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[*Firm name*] 29 January 2013

INTEREST RATE HEDGING PRODUCTS (IRHPs) REVIEW – [*Firm name*]

Thank you for meeting with us today and for the meeting with your team on 18 January 2013 and subsequent dialogue at working level. In addition to meeting with you, we have met with [***other banks' names*****],** HMT and other stakeholders. We have listened carefully to the concerns raised by you and others, including consumer stakeholders, about the review as originally outlined in June 2012. We have considered, in particular, the issues surfaced through the pilot and our recent discussions and have taken them into consideration in reaching our final position set out below.

We are confident that our position will provide fair outcomes for consumers sold IRHPs by [***firm name***] and, where appropriate, fair and reasonable redress. We are also confident that our position is fair to the banks who sold these products.

Set out in more detail in the Annexes is our final position but in summary:

1. Sophisticated Customer Criteria : We recognise the concerns raised about the previously proposed Sophisticated Customer Criteria and, in particular, the concern that certain types of retail customers could be incorrectly categorised as non-sophisticated (e.g. subsidiaries of large groups, SPVs etc) or sophisticated (e.g. farmers and Bed & Breakfasts). We have re-drafted the Sophisticated Customer Criteria to address these concerns.
2. Sales standards : Our position on the sales review is unchanged, but we should clarify that the test is whether, taking into account all the circumstances, the customer could reasonably have understood the features and risk in the product.
3. Redress : We have not changed our position on redress – it is a sound basis for the determination of fair and reasonable redress, where appropriate, although we have clarified some aspects. However, it is important point that the redress criteria we are setting out here and in particular the test on alternative products of 7.5% break costs, is only for the purposes of this redress exercise. We are not changing our rules in this area or setting out new guidance. Therefore we believe firms can continue to offer longer term products to customers provided that the customer is able to understand the risks and benefits of the product and makes an informed choice.

4. Consequential loss : We have changed our position on consequential loss. We accept that a straightforward approach that will allow for consequential loss to be determined as part of the review provides the right balance.
5. Financial Service Ombudsman ("FOS") : In our announcement in June 2012 we said we would approach the FOS to ask if it would consider offering a specific Scheme for dealing with the outcome of the review and related matters. We have decided not to proceed with a FOS Scheme for customers dissatisfied with the determination of their case. We accept that a FOS Scheme will lengthen the review process. However, this means it is extremely important that the Skilled Persons are effective in their role, providing independent oversight and ensuring that the banks follow the FSA's position and provide fair outcomes for consumers.
6. Moratorium on payments : The British Banking Association ('BBA') announced in November 2012 that banks will consider whether to apply a moratorium on payments of IRHPS on a case by case basis. We have some concerns arising from information supplied by the consumer groups that not all banks are adequately applying such a moratorium. We understand the BBA is arranging a forum where banks can share best practices on this matter, but we are also going to increase the scope of the first Skilled Persons' Requirement Notice to require the first Skilled Person to assess the effectiveness of the banks' procedures for considering a moratorium on payments in individual cases.
7. Offsetting : We also accept that you can offset amounts payable as redress, but only against loans that have been taken out for the sole purpose of paying break costs.

The Skilled Persons' Requirement Notice will need to be amended in light of our position on the moratorium on payments. A revised section 166 Requirement Notice will be issued in due course.

This is our final position. Our expectation is that you will conduct the review on this basis and will make the necessary changes to your methodology to this end. Of course, you may wish to provide more favourable outcomes for consumers generally or in specific cases.

Next Steps

We ask you to confirm in writing by **12pm on Wednesday 30 January 2013** whether you agree in principle to proceed to the main review. We will expect [***firm name***] to:

- Amend its methodology, in line with the position set out in the annexes to the letter dated 17 January 2013 (where applicable, as amended by the annexes enclosed). These amendments can be made after 31 January 2013.
- Address matters raised in the feedback about the Pilot Exercise, which requires re-reviewing the pilot cases in accordance with the revised methodology.

As soon as reasonably possible, we expect an approved person within [***firm name***] and lead partner for the Skilled Person to attest that the methodology has been amended and any feedback in relation to pilot cases considered, before the pilot customers receive a provisional redress determination.

We are writing in similar terms to each of the banks who signed an Undertaking with the FSA in June 2012. We are also meeting with the Skilled Persons of all ten banks to inform them of our final position.

