	<u>R</u>	<u>Applies in relation to money held by a CASS debt management firm on 1 April 2014 (being money to which CASS 11 would not otherwise apply) to the extent that such money was received or is held on behalf of an individual in the course of or in connection with business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be a debt management activity.</u>	<u>Indefinitely</u>	<u>1 April 2014</u>

Sch 1.3

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>CASS 11.3.6R</u>	<u>Allocation of CASS oversight function in CASS 11.3.1R or CASS 11.3.2R, or CASS operational oversight function in CASS 11.3.4R</u>	<u>The person to whom (as applicable) the CASS oversight responsibilities have been allocated, or to whom the CASS operational oversight function has been allocated</u>	<u>Upon allocation</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 11.7.6R</u>	<u>Appropriateness of a CASS large debt management firm's</u>	<u>Grounds upon which a CASS large debt management firm</u>	<u>Date of the selection</u>	<u>5 years (from the date the firm ceases to use the approved bank to</u>

	<u>selection of an approved bank</u>	<u>satisfies itself as to the appropriateness of the firm's selection of an approved bank at which to hold client money</u>		<u>hold client money)</u>
<u>CASS 11.8.8R</u>	<u>Demonstration that a CASS debt management firm has complied with CASS 11.8.1R to CASS 11.8.6R</u>	<u>Evidence of such compliance</u>	<u>On compliance with the relevant provision</u>	<u>None specified</u>
<u>CASS 11.9.5R</u>	<u>Money received from clients in the form of cash, cheques or other payable orders</u>	<u>Details of money received</u>	<u>On receipt</u>	<u>None specified</u>
<u>CASS 11.9.8R(2)</u>	<u>Unallocated client money under CASS 11.9.8(2)</u>	<u>Details of unallocated client money held</u>	<u>Being unable to identify money as client money or its own money, and deciding it is reasonably prudent to so record</u>	<u>Until it performs the necessary steps to identify the money under CASS 11.9.8R(1)</u>
<u>CASS 11.11.1R</u>	<u>Client money held for each client and the CASS debt management firm's own money</u>	<u>All that is necessary to enable the CASS debt management firm to distinguish client money held for one client from client money held for any other client, and from the firm's own money</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 11.11.2R</u>	<u>Client money held for each client</u>	<u>Accurate records to ensure the correspondence between the records and accounts of the entitlement of each client for whom the CASS debt management firm holds client money with the records and accounts of the client</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>

		<u>money the firm holds in client bank accounts</u>		
<u>CASS 11.11.3R</u>	<u>Payments made to, for or on behalf of clients by a CASS debt management firm and written and oral contact with clients and creditors</u>	<u>Details of payments made and of the written or oral contact</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 11.12.4R</u>	<u>A CASS debt management firm's CASS 11 resolution pack</u>	<u>The documents to which CASS 11.12.3R and CASS 11.12.4 R refer</u>	<u>From the date on which a CASS debt management firm becomes subject to CASS 11.12.3R</u>	<u>None is specified</u>
<u>CASS 11.13.12 R (3)</u>	<u>A CASS large debt management firm's record of each client's shortfall in the event of a secondary pooling event</u>	<u>Details of the shortfall</u>	<u>On the secondary pooling event occurring</u>	<u>None specified</u>

Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<u>CASS 11.2.4R(1) to (3)</u>	<u>The highest total amount of client money held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4R</u>	<u>The highest total amount of client money held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4R</u>	<u>The need to comply with CASS 11.2.4(1) to (3)R</u>	<u>By the fifteenth day of January unless contrary provision is made in CASS 11.2.4 (1) to (4)</u>
<u>CASS 11.2.4R(4)</u>	<u>A firm's CASS debt management firm type classification</u>	<u>A firm's CASS debt management firm type classification</u>	<u>The need to comply with CASS 11.2.4R (4)</u>	<u>At the same time as the notification in CASS 11.2.4 (1) to (4)</u>

<u>CASS</u> <u>11.11.25R</u> <u>(1)</u>	<u>Non-compliance with requirements in CASS 11.11.1R to CASS 11.11.3R</u>	<u>Non-compliance with requirements in CASS 11.11.1R to CASS 11.11.3R</u>	<u>The non-compliance</u>	<u>Without delay</u>
<u>CASS</u> <u>11.11.25R</u> <u>(2)</u>	<u>Amount of money segregated in client bank accounts is materially different from total aggregate of client money required to be segregated</u>	<u>The fact that there is a material difference</u>	<u>Awareness of the difference</u>	<u>Without delay</u>
<u>CASS</u> <u>11.11.25R</u> <u>(2)</u>	<u>A CASS large debt management firm's inability or failure to comply with CASS 11.11.18R, CASS 11.11.23 R, CASS 11.11.11R or CASS 11.11.20R</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>
<u>CASS</u> <u>11.11.27R</u>	<u>A CASS large debt management firm's inability or failure to comply with CASS 11.12.3R or CASS 11.12.6R</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>

Annex E

Amendments to the Supervision manual (SUP)

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

3.1 Application

...

3.1.2 R Applicable sections

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...		
(5B) <u>CASS debt management firm</u>	<u>SUP 3.1</u> <u>SUP 3.10</u> <u>SUP 3.11</u>	<u>SUP 3.1</u> <u>SUP 3.10</u>
...		

3.10 Duties of auditors: notification and report on client assets

Application

...

3.10.2 R An auditor of an *authorised professional firm* need not report under this section in relation to that *firm*'s compliance with the *client money rules* in the *client money chapter* or the debt management client money rules if:

- (1) ...
- (2) that *firm* is subject to the rules of its *designated professional body* as specified in *CASS 7.1.15R(2)* or CASS 11.1.6R(2) with respect to its *regulated activities*.

...

3.10.5 Client assets report

Whether in the auditor's opinion	
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), <u>the <i>debt management client money rules</i></u> and the <i>mandate rules</i> throughout the period;
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), <u>the <i>debt management client money rules</i></u> and the <i>mandate rules</i> , at the date at which the report has been made;
...	
(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the <i>rules</i> <u>in CASS 5.6 and CASS 7A (client money distribution) and CASS 11.13 (<i>debt management client money distribution rules</i>)</u> in relation to that pooling event.

3 Annex 1R

Auditor's client assets report Part 1 – Auditor's Opinion

...

Opinion

In our opinion:

[The firm has maintained] [Except for...the firm has maintained] [Because of...the firm did not maintain] systems adequate to enable it to comply with [the custody rules,] [the collateral rules,] [the mandate rules] ~~{and}~~ [the client money rules] [and] [the debt management client money rules] throughout the period since [the last date at which a report was made] [the firm was authorised] [the firm became subject to SUP 3.11 and we, its auditor, became subject to SUP 3.10].*

[The firm was] [Except for...the firm was] [Because of...the firm was not] in compliance with the [the custody rules,] [the collateral rules,] [the mandate rules] ~~{and}~~ [the client money rules] [and] [the debt management client money rules] as at the period end date.*

...

In relation to the secondary pooling event during the period, the firm has complied with the rules in [CASS 5.6] [and] [CASS 7A (client money distribution)] [and] [CASS 11(the debt management client money distribution rules)] in relation to that pooling event.

...

Insert the following chapter after SUP 8. The text is new and is not underlined.

8A Directions and determinations by the FCA waiving, varying or disapplying CCA requirements

8A.1 Application, purpose and interpretation

8A.1.1 D This chapter applies to every *firm* which:

- (1) is subject to the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA* that wishes to apply for a direction from the *FCA* waiving or varying those requirements;
- (2) is subject to the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement that wishes to apply for a determination by the *FCA* that that requirement can be dispensed with; and
- (3) wishes to apply for a direction from the *FCA* that the *hirer's* rights to terminate a regulated consumer hire agreement under section 101 of the *CCA* do not apply to regulated consumer hire agreements made by that *firm*.

8A.1.2 G This chapter explains how the regime for obtaining:

- (1) a direction from the *FCA* waiving or varying the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA*;
- (2) a determination by the *FCA* that the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement can be dispensed with; and
- (3) a direction from the *FCA* that the *hirer's* rights to terminate a regulated consumer hire agreement under section 101 of the *CCA* do not apply to regulated consumer hire agreements made by the relevant *firm*;

works.

8A.1.3 G Unless italicised and except where the contrary intention appears, expressions used in this chapter have the same respective meanings as in the *CCA*.

8A.2 Introduction and conditions

Directions under section 60(3) of the CCA

- 8A.2.1 G Under section 60(3) of the *CCA*, if, on an application made to the *FCA* by a *firm* carrying on a consumer credit business or a consumer hire business, it appears to the *FCA* impracticable for the *firm* to comply with any requirement of the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) or the Consumer Credit (Agreements) Regulations (SI 2010/1014) in a particular case, it may direct that the requirement be waived or varied in relation to the regulated agreement and subject to such conditions (if any) as it may specify.
- 8A.2.2 G Under section 60(4) of the *CCA*, the *FCA* shall make the direction only if it is satisfied that to do so would not prejudice the interests of debtors or hirers.
- 8A.2.3 G An application may be made under section 60(3) of the *CCA* only if it relates to:
- (1) a consumer credit agreement secured on land; or
 - (2) a consumer credit agreement under which a person takes an article in pawn; or
 - (3) a consumer credit agreement under which the creditor provides the debtor with a credit that exceeds £60,260; or
 - (4) a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him; or
 - (5) a consumer hire agreement.

Determinations under section 64(4) of the CCA

- 8A.2.4 G The requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement does not apply in the case of the agreements described in *SUP* 8A.2.5G, if:
- (1) on application by a *firm* to the *FCA*, the *FCA* has determined, having regard to:
 - (a) the manner in which antecedent negotiations for the relevant agreements with the *firm* are conducted; and
 - (b) the information provided to debtors or hirers before those agreements are made;

the requirement can be dispensed with without prejudicing the

interests of debtors or hirers; and

- (2) any conditions imposed by the *FCA* in making the determination are complied with.

8A.2.5 G A determination under 64(4) of the *CCA* may only be made in respect of agreements specified in the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983.

Directions under section 101(8) of the *CCA*

8A.2.6 G If on an application made to the *FCA* by a *firm* carrying on a consumer hire business, it appears to the *FCA* that it would be in the interests of hirers to do so, the *FCA* may direct that subject to such conditions (if any) as it may specify, section 101 of the *CCA* shall not apply to consumer hire agreements made by that *firm*.

Transitional provision

8A.2.7 G Under article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013, any of the following given or made by the Office of Fair Trading which were in effect immediately before 1 April 2014 have effect as if they had been given or made by the *FCA*:

- (1) a direction given under section 60(3) of the *CCA* (form and content of agreements);
- (2) a determination made under section 64(4) of the *CCA* (duty to give notice of cancellation rights) and the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983;
- (3) a direction given under section 101(8) or (8A) of the *CCA* (right to terminate hire agreement).

8A.3 Applying for a direction or determination by the *FCA* waiving, varying or disapplying *CCA* requirements

Publication

8A.3.1 G The *FCA* intends to include any direction or determination made by the *FCA* waiving, varying or disapplying *CCA* requirements in the public register under section 347 of the *Act*.

Form and method of application

8A.3.2 D A *firm* wishing to apply for a direction under section 60(3) of the *CCA* must complete the application form in *SUP* 8A Annex 1 D and submit it to the *FCA* in the way set out in *SUP* 15.7.4R, *SUP* 15.7.5AR, *SUP* 15.7.6A G and *SUP* 15.7.9G.

- 8A.3.3 D A *firm* wishing to apply for a determination under section 64(4) of the *CCA* must apply to the *FCA* in the way set out in *SUP* 15.7.4R, *SUP* 15.7.5AR, *SUP* 15.7. 6AG and *SUP* 15.7.9G.
- 8A.3.4 D A *firm* wishing to apply for a direction under section 101(8) of the *CCA* must complete the application form in *SUP* 8A Annex 2D and the information form in *SUP* 8A Annex 3D and submit them to the *FCA* in the way set out in *SUP* 15.7.4R, *SUP* 15.7.5AR, *SUP* 15.7. 6AG and *SUP* 15.7.9G.

Procedure on receipt of an application

- 8A.3.5 G The *FCA* will acknowledge an application promptly and if necessary will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. However, the *FCA* will aim to give decisions within 20 *business days* of receiving an application which includes sufficient information. If the *FCA* expects to take longer, it will tell the *firm* and give an estimated decision date. A *firm* should make it clear in the application if it needs a decision within a specific time.
- 8A.3.6 G The *FCA* will treat a *firm*'s application as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The *FCA* will not do this if the *firm* has made it clear to the *FCA* in some other way that it intends to pursue the application.
- 8A.3.7 G If the *FCA* decides not to give a direction or a determination, it will give reasons for the decision.
- 8A.3.8 G A *firm* may withdraw its application at any time up to the giving of the direction or determination. In doing so, a *firm* should give the *FCA* its reasons for withdrawing the application.

8A.4 Notification of altered circumstances relating to directions or waivers

- 8A.4.1 R A *firm* which has applied for or has been granted a direction or determination must notify the *FCA* immediately if it becomes aware of any matter which could affect the continuing relevance or appropriateness of the application or the direction or determination.
- 8A.4.2 G *Firms* are also referred to *SUP* 15.6 (Inaccurate, false or misleading information). This requires, in *SUP* 15.6.4 R, a *firm* to notify the *FCA* if false, misleading, incomplete or inaccurate information has been provided. This would apply in relation to information provided in an application for a direction or a determination.

8A.5 Revoking or varying directions and determinations

- 8A.5.1 G The *FCA* may revoke or vary any of the directions or determinations referred to in this chapter.

8A Annex 1D Application form for a direction under section 60(3) of the CCA CONSUMER CREDIT ACT 1974

Application for a Direction under Section 60(3)

A Direction waiving or varying a requirement of Regulations made under Section 60(3)

What is a Direction under Section 60(3)?

Regulated agreements made by a consumer credit or consumer hire business must comply with the requirements of the Consumer Credit (Agreements) Regulations 1983 or the Consumer Credit (Agreements) Regulations 2010, as applicable. Where it is impracticable to comply with those requirements, it is possible to apply to the Financial Conduct Authority (FCA) for a direction under Section 60(3) of the Act to waive or vary the requirements for some types of agreement (see below). The FCA must be satisfied that it is impracticable (rather than merely difficult) to comply with the requirements. The test for granting a direction is that the FCA believes that to do so would not prejudice the interests of debtors or hirers. The nature of the waiver or variation will depend on individual circumstances. The FCA may make the direction subject to such conditions as it may specify.

Who can apply?

Any consumer hire business and some consumer credit businesses can apply for a direction. The business must hold a valid consumer credit licence permitting that business to enter into the types of agreements in question – we cannot process applications for directions before a licence has been granted.

Please seek independent legal advice if you are unsure about whether to apply or whether your agreements are eligible for being considered for a direction.

Which agreements are eligible for consideration for a direction?

Only certain agreements that are regulated by the Act may be considered for a direction.

An application may be made under Section 60(3) only if it relates to:

- a consumer credit agreement secured on land
- a consumer credit agreement under which a person takes an article in pawn
- a consumer credit agreement under which the creditor provides the debtor with credit which exceeds £60,260
- a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him, or
- a consumer hire agreement.

Directions only apply to the agreements specified and cannot be used in connection with any other agreements. **Directions do not apply retrospectively.**

It is for you to satisfy yourself that your agreements comply with the Act and Regulations other than the parts for which you are applying to waive or vary. **If agreements are not compliant with the Regulations other than as waived or varied, any directions issued will be of no effect.**

Data protection

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the *FCA* to discharge its functions under the consumer Credit Act 1974, the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the applicant.

Can someone else fill in this form for me?

Yes, you can ask someone else to fill in this form and sign the declaration for you.

The individual who signs the form is responsible for making sure it is accurate and complete. Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000).

Contents of the form

The contents of the form are as follows:

- Part I**
- Section A: Applicant's details
 - Section B: Description of the agreement for which a direction is sought
 - Section C: Agreement to which the direction will apply
 - Section D: Reasons for the application for a direction
- Part II**
- Declaration

Part I: Information to support an application for a Direction

We need the information we ask for in the following sections to help us decide whether or not to issue a direction. If you do not provide the information required, the FCA may have to ask for this and your application will be delayed. Please continue your answers on a separate sheet of paper where necessary.

Section A: Applicant's details

1. Name of the business seeking a direction

2. Main place of business in the UK

3. Firm reference number

4. Please tick which type of activity the agreements will relate to:

Consumer credit Consumer hire

5. Details of contact for the purposes of this application

Title		Surname		Name	
-------	--	---------	--	------	--

Your contact telephone number and email address

Tel:		Email:	
------	--	--------	--

6. Your position in relation with the business (eg, Sole trader, Director, Partner, Lawyer)

7. Authority for acting on the applicant's behalf where you are not the applicant (attach document)

8. Correspondence address (where different from above)

Contact telephone number and email address (where different from above)

Tel:		Email:	
------	--	--------	--

Section B: Description of the agreement for which a direction is sought

Please describe the salient financial features of the agreement and how the agreement will work in practice (for example, details like type of agreement, duration, interest charges, rates, whether fixed or variable and any restrictions on partial early repayments).

--

Section C: Agreement to which the Direction will apply

Please attach the following to your application:

- A copy of the agreement, described in Section B, for which a direction is sought.
- A copy of the generic illustration (such as 'Buyer's Illustration') of the way in which the agreement operates that will be given to potential borrowers before the agreement is signed.

1. Please list here the enclosures you are submitting with your application.

--

Section D: Reasons for the application for a direction

- 1. Please specify the requirement(s) of the Regulations with which it would be impracticable for you to comply, the reasons why it would be impracticable for you to comply, whether you are applying for a waiver or variation, the nature of the variation you are seeking (where applicable), whether the information excluded from the agreement will be given to the debtor/hirer at a later date and if so, when and how, and if not, why not.**

For paragraph and Schedule numbers see the Consumer Credit (Agreements) Regulations 1983 as amended and the Consumer Credit (Agreements) Regulations 2010.

Please complete for each requirement:

Paragraph and Schedule number(s)	

Reasons for impracticability	
-------------------------------------	--

Please indicate if you are requesting a waiver <input type="checkbox"/> a variation <input type="checkbox"/>	
--	--

Nature of variation (where applicable)	
---	--

Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> <input type="checkbox"/>
---	---

If yes, when will this be provided?	
--	--

How will this be provided?	
-----------------------------------	--

Paragraph and Schedule number(s)	
---	--

Reasons for impracticability	
-------------------------------------	--

Please indicate if you are requesting a waiver <input type="checkbox"/> a variation <input type="checkbox"/>	
--	--

Nature of variation (where applicable)	
---	--

Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> <input type="checkbox"/>
---	---

If yes, when will this be provided?	
--	--

How will this be provided?	
-----------------------------------	--

Paragraph and Schedule number(s)	
---	--

Reasons for impracticability			
Please indicate if you are requesting a waiver <input type="checkbox"/> a variation <input type="checkbox"/>			
Nature of variation (where applicable)			
Will the information excluded from the agreement be given to the debtor/hirer at a later date?		Yes	<input type="checkbox"/> <input type="checkbox"/>
If yes, when will this be provided?			
How will this be provided?			

Paragraph and Schedule number(s)			
Reasons for impracticability			
Please indicate if you are requesting a waiver <input type="checkbox"/> a variation <input type="checkbox"/>			
Nature of variation (where applicable)			
Will the information excluded from the agreement be given to the debtor/hirer at a later date?		Yes	<input type="checkbox"/> <input type="checkbox"/>
If yes, when will this be provided?			
How will this be provided?			

Paragraph and Schedule number(s)			
---	--	--	--

Reasons for impracticability			
Please indicate if you are requesting a waiver <input type="checkbox"/> a variation <input type="checkbox"/>			
Nature of variation (where applicable)			
Will the information excluded from the agreement be given to the debtor/hirer at a later date?			Yes <input type="checkbox"/> <input type="checkbox"/>
If yes, when will this be provided?			
How will this be provided?			

2. Please give below the details of any information you will be providing to the borrower before the agreement is concluded (for example, buyer illustration, marketing material describing the features of credit being provided, etc.).

Part II: All applicants

Warning

Knowingly or recklessly giving the *FCA* information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the

FCA. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the *FCA* information that is false or misleading in a material particular.
- I/we will notify the *FCA* immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

Name

Signature

Date

APPLICANT:

I have authority to sign this application by virtue of (state position or authority)

Signature:

What to do next:

- Check that you have filled in the form correctly and answered all relevant questions and attached all the documents.

Please return the form and any attachments via email to the Central Waivers Team at the *FCA*:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

What happens next?

- We will confirm receipt of your application.

- We may write to you to ask for more information.
- We will confirm our decision in writing.

Any Queries?

If you have any queries regarding the progress of your application please send an email to: centralwaiversteam@fca.org.uk

8A Annex 2D Application form for a direction under section 101(8) of the CCA Consumer Credit Act 1974

Application for a

Direction under Section 101(8)

(A direction that the hirer's rights to terminate a hire agreement do not apply to a trader's consumer hire agreement)

This is the Application Form for a Direction under Section 101(8) of the Consumer Credit Act 1974.

WARNING

Knowingly or recklessly giving the *FCA* information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

Consumer Credit Act 1974

Application for a Direction under Section 101(8)

I hereby apply for a Direction that the hirer's rights to terminate a hire agreement do not apply to those Agreements listed in this application.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the *FCA* information that is false or misleading in a material particular.
- I/we will notify the *FCA* immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

Signature:	4. Describe the agreement or class of agreements for which a direction is sought and attach a copy of each agreement. (Any direction given will apply only to the agreements described.) If necessary, give answers on a separate sheet quoting this question number.
Date:	
Name in BLOCK LETTERS of person signing:	
Address:	
I have authority to sign this application by virtue of (state Position or authority):	
1. Give full name of person (the applicant) for whom a direction is required, i.e. the name of the individual, Partnership, company etc.	
2. Give full address of the principle place of business in the United Kingdom of the applicant	

<p>3. Give Firm reference number</p>	
---	--

8A Annex 3D Information form in support of an application for a direction under section 101(8) of the CCA

Consumer Credit Act 1974

Information in support of an Application for a Direction under Section 101(8)

This is the form required to provide information in support of an application for a direction under Section 101(8). The Financial Conduct Authority (FCA) needs this information to reach a decision. Further information may be required in some cases.

