

Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules

March 2015



Contents

Abbreviations used in this document	3
1 Overview	5
2 Mortgage Credit Directive	10
3 Our approach to second charge mortgages	17
4 Authorisation regime for second charge firms	20
Annex 1	
1 Detailed feedback to CP14/20	24
Annex 2	
2 List of non-confidential respondents	56
Appendix 1	
1 Made rules (legal instrument) Mortgage credit directive	58
Appendix 2	
2 Made rules (legal instrument) Fees	283
Appendix 3	
3 Further example ESIS documents	288

In this Policy Statement we report on the main issues arising from Consultation Paper 14/20 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages* and publish the final rules.

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Abbreviations in this document

APRC	Annual Percentage Rate of Charge
BSOCS	Building Societies' sourcebook
CBA	Cost-benefit analysis
CBTL	Consumer Buy to Let
CCA	Consumer Credit Act 1974
COMP	Compensation sourcebook
CONC	Consumer Credit sourcebook
CP	Consultation Paper
EBA	European Banking Authority
ERC	Early Repayment Charge
ESIS	European Standardised Information Sheet
EU	European Union
FCA	Financial Conduct Authority
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
HNW	High Net Worth
IMD	Insurance Mediation Directive
KFI	Key Facts Illustration
LTV	Loan-to-Value Ratio
'MCD' or 'the Directive'	Mortgage Credit Directive
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
MiFID	Markets in Financial Instruments Directive
MIPRU	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
MLAR	Mortgage Lenders and Administrators Return
MMR	Mortgage Market Review

PERG	Perimeter Guidance Manual
PII	Professional Indemnity Insurance
PRA	Prudential Regulation Authority
PS	Policy Statement
PSD	Product Sales Data
RAO	Regulated Activities Order
RMAR	Retail Mediation Activities Return
SUP	Supervision sourcebook
SVR	Standard Variable Rate
TC	Training & Competence sourcebook

1. Overview

Introduction

- 1.1** In September 2014 we consulted on our proposed approach to implementing the Mortgage Credit Directive (MCD) and our new regime for second charge mortgages. In this Policy Statement, we summarise the feedback we received and our response, indicating where we have adjusted the final policy to take respondents' views into account. In general, respondents welcomed our approach to implementing the MCD and our proposals to bring the regulation of second charge mortgages in line with our first charge mortgage regime. We are publishing final rules, the majority of which come into effect on 21 March 2016.

Who does this affect?

- 1.2** This Policy Statement will interest lenders, administrators, intermediaries and consumers in both the first and second charge mortgage markets, and bodies representing these groups, including firms dealing with niche mortgage products such as bridging finance or lifetime mortgages.

Is this of interest to consumers?

- 1.3** This Policy Statement will interest first charge mortgage consumers, as the Directive introduces additional protections to our existing requirements. However, it is likely to be of greater interest to second charge mortgage consumers, as our final rules introduce conduct requirements for these firms that are broadly consistent with our existing first charge mortgage rules and which will help protect consumers.

Context

Mortgage Credit Directive

- 1.4** The MCD introduces a European framework of conduct rules for firms selling both first and second charge mortgages and, in many ways, is designed to achieve similar consumer protection objectives as our existing mortgage rules. In view of the overlap between the MCD and our existing mortgage regime, our consultation proposals aimed, wherever possible, to implement the Directive using provisions in our existing rules. Where this is not possible, we

proposed that we should copy out¹ the Directive. This approach is designed to cause the least possible disruption to the market, while ensuring that consumers are appropriately protected.

Second charge mortgages

- 1.5** A second charge mortgage is a type of loan which uses the borrower's home as security. Second charge mortgages take secondary priority behind the borrower's main (or first charge) mortgage. This means that if the borrower is unable to make their mortgage payments and the property is repossessed, the first charge mortgage lender is repaid from the proceeds of the sale before the second charge lender or lenders.
- 1.6** Second charge mortgages are currently regulated as consumer credit. The MCD applies equally to first and second charge mortgages and the Government has decided to move the regulation of second charge mortgages into our mortgage regime when the UK implements the MCD. As well as implementing the MCD for second charge firms, we also consulted on proposals to apply additional protections from our first charge mortgage regime, which we believe are appropriate to protect consumers in the second charge market.

Other changes

- 1.7** We also consulted on areas where we propose to strengthen consumer protection and ensure consistent practice across both first and second charge markets. This included proposals on disclosure of alternative finance options, provisions on the fair treatment of vulnerable customers with payment shortfalls and rules on information sharing.

Summary of feedback and our response

- 1.8** In general, respondents welcomed our intention to use our existing rules and copy-out to implement the MCD. However, the consultation revealed a compatibility issue between the MCD and our existing responsible lending regime, which means that we must change our rules so that all consumers who re-mortgage with a new lender must have an affordability assessment, even if the consumer is not looking to borrow more.
- 1.9** We also received feedback and requests for clarity on a number of aspects of our draft rules. Without altering our overall policy approach, we propose to make some changes to our rules or guidance implementing the MCD, which we hope will make things clearer and help with implementation. More details are set out in Chapter 2.
- 1.10** There was strong support for our proposal to regulate second charge mortgages in line with our first charge mortgage regime. So we are proceeding with most proposals, subject to some minor amendments. For example, we have simplified the interest rate stress test that second charge firms will be required to carry out on higher priority mortgages as part of the affordability assessment.
- 1.11** However, second charge firms and their representatives expressed concern with the overall weight of regulatory change they would face in the lead up to 21 March 2016 and asked us to consider phasing the introduction of the second charge regime where possible.
- 1.12** We understand the concerns expressed about the level and pace of change for second charge firms. So we will introduce Product Sales Data (PSD) 'sales' and 'performance' reporting for second charge firms a year later than originally intended. Further details are set out in Chapter 3.

¹ A replication of the Directive text in the Handbook.

Related developments

- 1.13** Since we published our consultation paper in September 2014, we have also consulted on a number of related issues, which are summarised below.
- 1.14** In October 2014, we consulted on how we propose to recover the costs of regulating second charge mortgage lenders and intermediaries when they move into our mortgage regime. This included details of proposed application fees and periodic fees.² Feedback to this consultation was published earlier this month³ in CP15/14 'FCA Regulated fees and levies: rates proposals 2015/16'. We have attached at Appendix 2 the Fees (Mortgage Credit Directive) Instrument 2015, which includes the MCD related rule changes outlined in this CP.
- 1.15** In January 2015, the Treasury published the legislation necessary to implement the MCD and move the regulation of second charge mortgages from the interim consumer credit regime into our first charge mortgage regime.⁴ The legislation also includes a framework of conduct standards for firms who do business with consumers taking out buy-to-let mortgages. The FCA is required to implement this framework and our proposed approach is set out in CP15/3 'Buy-to-let mortgages – implementing the Mortgage Credit Directive Order 2015', which we published in February 2015.⁵ Our consultation ended on 19 March and we are aiming to make final rules before the end of June.
- 1.16** In February 2015, we also published CP15/6 'Consumer credit – proposed changes to our rules and guidance', which proposed amendments to our Consumer Credit sourcebook (CONC) flowing from the decision to regulate second charge mortgages as part of the first charge mortgage regime⁶. This CP also sets out proposals to amend the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) in relation to a small subset of lending that is not secured on residential property but is used to acquire or retain property rights in residential property. The deadline for consultation responses is on 6 May 2015 and our aim is to publish final rules before the end of July.
- 1.17** In the third quarter of 2015 we propose to consult on how our knowledge and competence requirements will apply to firms passporting into the UK under the MCD. At the same time we also plan to consult on the forms for notifying an intention to passport.
- 1.18** We also expect that later this year the European Banking Authority will publish the outcome of its consultation on two sets of guidelines on the assessment of creditworthiness⁷ and arrears and foreclosure.⁸ We will then consider whether there is a need for us to change our rules as a consequence.
- 1.19** In CP14/20 we published a proposed amendment to the DISP sourcebook. We highlighted this change and asked for views on it as part of CP14/30 'Improving complaints handling'⁹. In Q2 2015 we will be publishing feedback on our proposed changes to DISP, along with the final rules, as part of our Policy Statement on Consumer Buy-to-Let.

2 www.fca.org.uk/static/documents/consultation-papers/cp14-26.pdf

3 <http://www.fca.org.uk/static/documents/consultation-papers/cp15-14.pdf>

4 www.gov.uk/government/consultations/implementation-of-the-eu-mortgage-credit-directive

5 <http://www.fca.org.uk/static/documents/consultation-papers/cp15-03.pdf>

6 www.fca.org.uk/static/fca/documents/cp-15-06.pdf

7 [www.eba.europa.eu/documents/10180/926843/EBA-CP-2014-42+\(CP+on+GLs+on+creditworthiness\).pdf](http://www.eba.europa.eu/documents/10180/926843/EBA-CP-2014-42+(CP+on+GLs+on+creditworthiness).pdf)

8 [www.eba.europa.eu/documents/10180/927233/EBA-CP-2014-43+\(CP+on+draft+Guidelines+on+arrears+and+foreclosure\).pdf](http://www.eba.europa.eu/documents/10180/927233/EBA-CP-2014-43+(CP+on+draft+Guidelines+on+arrears+and+foreclosure).pdf)

9 <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-30>

Next steps

What do you need to do next?

First charge firms

- 1.20** All firms involved in regulated activities relating to mortgages or loans used to acquire or retain property rights in residential property, should consider how our new rules apply to their business and implement the changes necessary to comply within the appropriate timeframes.
- 1.21** If you are currently authorised to conduct regulated activity in relation to first charge mortgages, then you will not need to make any changes to your permissions in order to conduct regulated activity in relation to first and second charge mortgages after 21 March 2016. However, we will be contacting authorised first charge firms in late 2015 or early 2016 to understand whether they will carry out second charge activities from 21 March 2016.

Second charge firms

- 1.22** If you are currently authorised under the interim consumer credit regime to conduct regulated activity in relation to second charge mortgages, and you wish to continue with this activity after 21 March 2016, you will have to apply for the appropriate mortgage permissions. Further details are set out in Chapter 4.

What will we do?

- 1.23** We understand that many firms could face difficulties in preparing for the new requirements set out in this paper. In particular, we understand the challenges in establishing systems and processes to manage 'pipeline' transactions that start before 21 March 2016 but do not complete until after that date. We set out our response to this issue in Chapter 2.
- 1.24** Our supervisory approach to 'pipeline' transactions will follow our existing risk-based model and align with our broader supervisory priorities for the mortgage market. We believe that the MCD adds little to the existing protections available to UK first charge consumers and our central aim in implementing the Directive has been to seek to minimise disruption to the mortgage market, both for firms and consumers. We are supportive of firms whose approach to the adoption of the new requirements seeks to minimise disruption for consumers and achieve the right outcomes while reducing the amount of duplicative process and information disclosure during the transitional period.

Impact of changes on mutual societies

- 1.25** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.
- 1.26** In our consultation paper, we requested comments or information from respondents on issues relating to mutual societies arising from our proposals. One respondent asked about the future regulatory treatment of credit union second charge loans. We have addressed this in our response to Q15 in Annex 1. Another respondent raised an issue with us regarding foreign currency lending and the potential impact on the PRA's Building Societies sourcebook (BSOCS). Please see Chapter 2 for details of this issue.
- 1.27** We have considered the potential impacts arising from the changes to our proposals in relation to mutual societies including credit unions, industrial and provident societies, friendly societies and EEA mutual societies. In general we do not believe any of the changes made from our consultation have a significantly different impact from the impact identified in our consultation or that they will have a significantly different impact on authorised persons who are mutual

societies, in comparison with other authorised persons. While the change being made to the affordability assessment requirements where a customer is re-mortgaging will impact on all lenders equally, we recognise that there may be particular implications for how some mutual societies seek new business.

Equality and diversity considerations

- 1.28** We are required under the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, gender, disability, race or ethnicity, pregnancy and maternity, religion, sexual orientation and gender reassignment). We are also required to have due regard to the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.
- 1.29** We published the outcomes of our initial equality impact assessment in CP14/20 and invited comments or information from respondents about the impacts our proposals may have on equality and diversity issues. Our initial assessment was that we do not believe that our proposals give rise to any equality and diversity issues and we did not receive any comments to contradict this view during the consultation process.

2. Mortgage Credit Directive

What is the MCD?

- 2.1** The MCD introduces a framework of conduct rules for mortgage firms, largely covering pre-sale topics such as advertising and disclosure. In this respect, the MCD complements the comprehensive consumer protection our rules already aim to ensure. The MCD also allows mortgage intermediaries, once they are authorised, to 'passport' into other EU countries without needing to be authorised in those countries.
- 2.2** In CP14/20 we set out our approach to implementing the MCD, explaining that wherever possible, our starting point was to rely on our existing conduct rules to give effect to the Directive. There was unanimous support for this from respondents. Firms were keen to see disruption minimised, and consumer representatives favoured keeping existing standards. All stakeholders wanted to avoid unnecessary and expensive changes that might affect home buying.
- 2.3** There was also widespread support for our approach to copying out the MCD requirements that are clearly additional to our existing rules. Some firms and trade bodies said it would be helpful if we added further guidance or otherwise elaborated on some MCD obligations. However, in line with our own preference, many others welcomed the absence of prescription and the opportunity for firms to exercise discretion.
- 2.4** Where concerns were expressed by respondents, they often related to the content of the Directive rather than our proposed rules. For example, several respondents doubted the effectiveness of the second APRC (Annual Percentage Rate of Charge) and monthly cost that has to be included in the new prescribed disclosure document. In this case, and in several others identified by respondents, the requirements of the MCD are clear and we cannot depart from the EU law.
- 2.5** In this chapter we consider seven specific issues raised in the feedback:
- how and when the MCD requirements apply
 - implications for the MCOB transitional
 - the sales pipeline
 - binding offers
 - lifetime mortgages
 - foreign currency mortgages

- European Standardised Information Sheet (ESIS) language

How and when the MCD requirements apply

- 2.6** Respondents asked for clarity on how the MCD (or particular standards within it) should apply where there is a change in circumstances at the start of the contract. The example most often used was the case of a consumer who, sometime after taking out their mortgage, changes jobs and starts getting paid in a different currency. Respondents asked if this meant that the mortgage should now be treated as a foreign currency loan.
- 2.7** Our view is that the application of the MCD should be considered at the time that the agreement is entered into. So, if the change in the currency of the income resulted in a new agreement then, assuming the MCD definition is met, the new agreement would be a foreign currency loan. However, if the change in currency does not result in a new mortgage contract, there is no new loan agreement on which the application of the MCD needs to be determined. We have added new guidance to explain how the MCD requirements apply where there is a change in circumstance after the start of a contract (see MCOB 1.2.19G).
- 2.8** A second general concern about the application of the MCD requirements related to the treatment of contract variations. We can confirm that the MCD requirements do not apply where an existing contract is varied and that change does not result in a new contract.
- 2.9** For further advances involving a new agreement, a few respondents pointed out that the required ESIS will not, unlike a KFI for a further advance, include information on the total borrowing. While we cannot amend the ESIS to require such total cost information, it is open to a firm to give out further information detailing the total debt and cost.

Implications for the MCOB transitional

- 2.10** In CP14/20, we proposed to implement the MCD creditworthiness assessment requirements through our existing MCOB affordability rules. We received strong support for this approach, and intend to proceed on this basis.
- 2.11** However, during consultation we identified a conflict between the MCD and some of our current affordability rules for existing borrowers making changes to their mortgages. As a consequence, we are therefore withdrawing certain enabling provisions as they are not MCD compliant. From 21 March 2016, an affordability assessment will be required where a lender:
- takes on existing borrowers from other lenders. Use of this exception by firms has to date been extremely limited.
 - agrees to advance additional borrowing to existing customers to fund essential repairs to the property. Withdrawal of this, while an unfortunate consequence of the MCD, is likely to affect a very small number of borrowers.
- 2.12** We do not believe that it is the intention of the MCD to prevent existing customers from switching products where there is no material impact on affordability, and where that change could be brought into effect through different means. So, as is now the case, an affordability assessment will not be required where a consumer wishes to change a mortgage with their

existing lender (eg a rate switch), providing there is no additional borrowing and no other changes to terms likely to be material to affordability. This provision will also apply to second charge regulated mortgage contracts.

- 2.13** Where a first charge firm's existing customer took out their mortgage prior to 26 April 2014, that firm can continue to disapply some of our MCOB 11 rules where there is no additional borrowing and the transaction is in the consumer's best interests.
- 2.14** Our amended rules are in Appendix 1.

Pipeline

- 2.15** In CP14/20 we highlighted the limited number of exceptions to the 21 March 2016 transposition date for the MCD. We also explained how we proposed to turn on our MCD rules early (from 21 December 2015) to allow firms to manage their sales pipeline more smoothly. While some industry respondents said the scale of the implementation challenge meant they were unlikely to be ready ahead of time, they nonetheless thought it would be helpful if firms had the option to apply the rules even earlier. In response, we have decided to allow firms to comply with the final rules from 21 September 2015, six months in advance of the implementation date for the MCD, should they wish to.
- 2.16** Industry respondents welcomed the flexibility of being able to apply the rules early. However, many were concerned that the MCD did not explicitly recognise the sales pipeline. Industry representatives also made this point strongly to the Government in response to its consultation on the legislation, which the final legislation addresses. The Treasury provided further clarification on its implementing legislation in its summary of consultation responses¹⁰:

"the government has also made it clear that, where credit is granted pursuant to an agreement that exists before the implementation date of 21 March 2016, the affected mortgage does not need to be subject to the MCD. It will be for firms to assess when an agreement exists; and that question is a matter of fact and law that may depend on the practice of the individual lender. However, for example, it may be the case that an agreement exists at the formal offer stage of the mortgage lending process. Where such an agreement exists before 21 March 2016 the regulatory treatment as it was prior to the amendments to implement the MCD can be applied".

- 2.17** The Government's intention is that second charge firms will be able to adopt the MCD provisions voluntarily from September 2015, and that where they do so Consumer Credit Act requirements will not apply. The legislation in its current form may not disapply the Consumer Credit Act requirements in all circumstances, but we understand that the Government intends to resolve this before September 2015. We will amend our rules to reflect any change.

Binding offer

- 2.18** The MCD requires firms to provide a binding offer. In our consultation paper we explained the likely impact of the new requirement, focusing particularly on what it might mean for indicative

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397904/implementation_of_the_EU_MCD_summary_of_responses.pdf

offers or 'decisions in principle', which are common in the UK mortgage market. Respondents generally agreed with our view that the MCD should not prevent firms from providing indicative offers. Accordingly, the final rules leave firms free to carry on making draft or indicative offers, which are non-binding, and then later issue a binding offer.

- 2.19** Respondents expressed concerns over how the MCD binding offer requirements would impact the formal offers currently made by lenders, given that in many cases these include conditions. Stakeholders elaborated on the objective conditions they thought necessary for any offer, eg material changes in the circumstances of the borrower or subsequent evidence of fraud.
- 2.20** In our view, a binding offer can include conditions, such as those linked to a change in the facts and circumstances upon which the lender has based the decision to make the offer. However, we believe that reserving a blanket right to re-underwrite the loan, is not compatible with the offer being binding. We have added new guidance (see MCOB 6A.3.3G) setting out in greater detail our expectations with regard to binding offers.
- 2.21** Respondents were understandably keen to avoid making changes to their existing offer processes. The need for any change inevitably depends on the exact form of the current offer used and so there can be no universally applicable answer. However, the new guidance should help firms review their own processes in order to ensure compliance with the new binding offer requirement.

Lifetime mortgages

- 2.22** As we explained in CP14/20, lifetime mortgages are exempt from the MCD. We think it is appropriate to apply this exemption because the MCD is not designed for the distinctly different nature of lifetime mortgages.
- 2.23** As a result, we proposed to change our existing definition of a lifetime mortgage to reflect the MCD definition of a lifetime mortgage. This is because the MCD definition of a lifetime mortgage is slightly different, and in some respects narrower, than our existing Handbook definition of a lifetime mortgage.
- 2.24** Consultation responses indicated that the proposed definition would be problematic. This is because the MCD definition, on which it was based, excludes products that require repayment of capital during the term. If we proceed with just one definition, then lifetime mortgage products that require repayment of capital would fall outside the definition of a lifetime mortgage. So our existing tailored lifetime mortgage rules – such as the requirements for an additional qualification, enhanced advice, and a tailored key facts illustration (KFI) – would not apply. Instead, such products would fall under our rules for standard mortgages. This has the potential to harm consumers, as those people taking such mortgages would not, for example, receive the standard of advice we expect for lifetime mortgages. This is not a particular issue at the moment because lifetime mortgages requiring repayment of capital are not a feature of the current lifetime mortgage market, but such products might be developed in the future.
- 2.25** So we have decided to revise our approach to this. We will be retaining our existing Handbook definition of a lifetime mortgage, in order to apply our tailored lifetime mortgage rules. In addition, we will be creating an additional defined term – MCD exempt lifetime mortgage – which will be used to apply the MCD exemption for lifetime mortgages.

