

28 February 2017



Financial Conduct Authority

25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

Dear CEO

The FCA's expectations of firms that operate a loan-based crowdfunding platform which facilitates loans to lending businesses

The FCA is writing to firms that operate loan-based crowdfunding platforms to highlight that if a lending business borrows through a platform and then lends that money to others, it may be 'accepting deposits' within the meaning of Article 5 of the FSMA (Regulated Activities Order) 2001 (RAO). If the borrower does so without regulatory permission to accept deposits, this would involve a breach of FSMA and may be a criminal offence.

What are the implications for loan-based crowdfunding platforms?

Where a loan-based crowdfunding platform facilitates the acceptance of deposits by a borrower that does not hold the correct permission that platform would not be acting in a manner consistent with our expectations for regulated firms and may be in breach of certain regulatory requirements; in particular, Principle 6 (Treating Customers Fairly) and threshold conditions 2E (Suitability) and 2F (Business Model).

When does a lending business require accepting deposits permission?

A lending business that borrows monies through a loan based crowdfunding platform, and then lends the borrowed funds on to others requires permission to carry on the regulated activity of 'accepting deposits' as set out in Article 5 (1)(a) of the RAO, unless a) an exclusion applies; or b) they are not acting by way of business. Taking these in turn:

- a) Articles 6 – 9 of the RAO set out certain exclusions but they do not cover a scenario where investors, who are not in the business of lending money, provide sums to borrowers over a loan-based crowdfunding platform. These exclusions are therefore unlikely to apply.
- b) Article 2 of the FSMA (Carrying on Regulated Activities by way of Business) Order 2001 (BWOB Order) excludes a person from being regarded as carrying out the activity of accepting deposits where that person is doing so on "particular occasions". In determining whether deposits are only accepted on "particular occasions" regard is to be had to the frequency of these occasions and whether there are any characteristics distinguishing them from each other (see Article 2(2) BWOB Order). This exclusion is therefore unlikely to apply where a borrower

is borrowing sums on repeat occasions through a platform in order to lend these sums to others.

Therefore, where a borrower uses funds provided via a loan-based crowdfunding platform for on-lending, they are likely to require a permission to accept deposits.

Actions expected from your firm now

We expect that you should:

- a) establish whether you have been facilitating loans via your platform to lending businesses who have lent that money to others who do not have the required accepting deposits permission;
- b) if so, stop facilitating the acceptance of deposits by these borrowers;
- c) consider what action you will take to ensure that you do not facilitate the acceptance of deposits by any such borrowers who do not hold the correct permission in the future; and
- d) consider what action you will take in cases where a borrower has already been accepting deposits via your platform and does not hold the correct permission.

We request that you forward details of the actions you have taken under (a) – (d) above including the details of those firms which you have concluded are accepting deposits without the needed permission.

Once we receive this information we will review the actions your firm will be taking. We will be in further contact with your firm and any affected borrowers where appropriate.

This information, including nil returns, is required by Tuesday 14 March 2017. Please send responses to supervision.article5.responses@fca.org.uk

If you have any questions about the contents of this letter, please forward these to the email address shown above.

Yours faithfully

Jonathan Davidson
Director of Supervision – Retail and Authorisations