As you will note, the original Undertaking will need to be amended to take into account the amended Sophisticated Customer Criteria. Please find enclosed at Annex 4 a draft supplemental agreement.

As you are aware, we intend to publish a report on 31 January 2013, which will set out, at a high level, the results of the pilot exercise and the basis upon which we expect the review to be conducted.

We will also be asking the firms to send FSA branded communications to their customers on behalf of the FSA, which will outline the findings from the pilot exercises and the next steps.

We look forward to receiving your response.

Annex 1 – Sophisticated Customer Criteria

1. The current Sophisticated Customer Criteria has two elements; an objective test and a subjective test. No amendments are suggested in relation to the subjective test.

2. The current objective sophistication test is as follows:

   (i) In the financial year during which the sale was concluded, the customer had at least two of the following:

      a) a turnover of more than £6.5 million; or

      b) a balance sheet total of more than £3.26 million; or

      c) more than 50 employees.

3. The current subjective sophistication test is as follows:

   "The Firm is able to demonstrate that, at the time of the sale, the Customer had the necessary experience and knowledge to understand the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved."

4. We have identified the following unintended consequences with the current Sophisticated Customer Criteria:

   (i) Certain customers that we would have expected to fall within the review population were being excluded as sophisticated customers by virtue of having a large balance sheet and a high number of employees (potentially due to having a seasonal work force). These customers included farmers and Bed & Breakfasts.

   (ii) Firms having insufficient details about their customers to determine whether the Sophisticated Customer Criteria has been met without seeking further information from the customer.

   (iii) Some customers were being determined as non-sophisticated despite being part of a large/complex group which we would expect to be regarded as sophisticated. This was by virtue of the fact that the Sophisticated Customer Criteria was applied at an entity level, without consideration of the wider group.

   (iv) Some customers who are SPVs are constituted in a way that falls outside the Companies Act 2006 definition of a "group", but are part of a group of connected entities and are likely to be sophisticated customers.

5. We have considered the issues and now put forward revised objective Sophisticated Customer Criteria.

6. The flow diagram below outlines how we would expect the amended objective Sophisticated Customer Criteria to work.

7. The first consideration of the amended objective test is whether the customer is part of a "group" as defined in section 474(1) of the Companies Act 2006, and construed in accordance with sections 1161 and 1162 of, and Schedule 7 to, the Companies Act 2006.

8. Where the customer was part of a Companies Act group, you must consider whether the group met two of the three small Companies Act group thresholds (e.g. aggregate turnover of more than £6.5 million net (or £7.8 million gross); aggregate balance sheet total of more than £3.26 million net (or £3.9 million gross); or more than 50 employees) during the financial year of the sale. Where the Companies Act group met all three thresholds or the turnover threshold and either the balance sheet or employee threshold, the customer is deemed to meet the Sophisticated Customer Criteria.

9. Where in the financial year of the sale a Companies Act group met:

   (i) none of the thresholds; or

   (ii) only one of the thresholds; or

   (iii) only the balance sheet total and employee number thresholds; or

   (iv) insufficient information to determine whether or not groups meet the test

   it is then necessary to consider whether the customer belonged to a "group of connected clients" as defined in BIPRU 10.3 (a "BIPRU group").

   If the customer belonged to such a BIPRU group and the aggregated notional value[1] of all interest rate hedging products held by the BIPRU group, in existence at the time of the particular sale being assessed, was greater than £10 million, the customer will be deemed to meet the Sophisticated Customer Criteria.

   If the customer did not belong to a BIPRU group and the aggregated notional value of all interest rate hedging products held by the Companies Act group, in existence at the time of the particular sale being assessed and held by the customer across that Companies Act group was greater than £10 million, the customer will be deemed to meet the Sophisticated Customer Criteria.

10. Where the customer did not belong to a Companies Act group, you must consider whether the customer met two out of three of the small company thresholds (e.g. turnover of more than £6.5 million; balance sheet total of more than £3.26 million; or more than 50 employees) during the financial year of the sale. Where the customer met all three thresholds or the turnover threshold and either the balance sheet or employee threshold, the customer is deemed to meet the Sophisticated Customer Criteria.