- 2.26** However, because the MCD definition is narrower than our existing definition, there is a potential for some lifetime mortgages to be caught by the MCD (which we define as an MCD lifetime mortgage), eg future products that require payment of capital during the term. In this case, most of our tailored lifetime mortgage requirements will continue to apply (eg additional qualifications and enhanced advice), but the maximum harmonising elements of the MCD will mean that the ESIS will apply instead of the tailored KFI. Because the ESIS is not designed to disclose the risks of a lifetime mortgage, we will require firms to provide additional disclosure to the consumer alongside the ESIS. This will set out information on the key risks of a lifetime mortgage that would otherwise be provided in the tailored lifetime mortgage KFI (see MCOB 5A.6.2R).
- 2.27** We do not consider that this change in approach to the lifetime mortgage definition will mean new costs to firms in the short term as we are not aware of any products currently available which would qualify as an MCD lifetime mortgage. Any firms providing these products in future will incur some general set up costs from having to develop appropriate systems to comply with the MCD, including the ESIS, and the development of the additional disclosure will form part of this. However, through the continued disclosure of the specific risks of lifetime mortgages, there are likely to be benefits for consumers because of the ability to take informed actions (relative to a position where such disclosure was not required).
- 2.28** We are aware of the potential for new lifetime mortgage product variants to be developed, in addition to the recent launch of some 'hybrid' lifetime mortgages that facilitate the payment of interest during the mortgage term. To foster innovation that serves consumer interest we are interested in talking to firms developing new lifetime mortgage products so we can consider how we may need to adapt our regulatory approach, whether through future rule changes, or through individual waivers or modifications.

Foreign currency mortgages

- 2.29** Some consumer and industry stakeholders objected to the new MCD obligations on foreign currency loans, believing they would have the counter-productive outcome of causing firms to stop lending and reduce consumer access rather than stimulating the internal market. Unfortunately, we do not have any scope to change the requirements set out in the MCD. However, a few respondents asked us to be clearer about the rules relating to foreign currency mortgages and in response we have decided to introduce guidance in the following areas.
- 2.30** We are clarifying through guidance that a mortgage denominated in the currency of an EEA state in which the customer is resident would only be a foreign currency mortgage if the customer receives the income or holds the assets *from which the loan is to be repaid* in a different currency.
- 2.31** A number of firms expressed concern about our draft rules on limiting exchange rate risk on foreign currency lending. We have made our expectations clearer in this area by adding guidance in MCOB which reflects clarification provided in the MCD itself.
- 2.32** The requirement to disclose significant movements in exchange rates attracted some comment from industry representatives. Our view of the MCD is that the concern is with movements that are adverse to the customer – we do not think that a separate disclosure on a significant movement in the customer's favour is required.

- 2.33** We received a number of queries from respondents on whether the MCD would affect the definition of residency and any knock-on effects this might have on individuals in certain types of overseas employment such as armed forces personnel. The MCD does not define residency and therefore, in our view, the term retains its natural meaning. It remains for firms to determine where a customer is resident in line with their usual policies and procedures.
- 2.34** Some building societies were concerned that the MCD approach to defining foreign currency lending would be read across to BSOCS. The PRA has confirmed that the new, and much wider, MCD definition does not alter the BSOCS guidance on managing foreign exchange risks.
- 2.35** A question was raised regarding the status of loans denominated in the Gibraltar pound or the Isle of Man pound. Given that both currencies are kept at parity with the UK pound sterling we do not propose to view loans denominated in these currencies as foreign currency loans.

ESIS language

- 2.36** Respondents recognised that the Directive rules on the ESIS are maximum harmonising; however, several still expressed concern with the language and form of the required disclosure.
- 2.37** Some respondents asked if we could make changes to the ESIS language, either to use more familiar terms or to be consistent with language used elsewhere, on the basis that the MCD allows member states to vary the ESIS language where the result 'might be more easily understandable for consumers'.
- 2.38** We have reviewed the ESIS and are allowing changes to some areas of the ESIS drafting where we believe that the existing language might not be easily understandable to consumers, for example, replacing 'exit charge' with 'early repayment charge'. The MCD does not allow us to make changes to the form and language of the ESIS for other reasons. We are therefore unable to make the more extensive changes to the ESIS which some respondents would have preferred.

Other amendments

- 2.39 FSCS access for firms passporting into the UK:** We have made some further amendments to the COMP sourcebook which were not included in our consultation paper, to reflect changes made by the Treasury to its statutory instrument. Firms passporting into the UK under the MCD through a UK branch will be covered by the FSCS only if they elect to receive top-up cover, in the same way as firms passporting under some other European directives (for example IMD & MiFID). Any firms electing to top-up will need to provide notice of this in writing to the FSCS, as required by COMP 14.2.1R.
- 2.40 Remuneration:** Some feedback indicated confusion about the MCD approach to remuneration, specifically with regard to the provisions on sales targets. We have made some slight amendments to our guidance to take account of this. While the MCD seeks to ensure that remuneration is not contingent on sales targets, this does not prevent firms having remuneration packages based on sales volumes, or from having different incentive levels for different types of mortgage. Firms need to ensure that such remuneration structures are not designed in a way that incentivises members of staff to act without consideration to a consumer's interests

and needs, and the more general MCOB 2.5A obligation to act in line with the best interests of the customer.

3.

Our approach to second charge mortgages

Summary

- 3.1** We received strong support for most of our proposals for regulating second charge mortgages. So we are proceeding as we proposed, subject to a few minor amendments and a change to the timetable for implementing Product Sales Data reporting.
- 3.2** A summary of the feedback received to all of the questions we asked in CP14/20 and our policy responses are set out in Annex 1.
- 3.3** In this chapter we consider three specific issues raised in the feedback:
- implementation timetables
 - interest rate stress test
 - Time Orders

Implementation timetables – conduct standards and data reporting

- 3.4** In our consultation, we asked whether we should consider a phased approach to the discretionary elements of our mortgage regime for second charge firms across two broad areas – conduct standards (such as advice and qualifications) and data reporting.
- Conduct standards**
- 3.5** In CP14/20, we proposed implementing our advising and selling standards from 21 March 2016, while giving mortgage sellers until 21 September 2018 to obtain the required Level 3 qualification.
- 3.6** Respondents agreed that second charge firms should be required to sell mortgages to the same standards as first charge firms as this would improve consistency across the mortgage market and provide appropriate consumer protection.
- 3.7** Although some industry participants argued for more time to implement the advice rules, others preferred a single implementation date. Consumer representatives also strongly argued against any delay in implementation. In view of this, and as there is a limited advantage in introducing the advice rules on a different timescale to the related MCD requirement to provide an 'adequate explanation' of MCD-related disclosures, we do not propose to change the timetable for the introduction of the advice rules.

3.8 A small number of firms asked for mortgage sellers to be given more time to meet the Level 3 qualification requirements, but many others were content with the proposed additional 30 months. We therefore do not intend to extend this.

3.9 Respondents' views and our approach to implementing these conduct standards are set out in more detail in our response to questions 16, 19 and 40 in Annex 1.

Data reporting

3.10 We proposed that second charge firms would need to report regular data to us from 21 March 2016. This includes transaction-level Product Sales Data (PSD) sales and performance data, and aggregate data through the Mortgage Lenders and Administrators Return (MLAR) and Retail Mediation Activities Return (RMAR).

3.11 In light of industry feedback, we recognise that introducing transaction-level PSD reporting requirements at the same time as requiring firms to make systems and process changes to comply with the MCD and our wider mortgage regime would present challenges to second charge firms. So we are delaying implementation of the PSD sales and performance returns for second charge mortgages for one year. In practice, firms will be required to submit PSD returns on second charge mortgages entered into from 1 April 2017.

3.12 However, we will proceed with our proposal requiring firms to submit aggregate reports on their second charge activity (through MLAR and RMAR) from March 2016.

3.13 We have considered the risks of delaying implementation of PSD, such as our ability to monitor second charge lending activity and the associated risks to consumers. We believe we can manage these risks during this one year period through other means, such as the collection of aggregate data combined with other supervisory tools, allowing us to challenge firms where necessary.

3.14 Respondents' views and our approach to data reporting are set out in more detail in our response to questions 43-50 in Annex 1.

Interest rate stress test

3.15 The vast majority of respondents agreed with our proposal that, as part of the affordability assessment, second charge lenders must consider the impact of expected interest rate increases on existing higher priority mortgages – as well as on the second charge mortgage they are granting. We proposed that lenders should assess this based on the outstanding balance and current interest rate.

3.16 However, industry representatives expressed concerns about how this would work in practice. They thought that consumers would not know the interest rate of their existing mortgage(s), and were concerned about the delays and costs that would arise if second charge lenders were required to obtain that information from other sources, such as directly from the first charge lender.

3.17 We accept that the interest rate does not materially affect the outcome of the interest rate stress test if the mortgage balance and current payment is known (because the lender can use the balance to assess the impact of the expected interest increase, and add this on to the existing payment). So we have amended the rules (MCOB 11.6.18AR(2)) to remove the need to obtain the interest rate. This should simplify the requirement for firms, as they can get the

outstanding balance (and current payment) from a credit reference, but without materially impacting the outcome for consumers. We expect that this will reduce costs to firms compared to the original proposal.

- 3.18** Lenders must have regard to market expectations and any prevailing Financial Policy Committee recommendation on appropriate interest rate stress tests, as per MCOB 11.6.18R, to determine any margin it applies for the interest rate stress test on both the second charge and higher priority mortgages.

Time Orders

- 3.19** Consumer groups asked whether the change in regulation for second charge would impact on whether the courts would still be able to make a Time Order. It appears that there is some confusion among stakeholders as to whether it is currently possible for such orders to be made for first charge loans and a concern that second charge consumers may lose the existing protection.
- 3.20** As we understand it, the government's intention has always been to maintain the availability of Time Orders as a judicial tool. We have added a further sentence of explanation to our Perimeter Guidance on the point (see PERG 4.17.2G). The courts are responsible for operating and making decisions in respect of Time Orders and so our guidance cannot address the mechanism for applying for an order.

4.

Authorisation regime for second charge firms

Summary

- 4.1** This chapter is for firms who want to apply for direct authorisation or to vary their permission. Please refer to CP14/20 and our website¹¹ for alternatives to authorisation.

Do I need to apply for authorisation?

- 4.2** The implementation of the MCD on 21 March 2016 is the date on which second charge mortgages are transferred from the consumer credit regime to the mortgage regime. This means that to carry out second charge mortgage business after this date, lenders, administrators and intermediaries have to be authorised and hold the correct mortgage permissions.

When can I apply for authorisation?

- 4.3** We will accept applications from second charge firms who wish to add regulated mortgage permissions from 20 April 2015. We encourage you to apply as quickly as possible after this date.

How long will the decision take?

- 4.4** Statutory standards apply to the determination of applications for corporate authorisation or variation of permission. These standards are set out in the Financial Services and Markets Act (FSMA).
- 4.5** We will make a decision within the earlier of:
- six months of receiving your complete application
 - 12 months of receiving an incomplete application.
- 4.6** In practice, we usually determine applications well within these service standards. We encourage all firms to take time over their applications and ensure they are as complete as possible when you submit them.

¹¹ <https://www.fca.org.uk/static/fca/documents/fsa-applying-authorisation.pdf>

4.7 Please note that as we cannot accept applications until 20 April 2015 this means that the maximum 12 month statutory standard for an incomplete application extends beyond the date the MCD comes into effect so firms should plan to apply as soon as possible after 20 April, if they wish to ensure their authorisation is in place from 21 March 2016.

4.8 As the MCD does not come into force until 21 March 2016 successful firms will not become authorised until this date (although firms with interim permission can apply the rules early). We know that firms will want to know the result of their application before this so we will inform you of the outcome of your application as soon as we have completed our assessment and will issue written confirmation where we are 'minded to authorise'.

What is the authorisation process?

4.9 The authorisation process is different for different types of firm. We have identified three main firm types and we set out the process for each below.

Firm type 1. Firms with interim permission for second charge business and already hold mortgage permissions

4.10 The Treasury has changed the definition of a mortgage contract in the Regulated Activities Order (RAO) so it will extend to both first charge and second charge mortgages from 21 March 2016. This means that firms already holding Part 4a permissions for regulated mortgage contracts will not need to apply to vary their permissions in order to carry out second charge mortgage business post MCD. Firms in this category should review their existing mortgage permission profile to ensure they hold the correct permissions for the business they undertake. If you also hold an interim credit permission, you will need to take further action depending on what other credit activities your firm undertakes.

Firm type 1A. Firms whose only credit activity is second charge business and hold mortgage permissions

4.11 If your firm is in this category, contact us at application.period@fca.org.uk to request to move your application period to March 2016; this avoids applying for credit permissions which are only required for a short period of time and maintains interim permission for second charge business until the new regime comes into force.

Firm type 1B. Firms who do second charge business and other credit activities and hold mortgage permissions

4.12 Firms in this category have two choices:

- 1.** You can apply within your allocated application period. Your authorisation for second charge mortgages under consumer credit will only last until the new regime comes into force.
- 2.** You can apply to move your application period to a later date to avoid the need to make an application including second charge mortgage business. We do not guarantee to move your application date as this depends on a number of factors including your firm's other credit activities.

Firm type 2. Firms with interim permission for second charge business and other credit activities and do not hold mortgage permissions

4.13 Consumer credit firms have been given an application period between August 2014 and March 2016. We know firms would prefer to make a single application for all their credit and mortgage activities so we have moved the application periods for some firms identified as doing second charge business. We have contacted these firms already to give a revised application period of May to July 2015. If your firm wants to apply to move your application date, contact us

on application.period@fca.org.uk. We do not guarantee to do this as it depends on factors including the firm's other credit activities.

4.14 A small number of firms who had early application dates may have already submitted a consumer credit application. Firms will need to apply for second charge mortgage permissions and there are two ways to do this depending on the status of their application at 20 April 2015, the date we can accept applications for second charge mortgage business, or when they choose to apply (if later):

- If we have determined your application before 20 April 2015 (or when you choose to apply, if later), you will need to apply on our website¹² to vary your firm's permissions to add mortgage permissions in the normal way.
- If we have not determined your application by 20 April 2015 (or when you choose to apply, if later), you can complete a supplementary application form¹³ and add this to your 'in-progress' application.

4.15 Some firms will pay a 'top-up' fee if their consumer credit fee was below the £5,000 charged for mortgage lenders and administrators or £1,500 for mortgage brokers.

4.16 Firms with application periods from May 2015 onwards can apply for both mortgage and credit permissions before their allocated application period and we strongly urge firms to take advantage of this option so their application is more likely to be determined by March 2016. Email application.period@fca.org.uk to confirm your firm is applying outside of the allocated application period. Failure to do this may lead to interim permission being lapsed in error.

Firm type 3. Firms with interim permission and whose only consumer credit activity is second charge mortgage business and do not have regulated mortgage permissions

4.17 Firms need to apply to do regulated mortgage business and can apply from 20 April 2015. Applying early increases the chance that an application will be determined before the MCD comes into force.

4.18 Firms must complete a **financial services home finance application form** and NOT the consumer credit application form. These forms are on our website¹⁴ and we encourage firms to review them now so you understand the information, policies and procedures that must be submitted as part of an application. Final 'MCD' versions of the home finance forms will be available from 20 April but we do not anticipate any significant changes to the existing forms.

4.19 Firms should also email application.period@fca.org.uk to request to move their existing consumer credit application period to March 2016. By doing this, firms:

- won't have to make a consumer credit application, and
- will retain interim permission for their second charge business until the MCD comes into force on 21 March 2016.

¹² www.fca.org.uk/firms/being-regulated/variation-of-permission

¹³ The supplementary application forms will be published by the end of March 2016.

¹⁴ www.fca.org.uk/firms/about-authorisation/getting-authorised

MCD data collection for all authorised mortgage firms

- 4.20** To supervise firms effectively it is important that we know what business our authorised firms are undertaking. As there will be a single set of permissions for secured lending, we will ask existing firms to notify us whether they undertake first charge business only or both first and second charge business. We also have to publish MCD specific information on the public Register of firms, including the person responsible for MCD intermediation. We will be writing to firms late 2015 or early 2016 and will confirm and publicise the mechanism for the data collection separately.

Where can I go for information and support when applying for authorisation

- 4.21** Our dedicated Mortgage Credit Directive page on the FCA website¹⁵ provides information reflecting the changes for second charge firms. including:
- A pre-recorded webcast highlighting the authorisation process
 - How to get authorised and links to the forms firms must complete
 - FAQ's
- 4.22** We encourage firms to check the website regularly for information so they are fully prepared to apply for regulated mortgage business once we are open to accept applications.
- 4.23** We also encourage firms to engage with their compliance consultant and trade body.
- 4.24** Firms can also contact our Firm Contact Centre, Monday to Friday, 9am to 5pm, on:
- UK: 0300 500 0597
 - from abroad: +44 20 7066 1000
 - email: firm.queries@fca.org.uk

¹⁵ <http://www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mcd>

Annex 1: Detailed feedback to CP14/20

Q1: Do you agree with our proposed approach to implementing the transitional arrangements by requiring 'top-up' disclosure?

Q2: What, if any, might be the alternative approaches that would allow us to meet our legal obligations when implementing the transitional?

1. Most respondents agreed with our proposed approach of implementation by requiring 'top up' disclosure. A number pointed out that the approach raises the potential for customer confusion during the transitional period, as different disclosure documents will be available to customers as firms move to the ESIS at different times. A minority of respondents said all firms should switch over to the ESIS in 2016 to avoid this confusion.
2. Those respondents opposed to our proposals expressed the view that the existing KFI met the MCD requirements and the 'top-up' information was unnecessary.
3. A few firms requested confirmation that the 'top-up' information could be included in the KFI itself.

Our response:

We remain of the view that the 'top-up' disclosures are required for the KFI to provide equivalent information to the ESIS and therefore take advantage of the transitional provision. We understand that using the transitional provision is likely to result in an increase in different formats of disclosure document that customers may receive. However we believe that the requirement to provide an adequate explanation of the disclosure should mitigate any potential for customer confusion. We will therefore be proceeding with our proposals for 'top-up' disclosure.

Our proposal to allow the 'top-up' information to be given separately to (but at the same time as) the KFI is intended to reduce costs, particularly in the area of systems changes, for firms and subsequently for consumers. Our transitional provision (MCOB TP48), confirms that the 'top-up' information may be provided within the KFI or separately.

In response to requests from some firms, we have added a further transitional provision, enabling firms to replace the existing 1% interest rate increase scenario in the KFI (as given in MCOB 5.6.59R) with the additional APRC from the top up information. It is important to note that firms who choose to keep

the 1% interest rate increase scenario in their KFI are still required to provide the additional APRC as required by TP46.

Q3: *What difficulties, if any, can you see with using the ESIS instructions and template (see MCOB 5A Annex 1R and 2R) to prepare pre-sale mortgage illustrations?*

Q4: *Do you have views on whether the ESIS instructions should be drafted in standard Handbook format?*

4. A number of respondents to Question 3 expressed concerns with some of the terminology used in the ESIS, stating that it might be unfamiliar and potentially confusing for UK customers. Most of these asked whether Recital 42 of the MCD permitted changes to be made to the language used in the ESIS to make it easier for customers to understand.
5. We received one particular query on the ESIS requirement to disclose payments to the intermediary. The respondent was concerned that the requirement to disclose only the payment made to the intermediary could provide misleading information to the customer, as other payments made by the lender to third parties for introducing the mortgage would not be included.
6. Some respondents raised specific concerns about how the ESIS should be used for certain products or situations, such as bridging products, lifetime mortgages, second charge mortgages and post-contract variations, such as rate switches, and asked for further example documents.
7. The vast majority of respondents were in favour of drafting the ESIS instructions in standard Handbook format.

Our response:

We agree that some of the terminology used in the ESIS is potentially confusing for UK consumers. However, we do have to bear in mind that the Directive only permits the use of different vocabulary in the ESIS where this is necessary to make the language more easily understandable for customers, rather than to achieve consistency.

Having considered these points and the responses to our consultation, we propose to allow changes to the ESIS, replacing some words with terms more commonly used in the UK, for example, we have replaced 'reimbursed' with 'repaid', and 'exit charge' with 'early repayment charge'.

On the issue of disclosure of intermediary payments, our rules reflect the drafting of the MCD; however a firm can choose to disclose payments to other parties for the introduction of the mortgage in the ESIS if they wish to do so.

We have provided further example ESIS documents, covering bridging, second charge and foreign currency loans. We have also included updated versions of those examples included in CP14/20. Please see Appendix 3.

We have drafted the ESIS instructions in Handbook format.

Q5: Do you agree with the proposed approach to implementing the MCD requirement for a binding offer?

8. Respondents were generally concerned that the implementation approach to the binding offer should not be over-engineered in a way that would extend or complicate the home-buying process.
9. We received differing views on the extent to which the new requirements would result in a significant change in market practice. Several lenders had reviewed their current processes and considered that they already included a binding offer.
10. Respondents also asked for clarification on whether the new rules would restrict firms' ability to make a provisional or tentative offer to which it did not intend to be bound. There was a general request that we clarify the nature of a binding offer.

Our response:

We agree with respondents that a binding offer is different from an unconditional offer, and that firms should still be able to make informal or non-binding offers as part of any sale. In our view, a binding offer can include conditions, such as those linked to a change in the facts and circumstances upon which the lender has based the decision to make the offer. However, we believe that reserving a blanket right to re-underwrite the loan, is not compatible with the offer being binding. We also agree that the binding offer stage, which triggers a period of reflection for a consumer, needs to come at point when the consumer is not already committed to a linked property transaction. We have amended and expanded the guidance in MCOB 6A to clarify our approach.

