

Policy Statement

PS16/8

**FCA Handbook changes regarding the segregation of client money on loan-based crowdfunding platforms, the Innovative Finance ISA, and the regulated activity of advising on peer-to-peer agreements**

Including feedback to CP16/4 and CP16/5, and final rules



March 2016



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In this Policy Statement, we report on the main issues arising from two related Consultation Papers and publish final rules:

- CP16/4 – *Loan-based crowdfunding platforms and segregation of client money*, and
- CP16/5 – *FCA Handbook changes to reflect the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer agreements*

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## Abbreviations used in this paper

<b>B2B</b>	Business-to-business
<b>B2B Agreement</b>	Non-article 36H agreements, for the purposes of article 36H(4) of the Regulated Activities Order
<b>CASS</b>	Client Assets Sourcebook
<b>CMAR</b>	Client money and assets return
<b>COBS</b>	Conduct of Business Sourcebook
<b>COMP</b>	Compensation Sourcebook
<b>CP</b>	Consultation Paper
<b>DISP</b>	Dispute Resolution Sourcebook
<b>DP</b>	Discussion Paper
<b>FCA</b>	Financial Conduct Authority
<b>FEES</b>	Fees manual
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act
<b>HM Revenue and Customs</b>	Her Majesty's Revenue and Customs
<b>HM Treasury</b>	Her Majesty's Treasury
<b>IFISA</b>	Innovative Finance Individual Savings Account
<b>ISA</b>	Individual Savings Account
<b>Ombudsman Service</b>	Financial Ombudsman Service
<b>P2B</b>	Peer-to-business

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<b>P2P</b>	Peer-to-peer
<b>P2P agreement</b>	Article 36H agreement, as defined in article 36H(4) of the Regulated Activities Order
<b>PERG</b>	Perimeter Guidance manual
<b>QCF</b>	Qualifications and Credit Framework
<b>RAO</b>	Regulated Activities Order
<b>TC</b>	Training and Competence Sourcebook

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# 1. Overview

## Introduction

- 1.1** The following legislative changes, introduced by HM Revenue and Customs and HM Treasury, will come into force on 6 April 2016:
- An amendment to the Individual Savings Account Regulations 1998 (ISA Regulations) will allow ‘peer-to-peer agreements’ (also known as ‘article 36H agreements’) to be held in an ISA wrapper, within a new component known as the Innovative Finance ISA (IFISA)<sup>1</sup>.
  - An amendment to the Regulated Activities Order<sup>2</sup> will make advising on peer-to-peer (P2P) agreements a regulated activity. Article 53 of the RAO will be amended so that:
    - Article 53(1) specifies the existing regulated activity of ‘advising on investments’ and
    - Article 53(2) specifies the new regulated activity of ‘advising on P2P agreements’
- 1.2** In order to take account of these legislative developments, which will impact on the regulated loan-based crowdfunding sector, we published a discussion paper (DP15/6)<sup>3</sup> in November 2015 setting out our initial thinking on changes we might make to our Handbook. Following this, in February 2016 we published a consultation paper (CP16/5)<sup>4</sup> detailing our proposed changes to the FCA Handbook and the feedback we received to DP15/6.
- 1.3** Separately, in order to address an issue affecting firms in the loan-based crowdfunding sector, in January 2016 we published a related Consultation Paper (CP16/4).<sup>5</sup> CP16/4 consulted on rules to simplify client money requirements for firms that operate electronic systems in relation to lending (P2P platforms) and hold money in relation to both regulated and unregulated peer-to-peer business.
- 1.4** In this Policy Statement we summarise the feedback we received to both CP16/4 and CP16/5 and provide our final responses. We also publish the rules and guidance in relation to the proposals in CP16/4 that will come into force in March, as well as the rules and guidance in relation to the proposals in CP16/5 that will come into force on 6 April 2016, coinciding with the date on which the aforementioned legislative changes come into force.

<sup>1</sup> [www.legislation.gov.uk/ukSI/2016/364/contents/made](http://www.legislation.gov.uk/ukSI/2016/364/contents/made)

<sup>2</sup> [www.legislation.gov.uk/ukdsi/2016/9780111143254/contents](http://www.legislation.gov.uk/ukdsi/2016/9780111143254/contents)

<sup>3</sup> DP15/6, *Possible FCA Handbook changes to reflect the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer agreements*, (November 2015): [www.fca.org.uk/your-fca/documents/discussion-papers/dp-15-06](http://www.fca.org.uk/your-fca/documents/discussion-papers/dp-15-06)

<sup>4</sup> CP16/5, *Handbook changes to reflect the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer agreements*, (February 2016): [www.fca.org.uk/your-fca/documents/consultation-papers/cp16-5-handbook-changes-to-reflect-the-introduction-of-the-innovative-finance-isa-and-the-regulated-activity-of-advising-on-peer-to-peer-agreements-](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp16-5-handbook-changes-to-reflect-the-introduction-of-the-innovative-finance-isa-and-the-regulated-activity-of-advising-on-peer-to-peer-agreements-)

<sup>5</sup> CP16/4, *Loan-based crowdfunding platforms and segregation of client money*, (January 2016): [www.fca.org.uk/your-fca/documents/consultation-papers/cp16-4](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp16-4)

- 1.5** The powers to make rules relating to the ombudsman service are shared between the FCA and the ombudsman service. To the extent that our proposals related to redress, and the rules in DISP, our CP was issued jointly by the FCA and the ombudsman service. Where relevant, references to 'we' are to the FCA and ombudsman service.

### Who does this affect?

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- 1.6** This paper will be relevant to consumers and consumer organisations with an interest in the loan-based crowdfunding sector. It will also be relevant to trade bodies and compliance consultants that have aligned stakeholder interests.
- 1.7** It will apply to:
- firms that operate or plan to operate lending platforms which facilitate P2P agreements
  - firms that hold or plan to hold money for clients in relation to both P2P agreements and unregulated lending
  - firms that plan to manage IFISAs, and
  - firms that plan to offer regulated financial advice to consumers in relation to P2P agreements

### Context

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- 1.8** Crowdfunding is a way in which people, organisations and businesses, including business start-ups, can raise money through online portals (also known as crowdfunding platforms) to finance or re-finance their activities. Money can be provided in various ways by both individuals and businesses.
- 1.9** Some crowdfunding activity, such as donation or reward-based crowdfunding, is not regulated by the FCA, some is regulated by the FCA, and some is exempt from regulation. This paper focuses on the regulated loan-based crowdfunding sector, including P2P lending.
- 1.10** We took on responsibility for regulating firms that operate loan-based crowdfunding platforms on 1 April 2014. Individuals can use these platforms to lend money to other individuals or businesses, or businesses can use them to lend to individuals, in the hope of receiving a financial return in the form of interest payments, together with repayment of capital. We do not regulate firms when they operate platforms that facilitate business-to-business (B2B) loans that fall outside the scope of an article 36H agreement. In this paper, for simplicity, we refer to all non-article 36H agreements as 'B2B agreements'.
- 1.11** In 2014 we introduced rules and guidance to protect consumers investing in the regulated part of the loan-based crowdfunding market. For loan-based crowdfunding, these provisions focus on requiring that certain information is provided to consumers. The aim is to ensure information is given to consumers to help them assess the risks of loan-based crowdfunding, understand who will ultimately borrow the money invested, and make informed decisions. Firms operating regulated loan-based crowdfunding platforms must also follow other core consumer protection requirements in the FCA Handbook. For example, client money must be protected in line with our client money rules and firms must meet minimum capital standards.

- 1.12** We also require firms operating these platforms to have resolution plans in place so that, should the firm operating the platform collapse, loan repayments under P2P agreements will continue to be collected and those lending money should not lose out.
- 1.13** We have consulted on changes to our rules in advance of new legislation coming into effect to extend the ISA regime so investors can hold P2P agreements within the IFISA, and to make advice to invest in P2P agreements a regulated activity. Our consultation proposed a series of additional protections to build on those already in place<sup>6</sup> and to address risks associated with this new legislation.

### The Financial Advice Market Review

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- 1.14** A joint HM Treasury and FCA project, the Financial Advice Market Review (FAMR), reviewed the provision of financial advice in the UK.<sup>7</sup> The review has considered the current regulatory and legal framework governing the provision of financial advice to consumers. It also examined the effectiveness of this framework in ensuring all consumers have access to the information, advice and guidance necessary to empower them to make effective decisions about their finances.
- 1.15** We will consider the recently-published FAMR recommendations<sup>8</sup> and, as a result, may in the future need to make changes to the approach outlined in this paper.

### Summary of feedback and our responses

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- 1.16** In this section we summarise the feedback received to CP16/4 and 16/5, and our responses to each question posed. In addition, we wish to extend thanks to all those who responded to our consultation process.

### CP16/4: Loan-based crowdfunding platforms and segregation of client money

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- 1.17** The consultation in CP16/4 closed on 11 February 2016. This CP focused on the way the client money rules apply to segregation of client money by firms operating loan-based crowdfunding platforms.
- 1.18** In particular, we consulted on rule changes to allow firms that hold money in relation to both P2P and B2B agreements to be able to elect to hold all lenders' monies under CASS 7 if they wish to do so. We also consulted on guidance to clarify that, where a firm holds money that has not yet been invested for a client, this should be client money held under the CASS rules, unless the circumstances are such that it could never be money held in relation to a P2P agreement.
- 1.19** We received 13 responses to the questions posed in the paper. Respondents included a mixture of firms, trade associations, and consultancy firms. Respondents generally agreed with our proposals. We are therefore taking these forward.

<sup>6</sup> For example, COBS 14.3.7A – Examples of information a firm should provide to explain the specific nature and risks of P2P agreements.

<sup>7</sup> A call for input was published in October to invite feedback: [www.fca.org.uk/static/documents/famr-cfi.pdf](http://www.fca.org.uk/static/documents/famr-cfi.pdf)

<sup>8</sup> [www.fca.org.uk/static/fca/documents/famr-final-report.pdf](http://www.fca.org.uk/static/fca/documents/famr-final-report.pdf)

## CP16/5: FCA Handbook changes to reflect the introduction of the IFISA and the regulated activity of advising on P2P agreements

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- 1.20** In order to start the process of stakeholder engagement with our proposals, we published DP15/6 in November 2015. We received 15 responses to the DP. The content of these responses was reflected in the proposals we put forward in CP16/5. The consultation in CP16/5 closed on 15 February 2016.
- 1.21** In relation to the IFISA, we consulted on:
- guidance to clarify the type of information that a firm should give a retail client in relation to an IFISA in addition to the existing disclosure requirements, and
  - a number of consequential changes to definitions, rules and guidance that were needed in order to reflect the introduction of this new tax wrapper
- 1.22** In relation to the new regulated activity of advising on P2P agreements, we consulted on:
- applying the suitability rules<sup>9</sup> to firms making a personal recommendation involving advice on P2P agreements
  - extending the application of our rules that ban the payment or receipt of commission by firms in relation to personal recommendations made to retail clients to advice on P2P agreements<sup>10</sup>
  - applying the rule on inducements<sup>11</sup> to personal recommendations involving advice on P2P agreements in the same way it is applied to other retail investment business
  - applying rules to ensure that financial advisers who advise on P2P agreements are appropriately supervised and assessed as competent to carry out that activity (including attaining an appropriate qualification), and
  - ensuring that our rules provide consumers who receive advice on P2P agreements with access to the Financial Ombudsman Service (ombudsman service) and the Financial Services Compensation Scheme (FSCS)
- 1.23** We received 14 responses to the CP. Respondents included authorised firms, trade bodies, private consumers, and regulatory consultants. Respondents generally agreed with our proposals; in this paper, we are making the rules on which we consulted. Chapters 3 and 4 provide more detail on the feedback we received and our response to it.

### Next steps

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#### What will we do?

- 1.24** The rules set out in Appendix 1 come into force on 6 April 2016 and the rules set out in Appendix 2 come into force on 21 March 2016.

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<sup>9</sup> FCA rules in relation to suitability can be found in COBS 9.

<sup>10</sup> FCA rules in relation to payment or receipt of commission by firms making personal recommendations to retail clients can be found in COBS 6.1A/B

<sup>11</sup> COBS 2.3.1R – Rule on inducements

- 1.25** Separately, we will continue to monitor the UK crowdfunding sector through our supervisory work. This will allow us to identify any market failures and whether further changes are required.

### **What do you need to do next?**

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- 1.26** If your firm is affected by these rules and guidance, you should consider the changes you need to make.
- 1.27** Before investing in P2P agreements through an IFISA, consumers can find out if we regulate a P2P platform operator by checking the Register. The Financial Services Register of firms is available at [www.fca.org.uk/register](http://www.fca.org.uk/register).
- 1.28** HMRC maintains a list of authorised ISA managers. This can be found at [www.gov.uk/government/publications/list-of-authorised-isa-managers](http://www.gov.uk/government/publications/list-of-authorised-isa-managers)
- 1.29** Consumers with questions or concerns can contact our Contact Centre on 0845 606 9966 or email: [consumer.queries@fca.org.uk](mailto:consumer.queries@fca.org.uk).

## 2. Segregation of client money on loan-based crowdfunding platforms

### Feedback to CP16/4 and our responses

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- 2.1** In CP16/4, we proposed to simplify client money arrangements for firms that hold money in relation to both P2P and B2B agreements.
- 2.2** In particular, we consulted on rule changes to allow firms that hold money in relation to both P2P and B2B agreements to be able to elect to hold all lenders' monies in relation to this business under CASS 7 if they wish to do so. Firms may then hold P2P and B2B monies together, but segregated from the firm's money, without breaching CASS 7. We also consulted on guidance to clarify that, where a firm holds money that has not yet been invested for a client, this should be client money held under the CASS rules, unless the circumstances are such that it could never be money held in relation to a P2P agreement.
- 2.3** In this chapter we summarise the feedback we received to these proposals, in response to questions 1 to 3 of the CP. We also set out our responses.

**Q1: *Do you have any comments on our proposal to allow firms to elect to hold all their clients' monies, in relation to both P2P and B2B agreements, in line with CASS?***

- 2.4** We received 13 responses to our request for comments from a combination of firms, trade associations and consultancy firms. All respondents agreed with our proposals, with some adding further comments or requesting clarification. Issues raised by respondents included the following:
- A number of respondents felt the existing rules were overly burdensome and so welcomed the changes.
  - Some commented that, while they supported the changes, they were concerned that an increased client money balance as a result of the proposed election could lead them to become a CASS medium or CASS large firm, and that they would then have to submit a client money and assets return (CMAR) and appoint a CF10a. Concerns centred around the perception that such firms' activities were weighted towards non-article 36H agreements and that, while they also undertook regulated loan-based crowdfunding falling under article 36H, they would be brought into scope of these reporting requirements 'too early'.
  - One respondent requested confirmation that the proposed changes would not impact firms' financial resource requirements under IPRU(INV).
  - One respondent commented on the drafting of the proposed rule changes including the

use of the word 'customer' instead of 'client', requesting clarification on this point, as well as what is envisaged by requiring firms to 'write to' customers.

- One respondent questioned the format in which firms would have to communicate with customers and asked the FCA to be flexible in the light of 'digital communication channels'.
- One respondent felt that relying on the trustee rules could introduce 'unnecessary complexity'.

### Our response

We do not believe our current rules are overly burdensome. In proposing these changes we acknowledge that a loan-based crowdfunding firm will have developed prior to becoming subject to FCA regulation. This is different to a traditional investment firm developing under our rules from inception. Some firms may prefer to make use of our proposed election while others may not: the election remains optional, so firms can weigh up the benefits for their individual circumstances.

We understand that some firms could be concerned that an increased client money balance could affect their CASS firm size under CASS 1A.2.7R, leading their firm status to change from CASS small to CASS medium or CASS large as a result, so they would need to submit a CMAR under SUP 16.4. Such firms would also need to comply with the relevant parts of CASS 1A.3 (Responsibility for CASS operational oversight) and associated parts of SUP 10A and SUP 10C (including SUP 10A.4.4R and SUP 10A.7.9R).