11. Where in the financial year of the sale the customer met:

   (i) none of the thresholds; or

   (ii) only one of the thresholds; or

   (iii) only the balance sheet total and employee number thresholds;

   (iv) insufficient information to determine whether or not groups meet the test

[1] The aggregated notional hedge value is calculated using the notional hedge values of all 'live' hedges held by customer at that point in time. Therefore, it does not include the notional hedge value of a hedge that is being re-structured. For a collar the notional hedge value is the larger of the floor or cap value.

it is then necessary to consider whether the customer belonged to a "group of connected clients" as defined in BIPRU 10.3. The same methodology and notional value is applied as outlined above in relation to small Companies Act groups

Is Customer part of a group?

A Customer is deemed part of a group if it meets the Companies Act definition of a group (i.e. S474(1), S1161 and S.1162)

Yes

No

Companies Act test for small groups: A group is deemed small (i.e. non-sophisticated) if it does NOT meet two of the following:

i. Aggregate turnover of more than £6.5 million net (or £7.8 million gross); or
ii. Aggregate balance sheet total of more than £3.26 million net (or £3.9 million gross); or
iii. More than 50 employees.

[Calculated in accordance with S.383 Companies Act 2006 (amended)].

Does group meet the Companies Act test for a small group?

Does Customer meet the Companies Act test for a small company?

Companies Act test for small companies: A Customer is deemed small (i.e. non-sophisticated) if it does NOT meet two of the following:

i. Turnover of more than £6.5 million; or
ii. Balance sheet total of more than £3.26 million; or
iii. More than 50 employees.

Group meets:

1. All three thresholds; or
2. Turnover & balance sheet thresholds; or
3. Turnover & employees thresholds

Sophisticated

Group meets:

1. None of the thresholds; or
2. One of the thresholds; or
3. Balance sheet & employees thresholds only

OR:

Insufficient information to determine whether or not group meets the test

Customer meets:

1. None of the thresholds; or
2. One of the thresholds; or
3. Balance sheet & employees thresholds only

OR:

Insufficient information to determine whether or not Customer meets the test

Customer meets:

1. All three thresholds; or
2. Turnover & balance sheet thresholds; or
3. Turnover &employees thresholds

Sophisticated

Is Customer part of a group of connected clients?

A Customer is part of a group of connected clients if it meets the following (taken from the BIPRU definition of groups of connected clients):

1) Two or more persons who, unless it is shown otherwise constitute a single risk because one of them, directly or indirectly, has control over the other or others; or
2) Two or more persons between who there is no relationship of control as set out in 1) but who are regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter funding or repayment difficulties.

[For these purposes 'control' means control as defined in Article 1 of the Seventh Council Directive 83/349/EEC (the Seventh Company Law Directive) or a similar relationship between any person and an undertaking].

Yes

No

Aggregate the notional values of all live (i.e. not matured) trades across the group of connected clients at the time of the trade subject to the review

Aggregate the notional values of all live (i.e. not matured) trades held by the Customer at the time of the trade subject to the review

Does Customer / Group have aggregate notional hedge value of greater than £10 million?

Yes

No

Sophisticated

Non-sophisticated

Annex 2 – Sales Review Principles

1. We have listened carefully to the concerns raised in relation to our sales review principles. Particularly, your concerns, that they are too high level and hence open to interpretation and concerns that they appear inconsistent with Court Judgments.

2. In our view, the assessment of a sale requires an objective assessment of the facts to determine whether, in that customer's circumstances, the firm has complied with the Regulatory Requirements (taking into account the Sales Standards), and in particular, whether the Customer was provided with sufficient information to enable the Customer to understand the features and risks of the product.

3. In any case assessment banks must ensure that there is full consideration of the Customer's individual circumstances and all applicable rules in our Handbook are applied correctly. Therefore, general guidance will not assist banks when carrying out this review, because a case by case assessment is necessary.

4. This case by case assessment should involve (but is not limited to) a holistic consideration of the following:

    - the size and nature of the Customer;
    - the Customer's knowledge and understanding of these types of products generally and the specific product purchased;
    - the Customer's interaction during the sales process;
    - the complexity of the product; and
    - the information provided during the sales process, particularly the quality and nature of the information provided, when and how it was provided and how long the Customer had to digest and understand it.

5. The level and nature of disclosure required must meet our requirement of being clear, fair and not misleading. Therefore, a consideration of all the circumstances of the case must be carried out to determine whether the sale complied with the Regulatory Requirements[2] (taking into account the Sales Standards). This means that the level of disclosure required to e.g. satisfy the various disclosure requirements will vary from case to case.