Q6: Do you agree that the MCD consideration period is better enacted as a pre-sale reflection period, rather than a post-sale cooling-off period?

11. Generally, respondents were sceptical about the value of a new consideration period; however, they expressed an overwhelming preference for a pre-sale reflection period, as this is more consistent with the existing sales process. With the exception of a consumer representative, those who commented on the detailed rules supported a flexible approach to implementation that allowed firms to put in place their own arrangements for notifying consumers of the right of reflection and recording where consumers had either taken advantage of it or waived the right.

Our response:

The final rules confirm our earlier consultation approach. The changes we have made to clarify the new binding offer requirement (see Chapter 2 of the Policy Statement) should also help to address concerns raised about the timing of the consideration period.

Q7: *Would it simplify matters, for example in terms of the compliance obligations for firms, to apply the MCD approach to the APRC calculation to all lending rather than just that covered by the directive?*

12. Respondents favoured a single method of calculating the APRC, not just for MCD loans but for all mortgages and consumer credit. Some firms believed that we should mandate this position, whereas others were conscious of the cost and systems challenges that might be involved, eg for firms whose only lending was not covered by the MCD. These firms preferred the rules to be drafted so that firms could choose whether to apply the MCD approach to the APRC calculation to their non-MCD loans.
13. There were some requests for changes to the APRC calculation methodology in order to reflect individual existing practices.

Our response:

We accept that the simplest approach is to have a single standardised calculation applying to all mortgages; however, it is difficult to justify the additional costs imposed on firms and consumers where the lending is not covered by the MCD. Instead, our final rules confirm that for any mortgage lending exempt from the MCD, a firm will be free to choose whether to use the existing MCOB 10 rules or the new MCD rules for calculating the APRC.

The MCD requirements on the APRC are maximum harmonising, and so we have no scope to make changes that depart from the Directive. Nor can we apply the MCD methodology to consumer credit, as the Consumer Credit Directive mandates a slightly different approach.

Q8: *Do you agree with our proposed approach to specifying a benchmark that firms may need to use when calculating a second APRC?*

14. Many of those responding questioned whether including a second illustrative APRC (and monthly cost) would actually help consumers. In particular, some thought the information might actually mislead, confuse or simply be counter-productive by adding to the likelihood of information overload. That said, there was strong support for our simplified approach of using the Bank of England base rate to calculate a premium that should be added to the reversionary interest rate.

Our response:

The final rules confirm the approach set out in the consultation paper. Given that a second APRC is a maximum harmonising part of the MCD, we have no scope to make a change to this requirement. However we have given firms the ability to replace the existing risk warning in section 7 of the KFI with the second APRC, in order to reduce the possibility of information overload. We have also made a small number of minor changes to the guidance supporting the benchmark in response to requests from stakeholders.

Q9: *Do you agree with our proposed approach to transposing the MCD requirements on financial promotions and the wider simplification of our rules in this area?*

15. Respondents largely welcomed the proposed simplification of MCOB 3. However, some respondents raised concerns about the Directive requirement for a representative example to be given where information on interest rates or cost of credit is given, which they argued would bring little consumer benefit.
16. Some firms requested further guidance on how we expect representative examples to be set out in financial promotions. Other respondents asked for clarification on whether individual representative examples are required next to every product where a number of products are listed together on a website.
17. Firms generally welcomed the removal of the required risk statement, with two exceptions. A trade body questioned why the risk warning for lifetime mortgages is being removed in light of the MCD changes, and stated that this particular risk warning brought additional consumer protection. A consumer body argued that advertising plays a greater role in the purchasing decision in the second charge market, eg for debt consolidation loans, and that the risk statement should not be removed for the advertising of second charge loans.

Our response:

Many respondents, particularly firms, welcomed the simplification of the current requirements including the removal of the required risk statement.

We note the concerns around the information requirements set out in MCOB 3A.5. We have added some guidance on these rules clarifying that, as long as the financial promotion includes an overall representative example (which is representative of all agreements expected to result from the promotion) it is permissible to include individual product information in addition, for example by means of a table. We recognise that this can be helpful to consumers in comparing products. The product information does not have to include all of the details required in a representative example, provided that the promotion remains clear, fair and not misleading and the overall representative example is shown clearly and prominently.

We will continue with our proposals on removing the required risk statements. We believe the risk statement for lifetime mortgages does not significantly aid consumer protection in this area, and the requirements for financial promotions to be fair, clear and not misleading and balanced with appropriate warnings remain. We are introducing several new requirements to ensure protection of customers seeking second charge loans for debt consolidation, including enhanced disclosure, and we expect that most sales will be advised.

Q10: *What challenges do you see in providing consumers with an adequate explanation, for example in an execution-only sale?*

18. Respondents generally agreed that the existing advice standards ensured the provision of an adequate explanation. Some lenders asked for further guidance on the issues to be covered in an advised sale, but most welcomed the flexibility to determine how the new MCD requirements were met when giving advice.
19. There was a mix of views on the impact on execution-only sales. For several firms the arrangements in place for execution-only sales already met the new requirements, or could be amended to do so relatively easily. For others, there was a concern that an adequate explanation would actually impair the consumer experience in a non-interactive sale.
20. Firms highlighted the potential for the adequate explanation to amount to interaction that would necessitate advice. They were concerned that the changes could mean unpicking the current regulatory approach, or risk confusing consumers about the service actually being provided.

Our response:

Given the feedback, our final rules confirm the consultation proposals. While the provision of an adequate explanation is likely to be more challenging in an execution-only sale the feedback suggests that firms are largely confident that it can be done. We agree that the adequate explanation might be a prompt for interaction; however, the possibility of such interaction already exists with execution-only sales and so firms should have appropriate arrangements in place (which on occasion may involve transferring the sale to an advised channel).

Q11: *What do you consider will be the impact of the new MCD rules on the availability of foreign currency mortgages?*

21. All stakeholders were concerned at the likely reduction in mortgage availability for consumers whose situation met the new definition of a foreign currency loan. There was general recognition of the potential for detriment where a consumer is exposed to adverse exchange rate movement. However, the consensus was that the new MCD requirements were disproportionate to these risks and inappropriate for many of the forms of lending in the UK market that might inadvertently be captured by the new definition.
22. Respondents welcomed our approach to preserving the flexibility provided by the Directive. However, there were a large number of requests for further guidance (often on very specific lending circumstances) and some requests for us not to transpose the MCD requirements.

Our response:

We understand the new MCD obligations may lead some firms to stop offering mortgages to certain customer types, which is clearly not a helpful outcome for these consumers. Given that we are obliged to implement the MCD requirements our approach is to offer firms the maximum flexibility permitted by the Directive, and the final rules confirm this approach. By allowing this flexibility we are aiming to ensure, wherever possible, a minimum level of disruption to existing lending procedures.

We have made a small number of changes in response to the feedback received, including adding some guidance on points raised by respondents. These changes are explained in Chapter 2 of the Policy Statement.

Q12: *What do you think will be the impact of this approach [to MCD lending not secured on the home] on firms and consumers?*

Q13: *What, if any, might be alternative approaches [to MCD lending not secured on the home] that would allow us to meet our legal obligations when implementing the Directive for this type of lending?*

- 23.** Our consultation set out our high level approach to the implementation of the MCD for lending not secured on the home (article 3(1)(b) of the Directive). We stated that we would provide further detail in a subsequent consultation. Some respondents raised questions about the likely scope of the proposals: for example, whether credit agreements such as unsecured loans, credit cards and overdrafts used to acquire or retain property rights would be captured. Others outlined their concern on the impact of our proposals on high net worth individuals, as the Directive does not provide for an exemption for lending to such individuals.

Our response:

In February we consulted on our updated approach to this type of lending, along with the consequential changes to CONC from moving second charge lending into the mortgage regime (CP 15/6). We welcome feedback on our revised proposals.

Q14: *Do you consider that the proposed transitional approach is effective in allowing firms to prepare early for the implementation of the MCD?*

- 24.** Most respondents agreed that being able to apply MCD sales requirements up to three months ahead of 21 March 2016 could helpfully allow a smoother transition for firms and consumers.
- 25.** Firms encouraged us to offer further flexibility, by allowing them to meet the MCD rules even earlier in 2015. However many firms, including a number of those asking for the further flexibility, also highlighted concerns that the MCD implementation timetable was already challenging and that it might not be possible for many businesses to prepare for compliance ahead of March 2016. Second charge firms also noted that the ability of businesses to comply early with the new requirements would be constrained without complementary changes to consumer credit legislation.

Our response:

Given the support for our proposals, the final rules confirm this approach. We have only made minor drafting changes to reflect comments from respondents on technical aspects of the proposed transitionals. We are also allowing firms to choose to adopt the MCD rules from 21 September 2015 (three months

earlier than the consultation proposal). Any firm that wishes to apply the MCD rules before 21 September 2015 can apply for a waiver or modification in the usual way¹⁶.

The implementing legislation now passed by Parliament provides greater clarity for firms on the application of the MCD to sales started before 21 March 2016. The Government's intention is that second charge firms will be able to adopt the MCD provisions voluntarily from September 2015, and that where they do so Consumer Credit Act requirements will not apply. The legislation in its current form may not disapply the Consumer Credit Act requirements in all circumstances, but we understand that the Government intends to resolve this before September 2015. We will amend our rules to reflect any change.

Q15: Do you have any comments on the draft rules in relation to implementation of the MCD set out in the draft Mortgage Credit Directive Instrument 2014 at Appendix 1? Do you agree that the rules reflect the stated policy intention?

- 26.** Respondents generally agreed that the draft rules reflected the stated policy intention. Various suggestions were made for changes, either to make corrections, to provide further clarity or to amend the requirements. The topics drawing most comment were the binding offer requirement and the new provisions on foreign currency mortgages. Several of the requests for clarity highlighted a desire from some firms for us to spell out in more detail what might be expected under high-level MCD requirements, for example on knowledge and competency.
- 27.** There was a concern that the new ban on tying practices (MCOB 2A.2) would prevent lenders from offering 'loyalty discounts' for existing customers. There was also a view that the new requirements on property valuations effectively prevent the use of automated valuation methodologies by requiring a physical valuation in every case. Credit unions also asked for further explanation of the rules that apply to their mortgage lending.
- 28.** On the rule drafting, firms preferred to have the freedom to choose to apply just some of the new MCD rules to lending that is exempt from the Directive. They also questioned the presence of cross-references to the MCD included in the proposed rules. There was also some confusion around how the various new definitions of MCD business fitted together, especially when linked to the wider scope of defined terms used for financial promotions, eg 'home finance transaction' and 'qualifying credit'.

Our response:

Our response to the issues raised on foreign currency loans and binding offers, including information on the additional guidance we are providing, is set out in Chapter 2 of this Policy Statement. However, consistent with our implementation approach, we have aimed to avoid introducing additional prescription where this is not required by the MCD. Our preference is to give firms greater flexibility over how they satisfy the Directive requirements. For example, when implementing the MCD knowledge and competence requirements, we allow firms the flexibility to identify which individuals involved

¹⁶ <http://www.fca.org.uk/firms/being-regulated/waiver>

in mortgage underwriting or product design are affected and how to ensure their knowledge and competency.

The MCD does not require a physical valuation in every case. Rather, it is concerned with ensuring that reliable standards are used when there is such a valuation. We have added a new note of guidance to clarify this point (see MIPRU 1.3.3G), following the approach adopted in Principle 4.1 of the Financial Stability Board's Mortgage Underwriting Principles¹⁷ that are referred to in the MCD. We believe firms will find the new guidance helpful in confirming that in appropriate cases they will have the scope to use cost-effective alternatives to a physical valuation.

The new Directive provision banning tying practices is focused on the selling of a mortgage with another distinct financial product or service in a package. Our understanding is that the typical 'loyalty discount' involves the offer of a second financial product sometime after the first has been taken out, which seems less likely to constitute a package subject to the ban on tying. We have also included some new guidance at MCOB 2A.2 clarifying that where a financial service or product is a fully integrated part of the mortgage and cannot be offered separately (eg a secured overdraft) this arrangement is not a 'tying practice'.

For credit unions, any first charge residential mortgage lending has been subject to our MCOB rules since 2004, and this will remain the case. There has been an available exemption for second charge lending under the consumer credit regime, and the recent legislative changes maintain this. There is also an available exemption for credit unions from the MCD requirements providing consumers receive timely information on the main features, risks and costs of the mortgages and that any advertising is fair, clear and not misleading. This exemption is also confirmed in the recent legislation.

As requested, we have changed the way in which the rules can be applied to lending that is exempt from the MCD. Firms will be free to choose which aspects of the Directive to apply (if any) except in the case of a lifetime mortgage where we will continue to require that a KFI is given out in most sales rather than an ESIS. We have included the cross-references to relevant MCD articles in the final rules. These provide a resource for firms and also ensure we are transparent in our approach to transposing the Directive. In terms of the new Glossary language, an 'MCD regulated mortgage contract' is a subset of the loans covered by the definition of a 'regulated mortgage contract'. Because of this, 'MCD regulated mortgage contracts' are also covered within the existing definitions of 'home finance transaction' and 'qualifying credit', which is why no amendment of these terms is necessary.

Several of the requests to amend the rules would have meant the UK failing to transpose the MCD. These comments have not been acted on.

Finally, we have made changes to correct any errors identified by respondents. For example, we have made some changes to our initial disclosure rules in MCOB 4.4A to implement fully the MCD requirements on intermediary service disclosure and advisory standards. These changes require certain information to

¹⁷ *Principles for sound residential mortgage underwriting practices*. Financial Stability Board. April 2012

be provided in a durable medium and, for mediated sales, in good time before a firm carries out any MCD credit intermediation activity.

As explained in CP14/20, we do not believe it is proportionate to estimate the costs and benefits of rule changes that implement non-discretionary MCD obligations. The requirement to present information in a durable medium may lead to additional compliance costs for some firms. But we do not think these will be significant as the information is not specific to individual contracts.

In addition, we expect that some firms will already be providing this information in a durable medium. Although it is possible that some consumers will be able to use information provided in a durable medium to make better decisions, we do not expect significant benefits to arise from these MCD requirements.

Q16: *Are there any particular elements that you think should be implemented on a different timetable to MCD requirements? If so, which elements, and why, and to what timetable?*

29. Industry respondents generally supported a phased approach to the implementation of requirements for second charge mortgages where allowed by the MCD, due to the large degree of regulatory change second charge firms are facing. Some suggested, in particular, that the data reporting proposals need extra time to be implemented.
30. Consumer representatives strongly opposed any delay in implementation on consumer protection grounds.
31. Those that wanted a phased approach generally favoured an extra year (to March 2017) to implement both the advising and selling standards, and the data reporting requirements. Although two firms wanted second charge mortgage sellers to be given enough time to meet the Level 3 qualification, most respondents thought our proposal that these staff have until 21 September 2018 to do so was sufficient.

Our response:

Given the mixed responses to this question, we have carefully considered whether there is a case for applying a phased approach. There was no significant support for extending the timetable for training and competency, so we do not intend to make any changes to this. We believe the additional 30 months will provide sufficient time for mortgage advisers, arrangers and those staff designing execution-only sales scripts to achieve the Level 3 qualification required by our rules.

We did not receive sufficient feedback to justify any deviation from our intention to apply the MCOB sales standards to second charge mortgages from 21 March 2016. There does not seem to be a clear advantage to firms in delaying implementation of advice, given that the related MCD requirement to provide an adequate explanation, and firms' process changes necessary to effect this, must be implemented in March 2016. Moreover, if we were to delay the introduction of advice rules, firms giving an adequate explanation in the course of an interactive sale would need to implement robust systems and

controls to ensure that they do not stray into giving advice. In making these process changes, firms would incur costs with benefits only being realised in the period between the adequate explanation being required and our sales standards rules coming into force.

It would therefore be complex for firms to implement these two elements to a different timetable. It could also lead to confusion for consumers, as an interactive sales process for a first charge remortgage would require advice, but any second charge mortgage sale would not. So we do not intend to delay the implementation of advice.

However, we do see a case for delaying Product Sales Data reporting due to the extent of systems changes that some firms will need to make. See our response to Q48 for more information on this.

Q17: *Do you agree with our proposals for sales disclosure for second charge mortgages?*

- 32.** All respondents agreed with our proposals. One respondent said it would be useful to have an example ESIS for second charge mortgages.

Our response:

Given the widespread support for our proposals from stakeholders we will proceed with the approach outlined in CP 14/20.

We have provided an example ESIS for a second charge mortgage in Appendix 3.

Q18: *Do you agree with our proposals for post-sales disclosure for second charge mortgages?*

- 33.** The vast majority of respondents expressed agreement with our proposals. We also received requests for clarification around the scope of MCOB 6A, stating that the proposed Handbook text could result in the application of these rules to the first charge 'back book', and the application of the binding offer and reflection period requirements to post-sale variations.

Our response:

Given the support for our proposals we will proceed with the approach outlined in CP 14/20.

In response to feedback we have amended our definition of an MCD regulated mortgage contract to confirm that an MCD regulated mortgage contract is a contract concluded after 21 March 2016. We have also made amendments to MCOB 6A to clarify that the binding offer and reflection period requirements do not apply to post-sale variations.

Q19: Do you agree with our proposal to extend our mortgage advice and selling standards to second charge mortgages?

34. All respondents to this question, including firms, trade bodies and consumer groups, supported our proposal that interactive sales of second charge mortgages must be carried out on an advised basis. Generally, respondents recognised that requiring second charge firms to sell mortgages to the same standards as first charge firms would improve consistency across the mortgage market, with more suitable sales of second charge mortgages enhancing consumer protection.
35. One firm asked for further guidance to aid firms unfamiliar with the mortgage regime sales standards.
36. Respondents' views on implementation timings are summarised under question 16.

Our response:

We believe customers should only take out mortgage products they understand and that are suited to their needs and circumstances. Our sales standards in the first charge market were strengthened through the MMR, and we believe it is important they are extended to second charge sales given the potential conduct risks in this market. We believe that our rules and guidance provide sufficient clarity for firms on how we expect second charge sales to be conducted.

The implementation timing of our sales standards and the connected Level 3 qualification requirement is addressed in our response to question 16.

Q20: Do you agree that all borrowers looking to increase their borrowing should be made aware that a second charge or unsecured loan may be more appropriate, during initial disclosure at the start of the sale?

37. Most respondents were in favour of the proposed approach, stating it was right that customers should be appropriately informed so they can make a suitable purchasing decision.
38. Many respondents did, however, request clarification around our expectations in this area, as they were concerned that such a disclosure could lead to requests for advice. Some respondents requested confirmation that this requirement applied to execution-only sales.
39. A minority of respondents were not in favour of our proposal, feeling it could lead to customers choosing less appropriate products than the one they were applying for.

Our response:

As we stated in our consultation paper, we feel that this information is designed to raise customer awareness and should be provided as part of initial disclosure rather than constituting advice (thus enabling this information to be provided in execution-only sales as well as advised ones). There is no requirement for

the seller to consider whether the other options are more appropriate for the customer.

We continue to believe it is right that the customer should be made aware of other options when seeking to raise additional finance, both as part of our existing rules and in second charge lending. We will therefore be proceeding with this proposal.

Q21: Do you agree that we should apply MCD creditworthiness assessment requirements to second charge mortgages through our MCOB affordability rules?

40. All respondents were in favour of this proposal, many favouring the consistency it will provide with the regulation of first charge mortgages. However, some respondents commented that consumers might find it more difficult to get a mortgage if lenders applied the rules too strictly.

Our response:

We are proceeding with this proposal in view of the strong support for the consumer protection benefits offered by our responsible lending requirements.

Q22: Do you agree that we should apply the MCOB interest rate stress test to second charge mortgages?

41. The vast majority of respondents were in favour of applying an interest rate stress test to second charge mortgages, recognising the need to appropriately assess affordability.
42. However, some industry representatives were concerned that applying an interest rate stress test will prevent some consumers from being able to demonstrate affordability for a second charge mortgage. This could prevent them from consolidating debts, leaving them stranded on unsecured products with higher interest rates, which some respondents felt could be a worse outcome than consumers being unable to afford their mortgage following an interest rate rise. Two respondents suggested that an interest rate stress test should only be applied where a consumer was increasing their overall borrowing, and not where they are consolidating existing debts.

Our response:

While we recognise that applying an affordability test and interest rate stress test may result in some consumers not being able to obtain a second charge mortgage, the intention of our rules and the MCD is to prevent consumers from taking on mortgage debt that is foreseeably unaffordable, for example as a result of an expected interest rate increase. If a consumer has unsecured debt which they cannot afford, then it may well be a better option for them to seek help with their debts.

We are therefore proceeding with this proposal.

Q23: Do you agree with the proposed approach to stress testing higher priority loans against expected interest rate increases?

43. The vast majority of respondents agreed that second charge lenders should be required to consider the impact of expected interest rate increases on mortgages secured by a higher priority charge over the property. But industry representatives expressed concerns about how this would work in practice. They thought that consumers would not know the interest rate of their existing mortgage(s), and were therefore concerned about the delays and costs that would arise if second charge lenders were required to obtain that information from other sources, such as directly from the other lender(s).
44. Several respondents suggested approaches which they felt represented adequate alternatives to our proposed approach. The most popular option was to use just the outstanding balance of the existing mortgage(s). This can be obtained from a credit search which lenders require anyway for the underwriting process, and so would not cause any delays or additional costs.
45. One consumer representative thought we should go further than proposed, requiring lenders to also stress test against the reversion rate (eg the higher priority lender's SVR), rather than just the current interest rate. They thought this was necessary to ensure that the interest rate stress test was accurate in assessing impact on affordability.