We need to have oversight of firms' activities under our rules. We therefore consider this approach to be in line with our operational objectives.

Firms opting to make the election will be bringing other money into the CASS regime; as such, they will need to comply with our CASS rules. Further, we do not consider that the submission of the CMAR would be unduly burdensome, as firms would already have the required data. Similarly, we do not consider that the appointment of a CF10a to have operational oversight for CASS compliance would be unduly burdensome, as a CASS small firm is already required to allocate this responsibility to an employee under CASS 1A.3.1R. We reiterate that the proposed election is optional.

However, we have decided to provide a transitional provision so that if making the election means that a firm will change to CASS medium or CASS large solely as a result of its monies in relation to non-P2P agreements, it will have until the following annual stratification exercise in January 2017 before it will be required to submit a CMAR. However, we still require that such firms be able to provide CMAR data if requested to do so in the course of our supervisory activities.

The proposed changes do not interact with the calculation of a firm's financial resources requirement under IPRU(INV) 12. This is based on loaned funds and not client money; the proposed changes do not require any amendments to the calculation of loaned funds, which, under the Glossary definition, only includes funds under P2P agreements (and therefore excludes B2B loans).

The word 'customer' is not italicised in the draft rules, which is deliberate, as it is not used as a defined term. This is to take into account that a firm taking up the proposed election will have some customers that will not necessarily be consumers under FSMA (i.e. consumers in relation to B2B agreements), and not necessarily within the definition of 'client' as a defined glossary term. We do not think that this will lead to confusion.

Regarding communication with customers, our rules state that this must be in writing. We are not mandating a particular form of communication to meet this requirement.

We disagree that firms relying on the trustee rules would be introducing unnecessary operational complexity. We understand that some firms may want to opt money held in relation to non-article 36H agreements into CASS especially in relation to their 'mixed loans', consisting of a mixture of regulated and unregulated loan agreements. Then, for their pure B2B loans, from one lender to one borrower, they may already have separate trust arrangements in place that may be compatible with the trustee rules in CASS. We are therefore not mandating any firm to make use of such rules, but the existing rules reflect some firms' wishes to have separate arrangements for some of their clients.

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## Cost benefit analysis and compatibility statement

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- 2.5** In CP16/4 we provided our analysis of the costs and benefits of our proposals. We also explained how we feel our approach is compatible with the FCA's objectives.

**Q2: Do you have any comments on our cost benefit analysis?**

- 2.6** The FSMA, as amended by the Financial Services Act (2012), requires us to publish a cost benefit analysis (CBA) of our proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits' that will arise if the proposed rules are made. It also requires us to include estimates of those costs and those benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.
- 2.7** The CBA for our proposed regulatory approach to Handbook changes, as a result of the proposed changes to segregation of client money, was set out in Annex 2 of the CP. In this chapter, we asked respondents whether they had any comments or further information to inform our analysis.
- 2.8** The majority of respondents had either no comment or agreed with the analysis.
- 2.9** Some respondents linked their comments on the potential for some firms to change from CASS small to CASS medium or CASS large firms under CASS 1A to their assessment of the CBA. They commented that they felt the costs of segregation between regulated and unregulated client money would be reduced, but then replaced with costs in relation to submitting a CMAR and appointing a CF10a, as stated above.
- 2.10** One respondent thought that firms would face increased capital requirements because of the proposals.

### Our response

Allowing firms to hold both P2P and B2B agreement monies together, in accordance with our rules, would reduce the need for some firms to have two separate systems or complex systems in order to comply with CASS segregation requirements and reduce compliance costs for firms. Money held for clients in relation to P2P agreements would continue to benefit from CASS protections, even where firms comingle money in relation to P2P and B2B agreements. Money held for B2B clients would gain the benefit of CASS protections where a firm makes the proposed election.

Firms will not face any change in capital requirements as a result of the proposals, as explained above in our response to feedback to question 1.

We continue to believe any costs attributable to these proposals will be minimal. The proposed change is optional, so firms can avoid any costs arising from a different CASS firm size classification or the need to have a CF10a.

We do not consider that any of the points raised in relation to the CBA require us to reconsider the proposed rules.

### **Q3: Do you have any comments on our compatibility statement?**

- 2.11** We are required by section 138I(2)(d) of the FSMA to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
- 2.12** We are also required by section 138K(2) of the FSMA to state whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons. This analysis was detailed in Annex 3 of the CP.
- 2.13** Most respondents had either no comment or agreed with the statement. Some respondents linked their concerns about the potential for firms to change their CASS firm size classification and the potential need to submit a CMAR to the compatibility statement. They said they would prefer not to have to submit a CMAR, which would lead them to believe the proposed changes were more proportionate.

### Our response

We have explained our response to concerns about the potential CASS stratification for some firms in our response to feedback to questions 1 and 2.

We believe that the compatibility statement included in the CP pays due regard to all relevant aspects, including the principles that consumers should take responsibility for their own decisions, the potential impact on the economy, the market and the FCA's objectives of securing an appropriate degree of protection for, and promoting effective competition in the interests of, consumers. The feedback does not lead us to believe that our compatibility statement needs to be amended.

## 3.

# Handbook provisions relating to the introduction of the Innovative Finance ISA

### Feedback to CP16/5 and our responses

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- 3.1** In CP16/5, we proposed guidance on existing financial promotion and disclosure rules to clarify the types of information firms should provide in relation to IFISAs. In particular, we proposed guidance to clarify that firms should, where relevant, disclose details about the following:
- The potential tax disadvantages arising if a consumer invests in a P2P agreement, held in an IFISA wrapper, which is not repaid.
  - The potential tax disadvantages if the firm operating the platform fails.
  - The procedure applying, tax consequences arising and timeframes if an investor wants to cash in a P2P agreement held in an IFISA wrapper.
  - The procedure for transferring some or all of the P2P agreements held in an IFISA wrapper from one ISA manager to another and how long this may be expected to take.
- 3.2** We also proposed to make a number of consequential changes to definitions, rules and guidance. For example, we proposed to make changes to the Handbook so that provisions that apply to ISAs generally, such as rules relating to consumers' cancellation rights<sup>12</sup>, and client money, will apply to IFISAs in the same way.
- 3.3** In this chapter we summarise the feedback received to these proposals, in response to questions 1 and 2. We also set out our responses.
- Q1: *Do you have any comments on the proposed guidance on the information that firms must disclose in relation to the IFISA?***
- 3.4** We received eight responses to this question, the vast majority of which were in favour of our proposals for Handbook guidance on the types of risks that should be disclosed to consumers investing in an IFISA after 6 April 2016.
- 3.5** One respondent argued that our proposals did not go far enough and suggested that we should require firms to disclose how an IFISA is different to other ISA wrappers. Another felt that our proposed guidance on the disclosure of the potential tax disadvantages was 'misguided', and that it would not be possible, at the point of investment, to disclose full information about the process or timescale involved in the transfer of an IFISA in the future.

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<sup>12</sup> In COBS 15

- 3.6** One respondent asked for clarification in relation to when the IFISA-related risks should be disclosed to the consumer during the distribution process.

#### Our response

The purpose behind our proposals is to highlight that there are IFISA-related risks, of which prospective investors should be made aware.

There already exist a number of disclosure-related rules within the Handbook. For example, our current rules require that a firm provides a client with a general description of the nature and risks of designated investments<sup>13</sup>. We have provided guidance on this rule relating specifically to P2P agreements. Our rules in COBS 4 also require that, amongst other things, all communications are fair, clear and not misleading<sup>14</sup>. Given these existing provisions, we do not consider it necessary to specify that firms explain how IFISAs differ from other types of ISA, although it may be appropriate for firms to do so in some communications when meeting the existing requirements.

Regarding taxation, we expect firms to provide a sufficient explanation of the position so that customers can understand their tax obligations and the potential impact if a P2P agreement, held in an IFISA wrapper, is not repaid.

Firms should disclose the procedure for, and tax consequences of, cashing in or transferring an IFISA from one ISA manager to another. We anticipate that this would include the fact that transfers can only be made once outstanding loans have been repaid as cash, held in the client money account, and an indication of the time this is expected to take. We think firms should be able to achieve this.

We expect firms to provide appropriate information before the business is transacted, so that the client is able to make an informed decision about investing.

We believe the high-level guidance on which we consulted is proportionate to the IFISA market in its current stage of development.

**Q2: *Do you agree with the minor changes to the FCA Handbook we propose to make to take account of the introduction of the IFISA?***

- 3.7** We received seven responses to this question. All broadly agreed with the proposed minor changes to the FCA Handbook and offered no further feedback to our question.

<sup>13</sup> COBS 14.3.2R

<sup>14</sup> COBS 4.2.

### Our response

Given the responses, we plan to take forward the proposals to make consequential changes to the FCA Handbook to reflect the introduction of the IFISA.

In addition, we have made some minor changes to the instrument to provide greater clarity to firms:

- in TC to clarify the application of the exemption from the appropriate qualification requirements in TC2.1.9R for employees who advise on P2P agreements;
  - insertion of new transitional provisions in TC to clarify the point in time at which employees will be considered to have started carrying on the new activity for the purposes of calculating the time limit for attaining an appropriate qualification;
  - addition of new guidance to the notes for completion of the Retail Mediation Activities Return, explaining how to complete that form in relation to the new activity of advising on P2P agreements; and
  - because under the legislation all firms with an existing advising permission will be granted permission to carry on the new regulated activity of advising on P2P (including insurance mediation firms), in SYSC 4.4.1AR and SUP 10A.1.18R we clarify that the granting of this new permission will not affect the ability of relevant firms to benefit from the current exemption.
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## 4. Handbook provisions relating to advising on P2P agreements

### Feedback to CP16/5 and our responses

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- 4.1** In CP16/5, we proposed rules to take account of the new regulated activity, in article 53(2) of the RAO, of 'advising on article 36H agreements' ('advising on P2P agreements').
- 4.2** We proposed to:
- apply rules on suitability<sup>15</sup> to firms making a personal recommendation involving advice on P2P agreements
  - extend the application of our rules that ban the payment or receipt of commission by firms in relation to personal recommendations made to retail clients to advice on P2P agreements
  - apply the rule on inducements<sup>16</sup> to personal recommendations involving advice on P2P agreements in the same way as it is applied to other retail investment business
  - apply rules to ensure that financial advisers who advise on P2P agreements are appropriately supervised and assessed as competent to carry out that activity (including attaining an appropriate qualification), and
  - ensure that our rules provide consumers, who receive advice on P2P agreements with access to the ombudsman service and FSCS
- 4.3** We also consulted on updates to guidance in the Perimeter Guidance manual (PERG) to refer to the legislation relating to this new regulated activity.
- 4.4** In CP16/5, we proposed to amend definitions and application provisions so that certain rules in our Handbook would apply to firms giving investment advice on P2P agreements<sup>17</sup>. We also proposed to make a number of consequential changes, including changes to the regulatory capital rules and reporting rules.
- 4.5** To ensure consumers understand whether they are receiving regulated or unregulated advice, and in order to be fair, clear and not misleading, we expect firms to clarify to potential investors situations where they are not providing regulated advice<sup>18</sup>.

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<sup>15</sup> COBS 9

<sup>16</sup> COBS 2.3.1R – Rule on inducements

<sup>17</sup> Managing loan-based crowdfunding investments (e.g. discretionary investment management) will remain an unregulated activity and will not be affected by these rule changes

<sup>18</sup> COBS 4.2.4G(4)

**4.6** In this chapter, we summarise feedback received to questions 3 to 8. We also set out our responses.

**Q3: *Do you have any comments on our proposal to apply the suitability requirements to firms that make personal recommendations in relation to P2P agreements?***

**4.7** We received eight responses to this question.

- One respondent felt that, in order to provide suitable advice on P2P agreements, we should require firms to train their employees on the fundamental differences between cash ISAs, equity ISAs and IFISAs.
- Three respondents raised a concern that it would not be possible for an adviser to conduct adequate due diligence on P2P agreements to enable them to confidently comply with our rules on suitability. They argued that, as a result of the difficulty in being able to measure risks<sup>19</sup> associated with P2P agreements, there would be limited interest from existing advisers in advising on P2P agreements, and that these were likely to remain 'non-advised' investments unless this situation changed.
- One respondent noted that advisers should be able to rely on the information and statements made by the P2P platform operator when making a personal recommendation.
- Another respondent asked us to confirm if P2P agreements would be regarded as 'complex' and therefore if an appropriateness test must be carried out where a sale is non-advised<sup>20</sup>.
- While the majority of the responses supported our proposal that firms holding themselves out as independent should not be obliged to consider P2P agreements when recommending retail investment products to a retail client, one respondent disagreed with our proposal, arguing that this did not create a level-playing field.

### Our response

With reference to the concern raised about employee competence, we consider our high-level rules in the Training and Competence (TC) Sourcebook are appropriate. We expect advisers who give advice to retail clients in relation to P2P agreements to be supervised and assessed as competent, meeting the same qualification standards that currently apply to advisers providing advice on other retail investments.

As previously communicated, we consider it important that firms consider what research and due diligence they need to undertake to ensure they are familiar with the nature and risks of the products that they select for customers<sup>21</sup>.

We would expect an adviser to understand the distinctions in risks between different product types, especially those that may appear similar. For example,

<sup>19</sup> For example the ability of the adviser to understand how the platform operator has assessed the creditworthiness of the borrower.

<sup>20</sup> FCA rules in relation to appropriateness are set out in COBS 10.

<sup>21</sup> FG11/5: Assessing suitability: Establishing the risk a customer is willing and able to take and making a suitable investment selection [www.fsa.gov.uk/pubs/guidance/fg11\\_05.pdf](http://www.fsa.gov.uk/pubs/guidance/fg11_05.pdf) and TR16/1: Assessing suitability: Research and due diligence of products and services [www.fca.org.uk/your-fca/documents/thematic-reviews/tr16-1](http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr16-1)

advisers should consider the risks of P2P agreements when compared to bank or building society deposit accounts.

Our existing rules also set out situations where firms can place reliance on other persons.<sup>22</sup> It is generally reasonable for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware, or ought reasonably to be aware, of any fact that would give reasonable grounds to question the accuracy of that information.

Advisers must form their own opinion of the risk of any investment and advise their clients based on this opinion. If an adviser is unable to form an opinion based on the information available, then the correct response is not to advise the client to invest in that product<sup>23</sup>.

At this time, we are not applying the appropriateness test to P2P agreements when sold on a non-advised basis. This is something we may revisit in the future.

We believe that, with the sector still in an early stage of development, it is not appropriate at this time to oblige firms to have to consider P2P agreements when holding themselves out as independent. This is something we will keep under review.

Overall, and having considered the responses, we plan to take forward the proposals outlined in our CP.

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**Q4: Do you agree that loan-based crowdfunding should be subject to the rules that ban the payment or receipt of commission, and the rule on inducements?**

- 4.8** We proposed to make advice in relation to investment in P2P agreements subject to the rules that ban the payment or receipt of commission for personal recommendations, and the rule on inducements<sup>24</sup>. As is the case when advising retail clients on other investments, advisers will need to have a charging model for advice to retail clients in relation to P2P agreements that does not rely on the payment of commission.
- 4.9** We received ten responses, all of which were broadly supportive of our proposals. One of the respondents also suggested that the commission ban should be extended to firms who do not provide regulated advice (e.g. aggregator websites).

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<sup>22</sup> See COBS 2.4.6R

<sup>23</sup> PS12/24 – Consumer redress regime in respect of unsuitable advice to invest in Arch Cru funds [www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps1224](http://www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps1224)

<sup>24</sup> COBS 2.3.1R

### Our response

We proposed a commission ban in relation to personal recommendations to retail clients to invest in P2P agreements. We currently allow commission to be paid on non-advised sales of other investment products and have no evidence that P2P agreements should be treated in a different manner. We are therefore making the rules on which we consulted.

