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**FINAL NOTICE**

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To: **Mr Joseph Masi, trading as Select Mortgage Services**

Of: **Lovedays  
Knightsbridge House  
7 Little London Court  
Albert Street  
Swindon  
Wiltshire  
SN1 3HY**

Date: **3 September 2007**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty.**

**1. THE PENALTY**

- 1.1 The FSA gave Mr Joseph Masi, trading as Select Mortgage Services ("Select" or "the firm") a Decision Notice on 24 August 2007 which notified Select that pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act") the FSA has decided to impose a financial penalty of £10,500 on Select in respect of breaches of Principle 2 (Skill, care and diligence), Principle 3 (Management and control) and Principle 7 (Communication with clients) of the FSA Principles for Businesses ("FSA Principles") and Mortgages and Home Finance: Conduct of Business sourcebook ("MCOB") Rules that occurred between 1 January 2006 and 16 October 2006 ("the relevant period").
- 1.2 Select agreed to settle this matter at an early stage of the proceedings. It therefore qualified for a 30% reduction in penalty pursuant to the FSA's executive settlement procedures. Were it not for this discount the FSA would have sought to impose a financial penalty of £15,000 on Select.
- 1.3 Select confirmed on 3 August 2007 that it will not be referring the matter to the Financial Services and Markets Tribunal.

## 2. REASONS FOR THE ACTION

2.1 The FSA has decided to impose a financial penalty on Select in respect of breaches of the FSA Principles and Rules detailed in section 1 above.

2.2 The breaches of the FSA Principles and Rules that are the subject of this Notice relate to failings arising from Select's sale of mortgage products that occurred in the relevant period. In summary: Select failed to ensure that its financial promotions were clear, fair and not misleading, which meant that customers did not receive reliable information to help them make informed choices and therefore achieve a fair deal; it had inadequate sales processes in place for the recommendation of mortgage sales to its customers; and it did not have appropriate management systems and controls to ensure that it complied with the provisions in MCOB. More specifically Select's failings were as follows.

(a) Select's financial promotions were non-compliant for the following reasons.

- The promotions were unclear and did not accurately describe Select's "Capital Repayment Plan" ("the CRP"). Select did not make it clear that the CRP was based on an interest-only mortgage and did not set out how the CRP can claim that it guarantees to repay a mortgage in less than 25 years. Select also failed to mention the possible disadvantages associated with interest only mortgages.
- Its main promotion stated that Select was independent and sourced the perfect mortgage from over 150 lenders. However, Select did not source from over 150 lenders, nor did it use a third party platform or any other structured process for choosing lenders.
- The promotions did not state that the customer could pay by fee as required when the promotion stated that Select is independent.
- The Annual Percentage Rate ("APR") was not stated in the appropriate prescribed format.
- The risk warnings were not prominently displayed.

As a result of the conduct detailed above, Select did not communicate with its customers in a way which was clear, fair and not misleading **in breach of Principle 7.**

(b) Select had inadequate sales processes in place for the recommendation of mortgage sales to its customers. Its main financial promotion stated that the firm looked at the whole market; however, Select had no structured process or third party platform to choose the most suitable mortgage for each customer. Instead, Select used its market knowledge and experience based on marketing material received from lenders and packagers to choose the most suitable mortgage for each customer. Select arranged mortgages using only ten different lenders during the relevant period but have on file 27 mortgage providers in relation to regulated mortgage products. Select also did not make

or retain sufficient records on file to demonstrate affordability and suitability of the mortgages that it sold. As a result, Select failed to conduct its business with due skill, care and diligence **in breach of Principle 2.**

- (c) Select did not have appropriate management systems and controls in relation to its sales process, record-keeping and the authorising of financial promotions to ensure that it complied with the provisions in MCOB. Select therefore failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems **in breach of Principle 3.**

2.3 Select's failings are considered to be serious because:-

- (a) the potential adverse affect on its customers, many of whom were vulnerable due to the fact that they were consolidating debts and/or previously had adverse credit histories; and
- (b) insufficient ongoing attention was taken to ensure that the firm's procedures met the necessary regulatory requirements. The breaches revealed serious weaknesses in the management systems and internal controls relating to the firm's business.

