

## Finalised guidance

# Guidance on Small and Medium Sized Business (Credit Information) Regulations, and Small and Medium Sized Business (Finance Platform) Regulations

October 2016

### **Purpose of guidance**

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- 1.1 This guidance is given under our powers in section 139A of the Financial Services and Markets Act 2000 (FSMA), Regulation 20 of the Small and Medium Sized Business (Credit Information) Regulations 2015 and Regulation 17 of the Small and Medium Sized Business (Finance Platform) Regulations 2015. The purpose of the guidance is to explain the scope of our functions in relation to these Regulations. It will be of interest to banks, credit reference agencies (CRAs) and finance platforms designated by the Treasury under the Regulations, small and medium sized businesses (SMEs) seeking finance, and alternative finance providers. This guidance comes into force on 1<sup>st</sup> October 2016.

### **Background**

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- 1.2 The Small Business, Enterprise and Employment Act 2015 contains measures aimed at improving access to credit information about SMEs, and helping to match SMEs rejected for finance with alternative lenders through finance platforms. We are required by provisions set out in secondary legislation (the Regulations) to maintain arrangements to monitor and enforce relevant requirements. The Regulations create a separate monitoring and enforcement regime from the authorisation requirements under FSMA, but apply, or make provision corresponding to, certain aspects of FSMA.
- 1.3 The Regulations require, with permission from the relevant SME, designated banks to:
- share credit information about SMEs with designated CRAs which must then provide this information to finance providers on request, and

- provide specified information about rejected SME loan applicants to designated finance platforms which must then provide such information to finance providers on request

1.4 The nature and content of the credit information about SMEs that may be shared with designated CRAs, and information regarding rejected SME loan applicants to be provided to designated finance platforms, is set out in the respective schedules to the Regulations.

1.5 For the purposes of the Regulations, a business is an SME business if it:

- has an annual turnover of less than £25m
- carries out commercial activities as its principal activity
- does not carry out regulated activities as its principal activity
- is not owned or controlled by a public authority
- has an address in the United Kingdom, and
- is not part of a group which as a whole has an annual turnover which is equal to or greater than £25m

### **Designation of banks, CRAs and finance platforms**

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1.6 Designation, for the purposes of the specific activities under the Regulations outlined above, is separate from the authorisation requirements of FSMA and is solely a matter for the Treasury. The process for designation is set out in the Regulations. The Treasury will maintain a publicly accessible record of current designations. Some designated entities may also be authorised under FSMA in respect of regulated activities.

### **Monitoring and enforcement**

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1.7 The Regulations require us to maintain arrangements to monitor and enforce relevant requirements, whilst using our resources in the most efficient and economic way.

1.8 The Regulations also set out our information gathering powers, which include being able to appoint (or have appointed) a skilled person to prepare a report, for example, in relation to a designated entity's compliance with the Regulations. They also set out our disciplinary powers, which include public censure, financial penalties and imposing limitations on permission.

1.9 Broadly, we expect to apply our standard risk-based approach to monitoring compliance, having regard to the requirement to use our resources in the most efficient and economic way. If we receive information about potential non-compliance with the Regulations by designated banks, CRAs or finance platforms, we would consider this in accordance with our relevant supervisory processes.

- 1.10 Our approach to enforcement will reflect our general approach to enforcing FSMA as set out in the Enforcement Guide (EG), where we state that we will exercise our powers in a manner that is transparent, proportionate and consistent with our publicly stated policies.
- 1.11 Designated entities are required to maintain records for at least five years from creation which should be able to demonstrate compliance or non-compliance with relevant requirements under the Regulations.

## Complaints

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- 1.12 The activities of designated CRAs and finance platforms under the Regulations are within the scope of the Financial Ombudsman Service. SME consumers affected by designated CRAs and finance platforms carrying out activities under the Regulations (including activities which are ancillary) may, therefore, be able to complain to the Financial Ombudsman Service subject to other jurisdiction rules. The activities which banks carry out under the Regulations may also be within scope of the compulsory jurisdiction as ancillary activities to those already within scope.

## Fees

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- 1.13 Our approach to charging fees under the Regulations reflects our monitoring approach. Given the nature and scale of the activities undertaken, and the small number of CRAs and finance platforms likely to be designated under the Regulations, we consider that it is disproportionate to charge a periodic fee at the present time.
- 1.14 Nevertheless, there could be occasions when we have to undertake additional work because a designated CRA or finance platform has or may have failed to comply with requirements under the Regulations or has or may have committed the offence of misleading the FCA. In these circumstances, it would not be reasonable for our costs to be covered by the general body of firms.
- 1.15 Provision is made in FEES 3 to charge designated CRAs or finance platforms an hourly rate where we anticipate the resources involved in monitoring compliance with the Regulations in individual cases will exceed a threshold of £10,000.
- 1.16 We shall provide notice to the CRA or finance platform concerned where costs are likely to exceed £10,000. If costs do exceed £10,000, the full costs incurred are payable as a fee, not simply the excess over £10,000. For the purposes of calculating costs, we will use the hourly rates in FEES 3 Annex 9 (Special Project Fee). The current hourly rates are:
- Administrator £30
  - Associate £55
  - Technical Specialist £100

- Manager £110
  - Any other person employed by the FCA £160
- 1.17 If a skilled person is appointed under the Regulations, FEES 3.2.7R(zp) and (zq) will apply.
- 1.18 FEES 5 also provides for the payment of case fees by respondents where the Financial Ombudsman Service deals with more than 25 cases in a year. The ombudsman service levy is currently set at £0 for designated CRAs and finance platforms.
- 1.19 No application fees are payable as designation under the Regulations is solely a matter for the Treasury.
- 1.20 We will keep our approach under review in the light of our experience of these measures to consider whether it would be appropriate to introduce periodic fees at a future time.