WARNING

Knowingly or recklessly giving the *FCA* information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

<p>1. For each agreement listed on the application form, give full details of:</p> <p>a the goods, or type of goods, you hire out:</p>	<p>2. For each agreement or class of hire agreement, please set out the reasons why you consider that you should be given a direction. If necessary answer on a separate sheet quoting this question number.</p>
<p>b the period for which they are normally hired out</p>	
<p>c the period of notice normally required for cancellation and the cancellation fees required (if any):</p>	
<p>d the cash price of the goods hired out (or typical cash prices of the type of goods hired out):</p>	
<p>e hire charges (or typical charges over the normal): hire period</p>	
<p>f the potential second-hand or recoverable value of the goods or type of goods at 18 months intervals up to the end of the normal period of hire:</p>	

<p>3 For each agreement or class of hire agreements, please set out the reasons why you consider that it would be in the interest of hirers that you should be given a direction. If necessary answer on a separate sheet, quoting this question number</p>	<p>4 If your reasons are based on financial considerations, please give the following information:</p> <p>a an analysis of costs involved in previous similar transactions.</p> <p>b an analysis of costs you would expect to incur in future transactions if you were not given a direction. Answer on a separate sheet, quoting this question number.</p> <p>Both these analyses should be confirmed as reasonable by an independent qualified accountant or auditor using the form below.</p> <p>Declaration</p> <p>By submitting this application form:</p> <ul style="list-style-type: none"> • I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case. • I am/we are aware that it is a criminal offence knowingly or recklessly to give the <i>FCA</i> information that is false or misleading in a material particular. • I/we will notify the <i>FCA</i> immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action. <p>Signature</p> <p>Name in BLOCK LETTERS of individual signing</p>
--	--

	Position or authority
	Telephone Number
	Date

**Report of
independent accountant
or auditor**

Re application by:	<ul style="list-style-type: none"> I/We* have the following additional comments
<ul style="list-style-type: none"> I/We* have examined the record on which the analyses of previous and expected future costs are based. I/We* have received satisfactory answers to my/our questions. I/We* have carried out such tests as considered necessary. <p>I/We* consider the analyses to be reasonable.</p> <p>(*delete if not applicable)</p>	
<p>WARNING</p> <p>Knowingly or recklessly giving the <i>FCA</i> information, which is false or misleading in a material particular, may be a criminal offence (sections 398 of the Financial Services and Markets Act 2000).</p>	

	Signature
	Address
	Telephone no.
	Date

Amend the following as shown

Appointed representatives

...

10A.1.16 R (1) ...

(2) The conditions are that:

(a) the scope of appointment of the *appointed representative* includes *insurance mediation activity* in relation to *non-investment insurance contracts* or credit-related regulated activity, but no other *regulated activity*; and

(b) ...

10A.1.16A R This chapter applies to an *appointed representative* that has a *limited permission* to carry on a *regulated activity* prescribed for the purposes of section 39(1E)(a) of the *Act* as follows:

(1) *FCA controlled functions* apply to the *appointed representative* as set out in *SUP* 10A.1.15R and *SUP* 10A.1.16R in relation to the carrying on of the *regulated activity*, for which it does not have *permission*, comprised in the business for which its *principal* has accepted responsibility;

(2) (a) unless it is a *not for profit debt advice body*, the *apportionment and oversight function* applies in relation to the carrying on of the *regulated activity* for which it has

limited permission:

- (b) if it is a not for profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity.

...

Credit firms with limited permission

- 10A.1.25 R (1) Subject to (2) and (3), this chapter, except in respect of the apportionment and oversight function, does not apply to a firm that has limited permission in relation to the carrying on of the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission.
- (2) Subject to (3), this chapter does not apply to a not for profit debt advice body.
- (3) This chapter applies to a not for profit debt advice body that is a CASS large debt management firm with respect to the CASS operational oversight function only.

...

Compliance oversight function

- 10A.7.8 R The *compliance oversight function* is the function of acting in the capacity of:
- (1) a *director* or *senior manager* who is allocated the function set out in SYSC 3.2.8R, ~~or~~ SYSC 6.1.4R(2) or SYSC 6.1.4BR; or
- (2) ...

CASS operational oversight function (CF10a)

- 10A.7.9 R In relation to a *CASS medium firm* and a *CASS large firm* (other than a CASS large debt management firm), the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in CASS 1A.3.1AR.
- 10A.7.9A R In relation to a CASS large debt management firm, the CASS operational oversight function is the function of acting in the capacity of a person to whom is allocated the function set out in CASS 11.3.4R.

...

Significant management function (CF29)

- 10A.9.9 R The *significant management function* is the function of acting as a *senior*

manager with significant responsibility for a significant business unit that:

...

(2A) carries on credit-related regulated activity;

...

...

11.1.2 R Table Applicable sections (see SUP 11.1.1 R)

	Category of firm	Applicable sections
(1)	A UK domestic firm other than a building society, a non-directive friendly society, or a non-directive firm or a firm with only a limited permission	All except SUP 11.3, SUP 11.4.2AR and SUP 11.4.4R
...		
(2B)	A firm with only a limited permission	all except SUP 11.3, SUP 11.4.2R, and SUP 11.4.4R

...

...

11.3.2A G The Treasury have made the following exemptions from the obligations under section 178 of the Act:

...

(3) potential controllers of non-directive firms (other than firms with only a limited permission) ("A") are exempt from the obligation to notify a change in control unless the change results in the potential controller holding:

...

(4) potential controllers of firms with only a limited permission ("A") are exempt from the obligation to notify a change in control unless the change would result in the potential controller holding:

(a) 33% or more of the shares in A or in a parent undertaking of A ("P");

(b) 33% or more of the voting power in A or P; or

(c) shares or voting power in A or P as a result of which the

controller is able to exercise significant influence over the management of A;

or where the change in control over A would lead to the controller ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

...

11.4.2A R A *non-directive firm* (including a *firm with only a limited permission*) must notify the *appropriate regulator* of any of the following events concerning the *firm*:

...

...

11.4.7 R The notification by a *firm* under *SUP* 11.4.2 R, *SUP* 11.4.2AR or *SUP* 11.4.4R must:

...

...

11.6.1 G *Firms* are reminded that *SUP* 15.6.4R requires them to notify the *appropriate regulator* if information notified under *SUP* 11.4.2R, *SUP* 11.4.2AR or *SUP* 11.4.4R was false, misleading, inaccurate, incomplete, or changes, in a material particular. This would include a *firm* becoming aware of information that it would have been required to provide under *SUP* 11.5.1R if it had been aware of it.

...

11 Annex 1 G Summary of notifications required in this chapter

Event triggering a notification	Requirement	Reference
	When	How
Notifications from a controller or proposed controller of a UK domestic firm other than a non-directive firm or a firm with only a limited permission)		
1. When a person decides to become a controller or an existing controller decides to increase control	SUP 11.3.2G	SUP 11.3.7D to SUP 11.3.14G
2. When an existing controller decides to reduce control or to cease to have control	SUP 11.3.2G	SUP 11.3.15AD
Notifications from a controller or potential controller of a non-directive firm other than a firm with only a limited permission		
1. When a potential controller of a non-directive firm other than a firm with only a limited permission ("A") decides to acquire (a) 20% or more of the shares in A or in a parent undertaking of A ("P"); (b) 20% or more of the voting power in A or P; or (c) shares or voting power in A or P as a result of which the potential controller will be able to exercise significant influence over the management of A	SUP 11.3.2AG(3)	SUP 11.3.7D to SUP 11.3.14G
2. When an existing controller decides to reduce control over A in a manner which will result in the controller failing to fall in any of the cases described in 1 above	SUP 11.3.2AG(3)	SUP 11.3.15AD
Notifications from a controller or potential controller of a firm with only a limited permission		
1. When a potential controller of a firm with only a limited permission ("A") decides to acquire (a) 33% or more of the shares in A or in a parent undertaking of A ("P"); (b) 33% or more of the voting power in A or P; or (c) shares or voting power in A or P as a result of which the potential controller will be able to exercise significant influence over the management of A	SUP 11.3.2AG(4)	SUP 11.3.7D to SUP 11.3.14G
2. When an existing controller decides to reduce control over A in a manner which will result in the controller failing to fall in any of the cases described in 1 above	SUP 11.3.2AG(4)	SUP 11.3.15AD
Notifications from a UK domestic firm other than a non-directive firm or a firm with only a limited permission) relating to a change in control		

1.	When a <i>firm</i> becomes aware of a <i>person</i> proposing to become a <i>controller</i> or an existing <i>controller</i> proposing to increase his <i>control</i> over the <i>firm</i>	SUP 11.4.2R SUP 11.4.7R SUP 11.4.8G	SUP 11.5.1R SUP 11.5.1AG SUP 11.5.2R SUP 11.5.3G SUP 15.7
2.	When a <i>firm</i> becomes aware that an existing <i>controller</i> is proposing to reduce his <i>control</i> over the <i>firm</i> or is proposing to cease to be a <i>controller</i> of the <i>firm</i>	SUP 11.4.2R SUP 11.4.7R SUP 11.4.8G	SUP 11.5.7R SUP 15.7
3.	When a <i>firm</i> becomes aware of any material inaccuracies, omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i>	SUP 11.6.1G SUP 11.6.2R	SUP 15.7
4.	When a change in <i>control</i> actually takes place or, although a notification has been submitted, is not, after all, going to take place	SUP 11.6.4R SUP 11.6.5R	SUP 15.7

Notification from a non-directive firm relating to a change in control other than a firm with only a limited permission

1.	When a <i>firm</i> becomes aware that a <i>person</i> ("A") is acquiring (a) 20% or more of the <i>shares</i> in the <i>firm</i> ("B") or in a <i>parent undertaking</i> of B ("P"); (b) 20% or more of the <i>voting power</i> in B or P; or (c) <i>shares</i> or <i>voting power</i> in B or P as a result of which the <i>controller</i> is able to exercise significant influence over the management of B	SUP 11.4.2AR SUP 11.4.7R SUP 11.4.8G	SUP 11.5.1R SUP 11.5.2R SUP 11.5.3G
2.	When a <i>firm</i> becomes aware that A is ceasing to fall in any of the cases described in 1 above	SUP 11.4.2R SUP 11.4.7R SUP 11.4.8G	SUP 11.5.7R SUP 15.7
3.	When a <i>firm</i> becomes aware of any material inaccuracies omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i>	SUP 11.6.1G SUP 11.6.2R	SUP 15.7
4.	When a change in <i>control</i> actually takes place or, although a notification has been submitted, is not, after all, going to take place	SUP 11.6.4R SUP 11.6.5R	SUP 15.7

Notification from a firm with only a limited permission relating to a change in control

1.	<u>When a <i>firm</i> becomes aware that a <i>person</i> ("A") is acquiring (a) 33% or more of the <i>shares</i> in the <i>firm</i> ("B") or in a <i>parent undertaking</i> of B ("P"); (b) 33% or more of the <i>voting power</i> in B or P; or (c) <i>shares</i> or</u>	<u>SUP 11.4.2AR</u> <u>SUP 11.4.7R</u> <u>SUP 11.4.8G</u>	<u>SUP 11.5.1R</u> <u>SUP 11.5.2R</u>
----	---	---	--

	<u>voting power in B or P as a result of which the controller is able to exercise significant influence over the management of B</u>		
2.	<u>When a firm becomes aware that A is ceasing to fall in any of the cases described in 1 above</u>	<u>SUP 11.4.2AR</u> <u>SUP 11.4.7R</u> <u>SUP 11.4.8G</u>	<u>SUP 11.5.7R</u> <u>SUP 15.7</u>
3.	<u>When a firm becomes aware of any material inaccuracies omissions or changes in information previously provided to the appropriate regulator either by the firm or by the controller</u>	<u>SUP 11.6.1G</u> <u>SUP 11.6.2R</u>	<u>SUP 15.7</u>
4.	<u>When a change in control actually takes place or, although a notification has been submitted, is not, after all, going to take place</u>	<u>SUP 11.6.4R</u> <u>SUP 11.6.5R</u>	<u>SUP 15.7</u>
Notifications from an overseas firm relating to a change in control			
1.	When a firm becomes aware that a person becomes a controller of the firm, increases or reduces his control over the firm or ceases to be have control over the firm	<u>SUP 11.4.4R</u> <u>SUP 11.4.7R</u> <u>SUP 11.4.8G</u>	<u>SUP 11.5.1R</u> <u>SUP 11.5.2R</u> <u>SUP 11.5.3G</u> <u>SUP 15.7</u>
2.	When a firm becomes aware of any material inaccuracies, omissions or changes in information previously provided to the FSA appropriate regulator by the firm	<u>SUP 11.6.1G</u>	<u>SUP 15.7</u>
3.	When a change in control actually takes place or, although a notification has been submitted, is not, after all, going to take place	<u>SUP 11.6.4R</u> <u>SUP 11.6.5R</u>	<u>SUP 15.7</u>
Other ongoing notifications from a firm (UK domestic or overseas)			
1.	When a firm becomes aware of a change in the circumstances of an existing controller	<u>SUP 11.8.1R</u> <u>SUP 11.8.4G</u>	<u>SUP 15.7</u>
2.	When a firm becomes aware that it has become or ceased to be closely linked with any person	<u>SUP 11.9.1R</u>	<u>SUP 15.7</u>

12.2.2 G (1) A person (other than a firm with only a limited permission) must satisfy the conditions in section 39(1) of the Act to become an appointed representative. These are that:

...

Appointed representatives with limited permission to carry on certain credit activities

12.2.2A G (1) Under sections 20(1) and (1A) of the Act (Authorised persons acting without permission), if an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission, he is to be taken to have contravened a requirement imposed by the FCA (in the case of a FCA-authorized person) or the FCA and the PRA (in the case of a PRA-authorized person).

(2) In addition, under section 23(1A) of the Act (Contravention of the general prohibition or section 20(1) or (1A)), an authorised person is guilty of an offence if he carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission. For these purposes, entering into a regulated credit agreement as lender, exercising, or having the right to exercise the lender's rights and duties under a regulated credit agreement and debt collecting are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the borrower to repay is secured by a legal mortgage on land.

(3) Section 39(1D) of the Act provides, however, that sections 20(1) and (1A) and 23(1A) of the Act do not apply:

(a) to an authorised person with only a limited permission;

(b) in relation to the carrying on by him of a regulated activity which is not one to which his limited permission relates;

if the conditions in section 39(1C) of the Act are met. Guidance on these conditions is given at SUP 12.2.2BG. A firm carrying on a regulated activity in circumstances where, as a result of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply is also referred to as an appointed representative.

12.2.2B G (1) A firm must satisfy the conditions in section 39(1C) of the Act to become an appointed representative. These are that:

(a) the firm must have only a limited permission (section

39(1C)(a) of the Act);

- (b) the firm must have entered into a contract with another authorised person, referred to in the Act as the 'principal', which:
 - (i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(i) of the Act) (see SUP 12.2.7G); and
 - (ii) complies with any requirements that may be prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(ii) of the Act); and
- (c) the principal must have accepted responsibility, in writing, for the authorised activities of the firm in carrying on the whole, or part, of the business specified in the contract.

- (2) The appointed representative is not subject to sections 20(1) or (1A) or 23(1A) of the Act in relation to the carrying on of the regulated activity which is comprised in the business for which his principal has accepted responsibility and for which he does not have limited permission.

...

- 12.2.3 G As long as the conditions in section 39 of the Act are satisfied, any person, other than an *authorised person* (unless he has only a limited permission), may become an *appointed representative*, including a *body corporate*, a *partnership* or an individual in business on his own account. However, an *appointed representative* cannot be an *authorised person* under the Act unless he has only a limited permission; that is, it A person cannot be exempt for some *regulated activities* and *authorised* for others. An appointed representative with a limited permission is not an exempt person, but he may carry on the regulated activity comprised in the business for which his principal has accepted responsibility without being taken to have contravened a requirement imposed on him by the FCA or PRA or committing an offence, even though the activity is not covered by his limited permission.

...

- 12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under ~~section~~ sections 39(1), (1C) and (1E) of the Act. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the Act may not apply, which is business which comprises any of:

...

- (e) ...
- (ea) credit broking (article 36A of the *Regulated Activities Order*);
- (f) ...
- (fa) debt adjusting (article 39D of the *Regulated Activities Order*);
- (fb) debt counselling (article 39E of the *Regulated Activities Order*);
- (fc) debt collecting (article 39F of the *Regulated Activities Order*);
- (fg) debt administration (article 39G of the *Regulated Activities Order*);
- ...
- (j) *advising on a home finance transaction* (articles 53A, 53B and 53C of the *Regulated Activities Order*); ~~and~~
- (ja) entering into a regulated credit agreement as lender or exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement (article 60B of the *Regulated Activities Order*) when carried on in relation to a credit agreement under which the credit is provided free of interest and without any other charges;
- (jb) 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 (article 60N of the *Regulated Activities Order*);
- (k) *agreeing to carry on a regulated activity* (article 64 of the *Regulated Activities Order*) where the regulated activity is one of those in (a) to (h) or (ja) or (jb); and
- (l) providing credit information services (article 89A of the *Regulated Activities Order*).

...

12.3.4 G SYSC 6.1.1R requires a MiFID investment firm and a credit firm to ensure the compliance of its *appointed representative* with obligations under the *regulatory system*. The concept of a *relevant person* in SYSC includes an officer or employee of a *tied agent*.

...

12.5.2 G ...

(2) Under the *Appointed Representative Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:

...

(g) ...;

(h) effects introductions (within article 36A (Credit broking) of the *Regulated Activities Order*) of individuals to other counterparties;

(i) takes steps (within article 39D (Debt adjusting) of the *Regulated Activities Order*) on behalf of other counterparties;

(j) gives advice to a borrower (within article 39E (Debt-counselling) or 89A (Providing credit information services) of the *Regulated Activities Order*) on behalf of other counterparties;

(k) takes steps (within article 39F (Debt-collecting) of the *Regulated Activities Order*) to procure the payment of debts on behalf of other counterparties;

(l) performs duties (within article 39G (Debt administration) of the *Regulated Activities Order*) under, or exercises or enforces rights under, an agreement on behalf of other counterparties;

(m) enters into regulated credit agreements or exercises or has the right to exercise the lender's rights and duties under such agreements (within article 60B (Regulated credit agreements) of the *Regulated Activities Order*) on behalf of other counterparties;

(n) enters into regulated consumer hire agreements or exercises or has the right to exercise the owner's rights and duties under such agreements (within article 60N (Regulated consumer hire agreements) of the *Regulated Activities Order*) on behalf of other counterparties.

...

12.6.6 R A firm must take reasonable steps to ensure that each of its *appointed representatives*:

(1) does not carry on *regulated activities* in breach of the *general prohibition* in section 19 of the *Act* or (if the appointed representative is a firm with a limited permission) in breach of

sections 20(1) or (1A) of the Act; and

- (2) ...
- (a) which is performed as an *appointed representative* of another *firm* or in accordance with a limited permission; or

...

...

12.6.8 G (1) Some of the *controlled functions*, as set out in SUP 10A.4.1R, apply to an *appointed representative* of a *firm*, other than an *introducer appointed representative*, just as they apply to a *firm* (see SUP 10A.1.15R). These are the *governing functions* and the *customer function*. In the case of an appointed representative that also has a limited permission, an FCA required function may apply to it. As explained in SUP 10A.1.16R and SUP 10A.3.2G respectively:

...

- (b) although the *customer function* applies to an *appointed representative*, the descriptions of the functions themselves do not extend to *home finance mediation activity*, ~~or~~ *insurance mediation activity* or credit related regulated activity; ~~and~~

(ba) if an appointed representative also has a limited permission:

- (i) the apportionment and oversight function applies to it in relation to the carrying on of the regulated activity for which it has limited permission, unless it is a not for profit debt advice body;
- (ii) if it is a not for profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity; and

(c) ...

- (2) The *approved persons* regime applies differently to an *appointed representative* whose scope of appointment includes *insurance mediation activity* in relation to *non-investment insurance contracts* or credit-related regulated activity but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These appointed representatives need only one *person* performing one of the *governing functions*. This means that only one *director* (or equivalent) of these appointed representatives must be approved under section 59 of the *Act* for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*,

whichever is the most appropriate (see SUP 10A.1.16R).

...

12 Annex 3R Appointed representative appointment form

...

13 ...

14 Will the appointed representative undertake credit-related regulated activities? † §

...

12 Annex 4R Appointed representative notification form

13 ...

Yes No

13A Does the appointed representative undertake credit-related regulated activities?

Do you wish to change this? If “Yes”, please provide details below: †

...

13A.6.2 G ... For example where the business includes:

- (1) business covered by the Consumer Credit Act 1974, then an *incoming EEA firm* or *incoming Treaty firm* must comply with the provisions of that Act, ~~as modified by paragraph 15(3) of Schedule 3 to the Act~~; or

...

...

13A Annex Application of the Handbook to Incoming EEA firms

1G

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its

	appointed representative) in the United Kingdom	appointed representative) in the United Kingdom
...		
<i>REC</i>	...	...
<i>CONC</i>	<u><i>CONC</i> applies except to the extent necessary to be compatible with European law.</u> <u>Provisions on the territorial application of <i>CONC</i> are contained in <i>CONC</i> 1.2.8R</u>	<u>As column (2).</u>
<i>LR</i>	...	

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<i>SUP</i> 16.4 and <i>SUP</i> 16.5	All categories of <i>firm</i> except:	Entire sections
	...	
	(i) a <i>firm</i> with <i>permission</i> to carry on only <i>retail investment activities</i> ;	
	(j) a <i>firm</i> with <i>permission</i> to carry on only <i>insurance mediation activity, home finance mediation activity, or both</i> ;	
	(ja) a <i>firm</i> with <i>permission</i> to carry on only <i>credit related regulated activity</i> ;	

	(k)	a <i>firm</i> falling within a <u>combination of both (i), and (j) and (ja).</u>	
...			
<i>SUP</i> 16.11		A <i>firm</i> , other than a <i>managing agent</i> , which is:	Entire section
	...		
	(4)	a <i>person</i> who issues or manages the relevant assets of the issuer of a <i>structured capital-at-risk product</i> ; <u>or</u>	
	(5)	a <i>firm</i> with <u>permission to enter into a regulated credit agreement as lender in respect of high cost short term credit or home credit loan agreements.</u>	

16.11 Product Sales Data Reporting

Application

- 16.11.1 R This section applies to a firm which is a *home finance provider* or a firm with permission to enter into a regulated credit agreement as lender in respect of high cost short term credit or home credit loan agreements, or in respect of sales to a *retail client* or a *consumer*:

...

...

- 16.11.2 G (1) The purpose of this section is to set out the requirements for *firms* in the retail mortgage, investment, consumer credit lending, and *pure protection contract* markets specified in *SUP* 16.11.1R to report individual product sales data to the *FCA*. In the case of *firms* in the sale and rent back market, there is a requirement to record, but not to submit, the data. These requirements apply whether the regulated activity has been carried out by the *firm*, or through an intermediary which has dealt directly with the *firm*.

...

...

16.11.5 R The data must contain sales data in respect of the following products:

...

- (5) *home reversion plans; and*
- (6) *regulated sale and rent back agreements;*
- (7) *high cost short term credit; and*
- (8) *home credit loan agreements.*

...

16.12 Integrated Regulatory Reporting

Application

16.12.1 G The effect of *SUP* 16.1.1R is that this section applies to every *firm* carrying on business set out in column (1) of *SUP* 16.12.4R except:

...

- (3) *an authorised professional firm (other than one that must comply with IPRU(INV) 3, 5 or 13 in accordance with IPRU(INV) 2.1.4R, or that is a CASS debt management firm, where *SUP* 16.12.4R will apply in respect of the business the firm undertakes), which must (unless it is within (3A)) comply with *SUP* 16.12.30R and *SUP* 16.12.31R; and*
- (3A) *an authorised professional firm if the only regulated activity it carries on is credit-related regulated activity as a non-mainstream regulated activity; and*
- (4) ...

...

Reporting requirement

16.12.3 R (1) Any *firm* permitted to carry on any of the activities within each of the *RAGs* set out in column (1) of the table in *SUP* 16.12.4R must:

(a)

- (i) ...
- (ii) unless (iii) applies, where a *firm* is required to submit completed *data items* for more than one *RAG*, that *firm* must only submit the *data item* of the same name and purpose in respect of the lowest numbered *RAG* applicable to it, *RAG* 1 being the lowest and *RAG* 12 the highest;

...