We may review this approach in future as part of our on-going monitoring of regulated crowdfunding services.

## Prudential requirements

### **Q5: Do you agree with our proposals relating to the prudential requirements that will apply to firms that advise on P2P agreements?**

- 4.10** We proposed that firms that recommend P2P agreements should be subject to our minimum capital resources requirements, and in some cases, should hold a minimum level of professional indemnity insurance.
- 4.11** We also proposed changes to the rules to ensure that firms given permission to advise on P2P agreements remain subject to the same prudential sourcebook when calculating their prudential requirements.
- 4.12** We received six responses to this question, none of which objected to our proposals. All respondents broadly agreed that firms who recommend P2P agreements should be within the scope of the relevant prudential requirements as outlined in CP16/5.

### Our response

We plan to take forward our proposals as set out in CP16/5 to apply the relevant prudential requirements to firms that recommend P2P agreements.

## Redress and Compensation

### **Q6: Do you agree with our proposal to provide access to the ombudsman service and the FSCS in relation to advising on P2P agreements?**

- 4.13** We took the view that consumers receiving advice on P2P agreements should, in relation to that advice, have the same access to the ombudsman service and the FSCS as they do when receiving regulated investment advice on other investments<sup>25</sup>.

<sup>25</sup> Note that investors will not be able to seek redress simply because a borrower defaults on a loan

- 4.14** We received 11 responses to this question. There was general agreement with our proposals from the majority of respondents. However, it also became apparent that there might be some misunderstanding as to how our proposals would apply to customers receiving regulated advice on P2P agreements.
- 4.15** One respondent asked for information on the interaction between our proposal and the levies that firms pay in relation to advice compensation: specifically, how authorised firms would fund the FSCS levy during the first year that the new permission of 'advising on P2P agreements' is available.

### Our response

Having considered the feedback, we continue to believe it remains important that customers of advisory firms have recourse to the FSCS to protect them against failures by authorised advisory firms. In addition, we believe that consumers receiving regulated advice on P2P agreements should have the same access to the ombudsman service as they do when receiving regulated investment advice on other investments.

Therefore, as with other forms of regulated advice, clients will be able to complain to the advisory firm about poor advice and, if they are not happy with the response, will be able to take their complaint to the ombudsman service. Further, if the advising firm goes out of business, the investor may be able to seek compensation from the FSCS.

We wish to provide clarity in relation to the interaction between our suggested policy approach and the levies that firms pay to fund the FSCS. The FSCS is funded by levies on authorised firms. This allows the FSCS to meet its compensation costs and management expenses. As the activity of providing regulated advice on P2P agreements will be included within the Handbook definition of 'advising on investments', it falls within our current funding class D2 (investment intermediation).

FSCS funding currently works by putting a number of activities into a single funding class. We believe this approach is necessary to ensure that FSCS funding is sustainable and works for consumers. As is the case for other D2 firms that enter the market but fail within the first year, it may be that new firms that provide unsuitable advice on P2P agreements will not have contributed to funding the FSCS if they quickly go out of business. Our expectation is that the majority of firms carrying on the new activity will already be carrying on investment intermediation and so will already fall within D2 and will contribute to a levy in relation to the new activity.

We are planning to issue a CP on the review of FSCS funding later this year.

## Additional matters

### **Q7: Do you have any comments on the impact of the existing rules on firms that provide advice on P2P agreements?**

**4.16** In CP16/5, we highlighted other areas of our Handbook where existing rules would be relevant to firms if they provide regulated advice on P2P agreements. In particular:

- Senior Management Arrangements, Systems and Controls (SYSC) requirements: firms will need to ensure that they have appropriate systems and controls in place to deal with the risks of advising on P2P agreements, including that of the firm operating the P2P platform going out of business.
- Other SYSC requirements: firms must meet the high-level requirement to employ people with the skills, knowledge and expertise necessary for the responsibilities allocated to them.
- Training and Competence (TC) requirements: firms must ensure employees giving advice to retail clients on P2P agreements are appropriately supervised and assessed as competent to carry out that activity. As with other retail investment advice, advisers will need to be qualified to Qualifications and Credit Framework (QCF) level 4.
- Disclosure requirements in the Conduct of Business Sourcebook (COBS): firms must ensure that communications (including financial promotions) are fair, clear and not misleading. In particular, if a promotion names the FCA as the firm's regulator and also refers to matters not regulated by the FCA, such as general advice on the P2P sector, firms must make it clear that such advice is not regulated by the FCA.
- Fees manual (FEES): firms should note that remuneration for recommendations regarding P2P agreements will need to be included in the income reported for the purposes of calculating regulatory fees in fee-block A13 (advisors, arrangers, dealers and brokers). See FEES 4 Annex 11A for the definition of annual income and FEES 4 Annex 13 table 1 for guidance on reporting.
- Dispute resolution (DISP): firms should note that ombudsman levies will arise as a result of access to the ombudsman service; costs to firms are likely to fall into three main categories: redress costs, ombudsman service case fees and administrative costs.
- Compensation sourcebook (COMP): the FSCS is funded by levies on authorised firms. Under our rules, the FSCS can levy firms to meet its compensation costs and management expenses. As the activity of providing regulated advice on P2P agreements will be 'advising on investments', it will fall within funding class D2 Investment Intermediation, and there is no need for us to amend rules for FSCS funding in FEES 6.

**4.17** We received one response directly relevant to this question. The respondent agreed with our proposal. Other points made by respondents related to issues which have been addressed elsewhere in this paper.

### Our response

In order to treat advice on P2P agreements in broadly the same way as other regulated investment advice, we will extend the application of relevant existing rules so that they apply to firms with permission to provide regulated advice on P2P agreements.

**Q8: *Should we require individuals wishing to advise on P2P agreements to be qualified to the same standard as those advising on retail investment products?***

**4.18** We received seven responses to this question, with the majority of respondents not raising any substantive objections to our proposal.

- Two respondents felt that our approach was proportionate and consistent with personal recommendations given on other investment types.
- One respondent cautioned against the ‘grandfathering’ of firms’ existing CF30s<sup>26</sup> to allow them to provide personal recommendations on P2P agreements without any additional checks or controls to ensure they are competent to advise on P2P agreements.
- Another requested clarification of specific qualifications that would be necessary for an adviser to provide personal recommendations on P2P agreements.

### Our response

We consider that those advising retail clients on P2P agreements should be qualified under existing retail investment advice qualifications. We also consider it appropriate to expect advisers who give advice to retail clients in relation to P2P agreements to be supervised and assessed as competent, meeting the same standards that currently apply to advisers providing advice on other retail investments. As such, as with other retail investment advice, advisers will need to be qualified to QCF level 4 and assessed as competent to advise on P2P agreements. The appropriate qualifications for retail investment products are set out in our TC Sourcebook.<sup>27</sup>

<sup>26</sup> CF30 – Client Function 30: in this context the comment relates to a firm’s advisers

<sup>27</sup> TC App 4.1 Appropriate qualification tables

## 5.

# CP16/5: Cost benefit analysis and compatibility statement

### Feedback and our responses

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- 5.1** In CP16/5, we provided a summary of the market affected by our proposals, an analysis of potential market failures, and estimated costs and benefits of our proposed Handbook changes. We also explained in a compatibility statement how we consider our approach to be compatible with the FCA's statutory objectives.
- 5.2** This chapter summarises the feedback received to questions 9, 10 and 11 asked in the CP in relation to these areas.

### Market information

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**Q9:** *Do you have any comments on our analysis of the market or further information about it?*

- 5.3** In CP16/5 we described the market for loan-based crowdfunding, ISAs and advice, and asked respondents whether they agreed with this summary or had any further information about it.
- 5.4** Three respondents commented on our analysis and provided us with further information for consideration. Two of the respondents took the view that there is insufficient research material and information available on P2P agreements. On this basis, they felt it would be difficult to provide regulated advice on P2P agreements for clients.

#### Our response

Where feedback to this question made similar points to those already considered in this paper, please see earlier sections for our response.

We consider the rules we are making in this paper provide flexibility for firms, are proportionate to the risks in this market, and reflect the needs of consumers.

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## Cost benefit analysis

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### **Q10: Do you have any comments on our cost benefit analysis?**

- 5.5** The FSMA, as amended by the Financial Services Act (2012), requires us to publish a CBA of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as ‘analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made’. It also requires us to include estimates of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practical to produce an estimate.
- 5.6** The CBA for our proposed regulatory approach to Handbook changes as a result of the introduction of the IFISA and the regulated activity of advising on P2P agreements was set out in Annex 1 of the CP. In this chapter, we asked respondents whether they had any comments or further information to inform our analysis.
- 5.7** We received one comment on our analysis. They said that, with continued low interest rates and the rapid expansion of the P2P lending market, we should revise our assumption that 5% to 10% of investors on loan-based platforms, across the market as a whole, can be considered ‘less sophisticated’.

### **Our response**

In our first crowdfunding CP<sup>28</sup>, we made the assumption that 5% to 10% of investors on loan-based platforms, across the market as a whole, could be considered to be ‘less sophisticated’ investors. This was based on the evidence available to us at the time.

We agree that there is evidence that the P2P lending market has seen growth and that continued low interest rates are likely to influence consumers into seeking alternative finance solutions. We also recognise that market developments may mean that our assumption on the proportion of customers who could be considered as ‘less sophisticated’, may now appear to be too conservative.

Having considered the feedback received we believe that, even if the true proportion is higher than in our initial estimate, it is unlikely to affect our conclusion that the benefits outweigh the costs. We therefore do not feel it necessary to revise these figures at this time; however, this is something we will keep under review.

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<sup>28</sup> CP13/13 – The FCAs regulatory approach to crowdfunding (and similar activities)  
[www.fca.org.uk/static/documents/consultation-papers/cp13-13.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp13-13.pdf)

## Compatibility statement

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### ***Q11: Do you have any comments on our compatibility statement?***

- 5.8** We are required by section 138I(2)(d) of the FSMA to explain why we believe our proposed rules are compatible with our strategic objective, will advance one of more of our operational objectives, and have regard to the regulatory principles in section 3B of the FSMA.
- 5.9** We are also required by section 138K(2) of the FSMA to state whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons. This analysis was detailed in Annex 2 of the CP.
- 5.10** We received no specific concerns from respondents to our compatibility statement.

### **Our response**

We consider the compatibility statement included in the CP pays due regard to all relevant aspects, including the principles that consumers should take responsibility for their own decisions, the potential impact on the economy, the market, and the FCA's objectives of securing an appropriate degree of protection for, and promoting effective competition in the interests of, consumers.

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# Annex 1

## List of non-confidential respondents to CP16/4 and CP16/5

Association of Professional Financial Advisers

Bovill Limited

BPH Wealth Management LLP

Compliancy Services Ltd

Emoneyunion.com

Funding Circle Limited

Funding Knight Limited

GLI Alternative Finance

Nabarro LLP Solicitors

PwC LLP

RateSetter

Rebuildingsociety.com

Seedrs Limited

Signia Money Limited (QuidCycle)

SimplyBiz Plc

Tally Marketplace Lending Ltd.

Trillion Fund Limited

UK Crowdfunding Association

UP Investments Limited

Wealth Management Association

# Appendix 1

## Made rules (P2P lending legal instrument)

**PEER-TO-PEER LENDING INSTRUMENT 2016**

**Powers exercised by the Financial Ombudsman Service**

- A. The Financial Ombudsman Service Limited makes and amends the voluntary jurisdiction rules and fixes and varies the standard terms for voluntary jurisdiction participants as set out in Annexes A and H to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
  - (2) paragraph 8 (Guidance) of Schedule 17;
  - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (4) paragraph 22 (Consultation) of Schedule 17.
- B. The making and amendment of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited, as set out in Annexes A and H, are 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 137R (Financial promotion rules);
    - (d) section 137T (General supplementary powers);
    - (e) section 138C (Evidential provisions);
    - (f) section 139A (Power of the FCA to give guidance);
    - (g) section 213 (The compensation scheme);
    - (h) section 214 (General);
    - (i) section 226 (Compulsory jurisdiction);
    - (j) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
    - (k) paragraph 13 (Authority’s procedural rules) of Schedule 17; and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the voluntary jurisdiction rules made and amended, and the standard terms fixed and varied, by the Financial Ombudsman Service Limited in this instrument.

## Commencement

F. This instrument comes into force on 6 April 2016.

## Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Training and Competence sourcebook (TC)	Annex C
Fees manual (FEES)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Client Assets sourcebook (CASS)	Annex F
Supervision manual (SUP)	Annex G
Dispute Resolution: Complaints sourcebook (DISP)	Annex H
Collective Investment Schemes sourcebook (COLL)	Annex I

## Amendments to material outside the Handbook

H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex J to this instrument.

## Citation

I. This instrument may be cited as the Peer-to-Peer Lending Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited  
16 March 2016

By order of the Board of the Financial Conduct Authority  
17 March 2016

## 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.

*advising on investments (except P2P agreements)* the *regulated activity*, specified in article 53(1) of the *Regulated Activities Order* (Advising on investments), which is in summary: advising a *person* if the advice is:

- (1) given to the *person* in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor; and
- (2) advice on the merits of their doing any of the following (whether as principal or agent):
  - (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security* or *relevant investment* (that is, any *designated investment* (other than a *P2P agreement*), *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interests in a *funeral plan contract*); or
  - (b) exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.

*advising on P2P agreements* the *regulated activity*, specified in article 53(2) of the *Regulated Activities Order* (Advising on investments), which is in summary: advising a *person* if the advice is:

- (1) given to the *person* in their capacity as a *lender* or potential *lender* under a relevant P2P agreement or in their capacity as an agent for a *lender* or potential *lender* under a relevant P2P agreement; and
- (2) advice on the merits of their doing any of the following (whether as principal or agent):
  - (a) entering into a relevant P2P agreement as a *lender* or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law; or
  - (b) providing instructions to a *P2P platform operator* with a view to entering into a relevant P2P agreement as a *lender*

or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law, where the instructions involve:

- (i) accepting particular parameters for the terms of the agreement presented by a *P2P platform operator*; or
  - (ii) choosing between options governing the parameters of the terms of the agreement presented by a *P2P platform operator*; or
  - (iii) specifying the parameters of the terms of the agreement by other means; or
- (c) enforcing or exercising the *lender's* rights under a relevant P2P agreement; or
- (d) assigning rights under a relevant P2P agreement.

In this definition “relevant P2P agreement” means an article 36H agreement (within the meaning of article 36H of the *Regulated Activities Order*) which has been, or may be, entered into with the facilitation of a *person* carrying on an activity of the kind specified by article 36H(1) or 36H(2D) of the *Regulated Activities Order*.

<i>innovative finance component</i>	a qualifying investment as prescribed in regulation 8A of the <i>ISA Regulations</i> .
<i>innovative finance ISA</i>	an <i>individual savings account</i> which includes an <i>innovative finance component</i> .
<i>innovative finance ISA business</i>	a <i>firm's</i> activities, in its capacity as an <i>ISA manager</i> , in connection with an <i>ISA</i> which contains only an <i>innovative finance component</i> and is not <i>designated investment business</i> .
<i>P2P platform operator</i>	a <i>person</i> carrying on an activity of the kind specified by article 36H(1) or 36H(2D) of the <i>Regulated Activities Order</i> .

Amend the following definitions as shown.

<i>adviser charge</i>	any form of charge payable by or on behalf of a <i>retail client</i> to a <i>firm</i> in relation to the provision of a <i>personal recommendation</i> by the <i>firm</i> in respect of a <i>retail investment product</i> or <u><i>P2P agreement</i></u> (or any related service provided by the <i>firm</i> ) which: <ul style="list-style-type: none"><li>(a) is agreed between that <i>firm</i> and the <i>retail client</i> in accordance</li></ul>
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with the *rules* on adviser charging and remuneration (*COBS* 6.1A); and

(b) is not a *consultancy charge*.