Our response:

We accept that the outstanding balance can be used to assess the impact of an interest rate rise, in conjunction with the monthly payment. The outstanding balance is available on a credit reference, and the lender will already need to know the monthly payment as it is an item of committed expenditure in the affordability assessment. Therefore, as outlined in Chapter 3, we have amended the rules (MCOB 11.6.18AR(2)) to remove the need to obtain the interest rate. This will simplify matters for firms.

A lender must consider market expectations and any prevailing Financial Policy Committee recommendation on appropriate interest rate stress tests, as per MCOB 11.6.18R, to determine any margin it applies in the affordability test for both the second charge and higher priority mortgages.

We do not propose to amend the rules to require firms to stress test against the reversion rate. We accept that second charge lenders will not have full details of higher priority mortgages, or the assumptions used by those lenders to assess the impact of interest rate increases, and that requiring second charge lenders to obtain such details is likely to prove unworkable. So while this interest rate stress test is not a perfect test of future affordability, we believe it represents a proportionate and practical approach.

Q24: Do you agree that we should apply the MCOB debt consolidation requirement to all second charge debt consolidation mortgages?

46. Most respondents were in favour of this proposal. A few thought that the requirement should be consistent with first charge mortgages, either by applying it only to consumers with an

impaired credit history, or by applying it to all first charge debt consolidation mortgages. Two respondents thought that we did not need to apply the requirement at all to second charge debt consolidation mortgages, because it is already common practice for firms to send cheques to creditors.

47. A consumer representative said more thought should be given to how to identify debt consolidation mortgages, even where this is not stated as a purpose, as they thought that nearly all second charge mortgages are used for debt consolidation.

Our response:

We are proceeding with this proposal.

We are not changing the current requirement for first charge mortgages. This will continue to apply only to consumers with an impaired credit history. As set out in PS12/16, our predecessor body the FSA concluded it was not proportionate to apply this requirement to all first charge borrowers as many take on the responsibility of repaying their debts directly. That data showed that consumers with an impaired credit history have significantly higher levels of arrears when consolidating debt than those who do not. But our data shows that there are higher levels of indebtedness among second charge customers, and therefore we believe there are strong grounds to apply this requirement to all second charge debt consolidation mortgages.

We believe our affordability rules address the issue of identifying when a second charge mortgage is being taken out for debt consolidation. If a lender is not aware that an outstanding debt will be repaid from the mortgage advance, they are required to include it in the affordability assessment, and so consider whether the consumer can afford both the mortgage and the debt.

Q25: Do you agree that we should apply the MCOB interest-only rules to second charge mortgages?

48. All respondents were in favour of the proposals.

Our response:

As all respondents were in favour of our proposed approach, we are proceeding with this proposal.

Q26: Do you agree with our proposed approach to contract variations for second charge mortgages?

49. The majority of respondents were in favour of this proposal, generally on the grounds that they thought consumers found modifying agreements confusing and slow. Most thought that MCOB would provide appropriate protection.

50. However, one consumer representative questioned this in relation to poor practice, such as increasing fees on existing contracts. One lender with a closed book of second charge loans was concerned that it would be required to implement this change for these loans.

Our response:

We are proceeding with this proposal. We think the MCOB contract variation requirements coupled with other elements of MCOB (such as our rules on fees) provide appropriate protection for consumers, while also providing flexibility for consumers.

The Government's decision to move second charge back book loans into the mortgage regime will mean that firms with existing second charge loans, including some with closed books, will have to change their systems.

Q27: Do you agree with our proposal to prohibit the automatic rolling-up of fees and charges into a second charge loan?

51. All respondents to this question were supportive, although one consumer body suggested that the approach may not be enough to stop consumers in vulnerable circumstances being pressured into agreeing to roll up fees and charges. They suggested that a requirement should be introduced for firms to signpost consumers to free debt advice.

Our response:

Given the widespread support for our proposals from stakeholders we will proceed with the approach outlined in CP14/20. We consider that our proposals for second charge provide sufficient protection to consumers in this market, so we do not propose to introduce further disclosure requirements around free debt advice.

Q28: Do you have any comments on how our proposed approach to implementing the MCD requirements on ERCs will affect the second charge market?

52. Most respondents supported the proposed approach, which they thought would provide transparency for consumers and support a more diverse range of products.
53. Consumer representatives, however, did not support the approach. They were concerned that many second charge borrowers are experiencing financial stress at the point of sale, and so might not pay sufficient attention to ERCs when choosing a product, and later on may be less inclined to complain about high ERCs. They also had concerns around how second charge firms might interpret the rules given past poor practice. So they favoured retaining the consumer credit approach.

Our response:

The proposed requirements, which implement MCD on early repayment, limit any charges made by a firm to the costs that are linked to early repayment. This is a fair approach, which will potentially allow consumers to access a wider range of second charge mortgage products, while ensuring that the early repayment charges are cost-reflective, and not excessive. Where the sale is advised (which will be the case for most second charge sales, particularly where there is an element of debt consolidation), early repayment is considered as part of the advice. This provides an additional layer of protection. We are therefore proceeding with this proposal.

Q29: Do you agree with our proposal to apply MCOB 12.5 to second charge firms?

54. All respondents were in favour of the proposal.

Our response:

Due to the widespread support for these proposals we will proceed with the approach outlined in consultation.

Q30: Do you agree with our proposed approach to fees and charges relating to payment difficulties?

55. The vast majority of respondents were in favour of the proposed approach.
56. One consumer representative suggested that fees could be frozen as soon as a customer tells a lender they are in financial difficulties – the equivalent of the ‘breathing space’ provision used in the unsecured credit market

Our response:

Given the widespread support for the proposed approach we are confirming this in our final rules. We considered the merit of replicating the existing CONC ‘breathing space’ provisions, but considering as a whole our protections for customers in arrears we decided this would not be necessary.

Q31: Do you agree with our proposal to require interest to be charged on default fees only on a simple basis for second charge mortgages?

57. Most respondents were in favour on consumer protection grounds. However, some felt that the same approach should be applied to first and second charge mortgages, either requiring interest on default fees to be calculated on a simple basis for both or neither. Some pointed out the shortcomings of our proposed approach may affect competition. Consumer bodies suggested we might be weakening the existing CCA approach. Finally, some firms requested

consistency for the back book, as arrears fees could be subject to compound interest, simple interest or no interest subject to when the agreement came into effect.

Our response:

We remain of the view that second charge firms should be permitted to charge only simple interest on arrears fees. This retains an existing consumer protection under the CCA which was introduced specifically to address the practices of some consumer credit firms, including in the second charge market, which were causing harm to consumers. We do not intend to extend this requirement to the first charge market as we have no evidence of consumer detriment in this area.

Q32: Do you agree with our approach to protecting second charge mortgage customers in payment difficulties?

58. All of the respondents were in agreement with the proposal to apply MCOB 13 to second charge mortgages.
59. Two consumer bodies expressed concerns about the loss of existing CCA protections. One asked for clarification on the availability of Time Orders. The other questioned the loss of unfair credit relationships tests from the CCA regime, and was not satisfied that the case for excluding these provisions has been fully explained.

Our response:

Given the widespread support for the proposed approach we are confirming our position in the final rules. We are also providing further clarity in PERG on the availability of Time Orders. We are of the view that the use of Time Orders will diminish in the second charge market with the application of MCOB 13, which will place greater obligations on firms to seek resolution of payment difficulties before taking possession action.

On the unfair relationships test, the Treasury decided to switch off the CCA (including the unfair relationships provisions) for second charge mortgages, and we consider that MCOB 13 provides adequate and appropriate protections for customers in payment difficulties.

Q33: Do you agree with our proposal to apply the general conduct of business standards set out in MCOB 2 to second charge mortgages?

60. All the respondents who provided feedback on this proposal were in favour.

Our response:

Due to the widespread support we will proceed with the proposed approach.

Q34: Do you agree with our proposed approach to shared equity loans?

61. Most respondents were in favour of the proposed approach.
62. Two respondents were concerned that the regulation of shared equity loans would reduce their availability, as house builders might find it too complex to comply with the rules. In contrast, one respondent thought that exempt government schemes should also be covered by our rules.
63. We received several comments on the draft rules. Two respondents asked whether the advice rules relating to shared equity loans also applied to firms advising on a connected first charge mortgage (eg MCOB 4.7A.14AR). Another asked if it would be permissible to proceed with the sale if a consumer had sufficient resources to pay a deposit but still wanted to proceed with a shared equity loan. This respondent also asked us to be clearer about how affordability assessments should work, for example where payments are not required until several years into the loan, and they questioned what might constitute a credible repayment strategy for a shared equity loan. They considered this a key issue that would need to be resolved if shared equity loans are to be provided by house builders in the future.

Our response:

The Government has decided the scope of our regulation, with the decision to regulate also informed by EU legal requirements. As the MCD applies to shared equity loans, they have been included in the scope of our mortgage rules. However, the Government does intend to use an available MCD exemption for certain forms of lending done under statute, therefore excluding some shared equity loans, such as some loans it provides.

We have amended our advice rules to make it clearer that it is only for the firm selling the shared equity scheme to advise on that scheme (and not, for example, the firm selling the first charge mortgage) – see MCOB 4.7A.4AG. In cases where the consumer has the resources to purchase the property without taking a shared equity loan, it is for the firm providing the advice to decide whether to recommend a shared equity product, according to the facts of the case. However, this is a factor that we would expect it to consider.

The firm will need to consider how it assesses affordability for a shared equity loan where payments became due during the term, according to the rules in relation to future changes to income and expenditure (MCOB 11.6.14R), as for any other commitment that becomes due during the term.

And it is up to the lender to set a policy on what constitutes an acceptable repayment strategy under the interest-only rules. This may vary according to the circumstances of the consumer. However, we have added in some guidance to make it clear that sale of property may be an appropriate repayment strategy for a shared equity loan (see MCOB 11.6.45G(4)).

Q35: Do you agree with our proposed approach to second charge business loans?

64. Most respondents were in favour of the proposed approach.

65. One consumer representative disagreed on the grounds that it did not agree with our existing approach to first charge business loans on which the proposed approach to second charge business loans is based.
66. Two respondents asked us to clarify certain aspects of the proposed rules, including confirmation that second charge business loans above £25,000 would not be covered and whether the full MCOB approach could be applied (rather than the tailored business provisions).

Our response:

We propose to proceed with this proposal as consulted on.

As confirmed in the underlying legislation, second charge business loans above £25,000 will not fall within the scope of our regulation, and will remain unregulated. The legislation also confirms that some agreements with 'relevant recipients of credit' (small partnerships and unincorporated bodies) will remain subject to CONC.¹⁸

Where a second charge loan is regulated by us, firms have the choice whether to apply the tailored provisions for business loans. Further details are set out in MCOB 1.2.

Q36: Do you agree with our proposed approach to second charge bridging loans?

67. Most respondents were in favour of the proposals.
68. One trade body noted its concern that bridging loans where the exit is sale of property could be caught by the MCD, which could potentially require firms to run two sets of processes to cover both MCD and non-MCD loans, according to the exit strategy.

Our response:

We intend to proceed with this proposal as consulted on.

It is possible that some regulated mortgages that are bridging loans will be caught by the MCD, where they do not meet the definition of an MCD exempt bridging loan. Where this is the case, firms will need to comply with the relevant rules for MCD regulated mortgage contracts.

Q37: Do you agree with our proposed approach to high net worth individuals taking a second charge mortgage?

69. All respondents were in favour, other than a consumer representative who thought that advice should be provided for all sales to high net worth (HNW) mortgage customers.

¹⁸ See draft guidance at CONC 1.2.7G set out in CP15/6, <http://www.fca.org.uk/news/cp15-06-consumer-credit-consultation-paper>

Our response:

We are proceeding with this proposal.

We do not agree that advice should be provided for all HNW mortgage customers, for the reasons set out in PS12/16¹⁹.

Q38: Do you agree with our proposal to defer consideration of whether prudential requirements should apply to second charge firms?

Q39: Do you agree with our proposed timetable for deferral?

- 70.** The vast majority of the respondents agreed with the proposal to defer consideration of prudential requirements for second charge firms, with most observing the extent of regulatory change these firms have been subject to in recent years.
- 71.** One trade association voiced a concern that the proposal may deter first charge lenders from entering the market as they would be subject to full prudential requirements from the outset.
- 72.** One firm did not agree with the proposal stating that there was no case for deferral.
- 73.** The respondents in favour of the proposal were also in agreement with the proposed timetable for consideration. One consumer body suggested that the proposed timetable be kept under review so the decision can be made sooner if necessary.

Our response:

Given the widespread support for the policy proposal we will not introduce prudential requirements for second charge firms immediately and will review the position again by March 2017.

Q40: Do you agree with our proposed approach to training and competency?

- 74.** The majority of respondents welcomed our proposed approach to training and competency for second charge firms, although several expressed concern that the existing examination would need to be updated in order to reflect shifts in the market following MMR and MCD implementation and to incorporate second charge elements. Several trade bodies offered their support to any forthcoming review of the existing qualification standard.
- 75.** Some respondents expressed concern that 'mortgage manufacturers' has not yet been defined, and questioned which specific roles would be caught by this term. Others asked for clarity on other aspects of the rules, such as the interaction between the current requirements of TC App 1.1 in relation to mortgages and the additions to that chapter regarding MCD credit agreements.

¹⁹ <http://www.fca.org.uk/static/documents/policy-statements/fsa-ps12-16.pdf>

76. One trade body suggested that new advisers could sit an amended exam incorporating second charge elements, and that existing advisers could sit add-on exams to capture this.
77. The timetable for implementation was widely welcomed. One firm suggested that advisers should have to disclose to customers whether they are fully qualified or not.

Our response:

We note that the majority of respondents welcomed our proposed approach to setting training and competency standards for second charge firms. We are aware of a longstanding need to update the exam syllabus, and we are currently assessing the practicalities of a review. In response to queries we received on our amendments to the appropriate qualifications section of TC, we confirm that where an MCD credit agreement is a regulated mortgage contract, firms will be required to comply with the existing appropriate qualification requirements that apply to regulated mortgage contracts. As stated in our consultation paper, we are giving staff at second charge firms until 21 September 2018 (two and a half years from the date the rules come into force) to obtain the qualification. We have amended some of our wording in this section to make this clearer.

Q41: Do you agree with our proposal to include second charge advising and arranging activities into the scope of FSCS?

78. All respondents were in favour of this proposal. One trade body noted that it would involve an additional regulatory cost for second charge firms, and therefore a sensible introduction period should be allowed. Another respondent questioned how historic sales under previous regimes would be included or excluded from the scope of FSCS.

Our response:

We intend to proceed with this proposal. Therefore, second charge advising and arranging activities will be brought within the scope of FSCS from 21 March 2016. FSCS protection will cover activities that take place from this date, so claims arising from activities (eg incorrect advice) that occurred before this will not be covered, even where a consumer loss occurred afterwards.

Q42: Do you have any comments on the draft rules in relation to second charge mortgages set out in the draft Mortgage Credit Directive Instrument 2014 at Appendix 1? Do you agree that the rules reflect the stated policy intention?

79. Respondents broadly agreed that the draft instrument reflected the policy intention.

Our response:

We have made some minor amendments to the rules in response to feedback to ensure they reflect the policy intention. See Appendix 1 for the final rules.

More substantial questions on the draft rules have been addressed in previous questions above.

Q43: *Do you agree with our proposed collection of transaction-level data on second charge mortgages?*

Q44: *Do you have any comments on the individual data items we intend to collect on sales and performance of second charge mortgages?*

Q45: *Do you have any comments on our proposed adjustment to reporting frequencies for second charge performance data where firms are submitting data manually?*

- 80.** Most respondents agreed that lenders, and those firms acting as lenders, should report transaction-level data through PSD on both the sale and performance of second charge mortgages. A consumer body felt that this would be particularly useful in tracking arrears data back to the circumstances at the point of sale.
- 81.** The trade body representing second charge lenders believed that transaction-level reporting would be the most burdensome of our reporting requirements. Although several industry respondents stressed the need for proportionate transaction-level reporting requirements (see our response to questions 48 & 49, below) respondents provided only limited detail on the specific data items we proposed to collect.
- 82.** A trade body felt that our proposed requirements would be overly burdensome for second charge bridging firms and particularly those that write only small volumes of business. The trade body felt that systems costs could exceed £500,000, with additional training and development costs. It felt that the requirements should focus on loan-to-value (LTV), length of term and exit strategy.
- 83.** Another trade body commented that the new field we proposed for the PSD sales report to capture the purpose of a second charge loan would cause disruption for first charge firms already subject to PSD. The trade body argued that, instead, the existing PSD sales field that captures the purpose of a remortgage should be modified to capture the purpose of second charge loans.
- 84.** A trade body representing second charge lenders welcomed our proposal that firms manually submitting performance data should do so annually, rather than every six months, to reduce burden. However, another trade body did not believe this would have a significant impact.

Our response:

Our response to issues of timing is addressed under questions 48 and 49.

Generally, we are not proposing any significant changes to the structure of the PSD reports that will apply to second charge firms. As these firms will be subject to broadly the same conduct standards as first charge firms, our existing transaction-level reporting requirements are equally relevant. This data will be important to our longer-term supervision of the second charge market.

Given the conduct risks present in the bridging sector, we are not providing further tailoring for second charge bridging firms. As we explained in our policy statement on data reporting in the first charge market²⁰, many of the data items will not need to be populated by bridging firms because of the nature of this type of lending – for example, affordability fields will not need to be reported for interest roll-up loans and most forbearance fields are unlikely to be relevant. As first charge bridging firms are already subject to PSD reporting, the impacts of our approach on firms that lend both first and second charge should be minimised, and systems providers should already be catering for bridging firms.

We want to minimise the burden on firms that already report PSD. We are therefore making a change to the rules on which we consulted, incorporating the second charge ‘purpose of loan’ field into our existing ‘purpose of remortgage’ field, rather than creating an entirely new field in the PSD sales report.

We will, however, need to introduce a new field into the PSD performance report to address a technical issue that was identified post consultation. To aid our matching of sales and performance records, firms will be required to identify second charge mortgages in their PSD performance returns. We will look to introduce the technical aspects of this change in a way that causes the least amount of disruption to firms that do not sell second charge mortgages (eg by not requiring them to build this field into their PSD returns).

We did not receive particularly strong support for our proposal that firms manually submitting PSD performance data do so annually, rather than every six months, to reduce burden. As set out in CP14/20, we proposed this on the basis of second charge PSD reporting being implemented in March 2016. In light of our deferred implementation of transaction level reporting, we will not be taking forward this proposal.

Q46: *Do you agree with our proposed treatment of second charge lending through MLAR?*

- 85.** Respondents were broadly supportive of our proposal to capture aggregated second charge mortgage activity through the Mortgage Lenders and Administrators Return (MLAR).
- 86.** One respondent questioned whether second charge mortgages advanced before 21 March 2016 would be classed as regulated mortgage contracts and captured in the proposed second charge sub-forms. The same respondent also questioned whether the second charge sub-forms would simply duplicate what firms provide in the main MLAR forms.

²⁰ <http://www.fca.org.uk/static/documents/policy-statements/ps13-12.pdf>

Our response:

We are taking forward our application of MLAR to second charge lenders and administrators, with effect from 21 March 2016. This includes the sub-forms we set out in the draft Handbook text in CP14/20. Firms will be required to report on a quarterly basis.

From 21 March 2016, all second charge mortgages, including those lent prior to that date, will constitute regulated mortgage contracts. It is important that we are able to identify firms' second charge mortgage flows and arrears in order to identify any issues and follow these up with firms – particularly in light of our decision to defer transaction level reporting until March 2017. For avoidance of doubt, we will be requiring all second charge mortgages to be reported under the regulated mortgage categories in the main MLAR forms, as well as being included in the MLAR sub-forms. This is in line with the draft Handbook text in CP14/20.

The sub-forms will enable us to identify second charge activity separate from first-charge activity, while minimising disruption for firms that do not lend or administer second charge mortgages.

In the MLAR guidance set out in the Appendix, we have clarified that, for gross advances in the quarter, second charge firms should calculate LTV and loan-to-income (LTI) on the basis of all outstanding debt secured on the property.

In line with our proposals, we will not be requiring firms engaged in second charge activity, but not first charge, to report MLAR sections C, L or M. This approach will remain in place at least until we take a decision on the application of capital requirements to firms that only undertake second charge business.

Q47: Do you agree with our proposed treatment of second charge mediation through RMAR?

- 87.** Respondents were broadly supportive of our proposed approach, which is to align second charge intermediaries' reporting requirements to those of first charge wherever possible. We did not receive any objections to our proposed modifications to RMA-B and RMA-G, designed to explicitly capture intermediaries' second charge-related income, as well as training and competency activity. Two trade bodies also supported our proposed disapplication of RMA-C and RMA-D for firms that mediate second charge mortgages, but not first charge.
- 88.** However, several respondents questioned the implication that second charge intermediaries should be subject to more frequent reporting through RMAR than first charge intermediaries.