2.4 Select's failings are mitigated by the following factors.

- (a) The investigation did not find evidence that the failings identified resulted in any actual unsuitable mortgages for customers. Select received no complaints in 2006.
- (b) Select has agreed to an external review of its management systems & controls and the sign off of future financial promotions and mortgage sales by an external compliance consultant for a six month period.
- (c) Select now uses a third party platform to provide whole of market quotations.
- (d) Select will arrange training where appropriate for staff to ensure compliant processes going forward.
- (e) Select has agreed to write a letter, signed off by an external compliance consultant, to its existing customers to inform them:
- of the risks associated with its CRP product (including, in particular, risks of interest only mortgages and the difference between the CRP and a capital repayment mortgage); and
  - that if on reading Select's letter a customer wished to change his/her mortgage or complain, Select would resolve the matter to the customer's satisfaction at no cost to the customer.
- (f) Once made aware of the FSA's concerns Select amended its financial promotions.

- (g) Select has been open and co-operative with the FSA and has agreed the facts quickly ensuring efficient resolution of the matter.

### **3. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES**

3.1 The FSA's statutory objectives are set out in Section 2(2) of the Act. The most relevant ones for the purpose of this case are public awareness and the protection of consumers.

3.2 Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as (inter alia) appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.

3.3 Section 206 of the Act provides:

*"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such an amount as it considers appropriate."*

#### **Principles for Businesses and Mortgages and Home Finance: Conduct of Business Sourcebook Rules**

3.4 The FSA's Principles, as set out in the FSA's Handbook of Rules and Guidance, relevant to this case are:

- (a) FSA Principle 2 - a firm must conduct its business with due skill, care and diligence;
- (b) FSA Principle 3 - a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems; and
- (c) FSA Principle 7 - a firm must pay due regard to the information needs of its customers, and communicate information to them in a way which is clear, fair and not misleading.

3.5 These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives.

3.6 In addition to the above Principles, the following rules are also considered to be relevant in this case, MCOB rules 3.6.3 R, 3.6.13 R, 3.6.25 R, 3.6.26 R, 3.6.27 R, 4.3.2 R, 4.3.4 R, 4.3.7 R, 4.7.2 R, 4.7.4 R and 4.7.17 R. Annex 1 sets out these rules.

3.7 The FSA's Principles and Rules constitute requirements imposed on authorised persons under the Act; breaching a Principle and/or a Rule makes a firm liable to disciplinary sanctions.

#### 4. **FACTS AND MATTERS RELIED UPON**

##### **Background**

- 4.1. Mr Joseph Masi trading as Select Mortgage Services is a sole trader retail mortgage intermediary based in Swindon. Select has been trading since 1999. Mr Masi currently employs one other mortgage adviser and three support staff.
- 4.2. Select became authorised by the FSA on 31 October 2004 to carry on the following regulated activities in relation to regulated mortgage contracts:
- (a) advising on regulated mortgage contracts;
  - (b) agreeing to carry on a regulated activity; and
  - (c) arranging (bringing about) regulated mortgage contracts.
- 4.3. On 14 January 2005, Select was granted permission to carry on the following additional regulated activities:
- (a) advising on investments (except on Pension Transfers and Pension Opt Outs);
  - (b) arranging (bringing about) deals in investments; and
  - (c) making arrangements with a view to transactions in investments.
- 4.4. During the relevant period Select arranged 55 mortgages of which 31 were new mortgages and 24 were remortgages for existing clients. All of the mortgages arranged were interest only mortgages and all bar four of the customers signed up to a CRP.

##### **Background to the investigation**

- 4.5. The FSA's Small Firms Division and the Financial Promotions Department of the Retail Themes Division undertook thematic work to review the marketing literature of mortgage brokers that promote their services to customers with lower incomes or poor credit ratings. Concerns about Select's financial promotions were identified and the firm was visited on 24 October 2006. The visit highlighted additional concerns in relation to Select's systems and controls, particularly in relation to its sales processes and record keeping. As a result of these concerns the firm was referred to the FSA's Enforcement Division.
- 4.6. The Enforcement investigation reviewed 10 of Select's mortgage sale files from the relevant period and the management systems the firm had in place to control its business. Enforcement also interviewed Mr Masi and obtained further information through requests for information answered by the firm. The investigation found evidence of breaches in the three areas detailed below.

##### **Financial Promotions Breaches**

- 4.7. During the relevant period Select's marketing was limited to two financial promotions; an advertisement in the Swindon Advertiser ("the advertisement"), circulation approximately 22,000, which was its primary source of business and the firm's web site ("the website") which did not generate much, if any, business. Although in

different format and layout both these financial promotions contained generally the same information about the CRP.