*advising on investments*

(1) (except in *SUP* 10A (Approved Persons) and *APER*) the ~~regulated activity~~ *activities*, specified in ~~article 53~~ articles 53(1) and 53(2) of the *Regulated Activities Order* (Advising on investments), which is in summary: ~~advising a person if the advice is~~ are:

(a) ~~given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and~~ advising on investments (except P2P agreements); and

(b) ~~advice on the merits of his doing any of the following (whether as principal or agent):~~ advising on P2P agreements.

(i) ~~buying, selling, subscribing for or underwriting a particular investment which is a security or relevant investment (that is, any designated investment (other than a P2P agreement), funeral plan contract, pure protection contract, general insurance contract or right to or interests in a funeral plan contract); or~~

(ii) ~~exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.~~

(2) (in *SUP* 10A (Approved Persons) and *APER*) the ~~regulated activity~~ *activities* specified in ~~article 53~~ articles 53(1) and 53(2) (Advising on investments) of the *Regulated Activities Order*. For these purposes, *advising on investments* includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the *Regulated Activities Order*.

*advising on investments (except pension transfers and pension opt-outs)*

*advising on investments (except P2P agreements) except other than in respect of pension transfers and pension opt-outs.*

*advising on pension transfers and pension opt-outs*

any of the following *regulated activities*:

(a) *advising on investments (except P2P agreements)* in respect of *pension transfers* and *pension opt-outs* (article ~~53~~ 53(1));

<i>outs</i>	(b) ...
<i>borrower</i>	<p>(1) ...</p> <p>(2) in relation to a <i>P2P agreement</i> other than a <i>credit agreement</i> or a <i>regulated mortgage contract</i>;</p> <p style="padding-left: 40px;">(a) an <i>individual</i> who receives <i>credit</i> under a <i>P2P agreement</i> and under which the <i>lender</i> provides <i>credit</i> to the <i>individual</i> of less than or equal to £25,000 or the agreement is not entered into by the <i>individual</i> for the purposes of a business carried on by the <i>individual</i>; <u>or</u></p> <p style="padding-left: 40px;">(b) <u>an <i>individual</i> to whom the rights and duties of a <i>borrower</i> under a <i>P2P agreement</i> have passed by <i>assignment</i> or <i>operation of law</i>, where the agreement is for the provision of <i>credit</i> of less than or equal to £25,000 or is not, and was not when entered into, wholly or predominantly for the purposes of a business carried on or intended to be carried on by the <i>individual</i> or a former <i>borrower</i>.</u></p> <p>(3) ...</p>
<i>cash deposit ISA</i>	a <i>cash component</i> of an <i>ISA</i> which does not include the <i>qualifying investments</i> prescribed in paragraphs 8(2)(c), (d), (e) or (f) <u>or paragraph 8A(2) of the <i>ISA Regulations</i>.</u>
<i>category B3 firm</i>	<p>a <i>category B firm</i>:</p> <p>(a) whose <i>permission</i> includes only <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i>, <i>home finance mediation activity</i>, <i>assisting in the administration and performance of a contracts of insurances</i>, <i>arranging transactions in life policies</i> and other insurance contracts, <i>advising on investments (except <u>P2P agreements</u>)</i> and receiving and transmitting, on behalf of investors, orders in relation to <i>securities</i> and <i>units in collective investment schemes</i>, <u><i>advising on P2P agreements</i></u>; and</p> <p>(b) ...</p>
<i>client money</i>	<p>...</p> <p>(2A) (in <i>FEES</i>, <i>CASS 6</i>, <i>CASS 7</i>, <i>CASS 7A</i> and <i>CASS 10</i> and, in so far as it relates to matters covered by <i>CASS 6</i>, <i>CASS 7</i>, <i>COBS</i> or <i>GENPRU</i> and <i>IPRU(INV)</i> 11) subject to the <i>client money rules</i>, <i>money</i> of any currency:</p> <p>...</p>

- (bb) that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its innovative finance ISA business; or
- ...
- ...
- controlled activity* ...
- (i) advising on investments (except P2P agreements) (paragraph 7(1));
- (ia) advising on P2P agreements (paragraph 7(2));
- ...
- controlled investment* (in accordance with section 21(10) of the Act (Restrictions on financial promotion) and article 4 of the *Financial Promotion Order* (Definitions of controlled activities and controlled investments)) an investment specified in Part II of Schedule 1 to the *Financial Promotion Order* (Controlled investments) (having regard to the effect of paragraph 4C(10) and paragraph 7(4) of that Schedule).
- designated investment* (1) a security or a contractually-based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that is, any of the following investments, specified in Part III of the *Regulated Activities Order* (Specified Investments), ~~a P2P agreement, and a long term care insurance contract which is a pure protection contract:~~
- (a) ...
- ...
- (l) ~~rights to or interests in investments in (a) to (k) (article 89) but not including rights to or interests in rights under a long term care insurance contract which is a pure protection contract;~~
- (2) a P2P agreement; and
- (3) a long-term care insurance contract which is a pure protection contract.
- designated investment business* any of the following activities, specified in Part II of the *Regulated Activities Order* (Specified Activities), which is carried on by way of business:
- ...

- (m) *advising on investments (except P2P agreements)* (article 53 53(1)), but only in relation to *designated investments* (other than *P2P agreements*); for the purposes of the *permission* regime, this includes:
  - (i) *advising on investments (except pension transfers and pension opt-outs) (except pension transfers and pension opt-outs)*;
  - (ii) *advising on investments (except P2P agreements)* in respect of *pensions transfers* and *pension opt-outs*;
- (ma) ~~*advising on conversion or transfer of pension benefits*~~ (article 53E) *advising on P2P agreements* (article 53(2));
- (mb) *advising on conversion or transfer of pension benefits* (article 53E);

...

*insurance  
mediation activity*

any of the following *regulated activities* carried on in relation to a *contract of insurance* or rights to or interests in a life policy:

...

- (e) *advising on investments (except P2P agreements)* (article 53 53(1));

...

*lender*

- (A) ...
- (B) in the *FCA Handbook*:
  - (a) ...
  - ...
  - (c) in relation to a *P2P agreement* other than a *credit agreement* or a *regulated mortgage contract*:
    - (i) ~~the~~ a person providing *credit* under ~~the~~ a P2P agreement; or
    - (ii) a person who by assignment or operation of law has assumed the rights of a person who provided credit under a P2P agreement.

*marketing*

- (1) (in *COLL*) (in relation to *marketing units* in a *regulated collective investment scheme* in a particular country or territory):

- (a) ...
- (b) giving *advice on investments (except P2P agreements)* to, or arranging (bringing about) a deal in an investment for a *person* in that country or territory to become a *holder* in that *regulated collective investment scheme*.

(2) ...

*P2P agreement*

- (a) ~~(in relation to a *borrower*) in accordance with article 36H of the *Regulated Activities Order*, 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 *Regulated Activities Order*) and in relation to which the *borrower* is an *individual* and either:~~
  - ~~(i) the *lender* provides credit (within that meaning) of less than or equal to £25,000; or~~
  - ~~(ii) 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*.~~

(in relation to a *borrower*) in accordance with article 36H of the *Regulated Activities Order*, an agreement by which one *person* provides another *person* with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which:

- (i) the *operator of the electronic system in relation to lending* which facilitates the agreement does not provide credit (within that meaning), assume the rights (by *assignment* or operation of law) of a *person* who provided credit, or receive credit under the agreement;
- (ii) the *borrower* is an *individual*; and
- (iii) either condition (A) or (B) is satisfied:
  - (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*.

- (b) ~~(in relation to a *lender*) in accordance with article 36H of the *Regulated Activities Order*, 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 *Regulated Activities Order*) and in relation to which either the lender is an *individual*, or if the lender is not an *individual*, the borrower is an *individual* and either:~~

- ~~(i) the lender provides credit (within that meaning) of less than or equal to £25,000; or~~
- ~~(ii) 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.~~

(in relation to a lender) in accordance with article 36H of the *Regulated Activities Order*, an agreement by which one *person* provides another *person* with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which either:

- (i) the lender is an *individual* or was an *individual* at the time the agreement was entered into; or
- (ii) if the lender is not an *individual* or was not an *individual* at the time the agreement was entered into, either condition (A) or (B) is satisfied, or was satisfied at the time the agreement was entered into:
  - (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;

provided, in either case, that the *operator of the electronic system in relation to lending* which facilitates the agreement does not provide credit (within that meaning), assume the rights (by *assignment* or operation of law) of a *person* who provided credit, or receive credit under the agreement.

*personal  
investment firm*

a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, IFPRU investment firm, BIPRU firm, building society, collective portfolio management firm, credit union, energy market participant, ICVC, insurer, media firm, oil market participant, service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission) or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):

...

(c) a *firm*:

...

(ii) for which the most substantial part of its gross income (including commissions) from the *designated investment business* included in its *Part 4A permission* is derived from one or more of the following activities (based, for a *firm* given a *Part 4A permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the *Act*):

(A) *advising on investments (except P2P agreements), arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments, in relation to packaged products;*

(B) *managing investments for retail clients;*

(C) *advising on P2P agreements.*

*personal  
recommendation*

(except in *CONRED*) a recommendation that is *advice on investments, advice on conversion or transfer of pension benefits, or advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

For the purposes of this definition, references in the *Handbook to making personal recommendations* on, or in relation to, *P2P agreements* should be understood as referring to making *personal recommendations involving advice on P2P agreements*.

[Note: article 52 of the *MiFID implementing Directive*]

(in *CONRED*) a recommendation which is *advice on investments* and:

(a) where given on or before 31 October 2007, was given to a specific *person*; or

(b) where given on or after 1 November 2007, was presented as suitable for the *person* to whom the recommendation was made, or was based on a consideration of the circumstances of that *person*, other than a recommendation issued exclusively through distribution channels or to the public.

For the purposes of this definition, references in the Handbook to making personal recommendations on, or in relation to, P2P agreements should be understood as referring to making personal recommendations involving advice on P2P agreements.

- regulated activity* (A) ...
- (B) in the *FCA Handbook*:
- ...
- (p) *advising on investments (except P2P agreements)* (article ~~53~~ 53(1)); for the purposes of the *permission* regime, this includes:
- (i) *advising on investments (except pension transfers and pension opt-outs) (except pension transfers and pension opt-outs); and*
- (ii) *advising on investments (except P2P agreements) in respect of pensions transfers and pension opt-outs;*
- (pa) *advising on P2P agreements* (article 53(2));
- (pb) *advising on regulated mortgage contracts* (article 53A);
- ~~(pb)~~ *advising on a home reversion plan* (article 53B);
- (pc)
- ~~(pe)~~ *advising on a home purchase plan* (article 53C);
- (pd)
- ~~(pd)~~ *advising on a regulated sale and rent back agreement* (article 53D);
- (pe)
- ~~(pe)~~ *advising on regulated credit agreements for the acquisition of land* (article 53DA);
- (pf)
- ~~(pf)~~ *advising on conversion or transfer of pension benefits* (article 53E);
- (pg)
- ...
- transaction-specific advice* *advice on investments (except P2P agreements):*
- ...

**Annex B**

**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 Detailed application of SYSC**

**1**

...

<b>Part 3</b>	<b>Tables summarising the application of the common platform requirements to different types of firm</b>		
...			

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 4.4.1AR [FCA]	Not applicable	Not applicable	Not applicable	Rule applies this section only to: ... (2) activities carried on by a <i>firm</i> whose principal purpose is to carry on activities other

				<p>than <i>regulated activities</i> and which is:</p> <p>...</p> <p>(e) a <i>firm</i> with <i>permission</i> to carry on <i>insurance mediation activity</i> in relation to non-investment insurance contracts but no other <i>regulated activity</i> (<u>except <i>advising on P2P agreements</i></u>);</p> <p>...</p>
...				

...

## 4 General organisational requirements

...

### 4.4 Apportionment of responsibilities

#### Application

4.4.1A R This section applies to:

- (1) ...
- (2) activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:
 

...

  - (e) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity* (except *advising on P2P agreements*);

...

...

## Annex C

### Amendments to the Training and Competence sourcebook (TC)

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

## 2 Competence

### 2.1 Assessing and maintaining competence

...

#### Supervisors

2.1.4 G *Firms* should ensure that those supervising *employees* carrying on an activity in TC Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge and experience to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate to require those supervising *employees* not assessed as competent to attain an appropriate qualification as well except where the *employee* is giving advice on *retail investment products* or advising on P2P agreements, see TC 2.1.5R.

2.1.5 R Where an *employee* ~~is~~ has not been assessed as competent to do so and:

(1) ~~giving gives~~ gives advice on *retail investment products* to *retail clients* ~~and has not been assessed as competent to do so~~, the *firm* must ensure that the individual supervising and assessing that *employee* has attained an appropriate qualification; or

(2) gives advice on P2P agreements to *retail clients*, the *firm* must ensure that the individual supervising and assessing that *employee* has attained an appropriate qualification for giving advice on retail investment products to retail clients.

...

#### Knowledge and competence requirements when advising on P2P agreements

2.1.5G R TC 2.1.5HR applies to a firm advising on P2P agreements.

2.1.5H R A firm must not, for the purposes of TC 2.1.1R, assess an employee as competent to carry on activity 9A in TC Appendix 1 until the employee has attained each module of an appropriate qualification for giving advice on retail investment products to retail clients.

2.1.5I G An employee who only carries on activity 9A in TC Appendix 1 is not a retail investment adviser. As such, the rules in this section applicable to retail investment advisers are not relevant to employees who only advise on

P2P agreements.

Qualification requirements before starting activities

- 2.1.6 R A *firm* must ensure that an *employee* does not carry on an activity in *TC* Appendix 1 (other than an overseeing activity) for which there is a qualification requirement without first attaining the relevant regulatory module of:
- (1) (in respect of activities other than *advising on P2P agreements* (activity 9A in *TC* Appendix 1)) an appropriate qualification; or
  - (2) (in respect of *advising on P2P agreements* (activity 9A in *TC* Appendix 1)) an appropriate qualification for giving advice on *retail investment products* to *retail clients*.

...

Exemption from appropriate qualification requirements

- 2.1.9 R ...
- (2) The conditions are that a *firm* should be satisfied that an *employee*:  
...  
but (b) and (c) do not apply to an *employee* who is benefiting from the "30-day rule" exemption in *SUP* 10A.10.8R, unless the *employee* benefits from that rule because he is advising *retail clients* on *retail investment products*, is providing advice on *P2P agreements* to *retail clients* or is a *broker fund adviser*.
  - (3) The relevant activities are:
    - (a) *advising on investments (except *P2P agreements*)* which are *retail investment products*, if that advice is given to *retail clients*; or
    - (aa) *advising on *P2P agreements**, if that advice is given to *retail clients*; or
    - (b) the activity of a *broker fund adviser*; or

...

Selecting an appropriate qualification

- 2.1.10 E (1) This *rule* applies for the purposes of *TC* 2.1.1R, *TC* 2.1.5R, *TC* 2.1.5HR, *TC* 2.1.6R, *TC* 2.1.7R, *TC* 2.1.9R, *TC* 2.2A.1R, *TC* 2.2A.3R and *TC* 2.2A.6R.

...

...

**App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3**

App 1.1.1 R

Activity	Products/Sectors	Is there an appropriate qualification requirement?
<i>Designated investment business carried on for a retail client</i>		
...		
Advising	...	
	<u>9A.</u>	<u>Advising on P2P agreements</u> <u>Yes</u>
...		
<b>Notes:</b>		
...		
<u>2A.</u>	<u>In relation to activity number 9A, see TC 2.1.5HR and TC 2.1.6R(2). There is no qualification for this activity in the list of qualifications set out in TC Appendix 4E. However, the effect of TC 2.1.5HR is that an <i>employee advising on P2P agreements</i> must be qualified to the same standard as if that <i>employee</i> were providing investment advice to <i>retail clients on retail investment products</i>.</u>	
...		