...

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
<i>RAG number</i>	<i>Regulated Activities</i>	Provisions containing:		
		<i>applicable data items</i>	reporting frequency/period	due date
...				
<u>RAG 12</u>	<u>• credit-related regulated activity</u>	<u>SUP 16.12.29CR</u>	<u>SUP 16.12.29CR</u>	<u>SUP 16.12.29CR</u>

...

16.12.29A R ...

Regulated Activity Group 12

16.12.29B R SUP 16.12.29CR does not apply:

- (1) to a credit firm if the only credit-related regulated activity it carries on is providing credit references;
- (2) to a credit firm that is a not for profit body unless it is a not for profit debt advice body;
- (3) with respect to credit-related regulated activity to the extent that it relates to credit agreements secured by a legal mortgage on land.

16.12.29C R The applicable data items, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

<u>Description of data item</u>	<u>Data item (note 1)</u>	<u>Frequency</u>		<u>Submission deadline</u>
		<u>Annual revenue from credit-related regulated</u>	<u>Annual revenue from credit-related regulated</u>	

		<u>activities up to and including £5 million (note 2)</u>	<u>activities over £5 million</u>	
<u>Financial data (note 3)</u>	<u>CCR001</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Volumes (note 4)</u>	<u>CCR002</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Lenders (note 5)</u>	<u>CCR003</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Debt management (note 6)</u>	<u>CCR004</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Client Money & Assets (note 7)</u>	<u>CCR005</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Debt collection (note 8)</u>	<u>CCR006</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Key data (note 9)</u>	<u>CCR007</u>	<u>Annually</u>	<u>Annually</u>	<u>30 business days</u>
<u>Note 1</u>	<u>When submitting the required <i>data item</i>, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 35A R. Guidance notes for the completion of the data items is set out in SUP 16 Annex 35B G.</u>			
<u>Note 2</u>	<u>References to revenue in SUP 16.12.29C in relation to any <i>firm</i> do not include the amount of any repayment of any <i>credit</i> provided by that <i>firm</i> as <i>lender</i>.</u>			
<u>Note 3</u>	<p>(a) <u>Subject to (b) to (d) below, this <i>data item</i> applies to all <i>credit firms</i>.</u></p> <p>(b) <u>This <i>data item</i> does not apply to a <i>firm</i> if the only <i>credit-related regulated activity</i> for which it has <i>permission</i> is <i>operating an electronic system in relation to lending</i>.</u></p> <p>(c) <u>This <i>data item</i> does not apply to a <i>firm</i> required to submit a <i>Balance Sheet, Income Statement or Capital Adequacy data item</i> from a <i>RAG</i> other than <i>RAG 12</i>.</u></p> <p>(d) <u>This <i>data item</i> does not apply to a <i>firm</i> with <i>limited permission</i> unless it is a <i>not for profit debt advice body</i> and at any point in the last 12 months has held £1 million or more in <i>client money</i> or as the case may be, projects that it will hold £1million or more in <i>client money</i> in the next 12 months.</u></p>			
<u>Note 4</u>	<p>(a) <u>Subject to (b) below, this <i>data item</i> applies to all <i>credit firms</i>.</u></p> <p>(b) <u>This <i>data item</i> does not apply to a <i>firm</i> with <i>limited permission</i> unless it is a <i>not for profit debt advice body</i> and at any point in the last 12 months has held £1 million or more in <i>client money</i> or as the case may be, projects that it will hold £1million or more in</u></p>			

	<u>client money in the next 12 months.</u>
<u>Note 5</u>	<u>This data item applies to all firms with permission for entering into a regulated credit agreement as lender or exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement.</u>
<u>Note 6</u>	<p>(a) <u>Subject to (b) to (d) below, this data item applies to a debt management firm and to a not for profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.</u></p> <p>(b) <u>This data item does not apply to a firm with limited permission other than a not for profit debt advice body within (a).</u></p> <p>(c) <u>This data item does not apply to a firm required to submit a Capital Adequacy data item from a RAG other than RAG 12, or under SUP 16.13, unless (d) applies.</u></p> <p>(d) <u>Where a firm is required to submit a Capital Adequacy data item from a RAG other than RAG 12 or under SUP 16.13 but the firm's highest capital requirement derives from its activity under RAG 12, the firm should submit both CCR004 and the Capital Adequacy data item required from the RAG other than RAG 12 or SUP 16.13.</u></p>
<u>Note 7</u>	<u>This data item applies to a CASS debt management firm.</u>
<u>Note 8</u>	<u>This data item applies to a firm with permission to carry on debt collecting or operating an electronic system in relation to lending.</u>
<u>Note 9</u>	<p>(a) <u>Subject to (b) and (c) below, this data item applies to a firm that has limited permission.</u></p> <p>(b) <u>This data item does not apply to an authorised professional firm that is a CASS debt management firm. Such a firm is instead required to submit the other data items in SUP 16.12.29CR as appropriate.</u></p> <p>(c) <u>This data item does not apply to a not for profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months. Such a not for profit debt advice body is instead required to submit data items CCR001, CCR002, CCR004 and CCR005.</u></p>

Authorised professional firms

- 16.12.30 R (1) An authorised professional firm, other than one that must comply with IPRU(INV) 3, 5 or 13 in accordance with IPRU(INV) 2.1.4R, or one that is a CASS debt management firm or one that carries on only credit-related regulated activity as a non-mainstream regulated activity, must

submit an annual questionnaire, contained in SUP 16 Annex 9R,
unless:

...

16.12.30B R An authorised professional firm that is a CASS debt management firm and is not within SUP 16.12.1G(3A) must complete the appropriate reports specified in SUP 16.12.4R and SUP 16.12.29CR.

...

16 Annex 9R

Annual Questionnaire for Authorised Professional Firms

Handbook Reference: SUP 16 Annex 9R

...

2.02 Income from mainstream regulated activities

...

b During the period, please indicate the proportion of this income generated from: (An estimate to the nearest 10% is sufficient)	i)	Investment management activities	
	ii)	Corporate finance activities	
	iii)	Retail investment activities	
	iv)	Home finance mediation activities	
	v)	Insurance mediation activities	
	vi)	<i>Credit-related regulated activities</i>	
	vii)	Other	
		TOTAL	100%

16 Annex 19BG

NOTES FOR COMPLETE OF THE MORTGAGE LENDING ADMINISTRATION RETURN ('MLAR')

...

INTRODUCTION: GENERAL NOTES ON THE RETURN

...

4. Regulated mortgage contracts and the wider mortgage market

...

Examples of non-regulated mortgage contracts which fall under the wider category of residential loans to individuals include: buy-to-let loans and other types of loan where the property is not for use by the borrower (or qualifying dependants); and residential loans to individuals where the lender does not have a first charge. In the case where a lender takes a first and a second charge over the same residential property (for different purposes) we consider that generally the loan secured by the first charge will be a regulated mortgage contract, but that the loan secured by the second charge will invariably not and should be reported as non-regulated.

Pending the UK implementation of the Mortgage Credit Directive, even though loans secured by a second or subsequent charge on residential property may potentially be regulated credit agreements, firms completing the MLAR in the period after 1 April 2014 should continue to include second charge mortgage business as business falling within non-regulated mortgage contracts.

Products covered by the reporting requirement in SUP 16.11

G

In the case of mortgage transactions, the reporting requirement only applies to loans for house purchase and remortgages and not to further advances. A reportable mortgage transaction applies where the mortgage transaction has completed (i.e. funds have been transferred and have been applied for the purpose of the mortgage).

In the case of *high cost short term credit* and *home credit loan agreements*, a reportable transaction has taken place where the loan monies have been advanced to the *borrower*.

Part 1 – Products

The following tables provide *guidance* on the products for which sales data is to be reported. These tables are not intended to be a complete list of relevant products; *firms* should report sales data on all products which would fall within the scope of *retail investments*, *pure protection contracts*, *regulated mortgage contracts*, other *home finance transactions*, *high cost short term credit* and *home credit loan agreements*.

...

Table 5 – SHORT TERM LOANS

Relevant loan types comprise:

High cost short term credit

Home credit loan agreements

Part 2: Supporting product definitions/guidance for product sales data reporting

...

Short term loans

<u>Loan Type</u>	<u>Description</u>
<u><i>High cost short term credit</i></u>	Defined in the <u><i>Handbook Glossary</i></u>
<u><i>Home credit loan agreement</i></u>	Defined in the <u><i>Handbook Glossary</i></u>

16 Annex 21R	REPORTING FIELDS																						
	R	This is the annex referred to in SUP 16.11.7R.																					
	...																						
	2	SPECIFIC REPORTING FIELDS																					
	...																						
	(e)	<u>High cost short term credit and home credit loan agreements</u>																					
		<u>The following data reporting fields must be completed, where applicable for all high cost short term credit and home credit loan agreements</u>																					
		<table border="1"> <thead> <tr> <th><u>Data reporting field</u></th> <th><u>Code (where applicable)</u></th> <th><u>Notes</u></th> </tr> </thead> <tbody> <tr> <td><u>Loan amount</u></td> <td><u>Numeric £</u></td> <td><u>Provide the total amount of credit (i.e. the total sum made available under the loan)</u></td> </tr> <tr> <td><u>Loan type</u></td> <td><u>HCST = <i>High Cost Short Term Loan</i> H = <i>Home credit loan agreement</i></u></td> <td><u>Select one code only for each loan</u></td> </tr> <tr> <td><u>APR</u></td> <td><u>Numeric % 2dp</u></td> <td><u>Provide the annual percentage rate of charge in relation to the credit agreement calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook</u></td> </tr> <tr> <td><u>Arrangement fee</u></td> <td><u>Numeric £</u></td> <td><u>Provide the amount of any arrangement fee that is payable in relation to the loan in addition to interest or a fixed charge in lieu of interest</u></td> </tr> <tr> <td><u>Total amount payable</u></td> <td><u>Numeric £</u></td> <td><u>The total amount payable by the borrower being the sum of the total amount of credit and the total charge for credit payable under the agreement as well as any advance payment</u></td> </tr> <tr> <td><u>Rollover</u></td> <td><u>Y = yes N = no</u></td> <td><u>Indicate if the loan is rolled over from a previous loan. For this purpose, a loan is rolled over if the period over which loan repayments are to be made has been extended, or if the due date for any loan</u></td> </tr> </tbody> </table>	<u>Data reporting field</u>	<u>Code (where applicable)</u>	<u>Notes</u>	<u>Loan amount</u>	<u>Numeric £</u>	<u>Provide the total amount of credit (i.e. the total sum made available under the loan)</u>	<u>Loan type</u>	<u>HCST = <i>High Cost Short Term Loan</i> H = <i>Home credit loan agreement</i></u>	<u>Select one code only for each loan</u>	<u>APR</u>	<u>Numeric % 2dp</u>	<u>Provide the annual percentage rate of charge in relation to the credit agreement calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook</u>	<u>Arrangement fee</u>	<u>Numeric £</u>	<u>Provide the amount of any arrangement fee that is payable in relation to the loan in addition to interest or a fixed charge in lieu of interest</u>	<u>Total amount payable</u>	<u>Numeric £</u>	<u>The total amount payable by the borrower being the sum of the total amount of credit and the total charge for credit payable under the agreement as well as any advance payment</u>	<u>Rollover</u>	<u>Y = yes N = no</u>	<u>Indicate if the loan is rolled over from a previous loan. For this purpose, a loan is rolled over if the period over which loan repayments are to be made has been extended, or if the due date for any loan</u>
<u>Data reporting field</u>	<u>Code (where applicable)</u>	<u>Notes</u>																					
<u>Loan amount</u>	<u>Numeric £</u>	<u>Provide the total amount of credit (i.e. the total sum made available under the loan)</u>																					
<u>Loan type</u>	<u>HCST = <i>High Cost Short Term Loan</i> H = <i>Home credit loan agreement</i></u>	<u>Select one code only for each loan</u>																					
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<u>Rollover</u>	<u>Y = yes N = no</u>	<u>Indicate if the loan is rolled over from a previous loan. For this purpose, a loan is rolled over if the period over which loan repayments are to be made has been extended, or if the due date for any loan</u>																					

		<p><u>repayment has been moved to a later date, whether by means of an agreement that replaces, varies or supplements an earlier loan or otherwise (excluding any forbearance by the lender where the firm does not receive any consideration in connection with the rollover and the effect is that no interest or other charges (other than where a charge is a reasonable estimate of the cost of the additional administration required as a result of the customer having rolled over the agreement) accrue from the date of the rollover).</u></p>
<u>Order of rollover</u>	<u>Numeric integer</u>	<u>Indicate how many times the same original loan has been rolled over</u>
<u>Length of term</u>	<u>Numeric integer</u>	<u>Provide the length of the agreed loan period in days</u>
<u>Reason for loan</u>	<u>S = subsistence</u> <u>P = one off purchase</u> <u>O = other</u>	<u>Select only one code to indicate the reason for the loan.</u>
<u>Date of birth of borrower</u>	<u>DD/MM/YYYY</u> <u>Y</u>	
<u>Post code of borrower</u>	<u>e.g. XY45</u> <u>6XX</u>	<u>Provide the post code of the main place of residence of the borrower</u>
<u>Monthly income of borrower</u>	<u>Numeric £</u>	<u>Provide monthly income after tax of borrower</u>
<u>Monthly income of household</u>	<u>Numeric £</u>	<u>Provide monthly income after tax of borrower's household</u>
<u>Marital status of borrower</u>	<u>M = married</u> <u>S = single</u> <u>D = divorced</u> <u>W = widowed</u> <u>L = living together</u> <u>P = separated</u> <u>O = other</u>	<u>Select 1 code only that most appropriately represents the borrower's marital status</u>
<u>Residential status of borrower</u>	<u>O = owner occupier</u> <u>L = living with parents</u> <u>T = tenant</u> <u>C = council tenant</u> <u>J = joint owner</u>	<u>Select 1 code only that most appropriately represents the borrower's residential status</u>

		<u>X = other</u>	
	<u>Employment status of borrower</u>	<u>EF = employed full time</u> <u>EP = employed part time</u> <u>ET = employed temporary</u> <u>SE = self-employed</u> <u>S = student</u> <u>HM = home maker</u> <u>U = unemployed</u> <u>OB = on benefits</u> <u>AF = in armed forces</u> <u>R = retired</u>	<u>Select 1 code only that most appropriately represents the borrower's employment status</u>
	<u>Car owner</u>	<u>Y = yes</u> <u>N = no</u>	<u>Indicate whether the borrower is a car owner.</u>
	...		

Insert the following new Annexes after SUP 16 Annex 34B. The following text is all new and is not underlined.

16 Annex 35AR

CCR001 Consumer Credit data: Financial Data

Balance Sheet Items

A

- 1 Total shareholder funds/Partnership capital/Sole trader capital
- 2 Intangible Assets/Investments in Subsidiaries/Investment in Own Shares
- 3 Subordinated debt and subordinated loans

Current Assets

- 4 Cash
- 5 Debtors/Other

Current Liabilities

- 6 Creditors

- 7 Largest Exposures (including inter-company)

Amount	Counterparty name	Type of exposure
<input style="width: 90%; height: 20px;" type="text"/>	<input style="width: 90%; height: 20px;" type="text"/>	<input style="width: 90%; height: 20px;" type="text" value="Please select"/>
<input style="width: 90%; height: 20px;" type="text"/>	<input style="width: 90%; height: 20px;" type="text"/>	<input style="width: 90%; height: 20px;" type="text" value="Please select"/>

Income Statement (including regulated business revenue)

- 8 Total income
- 9 Retained Profit

CCR002 Consumer Credit data: Volumes

Activities		A Fee Mechanism	B Revenue	C Total Customers	D Total Transactions
Lending					
1	Debt purchasing				
2	Hire purchase/conditional sale agreements				
3	Home credit loan agreements				
4	Bill of sale loan agreements				
5	Pawnbroking				
6	High cost short term credit				
7	Running-account credit				
8	Other lending				
9	Credit Broking				
10	Debt Management Activity				
11	All other credit-related activity				

CCR003 Consumer Credit data: Lenders

	A	B	C	D	E	F	G
Activities	Total Value (000s)	Total number of Loans	Total number of Loans in Arrears	Total Value in Arrears (000s)	Value of new advances in period (000s)	Ave. annual percentage rate of charge (Total Loan Book)	Highest annual percentage rate of charge (in Period)
1 Debt purchasing							
2 Hire purchase/conditional sale agreements							
3 Home credit loan agreements							
4 Bill of sale loan agreements							
5 Pawnbroking							
6 High cost short term credit							
7 Running-account credit							
8 Other lending							

- 9 Does the firm use charging orders?
- 10 If yes, how many have been issued during the period?

A

CCR004 Consumer Credit data: Debt Management Firms

A

1 Total outstanding value of relevant debts under management

2 Higher of £5000 and 0.25% of (1)

3 Total prudential resources

4 Number of debt management plans that end before the end of the term originally agreed

--

--

CCR005 Consumer Credit data: Client Money & Assets

A

1 What was the highest balance of client money held at any one time during the reporting period?

2 What was the highest number of clients for whom client money was held at any one time during the period?

3 How much client money (if any) did you hold in excess of 5 days following receipt?

CCR006 Consumer Credit data: Debt collection

Firms with permission to operate an electronic system in relation to lending only

A

- 1** Have you undertaken any debt collection business during the reporting period?

(If the answer to 1 is "no" then do not complete the remainder of the form)

A

B

C

D

E

F

Stage of debt placement

1st

2nd

3rd

4th

5th

Subsequent

All firms

- 2** Total value of debts being pursued for collection
3 Total value of debts under collection
4 Total number of debts being pursued for collection
5 Total number of debts under collection
6 Number of debts under collection with missed repayments
7 Total income per placement

	A	B	C	D	E	F
	1st	2nd	3rd	4th	5th	Subsequent
2						
3						
4						
5						
6						
7						

CCR007 Consumer Credit Data: key data for credit firms with limited permission

A

- 1 Revenue from credit-related regulated activities
- 2 Total revenue (including from activities other than credit-related regulated activities)
- 3 Number of transactions involving credit-related regulated activities in reporting period
- 4 Number of complaints related to credit-related activities received in period
- 5 Credit-related regulated activity carried on in relation to the greatest number of customers in reporting period

16 Annex 35BG

NOTES FOR COMPLETION OF THE DATA ITEMS RELATING TO CONSUMER CREDIT ACTIVITIES

Contents

Introduction	General notes on the data items
CCR001:	Financial data for <i>credit firms</i>
CCR002:	Volumes
CCR003:	Lenders
CCR004:	Debt management
CCR005:	Client Money and Assets
CCR006:	Debt Collecting
CCR007:	Key data for firms with <i>limited permission</i>

Introduction

1. These notes aim to assist firms in completing and submitting the data items relevant to credit-related regulated activities.
2. The purpose of these data items is to provide a framework for the collection of information by the FCA as a basis for its supervisory and other activities. They also have the purpose set out in paragraph 16.12.2G of the Supervision manual, i.e. to help the FCA to monitor firms' financial soundness.
3. The data should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm omits a material item, includes an immaterial item or presents items in a manner which is misleading.

Defined Terms

4. These notes are not intended to provide any new definitions. Some of the terms we use below will already be included in the Glossary of Definitions in the FCA Handbook. Where we use an alternative word or phrase we expect firms to apply an ordinary meaning to those phrases.

Scope

5. Most firms with *limited permission* are only required to submit data item CCR007 (Key Data). A firm is not required to submit any data items if the only credit-related regulated activity it carries on is providing credit references. The reporting requirements also do not apply to a not for profit body unless it is a not for profit debt advice body (and most apply only if, at any point in the last 12 months it has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months). An authorised professional firm does not need to submit the data items in SUP 16.12.29C unless it is a CASS debt management firm.
6. All other firms undertaking *credit-related regulated* activities are required to complete the data items applicable to the activities they undertake as set out in SUP 16.12.29C
7. The credit-related regulated activities are:
 - a. Entering into a regulated credit agreement as lender;
 - b. Exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement
 - c. Credit broking;
 - d. Debt adjusting;
 - e. Debt counselling;
 - f. Debt collecting;
 - g. Debt administration
 - h. Operating an electronic system in relation to lending;

- i. Regulated consumer hire agreements;
- j. Providing credit information services;
- k. Providing credit references

Currency

You should report in the currency of your annual audited accounts, where this is Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Where annual audited accounts are reported in a currency outside those specified above, please translate these values into an equivalent within the list using an appropriate rate of exchange at the reporting date, or where appropriate, at the rates of exchange fixed under the terms of any relevant currency hedging transaction, and that value used in the return.

Unless otherwise stated, figures should be reported in single units.

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

CCR001 – Financial data for consumer credit firms

This data item provides the FCA with a snapshot of the assets, liabilities, income and expenditure of a firm, giving an idea of the on-going financial viability and whether this poses any potential risks to consumers.

Balance sheet items		
Total shareholder funds/Partnership capital/Sole trader capital	1A	Incorporated firms: add the value of all types of shares, reserves, retained earnings and verified current year profit. Partnerships and sole traders: add the value of all capital accounts, retained earnings and verified current year profit. LLPs: add the value of all cash and capital accounts.
Intangible Assets/Investments in subsidiaries/Investment in Own Shares	2A	Add the value of intangible assets/goodwill, investments in own shares, investments in subsidiaries, material current year losses and, if applicable, excess LLP member's drawings.
Subordinated debt and subordinated loans	3A	Add the value of any subordinated loans and other subordinated debt.
Current Assets		
Cash	4A	This is money physically held by the firm and money deposited with banks or building societies.
Debtors/Other	5A	Add the value of all types of debtors, stocks, investments (other than those included in 2A) and loans.
Current Liabilities		
Creditors	6A	Add the value of all types of creditors.
Largest Exposures (including inter-company): Amount	7A	Identify the amount of the two largest exposures (including those between the firm and a related entity). These exposures can either be amounts owed to the firm by debtors, or amounts owed by the firm to creditors.
Largest Exposures (including inter-company): Counterparty name	7B	Identify the name of the counterparty from or to whom the amounts are owed.

Largest Exposures (including inter-company): Type of exposure	7C	Identify whether the amounts are owed to the firm (debtor) or owed by the firm (creditor).
Income Statement (including regulated business revenue)		
Total income	8A	Submit the total income of the firm in the reporting period, from all activities, both regulated and non-regulated.
Retained Profit	9A	<p>This figure should be the amount of profit or loss retained from the period being reported on.</p> <p>This figure does not relate to the accumulated retained profit figure that appears on the firm's balance sheet, but to the retained profit or loss figure for the period shown on their income statement/P&L.</p>

CCR002 – Consumer Credit data: volumes

This data item provides the FCA with an overall picture of the size of the consumer credit market and how revenue is generated. On an individual firm level, it allows us to look at the relationship between customer numbers, transaction numbers and revenue.

In this data item, firms should complete each row relating to an activity they have permission to undertake.

Column A: Fee mechanism

In this column, firms should identify the predominant method used for applying fees to customers.

For the purposes of answering this question, an upfront fee is a single fee incurred once at the time of the transaction occurring. There are no further fees associated with the transaction. For example, a one-off broking fee.

An on-going fee is where the fee is split into multiple payments across the lifetime of the product. For example, a percentage charge taken from monthly payments on a debt management plan.

Where a firm only uses upfront fees or only uses on-going fees, the firm should select “upfront only” or “on-going only”. “Mainly upfront” and “mainly on-going” should be used when more than two-thirds of the relevant revenue from that activity is achieved using that method.