Our response:

We are taking forward our changes to forms RMA-B and RMA-G, with effect from 21 March 2016. We will also be making a minor change to RMA-E to accommodate the EBA's Regulatory Technical Standards on PII, which were finalised in November 2014. We will require all mortgage intermediaries to submit their indemnity limits for their PII policy in Euros to allow us to monitor compliance with the indemnity limit rules set out in MIPRU.

It is our intention to maintain the same reporting frequencies for first and second charge intermediaries. We will therefore be requiring second charge intermediaries to report in line with the existing rule for first charge intermediaries at SUP 16.12.23AR. This will require firms with annual regulated business revenue of up to and including £5 million to report RMA forms half yearly, with the exception of RMA-J and RMA-K, which are to be reported annually.²¹

In line with our proposals, we will not be requiring firms that mediate second charge mortgages, but not first charge, to report RMA-C or RMA-D, unless any other permissions held by the firm require it.

Q48: *Do you agree with our proposed implementation timetable for second charge firms' regulatory reporting?*

Q49: *Do you have any alternatives to minimise any cost burdens on firms, while ensuring that the FCA can meet its statutory objectives?*

Q50: *Do you have any comments on the draft rules set out in Appendix 1? Do you think the rules reflect the stated policy intention?*

- 89.** We received mixed responses on our proposed implementation date of March 2016 for second charge data reporting. Consumer bodies felt it was important that we collect data as soon as possible in order to quickly identify and address any conduct issues in the second charge market. One respondent felt that this would be a strong mitigant for regulatory arbitrage.
- 90.** As we anticipated in CP14/20, some firms already subject to first charge regulatory reporting feel more confident in meeting the requirements from March 2016, but echoed the need for proportionality in light of the wider changes to the regulatory regime. One respondent cited benefits from previous project experience in aligning implementation of major deliverables.
- 91.** However, several industry respondents asked that firms are given an appropriate amount of time to implement the necessary systems changes. A trade body representing second charge lenders was particularly concerned that data reporting would be introduced at the same time as a range of conduct measures. It felt this would place disproportionate burdens on second charge firms' systems development, particularly as they do not have the ESIS transitional arrangements available to first charge firms.
- 92.** The trade body representing second charge lenders argued that implementing a year later would give firms sufficient time to make systems changes, while not delaying implementation of conduct standards.
- 93.** Two respondents questioned the reporting requirements on second charge firms prior to March 2016. A consumer representative asked that the FCA collects data to monitor whether second charge lending was increasing compared to first charge. A second charge lender sought confirmation that the FCA would not require second charge firms to supply data prior to their transfer into the mortgage regime.

²¹ Second charge intermediaries with annual regulated business revenue of over £5 million will be required to report RMA-A to RMA-E on a quarterly basis.

94. We did not receive detailed views on alternatives to data reporting. Nor did we receive any further suggested changes to our data reporting rules, other than those points raised in response to previous questions.

Our response:

As we outlined in CP14/20, data is an important part of our supervision strategy. However, we recognise that second charge firms will be required to make significant changes to meet the requirements of both the MCD and our mortgage regime. It is clear that aligning PSD sales and performance reporting to that timetable would present significant operational challenges for firms.

It is imperative that firms prioritise their consideration and implementation of the conduct standards we will expect them to follow from March 2016. We are therefore delaying implementation of second charge PSD sales and performance reporting until a year after the transfer of second charge into our mortgage regime. In practice, this means that firms will begin reporting PSD on second charge mortgages entered into from 1 April 2017.

We will proceed as planned on our implementation of MLAR and RMAR from March 2016. In the interim period when we will not be collecting second charge transaction-level data, these aggregated returns, alongside other supervisory interventions that might be necessary (such as ad hoc data requests in response to specific issues) will be particularly important in enabling us to monitor second charge activity, flows and arrears rates, allowing us to challenge firms where necessary.

In line with PS14/3, we are not imposing specific reporting requirements on second charge mortgage firms until the mortgage regime comes into effect. We do, however, have the ability to request data from firms in response to particular supervisory issues and risks.

Q51: Do you agree with our proposed rules requiring firms to make customers aware of alternative finance options where they are looking to increase their secured borrowing?

Q52: Do you agree that these proposed rules should form part of the initial disclosure, applicable to both advised and execution only sales?

95. The majority of respondents were supportive of our approach in this area, and agreed that it is in the customer's best interests to be informed of alternative finance options when looking to increase their borrowing. A minority of respondents disagreed and some suggested that this kind of disclosure could lead to an increase in customer confusion. Some respondents questioned whether there was a need for rules in this area, and suggested that it should be left to firms to decide whether to provide this disclosure, based on their assessment of the individual customer's needs.

96. The vast majority of respondents agreed that the proposed rules should form part of the initial disclosure. Some firms did question whether such a disclosure could verge on advice in the case of execution-only transactions.

Our response:

Our view remains that customers should be made aware of alternative finance options when they are looking to increase their secured borrowing. We do not agree that a statement making them aware of such options, without providing any advice, could lead to an increase in customer confusion. We accept that alternative options may not be appropriate in all cases and the rules do not require firms to disclose details of an option that they know is not available to the customer.

As mentioned in our consultation paper, there is no requirement for the seller to consider whether the other options are more suitable for the customer.

We continue to believe that it is right that the customer should be made aware of other options when seeking to raise additional finance, both as part of our existing rules for first charge loans and in second charge lending. We will therefore be proceeding with our original proposals.

Q53: Do you agree with our proposal to transpose the CONC 7 provisions for vulnerable customers into MCOB 13?

97. The majority of respondents agreed with the proposal.
98. Some respondents requested that we provide clarity on our definition of 'vulnerability', some hoping it could be framed in terms of mental capacity and capability only, and some arguing it could extend wider than this.
99. Several of the firms said that they had already begun developing their policies in this area.

Our response:

We are taking forward our proposal to transpose the CONC 7 provisions for vulnerable customers. We will not provide a Handbook definition of customers in vulnerable circumstances, as we want firms to interpret this holistically in each individual case. As with the relevant CONC provisions, however, we are making clear that it includes particular customers with mental health difficulties, or who are known or reasonably believed to lack the capacity to make relevant financial decisions at the particular time.

We recently published an occasional paper which examines the circumstances that can contribute to consumer vulnerability.²²

²² www.fca.org.uk/static/documents/occasional-papers/occasional-paper-8.pdf

Q54: Do you agree with the scope of our proposed information sharing requirements?

Q55: Do you agree that our proposed information sharing requirements should apply to all firms with a regulated mortgage secured against the property?

- 100.** Several respondents expressed support for the proposal, citing the potential consumer benefit and a minimal impact in terms of additional costs. However, a number of trade associations and firms rejected the proposals saying they would increase costs to the consumer with no material benefit. Several industry representatives across first and second charge markets suggested changes which they felt made the proposals more proportionate.
- 101.** Some respondents voiced specific concerns about the rules slowing down the litigation process. Others asked for more clarification on the exact timing of disclosures, the responsibilities on firms to discover the existence of other charge holders, and whether the rules apply only to MCD loans taken out after 21 March 2016.
- 102.** Firms in support of the proposal also largely agreed that the requirements should apply to all firms with a regulated mortgage contract secured against the property.

Our response:

We have assessed the feedback on this proposal and, on balance, we consider there to be a benefit in reducing the volume of disclosures required of firms during the litigation process. We have retained those disclosures between charge holders which we consider to be of primary importance during the process, ie notice of the commencement of legal proceedings, surrender of property, details of any proposed sale, and details of the assisted voluntary sale process where applicable. We believe this will help reduce the cost burden on firms and avoid delays in the litigation process whilst ensuring that key information is still shared between charge holders. We have also added guidance to MCOB 13.4A stating that firms must make 'reasonable efforts' to discover the existence of other charge holders, as we are conscious that identification may not always be possible. These measures apply to all regulated mortgage contracts or home purchase plans, including those taken out before 21 March 2016.

Q56: Do you agree with the amendments made to PERG?

Q57: Are there any business models which need further consideration under PERG as we propose to amend it?

- 103.** Most respondents agreed with the proposals and had no comments to make.
- 104.** Questions were raised on how we viewed the commercial borrowing exemption, seeking an explanation as to how the guidance was developed. Some firms wanted further clarification on commercial lending generally and the meaning of 'incidental to business purposes'.

Our response:

In respect of the scope of the commercial borrowing exemption, further information is contained in the finalised legislation and our consultation on the appropriate framework for consumer buy-to-let. For more information please see CP15/3.

Q58: *Do you agree with the costs and benefits identified?*

105. Several respondents suggested that any benefits of the MCD would be smaller than costs for the UK. Some suggested we had underestimated the costs of the MCD, and a handful of respondents suggested that we had underestimated the costs of the proposals for second charge firms. One respondent stated the CBA did not adequately consider lifetime mortgages.

Our response:

MCD Analysis

As we explained in CP14/20, in the case of European Directive implementation, with little or no margin for discretion, we might consider it a disproportionate use of resources and therefore 'not reasonably practicable' to spend substantial resources on estimating the costs or benefits of something which in practice does not really involve an exercise of discretion or significant decision-making by us and the matter is not something that would be influenced by responses to the public consultation. Since we have little or no margin for discretion in implementing the MCD, or we have exercised the discretion we have to minimise the impact of the MCD in both scope and the extent of rules changing whenever possible, we conducted only a high level cost benefit analysis of the MCD.

In several of the nine areas which we analysed in the CBA where we thought the implementation of the MCD was likely to lead to material incremental impacts we stated the expectation that there may be few incremental benefits against potentially significant costs. For example, we were clear that we did not expect significant incremental benefits in the UK of the requirement to harmonise disclosure but that one-off costs for implementing this were likely to exceed £20m. We are therefore aligned with respondents. We acknowledge that since this was a high-level CBA it is possible that some costs of implementing the MCD are imprecise. However, to engage firms in an exercise to more precisely estimate costs when there is no little or no margin for discretion in the rules would be a disproportionate use of both our and industry's resources.

Second Charge Analysis

To inform the assessment of impacts for firms engaged in second charge business KPMG conducted interviews with 6 active lenders, 6 active brokers, 2 dormant lenders and a major industry association. KPMG further collected detailed information on the impact of the proposals through an online survey to which there were 54 responses from firms engaged in second charge business. This included 15 lenders currently active in the market - estimated to be responsible for 69% of all new second charge loans made. The FCA further collected transaction level information for the responsible lending aspects of the proposals from firms who make up around 85% of all current second

charge lending. The data sets that both our and KPMG's CBA were based on were hence quite extensive. These information sets, and therefore overall cost estimates, included responses from the three respondents who have stated that we may have underestimated costs.

We acknowledge that the estimates made will not be perfect, for example because assumptions made to extrapolate numbers out to the total population may be imperfect, because extrapolating the future direction of the second charge market is not straightforward, or because survey respondents may find it difficult to make credible judgements about incremental costs in cases. However, we are confident that a thorough data-gathering process and reasonable approach was followed to get to the cost estimates, and we do not intend to materially revise our analysis.

Lifetime Mortgages

In Chapter 2 we set out in greater detail the substantive points raised around the treatment of lifetime mortgages. As previously explained we only included a high level CBA of the implementation of the Directive because this would otherwise be a disproportionate use of our resources. We consequently did not break out impacts for lifetime mortgages within this analysis.

Changes to the rules and guidance included in CP 14/20

In four areas where we are intending to make rules and/ or guidance which differ materially from the proposals in CP14/20, we summarise potential costs and benefits below. In a limited number of other areas (in particular interest rate stress tests and lifetime mortgages) we state our view of potential impacts alongside the individual changes discussed earlier in this Policy Statement. Apart from these areas, we think that all other changes covered in this Policy Statement do not lead to costs of more than minimal significance, and relying on s138L of FSMA we therefore have not published a CBA for these.

We are making a change to align with the MCD affordability requirements to ensure that an affordability assessment is conducted when a customer remortgages with a new lender, even where there is no additional borrowing. As MCD implementation is driving the changes to the exceptions we offer under our existing rules, we (as before) present only a high level CBA here. This change may lead to a set of customers becoming trapped in contracts with unfavourable terms, leading consequently to some of these customers suffering payment difficulties, and in the extreme, default. The impact might not be very large in the low interest environment of today, but could become more severe were base rates to rise.

We are introducing guidance that clarifies that a binding offer can be subject to certain conditions. The binding offer itself is a requirement introduced by the MCD and covered in CP14/20. The guidance we are now introducing in effect means binding offers can be similar (to an extent) to conditional offers that are the norm in the UK market. Since we are applying a Directive requirement but in a way that grants greatest flexibility to firms, (as before) we present only a high-level CBA. Compared to a situation where binding offers might be thought unconditional the flexibility granted means firms would have to make less of a change relative to current practice, implying lower compliance costs (some of which might otherwise be passed on to consumers in the form of higher prices depending on the nature of competition in markets). Relative to

the situation of binding offers being unconditional we further do not expect a significant loss in benefits (detriment for consumers) because it is not clear there is a market failure in the current UK mortgage market that the stricter interpretation of a binding offer would directly address.

As previously explained, we are deferring implementation of the transaction level data reporting requirements for second charge firms. We would expect this to reduce the potential cost burden on industry. To support our CP14/20 analysis, we went through a significant data-gathering exercise in this sector, collecting transaction level data covering around 85% of active second charge lending. We believe that our ability to analyse this data set alongside new aggregate level data will help us to identify problems and mitigate any risks arising from the later collection of transaction level data.

Article 22 of the MCD sets out standards for 'advisory services' - these are defined by Article 4(21) of the Directive and are slightly different to the RAO definition of 'advising on a regulated mortgage contract'. It is possible that some firms who are MCD mortgage arrangers could carry out certain 'advisory services' without also being MCD mortgage advisors. Accordingly, we have:

- Required MCD mortgage arrangers to inform the customer where advisory services are being provided, where these are not being provided as an MCD mortgage adviser;
- Extended the requirement to give the customer a paper record, when advice is provided on an MCD regulated mortgage contract, of the recommendation provided to MCD mortgage arrangers

Since we are applying a Directive requirement where we do not have discretion we present only a high-level CBA (as before). The two requirements are unlikely to result in a significant increase in costs for firms, as the first disclosure does not have to be provided in a standard format and so can be provided orally, and the second disclosure can be provided by means of the completed ESIS or illustration document. We do not expect large incremental benefits as a result of these changes, given that the vast majority of firms with an arranging permission will also have an advising permissions, so these rules will apply in any case.

Annex 2: List of non-confidential respondents

Association of Bridging Professionals
Association of British Credit Unions Limited
Association of Finance Brokers
Association of Mortgage Intermediaries
Association of Professional Compliance Consultants
Association of Short-Term Lenders
Building Societies' Association
CLC
Clearly Loans Limited
Council of Mortgage Lenders
Coventry Building Society
Dodd Murray Ltd
EA Change Group
Equity Release Council
FinSec Limited
Finance & Leasing Association
Financial Services Consumer Panel
Furness Building Society
Guaranty Trust Bank (UK) Ltd
HSBC
Home Builders Federation
Intermediary Mortgage Lenders Association

Jerrold Holdings
Just Retirement
Leeds Building Society
Liverpool Victoria
Lloyds Banking Group
Money Advice Trust
Monmouthshire Building Society
Nemo Personal Finance
Pirie Palmann Ltd
Principality Building Society
RadioCentre
Royal Bank of Canada
Scotwest Credit Union
StepChange Debt Charity
TSB Bank PLC
The Law Society
Virgin Money
Which?

Appendix 1: Made rules (legal instrument) Mortgage Credit Directive

MORTGAGE CREDIT DIRECTIVE INSTRUMENT 2015

Powers exercised by the Financial Conduct Authority

- A. 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 Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137R (Financial promotion rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 213 (The compensation scheme);
 - (f) section 214 (General); and
 - (g) paragraph 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights);
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) on 21 September 2015 as follows
 - (a) Part 1 of Annex C;
 - (b) MIPRU 1.3.2R and MIPRU 1.3.4R in Part 2 of Annex C but only for the purposes of Part 1 of Annex C;
 - (c) Part 1 of Annex D;
 - (d) Part 2 of Annex D but only for the purposes of Part 1 of Annex D;
 - (e) Annex A but only for the purposes of (1)(a), (b), (c) and (d);
 - (2) on 21 December 2015 as follows:
 - (a) Part 1 of Annex E but only to the extent that is needed to enable the Financial Conduct Authority to treat a consent notice or a regulator’s notice as effective for the purposes of paragraphs 13(1) or 14(1) of Schedule 3 (as amended) of the Act or a notice of intention as effective for the purposes of paragraphs 19(2) or 20(1) of Schedule 3 (as amended) of

the Act and nothing in this paragraph gives a person a right to carry on, before 21 March 2016, any of the activities covered by the changes set out in Part 1 of Annex E;

(b) Annex A but only for the purposes of (2)(a);

(3) the remainder of 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) below:

(1)	(2)
Glossary of definitions	Annex A
Training and Competence sourcebook (TC)	Annex B
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex C
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D
Supervision manual (SUP)	Annex E
Compensation sourcebook (COMP)	Annex F
Professional Firms sourcebook (PROF)	Annex G

Amendments to the material outside the Handbook

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

F. The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) is amended in accordance with Annex I to this instrument.

Citation

G. This instrument may be cited as the Mortgage Credit Directive Instrument 2015.

By order of the Board of the Financial Conduct Authority

25 March 2015

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. This text is not underlined.

<i>ADR Directive</i>	Alternative Dispute Resolution Directive, Directive 2013/11/EU on alternative dispute resolution for consumer disputes.
<i>APRC</i>	the <i>total cost of the credit to the consumer</i> , expressed as an annual percentage of the <i>total amount of credit</i> , where applicable including the costs referred to in <i>MCOB 10A.1.2R</i> and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed, or which would be agreed if the <i>MCD credit agreement</i> is entered into, by the <i>MCD creditor</i> and the <i>consumer</i> .
	[Note: articles 4(15) and 17(2) of the <i>MCD</i>]
<i>article 3(1)(b) credit agreement</i>	a <i>credit agreement</i> : <ul style="list-style-type: none"> (a) under which the person to whom the credit is provided is a <i>consumer</i>, (b) the purpose of which is to acquire or retain property rights in land or in an existing or projected building; and (c) which is not an <i>MCD regulated mortgage contract</i>.
	[Note: articles 3(1)(b) and 4(3) of the <i>MCD</i>]
<i>assisted voluntary sale process</i>	a process in which a <i>firm</i> assists a <i>customer</i> to sell voluntarily property which is subject to a <i>regulated mortgage contract</i> or <i>home purchase plan</i> with the <i>firm</i> , over and above allowing the <i>customer</i> to remain in possession for a reasonable period to effect a sale.
<i>borrowing rate</i>	the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of <i>credit</i> drawn down.
	[Note: article 4(16) of the <i>MCD</i> and article 3(j) of the <i>Consumer Credit Directive</i>]
<i>European Standardised Information Sheet (ESIS)</i>	The pre-contractual disclosure document, the template for which is contained in <i>MCOB 5A Annex 1R</i> , provided to a <i>consumer</i> in accordance with <i>MCOB 5A</i> .

<i>exempt article 3(1)(b) credit agreement</i>	<p>an <i>article 3(1)(b) credit agreement</i> that is:</p> <ul style="list-style-type: none"> (a) an <i>MCD exempt bridging loan</i>; (b) an <i>MCD exempt credit union loan</i>; (c) an <i>MCD exempt overdraft loan</i>; or (d) an <i>MCD exempt lifetime mortgage</i>.
<i>exempt MCD credit agreement</i>	an <i>exempt MCD regulated mortgage contract</i> or an <i>exempt article 3(1)(b) credit agreement</i> .
<i>exempt MCD regulated mortgage contract</i>	<p>a <i>regulated mortgage contract</i> that is:</p> <ul style="list-style-type: none"> (a) an <i>MCD exempt bridging loan</i>; (b) an <i>MCD exempt credit union loan</i>; (c) an <i>MCD exempt overdraft loan</i>; or (d) an <i>MCD exempt lifetime mortgage</i>.
<i>first charge legal mortgage</i>	a legal mortgage ranking in priority ahead of all other mortgages (if any) affecting the land in question, where “mortgage” includes charge and (in Scotland) a heritable security.
<i>first charge regulated mortgage contract</i>	a <i>regulated mortgage contract</i> in which the mortgage on which the obligation to repay is secured is a <i>first charge legal mortgage</i> .
<i>foreign currency loan</i>	<p>an <i>MCD credit agreement</i> where the <i>credit</i> is:</p> <ul style="list-style-type: none"> (a) denominated in a currency other than that in which the <i>consumer</i> receives the income or holds the assets from which the <i>credit</i> is to be repaid; or (b) denominated in a currency other than that of the <i>EEA State</i> in which the <i>consumer</i> is resident. <p>[Note: article 4(28) of the <i>MCD</i>]</p>
<i>MCD</i>	Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property.
<i>MCD article 3(1)(b) credit agreement</i>	an <i>article 3(1)(b) credit agreement</i> which is not an <i>exempt article 3(1)(b) credit agreement</i> .
<i>MCD article 3(1)(b) credit</i>	<ul style="list-style-type: none"> (a) an <i>MCD credit broker</i>; or (b) an <i>MCD credit adviser</i>.