...

**App 4.1 Appropriate Qualification tables**

App 4.1.1 E **Part 1: Activities**

**Note:** The activity numbers in this table relate to the activities in TC App 1.1.1R. These tables do not cover activities 1, 5, 13A, 13B, 13C, 20A, 21B,

23A, 23B, 23C, 23D, 23E, 24, 25 or 26 as these activities do not have a qualification requirement. In relation to *advising on P2P agreements* (activity 9A), see TC 2.1.5HR and TC 2.1.6R(2).

...

**TP 8 Transitional provisions relating to time limits for attaining qualifications**

...

8.4 R An employee who is *advising on P2P agreements* as at 6 April 2016 will, for the purposes of TC 2.2A.1R, be regarded as starting to carry on that activity on that date.

**Annex D**

**Amendments to the Fees manual (FEES)**

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

**4 Periodic fees**

...

**4 Annex FCA Activity groups, tariff bases and valuation dates  
1AR**

<p>Part 1</p> <p>This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i>.</p>	
Activity group	Fee payer falls in the activity group if
...	
<p><b>A.13 Advisors, arrangers, dealers or brokers</b></p>	<p>...</p> <p>(2) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p>(i) in relation to one or more <i>designated investments</i>:</p> <p>...</p> <p><i>advising on investments (except P2P agreements)</i> (except <i>pension transfers</i> and <i>pension opt-outs</i>);</p> <p>...</p> <p><i>advising on syndicate participation at Lloyd's</i>;</p> <p>(ii) <u><i>advising on P2P agreements</i></u>;</p> <p>(b) ...</p>
...	

## Annex E

### Amendments to the Conduct of Business sourcebook (COBS)

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

## 2 Conduct of business obligations

...

### 2.3 Inducements

...

Rule on inducements

- 2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* or, in the case of its *MiFID or equivalent third country business*, another *ancillary service*, carried on for a *client* other than:
- (1) ...
  - (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
    - (a) ...
    - (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;
      - (i) this requirement only applies to business other than *MiFID or equivalent third country business* if it includes:
        - (A) giving a *personal recommendation* in relation to a *retail investment product*, or *P2P agreement*; or
        - (B) giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*;

...

- (c) in relation to *MiFID* or equivalent third country business or when carrying on a regulated activity in relation to a retail investment product, or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or

...

...

#### Guidance on inducements

...

- 2.3.6A G *COBS* 6.1A (Adviser charging and remuneration), *COBS* 6.1B (Retail investment product provider and operator of an electronic system in relation to lending and platform service provider requirements relating to adviser charging and remuneration), *COBS* 6.1C (Consultancy charging and remuneration) and *COBS* 6.1D (Product provider requirements relating to consultancy charging and remuneration) set out specific requirements as to when it is acceptable for a *firm* to pay or receive commissions, fees or other benefits:
- (1) relating to the provision of a *personal recommendation on retail investment products or P2P agreements*; or
  - (2) ...

...

#### Providing credit and other benefits to firms that advise on retail investment products or P2P agreements

- 2.3.11A G The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a retail investment product or P2P agreement to a retail client.
- 2.3.12 E (1) This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to retail clients on retail investment products or P2P agreements, except where the relevant transaction is between *persons* who are in the same *immediate group*.
- (2) A retail investment product provider or operator of an electronic system in relation to lending should not take any step which would result in it:

...

unless all the conditions in (4) are satisfied. A *retail investment product provider or operator of an electronic system in relation to lending* should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).

- (3) A *firm* in (1) should not take any step which would result in a *retail investment product provider or operator of an electronic system in relation to lending* having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.
- (4) The conditions referred to in (2) and (3) are that:
- (a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product provider or operator of an electronic system in relation to lending* would, taking into account all relevant circumstances, be willing to acquire the holding or provide *credit*;
  - ...
  - (c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product provider or operator of an electronic system in relation to lending*; and
  - (d) the *retail investment product provider or operator of an electronic system in relation to lending* is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products or P2P agreements* given by the *firm* or the advice given, or services provided to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- (5) In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product provider's or operator of an electronic system in relation to lending's associate* is to be regarded as held by, or provided by, that *retail investment product provider or operator of an electronic system in relation to lending*.

...

- 2.3.12A G Where a *retail investment product provider or operator of an electronic system in relation to lending*, or its *associate*, provides *credit* to a *retail client* of a *firm* making *personal recommendations* in relation to *retail*

*investment products or P2P agreements* or giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products or operator of an electronic system in relation to lending* may need to consider the examples in *COBS 2.3.12E* as if it had provided the *credit* to the *firm*.

...

## 4 Communicating with clients, including financial promotions

...

### 4.5 Communicating with retail clients

...

#### Innovative finance ISA

4.5.9 G Examples of information about relevant risks (COBS 4.5.2R) that a firm should give a retail client in relation to an innovative finance ISA include:

- (1) an explanation of the tax consequences if:
  - (a) the innovative finance component is a P2P agreement that is not repaid; and
  - (b) an operator of an electronic system in relation to lending which facilitates a P2P agreement fails;
- (2) the procedure for, timing and tax consequences of:
  - (a) withdrawing a P2P agreement from the innovative finance ISA; and
  - (b) a request for transfer of all or part of the innovative finance components in the innovative finance ISA; and
- (3) a warning, as relevant, that it may, or will, not be possible to sell or trade P2P agreements at market value on a secondary market.

4.5.10 G Operators of electronic systems in relation to lending and firms which advise on P2P agreements should also have regard to the guidance in COBS 14.3.7AG and COBS 14.3.7BG regarding the types of information they should provide to clients to explain the specific nature and risks of P2P agreements.

...

## 6 Information about the firm, its services and remuneration

...

## 6.1A Adviser charging and remuneration

Application – Who? What?

- 6.1A.1 R (1) This section applies to a *firm* which makes *personal recommendations to retail clients* in relation to *retail investment products or P2P agreements*.

...

- 6.1A.1A G *Guidance* on the ~~regulated activity~~ *regulated activity* of advising in relation to a new or existing *investment* can be found in *PERG 8.24 to PERG 8.29*. Although the *guidance* in *PERG 8.29.7G* relates to *advising on investments (except P2P agreements)* under article ~~53~~ *53(1)* of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to *PERG 13.3*. The *guidance* in *PERG 8.24 to PERG 8.29* does not apply to the *regulated activity of advising on P2P agreements*.

- 6.1A.1B G In this section, *COBS 6.1A.4AR, COBS 6.1A.4ABR and COBS 6.1A.4BR* are not relevant to a *firm* making *personal recommendations* in relation to *P2P agreements*.

...

Requirement to be paid through adviser charges

- 6.1A.4 R Except as specified in *COBS 6.1A.4AR, COBS 6.1A.4ABR, COBS 6.1A.4ACG and COBS 6.1A.4BR*, a *firm* must:

...

- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product or P2P agreement* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

...

Related and other services

- 6.1A.6 R 'Related service(s)' for the purposes of *COBS 6.1A* includes:

...

- (2) managing a relationship between a *retail client* (to whom the *firm* provides *personal recommendations* on *retail investment products* or *P2P agreements*) and a *discretionary investment manager* or providing a service to such a client in relation to the investments managed by such a manager; or
- (3) recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides *personal recommendations* or other services in relation to *retail investment products* or *P2P agreements*).

6.1A.6A G 'Other services' in COBS 6.1A.6R(3) includes:

- (1) providing information relating to *retail investment products*, *P2P agreements* or *operators of electronic systems in relation to lending* to the *retail client*, for example, general market research; or

...

Guidance on the requirement to be paid through adviser charges

6.1A.7 G ...

6.1A.8 G Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:

- (1) a share of the *retail investment product* charges or *platform service provider's* charges, or *retail investment product* provider's or *platform service provider's* revenues or profits; ~~and~~
- (2) a commission set and payable by a *retail investment product* provider or an operator of an electronic system in relation to lending in any jurisdiction; ~~and~~
- (3) a share of the operator of the electronic system in relation to lending's charges, revenues or profits.

Requirements on a retail investment product provider or operator of an electronic system in relation to lending making a personal recommendation in respect of its own retail investment products or P2P agreements

6.1A.9 R If the *firm* or its *associate* is the *retail investment product* provider or operator of an electronic system in relation to lending, the *firm* must ensure that the level of its *adviser charges* is at least reasonably representative of the services associated with making the *personal recommendation* (and related services).

...

Requirement to use a charging structure

...

6.1A.13 G In determining its charging structure and *adviser charges* a *firm* should have regard to its duties under the *client's best interests rule*. Practices which may indicate that a *firm* is not in compliance with this duty include:

- (1) ...
- (2) allowing the availability or limitations of services offered by third parties to facilitate the payment of *adviser charges* to influence inappropriately its charging structure or *adviser charges*; or
- (3) varying its *adviser charges* inappropriately according to operator of an electronic system in relation to lending.

...

6.1A.14 R A *firm* must not make a *personal recommendation* to a *retail client* in relation to a *retail investment product* or P2P agreement if it knows, or ought to know, that:

A

- (1) the product's charges ~~or~~, the *platform service provider's charges* or the operator of the electronic system in relation to lending's charges are presented in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable by that *retail client*; or
- (2) the product's charges or other payments are maintained by the *retail investment product* provider or operator of the electronic system in relation to lending at a level such that a cash rebate, other than a cash rebate permitted by COBS 6.1B.7AR or COBS 6.1E.10R(2), is payable to the *retail client*.

6.1A.15 G A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *adviser charges* if, for example:

...

- (2) it provides other services to a *retail client* (for example, *advising on a home finance transaction* or *advising on an equity release transaction*), and its *adviser charges* do not represent a reasonable proportion of the costs associated with the *personal recommendation* for the *retail investment product* or P2P agreement and its related services.

...

Ongoing payment of adviser charges

6.1A.22 R A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:

...

(2) the *adviser charge* relates to a *retail investment product* or arrangement with an operator of an electronic system in relation to lending for which an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or service will be provided.

6.1A.22A G To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (*COBS* 6.1A.22R(1)(b)) a *firm* should:

...

(3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* or to assign any P2P agreements to which the ongoing service relates.

...

Disclosure of total adviser charges payable

6.1A.24 R ...

(2) A disclosure under (1) must:

...

(d) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the *adviser charge* is payable and the implications for the *retail client* if the *retail investment product* or arrangement with the operator of an electronic system in relation to lending is cancelled before the *adviser charge* is paid and, if there is no ongoing service, the sum total of all payments.

...

**6.1B Retail investment product provider, operator of an electronic system in relation to lending, and platform service provider requirements relating to adviser charging and remuneration**

Application – Who? What?

6.1B.1 R (1) This section applies to:

(a) a *firm* which is a *retail investment product* provider; ~~and~~

- (b) in relation to *COBS 6.1B.9R*, *COBS 6.1B.10G* and *COBS 6.1B.11G*, a *platform service provider*; and
- (c) a firm which is an operator of an electronic system in relation to lending;

in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product* or *P2P agreement* and also where a *retail investment product* transaction is executed by a *platform service provider* and no *personal recommendation* has been made.

...

6.1B.1A G *Guidance* on the regulated activity of advising in relation to a new or existing *investment* can be found in *PERG 8.24* to *PERG 8.29*. Although the *guidance* in *PERG 8.29.7G* relates to *advising on investments (except P2P agreements)* under article 53 53(1) of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to *PERG 13.3*. The guidance in PERG 8.24 to PERG 8.29 does not apply to the regulated activity of advising on P2P agreements.

6.1B.1B G In this section, COBS 6.1B.5AR and COBS 6.1B.7AR are not relevant in circumstances where a retail client receives a personal recommendation in relation to a P2P agreement.

...

6.1B.3 G This section applies to a *firm* when it makes a *personal recommendation* on a *retail investment product* or *P2P agreement* and where a *retail investment product* for which it is the *retail investment product* provider or *P2P agreement* which it facilitates as the *operator of an electronic system in relation to lending* is the subject of a *personal recommendation* made by another *firm*.

...

Distinguishing product and P2P platform charges from adviser charges

6.1B.7 R A *firm* must:

- (1) take reasonable steps to ensure that its *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* are not structured so that they could mislead or conceal from a *retail client* the distinction between those charges and any *adviser charges* payable in respect of its *retail investment products* or *investments in P2P agreements* made through the system

of which it is the operator of an electronic system in relation to lending;

- (2) not include in any marketing materials in respect of its *retail investment products*, the service it offers as an operator of an electronic system in relation to lending or facilities for collecting *adviser charges* any statements about the appropriateness of levels of *adviser charges* that a *firm* could charge in making *personal recommendations* or providing related services in relation to its *retail investment products* or investments through the system in relation to which it is the operator of an electronic system in relation to lending; and
- (3) not defer, discount or rebate *retail investment product charges* or its charges as an operator of an electronic system in relation to lending in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable, including by maintaining *retail investment product charges* or its charges as an operator of an electronic system in relation to lending at a level such that a cash rebate, other than a cash rebate permitted by *COBS* 6.1B.7AR or *COBS* 6.1E.10R(2), is payable to the *retail client*.

...

Requirements on firms facilitating the payment of adviser charges

...

- 6.1B.11 G *COBS* 6.1B.9R(3) does not prevent a *firm*, if this is in the *retail client's* best interests, from entering into an agreement with another *firm* which is providing a *personal recommendation* to a *retail client*, or with a *retail client* of such a *firm*, to provide it with *credit* separately in accordance with the *rules* on providing credit and other benefits to *firms* that advise on *retail investment products* or P2P agreements (*COBS* 2.3.12E and *COBS* 2.3.12AG).

## 6.2A Describing advice services

Application – Who? What?

...

- 6.2A.1B G *P2P agreements* are not *retail investment products*. This section does not apply to a *firm* when it is *advising on P2P agreements*.

...

## 9 Suitability (including basic advice)

## 9.1 Application and purpose provisions

...

Making personal recommendations

- 9.1.1 R This chapter applies to a *firm* which makes a *personal recommendation* in relation to a *designated investment* (~~other than a *P2P agreement*~~).

...

Managing investments

- 9.1.3 R ...

- 9.1.3A G This chapter does not apply to a *firm* which *manages investments* when that *firm* takes a decision to trade for a *client* and that decision relates to a *P2P agreement*. This is because the *regulated activity of managing investments* does not extend to the management of assets where those assets are *P2P agreements*.

...

## 14 Providing product information to clients

...

### 14.3 Information about designated investments

Application

- 14.3.1 R This section applies to a *firm* in relation to:
- (1) ...
  - (2) the following *regulated activities* when carried on for a *retail client*:
    - (a) making a *personal recommendation* about a *designated investment* (~~other than a *P2P agreement*~~); or

...

...

P2P agreements

- 14.3.7A G Examples of information a *firm* should provide to explain the specific nature and risks of a *P2P agreement* include:

...

(3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the firm operator of the electronic system in relation to lending considers the borrower eligible for a *P2P agreement*;

...

(8) an explanation of the firm's operator of the electronic system in relation to lending's procedure for dealing with a loan in late payment or default;

(9) the procedure for a lender to access their money before the term of the *P2P agreement* has expired; and

(10) an explanation of what would happen if the firm operator of the electronic system in relation to lending fails, including confirmation that there is no recourse to the Financial Services Compensation Scheme.

14.3.7B G The guidance in COBS 14.3.7AG is relevant both to firms which are operators of electronic systems in relation to lending and firms advising on P2P agreements.

14.3.7C G Firms providing information to clients, and communicating information, about an innovative finance ISA should also have regard to the guidance in COBS 4.5.9G.

## Annex F

### Amendments to the Client Assets sourcebook (CASS)

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

#### 7 Client money rules

...

#### 7.10 Application and purpose

7.10.1 R This chapter applies to a *firm* that receives *money* from or holds *money* for, or on behalf of, a *client* in the course of, or in connection with, its:

...