[2] Providing clear, fair and not misleading information is essential for delivering fair outcomes for consumers. Firms must ensure that all of their communications satisfied FSA Principle 7 (' A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading').

Annex 3 – Redress

6. Following our review of the pilot exercises carried out by the firms, we set out below our views as to the very minimum that we expect from firms when considering fair and reasonable redress in the proactive redress exercise and past business review envisaged by the Undertaking.

A. Tenets of redress

7. The core tenet of this proactive redress exercise and past business review is to pay fair and reasonable redress to Customers where appropriate. In our view, fair and reasonable redress requires that the Customer be put back into the position they would have been in if there had not been any breach of the Regulatory Requirements[3].

B. Determining whether redress is payable

8. For Category A Customers, firms have agreed to provide fair and reasonable redress to all Customers who do not meet the Sophisticated Customer Criteria.

9. For Category B and C Customers, firms have agreed to assess the compliance of sales of IRHPs with the relevant Regulatory Requirements, taking into account, in particular, the Sales Standards. In determining whether it is appropriate to pay fair and reasonable redress, and if so, what that fair and reasonable redress entails, the firm will need to consider the following:

   a. Whether the sale of the IRHP was in breach of the Regulatory Requirements (taking into account, in particular, the Sales Standards)? If so there has been a non-compliant sale.

   b. For non-compliant sales, whether the Customer suffered loss (either past loss, or expected future loss due to being 'out of the money')?

   c. If so, whether the breach of the Regulatory Requirements caused the loss?

   d. And, if so, the Customer is due fair and reasonable redress.

C. Non-compliant sale but no redress

10. If there has been a non-compliant sale, but either:

   (i) the Customer has suffered no loss; or

   (ii) it is reasonable to conclude that the Customer would have followed the same course of action, notwithstanding the breach of the Regulatory Requirements (the "counter-factual"),

   then no redress is likely to be the fair and reasonable outcome.

[3] The Principles, rules and guidance contained in the FSA's Handbook.

11. When considering the counter-factual the firm should presume, in the absence of evidence to the contrary, that the Customer would have purchased a simple product (cap, vanilla swap or vanilla collar) without any callable or extendable elements.

12. When considering the counter-factual in cases where the firm has failed to comply with the Regulatory Requirements in relation to the disclosure of break costs the firm should presume, in the absence of relevant evidence to the contrary (see paragraph 13), that the Customer would not have taken an IRHP with a potential break cost greater than 7.5% of the notional value of the IRHP in a pessimistic but plausible scenario.

13. Relevant evidence might include the Customer's demands, needs and intentions at the time of the sale, including any testimony by the Customer about the reasons at the time of sale for purchasing the IRHP, but in this context the firm should also take into account the impact that the failure to comply with the relevant Regulatory Requirements may have had on those demands, needs, intentions and reasons.

D. Full tear-up and alternative product

14. There are two broad types of redress:

    (i) 'Full tear-up' – where the counter-factual is that the Customer would not have selected any product. In this case, fair and reasonable redress is the exit from the IRHP at no charge to the Customer, and a refund of all historic payments paid under the IRHP including, where appropriate, any break costs paid.

    (ii) 'Alternative product' – where the counter-factual is that the Customer would have selected an alternative IRHP. In this case, fair and reasonable redress is a refund of the difference between the payments made under the actual IRHP entered into and the payments that would have been made had the Customer entered into the alternative product. This includes, where appropriate, the difference between break costs paid and break costs that would have been payable under the alternative product.

15. In both cases, interest will be payable as part of fair and reasonable redress (see para. 33)

Full tear-up

16. In the event of a non-compliant sale, where the IRHP was not a legitimate condition of the lending arrangement, and where the counter-factual is that the Customer would not have purchased an IRHP, fair and reasonable redress is presumed to be a full tear-up.

17. When considering the counter-factual, the firm can consider whether there was an express wish for interest rate protection (see para. 48).

18. If the firm proposes a full tear-up for the Customer, the firm should ensure that the Customer is aware of the risks of not having such an IRHP.

Alternative product

19. In the event of a non-compliant sale, where the counter-factual is that the Customer would have purchased an alternative IRHP (whether due to it being a legitimate condition of lending or not), fair and reasonable redress is presumed to be an alternative product that provides such protection.

20. When considering the counter-factual, the firm can consider whether there was an express wish for interest rate protection (see para. 48).

Selection of an alternative product

21. The appropriate alternative product will be the IRHP that the Customer would, in the counter-factual scenario, have taken at the time.