- 4.8 The promotions were unclear and did not inform customers that the CRP was not a capital repayment mortgage and in fact was a voluntary savings account separate from the interest only mortgage. In particular, the promotions did not mention that the mortgage was based on an interest only mortgage and did not substantiate how Select's CRP product guaranteed to repay a mortgage in less time than 25 years. The promotions also failed to highlight the disadvantages associated with interest only mortgages. For these reasons Select's promotions were in breach of MCOB Rule 3.6.3 R.
- 4.9 When providing information or giving advice to a customer on regulated mortgage contracts, a firm must not hold itself out as acting independently unless it intends to: (a) provide that service wholly or predominantly based on the market and (b) enable the customer to pay a fee for the provision of that service. Where a fee may be charged for advising or arranging qualifying credit, a firm must ensure that a prominent indication is given of the amount of fee if known, or a representative fee based upon the business expected to arise from the promotion. The advertisement stated that Select was independent, but did not mention that in fact a fee was payable to Select for administering the CRP and that it received commission from the lenders for arranging the mortgage. For this reason the advert breached MCOB Rule 3.6.27 R. There was also no fee or commission information contained within the website. The financial promotions do not now use the word "independent" to describe the firm's services
- 4.10 The advertisement referred to various types of customers and gave the following information on interest rates "*fixed rates from 2.99% (APR 6.4%)*".<sup>1</sup> As the interest rate depended on the circumstances of the customer, it should have used the following prescribed term: *'The actual rate available will depend upon your circumstances. Ask for a personalised illustration.'* For this reason the advert breached MCOB Rule 3.6.25 R.
- 4.11 Select's advertisement included a reference to interest rates and many of the mortgages provided by Select included multi-rate mortgage features where the interest rate changed after an initial promotional period. The advertisement should therefore have stated the rates in sequence from the rate initially applying through to the rate assumed to apply at the end of the mortgage, and after each rate give its period of application. Select's advertisements did not provide the required information in breach of MCOB Rule 3.6.26 R.
- 4.12 The risk warnings in the advertisement were not prominently displayed as they were not in the main body of the promotion. Also, the website contained no risk warnings at all. For these reasons the promotions breached MCOB Rule 3.6.13 R.
- 4.13 The promotion stated that the firm was authorised and regulated by the FSA but did not state those matters which are not regulated by the FSA (e.g. right to buy and buy to let).

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<sup>1</sup> The rate changed in the advert over the course of the relevant period, this particular rate was included in the advert on 7 June 2006.

- 4.14 The website contained the FSA logo which is not permitted without the FSA's express permission. Select had not obtained such permission. The website also contained out of date information and stated that the firm was a member of the Mortgage Code of Intermediaries, which no longer exists.
- 4.15 Select changed certain aspects of the financial promotions immediately after the FSA informed it that the promotions were non compliant in October 2006. However, the promotions were still not compliant and further changes were required after the FSA raised further concerns.
- 4.16 As a result of the conduct detailed in paragraphs 4.7 to 4.15 above, Select did not communicate with its customers in a way which was clear, fair and not misleading **in breach of Principle 7.**

**Failure to have adequate sales processes in place for the recommendation of mortgage sales to its customers.**

*Scope of service*

- 4.17 A firm must take reasonable steps to ensure that the scope of the service which it advertises itself as offering to a customer matches the extent of that scope in practice. Select held itself out as being independent and offering a whole of market service. Select therefore needed to consider a sufficiently large number of mortgages generally available in the market. Select's advertisement stated that it looked at over 150 lenders, but the FSA review of files found no structured process or third party platform to choose systematically the most suitable mortgage for each customer from that number of lenders.
- 4.18 Select used its market knowledge from experience and information received from a variety of lenders giving details of new products and deals based on marketing material received from lenders to choose the most suitable product. Select arranged mortgages using only ten different lenders during the relevant period but have on file 27 mortgage providers in relation to regulated mortgage products. There is little or no evidence of product research being carried out on file. The firm did not offer a fee-based service for the provision of mortgage advice. The customer paid a fee for the management of the CRP and the firm received a procurement fee from the lender. Select held itself out as independent and sourcing from the whole of the market. However, Select's method of selection did not show that it sourced from the whole of the market and it did not offer customers the option of paying by fee. For these reasons Select has breached MCOB 4.3.2 R, 4.3.4 R and 4.3.7 R.