(2) *designated investment business*; and/or

(3) *stocks and shares ISA business*; and/or

(4) *innovative finance ISA business*;

...

## Annex G

### Amendments to the Supervision manual (SUP)

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

#### 10A FCA Approved Persons

##### 10A.1 Application

...

Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries.

- 10A.1.18 R The descriptions of *FCA significant-influence functions*, other than the *FCA required functions*, and, if the *firm* is a *MiFID investment firm*, the *FCA governing functions* do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:

...

- (5) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity* (except *advising on P2P agreements*).

...

##### 10A.10 Customer-dealing functions

...

Customer function (CF 30)

...

- 10A.10.9 G The *FCA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC 2.1.9R(2)* provides that the *firm* will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC 2.1.9R(2)* are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products*, *gives advice on P2P agreements* to *retail clients* or is a *broker fund adviser*). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see *TC 2.1.9R(2)*).

...

## 10A Frequently asked questions

### Annex

#### 1G

...

How does the customer function relate to the training and competence requirements?			
Activity	Products/sectors in TC Appendix 1	FCA controlled function	SUP
Advising only,	2 - 9 <u>9A</u>	<i>customer function</i> (CF 30)	10A.10.4R
...			

## 12 Appointed representatives

...

### 12.2 Introduction

...

Business for which an appointed representative is exempt

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:

...

(i) *advising on investments (except P2P agreements)* (article ~~53~~ 53(1) of the *Regulated Activities Order*) (that is in summary, on any *designated investment* (other than a *P2P agreement*), *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

(ia) *advising on P2P agreements* (article 53(2) of the *Regulated Activities Order*);

...

...

...

## 12.5 Contracts: required terms

Required contract terms for all appointed representatives

...

### 12.5.2 G ...

(2) Under the *Appointed Representative Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:

...

(c) gives advice (within article ~~53~~ 53(1) of the *Regulated Activities Order* (Advising on investments)) on the merits of entering into investment transactions with other counterparties;

...

(ia) facilitates a person assuming the rights of the lender under an article 36H agreement (within the meaning of the Regulated Activities Order) by assignment or operation of law on behalf of other counterparties;

(j) carries on any of the other activities specified in article 36H(3) of the *Regulated Activities Order* on behalf of other counterparties in the course of, or in connection with, facilitation mentioned in (i) or (ia) by the *appointed representative* or its principal;

(ja) gives advice (within article 53(2) of the Regulated Activities Order) on the merits of:

(i) a person entering into a 'relevant article 36H agreement' (within the meaning of the Appointed Representatives Regulations) as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law; or

(ii) a person providing instructions to a P2P platform operator with a view to entering into a 'relevant article 36H agreement' as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the

instructions involve:

- (A) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or
- (B) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or
- (C) specifying the parameters of the terms of the agreement by other means; or
- (iii) a person enforcing or exercising the lender's rights under a 'relevant article 36H agreement'; or
- (iv) a person assigning rights under a 'relevant article 36H agreement';

on behalf of other counterparties;

...

...

...

## 16 Reporting requirements

### 16.1 Application

...

- 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
...		
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:	Entire sections
	...	
	(ia)	<u>a firm with permission only to advise on P2P agreements (unless that activity is carried on exclusively with or for</u>

		<i>professional clients</i> );	
	...		
	(k)	a <i>firm</i> falling within a combination of (i), <u>(ia)</u> , (j) and (ja).	

...

## 16.12 Integrated Regulatory Reporting

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date
...				
RAG 3	<p>...</p> <ul style="list-style-type: none"> <li>advising on investments <u>(except P2P agreements)</u> (excluding retail investment activities)</li> <li><u>advising on P2P agreements (when carried on exclusively with or for professional clients)</u></li> </ul> <p>...</p>	...	...	...
...				

RAG 7	<ul style="list-style-type: none"> <li>• retail investment activities</li> <li>• <u>advising on P2P agreements (except when carried on exclusively with or for professional clients)</u></li> <li>• advising on pensions transfers &amp; opt-outs</li> <li>• arranging (bringing about deals) in retail investments</li> </ul>	...	...	...
...				

...

16.12.22A R ...

Description of data item	Firms' prudential category and applicable data item (note 1)
...	
Note 26	This item only applies to <i>firms</i> that provide advice on <i>retail investment products</i> and <i>P2P agreements</i> .
...	

...

16 Annex  
18BG

**Notes for Completion of the Retail Mediation Activities Return ('RMAR')**

...

**Scope**

6. The following *firms* are required to complete the sections of the *RMAR* applicable to the activities they undertake as set out in *SUP* 16.12:

...

- (c) *personal investment firms*; ~~and~~
- (d) other investment *firms* that have ~~retail customers~~ *clients* (defined as *retail investment firms*), and have *permission* to carry on the following activities in relation to *retail investment products*: ...

...

*Retail investment products* are defined as:

- (a) ...

...

whether or not any of (a) to (h) are held within an *ISA* or a *CTF*; and

- (e) other investment firms that have permission to advise on P2P agreements and do not carry on that activity exclusively with or for professional clients.

For the purposes of completing the *RMAR* in relation to the activity of advising on P2P agreements only, ‘retail investments’ and ‘retail investment products’ should be understood as including P2P agreements, and references to retail investment advising and retail investment activity should be understood as including advice on P2P agreements.

The practical effect of the ~~retail customer~~ *client* limitation in the definition of *retail investment firms* is to exclude from the requirements *firms* that carry on *retail investment activities* exclusively with or for ~~professional customers~~ *clients* or *eligible counterparties*.

...

## **Section F: the *threshold conditions***

### **Sub-heading: close links**

This section relates to *threshold condition* 3. *Firms* should consult *COND* 2.3, as well as Chapter 11 of the Supervision Manual (*‘SUP’*).

*Sole traders*, ~~and firms~~ which have ~~permission~~ *permission* to carry on *retail investment activities* only, *firms with permission only to advise on P2P agreements (unless that activity is carried on exclusively with or for professional clients)* or *firms* which have *permission* to carry on only one, or only both of:

- *insurance mediation activity*; or
- *home finance activity*;

and are not subject to the requirements of SUP 16.4 or SUP 16.5 (requirement to submit annual controllers report; or annual close links reports), will submit these reports in RMAR section F instead.

...

### Appendix 3 Guidance on passporting issues

...

#### App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and Insurance Mediation Directive to the Regulated Activities Order

...

#### App 3.9.4 G Activities set out in Annex 1 of the CRD

Table 1: CRD activities		Part II RAO Activities	Part III RAO Investments
...			
8.	Participation in share issues and the provision of services relating to such issues	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 89
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-80, 83-85, 89

...			
11.	Portfolio management and advice	Article 14, 21, 25, 37, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89
...			
...			

App  
3.9.5

G Services set out in Annex I to MiFID

Table 2: <i>MiFID investment services and activities</i>		Part II RAO Investments	Part III RAO Investments
	<i>A MiFID investment services and activities</i>		
...			
5.	Investment advice	Article <del>53</del> <u>53(1)</u>	Article 76-81, 83-85, 89
...			
	Ancillary services	Part II RAO Activities	Part III RAO Investments
...			
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-80, 83-85, 89
4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 83-85, 89
5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89

6.	Services related to underwriting	Article 25, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89
7.	Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.	Article 14, 21, 25, 25D, 37, <del>53</del> <u>53(1)</u> , 64	Article 83 and 84
...			

App  
3.9.5A

G Activities set out in article 6(2) to (4) of AIFMD

<b>Table 2ZA: AIFMD activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
...			
3.	Investment advice (Note 2).	Articles <del>53</del> <u>53(1)</u> , 64	Articles 76 to 81, 83 to 85, 89
...			
...			

App  
3.9.6

G Activities set out in Article 6(2) and (3) of the UCITS Directive

<b>Table 2A: UCITS Directive activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
...			
3.	Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i>	Articles <del>53</del> <u>53(1)</u> , 64	Articles 76-81, 83-85, 89
...			

...

App  
3.9.7

G Activities set out in Article 2(3) of the IMD

<b>Table 2B: Insurance Mediation Directive activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
1.	Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance	Articles 25, <del>53</del> <u>53(1)</u> and 64	Articles 75, 89 (see Note 1)
2.	Concluding contracts of insurance	Articles 21, 25, <del>53</del> <u>53(1)</u> and 64	Articles 75, 89
...			

...

## Annex H

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(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 ~~4~~ 6 April 2016) 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 1G*);

...

...

### 2 Annex 1G Regulated activities for the Voluntary Jurisdiction at ~~4~~ 6 April 2016

This table belongs to *DISP 2.5.1 R*

The activities which were covered by the *Compulsory Jurisdiction* (at ~~4~~ 6 April 2016) were:

...

The activities which (at ~~4~~ 6 April 2016) 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*:

...

(26) *advising on investments* (*except P2P agreements*) (article ~~53~~ 53(1));

(26A) advising on P2P agreements (article 53(2));

...

## Annex I

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

#### 6 Operating duties and responsibilities

...

#### 6.9 Independence, names and UCITS business restrictions

...

Restrictions of business for UCITS management companies

6.9.9 R A *UCITS management company* must not engage in any activities other than:

...

(5) *advising on investments (except P2P agreements)* where:

...

...

## Annex J

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 1 Introduction to the Perimeter Guidance manual

...

#### 1.2 Introduction

...

1.2.3A G Except in *PERG 2* and *PERG 7*, where *PERG* uses the defined term of *advising on investments*, this term refers only to the *regulated activity* (in article 53(1) of the *Regulated Activities Order*) of *advising on investments* (except *P2P agreements*) and related text should be read and construed accordingly.

...

#### 2 Authorisation and regulated activities

...

#### 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. ...

...

(2) Except as stated in *PERG 2.3.2G(2A)* and *PERG 2.3.2G(3)*, the business element is not to be regarded as satisfied for any of the *regulated activities* carried on in relation to *securities* or *contractually based investments* (or for those *regulated activities* carried on in relation to 'any property') unless a *person* carries on the business of engaging in one or more of the activities. This also applies to the *regulated activities* of *advising on P2P agreements*, *advising on a home finance transaction* and *arranging a home finance transaction*. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.

...

...

## 2.6 Specified investments: a broad outline

...

Rights under a credit agreement and an article 36H 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. In accordance with article 36H(10) of the *Regulated Activities Order*, rights under an article 36H agreement are also *specified investments*. The definition of an article 36H agreement is set out in *PERG 2.7.7HG*. In addition and in accordance with article 53(5) of the *Regulated Activities Order*, rights under a 'relevant article 36H agreement' (within the meaning of that Order) are also *specified investments*.

...

## 2.7 Activities: a broad outline

...

Effecting or carrying out contracts of insurance as principal

...

- 2.7.4 G In addition, certain other activities carried on in relation to rights under *contracts of insurance* are *regulated activities*. These are where the activity is carried on in relation to:

...

- (2) rights under any *contract of insurance*, where the *regulated activities* concerned are:

...

- (d) *advising on investments (except P2P agreements)* (see *PERG 2.7.15G*); and

...

...

...

Operating an electronic system in relation to lending

- 2.7.7H G ...

- (2) To be caught, all of the following conditions must be met:
- ...
- (b) A, or another *person* (“X”) acting under an arrangement with A or at A’s direction, undertakes to:
- (i) receive payments in respect of interest ~~and~~ or capital or both due under the article 36H agreement from C; and
  - (ii) make payments in respect of interest ~~and~~ or capital or both due under the article 36H agreement to B; and
- ...
- ...
- (4) ~~An~~ Subject to the condition in (4A), an article 36H agreement is an agreement by which one *person* provides another *person* with *credit* and either of the following conditions is satisfied, or was satisfied at the time the agreement was entered into:
- ...
- (4A) It is a condition to be an article 36H agreement that A does not provide *credit*, assume the rights (by *assignment* or operation of law) of a *person* who provided *credit*, or receive *credit* under the agreement.
- ...
- (6A) A *person* operating an *electronic system in relation to lending* (A) also carries on a *regulated activity* where they operate an *electronic system*:
- (a) that enables A to facilitate a *person* (B) assuming the rights of the *lender* under an article 36H agreement by *assignment* or operation of law; and
  - (b) that meets all of the conditions in *PERG 2.7.7HG(2)*, where C is the *borrower* under the agreement in (a).
- (7) 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) or (6A):
- (a) presenting or offering article 36H agreements to B ~~and~~ or C with a view to B becoming the *lender* under the article 36H agreement ~~and~~ or C becoming the *borrower* under the

- article 36H agreement; or
- (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; or
  - (c) Taking steps to procure the payment of a debt due under an article 36H agreement; or
  - (d) ~~performing duties, or exercising or enforcing~~ taking steps to perform duties or exercise or enforce rights under an article 36H agreement on behalf of the *lender*; or
  - (e) taking steps with a view to ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*; or
  - (f) taking steps with a view to ascertaining the contents of such information; or
  - (g) taking steps with a view to securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information; or
  - (h) taking steps with a view to securing that a *credit information agency* which holds such information stops holding the information, or does not provide it to any other *person*; or
  - (i) giving advice in relation to the taking of any of the steps in (e) to (h).

...

#### Providing basic advice on stakeholder products

- 2.7.14A G This activity covers advice in the form of a recommendation given to a retail *consumer*. The recommendation must relate to a *stakeholder product* and certain conditions must be met. These conditions are based on the need for the adviser to make an assessment of the *consumer's* needs based on the answers that the *consumer* provides to a series of pre-scripted questions. A fuller description of the activity is given in *PERG 2.7.14BG* and explains what is meant by "retail customer". This activity is separate to the *regulated activity of advising on investments (except P2P agreements)* (see *PERG 2.7.15G* (Advising on investments)). The existence of this separate advising activity does not prevent a *person* from giving advice on *stakeholder products* in circumstances that do not satisfy the conditions set out in *PERG 2.7.14BG*. But such advice is likely to amount to *advising on investments (except P2P agreements)* unless the *stakeholder product* is a *deposit*. Neither does the existence of the activity prevent a *person* from selling *stakeholder*

*products* in any other manner provided the *person* has the appropriate *permission*.

...

Advising on investments

2.7.14C G There are two *regulated activities* which constitute *advising on investments* in article 53 of the *Regulated Activities Order*. These are:

(1) *advising on investments (except P2P agreements)* (in article 53(1) of the *Regulated Activities Order*); and

(2) *advising on P2P agreements* (in article 53(2) of the *Regulated Activities Order*).

~~Advising on investments~~

2.7.15 G The *regulated activity* of *advising on investments (except P2P agreements)* under article ~~53~~ 53(1) of the *Regulated Activities Order* applies to advice on *securities* or *relevant investments*. ... However, the context in which something is communicated may affect its character; for example, if a *person* gives information on share price against the background that, when he does so, that will be a good time to sell, then this will constitute *advising on investments (except P2P agreements)*.

2.7.16 G ... Further *guidance* on the meaning of *advising on investments (except P2P agreements)* is in *PERG* 8.24 (*Advising on investments*).

2.7.16A G In certain circumstances, the activity of *advising on investments (except P2P agreements)* can also amount to *providing basic advice on a stakeholder product* (see *PERG* 2.7.14AG (*Providing basic advice on stakeholder products*)).

2.7.16AA G The *regulated activity* of *advising on P2P agreements* under article 53(2) of the *Regulated Activities Order* applies to advice given to a *person* in their capacity as a *lender* or potential *lender* under a relevant article 36H agreement (defined in article 53(4) of the *Regulated Activities Order*), or as an agent for a *lender* or potential *lender* under such an agreement, where that advice is on the merits of their doing any of the following (whether as principal or agent):

(1) entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law; or

(2) providing instructions to a *P2P platform operator* with a view to entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law, where the instructions involve:

- (a) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or
- (b) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or
- (c) specifying the parameters of the terms of the agreement by other means; or
- (3) enforcing or exercising the lender's rights under a relevant article 36H agreement; or
- (4) assigning rights under a relevant article 36H agreement.