With respect to lending activities, “interest only” should be selected if revenue is generated solely from charging interest on loans. “Mainly interest” should be selected if interest accounts for more than two-thirds of the revenue generated. For example an agreement for high cost short term credit may incur a fixed fee plus interest.

“Combination” should be used when no single revenue source (upfront fees, on-going fees and interest) accounts for more than two-thirds of the relevant revenue from that activity.

Column B: Revenue

In this column, firms should enter the amount of revenue generated by each activity undertaken.

Column C: Total Customers:

In this column, firms should enter the total number of individual customers that have taken up a credit related product during the period. This figure should be the number of customers, rather than the number of transactions. For example, if the same customer has taken out three loans, this counts as one towards the “total customers” figure.

A *credit repair firm* should count the number of individual customers who have engaged their services during the period.

Column D: Total Transactions:

In this column, firms should identify the total number of transactions that were made during the period. This figure should always be equal to or greater than the figure in column C. For example, if the same customer has taken out three loans, this counts as three towards the “total transactions” figure.

In the case of pawnbroking, each separate item held as security should be counted as a single transaction.

A debt management firm or a not for profit debt advice body to which this data item applies should record the number of debt management plans that they have entered into during the reporting period.

A credit repair firm does not need to complete this field.

Rows 1 to 9: Lending

The rows under the heading “Lending” relate to the different types of lending that are covered by *consumer credit lending*. For each type of lending that a firm undertakes, the row relating to that activity should be completed in full.

Firms undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

Row 10: Credit Broking

This row should be completed in full by all firms carrying on the activity of *credit broking* as defined in article 36A of the *Regulated Activities Order*.

Row 11: Debt Management Activity

This row should be completed in full by a *debt management firm* or a *not for profit debt advice body* to which this data item applies.

Row 12: All other credit-related activity

Firms should include in this row data relating to all other credit-related activities not covered in rows 1 to 11. The row should be completed in full and include the total of all other credit-related activities that a firm undertakes.

CCR003 – Consumer Credit data: Lenders

The purpose of this data item is to give the FCA an understanding of the number and value of credit-related loans that exist, and the extent of arrears attached to those loans. This data item will also provide information on interest rates being charged on those loans.

In this data item, firms should complete each row relating to lending sub-category that they have permission to undertake.

Firms undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

Column A: Total Value (000s)

In this column, a firm should enter the total value of loans outstanding at the end of the reporting period.

Column B: Total # Loans

In this column, the firm should enter the total number of loans in its loan book at the end of the reporting period. In the case of pawnbroking, each item that has been used as security should be counted as a separate loan.

Column C: Total # Loans in Arrears

In this column, a firm should enter the number of loans that had overdue repayments at the end of the reporting period.

Column D: Total Value of Arrears (000s)

In this column, a firm should enter the total value of arrears that existed in its loan book at the end of the reporting period.

Column E: Total Value of New Advances in Period (000s)

In this column, a firm should enter the total value of loans made during the reporting period. In the case of Debt Purchase, a firm should report the value of loans purchased during the period.

Column F: Ave. rate of interest (Total loan book)

The firm should calculate the average (mean) APR on all the current loans in its loan book at the period end. APR should be calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook.

The amount entered will be a percentage with no decimal places.

Worked example:

A firm has the following loans:

4 loans of £1000 with 300% APR

3 loans of £500 with 400% APR

2 loans of £200 with 500% APR

1 loan of £100 with 750% APR

Average rate of interest is calculated as follows:

$$((4 \times 300) + (3 \times 400) + (2 \times 500) + (1 \times 750)) / 10$$

Column G: Highest rate of interest (in Period)

Firms should enter the highest APR that has been applied during the reporting period to a single loan. APR should be calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook.

The amount entered will be a percentage with no decimal places.

CCR004 – Consumer Credit data: Debt Management Firms

This data item is intended to reflect the underlying prudential requirements contained in CONC 10 and allows monitoring against the requirements set out there.

Total value of <i>relevant debts under management</i> outstanding	1A	Firms should enter the total of the value of all the <i>relevant debts under management</i> that were used to calculate the firm's current capital requirement. This should be the figure calculated at the latest accounting reference date, or, if there has been a change in the value of all the <i>relevant debts under management</i> of more than 15%, the re-calculated figure.
Higher of £5000 and 0.25% of (1)	2A	Firms should enter whichever figure is highest out of £5000 and 0.25% of the amount entered in element 1A. NB: this form must be completed in '000s, so if £5000 is the highest requirement, this should be submitted as "5".
Total prudential resources	3A	Firms should enter their total prudential resources, calculated in accordance with CONC 10
Number of debt management plans that end before the end of the term originally agreed	4A	Firms should identify the number of debt management plans that ended earlier than stated in the original contract during the reporting period.

CCR005 – Consumer Credit data: Client Money & Assets

The purpose of this data item is so that the FCA has an understanding of how much client money and assets is being held by firms in relation to credit activities.

<p>What was the highest balance of client money held during the reporting period?</p>	<p>1A</p>	<p>A CASS debt management firm should enter the highest total amount of client money that was held in respect of debt management activity at a single point in time during the reporting period.</p>
<p>What was the highest number of clients for whom client money was held during the reporting period?</p>	<p>2A</p>	<p>A CASS debt management firm should enter the highest number of clients for whom client money was held in respect of debt management activity at a single point in time during the reporting period.</p>
<p>How much client money (if any) did you hold in excess of 5 days following receipt?</p>	<p>3A</p>	<p>If a CASS large debt management firm at any point during the reporting period held client money for an individual client, relating to a single transaction, in excess of five days of receipt of cleared funds, it should report the aggregate balance of this client money (i.e. the sum of all the amounts that were held longer than five days). A CASS large debt management firm should report '0' if it did not hold client money in excess of five days at any point during the reporting period.</p> <p>In accordance with CASS 11, a CASS large debt management firm must pay any client money it receives to creditors as soon as reasonably practicable, save in the circumstances set out in in CASS 11. In the FCA's view the payment to creditors should normally be within 5 business days of the receipt of cleared funds.</p>

CCR006 – Consumer Credit data: Debt collection

The purpose of this data item is to give the FCA an understanding of the activities of firms undertaking debt collection, the size of the market, and identify potential areas where there is risk of consumer detriment.

1A Have you undertaken any debt collection business during the reporting period?

Firms that have the permission to operate an electronic system in relation to lending (peer to peer lending) are required to submit CCR006 because the scope of that permitted activity allows firms to undertake debt collection. If a peer to peer lender has not undertaken any debt collection business, they should answer “no” and do not have to complete the remainder of the data item.

Stage of debt placement

The firm should complete each column in which they have debts to collect. All debts at 6th stage or lower should be aggregated and reported in column F.

Debt placement is the placement of an overdue account, passed out for debt collection either through an internal collection strategy (also known as in-house) or outsourced to a specialist third party debt collection agency. Each time the debt is passed to a new agency for collection, the stage of debt placement increases.

Total value of debts being pursued for collection	2	The firm should report the total value of all the debts that are being actively pursued for collection at the end of the reporting period.
Total value of debts under collection	3	The firm should report the total value of all the debts that it has on its books to collect at the end of the reporting period.
Total number of debts being pursued for collection	4	The firm should report the number of all the debts that are being actively pursued for collection at the end of the reporting period.
Total number of debts under collection	5	The firm should report the number of individual debts that it has on its books to collect at the end of the reporting period.
Number of debts under collection with missed repayments	6	The firm should identify the number of debts under collection on its books that have missed repayments.
Total income per placement (000s)	7	The firm should indicate the amount of income that has been attributed to debts collected under each stage of placement.

CCR007 – Key data for credit firms with limited permission

The purpose of this data item is so that the FCA can collect a small, proportionate amount of data from the large population of firms with limited permission undertaking *credit-related regulated activities*, to enable monitoring of the market with a risk based approach.

Revenue from credit-related regulated activities	1A	A firm should include the total revenue received from all <i>credit-related regulated activities</i> during the period.
Total revenue (including from activities other than credit-related regulated activities)	2A	A firm should all include the total revenue received from all its business undertaken during the reporting period, both regulated and unregulated.
Number of credit-related regulated transactions in reporting period	3A	A firm should identify how many credit-related regulated activity transactions it has undertaken during the period. In relation to debt counselling, the amount should relate to the number of occasions on which advice has been given.
Number of complaints relating to credit-related regulated activities received in period	4A	A firm should submit the total number of complaints received in relation to credit-related regulated activities undertaken by the firm which it has been required to deal with under the rules in <i>DISP</i> .
Credit-related regulated activity carried on in relation to the greatest number of customers in reporting period	5A	Selecting from the following options, a firm should identify which <i>credit-related regulated activity</i> generates the highest amount of turnover. <ul style="list-style-type: none"> • Lending • Consumer hire • Not-for-profit debt counselling • Secondary credit broking • Other

Insert the following transitional provision after TP 1.8 AIFMD. The following text is all new and is not underlined.

TP 1.9 Credit-related regulated activities

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provisions	Transitional provision: dates in force	Handbook provision coming into force
1	The changes to SUP 16.11 and 16.12 set out in Annex E of the Consumer Credit Instrument 2013	R	The changes effected by the Annex listed in column (2) to SUP 16.11 and SUP 16.12 do not apply until 1 October 2014.	1 April 2013 to 1 October 2013	1 April 2013
2	The changes to SUP 16.12 set out in Annex E of the Consumer Credit Instrument 2013	G	The effect of (1) is that, for a <i>firm</i> with <i>permission</i> to carry on a <i>credit related regulated activity</i> , the reporting frequencies and submission deadlines for the <i>data items</i> referred to in SUP 16.12.29C are calculated from the <i>firm's</i> next <i>accounting reference date</i> that follows 1 October 2014 and the first <i>data items</i> should cover the period from 1st October 2014 to the <i>accounting reference date</i> or the end of the first reporting period if the frequency is half-yearly.	1 April 2013 to 1 October 2013	1 April 2013

Annex F

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013	Description	Handbook reference	Decision maker
...			

<u>The Financial Services Act 2012 (Consumer Credit) Order 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article 3(3)</u>	<u>when the <i>FCA</i> is proposing or deciding to take action against an <i>approved person</i>, for being knowingly concerned in a contravention of a <i>CCA Requirement</i> by an <i>authorised person</i>, by exercising the disciplinary powers conferred by section 66*</u>		<u><i>RDC</i></u>
<u>Article 3(7)</u>	<u>when the <i>FCA</i> is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a <i>permission</i> or impose a restriction in relation to the carrying on of a regulated</u>		<u><i>RDC</i></u>

	activity (under section 206A) for the contravention of a <i>CCA Requirement</i> . This applies in respect of an <i>authorised person</i> , or an <i>unauthorised person</i> to whom section 404C applies*		
<u>Article 3(10)</u>	when the <i>FCA</i> is proposing or deciding to exercise the power under section 384(5) to require a <i>person</i> to pay restitution in relation to the contravention of a <i>CCA Requirement</i> *		<u>RDC</u>

2 Annex 2G Statutory notices and the allocation of decision making

Payment Services Regulations	Description	Handbook reference	Decision maker
...			

<u>The Financial Services Act 2012 (Consumer Credit) Order 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article 3(6)</u>	when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i> by reference to the contravention or likely contravention of a <i>CCA Requirement</i>	<i>SUP 14</i>	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP 2.5.7G</i> and <i>2.5.7AG</i>

...

Sch 3 Fees and other required payments

...

Sch 3.2G The *FCA*'s power to impose financial penalties is contained in:

	...
	the <i>Referral Fees Regulations</i>
	<u>the CCA Order</u>

...

Sch 4 Powers Exercised

...

Sch 4.2G	The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
	...
	Regulation 30 (Application of Part 26 of the 2000 Act) of the <i>Referral Fees Regulations</i>
	<u>Article 3(11) (Application of provisions of FSMA 2000 in connection with failure to comply with the 1974 Act) of the CCA Order</u>
	<u>Article 4 (Statement of policy) of the CCA Order</u>

Annex G

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

INTRO 1 Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, ~~licensees~~* and *VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FCA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FCA*.

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, ~~licensees~~* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

Chapter 2 sets out the scope of the *Financial Ombudsman Service's* ~~three~~ two jurisdictions:

- the *Compulsory Jurisdiction*;
- ~~the *Consumer Credit Jurisdiction*~~; and
- the *Voluntary Jurisdiction*.

The scope of the ~~three~~ two jurisdictions is defined by...

...

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) ...; and
- (2) ~~*persons covered by the Consumer Credit Jurisdiction (licensees)*~~; and [deleted]
- (3) ...

...

1.1.10 R In relation to a *firm's* obligations under this chapter, references to a *complaint* also include an expression of dissatisfaction which is capable of

becoming a *relevant new complaint*, ~~or a relevant transitional complaint or~~ a relevant new credit-related complaint.

...

Application to licensees and VJ participants

1.1.14 R This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to *licensees* for *complaints from eligible complainants*. ~~[deleted]~~

...

1.1.16 G Although *licensees* and *VJ participants* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should it be necessary.

1.1.17 R In relation to the *Consumer Credit Jurisdiction* only, *FOS Ltd* may dispense with, or modify, the application of the *rules* in this chapter to *licensees* where it considers it appropriate to do so and is satisfied that:

(1) compliance by the *licensee* with the *rules* would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and

(2) it would not result in undue risk to the *persons* whose interests the *rules* were intended to protect. ~~[deleted]~~

1.1.18 G This power is intended to deal with exceptional circumstances, for example, where it is not possible for a *licensee* to meet the specified time limits, and any dispensation or modification is likely to be rare. ~~[deleted]~~

...

1.10.1 R (1) ~~Twice~~ Unless (2) applies, twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants*. The report must be set out in the format in *DISP 1 Annex 1 R*.

(2) If a *firm* has permission to carry on only credit-related regulated activities and has revenue arising from credit-related regulated activities that is less than or equal to £5,000,000 a year, the *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* once a year.

(3) The report required by (1) and (2) must be set out in the format in *DISP 1 Annex 1R*.

(4) Paragraphs (1) and (2) do not apply to a *firm* with only a limited permission unless that *firm* is a not for profit advice body that at any point in the last 12 months has held £1 million or more in client

money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.

1.10.1-A G A firm with only a limited permission to whom DISP 1.10.1R(1) and (2) do not apply is required to submit information to the FCA about the number of complaints it has received in relation to credit-related activities under the reporting requirements in SUP 16.12 (see in particular data item CCR007 in SUP 16.12.29CR). A firm with limited permission to whom DISP 1.10.1R(1) and (2) do not apply is also subject to the complaints data publication rules in DISP 1.10A.

...

1.10.1D G Not all the *firms* in the *group* need to submit the report jointly. *Firms* should only consider submitting a joint report if it is logical to do so, for example, where the *firms* have a common central *complaints* handling team, and the same accounting reference date and are all subject to the same reporting frequencies and submission deadlines.

...

1.10.2 R Part A of DISP 1 Annex 1R requires (for the relevant reporting period) information about:

...

1.10.2-A R Part B of DISP 1 Annex 1R requires (for the relevant reporting period) information about:

(1) the total number of complaints received by the firm;

(2) the total number of complaints closed by the firm;

(3) the total number of complaints:

(a) upheld by the firm in the reporting period; and

(b) outstanding at the beginning of the reporting period; and

(4) the total amount of redress paid in respect of complaints during the reporting period.

...

1.10.3 G For the purpose of *DISP 1.10.2R*, *DISP 1.10.2-AR* and *DISP 1.10.2AR*, when completing the return, the *firm* should take into account the following matters.

...

(2) Under *DISP 1.10.2R(3)(a)* or *DISP 1.10.2-A R*, a *firm* should report

...

- (3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R (4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, redress should be interpreted ...
- (4) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2 R (4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, redress should not, however, include ...

...

1.10.4 R ~~The~~ Unless *DISP* 1.10.4AR applies, the relevant reporting periods are:

...

1.10.4A R If a *firm* has *permission* to carry on only *credit-related regulated activities* and has revenue arising from *credit-related regulated activities* that is less than or equal to £5,000,000 a year, the relevant reporting period is the year immediately following the *firm's accounting reference date*.

...

Meaning of revenue

1.10.10 G In *DISP* 1.10 references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

...

Obligation to publish summary of complaints data or total number of complaints

1.10A.1 R (1) ~~Where~~ Unless (1A) applies to the *firm*, where, in accordance with *DISP* 1.10.1R, a *firm* submits a report to the *FCA* reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

- (1A) (a) This paragraph applies to a *firm* which:
 - (i) has *permission* to carry on only *credit-related regulated activities*; and
 - (ii) has revenue arising from *credit-related regulated activities* that is less than or equal to £5,000,000 a year.
- (b) Where a *firm* to which this paragraph applies submits a report to the *FCA* in accordance with *DISP* 1.10.1R reporting 1000 or more *complaints* it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

- (2) Where, in accordance with *DISP* 1.10.1CR, a *firm* submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 500 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary), unless it is a *firm* to which (1A) applies.
- (3) Where, in accordance with *DISP* 1.10.1CR, a *firm* to which (1A) applies submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary).
- (4) Where, in accordance with *SUP* 16.12.4R and *SUP* 16.12.29CR, a *firm* with a *limited permission* submits *data item* CCR007 to the *FCA* reporting 1000 or more *complaints*, it must publish the total number of *complaints* received.

...

- 1.10A.3 R
- (1) Where the *firm's* relevant reporting period (as defined in *DISP* 1.10.4R or *DISP* 1.10.4AR as the case may be) ends between 1 January and 30 June, the *firm* must publish the *complaints* data summary no later than 31 August of the same year.
 - (2) Where the *firm's* relevant reporting period (as defined in *DISP* 1.10.4R or *DISP* 1.10.4AR as the case may be) ends between 1 July and 31 December, the *firm* must publish the *complaints* data summary no later than 28 February of the following year.
 - (3) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 January and 30 June, the *firm* must publish the total number of *complaints* received no later than 31 August of the same year.
 - (4) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 July and 31 December, the *firm* must publish the total number of *complaints* received no later than 28 February of the following year.

...

- 1.10A.4 R
- A *firm* must immediately confirm to the *FCA*, in an email submitted to complaintsdatasummary@fca.org.uk, that the *complaints* data summary or total number of *complaints* (as appropriate) accurately reflects the report submitted to the *FCA*, that the summary or total number of *complaints* (as appropriate) has been published and where it has been published.

...

1.10A.5 E A *firm* will be taken to have complied with *DISP* 1.10A.1R(1), ~~of (1A)~~, (2), (3) or (4) if within the relevant time limit set out in *DISP* 1.10A.3R the *firm*:

(1) ensures that another *person* publishes the *complaints* data summary or total number of *complaints* (as appropriate) on its behalf; and

(2) publishes details of where this summary or total number of *complaints* (as appropriate) is published.

...

1.10A.6 R Any *firm* covered by a joint report, other than the *firm* that submitted the joint report, must provide details of where the *complaints* data summary or total number of *complaints* (as appropriate) is published to any *person* who requests them.

...

1.10A.7 G *Firms* may choose how they publish the *complaints* data summary or total number of *complaints* (as appropriate). However, the summary or total number of *complaints* (as appropriate) should be readily available. For this reason, the *FCA* recommends that *firms* should publish the summary or total number of *complaints* (as appropriate) on their websites.

1.10A.8 G (1) The *FCA* recommends that *firms* should publish additional information alongside their *complaints* data summaries or total number of *complaints* (as appropriate) in order to relate the number of complaints to the scale of the *firm's* relevant business. *Firms* are recommended to publish the relevant standard metrics set out in the table at *DISP 1 Annex 1A G* with the summaries. Where the *complaints* data summary or total number of *complaints* (as appropriate) relates to a joint report the metrics should cover all the *firms* included in the joint report.

...

Meaning of revenue

1.10A.9 G In *DISP* 1.10A references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

...

1 Annex 1R Complaints return form
This annex consists only of one or more forms. Forms are to be found through the following address:

Complaints return form - DISP 1 Annex 1 R

DISP 1 Ann 1R

Illustration of the reporting requirements, referred to in *DISP* 1.10.1R

Complaints Return (DISP 1 Ann 1R)

GROUP REPORTING / NIL RETURN DECLARATION

1 Does the data reported in this return cover complaints relating to more than one entity? If 'Yes', then list the *firm* reference numbers (FRNs) of all the entities included in this return.

Yes / No

2 We wish to declare a nil return

Yes / No

RETURN DETAILS REQUIRED

3 Total complaints outstanding at reporting period start date

PART A

Complaints closed and total redress paid during the reporting period

		A	B	C	D
	Product/service grouping	Complaints closed within 4 weeks	Complaints closed > 4 but within 8 weeks	Complaints closed > 8 weeks	Total complaints upheld by firm
4	Banking <u>and credit cards</u>				
5	Home finance				

6	General insurance and pure protection					
7	Decumulation, life and pensions					
8	Investments					

Complaints opened

		A	B	C	D	E	
	Product/service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	Other
9	Banking and credit cards	Current accounts					
10		Credit cards					
11		<u>Overdrafts</u>					
12		<u>Unregulated loans</u>					
13		Savings (inc. Cash ISA) and other banking					
14	Home finance	Equity release products					
15		Impaired credit mortgages					
16		Other regulated home finance products (<u>including second and subsequent charge mortgages</u>)					
17		Other unregulated home finance products					
18	General insurance & pure protection	Payment protection insurance					
19		Other general insurance					
20		Critical illness					
21		Income protection					
22		Other pure protection					
22	Decumulation,	Personal pensions and FSAVCs					

23	life and pensions	Investment linked annuities					
24		Income drawdown products					
25		Endowments					
26		Other decumulation, life and pensions					
27	Investments	Investment bonds					
28		PEPs/ISAs (exc. cash ISAs)					
29		Investment trusts					
30		Unit trusts/OEICs					
31		Structured products					
32		Other investment products/funds					
33		Investment management/services (inc. platforms)					

PART B

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
	<u>Total complaints outstanding at reporting period start date</u>	<u>Complaints Received</u>	<u>Complaints Closed</u>	<u>Complaints Upheld by firm</u>	<u>Total Redress paid £</u>
<u>Activities</u>					
<u>Lending</u>					
1 <u>Debt purchasing (including complaints in relation to the underlying debt that has been purchased but not complaints about the collection of that debt)</u>		-	-	-	-
2 <u>Hire purchase/conditional sale</u>		-	-	-	-

	<u>agreements</u>				
3	<u>Home credit loan agreements</u>	-	-	-	-
4	<u>Bill of sale loan agreements e.g. logbook lending</u>	-	-	-	-
5	<u>Pawnbroking</u>	-	-	-	-
6	<u>High cost short term credit</u>	-	-	-	-
9	<u>Other lending</u>	-	-	-	-
-	-	-	-	-	-
10	<u>Credit Broking</u>	-	-	-	-
11	<u>Debt Management activity</u>				
-	-				
12	<u>Debt collecting</u>				
13	<u>All other credit-related activity</u>				

NOTES ON THE COMPLETION OF THIS RETURN

Nil returns

If no *complaints* have been received during the reporting period and no *complaints* were outstanding at the beginning of the period, the *firm* may submit a NIL RETURN by clicking on the relevant box.

Product/service groupings

~~Complaints~~ Unless otherwise specified, *complaints* should be allocated to these groupings based on the product or service the *complaint* relates to.