<i>intermediary</i>	[Note: article 4(5) and (21) of the <i>MCD</i>]
<i>MCD article 3(1)(b) credit intermediation activity</i>	the activity of acting as an <i>MCD article 3(1)(b) credit intermediary</i> . [Note: article 4(5) and (21) of the <i>MCD</i>]
<i>MCD article 3(1)(b) creditor</i>	a <i>firm</i> with <i>permission</i> for entering into a regulated credit agreement as lender which, by way of business and for remuneration (which may take a pecuniary form or any other agreed form of financial consideration), grants or promises to grant an <i>MCD article 3(1)(b) credit agreement</i> . [Note: article 4(2) of the <i>MCD</i>]
<i>MCD contingent liability or guarantee</i>	an <i>MCD credit agreement</i> which acts as a guarantee to another separate, but ancillary, transaction and where the capital secured against an immovable property is only drawn down if an event specified in the contract occurs. [Note: article 4(24) of the <i>MCD</i>]
<i>MCD credit adviser</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i>) to carry on the activity, by way of business, of <i>advising on regulated credit agreements for the acquisition of land</i> . [Note: article 4(21) of the <i>MCD</i>]
<i>MCD credit agreement</i>	an <i>MCD regulated mortgage contract</i> or an <i>MCD article 3(1)(b) credit agreement</i> . [Note: article 3(1) of the <i>MCD</i>]
<i>MCD credit broker</i>	a <i>credit broker</i> who: <ul style="list-style-type: none"> (a) for remuneration (which may take a pecuniary form or any other agreed form of financial consideration), carries out an activity of the kind specified in article 36A(1)(d), (e) or (f) of the <i>Regulated Activities Order</i> in relation to <i>MCD article 3(1)(b) credit agreements</i>; and (b) is not merely introducing, either directly or indirectly, a <i>consumer</i> to an <i>MCD firm</i>. [Note: article 4(5) of the <i>MCD</i>]
<i>MCD credit intermediary</i>	an <i>MCD mortgage credit intermediary</i> or an <i>MCD article 3(1)(b) credit intermediary</i> . [Note: article 4(5) and (21) of the <i>MCD</i>]
<i>MCD credit</i>	the activity of acting as an <i>MCD mortgage credit intermediary</i> or an

<i>intermediation activity</i>	<p><i>MCD article 3(1)(b) credit intermediary.</i></p> <p>[Note: article 4(5) and (21) of the <i>MCD</i>]</p>
<i>MCD creditor</i>	<p>an <i>MCD mortgage lender</i> or an <i>MCD article 3(1)(b) creditor</i>.</p> <p>[Note: article 4(2) of the <i>MCD</i>]</p>
<i>MCD exempt bridging loan</i>	<p>a <i>regulated mortgage contract</i> or an <i>article 3(1)(b) credit agreement</i> either of no fixed duration or which is due to be repaid within 12 months, used by the <i>consumer</i> as a temporary financing solution while transitioning to another financial arrangement for the immovable property.</p> <p>[Note: article 4(23) of the <i>MCD</i>]</p>
<i>MCD exempt credit union loan</i>	<p>a <i>regulated mortgage contract</i> or an <i>article 3(1)(b) credit agreement</i> where the lender is a <i>credit union</i>.</p> <p>[Note: articles 3(3)(e) and 4(2), (3) of the <i>MCD</i> and article 2(5) of the <i>Consumer Credit Directive</i>]</p>
<i>MCD exempt lifetime mortgage</i>	<p>a <i>regulated mortgage contract</i> or an <i>article 3(1)(b) credit agreement</i> under which the lender:</p> <ul style="list-style-type: none"> (a) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of residential immovable property or a right relating to residential immovable property; and (b) will not seek repayment of the capital until the occurrence of one or more of the <i>specified life events</i>, unless the <i>customer</i> breaches their contractual obligations (including any obligation to pay interest during the term) which allows the lender to terminate the agreement. <p>[Note: article 3(2)(a) of the <i>MCD</i>]</p>
<i>MCD exempt overdraft loan</i>	<p>a <i>regulated mortgage contract</i> or an <i>article 3(1)(b) credit agreement</i> in the form of an <i>overdraft facility</i> and where the credit has to be repaid within one month.</p> <p>[Note: articles 3(2)(d) and 4(3), (23) of the <i>MCD</i>]</p>
<i>MCD firm</i>	<p>any of the following:</p> <ul style="list-style-type: none"> (a) an <i>MCD creditor</i>; (b) an <i>MCD credit intermediary</i>; or (c) an <i>MCD mortgage administrator</i>.

[**Note:** article 4(2), (5) and (21) of the *MCD*.]

MCD lifetime mortgage a *lifetime mortgage* which is not an *MCD exempt lifetime mortgage*.

MCD mortgage administrator (in *MCOB 7A* and *MCOB 14*) a *mortgage administrator* who administers *MCD regulated mortgage contracts*.

MCD mortgage adviser a *mortgage adviser* who, by way of business, provides a personal recommendation to a *consumer* in respect of *MCD regulated mortgage contracts*.

[**Note:** article 4(21) of the *MCD*]

MCD mortgage arranger a *mortgage arranger* who:

- (a) by way of business and for remuneration (which may take a pecuniary form or any other agreed form of financial consideration), carries out an activity of the kind specified in article 25A(1)(a) or (2A) of the *Regulated Activities Order* in relation to *MCD regulated mortgage contracts*; and
- (b) is not merely introducing, either directly or indirectly, a *consumer* to an *MCD firm*.

[**Note:** article 4(5) of the *MCD*]

MCD mortgage credit intermediary in relation to an *MCD regulated mortgage contract*:

- (a) an *MCD mortgage arranger*; or
- (b) an *MCD mortgage adviser*.

[**Note:** article 4(5) and (21) of the *MCD*]

MCD mortgage credit intermediation activity the activity of acting as an *MCD mortgage credit intermediary*.

[**Note:** article 4(5) of the *MCD*]

MCD mortgage lender a *mortgage lender* who, by way of business and for remuneration (by pecuniary form or any other agreed form of financial consideration), grants or promises to grant *MCD regulated mortgage contracts*.

[**Note:** article 4(2) of the *MCD*]

MCD regulated mortgage contract a *regulated mortgage contract* entered into on, or after, 21 March 2016, under which the borrower is a *consumer* and which is not an *exempt MCD regulated mortgage contract*.

[**Note:** article 3(1)(a) of the *MCD*]

<i>member of staff</i>	<p>any individual:</p> <ul style="list-style-type: none"> (a) working for a <i>firm</i> who is directly engaged in the activities specified in <i>TC 4.1.6R</i>; (b) working for a <i>firm</i> or its <i>appointed representative</i> who has contact with a <i>consumer</i> in the course of those activities; or (c) directly managing or supervising an individual referred to in (a) or (b) above. <p>[Note: article 4(11) of the <i>MCD</i>]</p>
<i>related person</i>	<p>(in relation to a borrower or, in the case of credit provided to trustees, a beneficiary of the trust), a person who is:</p> <ul style="list-style-type: none"> (a) that person's spouse or civil partner; (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or (c) that person's parent, brother, sister, child, grandparent or grandchild.
<i>second charge lender</i>	a <i>mortgage lender</i> who grants, or promises to grant, a <i>second charge regulated mortgage contract</i> .
<i>second charge regulated mortgage contract</i>	a <i>regulated mortgage contract</i> which is not a <i>first charge legal mortgage</i> .
<i>shared equity credit agreement</i>	<p>an <i>MCD credit agreement</i> where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments.</p> <p>[Note: article 4(25) of the <i>MCD</i>]</p>
<i>specified life events</i>	<ul style="list-style-type: none"> (a) the death of the <i>customer</i>; or (b) the <i>customer</i> leaves the mortgaged land to live elsewhere and has no reasonable prospect of returning (for example, by moving into residential care); or (c) the <i>customer</i> acquires another dwelling for use as his main residence; or (d) the <i>customer</i> sells the mortgaged land; or (e) the <i>lender</i> exercises its legal right to take possession of the mortgaged land under the terms of the contract.

<i>tied MCD article 3(1)(b) credit intermediary</i>	<p>an <i>MCD article 3(1)(b) credit intermediary</i> who acts on behalf of and under the full and unconditional responsibility of:</p> <ul style="list-style-type: none"> (a) only one <i>MCD article 3(1)(b) creditor</i>; (b) only one <i>group</i>; or (c) a number of <i>MCD article 3(1)(b) creditors</i> or <i>groups</i> which does not represent the majority of the market. <p>[Note: article 4(7) of the <i>MCD</i>]</p>
<i>tied MCD credit intermediary</i>	<p>a <i>tied MCD mortgage credit intermediary</i> or a <i>tied MCD article 3(1)(b) credit intermediary</i>.</p> <p>[Note: article 4(7) of the <i>MCD</i>]</p>
<i>tied MCD mortgage credit intermediary</i>	<p>an <i>MCD mortgage credit intermediary</i> who acts on behalf of and under the full and unconditional responsibility of:</p> <ul style="list-style-type: none"> (a) only one <i>MCD mortgage lender</i>; (b) only one <i>group</i>; or (c) a number of <i>MCD mortgage lenders</i> or <i>groups</i> which does not represent the majority of the market. <p>[Note: article 4(7) of the <i>MCD</i>]</p>
<i>total cost of the credit to the consumer</i>	<p>all costs, including interest, commissions, taxes, valuation fees, and any other fees which are required to be paid by, or on behalf of, the <i>consumer</i> in connection with the <i>MCD credit agreement</i>. This covers costs payable to the <i>MCD creditor</i> or to any other <i>person</i> which are known to the <i>MCD creditor</i>. It also includes, in calculating the <i>APRC</i>, the costs referred to in <i>MCOB 10A.1.2R</i> and any fee payable by the <i>consumer</i> to an <i>MCD credit intermediary</i> for its services in connection with the <i>MCD credit agreement</i>. It does not include notarial costs, property transfer registration fees and any charges payable by the <i>consumer</i> for non-compliance with obligations under the <i>MCD credit agreement</i>.</p> <p>[Note: articles 4(13), 15(4) and 17(2) of the <i>MCD</i>]</p>
<i>tying practices</i>	<p>the offering or the selling of an <i>MCD credit agreement</i> in a package with other distinct financial products or services where the <i>MCD credit agreement</i> is not made available to the <i>consumer</i> separately.</p> <p>[Note: article 4(26) of the <i>MCD</i>]</p>

Amend the following definitions as shown.

<i>arranging (bringing about) regulated mortgage contracts</i>	<p>the regulated activity, specified in article 25A(1) <u>and (2A)</u> of the <i>Regulated Activities Order</i>; which is, in summary, making arrangements for another person to:</p> <p>(a) <u>for another person to</u> enter into a <i>regulated mortgage contract</i> as borrower; or</p> <p>(b) <u>for another person to</u> vary the terms of a <i>regulated mortgage contract</i> entered into by him as borrower on or after 31 October 2004; <u>or</u></p> <p>(c) <u>to enter into a regulated mortgage contract with a borrower on behalf of a lender.</u></p> <p>...</p>
<i>bridging loan</i>	<p>(1) <u>an MCD exempt bridging loan; or</u></p> <p>(2) <u>(other than in (1)) a regulated mortgage contract</u> which has a term of twelve <i>months</i> or less.</p>
<i>consumer</i>	<p>...</p> <p>[Note: article 2 of the <i>Distance Marketing Directive</i>, article 2 of the <i>Unfair Terms in Consumer Contracts Directive</i> (93/13/EEC), article 2 of the <i>E-Commerce Directive</i>, article 4(11) of the <i>Payment Services Directive</i>, <u>and</u> article 3 of the <i>Consumer Credit Directive</i> <u>and</u> article 4(1) of the <i>MCD</i>.]</p>
<i>credit</i>	<p>...</p> <p>(1) (except in relation to a <i>class of contract of insurance</i>, and a <i>credit-related regulated activity</i> <u>and an MCD credit agreement</u>) ...</p> <p>...</p> <p>(3) (in relation to a <i>credit-related regulated activity</i>, or <u>operating an electronic system in relation to lending or an MCD credit agreement</u>) ...</p>
<i>credit information agency</i>	<p>...</p> <p>(j) <i>providing credit references</i> (article 89B);</p> <p>(k) <u><i>advising on regulated credit agreements for the acquisition of land</i></u> (article 53DA).</p>
<i>customer</i>	<p>...</p> <p>(1) (except in relation to <i>ICOBS</i>, a <i>credit-related activity</i>, <i>MCOB 3</i></p>

3A, an MCD credit agreement and CASS 5) ...

(2) (in relation to *MCOB 3 3A*) ...

(2A) (in relation to an MCD credit agreement) a consumer.

EEA firm

...

(hh) an *AIFM* which is authorised (under article 6 of *AIFMD*) by its *Home State regulator*;

(hhh) an MCD credit intermediary admitted under article 29(1) of the MCD by its home state regulator to carry out all or part of the activities in article 4(5) of the MCD, or to provide advisory services (as defined in article 4(21) of the MCD);

...

financial promotion

...

(3) (in MCOB 3A), in addition to (1), any advertising or marketing communications within the meaning of articles 10 or 11 of the MCD made by an MCD firm in relation to an MCD credit agreement.

[Note: articles 10 and 11 of the MCD.]

financial promotion rules

....

(3) (in relation to MCOB) ~~MCOB 3~~ any or all of the rules in MCOB 3A that impose requirements in relation to a financial promotion, but only to the extent that they apply to a financial promotion.

...

group

(5) ...

(6) (in MCOB) a group of MCD creditors which are to be consolidated for the purposes of drawing up consolidated accounts, as defined in Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

[Note: article 4(6) of the MCD]

lifetime mortgage

(1) an MCD exempt lifetime mortgage; or

(2) (other than in (1)), a regulated mortgage contract or an article

3(1)(b) credit agreement under which:

...

- (b) the ~~mortgage lender~~ lender may or may not specify a mortgage term, but will not seek full repayment of the loan (including interest, if any, outstanding) until the occurrence of one or more of the following specified life events; and
- (i) ~~the death of the customer~~; or
 - (ii) ~~the customer leaves the mortgaged land to live elsewhere and has no reasonable prospect of returning (for example by moving into residential care)~~; or
 - (iii) ~~the customer acquires another dwelling for use as his main residence~~; or
 - (iv) ~~the customer sells the mortgaged land~~; or
 - (v) ~~the mortgage lender exercises its legal right to take possession of the mortgaged land under the terms of the contract.~~

And

...

mortgage mediation activity (as defined in article 26 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475) any of the following regulated activities:

- (a) *arranging (bringing about) regulated mortgage contracts* (article 25A(1) and (2A));

...

overdraft facility (1) (in *CONC* App 1.2) an explicit agreement whereby a *lender* makes available to a *borrower* funds which exceed the current balance in the *borrower's current account*.

(2) (in *MCOB 10A*) an explicit agreement whereby an *MCD creditor* makes available to a *consumer* funds which exceed the current balance in the *consumer's current account*

[Note: Annex I Part II of the *MCD* and article 3(d) of the *Consumer Credit Directive*]

price information ...

- (b) the presence or absence of any payments, fees or charges ~~(other than the fees for advising on or arranging a regulated mortgage contract as required by MCOB 3.6.27R);~~ or
 - ...
 - private person* ...
- (c) a relevant recipient of *credit* (within the meaning of article 60L of the *Regulated Activities Order*) who is not an individual and who has suffered the loss in question in connection with an activity of the kind specified by article 36A, 39D, 39E, 39F, 39G, 53DA, 60B ...
 - ...
 - regulated activity* ...
- (ga) *arranging (bringing about) regulated mortgage contracts* (article 25A(1) and (2A));
 - ...
 - (pd) ...
 - (pe) *advising on regulated credit agreements for the acquisition of land* (article 53DA);
 - ...
 - regulated mortgage activity* any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):
 - (a) *arranging (bringing about) regulated mortgage contracts* (article 25A(1) and (2A));
 - ...
 - (a) (in relation to a contract) a contract which:
 - (i) (in accordance with article 61(3) of the *Regulated Activities Order*) at the time it is entered into, meets the following conditions:
 - ...
 - (B) the obligation of the borrower to repay is secured by a ~~first legal mortgage on land (other than timeshare accommodation)~~ in the *United Kingdom EEA*, at least 40% of which is used, or is intended to be used, in the case of credit provided to an individual, as or in connection with a dwelling; or (in the case of credit

provided to a trustee which is not an individual) as or in connection with a dwelling ~~by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person or (in the case of credit provided to trustees) a beneficiary of the trust:~~

- ~~(I) that *person's* spouse or civil partner; or~~
- ~~(II) a *person* (whether or not of the opposite sex) whose relationship with that *person* has the characteristics of the relationship between husband and wife; or~~
- ~~(III) that *person's* parent, brother, sister, child, grandparent or grandchild; and~~

- (ii) is not a home purchase plan, a limited payment second charge bridging loan, a second charge business loan, an investment property loan, an exempt consumer buy-to-let mortgage contract or a limited interest second charge credit union loan within the meaning of article 61A(1) or (2) of the Regulated Activities Order.

(b) ...

[Note: articles 3(1)(a) and 4(2) of the MCD]

Single Market Directives

...

(d) ...

(da) MCD:

...

total amount of credit

(1) (in *CONC*) the *credit limit* or the total sums made available under a regulated credit agreement.

(2) (in *MCOB*) the ceiling or the total sums made available under an MCD credit agreement.

[Note: article 4(12) of the MCD]

total amount payable

(1) (except in *CONC* or *MCOB*) the *total charge for credit* plus the total amount of credit advanced.

...

(3) (in *MCOB*) the sum of the total amount of credit and the total cost of the credit to the consumer.

[Note: article 4(14) of the MCD]

Annex B

Amendments to Training and Competence sourcebook (TC)

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

2.1 Assessing and maintaining competence

...

2.1.5 ...

Knowledge and competence requirements before starting MCD credit agreement activities

2.1.5A R TC 2.1.5BR and TC 2.1.5CR apply to a firm acting as an MCD creditor or an MCD credit intermediary.

2.1.5B R A firm must ensure that an employee does not carry on any of the activities 23A to 23E in TC Appendix 1 without having an appropriate level of knowledge and competence, which includes an appropriate:

- (1) knowledge of MCD credit agreements and any ancillary services offered by the firm with them;
- (2) knowledge of the laws relating to MCD credit agreements for consumers (in particular, consumer protection);
- (3) knowledge and understanding of the property purchasing process;
- (4) knowledge of security valuation;
- (5) knowledge of the organisation and functioning of land registers;
- (6) knowledge of the market;
- (7) knowledge of business ethics standards;
- (8) knowledge of the process of assessing a consumer's creditworthiness or, where applicable, competence in assessing the consumer's creditworthiness; and
- (9) level of financial and economic competency.

[Note: article 9 and annex III (1) of the MCD]

2.1.5C R A firm must not assess knowledge and competence based solely on relevant professional experience. It should also take into account relevant professional qualifications, such as diplomas and degrees, training and competency tests.

[Note: annex III (3) of the MCD]

2.1.5D G For the purposes of assessing the *employee's* knowledge and competence, professional experience means their years of employment in areas relating to the origination, distribution or intermediation of MCD credit agreements.

[Note: annex III (3)(b) of the MCD]

2.1.5E R A firm must, for the purposes of TC 2.1.5BR, take into account the nature of the *employee's* role and their level of responsibility within the firm and decide the appropriate level of knowledge and competence for that employee.

[Note: annex III (2) of the MCD]

2.1.5F G Where an *employee*, carrying on an activity in relation to a regulated mortgage contract, has attained the appropriate qualification required by TC Appendix 1, a firm may for the purposes of TC 2.1.5BR assess that *employee* as having knowledge and competence. Additionally, firms will need to meet the separate requirements in this sourcebook such as the assessment of competence in TC 2.1.1R.

...

Maintaining competence

2.1.12 R ...

[Note: article 9(1) of the MCD]

3.1 Record-keeping requirements

3.1.1 R ...

[Note: article 9(4) of the MCD]

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?

	
		Mortgage Activity and <i>reversion activity</i> carried on for a <i>customer</i>			
	
		<i>MCD credit agreement</i> activities carried on for <i>consumers</i>			
		<u>manufacturing</u>	<u>23A</u>	<u>an MCD credit agreement</u>	<u>No</u>
		<u>entering into a regulated mortgage contract or entering into a regulated credit agreement as lender</u>	<u>23B</u>	<u>an MCD credit agreement</u>	<u>No</u>
		<u>arranging (bringing about) regulated mortgage contracts or acting as an MCD credit broker</u>	<u>23C</u>	<u>an MCD credit agreement</u>	<u>No</u>
		<u>advising on a regulated mortgage contract or advising on a regulated credit agreement for the acquisition of land</u>	<u>23D</u>	<u>an MCD credit agreement</u>	<u>No</u>
		<u>directly managing or supervising employees who carry on any of the MCD credit agreement activities 23A to 23D</u>	<u>23E</u>	<u>an MCD credit agreement</u>	<u>No</u>
		[Note: article 9(1) of the MCD]			
		...			
		Notes:			
		...			
		<u>4.</u>	<u>In this Appendix, paragraphs 23A, 23B, 23C, 23D and 23E relate to the implementation of article 9(1) of the MCD. The specified activities do not, in and of themselves, attract a qualification requirement.</u>		

			However, where those activities overlap with those specified under the heading “ <i>mortgage activity and reversion activity carried on for a customer</i> ”, qualification requirements may apply.
--	--	--	---

App 2.1	Territorial scope subject to the limitation in TC Appendix 3				
App 2.1.1	R				
			<i>UK domestic firm</i>	<i>Incoming EEA firm</i>	<i>Overseas firm (other than an incoming EEA firm)</i>
		
		Any other activity in Appendix 1	...	... [Note: article 9(3)(i) of the MCD]	...