...

## 2.8 Exclusions applicable to particular regulated activities

...

Arranging deals in investments and arranging a home finance transaction

...

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.

...

- (1) ... This will require something more than the mere giving of advice (although giving such advice may be the *regulated activity* of *advising on investments (except P2P agreements)* or *advising on home finance transactions*).

...

...

Operating an electronic system in relation to lending

2.8.6D G (1) An activity of a kind specified below is excluded from the *regulated activity* of *operating an electronic system in relation to lending*:

...

- (d) *managing investments; and*
- (e) *advising on investments (except P2P agreements).*

(1A) The regulated activity of *advising on P2P agreements* does not apply where such advice is given in relation to a relevant article 36H

agreement (defined in article 53(4) of the *Regulated Activities Order*) which has been facilitated by the *person* giving the advice in the course of carrying on an activity specified by article 36H of the *Regulated Activities Order* and is given by:

- (a) an authorised person with permission to carry on the regulated activity of operating an electronic system in relation to lending; or
- (b) an appointed representative in relation to the regulated activity of operating an electronic system in relation to lending; or
- (c) an exempt person in relation to the regulated activity of operating an electronic system in relation to lending; or
- (d) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to the regulated activity of operating an electronic system in relation to lending.

...

...

Debt adjusting, debt counselling, debt collecting and debt administration

...

2.8.7D G The regulated activity of advising on P2P agreements does not apply in so far as the advice is given in the course of carrying on an activity of a kind specified by:

- (1) article 39F of the *Regulated Activities Order* (debt collecting); or
- (2) article 39G of the *Regulated Activities Order* (debt administration);

by a person carrying on that activity not in contravention of the general prohibition.

...

**2 Annex 2G Regulated activities and the permission regime**

...

Table 1: Regulated Activities (excluding PRA-only activities) [see note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the

	<b>regulated activity (in the corresponding section of column one) may be carried on</b>
...	
<b>Designated investment business [see notes 1A, 1B and 1C to Table 1]</b>	
<p>...</p> <p>(j) <i>advising on investments (except P2P agreements)</i> (article 53 53(1) [see note 1B to Table 1] [also see Section of Table 1 headed ‘Regulated mortgage activity’]</p> <p>...</p> <p>(ja) <i>advising on conversion or transfer of pension benefits</i> (article 53E) is contained in the permission of <i>advising on pension transfers and pension opt-outs</i> [see note 4 to Table 1] <i>advising on P2P agreements</i> (article 53(2)) [see note 9 to Table 1]</p> <p>(jb) <i>advising on conversion or transfer of pension benefits</i> (article 53E) is contained in the permission of <i>advising on pension transfers and pension opt-outs</i> [see note 4 to Table 1]</p> <p>...</p>	
<b>Insurance mediation activity [see note 5A to Table 1]</b>	
<p>...</p> <p>(pf) <i>advising on investments (except P2P agreements)</i> (article 53 53(1))</p> <p>...</p>	

Notes to Table 1
...
<p>Note 1A:</p> <p><i>Funeral plan contracts are contractually based investments. Accordingly, the following are regulated activities when carried on in relation to a funeral plan contract: (a) arranging (bringing about) deals in investments, (b) making arrangements with a view to transactions in investments, (c) managing investments, (d) safeguarding and administering investments, (e) advising on investments (except P2P agreements), (f) sending dematerialised instructions and (g) causing dematerialised instructions to be sent (as well as agreeing to carry on each of the activities listed in (a) to (g)). However, they are not designated investment business.</i></p>
...
<p>Note 4:</p> <p>For the purposes of the <i>permission</i> regime, the activity in (j)(ii) of <i>advising on pension transfers and pension opt-outs</i> includes the following two <i>regulated activities</i>: (1) <i>advising on investments (except P2P agreements)</i> where it is carried on in respect of the following <i>specified investments</i>: ...</p>
...
<p>Note 9:</p> <p>...</p> <p>For the purposes of <i>operating an electronic system in relation to lending</i>, rights under a <i>credit agreement</i> include rights under an article 36H agreement within the meaning of article 36H (4) of the <i>Regulated Activities Order</i>.</p> <p><u>For the purposes of <i>advising on P2P agreements</i>, rights under a <i>credit agreement</i> include rights under a relevant article 36H agreement within the meaning of article 53(4) of the <i>Regulated Activities Order</i>.</u></p>
...

...

**5 Guidance on insurance mediation activities**

...

**5.2 Introduction**

...

Approach to implementation of the IMD

...

- 5.2.8 G It follows that each of the *regulated activities* below potentially apply to any *contract of insurance*:

...

- (5) *advising on investments (except P2P agreements)* (article ~~53~~ 53(1) (Advising on investments));

...

...

### 5.3 Contracts of insurance

...

Specified investments

- 5.3.9 G For an activity to be a *regulated activity*, it must be carried on in relation to 'specified investments'...

...

*'Relevant investments'* is the term used in articles 21 (Dealing in investments as agent), 25 (Arranging deals in investments) and ~~53~~ 53(1) (Advising on investments (except P2P agreements)) of the *Regulated Activities Order* to help define the types of investment to which the activities in each of these articles relate.

...

### 5.8 The regulated activities: advising on contracts of insurance

- 5.8.1 G Article ~~53~~ 53(1) of the *Regulated Activities Order* (Advising on Investments (except P2P agreements)) makes advising on *contracts of insurance* a *regulated activity*. ...

- 5.8.2 G For advice to fall within article ~~53~~ 53(1), it must: ...

...

Advice must relate to a particular contract of insurance

- 5.8.4 G Advice about *contracts of insurance* will come within the *regulated activity* in article ~~53~~ 53(1) of the *Regulated Activities Order* only if it relates to a particular *contract of insurance*. So, generic or general advice will not fall

under article 53 53(1). In particular:

(1) advice would come within article 53 53(1) if it took the form of a recommendation that a *person* should *buy* the ABC Insurers motor insurance;

...

(3) the table in *PERG 5.8.5G* identifies several typical recommendations and indicates whether they will be regarded as advice under article 53 53(1).

5.8.5 G Typical recommendations and whether they will be regulated as advice on contracts of insurance under article 53 53(1) of the *Regulated Activities Order*. This table belongs to *PERG 5.8.4G*.

Recommendation	Regulated under article 53 53(1) or not?
...	

Advice given to a person in his capacity as an investor or potential investor

5.8.6 G For the purposes of article 53 53(1), advice must be given to a *person* in his capacity as an investor or potential investor (which, in the context of *contracts of insurance*, will mean as *policyholder* or potential *policyholder*). So, article 53 53(1) will not apply where advice is given to *persons* who receive it as: ...

5.8.7 G Advice will still be covered by article 53 53(1) even though it may not be given to any particular *policyholder* (for example, advice given in a periodical publication or on a website).

Advice or information

...

5.8.10 G In the case of article 53 53(1), information relating to *buying* or *selling contracts of insurance* may often involve one or more of the following: ...

5.8.11 G In the *FCA's* opinion, however, such information is likely to take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. Examples of situations where information provided by a *person* (P) might take the form of advice are given below.

...

(2) P may, as a result of going through the sales process, discuss the merits of one *contract of insurance* over another, resulting in advice to enter into a particular one. In contrast, advice on how to complete an application form, without an explicit or implicit recommendation on the merits of *buying* or *selling* the *contract of insurance* whilst

'advice' in the general sense of the word, is not, in the view of the FCA, advice within the meaning of article 53 53(1). ...

Advice must relate to the merits (of buying or selling a contract of insurance)

5.8.12 G Advice under article 53 53(1) relates to the advantages and disadvantages of *buying, selling*, subscribing for or underwriting a particular *contract of insurance*. ...

...

5.8.14 G Generally speaking, advice on the merits of using a particular *insurance undertaking*, broker or adviser in their capacity as such, does not amount to advice for the purpose of article 53 53(1). ...

...

Medium used to give advice

5.8.20 G With the exception of:

...

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article 53 53(1).

...

## 5.10 Renewals

5.10.1 G It must be emphasised that activities which concern invitations to renew *policies* and the subsequent effecting of renewal of *policies* are likely to fall within *insurance mediation activity*. ... Where it contains a recommendation to renew existing cover this is likely to constitute *advising on investments (except P2P agreements)* (under article 53 53(1) of the *Regulated Activities Order*). ...

...

## 5.15 Illustrative tables

...

5.15.4 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
MARKETING AND EFFECTING INTRODUCTIONS		
...		

<p>Recommending a broker/<i>insurance undertaking</i> and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)</p>	<p>Yes, but article 72C may be available.</p>	<p>This will constitute making arrangements under article 25(2). But, the exclusion in article 72C will apply if all the intermediary does is supply information to the customer and the conditions of article 72C are otherwise met (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). Generally, this will not amount to advice under article <del>53</del> <u>53(1)</u> unless there is an implied recommendation of a particular <i>policy</i> (see <i>PERG</i> 5.8.4G), in which case article 72C would not be available.</p>
<p>...</p>		
<p>PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE</p>		
<p>...</p>		
<p>Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several <i>policies</i> which suit the answers given)</p>	<p>Yes. Subject to article 72C exclusion where available.</p>	<p>This will constitute <i>arranging</i> although article 72C may be of application (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). If there is no express or implied recommendation of a particular <i>policy</i>, this activity will not amount to advice under article <del>53</del> <u>53(1)</u> (see <i>PERG</i> 5.8.15G to <i>PERG</i> 5.8.19G).</p>
<p>Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies</p>	<p>Possibly. Article 72C available.</p>	<p>This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments</i> (<u>except</u></p>

		<i>P2P agreements</i> ) (see <i>PERG 5.8.8G</i> (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments (except P2P agreements)</i> , article 72C may be of application (see <i>PERG 5.6.5G</i> to <i>PERG 5.6.9G</i> ), and where information is provided by a professional in the course of a profession, article 67 may apply (see <i>PERG 5.11.9G</i> to <i>PERG 5.11.12G</i> ).
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article <del>53</del> <u>53(1)</u> (see <i>PERG 5.8.4G</i> to <i>PERG 5.8.5G</i> ).
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article <del>53</del> <u>53(1)</u> (see <i>PERG 5.8.4G</i> to <i>PERG 5.8.5G</i> ).
...		

...

## 7 Periodical publications, news services and broadcasts: applications for certification

### 7.1 Application and purpose

#### Application

- 7.1.1 G This chapter applies to anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about *securities*, *relevant investments*, *P2P agreements* or *home finance transactions*...

...

### 7.3 Does the activity require authorisation?

Advising on investments and advising on home finance transactions

7.3.1 G Under article ~~53~~ 53(1) of the *Regulated Activities Order* (Advising on investments), advising a *person* is a specified kind of activity if:

...

7.3.1-A G Under article 53(2) of the *Regulated Activities Order* (Advising on investments), advising a *person* is a specified kind of activity if:

- (1) the advice is given to the *person* in their capacity as a *lender* or potential *lender* under a relevant article 36H agreement (defined in article 53(4) of the *Regulated Activities Order*) or as an agent for a *lender* or potential *lender* under such an agreement; and
- (2) it is advice on the merits of their doing any of the following (whether as principal or agent):
  - (a) entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law; or
  - (b) providing instructions to a *P2P platform operator* with a view to entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by *assignment* or operation of law, where the instructions involve:
    - (i) accepting particular parameters for the terms of the agreement presented by a *P2P platform operator*; or
    - (ii) choosing between options governing the parameters of the terms of the agreement presented by a *P2P platform operator*; or
    - (iii) specifying the parameters of the terms of the agreement by other means; or
  - (c) enforcing or exercising the *lender's* rights under a relevant article 36H agreement; or
  - (d) assigning rights under a relevant article 36H agreement.

...

Carrying on the regulated activity by way of business

...

- 7.3.4 G ... For example, a newspaper may reply to readers' letters to generate goodwill or to generate a supply of further material that it can publish or a website that is 'free' to the user will be sponsored or paid for by advertising. In such cases, if advice on *securities*, *relevant investments*, *P2P agreements* or *home finance transactions* is given, then, in the *FCA*'s view, the business of *advising on investments* or *advising on a home finance transaction* is being carried on. ...

...

Carrying on the regulated activity in the United Kingdom

...

- 7.3.7 G ... The effect of this is that, where the principal purpose of an overseas periodical publication is to offer advice on *securities* or *relevant investments* or *P2P agreements* and *home finance transactions*, the exclusion for an *overseas person* who provides advice to *persons* in the *United Kingdom* as a result of a legitimate approach will not apply to the advice concerning *home finance transactions*.

...

#### 7.4 Does the article 54 exclusion apply?

The formats

...

- 7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:
- (1) to advise on *securities* or *relevant investments* or *P2P agreements* or *home finance transactions* or amounts to carry on *advising on conversion or transfer of pension benefits*; or
  - (2) to lead or enable *persons*:
    - (a) ...
    - (aa) to enter into a relevant article 36H agreement (within the meaning of article 53(4) of the *Regulated Activities Order*) as a *lender*, to assume the rights of a *lender* under such an agreement by *assignment* or operation of law, or to assign rights under such an agreement; or

...

...

The principal purpose test

- 7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:
- (1) to give advice on *securities, relevant investments, P2P agreements* or *home finance transactions* (see PERG 7.3.1G); or
  - (2) to lead or enable *persons* to:
    - (a) ...
    - (aa) enter into a relevant article 36H agreement (within the meaning of article 53(4) of the Regulated Activities Order) as a lender, to assume the rights of a lender under such an agreement by assignment or operation of law, or to assign rights under such an agreement; or

...

- 7.4.9 G For the second disqualifying purpose, the focus switches to assessing whether the principal purpose of a publication or service is to lead a *person* to engage in a relevant transaction or enable him to do so. ...

...

In the *FCA's* view, material will not lead or enable a *person* to engage in a relevant transaction where the material is intended merely to raise people's awareness of matters relating to *securities, relevant investments, P2P agreements* or *home finance transaction*.

...

## 8 Financial promotion and related activities

...

### 8.23 Regulated activities

...

- 8.23.5 G As explained in PERG 1.2.3AG, where the guidance that follows uses the defined term *advising on investments*, this term should be read as referring only to the regulated activity (in article 53(1) of the Regulated Activities Order) of *advising on investments (except P2P agreements)*. Related text should be construed accordingly.

**8.24 Advising on investments**

8.24.1 G Under article ~~53~~ 53(1) of the *Regulated Activities Order*, *advising on investments (except P2P agreements)* covers advice which:

...

...

**8.25 Advice must relate to an investment which is a security or contractually based investment**

8.25.1 G For the purposes of article ~~53~~ 53(1) of the *Regulated Activities Order*, a *security* or *relevant investment* is any one of the following:

...

8.25.2 G Article ~~53~~ 53(1) does not apply to advice given on any of the following:

...

...

**8.26 The investment must be a particular investment**

8.26.1 G For the purposes of article ~~53~~ 53(1), advice must relate to a particular *investment* – generic or general advice is not covered. Generic or general advice may, however, be a *financial promotion* (see *PERG* 8.4).

8.26.2 G Generic advice will not be caught by article ~~53~~ 53(1). Examples of generic advice may include:

...

8.26.3 G In the *FCA's* view, guiding a *person* through a decision tree should not, of itself, involve advice within the meaning of article ~~53~~ 53(1) (it should be generic advice). For example, helping a *person* to understand what the questions or options are and how to determine which option applies to his particular circumstances. But a recommendation that the *person* concerned should, if the results of using the decision tree so indicate, buy a stakeholder personal pension from a particular provider (or any other particular *investment*) would be advice for the purpose of article ~~53~~ 53(1). An *unauthorised person* guiding another through a decision tree needs to make it clear that the decision tree aids generic decisions and that the *person* doing the guiding is not recommending any particular *investment*.

...