If a *firm* has not received any *complaints* relating to a particular product or service during the reporting period, the relevant box should be left blank.

Product and cause categories

The 'other' categories should only be used in exceptional circumstances when none of the specific product or cause categories are appropriate.

A *complaint* should be reported against the product/service element complained about; this may be different to the main policy itself. For example, for a term assurance policy with an attaching critical illness option, where the *complaint* relates to the term assurance element, it should be reported under 'other pure protection' but where the *complaint* relates to the critical illness element, it should be reported under 'critical illness'.

A *complaint* should only be reported in Part B if it is not covered by a specific category in Part A.

1 Annex 1AG

This table belongs to *DISP* 1.10A.8 G

Type of business	Contextualised new complaint numbers	Recommended metrics
Banking and loans <u>credit cards</u>	<i>Complaints</i> per 1,000 accounts	The tariff base (number of accounts) at row 1, column 2 of the table in <i>FEES</i> 5 Annex 1 R as reported in the <i>firm's</i> most recent statement of total amount of <i>relevant business</i> <u>or if this tariff base is not relevant, the applicable tariff base under <i>FEES</i> 5 Annex 1 R</u>
...		
Decumulation, life and pensions (intermediation)	<i>Complaints</i> per £1m of annual eligible income	The <i>firm's</i> annual eligible income as defined in class C2 of <i>FEES</i> 6 Annex 3 R
<u>credit-related activities</u>	<u><i>Complaints</i> per £1m of annual eligible income</u>	<u>The applicable tariff base under <i>FEES</i> 5 Annex 1 R</u>

Note 1: ...
Note 5: <u>Where a firm undertakes both (a) banking and credit cards and (b) other credit-related activities, it can chose to use the metric which forms the greater part of its business.</u>
Note 6: <u>Where a firm undertakes both (a) home finance and (b) credit-related activities, it can chose to use the metric which forms the greater part of its business.</u>

...

1 Annex 1BR

This table belongs to *DISP* 1.10A.2 R

Complaints publication report

Firm name:

Group: (if applicable):

Other firms included in this report (if any):

Period covered in this report: [e.g. 1 January – 30 June 2010
2015 or 1 January – 31 December 2015]

Brands/trading names covered:

Number of complaints opened	Number of complaints closed	Complaints closed within 8 weeks (%)	Closed complaints upheld by firm (%)
-----------------------------------	-----------------------------------	---	---

Banking and
credit cards

...

Credit-related

Not
Applicable

...

1 Annex 2G

...

Type of respon dent/co mplaint	<i>DISP</i> 1.2 Consumer awareness rules	<i>DISP</i> 1.3 Complaints handling rules	<i>DISP</i> 1.4- 1.8 Complaints resolution rules etc.	<i>DISP</i> 1.9 Complaints record rule	<i>DISP</i> 1.10 Complaints reporting rules	<i>DISP</i> 1.10A Compl aints data public
--	---	---	---	--	--	--

						ation rules
...						
<i>license e</i>	Applies for <i>eligible complainant s</i>	Applies for <i>eligible complainants (DISP 1.3.4G to DISP 1.3.5 G do not apply)</i>	Applies for <i>eligible complainant s (DISP 1.6.8G does not apply)</i>	Does not apply	Does not apply	Does not apply
...						

...

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, ~~the *Consumer Credit Jurisdiction*~~ and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* ~~three~~ two jurisdictions:

- (1) ...
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about); ~~and~~
 - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order*,² and the *Mortgages and General Insurance Complaints Transitional Order*; and
 - (c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 10 of the *Regulated Activities Amendment Order*;
- (2) ~~the *Consumer Credit Jurisdiction* covers certain *complaints* against *licensees* (and businesses which were *licensees* at the time of the events complained about); and [deleted]~~

(3) ...

2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise

(1) ...

- (2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*; ~~and~~
- (3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgages and General Insurance Complaints Transitional Order*;
- (4) *relevant existing credit-related complaints* referred to the *Financial Ombudsman Service* before 1 April 2014 which were formerly being dealt with under the *Consumer Credit Jurisdiction* and which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*; and
- (5) *relevant new credit-related complaints* about events which took place before 1 April 2014 but referred to the *Financial Ombudsman Service* on or after 1 April 2014 which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*.

...

2.2.1 G The scope of the *Financial Ombudsman Service*'s ~~three~~ two jurisdictions depends on:

...

...

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) ...
- (1A) ...
- (2) ~~*consumer credit activities*~~; [deleted]
- (3) ...
- (4) *lending money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
- (5) *paying money by a plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);

...

Activities by firms and unauthorised persons previously subject to the Consumer Credit Jurisdiction

2.3.2-A G In accordance with article 10 of the *Regulated Activities Amendment Order*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) a *relevant existing credit-related complaint* referred to the *Financial Ombudsman Service* before 1 April 2014 which was formerly being dealt with under the *Consumer Credit Jurisdiction*; and
- (2) a *relevant new credit-related complaint* referred to the *Financial Ombudsman Service* on or after 1 April 2014 which relates to an act or omission which took place before 1 April 2014;

provided that:

- (a) the *complaint* could have been dealt with under the *Consumer Credit Jurisdiction* (disregarding whether the complainant would have been eligible under rules made for the purposes of the *Consumer Credit Jurisdiction* and whether the complaint would have fallen within a description specified in those rules) but for the repeal of section 226A of the *Act*; and
- (b) the complainant is eligible and wishes to have the *complaint* dealt with under the *Financial Ombudsman Service*.

...

2.3.2A R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *payment service provider* in carrying on:

- (1) *payment services*; or
- (2) ~~*consumer credit activities*~~ *credit-related regulated activities*;

...

2.3.2B R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by an *electronic money issuer* in carrying on:

- (1) issuance of *electronic money*; or
- (2) ~~*consumer credit activities*~~ *credit-related regulated activities*;

...

...

2.4 ~~To which activities does the Consumer Credit Jurisdiction apply?~~ [deleted]

2.4.1 R ~~The *Ombudsman* can consider a *complaint* under the *Consumer Credit*~~

Jurisdiction if:

- (1) ~~it is not covered by the *Compulsory Jurisdiction*; and~~
- (2) ~~it relates to an act or omission by a *licensee* in carrying on~~
 - (a) ~~one or more *consumer credit activities*; or~~
 - (b) ~~any ancillary activities, including advice carried on by the *licensee* in connection with them. [deleted]~~

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

- (1) it is not covered by the *Compulsory Jurisdiction* ~~or the *Consumer Credit Jurisdiction*~~; and
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~22 July 2013~~ 1 April 2014) would be covered by the *Compulsory Jurisdiction* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1 G*);

(d) ~~activities which would be *consumer credit activities* if they were carried on from an establishment in the *United Kingdom*; [deleted]~~

...

(f) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);

(g) paying *money* by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);

...

Consumer Credit Jurisdiction

2.6.3 R The ~~*Consumer Credit Jurisdiction*~~ covers only *complaints* about the activities of a *licensee* carried on from an establishment in the *United Kingdom*. [deleted]

...

- 2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:
- ...
- (10) ...
- (c) an actual or prospective *regulated consumer credit agreement*;
- ...
- (11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in ~~operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended)~~ providing credit references;
- (12) the complainant is a *person*:
- (a) from whom the *respondent* has sought to recover payment under a ~~regulated consumer credit agreement~~ or ~~regulated consumer hire agreement~~ (whether or not the *respondent* is a party to the agreement); or
- (b) in relation to whom the *respondent* has sought to perform duties, or exercise or enforce rights, on behalf of the creditor or owner, under a ~~regulated consumer credit agreement~~ or ~~regulated consumer hire agreement~~ in carrying on ~~debt administration as defined by section 145(7A) of the Consumer Credit Act (1974) (as amended)~~ debt administration;
- ...
- (14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* to the *respondent*;
- (15) the complainant is a borrower under a P2P agreement and the respondent is the operator of an electronic system in relation to lending.
- ...
- 2.7.9 R The following are not *eligible complainants*:
- (1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* whose *complaint* relates in

any way to an activity which:

- (a) ...
- (ab) ...
- (b) the ~~licensee~~ or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, the ~~*Consumer Credit Jurisdiction*~~, or the *Voluntary Jurisdiction*;

- (2) ...
- (3) (~~in the Consumer Credit Jurisdiction~~):
 - (a) a body corporate;
 - (b) a *partnership* consisting of more than three persons;
 - (c) a *partnership* all of whose members are bodies corporate; or
 - (d) an unincorporated body which consists entirely of bodies corporate. [deleted]

...

2 Annex 1G **Regulated activities for the Voluntary Jurisdiction at ~~22 July 2013~~ 1 April 2014**

This table belongs to *DISP* 2.5.1 R

- 2.1 G The activities which were covered by the Compulsory Jurisdiction (at ~~22 July 2013~~ 1 April 2014) were:
 - (1) for *firms*:
 - ...
 - (c) ~~*consumer credit activities*~~; [deleted]
 - ...
 - (e) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - (f) paying *money* by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - ...
 - (2) for payment service providers:

- (a) ...
- (b) ~~consumer credit activities~~ credit-related regulated activities;

...

- (3) for electronic money issuers:
 - (a) issuance of electronic money; ~~or~~
 - (b) ~~consumer credit activities~~ credit-related regulated activities;

...

The activities which (at ~~22 July 2013~~ 1 April 2014) were *regulated activities* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

- (14C) ...
- (14D) credit broking (article 36A);
- (14E) operating an electronic system in relation to lending (article 36H);
- (16) ...
- (16A) debt adjusting (article 39D(1) and (2));
- (16B) debt counselling (article 39E(1) and (2));
- (16C) debt collecting (article 39F(1) and (2));
- (16D) debt administration (article 39G(1) and (2));

...

- (32A) entering into a regulated credit agreement (article 60B(1));
- (32B) exercising, or having the right to exercise, rights and duties under a regulated credit agreement (article 60(B)(2));
- (32C) entering into a regulated consumer hire agreement (article 60N(1));
- (32D) exercising, or having the right to exercise rights and duties under a regulated consumer hire agreement (article 60N(2));

...

(40A) providing credit information services (article 89A);

(40B) providing credit references (article 89B);

...

which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (20), (21), (21A), (22), (22A) to (22E), and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a person's financial standing.

...

3.1.2 R In this chapter, 'out of jurisdiction' means outside the *Compulsory Jurisdiction*, ~~the *Consumer Credit Jurisdiction*~~ and the *Voluntary Jurisdiction* in accordance with *DISP 2*.

...

3.6.2 G Section 228 of the *Act* sets the “fair and reasonable” test for the *Compulsory Jurisdiction* (other than in relation to *consumer redress schemes*) ~~and the *Consumer Credit Jurisdiction*~~ and *DISP 3.6.1R* extends it to the *Voluntary Jurisdiction*.

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms* except where the context requires otherwise:

(1) ...

(2) *DISP 2* (Jurisdiction of the Financial Ombudsman Service), except:

(a) ...

(b) ~~*DISP 2.4* (Consumer Credit Jurisdiction);~~ and

...

...

Sch 2 Notification requirements

...

Sch 2.1	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		...				

<i>DISP</i> 1.10.1R(1)	...	...	...	...
<u><i>DISP</i></u> <u>1.10.1R(2)</u>	<u>Complaints</u> <u>report</u>	<u>Details</u>	<u>A year</u> <u>immediately</u> <u>following the</u> <u><i>firm's</i></u> <u><i>accounting</i></u> <u><i>reference</i></u> <u><i>date</i></u>	<u>30 business</u> <u>days</u>
...				
<i>DISP</i> 1.10A.4R	Publication of <i>complaints</i> data summary/ <u>total number</u> of <u>complaints</u> (as appropriate)	Email confirmation of publication, containing also a statement that the data summary or total number of <u>complaints</u> (as appropriate) accurately reflects the report submitted to the <i>FCA</i> and stating where the summary/ <u>total</u> number of <u>complaints</u> has been published	Upon publication of <i>complaints</i> data summary/ <u>total number of</u> <u>complaints</u> (as appropriate)	Immediately

Annex H

Amendments to the Enforcement Guide (EG)

In this Annex, in Chapter 19 underlining indicates new text and striking through indicates deleted text, in Chapter 20 all the text is new and is not underlined.

19. Non-FSMA powers

...

19.39 The *FCA*, together with several other UK authorities, has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. Where a breach has been committed, the *FCA* will liaise with other authorities, particularly the ~~Office of Fair Trading (the OFT)~~ Competition and Markets Authority (the CMA), to determine which authority is best placed to take enforcement action. The *FCA* would generally expect to be the most appropriate authority to deal with breaches by authorised firms in relation to regulated activities.

...

19.45 Before the *FCA* may apply for an enforcement order, it must ~~consult with:~~
give notice to the CMA of its intention to apply for an enforcement order~~the OFT;~~ and consult the person against whom the enforcement order would be made.

The period for notification and consultation is 14 days before an application for an enforcement order ~~can be~~ is made, or 7 days in the case of an application for an interim enforcement award. The aim of consultation is to ensure that any action taken is necessary and proportionate, and to ensure that businesses are given a reasonable opportunity to put things right before the courts become involved.

...

19.49 The *FCA* anticipates that its powers under the *Act* will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the *FCA* does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the ~~OF~~²~~T's~~ CMA's website. f/n 19

f/n 19 ⁴~~www.of~~²~~t.gov.uk/advice_and_resources/resource_base/legal/enterprise_act/part8/~~
www.gov.uk/government/organisations

...

Financial Services (Distance Marketing) Regulations 2004

19.61 The *FCA* may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of the Regulations. ~~The *FCA* must consult with the OFT before exercising this power.~~ The *FCA* may also accept undertakings from the person who committed the breach that he will comply with the Regulations. The *FCA* must publish details of any applications it makes for injunctions; the terms of any orders that the court subsequently makes; and the terms of any undertakings given to it or to the court.

...

After EG 19 insert the following new chapter.

20. Enforcement of the Consumer Credit Act 1974

20.1 *The CCA Order* gives the *FCA* the power to enforce the *CCA* through the application of its investigation and sanctioning powers in the *Act* by reference to the contravention of *CCA Requirements* and criminal offences under the *CCA*. The *FCA*'s investigation and sanctioning powers include the following:

- power to censure or fine an approved person, or impose a suspension or a restriction on their approval under section 66 of the *Act*, for being knowingly concerned in a contravention by the relevant *authorised person* of a *CCA Requirement*;
- power to require information and documents, under section 165 of the *Act*, it reasonably requires in connection with the exercise of the functions conferred on it by the *CCA Order*;
- power to appoint an investigator under section 167 of the *Act* for reasons related to its functions under the *CCA Order*;
- power to appoint an investigator under section 168 of the *Act* where there are circumstances suggesting that an offence under the *CCA* may have been committed or that a person may have failed to comply with a *CCA Requirement*;
- power to impose a requirement under section 196 of the *Act* on an *incoming firm* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to censure (under section 205 of the *Act*) or fine (under section 206 of the *Act*) an authorised person, or impose a suspension or restriction on their permission (under section 206A of the *Act*) for the contravention of a *CCA Requirement*;
- power to apply to the court for an injunction under section 380 of the *Act* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to apply to the court for a restitution order under section 382 of the *Act* by reference to the contravention of a *CCA Requirement*;
- power to impose a restitution requirement under section 384 of the *Act* by reference to the contravention of a *CCA Requirement*; and
- power to prosecute under section 401 of the *Act* an offence committed under the *CCA*.

20.2 The *FCA*'s approach to taking enforcement action under the *CCA Order* will mirror its general approach to enforcing the *Act*, as set out in EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the

non-compliance.

- 20.3 The *FCA* has decided to adopt procedures and policies that it currently has in place for the enforcement of the *Act* in exercising its powers to enforce the *CCA*. Key features of the *FCA*'s approach are described below.

Information gathering and investigation powers

- 20.4 The *CCA Order* applies much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating contraventions of the *CCA Requirements* and offences committed under the *CCA*.
- 20.5 The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *CCA Order* and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in civil investigations under the *CCA Order* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the CCA Order

- 20.6 The *RDC* is the *FCA*'s decision maker for decisions which require the giving of warning or decision notices under the *CCA Order*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*.
- 20.7 The *CCA Order* does not require the *FCA* to publish procedures about its approach towards the commencement of criminal prosecutions. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in EG 12.
- 20.8 The *CCA Order* does not require the *FCA* to publish procedures about its approach towards applications to the court for an injunction or restitution order. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in EG 10 and EG 11.
- 20.9 The *CCA Order* requires the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to material as set out in section 394 of the *Act* in relation to warning notices and decision notices given under the *CCA Order*.
- 20.10 The *CCA Order* applies the procedural provisions of Part 9 of the *Act*, as modified by the *CCA Order*, in respect of matters that can be referred to the Tribunal. Referrals to the Tribunal in respect of decision notices given under sections 67 (pursuant to Article 3(3) of the *CCA Order*) and 208 (pursuant to Article 3(7) of the *CCA Order*) of the *Act* are treated as disciplinary referrals for the purpose of section 133 of the *Act*.

Public censures, imposition of penalties and the impositions of suspensions or restrictions in relation to contraventions of the Consumer Credit Act 1974

- 20.11 When determining whether to take action to impose a penalty or to issue a public censure in relation to the contraventions of a *CCA Requirement*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. When determining the level of financial penalty, the *FCA*'s policy includes having regard to relevant principles and factors in *DEPP* 6.5 to *DEPP* 6.5B, *DEPP* 6.5D and *DEPP* 6.7.
- 20.12 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil contraventions of *CCA Requirements* to assist it to exercise its functions. *DEPP* 5, *DEPP* 6.7 and *EG* 5 set out information on the *FCA*'s settlement process and the settlement discount scheme.
- 20.13 When determining whether to take action to impose a suspension or restriction in relation to the contraventions of *CCA Requirements*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6A.2 and 6A.4. When determining the length of the period of suspension or restriction, the *FCA*'s policy includes having regard to relevant principles and factors in *DEPP* 6A.3.
- 20.14 The *FCA* will apply the approach to publicity that is outlined in *EG* 6.

Prosecution of criminal offences under the Consumer Credit Act 1974

- 20.15 The *FCA*'s policy with respect to the prosecution of criminal offences is set out in *EG* 12 and applies to the prosecution of *CCA* offences under section 401 of the *Act*. The *FCA* will not prosecute a person for an offence under the *CCA* in respect of an act or omission where the *FCA* has already disciplined the person under section 66, 205, 206 or 206A of the *Act* in respect of that act or omission.

Annex I

Amendments to the Perimeter Guidance manual (PERG)

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

2.2.1 G Under section 23 of the *Act* (Contravention of the general prohibition or section 20 (1) or (1A)), a *person* commits a criminal offence if he carries on activities in breach of the *general prohibition* in section 19 of the *Act* (The general prohibition). An authorised person also commits a criminal offence if he carries on a credit-related regulated activity in the UK, or purports to do so, otherwise than in accordance with his permission (unless the person is an appointed representative carrying on the activity in circumstances where, as a result of section 39 (1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply). For these purposes, entering into a regulated credit agreement as lender, exercising, or having the right to exercise the lender's rights and duties under a regulated credit agreement and debt collecting are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the borrower to repay is secured by a legal mortgage on land. Although a *person* who commits the criminal offence is subject to a maximum of two years imprisonment and an unlimited fine, it is a defence for a *person* to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

...

2.2.1A G A regulated credit agreement that is made by an authorised person who does not have permission to do so, in contravention of section 20 of the Act, could be unenforceable against the borrower (see section 26A of the Act).

...

2.3 The business element

...

2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476),¹ the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 (SI 2005/922), ~~and~~ the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2)

Order 2013.

...

(3B) If a not-for-profit body is carrying on debt adjusting, debt counselling or providing credit information services (or agreeing to carry on a regulated activity so far as relevant to any of those activities), it is to be regarded as doing so by way of business. It is immaterial whether the not-for-profit body also carries on other activities. This change to the business element does not apply, however, if the not-for-profit body carries on that activity only on an occasional basis.

(4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract, entering into a home finance transaction or administering a home finance transaction, and operating a dormant account fund and credit-related regulated activities carried on by persons other than not-for-profit bodies.*

...

2.3.4 G ...

Whether someone is carrying on his or her own business

2.3.5 G Another aspect of the general prohibition is that an employee will not breach the general prohibition by carrying on a regulated activity on behalf of his employer. The reason for that is that it is the employer who is carrying on that activity. The employee is simply carrying on the employer's business.

2.3.6 G This principle potentially also applies to agents and others who assist another to carry on that other's business. That does not mean however that agents and other such persons can never carry on a regulated activity. Apart from anything else it is clear that some regulated activities are meant to be carried on by such persons, such as dealing in investments as agent.

2.3.7 G In the FCA's view the following factors are relevant in deciding whether an agent is to be treated as carrying on his own business (in which case he may require authorisation unless an exemption or exclusion is available) or whether he is carrying on his principal's (in which case he will not require authorisation). In this paragraph, an agent also includes a person who is acting on behalf of another or a person who is assisting another to carry on that other's business (that other person is referred to as the principal).

- (1) The degree of control the principal has over the agent. This takes into account the power of deciding the thing to be done, the way in which it is to be done, the means to be employed in doing it and the time when and the place where it is to be done. For example at one end of the spectrum the agent may merely agree to achieve an end result without that end result being specified in detail. At the other end of the spectrum, the agent may be controlled in every detail of how things are to be done.
- (2) The degree to which the agent is integrated into the principal's business. One may look at to what extent the agent is subject to the managerial procedures of the principal in relation to such matters as quality of work and performance.
- (3) The degree to which the agent takes on the financial risks and rewards of an independent business. For example, one might take into account whether the agent provides his own equipment; whether he hires his own helpers; what degree of financial risk he takes; what degree of responsibility for investment and management he has; whether and how far he has an opportunity of profiting from sound management in the performance of his task.
- (4) For example if the agent's job is to find customers it may be relevant whether he is paid a commission for each customer gained. However this is not a particularly strong factor as many conventional employees are paid by commission.
- (5) The degree to which the agent deals with the principal's customers in his own name. For example it may be relevant whether the agent receives monies from the principal's customers into a bank account in the agent's name.
- (6) The degree to which the services supplied by the agent to the principal are ones that the agent supplies to other clients as well, so that the agent can be said to be in the business of providing those services generally.
- (7) Whether the agent is a natural *person*. It is unlikely that a company or a partnership will fall outside the *general prohibition* on the grounds in *PERG 2.3.6G*.

2.3.8 G In practice a *person* is only likely to fall outside the *general prohibition* on the grounds that he is not carrying on his own business is if he is an employee or performing a role very similar to an employee.

2.3.9 G The consumer credit industry provides an example of how the factors in PERG 2.3.7G might apply. Home collected credit firms supply small, short-term, unsecured loans direct to customers in their homes. It is common practice in this sector for some of the larger firms, in particular, to deal with their customers via self-employed agents. Self-employed agents are not paid a salary by an employer. These agents call on customers in their homes to provide loans or collect repayments due on loans, on behalf of the home collected credit providers they represent, and they receive commission on the repayments they collect. Agents of home collected credit firms may:

- introduce new clients to the credit provider;
- arrange for the completion of the relevant credit agreements by new clients; and
- collect repayments.