*Suitability*

- 4.19 A firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract unless it will be suitable for that customer. This requires a firm to have regard to the facts disclosed by the customer and other facts about the customer of which the firm is or should reasonably be aware and have reasonable grounds to conclude:
- (a) that the mortgage is the most suitable of those that the firm has available to it within the scope of the service provided to the customer – in this case the whole of the market;

- (b) that customers can afford to enter into the mortgage. This would include obtaining and considering information about expenditure as well as income; and
  - (c) that the mortgage is appropriate to the needs and circumstances of the customer. This would include considering whether a customer should have an interest-only mortgage, a repayment mortgage or a combination of the two.
- 4.20 Select's initial information gathering of customer information failed to demonstrate that the recommended mortgage was affordable for the customer. In all ten of the files reviewed, in assessing affordability the only expenditure taken into account was any existing mortgage and other secured debt and personal loans. Regular living expenses were not taken into account and as a consequence, sufficient information was not obtained in order to assess affordability in breach of MCOB 4.7.4 R. The customer fact find has now been altered to include regular living expenses.
- 4.21 The reviewed files also failed to demonstrate the firm's reasons for selection and recommendation of the CRP over other methods of repaying the mortgage. In respect of the reviewed files, an illustration was included that provided a CRP quote for the new mortgage against the client's repayments on their current mortgage. However, no information was held on the customer files to explain why the CRP was recommended in preference to any other capital repayment method in breach of MCOB 4.7.2 R.
- 4.22 In the 10 files reviewed, only 2 contained a Key Facts Illustration ("KFI") that was compliant and in both cases the KFI was produced by the lender. Select has admitted that its KFIs were non-compliant. It now sends out the lender's KFI with a covering letter. The reasons for the KFIs being non-compliant were:
  - (a) the KFI contained non-prescribed information; and
  - (b) in eight files it did not disclose the procurement fee that the firm was going to receive from the lender.
- 4.23 A firm should (out of all the regulated mortgage contracts identified as being appropriate for the customer) recommend the one that is the least expensive for that customer taking into account the pricing elements identified by the customer as being the most important to them. Where the least expensive has not been recommended the firm should record the basis on which the recommendation has been made. Select's files did not make this clear.
- 4.24 In cases where either the customer had self-certified their income, or the term of the recommended mortgage went beyond the customer's normal retirement age or the mortgage was used to consolidate unsecured loans, there was a failure to record the information justifying and explaining the recommendation.
- 4.25 In some cases, where sub-prime or near-prime rate interest-only mortgages were recommended there was a failure to record either the fact of any adverse credit history or why that adverse credit history merited the recommendation of a sub-prime or near-prime mortgage. These anomalies arose as some customers had not been entirely accurate in stating their credit history and the extent of their other debts when the firm first gathered information about the customer's circumstances. There was no record on the file of when further information was provided and what it was, although it was



subsequently taken into account in Select's recommendation.

- 4.26 The failures to set out and record on the customer files the facts and matters supporting the assessment of suitability and reasons for the recommendation are breaches of MCOB 4.7.17 R.
- 4.27 As a result of the failings detailed in paragraphs 4.17 to 4.26 Select failed to conduct its business with due skill care and diligence in breach of Principle 2.

#### **Management systems and controls failings**

- 4.28 Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. There were inadequate systems and controls in place for ensuring that the firm was compliant with the requirements and standards set out in the Principles and MCOB.
- 4.29 Select did not make and retain adequate records to demonstrate compliance in the key areas of financial promotions, providing an independent and whole of market service to customers and ensuring suitability of advice to customers. Moreover, Select accepted that it was unaware of many of the requirements set out in MCOB and as a result did not have systems and controls in place to ensure compliance with the MCOB rules. The failure to establish, implement and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system resulted in Select failing to take reasonable care to organise and control its affairs responsibly and effectively in breach of **Principle 3**.

### **5. ANALYSIS OF THE PROPOSED SANCTION**

- 5.1 The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions, and demonstrating generally to firms the benefits of compliant behaviour.
- 5.2 In determining whether a financial penalty is appropriate and, if so, its level, the FSA is required to consider all the relevant circumstances of the case. The FSA considers that the following factors are particularly relevant in this case.

#### **The seriousness of the misconduct or contravention**

- 5.3 In determining the appropriate sanction, the FSA has had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches, the number of customers who were exposed to risk of loss and to whether the misconduct or contravention revealed serious failings in the firm's management systems and controls. For the reasons set out at paragraph 2.3 above, the FSA considers that the breaches identified in this case are of a serious nature.

#### **The extent to which the contravention or misconduct was deliberate or reckless.**

- 5.4 The FSA has not determined that Select deliberately contravened regulatory requirements.