22. Two key principles underpin the process for determining an alternative product.

    (i) The firm should presume, in the absence of evidence to the contrary, that the Customer would have purchased a simple product (cap, vanilla swap or vanilla collar) without any callable or extendable elements.

    (ii) When considering the counter-factual in cases where the firm has failed to comply with the Regulatory Requirements in relation to the disclosure of break costs the firm should presume, in the absence of relevant evidence to the contrary (see paragraph 13), that the Customer would not have taken an IRHP with a potential break cost greater than 7.5% of the notional value of the IRHP in a pessimistic but plausible scenario. This means that the tenor of the product should not exceed the maximum term (as defined in para. 52)

    Relevant evidence might include the Customer's demands, needs and intentions at the time of the sale, including any testimony by the Customer about the reasons at the time of sale for purchasing the IRHP, but in this context the firm should also take into account the impact that the failure to comply with the relevant Regulatory Requirements may have had on those demands, needs, intentions and reasons.

23. It is not reasonable to use a vanilla swap or a vanilla collar as a 'default' option, as the alternative product must be determined on the basis of the evidence available; and determined considering the financial sophistication, knowledge and understanding of the Customer.

24. The firm should take into account the Customer's circumstances at the time of the sale when considering what term the Customer would have opted for were it not for the breach of the Regulatory Requirements. For example, the evidence available may demonstrate that, were it not for the breach of the Regulatory Requirements, the Customer would have opted for a term shorter than the maximum term.

25. If during the original sale, a Customer said they did not want a cap on the basis that they did not wish to pay a premium, then the assessment of the sale should consider whether any breach of the Regulatory Requirements contributed to that decision; for example, a lack of sufficient disclosure in relation to the features and risks of non-cap products.

26. Where the counter-factual is that the Customer would still be in the alternative product, it is likely to be fair and reasonable for the Customer to be placed into that alternative product for the remainder of the counter-factual term, though the firm should also consider the current circumstances of the Customer.

Pricing of alternative products

27. The pricing of an alternative product must be fair and reasonable in the circumstances.

28. In the event that the alternative product is a cap or vanilla collar, the strike rate of the cap should be defined according to a holistic consideration of the circumstances of the Customer at the time of the original sale. It is not sufficient for the strike rate of the alternative product to default to the actual strike rate, or the most common market rate at the time of the original sale, if a collar was originally sold.

E. Over-hedging

29. Over-hedging encompasses a number of issues, including, for example, where the term or value of the IRHP exceeds the term or value of any associated lending arrangements.

30. There are only a limited number of circumstances that might be a 'legitimate reason' for over-hedging. This includes, for example, where the Customer has a number of separate lending arrangements that are associated with the IRHP and/or 'technical' over-hedging due to operational factors such as an IRHP being 'booked' the day after the drawdown of the loan, or ending a day later. The firm should consider whether the 'technical' over-hedging is fair and reasonable in the circumstances of the case.

31. A Customer choosing an IRHP with a longer term or higher notional value than the associated lending arrangement solely because the interest rate was less than it would have been for a shorter term, or lower notional value, is not a legitimate reason for over-hedging unless the firm can demonstrate that the Customer understood the risks of doing so.

32. Where there is no legitimate reason for over-hedging, and a full tear-up is not required, fair and reasonable redress is an adjustment of the IRHP and a refund of the payments made in excess of what would have been made in the counter-factual scenario, in addition to, if relevant, the selection of an alternative product.

F. Interest

33. Interest should be paid on any redress due to Customers at a rate that is in line with the approach applied by the FOS – i.e. 8% a year simple, or in line with an identifiable cost that the Customer incurred as a result of having to borrow money.

G. Consequential loss

34. "Consequential loss" should be determined by reference to the general legal principles relevant to claims in tort or for breach of statutory duty (e.g. breaches of the FSA's rules).

35. This will involve a consideration of causation and remoteness (i.e. whether the loss was reasonably foreseeable at the time of the breach of the Regulatory Requirements).

H. Offsetting

36. When calculating redress amounts, the overall position of the Customer should be the position they would have been in had the breaches of the Regulatory Requirements not taken place. Firms can take into account periods of time when the Customer benefited from the particular IRHP or when payments were suspended. Firms can offset redress against any loans provided purely for the purposes of paying break costs.