2.3.10 G Although the overall relationship between a home collected credit provider (the principal) and its agent will need to be taken into account, meeting the following criteria is likely to mean that the agent does not require authorisation on the grounds that he is carrying on the business of the credit provider and not his own:

- (1) the principal appoints the agent as an agent;
- (2) the agent only works for one principal;
- (3) the principal has a *permission* from the *FCA* for every activity the agent is carrying on for which the principal would need *permission* if it was carrying on the activity itself;
- (4) the contract sets out effective measures for the principal to control the agent;
- (5) (in the case of collecting debts) receipt of repayment by the agent is treated as receipt by the principal so that the debtor is not disadvantaged if the agent becomes insolvent before the money is passed to the principal;
- (6) the principal accepts full responsibility for the conduct of its agent when it is acting on its behalf in the course of its business; and
- (7) the agent makes clear to customers that it is representing a principal and the name of that principal.

...

2.4.8 G ...

2.4.9 G Whether a *credit agreement* or *consumer hire agreement* is subject to the law of a country outside the *United Kingdom* is immaterial to whether an

activity is credit broking, see PERG 2.7.7EG.

...

2.5.1A G ...

2.5.1B G The activities of providing credit information services and providing credit references are not required to relate to a specified investment to be regulated activities, but rather relate to information about a person's financial standing.

...

2.6.29 G ...

Rights under a credit agreement

2.6.30 G In accordance with article 60B (3) of the Regulated Activities Order, a credit agreement is an agreement between an individual ("A") and any other person ("B") under which B provides A with credit of any amount.

Rights under a consumer hire agreement

2.6.31 G In accordance with article 60N (3) of the Regulated Activities Order, a consumer hire agreement is an agreement between a person ("the owner") and an individual ("the hirer") for the bailment or, in Scotland, the hiring, of goods to the hirer which:

- (1) is not a hire-purchase agreement; and
- (2) is capable of subsisting for more than three months.

...

2.7.7D G ...

Credit broking

2.7.7E G There are six activities that fall within credit broking. These are:

- (1) effecting an introduction of an individual who wishes to enter into a credit agreement to another person with a view to that person entering as lender into a credit agreement by way of business;
- (2) effecting an introduction of an individual who wishes to enter into a consumer hire agreement to another person with a view to that person entering as owner into a consumer hire agreement by way of business (except where the exemption relating to the supply of essential services would apply to the consumer hire agreement, see PERG 2.7.19OG);
- (3) effecting an introduction of an individual who wishes to enter into a

credit agreement or a consumer hire agreement to a person who carries on an activity in (1) or (2) by way of business;

- (4) presenting or offering an agreement which would (if entered into) be a credit agreement;
- (5) assisting an individual by undertaking preparatory work with a view to that person entering into a credit agreement;
- (6) entering into a credit agreement on behalf of a lender.

2.7.7F G An activity is not credit broking within (1), (4), (5) or (6) if the exemption relating to the number of repayments to be made would apply to the credit agreement, see PERG 2.7.19GG.

2.7.7G G An activity is also not credit broking within (1) to (6) in so far as the activity is operating an electronic system in relation to lending, see PERG 2.7.7HG.

Operating an electronic system in relation to lending

- 2.7.7H G
- (1) This activity is aimed at what are sometimes referred to as peer-to-peer lending platforms. A person (“A”) will be operating an electronic system in relation to lending if he operates an electronic system which enables him to facilitate persons (“B” and “C”) becoming the lender and borrower under an article 36H agreement.
 - (2) To be caught, the electronic system operated by A must be capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).
 - (3) An article 36H agreement is an agreement by which one person provides another person with credit and either:
 - (a) the lender is an individual; or
 - (b) (i) borrower is an individual; and
 - (ii) the amount of credit provided is less than or equal to £25,000, or
 - (iii) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower. If the agreement includes a declaration by the borrower that it is entered into by the borrower wholly or predominantly for business purposes, this may create a presumption that this is the case (see PERG 2.7.19DG).
 - (4) An agreement may be an article 36H agreement and not a credit agreement, for example if it is an agreement by which an individual provides credit to a company. An agreement may, equally, be both

an article 36H agreement for the purposes of *operating an electronic system in relation to lending* and a *credit agreement* for the purposes of other *credit-related regulated activities* if it is within the relevant definitions.

- (5) It is immaterial whether the *lender* is carrying on a *regulated activity*.
- (6) The following activities are also caught by *operating an electronic system in relation to lending* if carried on by the operator in the course of, or in connection with, the activity in (1):
- (a) presenting or offering article 36H agreements to B and C with a view to B becoming the *lender* under the article 36H agreement and C becoming the *borrower* under the article 36H agreement;
 - (b) furnishing information relevant to the financial standing of a *person* to assist a potential *lender* to determine whether to provide *credit* to that person under an article 36H agreement;
 - (c) taking steps to procure the payment of a debt due under an article 36H agreement;
 - (d) performing duties, or exercising or enforcing rights under an article 36H agreement on behalf of the *lender*;
 - (e) ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*;
 - (f) ascertaining the contents of such information;
 - (g) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information; or
 - (h) securing that a *credit information agency* which holds such information stops holding the information, or does not provide it to any other *person*.

...

Debt adjusting

- 2.7.8B G This activity comprises:
- (1) negotiating with the *lender* or *owner*, on behalf of the *borrower* or *hirer*, terms for the discharge of a debt;
 - (2) taking over, in return for payments by the *borrower* or *hirer*, that person's obligation to discharge a debt; or

- (3) any similar activity concerned with the liquidation of a debt:
when carried on in relation to debts due under a *credit agreement* or
consumer hire agreement.

Debt-counselling

- 2.7.8C G Giving advice to a *borrower* about the liquidation of a debt due under a *credit agreement* is a regulated activity. Giving advice to a *hirer* about the liquidation of a debt due under a *consumer hire agreement* is a regulated activity. See PERG 17 for further guidance on *debt-counselling*.

Debt-collecting

- 2.7.8D G (1) Taking steps to procure the payment of a debt due under a *credit agreement* or a *consumer hire agreement* is a regulated activity.
- (2) Taking steps to procure the payment of a debt due under an article 36H agreement (see PERG 2.7.7HG(3)) which has been entered into with the facilitation of an *operator of an electronic system in relation to lending* is also a regulated activity.
- (2) The activity is not a regulated activity in so far as the activity is *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*) see PERG 2.7.7HG.

Debt administration

- 2.7.8E G (1) Taking steps to perform duties or to exercise or to enforce rights under a *credit agreement* or a *consumer hire agreement* on behalf of the *lender* or *owner* is a regulated activity.
- (2) Taking steps to perform duties or to exercise or to enforce rights under an article 36H agreement (see PERG 2.7.7HG(3)) which has been entered into with the facilitation of an *operator of an electronic system in relation to lending* is also a regulated activity.
- (3) In so far as the activity is *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*, see PERG 2.7.7HG) or *debt-collecting* (article 39F of the *Regulated Activities Order*) it is not also *debt administration*.

...

Regulated credit agreements

- 2.7.19A G (1) Entering into a *regulated credit agreement* as *lender* is a regulated activity.
- (2) It is also a regulated activity for the *lender* or another *person* to exercise, or to have the right to exercise, the *lender's* rights and

duties under a regulated credit agreement.

Exempt Agreements

2.7.19B G A credit agreement is not a regulated credit agreement for the purposes of PERG 2.7.19AG if it is an exempt agreement. PERG 2.7.19CG to PERG 2.7.19JG describe the categories of exempt agreement.

Exemptions relating to the nature of the agreement

2.7.19C G A credit agreement is an exempt agreement in the following cases:

(1) if it is a regulated mortgage contract or a regulated home purchase plan;

(2) if:

(a) the lender provides the borrower with credit exceeding £25,000; and

(b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

(3) if:

(a) the lender provides the borrower with credit of £25,000 or less; and

(b) the agreement is entered into by the borrower wholly for the purposes of a business carried on, or intended to be carried on, by the borrower; and

(c) the agreement is a green deal plan within the meaning of section 1 of the Energy Act 2011;

(4) if it is made in connection with trade in goods or services:

(a) between the United Kingdom and a country outside the United Kingdom; or

(b) within a country or between countries outside the United Kingdom; and

the credit is provided to the borrower in the course of a business carried on by the borrower.

2.7.19D G If a credit agreement includes a declaration which:

(1) is made by the borrower;

(2) provides that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to

be carried on, by the borrower; and

(3) complies with the rules in CONC App 1.4;

the credit agreement is to be presumed to have been entered into by the borrower wholly or predominantly for business purposes. This presumption does not apply, however, if the lender or any person who has acted on behalf of the lender knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for business purposes. This also applies to the exemption in PERG 2.7.19CG(3), as if the word “predominantly” were omitted.

Exemption relating to the purchase of land for non-residential purposes

2.7.19E G A credit agreement is an exempt agreement if, at the time it is entered into:

(1) any sums due under it are secured by a legal mortgage on land; and

(2) less than 40% of the land is used, or is intended to be used, as or in connection with a dwelling:

(a) by the borrower or a related person of the borrower; or

(b) in the case of credit provided to trustees, by an individual who is a beneficiary of the trust or a related person of a beneficiary.

(3) For these purposes, a person is related to a borrower or a beneficiary of a trust if they are a spouse or civil partner, or a parent, brother, sister, child, grandparent or grandchild of the borrower or beneficiary or if their relationship with the borrower or beneficiary has the characteristics of the relationship between husband and wife.

(4) This exemption is intended to mirror the definition of regulated mortgage contract so that buy-to-let loans (that are not secured by a legal mortgage on the borrower’s or a related person’s residence) are not regulated either as regulated mortgage contracts or as regulated credit agreements.

Exemptions relating to the nature of the lender

2.7.19F G A credit agreement is an exempt agreement in the following cases:

(1) if the credit agreement is a relevant credit agreement relating to the purchase of land and the lender is a local authority;

(2) if the credit agreement is a relevant credit agreement relating to the purchase of land specified in CONC App 1.3 and the lender is a person or within a class of persons specified in CONC App 1.3;

(3) if the credit agreement is secured by a legal mortgage on land, that land is used or is intended to be used as or in connection with a dwelling and the lender is a housing authority; or

- (4) If the lender is an investment firm or a credit institution, and the agreement is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more financial instruments.

Exemptions relating to number of repayments to be made

2.7.19G G A credit agreement is also an exempt agreement in the following cases:

- (1) if (subject to PERG 2.7.19HG):
- (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit;
 - (b) the number of payments to be made by the borrower is not more than four;
 - (c) those payments are required to be made within a period of 12 months or less (beginning on the date of the agreement); and
 - (d) the credit is:
 - (i) secured on land; or
 - (ii) provided without interest or other significant charges;
- (2) if (subject to PERG 2.7.19HG):
- (a) the agreement is a borrower-lender-supplier agreement for running-account credit;
 - (b) the borrower is to make payments in relation to specified periods which must be, unless the agreement is secured on land, of 3 months or less;
 - (c) the number of payments to be made by the borrower in repayment of the whole amount of credit provided in each period is not more than one; and
 - (d) the credit is:
 - (i) secured on land; or
 - (ii) provided without interest or other significant charges
- (3) if:
- (a) the agreement is a borrower-lender-supplier agreement financing the purchase of land;
 - (b) the number of payments to be made by the borrower is not more than four; and

- (c) the credit is:
 - (i) secured on land; or
 - (ii) provided without interest or other charges;
- (4) if:
 - (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit;
 - (b) the credit is to finance a premium under a contract of insurance relating to land or anything on land (for example, house or contents insurance);
 - (c) the lender is the lender under a credit agreement secured by a legal mortgage on that land;
 - (d) the credit is to be repaid within the period (which must be 12 months or less) to which the premium relates;
 - (e) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement (see CONC App 1) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (c);
 - (f) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges; and
 - (g) the number of payments to be made by the borrower is not more than 12;
- (5) if:
 - (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit;
 - (b) the lender is the lender under a credit agreement secured by a legal mortgage on land;
 - (c) the agreement is to finance a premium under a life insurance policy that meets certain conditions;
 - (d) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement (see CONC App 1) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (b);
 - (e) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges; and

(f) the number of payments to be made by the *borrower* is not more than 12.

2.7.19H G The exemptions in *PERG 2.7.19GG* (1) and (2) do not apply to:

- (1) *credit agreements financing the purchase of land;*
- (2) *conditional sale agreements or hire-purchase agreements; or*
- (3) *credit agreements secured by a pledge (other than a pledge of documents of title or of bearer bonds).*

Exemptions relating to the total charge for credit

2.7.19I G A *credit agreement* is also an *exempt agreement* in the following cases:

- (1) if it is a *borrower-lender agreement*, the *lender* is a *credit union* and the rate of the *total charge for credit* (see *CONC App 1*) does not exceed 42.6 per cent;
- (2) if (subject to (5) and (6)):
 - (a) it is a *borrower-lender agreement*;
 - (b) it is offered to a particular class of *individual* and not offered to the public generally;
 - (c) it provides that the only charge included in the *total charge for credit* (see *CONC App 1*) is interest; and
 - (d) interest under the agreement may not at any time be more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the interest is charged;
- (3) if (subject to (5) and (6)):
 - (a) it is a *borrower-lender agreement*;
 - (b) it is an agreement of a kind offered to a particular class of *individual* and not offered to the public generally;
 - (c) it does not provide for or permit an increase in the rate or amount of any item which is included in the *total charge for credit* (see *CONC App 1*); and
 - (d) the *total charge for credit* under the agreement is not more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the charge is imposed;
- (4) the banks (referred to in (3)(d)) are:

- (a) the Bank of England;
 - (b) Bank of Scotland;
 - (c) Barclays Bank plc;
 - (d) Clydesdale Bank plc;
 - (e) Co-operative Bank Public Limited Company;
 - (f) Coutts & Co;
 - (g) National Westminster Bank Public Limited Company;
 - (h) the Royal Bank of Scotland plc;
- (5) the exemptions in (2) and (3) do not apply, however, if the total amount to be repaid by the *borrower* may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor;
- (6) unless the agreement:
- (a) is secured on *land*; or
 - (b) is offered by a *lender* who is an employer to a *borrower* as an incident of employment with the lender;
- the exemptions in (2) and (3) apply only if:
- (c) the agreement is offered under an enactment with a general interest purpose; and
 - (d) the terms on which the *credit* is provided are more favourable to the *borrower* than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market, or because the rate of interest is no higher than that prevailing on the market but the other terms on which *credit* is provided are more favourable to the *borrower*.

High net worth exemption

2.7.19J G A credit agreement is an exempt agreement if:

- (1) the *borrower* is an individual;
- (2) the agreement is either secured on *land* or for *credit* which exceeds £60,260;
- (3) the agreement includes a declaration, made by the *borrower* which provides that the *borrower* agrees to forgo the protection and remedies that would be available to the borrower if the agreement were a *regulated credit agreement*, which complies with *CONC App 1.4*;

- (4) a statement has been made in relation to the income or assets of the borrower which complies with CONC App 1.4; and
- (5) the connection between that statement and the credit agreement complies with CONC App 1.4; and
- (6) a copy of that statement was provided to the lender before the agreement was entered into.

Regulated consumer hire agreements

- 2.7.19K G (1) Entering into a regulated consumer hire agreement as owner is a regulated activity.
- (2) It is also a regulated activity for the owner or another person to exercise, or to have the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.

Exempt Agreements

- 2.7.19L G A consumer hire agreement is not a regulated consumer hire agreement for the purposes of PERG 2.7.19KG if it is an exempt agreement. PERG 2.7.19MG to PERG 2.7.19PG describe the categories of exempt agreement.

Exemptions relating to nature of agreement

- 2.7.19M G A consumer hire agreement is an exempt agreement if the hirer is required by the agreement to make payments exceeding £25,000, and the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

- 2.7.19N G As in the case of a credit agreement (see PERG 2.7.19DG), if a consumer hire agreement includes a declaration which:

- (1) is made by the hirer;
- (2) provides that the agreement is entered into by the hirer wholly or predominantly for business purposes; and
- (3) complies with CONC App 1.4;

the consumer hire agreement is to be presumed to have been entered into by the hirer for business purposes. This presumption does not apply, however, if the owner or any person who has acted on behalf of the owner knows or has reasonable cause to suspect that the agreement is not entered into by the hirer for business purposes.

Exemption relating to supply of essential services

- 2.7.19O G A consumer hire agreement is an exempt agreement if the owner is a body corporate which supplies gas, electricity or water under an enactment, and the subject of the agreement is a meter or metering equipment which is used

in connection with that purpose.

High net worth exemption

2.7.19P G This exemption is substantially the same as the one for *credit agreements* in *PERG 2.7.19JG*.

...

Providing credit information services

2.7.20K G (1) Taking any of the steps in (2) on behalf of an *individual* is a *regulated activity*.

(2) This activity catches steps taken with a view to:

(a) ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*;

(b) ascertaining the contents of such information;

(c) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information;
or

(d) securing that a *credit information agency* which holds such information stops holding the information or does not provide it to any other *person*.

(2) Giving advice to an *individual* in relation to the taking of any of the steps in *PERG 2.7.20KG(1)* (a) to (d) is also a *regulated activity*.

(3) A *credit information agency* that takes any of the steps in *PERG 2.7.20KG* (1) (a) to (d) in relation to information held by that agency does not *provide credit information services*.

(4) In so far as taking any of the steps in *PERG 2.7.20KG(1)* (a) to (d) is the activity of *operating an electronic system in relation to lending*, then it is not also *providing credit information services*.

Providing credit references

2.7.20L G (1) Furnishing of *persons* with information relevant to the financial standing of *individuals* is a *regulated activity* if the *person* has collected the information for that purpose.

(2) A person requires *authorisation* for this activity only if its business primarily consists of the activities in (1).

(3) This activity does not include an activity in so far as it is *operating an electronic system in relation to lending*.

...

Credit broking

2.8.6C G The following activities are excluded from the *regulated activity of credit broking*:

Introducing by individuals in the course of canvassing off trade premises

- (1) Activities carried on by an individual by *canvassing off trade premises*:
- (a) a *restricted-use credit agreement* to finance a transaction between the *lender* or a member of the *lender's* group and the *borrower*; or
 - (b) a *regulated consumer hire agreement*;

are excluded from *credit broking*, as long as the individual does not carry on any other activity in *PERG 2.7.7EG(1) to (3)*.

Activities for which no fee is paid

- (2) The activities in *PERG 2.7.7EG(4) to (6)* carried on by a *person* for which that *person* does not receive a fee are excluded from *credit broking*.

Transaction to which the broker is a party

- (3) Activities carried on by a *person* in relation to a *credit agreement* or a *consumer hire agreement* into which that person enters or is to enter as *lender* or *owner* are excluded from *credit broking*.

Activities in relation to certain agreements relating to land

- (4) Activities carried on with a view to an *individual* entering into a *regulated mortgage contract* are excluded from *credit broking* if the *person* carrying on the activity is an *authorised person* who has *permission* to:
- (a) *enter into a regulated mortgage contract* as lender (see *PERG 4.7*); or
 - (b) make an introduction to an *authorised person* who has *permission* to enter into a *regulated mortgage contract* as lender (see *PERG 4.5* on arranging regulated mortgage contracts).
- (5) Activities carried on with a view to an *individual* entering into a *regulated home purchase plan* are excluded from *credit broking* if the *person* carrying on the activity is an *authorised person* who has

permission to:

- (a) enter into a *home purchase plan* as home purchase provider (see PERG 14.4); or
- (b) make arrangements for a client to enter into a *home purchase plan* as home purchaser by introducing the client to an *authorised person* who has *permission* to enter into a *home purchase plan* as home purchase provider (see PERG 14.4).

Activities carried on by members of the legal profession

- (6) Activities carried on by:
 - (a) a barrister or advocate acting in that capacity;
 - (b) a solicitor acting in the course of contentious business;
 - (c) a *person* acting in the course of contentious business who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from *credit broking*. For these purposes, business done in or for the purposes of proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business, is contentious business.

Electronic commerce activity

- (7) The exclusion for *electronic commerce activities* by an *incoming ECA provider* also applies to credit broking (see PERG 2.9.18G).

...

Debt adjusting, debt counselling, debt collecting and debt administration

- 2.8.7C G (1) Activities carried on by:
- (a) the *lender* or *owner* under the agreement;
 - (b) the *supplier* in relation to the *credit agreement*;
 - (c) a *credit broker* who has acquired the business of the *person* who was the *supplier* in relation to the *credit agreement*; or
 - (d) a *person* who would be a *credit broker* but for the exclusion in PERG 2.8.6CG(1) where the agreement was made in consequence of an introduction (by that *person* or another *person*) to which that exclusion applies;

are excluded from the *regulated activities* of *debt adjusting*, *debt-counselling* and *debt collecting*:

- (2) Steps taken under or in relation to an agreement by any of the persons in (1) are excluded from being *debt administration*.
- (3) Activities carried on by a relevant energy supplier in relation to debts due under a green deal plan (within section 1 of the Energy Act 2011) associated with the supplier are excluded from being *debt adjusting, debt-counselling, debt collecting* or *debt administration*. A green deal plan is associated with a supplier if the payments under the plan are to be made to the supplier.
- (4) There is also an exclusion from *debt adjusting, debt-counselling, debt collecting* and *debt administration* for activities that relate to a *regulated mortgage contract* or a *regulated home purchase plan*.
- (5) Activities carried on by:
 - (a) a barrister or advocate acting in that capacity;
 - (b) a solicitor acting in the course of contentious business;
 - (c) a person acting in the course of contentious business who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from *debt adjusting, debt-counselling, debt collecting* and *debt administration*. For these purposes, contentious business means business done in or for the purposes of proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business.
- (6) The exclusion relating to *electronic commerce activities* by an *incoming ECA provider* (see PERG 2.9.18G) applies to these *regulated activities*.

...

Regulated credit agreements

- 2.8.14Z G A person who is not an *authorised person* and exercises or has the right to exercise the *lender's* rights and duties under a *regulated credit agreement* does not require *authorisation* to do so where he:
- (1) arranges for another *person* to do so and the other person is an *authorised person* with *permission* to carry on that *regulated activity*;
 - (2) does so for up to one month after an arrangement of the kind in (1) comes to an end; or
 - (2) does so under an agreement with an *authorised person* who has *permission* to carry on that *regulated activity*.

2.8.14Z B G The exclusion for *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) also applies to *entering into a regulated credit agreement as lender and exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement.*

Regulated consumer hire agreements

2.8.14Z C G *Electronic commerce activities* provided by an *incoming ECA provider* are excluded from *entering into a regulated consumer hire agreement as owner and exercising, or to having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.*

...

Providing credit information services or credit references

2.8.14C G The exclusions relating to activities carried on by members of the legal profession (see *PERG 2.8.6CG(6)*) and to *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) apply to *providing credit information services* and *providing credit references.*

...

2.10.3 G The *Act* provides that *appointed representatives* (see *PERG 2.10.5G*), *recognised investment exchanges* and *recognised clearing houses* (see *PERG 2.10.6G*) and certain other *persons* exempt under miscellaneous provisions (see *PERG 2.10.7G*) are *exempt persons* (although in certain circumstances, an *appointed representative* may not be an *exempt person*, but may have a *limited permission* to carry on certain *credit-related regulated activities*)...

2.10.5 G With one exception, A *person* is exempt if he is an *appointed representative* of an *authorised person*. In some circumstances, however, a *person* may be an *appointed representative* and not be exempt, if the *person* has a *limited permission* for certain *credit-related regulated activities*. See *SUP 12* (*Appointed representatives*)...

Insert the following section after PERG 2.10. The text is all new and is not underlined.