...

App 4 Appropriate Qualification tables		
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 <i>TC App 1.1.1R</i> . These tables do not cover activities 1, 5, 13A, 13B, 13C, 20A, 21B, <u>23A, 23B, 23C, 23D, 23E</u> , 24, 25 or 26 as these activities do not have a qualification requirement.

...

TP 8 Transitional provisions relating to time limits for attaining qualifications

...
8.2	R	An <i>employee</i> who is carrying on the activities specified in TC App 1 of:
		...

8.3	R	<u>An employee who is carrying on the activities specified in TC App 1 in relation to a second charge regulated mortgage contract, of:</u>	
		(1)	<u>advising; arranging (bringing about) regulated mortgage contracts or home reversion plans or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A Regulated Activities Order (Arranging contracts to which the arranger is a party) for a non-business purpose; or</u>
		(2)	<u>designing scripted questions for execution-only sales of regulated mortgage contracts for a non-business purpose;</u>
		<u>as at 21 March 2016 will, for the purposes of TC 2.2A.1R, be regarded as carrying on only such activities with effect from that date and, in relation to such an employee, a firm need not (in relation to such activities only) comply with TC 2.1.6R until 21 September 2018. TP 8.1 does not apply in respect of such an employee.</u>	

Insert the following TP after TC TP 8. All the text is new and is not underlined.

TP 9 – Transitional Provisions relating to MCD credit agreement activities

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
9.1	2.1.5B	R	A <i>firm</i> acting as an <i>MCD credit intermediary</i> or an <i>MCD creditor</i> may comply with the <i>TC rules</i> as they were in force at 20 March 2016. [Note: article 43(3) of the <i>MCD</i>]	From 21 March 2016 to 21 March 2017	21 March 2016
9.2	2.1.5C	R	A <i>firm</i> acting as an <i>MCD creditor</i> or an <i>MCD credit intermediary</i> may, until 21 March 2019, assess the knowledge and competency of the relevant <i>employee</i> solely	From 21 March 2016 to 21 March 2019	21 March 2016

			on the basis of their professional experience. [Note: annex III (3) of the <i>MCD</i>]		
--	--	--	--	--	--

Annex C

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

Part 1: Comes into force on 21 September 2015

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
...					
4	<u>MIPRU 1.3.2R and MIPRU 1.3.4R</u>	R	<p><u>A firm to which MIPRU 1.3.2R will apply from 21 March 2016 may elect to comply with MIPRU 1.3.2R from 21 September 2015.</u></p> <p><u>If a firm elects to comply with MIPRU 1.3.2R, it must also comply with MIPRU 1.3.4R.</u></p>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

Part 2: Comes into force on 21 March 2016

After MIPRU 1.2 insert the following new section. This text is new and is not underlined.

1.3 Remuneration and property valuation requirements for MCD creditors

Application

- 1.3.1 R *MIPRU* 1.3 applies to an *MCD creditor*.
Property valuation requirements
- 1.3.2 R For the valuation of residential immovable property to enter into an *MCD credit agreement*:
- (1) an *MCD creditor* must use reliable standards for the valuation where the valuation is carried out by the *MCD creditor*; or
 - (2) where the valuation is carried out by a third party, the *MCD creditor* must take reasonable steps to ensure that reliable standards are used.
- [Note: article 19(1) of the *MCD*]
- 1.3.3 G For the purposes of *MIPRU* 1.3.2R:
- (1) reliable standards for the valuation of residential immovable property include internationally recognised valuation standards, in particular those developed by the International Valuation Standards Committee (IVSC), the European Group of Valuers' Associations (EGoVA) or the Royal Institution of Chartered Surveyors (RICS), as well as the standards in *BIPRU* 3.4.77R to *BIPRU* 3.4.80R or, where applicable, *MIPRU* 4.2F.27R to 4.2F.29R.
- [Note: recital 26 of the *MCD*]
- (2) the *MCD creditor* is not limited to on-site inspections where it is possible to demonstrate that any risks posed have been adequately assessed through the overall collateral management process.
- 1.3.4 R An *MCD creditor* must ensure that:
- (1) internal and external appraisers conducting property valuations are professionally competent and sufficiently independent from the credit underwriting process so they can provide an impartial and objective valuation; and
 - (2) property valuations are documented in a *durable medium*.
- [Note: article 19(2) of the *MCD*]

Amend the following text as shown.

2 Insurance and MCD mediation activity: responsibility, knowledge, ability and good repute

2.1 Application and purpose

Application

- 2.1.1 R This chapter applies to a *firm* with *Part 4A permission* to carry on *insurance mediation activity* or *MCD credit intermediation activity*.

Purpose

- 2.1.2 R The main purpose of this chapter is to implement in part the provisions of the *Insurance Mediation Directive* and the *MCD* as these apply to *firms* regulated by the *appropriate regulator*.

2.2 **Allocation of the responsibility for insurance mediation activity or MCD credit intermediation activity**

Responsibility for insurance mediation activity or *MCD credit intermediation activity*

- 2.2.1 R A *firm*, other than a sole trader, must allocate the responsibility for the *firm's insurance mediation activity* or *MCD credit intermediation activity* to a director or senior manager.

[**Note:** Article 3(1), fourth paragraph, of the *Insurance Mediation Directive* and article 29(4)(a), first sentence, of the *MCD*.]

- 2.2.2 R The *firm* may allocate the responsibility for its *insurance mediation activity* or *MCD credit intermediation activity* to an *approved person* (or *persons*) performing:

...

- 2.2.3 G (1) Typically a *firm* will appoint a *person* performing a *governing function* (other than the *non-executive director function*) to direct its *insurance mediation activity* or *MCD credit intermediation activity*. Where this responsibility is allocated to a *person* performing another function, the *person* performing the *apportionment and oversight function* with responsibility for the apportionment of responsibilities must ensure that the *firm's insurance mediation activity* or *MCD credit intermediation activity* is appropriately allocated.
- (3) In the case of a *sole trader*, the *sole trader* will be responsible for the *firm's insurance mediation activity* or *MCD credit intermediation activity*, as applicable.

- 2.2.4 G Where a *firm* has appointed an *appointed representative* to carry on *insurance mediation activity* or *MCD credit intermediation activity* on its behalf, the *person* responsible for the *firm's insurance mediation activity* or *MCD credit intermediation activity* will also be responsible for the *insurance mediation activity* or *MCD credit intermediation activity* carried on by an *appointed representative*.

- 2.2.5 G The *FCA* will specify in the *Financial Services Register* the name of the *persons* to whom the responsibility for the *firm's insurance mediation activity* or *MCD credit intermediation activity* has been allocated by inserting after the relevant *controlled function* the words "(insurance mediation)" or "(MCD intermediation)". In the case of a *sole trader*, the *FCA* will specify in the *Financial Services Register* the name of the *sole trader* as the 'contact person' in the *firm*.

...

3 Professional indemnity insurance

3.1 Application and purpose

Application

- 3.1.1 R This chapter applies to a *firm* with *Part 4A permission* to carry on any of the activities:

...

- (2) *home finance mediation activity* or *MCD article 3(1)(b) credit intermediation activity*,

as indicated and unless any of the following exemptions apply:

...

- (4) in relation to *home finance mediation activity*, this chapter does not apply to a *firm* if:

- (a) ~~it has net tangible assets of more than £1 million; or~~ any *firm* which is an *MCD mortgage credit intermediary* exclusively advising on or arranging *second charge regulated mortgage contracts* (except for *MIPRU 3.2.9AR*);

- (b) ~~the comparable guarantee provisions of (3) apply (as if the *firm* was carrying on *insurance mediation activity*) but substituting £1 million for £10 million in (3)(a) and (b);~~ a *firm* which is not an *MCD mortgage credit intermediary* if:

- (i) it has net tangible assets of more than £1 million; or

- (ii) the comparable guarantee provisions of (3) apply (as if the *firm* was carrying on *insurance mediation activity*) but substituting £1 million for £10 million in (3)(a) and (b);

...

- (6) in relation to home finance mediation activity or MCD article 3(1)(b) credit intermediation activity, this chapter does not apply to an authorised professional firm which is not an MCD credit intermediary:

...

- (7) in relation to home finance mediation activity or MCD article 3(1)(b) credit intermediation activity, this chapter does not apply to an MCD credit intermediary if it holds a comparable guarantee (as specified in (4)(b)(ii)) against liability arising from professional negligence.

[Note: article 29(2) of the MCD]

- (8) in relation to MCD article 3(1)(b) credit intermediation activity, only MIPRU 3.2.9AR applies.

[Note: article 29(2)(a) of the MCD]

...

3.2 Professional indemnity insurance requirements

...

Minimum limits of indemnity: home finance intermediary that is not an MCD credit intermediary

- 3.2.9 R If the *firm* is a home finance intermediary that is not subject to MIPRU 3.2.9AR, then the minimum *limit of indemnity* is the higher of 10% of *annual income* up to £1 million, and:

...

Minimum limits of indemnity: MCD credit intermediaries

- 3.2.9A R If the *firm* is:

(1) an MCD article 3(1)(b) credit intermediary; or

(2) a home finance intermediary that is

(a) an MCD mortgage adviser; or

(b) an MCD mortgage arranger

who is not also an MCD mortgage lender carrying out direct sales only;

then the minimum *limit of indemnity* is the amount set out in article 1 of the Commission Delegated Regulation (EU) No 1125/2014 which is reproduced in *MIPRU* 3.2.9BEU.

[Note: article 29(2) of the *MCD*]

3.2.9B EU The minimum monetary amount of the professional indemnity insurance or comparable guarantee required to be held by credit intermediaries as referred to in the first subparagraph of Article 29(2)(a) of Directive 2014/17/EU shall be:

(a) EUR 460 000 for each individual claim;

(b) in aggregate EUR 750 000 per calendar year for all claims.

[Note: article 1 of the Commission Delegated Regulation (EU) No 1125/2014.

...

4 Capital resources

4.1 Application and purpose

...

4.1.13 G ...

Application: MCD firms

4.1.13A R This chapter does not apply to a *firm* which only carries on one or more of the following:

(1) *home finance mediation activity exclusively for second charge regulated mortgage contracts; or*

(2) *home financing exclusively for second charge regulated mortgage contracts; or*

(3) *home finance administration exclusively for second charge regulated mortgage contracts.*

4.1.13B R For a *firm* that carries on a combination of *home finance mediation activity, home financing and home finance administration*, this chapter will only apply to the extent its activities relate to *specified investments other than second charge regulated mortgage contracts.*

...

4.3 Calculation of annual income

...

- 4.3.3 G For a *firm* which carries on *insurance mediation activity* or *home finance mediation activity*, *annual income* is the amount of all brokerage, fees, *commissions* and other related income (for example, administration charges, overrides, profit shares) due to the *firm* in respect of, or in relation to, those activities. But it does not include income generated from carrying on any home finance mediation activity for second charge regulated mortgage contracts.

...

Annual income for home finance administration

- 4.3.7 R ...

- 4.3.7A R In the calculation of the capital resources of a *firm* that carries on any *home finance administration activity*, the *annual income* does not include annual income from *second charge regulated mortgage contracts*.

...

Annex D

**Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook
(MCOB)**

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

Part 1: Comes into force on 21 September 2015

TP1.1 Transitional Provisions

(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
...					
<u>20</u>	<u>MCOB TPs 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40</u>	<u>G</u>	<u>The purpose of TPs 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40 is to allow <i>firms</i> to apply certain sets of provisions that implement MCD requirements early. A <i>firm</i> may adopt any set of provisions, it need not adopt all of the sets at the same time.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>21</u>	<u>MCOB TPs 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40</u>	<u>R</u>	<u>An election to apply any of TP 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40 does not imply an election to apply any other of TP 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>22</u>	<u>MCOB 2A.1</u>	<u>R</u>	<u>A <i>firm</i> to which MCOB 2A.1 will apply from 21 March 2016 may elect to comply with MCOB 2A.1 from 21 September 2015. If the <i>firm</i> elects to comply with MCOB 2A.1, it must comply with MCOB 2A.1 and any related provisions in full.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

<u>23</u>	<u>MCOB TP 22</u>	<u>G</u>	<u>TP 22 allows a firm to apply the MCD requirements relating to remuneration early.</u>		
<u>24</u>	<u>MCOB 2A.3, MCOB 7A.4 MCOB 5A, MCOB 6A, MCOB 7B and MCOB 10A</u>	<u>R</u>	<u>A firm to which these provisions will apply from 21 March 2016 may elect to comply with them all, in full, and any related provisions, from 21 September 2015. As such, the rules and other provisions in MCOB 5, MCOB 6, MCOB 7.6.7R to MCOB 7.6.17R and MCOB 10, as in force prior to 21 March 2016, will cease to apply from the date of the election.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>25</u>	<u>MCOB TP 24</u>	<u>G</u>	<u>TP 24 allows a firm to apply the MCD requirements relating foreign currency early.</u>		
<u>26</u>	<u>MCOB 3A and MCOB 10A</u>	<u>R</u>	<u>A firm to which these provisions will apply from 21 March 2016 may elect to comply with them all, in full, and any related provisions, from 21 September 2015. As such, the rules and other provisions in MCOB 3 and MCOB 10, as in force prior to 21 March 2016, will cease to apply from the date of the election.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>27</u>	<u>MCOB TP 26</u>	<u>G</u>	<u>TP 26 allows a firm to apply the MCD requirements relating to advertising early.</u>		
<u>28</u>	<u>MCOB 3B</u>	<u>R</u>	<u>A firm to which MCOB 3B will apply from 21 March 2016 may elect to comply with MCOB 3B from 21 September 2015. If the firm elects to comply with MCOB 3B, it must comply with MCOB 3B and any related provisions in full.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>29</u>	<u>MCOB TP 28</u>	<u>G</u>	<u>MCOB TP 28 allows a firm to</u>		

			<u>apply the MCD requirements relating to general information early.</u>		
<u>30</u>	<u>MCOB 4.4A.4R(1)(a) and (3), MCOB 4.4A.8R(1)(c) and (d), MCOB 4.4A.8R(2)(e) and MCOB 4A.1</u>	<u>R</u>	<u>A firm to which these provisions will apply from 21 March 2016 may elect to comply with them all, in full, and any related provisions, from 21 September 2015. As such, the rules and other provisions in MCOB 4.4A.8R, MCOB 4.4A.9R, MCOB 4.4A.12R, MCOB 4.4A.18R and MCOB 4.4A.21R, as in force prior to 21 March 2016, will cease to apply from the date of the election.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>31</u>	<u>MCOB TP 30</u>	<u>G</u>	<u>MCOB TP 30 allows a firm to apply the MCD requirements relating to intermediary disclosure early.</u>		
<u>32</u>	<u>MCOB 4.7A.14AR, MCOB 4.7A.21R, MCOB 4.8A.7R and MCOB 11A</u>	<u>R</u>	<u>A firm to which these provisions will apply from 21 March 2016 may elect to comply with them all, in full, and any related provisions, from 21 September 2015. As such, the rules and other provisions in MCOB 4.7A.21R, and MCOB 4.8A.7R, as in force prior to 21 March 2016, will cease to apply from the date of the election.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>33</u>	<u>MCOB TP 32</u>	<u>G</u>	<u>MCOB TP 32 allows a firm to apply the MCD requirements relating to creditworthiness early.</u>		
<u>34</u>	<u>MCOB 4A.2</u>	<u>R</u>	<u>A firm to which MCOB 4A.2 will apply from 21 March 2016 may elect to comply with MCOB 4A.2 from 21 September 2015. If the firm elects to comply with MCOB 4A.2 early, it must comply with MCOB 4A.2 and any</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

			<u>related provisions in full from the date of election.</u>		
<u>35</u>	<u>MCOB TP 34</u>	<u>G</u>	<u>MCOB TP 34 allows a firm to apply the MCD requirements relating to adequate explanations early.</u>		
<u>36</u>	<u>MCOB 4.4A.4R(3) and MCOB 4A.3</u>	<u>R</u>	<u>A firm to which these provisions will apply from 21 March 2016 may elect to comply with them all, in full, and any related provisions, from 21 September 2015. As such, the rules and other provisions in MCOB 4.4A.4R(3), as in force prior to 21 March 2016, will cease to apply from the date of the election.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>37</u>	<u>MCOB TP 36</u>	<u>G</u>	<u>MCOB TP 36 allows a firm to apply the MCD requirements relating to advice early.</u>		
<u>38</u>	<u>MCOB 5A, MCOB 6A and MCOB 10A</u>	<u>R</u>	<u>A firm to which these provisions will apply from 21 March 2016 may elect to comply with them all, in full, and any related provisions, from 21 September 2015. As such, the rules and other provisions in MCOB 5, MCOB 6 and MCOB 10, as in force prior to 21 March 2016, will cease to apply from the date of the election.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>39</u>	<u>MCOB TP 39</u>	<u>G</u>	<u>MCOB TP 38 allows a firm to apply the MCD requirements relating to pre-contractual information early.</u>		
<u>40</u>	<u>MCOB 5A, MCOB 6A, MCOB 7B, MCOB 7.6.18R to MCOB 7.6.26G, MCOB</u>	<u>R</u>	<u>(1) A firm to which these new or amended provisions will apply from 21 March 2016 may elect to comply with them all, in full, and any related provisions, from 21 September 2015. As such, the rules and</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

	<u>7.6.31R to MCOB 7.6.36G and MCOB 10A</u>		<p>other provisions listed in paragraph (2) below, as in force prior to 21 March 2016, will cease to apply from the date of the election. However, <i>MCOB 7.6.7R to MCOB 7.6.17R</i> will continue to apply, after such an election, to <i>regulated mortgage contracts other than MCD regulated mortgage contracts</i>.</p> <p>(2) <u>The rules and provisions referred to in paragraph (1) above are those in <i>MCOB 5, MCOB 6, MCOB 7.6.7R to MCOB 7.6.17R</i> (in relation to <i>MCD regulated mortgage contracts</i>), <i>MCOB 7.6.18R to MCOB 7.6.26G, MCOB 7.6.31R to MCOB 7.6.36G and MCOB 10</i>.</u></p>		
41	<u>MCOB TP 40</u>	<u>G</u>	<u>MCOB TP 40 allows a firm to apply the new and amended requirements relating to further advances, rate switches and the addition and removal of parties early.</u>		
42	<u>MCOB (all)</u>	<u>R</u>	<p><u>A second charge lender who elects, for any particular agreement or proposed agreement, under article 31 of the Mortgage Credit Directive Order 2015 to comply with the provisions of <i>MCOB</i> that will apply to that firm's activities from 21 March 2016:</u></p> <p>(1) <u>must comply with all the provisions of <i>MCOB</i> that will apply to that firm in respect of the agreement from 21 March 2016;</u></p>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

			<p>(2) <u>except as provided in (3), need not comply with the provisions of CONC that would otherwise apply in respect of the agreement.</u></p> <p>(3) <u>a second charge lender with interim permission must continue to comply with CONC 12.</u></p>		
43	<u>MCOB TP 42</u>	<u>G</u>	<u>The restrictions on firms with interim permission in article 59 of SI 2013/1881 continue to apply to a firm using MCOB TP 42.</u>		
44	<u>MCOB TP 42</u>	<u>G</u>	<u>MCOB TP 42 allows a second charge lender to comply with MCOB early without at the same time needing to comply with CONC, provided that the second charge lender complies with all provisions of MCOB that will apply in respect of the agreement for which the second charge lender has made the election under article 31 of the Mortgage Credit Directive Order 2015.</u>		

Part 2: Comes into force on 21 March 2016

[Editor's note: The coming into force of the provisions in Part 2 on 21 March 2016 is subject to a firm's right to elect to comply with some or all of these provisions earlier, from 21 September 2015 (see MCOB TP 20 to TP 44 in Part 1, above). If a firm makes an election, some or all of these provisions come into force (in accordance with MCOB TP 20 to TP 44) in relation to that firm from the date of the election.]

Amend the following text as shown.

1.2 General application: who? what?

...

1.2.3C G In relation to an MCD regulated mortgage contract with a high net worth

mortgage customer, to comply in full with MCOB, a firm does not need to comply with those provisions in MCOB that are expressed not to apply to MCD regulated mortgage contracts.

...

- 1.2.8 G (1) *Firms* are reminded of the requirement in ~~MCOB 2.2.6R~~ 3A.2.1R that any communication should be ~~clear~~, fair, clear and not misleading when substituting an alternative for the term 'mortgage' in accordance with *MCOB 1.2.7R(1)*.

...

- 1.2.9 G The disclosure *rules* in *MCOB* place particular emphasis on the description of borrowing. Where the *regulated mortgage contract* is for a business purpose or with a *high net worth mortgage customer* who is not a consumer under an MCD regulated mortgage contract, a *firm* should reflect this emphasis in any disclosure by first describing any borrowing before addressing the other facilities provided under the *regulated mortgage contract*.

...

- 1.2.10 R *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for:

(1) ~~MCOB 2.2 (Communications)~~ MCOB 3A (Financial promotions and communications with customers).

(2) ~~MCOB 3 (Financial promotion)~~.

- 1.2.11 G *Authorised professional firms* should be aware of the following:

...