37. Where cash payments are due to the Customer these amounts cannot be used for any other purpose, including offsetting against other debts, without the agreement of the Customer.

I. Third-party advice for the Customer

38. In certain circumstances, where the Customer has sought, or would like to seek, third-party advice in respect of the redress proposal, the firm should consider whether it is fair and reasonable to pay for the cost of that advice.

J. Customers 'in-the-money'

39. During the review, the firm may find non-compliant sales where the Customer is now 'in-the-money' (i.e. were the IRHP to be 'broken' the Customer would be owed money by the firm). In these circumstances, the firm should contact the Customer and provide details of the risks associated with the IRHP to ensure that the Customer makes a fully informed decision as to whether to continue with the IRHP. This is of particular importance in relation to Category A sales.

K. Definitions

Legitimate condition of a lending arrangement

40. In order to determine whether or not the sale of an IRHP is a legitimate condition of lending (LCOL), the firm should consider all the facts of the case. Although we set out below factors that may be considered when making this decision, we emphasise that these factors are not exhaustive and that satisfying one (or more) does not automatically mean there is a LCOL. We stress that it is important for the firm to reach rounded judgements having given proper consideration to all the facts and circumstances of each case.

41. The firm should consider whether there is evidence that the firm's credit policies required the Customer to have the IRHP. For example, subject to other factors, the sale of the IRHP may be a LCOL where the Customer's loan/facility met a specified criterion (e.g. credit rating, risk rating, LTV etc) for which the firm's credit policy required interest rate protection.

42. There should also be consideration of evidence that indicates that the sale of the IRHP complied with the firm's documented lending process. For example, the firm's documented lending process may have stipulated that interest rate protection must be agreed with the credit function. Where that decision to make the IRHP a condition of the loan has been agreed with the credit function, then, subject to other factors, this may be a LCOL.

43. Subject to other factors, the firm should consider whether there is evidence that the hedging complied with the requirements of the credit function, such as the notional value of the hedge and duration.

44. The firm should consider whether there is evidence that the Customer's circumstances made it reasonable for firm to impose the requirement to hedge. For example, subject to other factors, for there to be a LCOL the file must evidence that at the point of sale it was reasonable for the Customer to be hedged in light of the risk of interest payments.

45. Similarly, there should be consideration of any evidence that suggests that sales incentives/inducements inappropriately influenced the decision to make the IRHP a condition of the loan. For example, it is not a LCOL where there is evidence that sales staff put in place the IRHP solely for commercial (and/or personal) benefit without due regard for the needs of the Customer.

46. The firm should also consider whether there is evidence that the communication of the IRHP as a condition of lending was in good time, fair, clear and not misleading. For example, for there to be a LCOL, the Customer must have been informed in a timely manner of the condition in the loan/facility before accepting it.

47. The firm should also note that where they are satisfied that the condition of lending is legitimate, there must be a further assessment to ensure that the sale of the particular IRHP complied with the regulatory requirements.

Express wish for interest rate protection

48. An 'express wish' is an unsolicited request from a Customer seeking to obtain interest rate protection on a lending arrangement. A Customer must not be regarded as having an express wish for interest rate protection unless there is clear and credible supportive evidence on file.

49. The firm should consider whether the discussion and the decision to have the interest rate hedging product (IRHP) were Customer-led. For example, if there is evidence on file to verify that the Customer initiated the request for interest rate protection or the Customer proactively requested an IRHP, then subject to other factors, this may constitute an express wish.

50. The firm should also consider whether or not there is evidence that the firm influenced the Customer to purchase the IRHP. Evidence of pressure, direction or misleading information from the firm would indicate that the Customer did not have an express wish for interest rate protection. The firm should note that where the firm presents to the Customer a range of products and the Customer chooses a particular IRHP, this by itself is not sufficient to indicate an express wish.

51. It is important for the firm to reach rounded judgements having given proper consideration to all the facts and circumstances of each case.

Maximum term

52. When considering the counter-factual in cases where the firm has failed to comply with the Regulatory Requirements in relation to the disclosure of break costs the firm should presume, in the absence of relevant evidence to the contrary (see paragraph 13), that the Customer would not have taken an IRHP with a potential break cost greater than 7.5% of the notional value of the IRHP in a pessimistic but plausible scenario. This means that the tenor of the product should not exceed the maximum term.

53. The calculation of the maximum term is done by shocking the interest curve by a pessimistic but plausible amount (2 standard deviations).