2.11 Persons who are exempt for credit-related regulated activities

2.11.1 G Various persons are exempted by Order made by the Treasury under section 38 of the *Act* from the need to obtain *authorisation* for certain *credit-related regulated activities* in the circumstances specified in the Order (for example, in some cases, a *person* is exempt only when acting in a particular capacity or for particular purposes). *Persons* exempt under the Order cannot be

exempt in relation to some *regulated activities* and *authorised* in relation to others [(except where the *person* is an *authorised person* with only *interim permission*)].

Insolvency practitioners

2.11.2 G A *person* acting as:

- (1) an insolvency practitioner (to be read with section 388 of the Insolvency Act 1986 or article 3 of the Insolvency (Northern Ireland) Order 1989);
- (2) an official receiver; or
- (3) a judicial factor;

is exempt in respect of *debt adjusting*, *debt counselling*, *debt collecting*, *debt administration* or *providing credit information services*.

2.11.3 G A *person* acting in reasonable contemplation of appointment as an insolvency practitioner is exempt in respect of *debt adjusting*, *debt-counselling* or *providing credit information services*.

Cycle to work

2.11.4 G This exemption applies to a scheme under which an employer provides or makes available to their employees a cycle or cyclist's safety equipment up to the value of £1,000 (which is designed to allow employees to take advantage of section 244 of the Income Tax (Earnings and Pensions) Act 2003). An employer does not require *authorisation* for the *regulated activities* relating to *regulated consumer hire agreements* just because it operates such a scheme.

Tracing agents

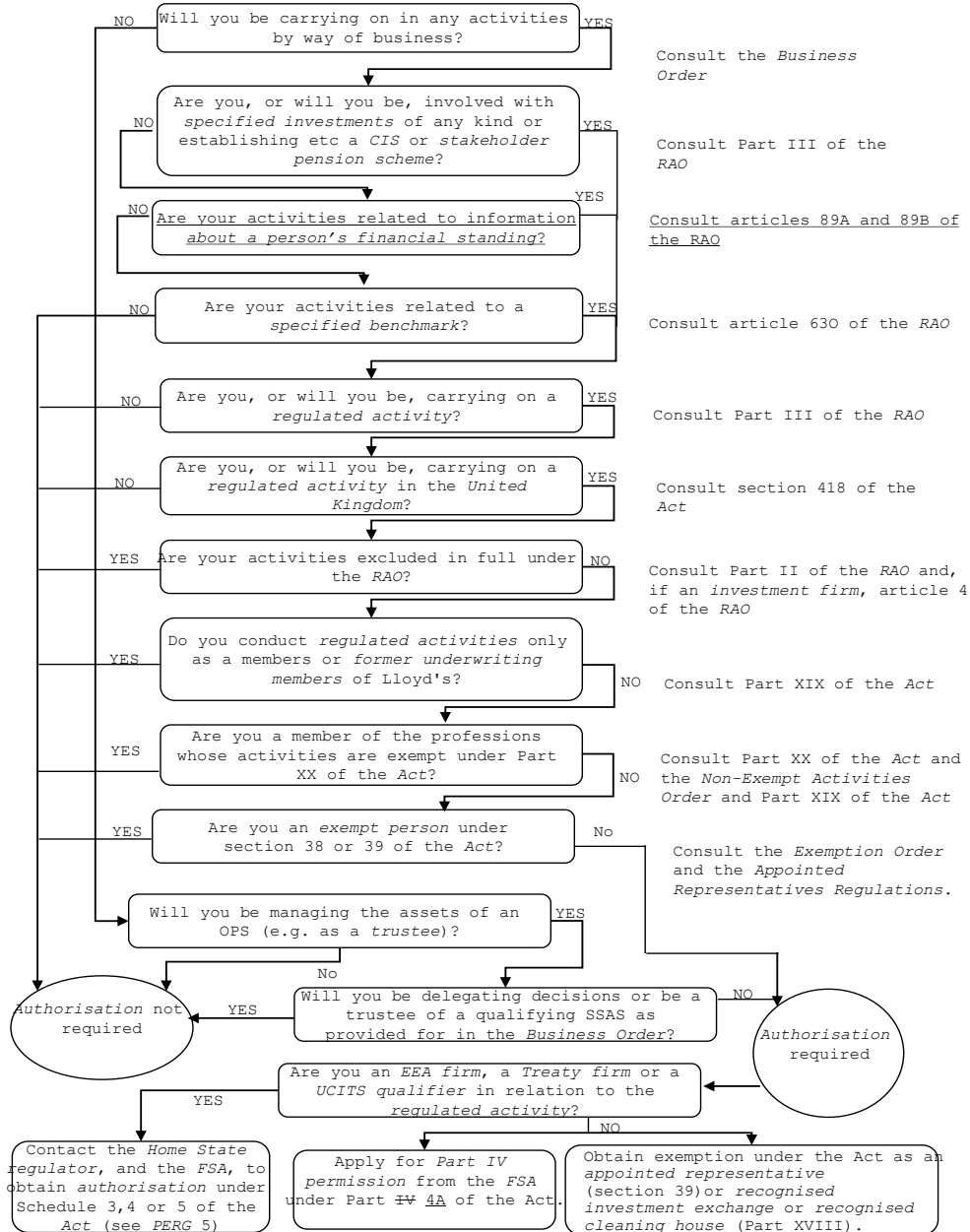
2.11.5 G A *person* who takes steps to ascertain the identity or location (or the means of ascertaining the identity or location) of a *borrower* or *hirer* is exempt from *debt-collecting* as long as the *person* is not the *lender* or *owner* under the agreement concerned, takes no other steps to collect debts due under the agreement and carries on no other activity which requires *authorisation*.

Enterprise schemes

2.11.6 G There are also exemptions from *credit broking*, *debt adjusting*, *debt-counselling* and *providing credit information services* for an enterprise scheme as long as it does not carry on the activity for, or with the prospect of, direct or indirect pecuniary gain. Sums reasonably regarded as necessary to meet the costs of carrying on the activity do not constitute a pecuniary gain for this purpose.

Amend the following as shown.

PERG 2 Annex 1G Authorisation and regulated activities



2 Annex 2 Regulated activities and the permission regime

...

1.3 G	Part II of the <i>Regulated Activities Order</i> (Specified activities) specifies the activities for the purposes of section 22 of the Act. This section states that an activity is a regulated activity if it is an activity of a specified kind which is carried on by way of business and:
	(1) relates to an investment of a specified kind; or
	(2) in the case of an activity specified for the purposes of section 22(1)(b) of the Act, is carried on in relation to property of any kind; or
	(3) <u>relates to information about a <i>person's</i> financial standing.</u>
...	

2 Table

...	
Regulated activity	Specified investment ...
...	
(zo) <i>administering a regulated sale and rent back agreement</i> (Article 63(J)(2))	rights under a <i>regulated sale and rent back agreement</i> (Article 88C)
<u>Credit-related regulated activity</u>	
(zp) <i>entering into a regulated credit agreement as lender</i> (article 60B(1)) (zq) <i>exercising, or having the right to exercise the lender's rights and duties under a regulated credit agreement</i> (article 60B(2)) (zr) <i>credit broking</i> (article 36A) (zs) <i>debt adjusting</i> (article 39D(1)) (zt) <i>debt counselling</i> (article 39E(1)) (zu) <i>debt collecting</i> (article 39F(1)) (zv) <i>debt administration</i> (article 39G(1))	<u>Rights under a <i>credit agreement</i> (article 88D) (see note 9 to Table 1)</u>
(zw) <i>entering into a regulated consumer hire agreement as owner</i> (article 60N(1)) (zx) <i>exercising, or having the right to exercise the owner's rights and duties under a regulated consumer hire agreement</i> (article 60N(2)) (zy) <i>credit broking</i> (article 36A) (zz) <i>debt adjusting</i> (article 39D(2)) (zaa) <i>debt counselling</i> (article 39E(2)) (zab) <i>debt collecting</i> (article 39F(2))	<u>Rights under a <i>consumer hire agreement</i> (article 88E)</u>

(zac) *debt administration* (article 39G(2))

3 Table

...

Note 8:

...

Note 9:

For the purposes of the *permission* regime with respect to the *regulated activities* of *entering into a regulated credit agreement as lender and exercising, or having the right to exercise the lender's rights and duties under a regulated credit agreement*, this is sub-divided into:

(i) *a regulated credit agreement (excluding high cost short term credit, a home credit loan agreement and a bill of sale loan agreement);*

(ii) *high cost short term credit;*

(iii) *a home credit loan agreement;*

(iv) *a bill of sale loan agreement.*

...

Entering into and administering a regulated mortgage contract

4.17.1 G ~~Article 90 of the *Regulated Activities Order* essentially carves out *regulated mortgage contracts* from regulation under the Consumer Credit Act 1974 (CCA). Many loans that fall within the *regulated mortgage contract* definition are already exempt from much of the detail required under the CCA. The cumulative effect of article 20 (3) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (the 2013 Order) and Chapter 14A of Part 2 of the *Regulated Activities Order* is to essentially carve out *regulated mortgage contracts* from regulation under the CCA and from regulation as a *credit-related regulated activity*.~~

4.17.2 G ~~Some loans that will fall within the *regulated mortgage contract* definition are also currently classified as regulated agreements under the CCA. In these cases, the impact of the carve-out in article 90 of the *Regulated Activities Order* is likely to be more significant. In particular, most of the CCA controls in respect of entering into, operation and termination of agreements will not apply. Article 90 also, however, provides that Article 20 (38) of the 2013 Order amends the CCA so that section 126 of the CCA (Enforcement of land mortgages) and other provisions relating to it, apply applies to agreements which would otherwise be *regulated agreements regulated mortgage contracts*. In the FCA's view, it follows that section 126 of the CCA and related provisions including sections 129, 130, 131, 135 and 136 (dealing amongst other things with extension of time and protection of property pending proceedings) will apply to these *regulated mortgage contracts*.~~

- 4.17.3 G *Regulated mortgage contracts* that were in place at 31 October 2004 and which are subject to the *CCA* will remain subject to ~~that~~ the regime in the *CCA* and may be *regulated credit agreements* for the purposes of the *credit-related regulated activities* in Chapter 14A of Part 2 of the *Regulated Activities Order* and will come within the *FCA's* remit. But there may be instances where a variation of an existing contract amounts to entering into a new *regulated mortgage contract* (see *PERG* 4.4.4G and *PERG* 4.4.13G).
- 4.17.4 G Unsecured loans, as well as loans secured on second and subsequent charges on property, are not subject to ~~the article 90~~ carve-out described above and may be *regulated credit agreements* for the purposes of the *CCA* and the *credit-related regulated activities* for which a *person* may need *permission*. Many of these loans are currently covered by the *CCA* and the position will not change.
- 4.17.5 G ~~In some cases, lenders may provide a flexible mortgage product comprising both a secured first charge loan and unsecured borrowing, for example credit card facilities. In this example, in addition to considering the need for *full authorisation*, the lender will also require a *CCA* licence in respect of the unsecured lending, even where the product is sold under a single agreement.~~
[deleted]

Advising on and arranging a regulated mortgage contract

- 4.17.6 G ~~The *CCA* also regulates *persons* who carry on certain types of ancillary credit business including "credit brokerage", "debt adjusting" and "debt counselling", as defined by section 145 of the *CCA*. One aspect of the *CCA* regime is that a licence is required for these activities. Article 20 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475) adds new exceptions to section 145 of the *CCA* in relation to these activities.~~ [deleted]
- 4.17.7 G ~~Article 20(2) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 amends section 146 of the *CCA* (Exceptions from section 145) so that it is not "credit brokerage" for a *person* to introduce an individual seeking to obtain credit if the introduction is made (a) to an *authorised person* who has *permission* to enter as lender into "relevant agreements"; or (b) to a "qualifying broker", with a view to that individual obtaining credit under a "relevant agreement".~~ [deleted]
- 4.17.8 G ~~Amended section 146 of the *CCA* defines "relevant agreement" as meaning a consumer credit agreement secured by a land mortgage, where entering into that agreement as lender is a *regulated activity*. "Qualifying broker" is defined in the same section as meaning a *person* who may effect introductions of the kind mentioned in *PERG* 4.17.7 G without contravening the *general prohibition* under section 19 of the *Act*. "Credit brokerage" itself includes introducing an individual seeking to obtain credit to finance the acquisition of a dwelling to be occupied by himself or his relatives, to any *person* carrying on a business in the course of which he provides credit secured on land (for full definition see section 145(2) of the *CCA*).~~ [deleted]

- 4.17.9 G ~~In addition to the provisions of the exception under amended section 146 of the CCA, introducers are referred to the *guidance* in PERG 4.5.10 G dealing with the provisions relating to introducing in the *Regulated Activities Order*. [deleted]~~
- 4.17.10 G ~~Article 20(2) amends section 146 of the CCA by providing that it is not "debt adjusting" to carry on an activity which would otherwise be "debt adjusting" under section 146(5) of the CCA if (a) the debt in question is due under a "relevant agreement"; and (b) that activity constitutes a *regulated activity*. "Debt adjusting" includes in relation to debts due under consumer credit agreements (a) negotiating with the creditor, on behalf of the debtor, terms for discharge of the debt, or (b) taking over, in return for payments by the debtor, his obligation to discharge a debt, or (c) any similar activity concerned with the liquidation of the debt (see full definition in section 145(5) of the CCA). [deleted]~~
- 4.17.11 G ~~In addition to the provisions of the exception under amended section 146 of the CCA, debt adjusters and arrangers are referred to the *guidance* in PERG 4.5 dealing with the provisions relating to *arranging* and, in particular, PERG 4.5.1G(1)(b) dealing with varying a *regulated mortgage contract*. [deleted]~~
- 4.17.12 G ~~Article 20(2) amends section 146 CCA by providing that it is not "debt-counselling" for a *person* to give advice to debtors if (a) the debt in question is due under a "relevant agreement"; and (b) giving that advice constitutes a *regulated activity*. "Debt-counselling" includes the giving of advice to debtors about the liquidation of debts due under consumer credit agreements (see the full definition in section 145(6) of the CCA). [deleted]~~
- 4.17.13 G ~~In addition to the provisions of the exception under amended section 146 of the CCA, debt counsellors and advisers are referred to the *guidance* in PERG 4.6 dealing with *advising on regulated mortgage contracts* and, in particular, PERG 4.6 (Definition of 'advising on regulated mortgage contracts') dealing with varying a *regulated mortgage contract*. [deleted]~~
- 4.17.14 G ~~The CCA's licensing regime will still apply to credit brokers, debt adjusters and debt counsellors in respect of non-regulated mortgages and other loans, as well as to *authorised persons* or *appointed representatives* who carry on ancillary credit business in addition to *regulated activities*. Accordingly, *mortgage intermediaries* requiring *authorisation* may also need to retain their CCA licences. [deleted]~~

Financial Promotion and advertisements

- 4.17.15 G ~~Articles 90 and 91 of the *Regulated Activities Order* include provisions that have the effect of removing from CCA regulation *financial promotions* about *qualifying credit*. Such promotions will not therefore be subject to Part IV of the CCA or regulations made under that Part. Article 17 of the 2013 Order has the effect that the *controlled activity* of providing relevant consumer credit for the purposes of the *financial promotion* regime does not~~

include regulated mortgage contracts.

- 4.17.16 G For more detailed *guidance* concerning the ~~interface between application of the *financial promotion* regime and the regulation of credit advertisements under the CCA~~ to *qualifying credit* and relevant consumer credit, see *PERG* 8.17.19G.

...

- 8.12.13 G Article 16 (2) applies to *unsolicited real time financial promotions* made by an *appointed representative* in carrying on the business:

(1) ...

(2) in relation to which the *appointed representative* is exempt under section 39 [or sections 20(1) and (1A) and 23(1A) of the *Act* do not apply as a result of section 39 (1D) of the *Act*].

...

- 8.14.18 G This exemption allows a *person* in another *EEA State* who lawfully carries on a *controlled activity* in that State to promote into the *United Kingdom*. The terms of the exemption are that the promotion must comply with the rules in COBS 4, ~~or~~ MCOB 3 or *CONC* 3 (as relevant).

...

- 8.17.1 G Section 21 applies to *financial promotions* concerning agreements for *qualifying credit* and relevant consumer credit. *PERG* 8.17.1AG to *PERG* 8.17.18G has guidance about the treatment of ~~such *financial promotions* concerning agreements for *qualifying credit*~~. *PERG* 8.17ZAG has guidance about *financial promotions* concerning relevant consumer credit. ~~Section 21 applies not only to *financial promotions* about *regulated mortgage contracts* but also to *financial promotions* about certain other types of credit agreement. This is explained in more detail in *PERG* 8.17.2G to *PERG* 8.17.3G.~~

...

- 8.17.10 G Article 46 (Qualifying credit to bodies corporate) exempts any *financial promotion* about providing *qualifying credit* (or relevant consumer credit or consumer hire) if it is: ...

...

- 8.17.12 G Article 28B (Real time communications: introductions) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about *regulated mortgage contracts*, as well as *home reversion plans*, *home purchase plans*, ~~and *regulated sale and rent back agreements*~~, *regulated consumer hire agreements* and relevant credit agreements. The exemption is subject to the following conditions being satisfied:

...

...

Interaction with the Consumer Credit Act

8.17.17 G Most credit advertisements are, with various exceptions, regulated under the Consumer Credit Act 1974. However, article 90(3) (Consequential amendments of the Consumer Credit Act 1974) and Article 91(1) (Consequential amendments to subordinate legislation under the Consumer Credit Act 1974) of the *Regulated Activities Order* disapply the provisions of the Consumer Credit Act 1974 to any *financial promotion* other than an exempt generic communication. An exempt generic communication is a *financial promotion* that is exempt under article 17 of the Financial Promotion Order (Generic promotions) (see PERG 8.12.14 G (Generic promotions (article 17))). Hence, an advertisement about credit of any kind will either be regulated under Section 21 of the Act or under the Consumer Credit Act 1974. Such an advertisement will only be subject to regulation under both statutes if it is about secured and unsecured lending. Typical examples showing which statute regulates particular types of credit advertisements are given in the table in PERG 8.17.18 G (Table – Guide to the application of the Act and the Consumer Credit Act 1974 to credit advertisements). [deleted]

8.17.18 G Guide to application of the Act and the Consumer Credit Act 1974 to credit advertisements. This table belongs to PERG 8.17.17 G

-	Subject of advertising or promotion	FSMA regulated	CCA regulated
(1)	<i>regulated mortgage contracts</i>	Yes	No
(2)	other loans secured on land where the lender also enters into <i>regulated mortgage contracts</i> as lender	Yes	No
(3)	loans not secured on land whether or not the lender also enters into <i>regulated mortgage contracts</i> as lender	No	Yes
(4)	loans not secured on land but which form part of a loan product that is otherwise secured on land and where the lender enters into <i>regulated mortgage contracts</i> as lender	Yes	No
(5)	loans as in (1), (2) or (4) but where the advertisement is subject to exemptions under the <i>Financial Promotion Order</i> other than article 17	Yes	No

	(Generic promotions)		
(6)	loans as in (1), (2) or (4) but where the advertisement is exempt under article 17 of the <i>Financial Promotion Order (Generic Promotions)</i>	No	Yes
(7)	loans with features as in (1), (2), (4) or (5) promoted in combination with other loans	Yes	Yes

[deleted]

Interaction with providing relevant consumer credit

8.17.19 G Rights under a relevant credit agreement are also a *controlled investment*. A relevant credit agreement is a *credit agreement* other than a *regulated mortgage contract*. An agreement for *qualifying credit* includes certain types of loan in addition to those that would be a *regulated mortgage contract* (see *PERG 8.17.2G* and *PERG 8.17.3G*). There is, therefore, a degree of overlap between *qualifying credit* and a relevant credit agreement. Further guidance on providing relevant consumer credit is given in *PERG 8.17ZA*.

8.17.20 G *CONC 3* contains rules about *financial promotions* relating to *credit-related regulated activity*. *CONC 3* does not apply, however, to the *communication, or approval for communication, of a financial promotion* to the extent it concerns *qualifying credit*. *MCOB 3* applies to the *communication or approval of a financial promotion of qualifying credit*. This means that a *financial promotion* about *credit* will not usually be subject to both *MCOB 3* and *CONC 3* unless it is about secured and unsecured lending. Guidance on the potential application of *MCOB 3* and *CONC 3* to particular types of *financial promotion of credit* is given in the table in *PERG 8.17.21G*. *Firms* must also comply with *Principle 7* (a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading).

8.17.21 G Guide to potential application of *MCOB 3* and *CONC 3* to *financial promotion of credit*. This table belongs to *PERG 8.17.20 G*.

-	Subject of promotion	<i>MCOB 3</i>	<i>CONC 3</i>
		may apply	may apply
(1)	<i>regulated mortgage contracts</i>	Yes	No
(2)	credit agreements secured on land where the lender also enters into <i>regulated mortgage contracts</i> as lender	Yes	No

(3)	<u>credit agreements not secured on land whether or not the lender also enters into <i>regulated mortgage contracts</i> as lender</u>	<u>No</u>	<u>Yes</u>
(4)	<u>credit agreements secured on land where the lender does not enter into <i>regulated mortgage contracts</i> as lender</u>	<u>No</u>	<u>Yes</u>
(5)	<u>credit agreements partly secured on land that include some unsecured credit and where the lender enters into <i>regulated mortgage contracts</i> as lender</u>	<u>Yes</u>	<u>No</u>
(6)	<u>credit agreements with features as in (1), (2) or (5) promoted in combination with other unsecured credit agreements</u>	<u>Yes</u>	<u>Yes</u>

Insert the following section after PERG 8.17. The text is all new and is not underlined.

8.17ZA Financial promotions concerning consumer credit and consumer hire

8.17ZA.1 G Section 21 of the *Act* applies to *financial promotions* in relation to relevant consumer credit and consumer hire. This section sets out guidance about such *financial promotions*.

Controlled investments

8.17ZA.2 G Rights under a relevant credit agreement are a *controlled investment*. A relevant credit agreement is defined as a *credit agreement* other than a *regulated mortgage contract*.

8.17ZA.3 G Rights under a *consumer hire agreement* are also a *controlled investment*.

Controlled activities

8.17ZA.4 G Providing relevant credit is a *controlled activity*. This is defined as entering into a relevant credit agreement as *lender*, or exercising or having the rights to exercise the rights of the *lender* under such an agreement.

8.17ZA.5 G The *controlled activities* also include providing consumer hire. A *person* provides consumer hire if he enters into a *regulated consumer hire agreement* as *owner* or exercises or has the right to exercise the rights of the *owner* under such an agreement.

8.17ZA.6 G Operating an electronic system in relation to lending is a *controlled activity*.

- 8.17ZA.7 G There are three other *controlled activities* that involve both of the *controlled investments* of relevant credit agreements and consumer hire agreements:
- (1) credit broking;
 - (2) debt adjusting;
 - (3) debt counselling;
- 8.17ZA.8 G The *controlled activities* in PERG 8.17ZA.6 and PERG 8.17ZA.7 are substantially the same as the *regulated activities* of *operating an electronic system in relation to lending, credit broking, debt adjusting and debt counselling* (although there are some technical differences between the *controlled activity* of credit broking and the *regulated activity* of *credit broking* in that the credit broking *controlled activity* captures all relevant credit agreements (including those to which the exemption relating to number of repayments to be made in article 60F of the *Regulated Activities Order*) and does not capture any exempt *consumer hire agreements*). Guidance on these *regulated activities* is given in PERG 2.7.7E (credit broking), 2.7.7H (operating an electronic system), 2.7.8B (debt adjusting) and 2.7.8C (debt counselling).