### **The size, financial resources and other circumstances of the firm**

- 5.5 In determining the level of penalty, the FSA has been mindful of the size and financial situation of the firm and the cost of the measures Select has put in place to ensure that its business is fully compliant in the future. Taking full account of these factors, the FSA considers that a penalty of £15,000 (subsequently discounted by 30% to £10,500 for early settlement) is appropriate.

### **The amount of profits accrued or loss avoided**

- 5.6 The FSA has not determined that Select deliberately set out to accrue additional profits or avoid a loss through the non-compliant way it previously sold its mortgage product.

### **Conduct following the contravention**

- 5.7 After Select was informed by the FSA of the concerns it immediately amended its financial promotions in certain respects and said that it was willing to amend its procedures to ensure that it adhered to the regulatory requirements going forward.
- 5.8 As detailed in paragraph 2.4, Select now uses a third party platform to provide whole of market quotations, has arranged for an external compliance consultant to review its management systems and controls, and agreed to the sign off of future sales by an external compliance consultant for a six month period.
- 5.9 Following its referral to Enforcement, Select has co-operated fully with the Enforcement action. Select agreed the facts quickly ensuring efficient resolution of the matter and has received full credit for settlement at an early stage. Without this level of co-operation the financial penalty would have been higher.

### **Disciplinary record and compliance history**

- 5.10 Select has not been the subject of previous disciplinary action.

### **Previous action taken in relation to similar failings**

- 5.11 In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

## **6. DECISION MAKER**

- 6.1 The decision which gave rise to the obligation to give this Final Notice was made by the Executive Settlement Decision Makers on behalf of the FSA.

## **7. IMPORTANT**

- 7.1 This Final Notice is given to Select in accordance with section 390 of the Act.

### **Manner of and time for payment**

- 7.2 The financial penalty must be paid in full by Select by no later than 29 October 2007.

**If the financial penalty is not paid**

- 7.3 If all or any of the financial penalty is outstanding on 29 October 2007, the FSA may recover the outstanding amount as a debt owed by Select and due to the FSA.

**Publicity**

- 7.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 7.5 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 7.6 For more information concerning this matter generally, you should contact John Tutt at the FSA (direct line: 020 7066 1240 /fax: 020 7066 1241).

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**Georgina Philippou**  
**FSA Enforcement Division**

**ANNEX 1 – Mortgages and Home Finance:**  
**Conduct of Business Sourcebook Rules**

**MCOB 3.6.3 R - Clear, fair and not misleading**

(1) A firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is clear, fair and not misleading. (2) A non-real time financial promotion which includes a comparison or contrast must: (a) compare credit meeting the same needs or which is intended for the same purpose; (b) objectively compare one or more material, relevant, verifiable and representative features of that credit, which may include price; (c) not create confusion in the market place between the firm itself (or the person whose qualifying credit promotion it approves) and a competitor or between the firm's trademarks, trade names, other distinguishing marks, qualifying credit (or those of the person whose qualifying credit promotion it approves) and those of a competitor; (d) not discredit or denigrate the trademarks, trade names, other distinguishing marks, qualifying credit, services, activities or circumstances of a competitor; (e) not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor; (f) not present qualifying credit as an imitation or replica of qualifying credit bearing a protected trademark or trade name; and (g) indicate in a clear and unequivocal way in any comparison referring to a special offer the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the qualifying credit, and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions will apply.

**MCOB 3.6.13 R - Required risk statements**

A non-real time financial promotion must, unless the transient advertising rule applies, prominently contain one or more of the following statements in the circumstances described:

(1) where it relates to a lifetime mortgage: 'This is a lifetime mortgage. To understand the features and risks, ask for a personalised illustration.' If the promotion also relates to a home reversion plan the statement may be adapted to the extent necessary to comply with the equivalent requirement for a home reversion plan (see MCOB 3.8A.3R (2)(a)); (2) where it refers to paying off unsecured debts (for example, credit cards, personal loans or overdrafts) by taking out qualifying credit: 'Think carefully before securing other debts against your home. Your home may be repossessed if you do not keep up repayments on your mortgage.' (3) in all cases except (1) and (2): 'Your home may be repossessed if you do not keep up repayments on your mortgage.'; or if it refers in whole or in part to qualifying credit secured on property which is not the customer's home the statement may be amended but only to the extent necessary in order to reflect that fact. (4) where the mortgage will be denominated in a currency other than sterling: 'Changes in the exchange rate may increase the sterling equivalent of your debt.' (5) where more than one of the statements in (1) to (4) applies, each relevant statement should be included. In such cases, the statement set out in (1), (2) or (3) should precede that in (4). (6) where a non-real time financial promotion relates to both qualifying credit and credit which is not qualifying credit the statements required by (2) or (3) may be modified by replacing 'your mortgage' with 'a mortgage or any other debt secured on it'.