**8.27 Advice to be given to persons in their capacity as investors (on the merits of their investing as principal or agent)**

- 8.27.1 G For the purposes of article ~~53~~ 53(1), advice must be given to or directed at someone who either holds *investments* or is a prospective investor (or their agent). Where the *investment* is a risk-only *contract of insurance* such as house contents insurance, the *policyholder* or prospective *policyholder* is regarded as an investor.
- 8.27.2 G Article ~~53~~ 53(1) does not apply where the advice is given to *persons* who receive it as:  
...
- 8.27.3 G Article ~~53~~ 53(1) does not apply to advice given to a *person* (such as an independent financial adviser) who is acting as an agent for an investor if it does not relate to a transaction into which the *person* is to enter as agent for the investor.
- 8.27.4 G Article ~~53~~ 53(1) does apply where the recipient is someone who invests on behalf of other *persons* (whether as a principal or agent), such as:  
...
- 8.27.5 G Advice will still be covered by article ~~53~~ 53(1) even though it may not be given to or directed at a particular investor (for example, advice given in a periodical publication or on a website). The expression ‘investor’ has a broad meaning and will include institutional or professional investors.

**8.29 Advice must relate to the merits (of buying or selling a particular investment)**

...

- 8.29.3 G Neither does advice on the merits of using a particular stockbroker or investment manager in his capacity as such amount to advice for the purpose of article ~~53~~ 53(1). This is because it is not advice on the merits of *buying* or *selling* an *investment*.  
...
- 8.29.5 G Without an explicit or implicit recommendation on the merits of *buying* or *selling* an *investment*, advice will not be covered by article ~~53~~ 53(1) if it is advice on:  
...
- 8.29.6 G Advice as to what might happen to the price or value of an *investment* if certain events were to take place, however, may be covered by article ~~53~~ 53(1) in some circumstances.

- 8.29.7 G Typical recommendations and whether they will be regulated as *advising on investments (except P2P agreements)* under article 53 53(1) of the *Regulated Activities Order*. This table belongs to *PERG* 8.29.1G to *PERG* 8.29.6G.

Recommendation	Regulated under article 53 <u>53(1)</u> or not?
...	

### 8.30 Medium used to give advice or information

- 8.30.1 G With the exception of periodicals, broadcasts and other news or information services (see *PERG* 8.31.2G), the medium used to give advice should make no difference to whether or not it is caught by article 53 53(1).

...

- 8.30.3 G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problems. The provider of the service will be giving advice for the purpose of article 53 53(1) only if the service results in something more than a generic recommendation, as with a paper version.

...

- 8.30.5 G ... These signals are liable, as a general rule, to be advice for the purposes of article 53 53(1) (as well as *financial promotions*) given by the *person* responsible for the provision of the software. ...

### 8.31 Exclusions for advising on investments

...

- 8.31.2 G As respects article 53 53(1), the main exclusion relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54: Advice given in newspapers etc). The exclusion applies if the principal purpose of any of these is not to give advice covered in article 53 53(1) or to lead or enable *persons* to acquire or dispose of *securities* or *contractually based investments*. This is explained in greater detail, together with the provisions on the granting of certificates, in *PERG* 7.

...

## 10 Guidance on activities related to pension schemes

...

### 10.4 Pension scheme service providers other than trustees

...  
Q39. I give advice to the members of a pension scheme. Is this likely to be regulated advice and mean that I must be authorised or exempt?

It is likely to be regulated advice under article 53 53(1) of the *Regulated Activities Order* if the advice concerns a *personal pension scheme* but probably not if it concerns an OPS that is not a *stakeholder pension scheme*. ...

... In addition to advice that may fall under article 53 53(1) of the *Regulated Activities Order*, giving advice to *members of a pension scheme* could amount to *advising on conversion or transfer of pension benefits* where the advice relates to rights or interests under a pension scheme which provides *safeguarded benefits* (see *PERG 2.7.16FG*). ...

...

**10**  
**Annex**  
**3G**      **Table summarising regulatory position of pension scheme trustees and service providers**

Potential regulated activity	When will such regulated activities be carried on?
...	
<i>Advising on investments (except P2P agreements)</i> (article 53 53(1) of the <i>Regulated Activities Order</i> )	...

**13**      **Guidance on the scope of MiFID and CRD IV**

...

**13**  
**Annex**  
**2G**      **Table 1 - MiFID Investment services and activities and the Part 4A permission regime**

MiFID Investment Services and Activities	Part 4A permission	Comments
...		

A5- Investment advice	Advising on investments <u>(except P2P agreements)</u> (article 53 <u>53(1)</u> RAO)	...
...		

---

## Appendix 2

# Made rules (CASS legal instrument)

**CLIENT ASSETS SOURCEBOOK (AMENDMENT NO 9) INSTRUMENT 2016****Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137B (FCA general rules: clients’ money, right to rescind etc);
  - (3) section 137T (General supplementary powers); and
  - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 21 March 2016.

**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
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Client Assets sourcebook (CASS)	Annex C
Supervision manual (SUP)	Annex D

**Citation**

- E. This instrument may be cited as the Client Assets Sourcebook (Amendment No 9) Instrument 2016.

By order of the Board  
17 March 2016

## Annex A

### Amendments to the Glossary of definitions

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

<i>non-P2P agreement</i>	an agreement between one <i>person</i> (“the borrower”) and another <i>person</i> (“the lender”) by which the lender provides the borrower with credit, which does not satisfy the conditions for being a <i>P2P agreement</i> .
<i>operating an electronic system in relation to non-P2P agreements</i>	the <i>unregulated activity</i> , carried on by a <i>person</i> who has <i>Part 4A permission to operate an electronic system in relation to lending</i> , of carrying on the activity described in article 36H of the <i>Regulated Activities Order</i> in relation to a <i>non-P2P agreement</i> or prospective <i>non-P2P agreement</i> .
<i>relevant electronic lending services</i>	<i>operating an electronic system in relation to lending</i> or <i>operating an electronic system in relation to non-P2P agreements</i> .

## Annex B

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

In this Annex, underlining indicates new text.

#### 4.1 General requirements

...

- 4.1.8E R (1) *An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to P2P agreements.*
- (2) *If an operator of an electronic system in relation to lending has made a client money election under CASS 7.10.7AR, when it is operating an electronic system in relation to non-P2P agreements it must also not accept, take, or receive the transfer of full ownership of money relating to non-P2P agreements.*

...

## Annex C

## Amendments to the Client Assets sourcebook (CASS)

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

## 7.10 Application and purpose

...

7.10.5 G The opt-in to the *client money rules* ~~in this chapter~~ under CASS 7.10.3R does not apply in respect of *money* that a *firm* holds outside of either the:

...

7.10.6 G If a *firm* has opted to comply with this chapter under CASS 7.10.3R, the *insurance client money chapter* will have no application to the activities to which the election applies.

...

### Loan-based crowdfunding

7.10.7A R (1) If both the conditions in (a) and (b) below are met in respect of a *firm*, or the *firm* reasonably expects that they will all be met in the future, then the *firm* has the option to elect to comply with this chapter for all of the *money* described in those conditions:

(a) the *firm* receives or holds *money* for one or more *persons* in the course of, or in connection with, the *firm*'s activity of *operating an electronic system in relation to non-P2P agreements*; and

(b) those *persons* are customers of the *firm* in their capacity as lenders under *non-P2P agreements* or prospective lenders under *non-P2P agreements*.

(2) A *firm* can only make the election under (1) by informing the *FCA* in writing of the election at least one *month* before the date on which it intends to start holding the *money* in accordance with the *client money rules* ("the effective date").

(3) The communication in (2) must specify the effective date.

(4) The *firm* may change the effective date after it has made the communication in (2) provided that:

(a) it informs the *FCA* in writing before the new effective date; and

(b) the new effective date is not less than one month after the date of the communication in (2).

7.10.7B R (1) When a firm makes an election under CASS 7.10.7AR it must write to any customer (“C”) with whom it has agreed to provide relevant electronic lending services in C’s capacity as a lender or prospective lender, informing C at least one month before it will start to hold the money in accordance with the client money rules:

(a) that all the money it holds in the course of, or in connection with, operating an electronic system in relation to non-P2P agreements for lenders and prospective lenders under non-P2P agreements will be treated in accordance with the client money rules; and

(b) of the date on which this will start.

(2) The firm must also write to any customer (“C”) with whom, following the firm’s election, it agrees to provide relevant electronic lending services in C’s capacity as a lender or prospective lender.

(a) The firm must make this communication in advance of it receiving any money from or on behalf of C.

(b) The communication must inform C that all the money the firm holds in the course of, or in connection with, operating an electronic system in relation to non-P2P agreements for lenders and prospective lenders under non-P2P agreements will be treated in accordance with the client money rules from the date specified under (1)(b) or, if that date has passed, that this will be the case from the time of the communication onwards.

7.10.7C R Once an election made by a firm under CASS 7.10.7AR becomes effective, and until it ceases to be effective:

(1) the firm must treat all the money referred to under CASS 7.10.7AR(1) in accordance with the election; and

(2) for the purposes of (1), this chapter applies to the firm in the same way that it applies to a firm that receives and holds money in the course of or in connection with its designated investment business, except that:

(a) CASS 7.10.10R will not apply to the money referred to under CASS 7.10.7AR(1); and

(b) “client” for the purposes of CASS and rules and guidance related to CASS and their application to the firm includes customers of the firm in their capacity as lenders or prospective lenders under non-P2P agreements.

7.10.7D R If a firm that has made an election under CASS 7.10.7AR subsequently

decides to cancel that election:

- (1) it can only do so by writing to the *FCA*, at least one *month* before the date the election ceases to be effective;
- (2) it must write to any customer with whom, as at the time of the cancellation, it has agreed to *operate an electronic system in relation to non-P2P agreements* in their capacity as a lender or prospective lender, informing them at least one *month* before the date the election ceases to be effective:
  - (a) of the extent to which it will cease to hold their *money* in accordance with the *client money rules*; and
  - (b) of the date from which those changes will take effect; and
- (3) it must write to any customer (“C”) with whom, following the *firm’s* decision to cancel the election but before the election ceases to be effective, it agrees to *operate an electronic system in relation to non-P2P agreements* in C’s capacity as a lender or prospective lender, in advance of the *firm* receiving any *money* from them or on their behalf, informing them:
  - (a) of the period during which it will continue to hold all the *money* of lenders and prospective lenders under *non-P2P agreements* in accordance with the *client money rules*;
  - (b) of the extent to which it will subsequently cease to hold their *money* in accordance with the *client money rules*; and
  - (c) of the date from which those changes will take effect.

7.10.7E R (1) A *firm* must make and retain a written record of any election it makes under CASS 7.10.7AR including:

- (a) the date from which the election is to be effective; and
  - (b) if it cancels the election, the date from which the election is to cease to be effective.
- (2) The *firm* must:
- (a) make the record on the date it makes the election;
  - (b) update the record if it decides to cancel the election or change the effective date; and
  - (c) keep the record for a period of five years after ceasing to use the election.

7.10.7F G (1) Where a *firm* has made an election under CASS 7.10.7AR:

- (a) it should treat *money* held for a *client* as *client money* both in the course of or in connection with:
- (i) *operating an electronic system in relation to lending*; and
- (ii) *operating an electronic system in relation to non-P2P agreements*;
- (b) (a) is regardless of whether, at the time the *firm* is holding the *money*, the *client* could or could not be a lender under a *P2P agreement*; and
- (c) under SYSC 4.1.8ER(2) it will be not be able to accept, take, or receive the transfer of full ownership of *money* relating to *non-P2P agreements*.
- (2) Where a *firm* has not made an election under CASS 7.10.7AR, or where it has previously made an election but the election has ceased to be effective under CASS 7.10.7DR, any *money* it holds:
- (a) in the course of, or in connection with *relevant electronic lending services*, for a *client* who at that time will or could be a lender under a *P2P agreement* in respect of that *money*, should be treated as *client money* (for example because that *client's* contractual investment criteria permit that *money* to be invested in a *P2P agreement*); and
- (b) in the course of, or in connection with, *operating an electronic system in relation to non-P2P agreements*, for a customer who at that time could not be a lender under a *P2P agreement* in respect of that *money*, should not be treated as *client money* (for example because that customer's contractual investment criteria only permit that *money* to be invested in a *non-P2P agreement*).

...

- 7.10.8 G CASS 7.10.9G to CASS 7.10.15G do not apply to a *firm* in relation to *money* held in connection with its *MiFID business* to which this chapter applies or in relation to *money* for which the *firm* has made an election under CASS 7.10.3 R(1) or CASS 7.10.7AR.

...

Amend the following as shown.

## TP 1 Transitional Provisions

## TP 1.1

(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
...					
9C	<u>CASS 7.10.7AR(2)</u>	R	<u>A firm need not give the FCA at least one month's notice under this rule, if it informs the FCA immediately at the time of making the election under CASS 7.10.7AR(1).</u>	<u>From 21 March 2016 to 22 April 2016</u>	<u>21 March 2016</u>
9D	<u>CASS 7.10.7BR(1)</u>	R	<u>A firm need not give customers at least one month's advance notice under this rule, if it informs customers as soon as practicable at the time of making the election under CASS 7.10.7AR(1).</u>	<u>From 21 March 2016 until 22 April 2016.</u>	<u>21 March 2016</u>
...					

Insert the following new row in the appropriate numerical position in **Schedule 1 (Record keeping requirements)**. The new text is underlined.

## Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS 7.8.10R	...			
<u>CASS 7.10.7ER</u>	<u>The election made under CASS 7.10.7AR</u>	<u>The election including the date from which the election is to be effective and,</u>	<u>At the time of the election and, if the firm cancels the election, at the</u>	<u>Five years after ceasing to use the election</u>

		<u>if the <i>firm</i> cancels the election, the date from which the election is to cease to be effective</u>	<u>time it is cancelled</u>	
...				

Insert the following new rows in the appropriate numerical position in **Schedule 2 (Notification requirements)**. The new text is underlined.

## Sch 2.1G

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
...				
CASS 6.6.57R(6)	...			
<u>CASS 7.10.7AR(2)-(4)</u>	<u>The <i>firm's</i> election under CASS 7.10.7AR(1), the effective date and any change to the effective date</u>	<u>The <i>firm's</i> election under CASS 7.10.7AR(1)</u>	<u>Making the election or changing the effective date</u>	<p><u>For a notification under CASS 7.10.7AR(2), at least one month before the date on which the <i>firm's</i> election is to be effective</u></p> <p><u>For a notification of a new effective date under CASS 7.10.7AR(4), the notification must be made before the new effective date.</u></p>
<u>CASS 7.10.7DR(1)</u>	<u>The cancellation of the <i>firm's</i> election under CASS 7.10.7AR(1)</u>	<u>The cancellation of the <i>firm's</i> election under CASS 7.10.7AR(1)</u>	<u>Cancelling the election</u>	<u>At least one month before the date on which the <i>firm's</i> election is to cease to be effective</u>
...				

## Annex D

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

## TP 1 Transitional provisions

...					
SUP TP 1.2					
(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
...					
14D	...				
<u>14E</u>	<u>SUP 16.14.3R</u>	<u>R</u>	<u>Where, as a result of making the election under CASS 7.10.7AR(1), a firm exceeds the limit in the bottom row of the table in CASS 1A.2.7R (CASS small firm), SUP 16.14.3R (requirement to submit CMAR) does not apply to the firm.</u>	<u>From 21 March 2016 until 1 January 2017</u>	<u>21 March 2016</u>
<u>14F</u>	<u>SUP 16.14.3R</u>	<u>G</u>	<u>CASS TP 14E means that a CASS small firm which becomes a CASS medium firm or a CASS large firm as a result of making the election under CASS 7.10.7AR(1) does not need to submit a CMAR until January 2017.</u>	<u>From 21 March 2016 until 1 January 2017</u>	<u>21 March 2016</u>
...					



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