Application of exemptions to financial promotions about agreements for relevant consumer credit or consumer hire

- 8.17ZA.9 G *Financial promotions* about relevant consumer credit or consumer hire are subject to the exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities). A number of the exemptions in Part VI of the *Financial Promotion Order* (Exempt communications: certain controlled activities) also apply. Guidance on some of these (which apply to *financial promotions* about both *qualifying credit* and relevant consumer credit) is given in PERG 8.17.10 G to PERG 8.17.12 G. There is one exemption that applies specifically to relevant consumer credit and consumer hire, referred to in PERG 8.17ZA.10G.

Promotions of credit for business purposes (article 46A)

- 8.17ZA.10 G
- (1) Article 46A of the *Financial Promotion Order* exempts a *communication* which relates to the *controlled activities* of operating an electronic system in relation to lending, providing relevant consumer credit or providing consumer hire.
 - (2) This exemption applies only if the *communication*:
 - (a) indicates clearly that a *person* is willing to engage in the investment activity for the purposes of another *person's* business; and
 - (b) does not indicate (by express words or otherwise) that the *person* is willing to engage in the investment activity for any other purpose.

- (3) For the purposes of this exemption, references to a “business” do not include a business carried on by the *person communicating* the promotion, or by a *person* who is a *credit broker* in relation to the agreement to which the promotion relates.

After PERG 16 insert the following new chapter. The text is all new and is not underlined.

17 Consumer credit debt counselling

17.1 Introduction

Question 1.1: What is the purpose of the questions and answers in this chapter?

The purpose is to consider the scope of the *regulated activities* specifically relating to consumer credit debt counselling.

Question 1.2: What are the regulated activities specifically relating to consumer credit debt counselling?

The *regulated activities* that specifically relate to consumer credit debt counselling are both to be found in article 39E of the *Regulated Activities Order*. They are:

- (1) giving advice to a *borrower* about the liquidation of a debt due under a *credit agreement*; and
- (2) giving advice to a *hirer* about the liquidation of a debt due under a *consumer hire agreement*.

Question 1.3: What is the scope of this chapter?

This chapter is not a complete discussion of the *regulated activities* relating to consumer credit. It just concentrates on the things that are specific to *debt counselling*. In particular it does not discuss the meaning of *borrower*, *credit agreement*, *consumer hire agreement* or *hirer*.

Question 1.4: Are there transitional arrangements?

Yes, but they are outside the scope of this chapter.

17.2 The basic elements of debt-counselling

Question 2.1: What is the basic definition of debt-counselling?

It involves the following elements:

- (1) The advice is given to:
 - (a) a *borrower* under a *credit agreement*; or
 - (b) a *hirer* under a *consumer hire agreement*;
- (see *PERG 17.4*).

- (2) The advice is about the liquidation of a debt due under:
 - (a) the *credit agreement* referred to in (1)(a); or
 - (b) the *consumer hire agreement* referred to in (1)(b);(see *PERG* 17.3).
- (3) It covers the giving of advice and not mere information. It does not cover generic advice. These are explained in *PERG* 17.5.
- (4) If an exclusion applies, the activity is not a *regulated activity* (see *PERG* 17.6).

Question 2.2: Can you give some examples of what is and is not debt-counselling?

Yes. There are examples in *PERG* 17.7.

Question 2.3: What other factors are relevant to whether authorisation is needed?

- (1) Whether the activity is carried on by way of business (see *PERG* 2.3).
- (2) Whether an exemption is available (see *PERG* 2.11).
- (3) Whether the *person* can carry on the activity without *authorisation* (see *PERG* 2.10.12G to *PERG* 2.10.16G).

17.3 What the advice must be about

Question 3.1: What does liquidation of a debt mean?

It has a wide meaning. For example it would cover the following:

- paying off the debt in full and in time;
- agreeing a rescheduling or a temporary halt to paying off the debt;
- the debtor being released from the debt;
- agreeing a reduced repayment amount (including the creditor agreeing to accept token repayments);
- a third party taking over the debtor's obligation to discharge the debt;

- discharging the debt or making it irrecoverable through personal insolvency procedures such as bankruptcy, a voluntary arrangement or a debt relief order.

Question 3.2: What does due mean?

As described in the answer to Question 2.1 (What is the basic definition of debt-counselling?), *debt counselling* relates to debts that are due under a *credit agreement* or a *consumer hire agreement*. As the regulation of *debt counselling* is a consumer protection measure the “due” should in the *FCA*’s view be interpreted fairly broadly and should not be limited to debts that are immediately payable. For instance it would cover present obligations to make payments in the future.

Debt counselling is not limited to debts that are overdue. It also covers debts that are not overdue.

Question 3.3: Does it matter if the advice also covers debts that are not due under a credit agreement or a consumer hire agreement?

No. If advice is given to a debtor about his debts, some of which are not payable under a *credit agreement* or a *consumer hire agreement*, that advice is regulated as long as some of the debts are due under a *credit agreement* or a *consumer hire agreement*.

17.4 Advice must relate to a particular debt and debtor

Question 4.1: Does debt counselling cover advice given to the public in general rather than to a particular debtor?

Debt counselling covers giving advice about “a” debt. This means that the advice must relate to the debts of a particular debtor or debtors. Advice will normally not be covered if it is not given to any particular debtor. So for example, it would not generally cover advice in a newspaper, periodical publication, journal, magazine, publication or a radio or television broadcast. General advice open to everyone on a website is unlikely to be *debt counselling* for the same reason. On the other hand advice given to a particular debtor over the Internet may be regulated.

Question 4.2: Must advice be given to a borrower?

Yes. *Debt counselling* means giving advice to a *borrower* under a *credit agreement* or a *hirer* under a *consumer hire agreement*. So for example it does not cover advice given to *persons* who receive it as:

- a lender under a *credit agreement* or the owner under a *consumer hire agreement*; or

- an adviser who will only use it to inform advice given by him to others (but see Question 4.3); or
- a journalist or broadcaster who will use it only for journalistic purposes.

Question 4.3: What about advice that is passed on through an intermediary?

This question covers advice prepared by A which is then passed on to the debtor by B.

If the debtor knows of this arrangement and knows that B does not exercise any judgement but just acts as a conduit, it is likely that A is *debt counselling* and B is not.

17.5 The meaning of advice

Question 5.1: Broadly speaking, what is advice?

Advice means giving an opinion as a guide to action to be taken, in this case the liquidation of debts. It either explicitly or implicitly steers the customer to a particular course of action.

A key question is whether an impartial observer, having due regard to the regulatory regime and *guidance*, context, timing and what passed between the parties, would conclude that advice had been given. One should look at whether what the adviser says could reasonably have been understood by the client as being advice which would help him make up his mind.

The concept of advice is broad enough to include any communication with the debtor which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the debtor's decision whether or not to undertake the course of action in question.

Any course of action does not have to be identified in any detail. For example advice to opt for personal insolvency may, depending on the circumstances, be *debt counselling* even though no particular procedure is identified.

Question 5.2: Does advice include a recommendation?

Yes, a recommendation to carry out a specific course of action to liquidate a relevant debt is likely to be *debt counselling*. However something falling short of an explicit recommendation can be regulated too. Any element of evaluation, value judgment or persuasion is likely to mean that advice is being given.

Question 5.3: Is giving information advice?

In the *FCA's* view, advice requires an element of opinion on the part of the adviser or something that might be taken by the debtor, expressly or by implication, to suggest or influence a course of action. Information, on the other hand, involves statements of facts or figures.

In general terms, simply giving balanced and neutral information without making any comment or value judgement on its relevance to decisions which a borrower may make is not advice. The provision of purely factual information does not become regulated advice merely because it feeds into the debtor's own decision-making process and is taken into account by him.

Therefore a neutral and balanced explanation of the implications of entering into different personal insolvency proceedings need not, itself, involve *debt counselling*.

In the *FCA's* opinion, however, such information is likely taken on the nature of advice if the circumstances in which it is provided give it, expressly or by implication, the force of a recommendation.

For example the adviser may provide information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of the debtor. This may arise where the adviser offers to provide information about certain ways of liquidating the debtor's debts that contain features specified by the debtor. The adviser may then exercise discretion as to which course of action to highlight.

A key to the question whether advice is given is whether that information is either accompanied by a comment or value judgment on the relevance of that information to the client's decision, or is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision of the recipient. In both these scenarios the information acquires the character of a recommendation.

One factor in deciding whether what was said by an adviser in a particular situation did or did not amount to advice is to look at the inquiry to which the adviser was responding. If a debtor asks for a recommendation, any response is likely to be regarded as advice.

On the other hand, if a debtor makes a purely factual inquiry it may well be the case that a reply which simply provides the relevant information is no more than that. In this case it is relevant whether the adviser makes it clear that it does not give advice or whether the adviser runs a *debt counselling* business.

Question 5.4: PERG says a lot about generic advice in relation to other sorts of regulated advice. Is the idea of generic advice relevant to debt counselling?

Generic advice is a term the *FCA* uses to refer to something that is advice rather than mere information but which is not regulated because, although it relates to investments, it is not about the merits of buying or selling a particular investment.

The concept of generic advice is also relevant to *debt counselling*. As explained in the answer to Question 1.2 (What are the regulated activities specifically relating to consumer credit debt counselling?) and Question 4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?) *debt counselling* relates to the particular debts of a debtor. Advice that does not relate to particular debts in this way is likely to be generic advice.

However, as explained in the answer to Question 5.1, advice may be *debt counselling* even though the advice does not identify a course of action with any precision. Therefore the distinction between generic and regulated advice will not always be quite as important to *debt counselling* as it is to some other kinds of regulated advice.

See example (6) in the table in the answer to Question 7.1 for an example of where generic advice is relevant to *debt counselling*.

Question 5.5: Does a decision tree involve advice?

Scripted questioning involves using any form of sequenced questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a method of liquidating his debts under a *credit agreement* or a *consumer hire agreement*. A decision tree is an example of scripted questioning. The process of going through the questions will usually narrow down the range of options that are available. Scripted questions must be prepared in advance of their actual use.

Undertaking the process of scripted questioning gives rise to particular issues concerning *debt counselling*. Whether or not scripted questioning in any particular case is *debt counselling* will depend on all the circumstances. If the process involves identifying one or more particular courses of action then, in the *FCA's* view, to avoid *debt counselling*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the debtor as, assisting the debtor to make his own choice of how to liquidate his debts. The questioner will need to avoid making any judgement on the suitability of one or more courses of action for the debtor.

The potential for variation in the form, content and manner of scripted questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, the nature and size of the debts). In the *FCA's* view, this does not of itself amount to *debt counselling*, as it involves the provision of information rather than advice. There are various possible scenarios, including the following:

- (1) The questioner may go on to identify several courses of action which match features identified by the scripted questioning; provided these are presented in a balanced and neutral way (for example, they identify all the possible courses of action, without making a recommendation as to a particular one) this need not of itself involve *debt counselling*.
- (2) The questioner may go on to advise the debtor on the merits of one particular course of action over another. This would be *debt counselling*.
- (3) The questioner may, before or during the course of the scripted questioning, give advice that considered on its own would be unregulated generic advice and, following the scripted questioning, identify one or more particular courses of action. The factors described in the answer to Question 5.6 are relevant to deciding whether there is *debt counselling*.

The second type of scripted questioning involves providing questions and answers incorporating opinion, judgement or recommendations. There are various possible scenarios, including the following:

- (4) The scripted questioning may not lead to the identification of any particular course of action; in this case, the questioner has provided advice, but it is generic advice and does not amount to *debt counselling*.
- (5) The scripted questioning may lead to the identification of one or more particular courses of action. The factors described in the answer to Question 5.6 are relevant to deciding whether there is *debt counselling*.

(3) and (4) mention generic advice. However as explained in the answer to Question 5.4 (PERG says a lot about generic advice in relation to other sorts of regulated advice. Is the idea of generic advice relevant to debt counselling?) the idea of unregulated generic advice is not always as relevant in the case of *debt counselling* as it is for other types of regulated advice.

Question 5.6: What are the factors mentioned in paragraphs (3) and (5) of the answer to Question 5.5?

The *FCA* considers that it is necessary to look at the process and outcome of scripted questioning as a whole. It may be that the element of advice incorporated in the questioning may properly be viewed as generic advice if it were considered in isolation. But, although the actual advice may be generic, the process has ended in identifying one or more particular courses of action. The combination of the generic advice and the identification of a particular or several courses of action to which it leads may well, in the *FCA's* view, cause the questioner to be *debt counselling*. Factors that may be relevant in deciding whether the process involves *debt counselling* include the following:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the stage in the questioning at which the opinion is offered and its significance;
- (4) the role played by any questioner who guides a *person* through the scripted questions;
- (5) the outcome of the questioning (how many courses of action are highlighted, how precise they are, whether the questioner will help the debtor to carry out the course of action, whether the questioner identifies any third party who might help the debtor to carry out the course of action and the relationship between the questioner and that third party and so on);
- (6) whether the scripted questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party (for example, the *FCA*), and all that the questioner has done is help the debtor understand what the questions or options are and how to determine which option applies to his particular circumstances; and
- (7) the scope of generic advice in *debt counselling* (see Question 5.4 (PERG says a lot about generic advice in relation to other sorts of regulated advice. Is the idea of generic advice relevant to debt counselling?)).

Question 5.6: Does the medium used to give advice matter?

The medium used to give advice should make no material difference to whether or not the advice is *debt counselling*. Advice can be provided in many ways including:

- face to face;
- orally to a group;
- by telephone;

- by correspondence (including e-mail);
- through the provision of an interactive software system.

However advice given in a publication, broadcast or website raises different issues (see the answer to Question 4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?)).

17.6 Exclusions

Question 6.1: What exclusions are available?

There are no exclusions specific to *debt counselling*. There are some exclusions that apply to it and other activities. The following table lists them and says where further information on them can be found in *PERG*.

Exclusions that apply to debt counselling		
What the exclusion covers	<i>RAO</i> article	Where summarised in <i>PERG</i>
Activities where person has a connection to the agreement	Article 39H	<i>PERG</i> 2.8.7CG(1)
Activities carried on by certain energy suppliers	Article 39I	<i>PERG</i> 2.8.7CG(3)
Activities carried on in relation to a relevant agreement in relation to land	Article 39J	<i>PERG</i> 2.8.7CG(4)
Activities carried on by members of the legal profession etc.	Article 39K	<i>PERG</i> 2.8.7CG(5)
Information society services	Article 72A	<i>PERG</i> 2.9.18G

17.7 Examples

Question 7.1: Please give me some examples of what is and is not debt counselling

Please see the following table. All the examples assume that the advice or information relates to debts under a *consumer credit agreement* or a *consumer hire agreement* or to a group of debts that include such debts.

Examples of what is and is not <i>debt counselling</i>	
Example	Explanation
(1) Adviser: “I recommend you enter into a debt management plan”	This is <i>debt counselling</i> . This is advice which steers the debtor in the direction of a debt solution which the debtor could enter into as a means of liquidating his debts.
(2) Adviser: “I recommend you do not enter into an IVA”	This is <i>debt counselling</i> . This is advice which steers the debtor away from a particular debt solution which the debtor could have entered into as a means of liquidating his debts.
(3) Adviser: “I suggest you change (or do not change) from a debt management plan to an IVA”	This is <i>debt counselling</i> . This is advice that steers the debtor in the direction of a different debt solution from the one that he has already entered into as an alternative means of liquidating his debts.
(4) Adviser: “I recommend you do not borrow more than you can comfortably afford”	This is not <i>debt counselling</i> as it is about incurring debts, not liquidating them.
(5) Adviser: “I recommend you to pay off your debts on time if you can afford to”	This is unlikely to be <i>debt counselling</i> as it is just saying something the debtor already knows.
(6) Adviser: “I would recommend that you explore the pros and cons of all the different debt solutions that may be available to you”	This is not <i>debt counselling</i> . It is unregulated generic advice because it does not steer the debtor to any particular course of action in liquidating his debts.

<p>(7) Adviser: “I think that reaching a compromise with your creditors would be a risky solution to your problems of liquidating your debts. Some sort of personal insolvency procedure would be safer but whether you go down this road and which personal insolvency procedure you choose is up to you”</p>	<p>This is likely to be <i>debt counselling</i>. It does not recommend a precise course of action but as described in the answer to Question 5.1 (Broadly speaking, what is advice?) this does not necessarily matter. The adviser is making a value judgement and giving an opinion and is steering the debtor towards certain courses of action and away from others. It does not necessarily matter that the adviser is not giving a firm or definite recommendation.</p>
<p>(8) The adviser gives an explanation of the way that various types of personal insolvency procedures work.</p>	<p>If this is given in a balanced and neutral way it is likely not to be <i>debt counselling</i> as it is just information.</p>
<p>(9) The adviser gives a comparison of the features and benefits of one type of personal insolvency procedure with another and the implications of entering into different types of personal insolvency proceedings.</p>	<p>Same as the answer to (8).</p>
<p>(10) An adviser advises on uncertain questions about the interpretation of an individual voluntary arrangement.</p>	<p>The element of uncertainty is likely to mean that the advice has a strong element of opinion and hence is likely to be advice rather than mere information. It is likely to be <i>debt counselling</i> as long as it steers the debtor towards a course of action in liquidating his debts. If the advice is given by a lawyer it is likely to be excluded from <i>debt counselling</i> by the exclusion in article 39K of the <i>RAO</i> (Activities carried on by members of the legal profession etc.) referred to in the answer to Question 7.1.</p>
<p>(11) A <i>person</i> distributes leaflets or illustrations that help debtors to decide how they will liquidate their debts</p>	<p>This is not <i>debt counselling</i> for the reasons described in the answer to Question 4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?).</p>

<p>(12) A <i>person</i> explains how to fill in a form for entering into a personal insolvency procedure</p>	<p>It is unlikely that a <i>person</i> would provide this advice on its own by way of business.</p> <p>If a <i>person</i> provides this help in the course of carrying on some other unregulated activities he will not be <i>debt counselling</i> as it should be seen as providing information not advice.</p> <p>If though he provides this help in the course of a wider <i>debt counselling</i> business it will be included as part of that <i>debt counselling</i> activity.</p> <p>If the explanation is given by the insolvency practitioner an exemption may be available (see <i>PERG</i> 2.11).</p>
<p>(13) A <i>person</i> uses direct marketing and other forms of advertising (for example, on websites promoted on search engines) and cold calling, to gather personal information from debtors, which is then sold on to providers of debt advice.</p>	<p>It is not <i>debt counselling</i> as it does not involve advice to debtors about the liquidation of debts due.</p> <p>However, a person providing such referrals will be <i>debt counselling</i> if during the course of communicating with a debtor he makes a recommendation to the debtor as to how he might liquidate his consumer credit debt(s).</p>
<p>(14) A <i>person</i> recommends that a debtor obtains advice from a particular <i>debt counselling firm</i>, ABC Debt Management.</p>	<p>Taken on its own it is not <i>debt counselling</i> because the adviser is advising the debtor to obtain advice from another adviser.</p> <p>However, if ABC Debt Management offers one debt solution (e.g. IVAs), the referral could constitute a recommendation intended implicitly to steer the debtor in the direction of that particular debt solution and therefore could be advice (in which case it would be <i>debt counselling</i>).</p> <p>Consequently, whether or not advice is provided will depend on the individual circumstances in each case and is likely to involve a consideration of the process as a whole.</p>

<p>(15) Adviser: “I recommend you prioritise the repayment of your electricity bill over all other debts”</p>	<p>This is likely to constitute <i>debt counselling</i> if, having considered all of a debtor’s outstanding debts, an adviser advises the debtor to prioritise the repayment of a utility bill (e.g. an electricity bill) over his other outstanding debts (including debts arising under <i>credit agreements</i> or <i>consumer hire agreements</i>). This constitutes advising on the liquidation of debts due since there is an implied recommendation that the debtor should postpone repaying his consumer credit related debts until he has repaid another debt or debts.</p>
<p>(16) A <i>person</i> (for example a money adviser) helps a debtor to draw up a budget of income and debts</p>	<p>This is not <i>debt counselling</i> if all the adviser does is to provide a debtor with information about his budget and the process is limited to, and likely to be perceived by the debtor as, assisting him to make his own choice as to a course of action he might take with regards to liquidating his consumer credit related debts.</p> <p>It may not be advice at all, in that it just puts into a convenient form information that the consumer has himself supplied.</p> <p>Even if it goes beyond just organising information supplied by the debtor, as long as the adviser gives the information in a balanced and neutral way the adviser should be seen as providing information rather than advice. The adviser is supplying material that could be used for the purposes of deciding how to liquidate debts but not advising on liquidating them.</p>

<p>(17) An adviser gives budgetary advice</p>	<p>This is <i>debt counselling</i> if the adviser goes beyond the services in example (16) and advises the debtor on how to match income and debts. For example the adviser may advise the debtor to reduce discretionary spending to a set amount each month to enable him to pay off a certain amount of a big credit card bill each month.</p> <p>It does not matter if the result of the advice is that the debtor should pay off his debts in full rather than rescheduling them or entering into a personal insolvency procedure as <i>debt counselling</i> is not limited to advice about being released from paying the debt in full or rescheduling.</p>
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Annex J

Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

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

- 1.1.2 G We have agreed with the ~~Office of Fair Trading (“OFT”)~~ Competition and Markets Authority (“CMA”) that the *FCA* will consider the fairness (within the meaning of the Regulations) of financial services contracts for carrying on any *regulated activity*.
- 1.1.3 G ~~The OFT will consider the fairness of other financial services contracts which involve activities governed by the Consumer Credit Act 1974. This includes second charge mortgage loans, buy to let mortgages, and non mortgage personal loans (including credit cards). Also, where~~ Where the *firm* concerned is not a *firm* or an *appointed representative*, the ~~OFT~~ CMA may take enforcement action under the Regulations in respect of financial services contracts involving the carrying on of *regulated activities* (see EG 10.16 and 10.17).
- ...
- 1.2.4 G (1) As such, we publish on our website details of cases that result in a change in the contract terms used by the *firm*. This may happen through either an undertaking by a *firm* or injunction obtained from the courts.
- (2) Under regulation 14 of the Regulations the *FCA* has a duty to pass details of these cases to the ~~OFT~~CMA.
- (3) The ~~OFT~~ CMA also publishes details of cases that it, and other qualifying bodies, have dealt with in accordance with the ~~OFT's~~ CMA's duties under regulation 15 of the Regulations.
- 1.4.2 G ...
- (3) from the ~~OFT~~ CMA.
- 1.4.5 G (1) ...
- (2) In some cases, it might be appropriate for us to use other powers to deal with issues identified under the Regulations. The powers available to the *FCA* under the *Act* may vary depending on the *regulated activities* which the *firm* carries out. For example, the use of the unfair term might involve a breach of a *Principle* or a *rule* in *COBS*, *CONC*, *MCOB* or

ICOBS. If so, the *FCA* might also address the issue as a *rule* breach.

1.5.1 G ...

- (3) As part of their risk management, *firms* that have not themselves given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions about other *firms*, since these will be of potential value in indicating the likely attitude of the courts, the *FCA*, the ~~OFF~~ CMA or other qualifying bodies to similar terms or to terms with similar effects.

Financial Conduct Authority



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