**MCOB 3.6.25 R**

'If the non-real time financial promotion of qualifying credit concerns a contract where the APR varies depending upon the circumstances of the customer, the following further statement must be included with due prominence: 'The actual rate available will depend upon your circumstances. Ask for a personalised illustration.'

**MCOB 3.6.26 - Multi-rate mortgages**

If the non-real time financial promotion of qualifying credit is for a product where more than one rate of charge will or may apply during the course of the contract, and the non-real time financial promotion of qualifying credit contains information about any of these rates then:

(1) the non-real time financial promotion of qualifying credit must contain a clear and no less prominent description of all of the rates of charge that will apply; (2) where any rate to be charged in the future is variable (such as the mortgage lender's standard variable rate), the rate indicated must be the level of that rate current at the time of the promotion; and (3) the rates must be stated in sequence from the rate initially applying through to the rate assumed to apply at the end of the mortgage, and after each rate must be given a statement: (a) of its period of application; and (b) that the rate then changes.

### **MCOB 3.6.27 R - Fees for advice or arranging**

If a non-real time financial promotion of qualifying credit relates to the controlled activities of advising on or arranging qualifying credit and a fee may be charged for these activities, a firm must ensure that a prominent indication is given of:

(1) the amount of the fee (if known); or (2) a representative fee based upon the business expected to arise from the promotion.

### **MCOB 4.3.2 R**

A firm must take reasonable steps to ensure that the extent of the scope of the service which it holds itself out as offering to a customer reflects the extent of that scope in practice.

### **MCOB 4.3.4 - Whole of market**

(1) A firm which holds itself out as giving information or advice to customers on regulated mortgage contracts from the whole market must not give any such information or advice unless: (a) it has considered a sufficiently large number of regulated mortgage contracts which are generally available from the market; and (b) the consideration in (a) is based on criteria which reflect adequate knowledge of the regulated mortgage contracts generally available from the market as a whole. (2) A firm in (1) must satisfy the obligation in MCOB 4.7.2 R by taking reasonable steps to ensure that a personal recommendation given to a customer is: (a) in accordance with the consideration in (1); and (b) the regulated mortgage contract which on the basis of that consideration is the most suitable to meet the customer's needs.

### **MCOB 4.3.7 R - Independence**

(1) When providing information or giving advice to a customer on home finance transactions, a firm must not hold itself out as acting independently unless it intends to: (a) provide that service wholly or predominantly based on the whole market in the relevant type of home finance transaction; and (b) enable the customer to pay a fee for the provision of that service. (2) A firm which in accordance with (1) holds itself out as independent must ensure that the information or advice subsequently given to the customer concerned is information or advice on home finance transactions from the whole market in the relevant type of home finance transaction.

### **MCOB 4.7.2 R**

A firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for that customer (see MCOB 4.3.4 R (2), MCOB 4.3.5 G and MCOB 4.3.6 G).

### **MCOB 4.7.4 R - For the purposes of MCOB 4.7.2 R:**

(1) a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm has reasonable grounds to conclude that: (a) the customer can afford to enter into the regulated mortgage contract; (b) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and (c) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer. (2) no recommendation must be made if there is no regulated mortgage contract from within the scope of the service provided to the customer which is appropriate to his needs and circumstances; and (3) if a firm is dealing with an existing customer in arrears and has concluded that there is no suitable regulated mortgage contract for the purposes of MCOB 4.7.2 R, the firm must nonetheless have regard to MCOB 13.3.2 E(1)(a), (e) and (f) (see also MCOB 13.3.4 G(1)(a) and (b)).

### **MCOB 4.7.17 R - Record keeping**

(1) A firm must make and retain a record: (a) of the customer information, including that relating to the customer's needs and circumstances, that it has obtained for the purposes of MCOB 4.7; and (b) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2 R satisfies the suitability requirements in MCOB 4.7.4 R(1). This explanation must include, where this is the case, the reasons why a personal recommendation has been made on a basis other than that described in MCOB 4.7.13 E(1). (2) The record in (1) must be retained for a minimum of three years from the date on which the personal recommendation was made.