(2) ~~MCOB 3.1.9R~~ MCOB 3A.1.3R (Authorised professional firms) and the exception in article 55 of the *Financial Promotion Order* (Communications by members of the professions) which applies in relation to *financial promotion* of *qualifying credit* or of a *home reversion plan* of *authorised professional firms* under ~~MCOB 3.2.5R(3)~~ MCOB 3A.1.9R(2) (Exemptions).

...

MCD application

- 1.2.14 G (1) The provisions in the table in (2) apply only in relation to an MCD regulated mortgage contract.
- (2) This table belongs to (1).
-

<u>Chapter</u>	<u>Provisions</u>
<u>MCOB 2A</u>	<u>Whole chapter</u>
<u>MCOB 3A</u>	<u>MCOB 3A.2.4R(2) and MCOB 3A.5</u>
<u>MCOB 3B</u>	<u>Whole chapter</u>
<u>MCOB 4</u>	<u>MCOB 4.4A.4R(1)(a) and (3), MCOB 4.4A.8R(1)(d) and MCOB 4.4A.8R(2)(e)</u>
<u>MCOB 4A</u>	<u>Whole chapter</u>
<u>MCOB 5A</u>	<u>Whole chapter</u>
<u>MCOB 6A</u>	<u>Whole chapter</u>
<u>MCOB 7A</u>	<u>Whole chapter</u>
<u>MCOB 7B</u>	<u>Whole chapter</u>
<u>MCOB 10A</u>	<u>Whole chapter</u>
<u>MCOB 11</u>	<u>MCOB 11.6.21AR and MCOB 11.6.21BG</u>
<u>MCOB 11A</u>	<u>Whole chapter</u>

1.2.15 G (1) In the table in (2), the provisions in column (1) apply in relation to an MCD regulated mortgage contract instead of the provisions in column (2).

(2) This table belongs to (1).

<u>(1) MCD requirement</u>	<u>(2) Non-MCD requirement</u>
<u>MCOB 5A</u>	<u>MCOB 5</u>
<u>MCOB 6A</u>	<u>MCOB 6</u>
<u>MCOB 7B</u>	<u>MCOB 7.6.7R to 7.6.17R</u>
<u>MCOB 10A</u>	<u>MCOB 10</u>

1.2.16 R (1) For any regulated mortgage contract which is not an MCD regulated mortgage contract, a firm may elect to comply with any part of MCOB as if the contract was an MCD regulated mortgage contract.

(2) Where the contract in (1) is an MCD exempt lifetime mortgage, the firm must continue to provide an illustration in accordance with the

relevant requirements in MCOB, rather than an ESIS.

1.2.17 G The purpose of MCOB 1.2.16R is to allow a firm to apply provisions of MCOB which implement the MCD for an MCD regulated mortgage contract to regulated mortgage contracts that are not MCD regulated mortgage contracts, save in respect of MCD exempt lifetime mortgages where the firm must continue to provide an illustration in accordance with the relevant requirements in MCOB, rather than an ESIS.

1.2.18 R A firm that makes the election in MCOB 1.2.16R to treat an MCD exempt bridging loan as if it were an MCD regulated mortgage contract must calculate the APRC for the MCD exempt bridging loan by applying the following additional assumptions:

- (1) the total amount of credit must be deemed to be drawn down in full and for the duration of the MCD exempt bridging loan; and
- (2) if the duration of the MCD exempt bridging loan is not known, the APRC must be calculated on the assumption that the duration of the credit is 12 months.

Identifying MCD credit agreements

- 1.2.19 G (1) To meet the definition of an MCD credit agreement (including a foreign currency loan), a contract must come within the definition at the time it is entered into.
- (2) The effect of (1) is that:
- (a) a contract which, at the time it is entered into, comes within the definition of an MCD regulated mortgage contract (and a foreign currency loan where applicable) remains an MCD regulated mortgage contract (and a foreign currency loan where applicable) throughout its remaining term, even if there are subsequent periods of time when some or all of the conditions set out in the definition are not satisfied; and
 - (b) unless the contract is subsequently replaced with a new contract which meets the conditions in the definition, a contract which does not start out as an MCD regulated mortgage contract or a foreign currency loan cannot subsequently become one, even if the contract is subsequently amended so that it meets all the conditions set out in definition.

Applicability of MCOB to second charge mortgage contracts entered into before 21 March 2016

1.2.20 R From 21 March 2016, where a second charge mortgage contract was entered into before 21 March 2016 (subject to certain exceptions in article 28 of the Mortgage Credit Directive Order 2015) the following provisions of MCOB apply:

- (a) MCOB 7 (disclosure at start of contract and after sale)
- (b) MCOB 12 (charges)
- (c) MCOB 13 (arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans)

1.3 General application: where?

...

- 1.3.2 R The territorial scope of MCOB 3.3A (Financial promotion promotions and communications with customers) is set out in MCOB 3.3 (Application: where?) MCOB 3A.1.13R to MCOB 3A.1.16R (Territorial scope and Exceptions to territorial scope), rather than in this section.

...

2 Conduct of business standards: general

2.1 Application

...

- 2.1.2 R This table belongs to *MCOB 2.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, <i>MCOB 2.6A.1R to MCOB 2.6A.18G and MCOB 2.8.6G</i>
...	
<i>home purchase provider</i>	<i>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.6R to MCOB 2.2.9G, MCOB 2.5 to MCOB 2.6, MCOB 2.6A.1R to MCOB 2.6A.4G, MCOB 2.6A.7G to MCOB 2.6A.10G, MCOB 2.7.4R to MCOB 2.7.6R, MCOB 2.7A and MCOB 2.8.6G</i>
...	
<i>reversion provider</i>	whole chapter except MCOB 2.2.6AR, MCOB 2.2.8AR and MCOB 2.2.8BG, <i>MCOB 2.6A.7G, MCOB 2.7.4R to MCOB 2.7.6R and MCOB 2.8.6G</i>
...	
<i>SRB administrator</i>	<i>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.2G, MCOB 2.2.3R, MCOB 2.2.6R, MCOB 2.2.7G, MCOB 2.2.8G, MCOB 2.5 to</i>

	<i>MCOB 2.6, MCOB 2.6A.5BR(5), MCOB 2.6A.8R to MCOB 2.6A.11G, MCOB 2.6A.17AR, MCOB 2.6A.18G, MCOB 2.7.1G to MCOB 2.7.5R, MCOB 2.7A, MCOB 2.8.1G to MCOB 2.8.5G.</i>
<i>SRB adviser</i>	Whole chapter except MCOB 2.2.5 G, MCOB 2.2.6A R, MCOB 2.2.8A R, MCOB 2.2.8B G , <i>MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R and MCOB 2.8.6G.</i>
<i>SRB agreement provider</i>	Whole chapter except MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG , <i>MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R, MCOB 2.6A.17AR, MCOB 2.6A.18G and MCOB 2.8.6G.</i>
<i>SRB arranger</i>	Whole chapter except MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG , <i>MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R and MCOB 2.8.6G.</i>
...	
<i>a firm that communicates or approves a financial promotion of a home purchase plan</i>	MCOB 2.2.6R to MCOB 2.2.9G , <i>MCOB 2.5, MCOB 2.6, MCOB 2.7, MCOB 2.7A and MCOB 2.8.6G</i>

MCOB 2.2 is deleted in its entirety. The deleted text is not shown.

2.5A The customer's best interests

2.5A.1 R ...

[Note: article 7(1) of the MCD]

....

2.8 Record keeping

...

2.8.5 G ~~Each~~ Except for MCOB 11.6.21AR, each rule in *MCOB* that requires a record, also sets out a period that the record must be kept for. ...

Insert the following new chapter after MCOB 2 Annex 1G. The text is not underlined.

2A Mortgage Credit Directive

2A.1 Remuneration: MCD regulated mortgage contracts

- 2A.1.1 R (1) An *MCD mortgage lender* must not remunerate its *members of staff* or *MCD mortgage credit intermediaries* in a way that impedes the *MCD mortgage lender* from complying with the *rules*.
- (2) An *MCD mortgage credit intermediary* must not remunerate its *members of staff* or *appointed representatives* in a way that impedes the *MCD mortgage credit intermediary* from complying with the *rules*.

[**Note:** article 7(2) of the *MCD*]

- 2A.1.2 R When establishing and applying *remuneration* policies for *members of staff* who are responsible for the assessment of affordability for *consumers*, an *MCD mortgage lender* must comply with the following principles:
- (1) be consistent with, and promote, sound and effective risk management;
 - (2) not encourage risk-taking that exceeds the level of tolerated risk of the *MCD mortgage lender*;
 - (3) be in line with the business strategy, objectives, values and long-term interests of the *MCD mortgage lender*; and
 - (4) incorporate measures to avoid conflicts of interest, in particular by providing that *remuneration* is not contingent on the number or proportion of applications accepted.

[**Note:** article 7(3) of the *MCD*]

- 2A.1.3 R An *MCD mortgage lender* must comply with *MCOB 2A.1.2R* in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities:

[**Note:** article 7(3) of the *MCD*]

- 2A.1.4 R An *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, must ensure that the *remuneration* structure of the *members of staff* involved does not:
- (1) prejudice the ability of the *members of staff* or the *firm* to act in the *consumer's* best interest; and
 - (2) be contingent on sales targets.

[**Note:** article 7(4) of the *MCD*]

2A.1.5 G The *remuneration* policies of *MCD mortgage lenders* and *MCD mortgage credit intermediaries*, including those that take account of sales volumes, should not be designed in a way that would incentivise their *members of staff* to conclude a given number or type of *MCD regulated mortgage contracts*.

2A.2 Tying practices

2A.2.1 R Except in the circumstances specified in *MCOB 2A.2.2G*, *MCOB 2A.2.3R* and *MCOB 2A.2.4R*, neither an *MCD mortgage lender* nor an *MCD mortgage credit intermediary* may engage in any *tying practice*.

[**Note:** article 12(1) of the *MCD*]

2A.2.2 G A *firm* will not be engaging in a *tying practice* where the financial service or product offered together with the *MCD credit agreement* cannot be offered separately as it is a fully integrated part of the *credit*, for example, a secured overdraft.

2A.2.3 R An *MCD mortgage lender* may request the *consumer*, family member or close relation of the *consumer* to:

- (1) open or maintain a payment or a savings account, where the only purpose of the account is to accumulate capital to repay the *credit*, to service the *credit*, to pool resources to obtain the *credit*, or to provide additional security for the *MCD mortgage lender* in the event of default;
- (2) purchase or keep an investment product or a private pension product, where such product primarily offers the investor an income in retirement and also serves to provide additional security for the *MCD mortgage lender* in the event of default or to accumulate capital to repay the *credit*, to service the *credit* or to pool resources to obtain the *credit*; or
- (3) conclude a separate *MCD regulated mortgage contract* in conjunction with a *shared equity credit agreement* to obtain the *credit*.

[**Note:** article 12(2) of the *MCD*]

2A.2.4 R An *MCD mortgage lender* may engage in *tying practices* where it can demonstrate to the *FCA* that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the *consumer* taking due account of the availability and the prices of the relevant products offered on the market. This *rule* only applies to products which are marketed after 20 March 2014.

[**Note:** article 12(3) of the *MCD*]

- 2A.2.5 R An *MCD mortgage lender* may require the *consumer* to hold a relevant insurance policy related to the *MCD regulated mortgage contract* but, where it does so, the *MCD mortgage lender* must accept an insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the *MCD mortgage lender* has proposed.

[**Note:** article 12(4) of the *MCD*]

2A.3 Foreign currency loans

- 2A.3.1 R Where an *MCD regulated mortgage contract* relates to a *foreign currency loan*, at the time the *MCD regulated mortgage contract* is entered into the *MCD mortgage lender* must ensure:

- (1) the *consumer* has a right to convert the *MCD regulated mortgage contract* into an alternative currency under specified conditions; or
- (2) there are other arrangements in place to limit the exchange rate risk to which the *consumer* is exposed under the *MCD regulated mortgage contract*.

[**Note:** article 23(1) of the *MCD*]

- 2A.3.2 G The “other arrangements” referred to in *MCOB 2A.3.1R(2)* may include:

- (1) a cap; or
- (2) a risk warning (where a risk warning would be sufficient to limit the exchange rate risk (if any) to which the consumer is exposed).

- 2A.3.3 G Where:

- (1) an *MCD regulated mortgage contract* is denominated in the currency of the *EEA State* in which the *consumer* is resident (“currency A”); and
- (2) the *consumer* receives income or holds assets in currency A but also receives income or holds assets in another currency (“currency B”);

the *MCD regulated mortgage contract* will not be a *foreign currency loan* unless the credit is to be repaid wholly or in part from the income received or assets held in currency B.

- 2A.3.4 R The alternative currency referred to in *MCOB 2A.3.1R(1)* must be either:

- (1) the currency in which the *consumer* primarily receives income or holds assets from which the *credit* is to be repaid, as indicated at the

time that the most recent affordability assessment in relation to the *regulated mortgage contract* was made; or

- (2) the currency of the *EEA State* in which the *consumer* either was resident at the time that the *MCD regulated mortgage contract* was entered into or is currently resident.

[**Note:** article 23(2) of the *MCD*]

- 2A.3.5 R Where a *consumer* has a right to convert the *MCD regulated mortgage contract* into an alternative currency in accordance with *MCOB 2A.3.1R(1)*, the exchange rate at which the conversion is carried out must be the market exchange rate applicable on the day of application for conversion, unless otherwise specified in the *MCD regulated mortgage contract*.

[**Note:** article 23(3) of the *MCD*]

- 2A.3.6 R A *firm* must disclose to the *consumer* its arrangements for complying with the obligations in *MCOB 2A.3.1R* in the *MCD regulated mortgage contract*.

[**Note:** article 23(6) of the *MCD*]

2A.4 Early repayment

- 2A.4.1 R (1) An *MCD mortgage lender* must give a *consumer* who enters into an *MCD regulated mortgage contract* the right to discharge fully or partially his obligations under that *MCD regulated mortgage contract* prior to its expiry.
- (2) If the *consumer* exercises the right in (1), the *MCD mortgage lender* must reduce the *total cost of the credit to the consumer* by an amount equal to the interest and costs for the remaining duration of the *MCD regulated mortgage contract*.

[**Note:** article 25(1) of the *MCD*]

- 2A.4.2 R *MCOB 2A.4.1R(2)* does not prevent an *MCD mortgage lender* from imposing an *early repayment charge* in accordance with *MCOB 12.3.1R*.

- 2A.4.3 G *MCOB 7A.3* sets out the *MCOB* disclosure rules in relation to early repayment.

2A.5 Variable rate credits

- 2A.5.1 R Where the *borrowing rate* under an *MCD regulated mortgage contract* is variable, the *MCD mortgage lender* must:

- (1) ensure that any index or reference rate used to calculate that rate is

clear, accessible, objective and verifiable by the parties to the *MCD regulated mortgage contract* and the *FCA*; and

- (2) keep a record of the index or reference rate used to calculate that rate for as long as the *MCD regulated mortgage contract* remains outstanding.

[Note: article 24 of the *MCD*]

2A.6 Information free of charge

- 2A.6.1 R When an *MCD mortgage lender* or an *MCD mortgage credit intermediary*, provides information in compliance with the requirements in *MCOB* relating to an *MCD regulated mortgage contract*, it must provide that information free of charge.

[Note: article 8 of the *MCD*]

MCOB 3 is deleted in its entirety and replaced with MCOB 3A and MCOB 3B. The deleted text is not shown and the new text is not underlined.

3A Financial promotions and communications with customers

3A.1 Application and purpose

Who?

- 3A.1.1 R This chapter applies to a *firm*:
- (1) *communicating* information to a *customer* in relation to a *home finance transaction*; or
 - (2) *communicating* or *approving* a *financial promotion* of *qualifying credit*, a *home reversion plan*, a *home purchase plan* or a *regulated sale and rent back agreement*.
- 3A.1.2 G As a result of this chapter and *CONC* 3:
- (1) a *financial promotion* is not subject to *CONC* 3 to the extent that it relates to *qualifying credit*; and
 - (2) where a *firm* makes a communication which consists of a *financial promotion* of *qualifying credit* and a *financial promotion* of a different form of lending that is not *qualifying credit* (for example, an unsecured personal loan), the content of the latter will need to comply with *CONC* 3.

Authorised professional firms

- 3A.1.3 R (1) Except for *MCOB 3A.5*, *MCOB 3A* does not apply to an *authorised professional firm* in relation to the *communication* of a *financial promotion* if the following conditions are satisfied:
- (a) the *firm's* main business must be the practice of its profession;
 - (b) the *financial promotion* must be made for the purposes of, and incidental to, the promotion or provision by the *firm* of:
 - (i) its professional services; or
 - (ii) its *non-mainstream regulated activities* (see *PROF 5.2* (Nature of non-mainstream activities)); and
 - (c) the *financial promotion* must not be *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if they were acting in the course of business.
- (2) in (1)(a), a *firm's* professional business practice is not the “main business” of the *firm* unless the proportion of income it derives from *professional fees* is, during its annual accounting period, at least 50% of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this purpose).
- (3) in (1)(b)(i), “professional services” means services:
- (a) which do not constitute a *regulated activity*; and
 - (b) the provision of which is supervised and regulated by a *designated professional body*.

Application for a financial promotion of qualifying credit

- 3A.1.4 R This chapter applies to the *communication* or *approval* of a *financial promotion* of *qualifying credit* as follows:

Application and purpose	<i>MCOB 3A.1</i>
The fair, clear and not misleading rules	<i>MCOB 3A.2</i> , except <i>MCOB 3A.2.5R</i>
Other general requirements for financial promotions	<i>MCOB 3A.3</i>
Qualifying credit financial promotions	<i>MCOB 3A.4</i>

MCD financial promotions (note 1)	<i>MCOB 3A.5</i>
Systems and controls	<i>MCOB 3A.9</i>
Note 1: This item does not apply to non- <i>MCD financial promotions of qualifying credit</i> .	

Application for a financial promotion of a home reversion plan

- 3A.1.5 R This chapter applies to the *communication or approval* of a *financial promotion* of a *home reversion plan* as follows:

Application and purpose	<i>MCOB 3A.1</i>
The fair, clear and not misleading rules	<i>MCOB 3A.2</i> , except <i>MCOB 3A.2.5R</i>
Other general requirements for financial promotions	<i>MCOB 3A.3</i>
Home reversion plan financial promotions	<i>MCOB 3A.7</i>
Systems and controls	<i>MCOB 3A.9</i>

Application for a financial promotion of a regulated sale and rent back agreement

- 3A.1.6 R This chapter applies to the *communication or approval* of a *financial promotion* of a *regulated sale and rent back agreement* as follows:

Application and purpose	<i>MCOB 3A.1</i>
The fair, clear and not misleading rules	<i>MCOB 3A.2</i> , except <i>MCOB 3A.2.5R</i>
Other general requirements for financial promotions	<i>MCOB 3A.3</i>
Sale and rent back financial promotions	<i>MCOB 3A.8</i>
Systems and controls	<i>MCOB 3A.9</i>

Application for a financial promotion of a home purchase plan

- 3A.1.7 R This chapter applies to the *communication or approval* of a *financial promotion* of a *home purchase plan* as follows:

Application and purpose	<i>MCOB 3A.1</i>
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Fair, clear and not misleading rule for approval of home purchase plan financial promotions	<i>MCOB</i> 3A.2.5R
Home purchase plan financial promotions	<i>MCOB</i> 3A.6

Exemptions

- 3A.1.8 R Except for *MCOB* 3A.2.4R(2) and *MCOB* 3A.5, this chapter does not apply to a *firm* in relation to a *financial promotion* of *qualifying credit* that is of a kind listed in *MCOB* 3A.1.9R, except if the *firm* approves the *financial promotion*, then the following apply:
- (1) *MCOB* 3A.1 (Application and purpose);
 - (2) *MCOB* 3A.2.4R (Fair, clear and not misleading financial promotions);
 - (3) *MCOB* 3A.4.4G to *MCOB* 3A.4.7G (Approval of qualifying credit promotions; No approval of real time qualifying credit promotions; Approval of qualifying credit promotions when not all the rules apply); and
 - (4) if the *firm* approves a *non-real time financial promotion* of *qualifying credit* by an *overseas person* *MCOB* 3A.4.8R (Non-real time qualifying credit promotions for overseas persons) applies.
- 3A.1.9 R This table belongs to *MCOB* 3A.1.8R.

Exemptions	
This chapter does not apply to the following:	
(1)	a <i>financial promotion</i> which contains only one or more of the following
(a)	the name of the <i>firm</i> (or its <i>appointed representative</i>);
(b)	a logo;
(c)	a contact point (address (including an email address), telephone or facsimile number);
(d)	a brief, factual statement of the <i>firm's</i> (or its <i>appointed representative's</i>) main occupation;
(2)	a <i>financial promotion</i> which can lawfully be <i>communicated</i> by an <i>unauthorised person</i> without <i>approval</i> ;

(3)	a <i>financial promotion</i> communicated from outside the <i>United Kingdom</i> which would be exempt under articles 30, 31, 32 or 33 of the <i>Financial Promotion Order</i> (Overseas communicators) if the office from which the <i>financial promotion</i> is <i>communicated</i> were a separate <i>unauthorised person</i> (but see <i>GEN</i> 4.4.1R (Business for private customers from non-UK offices)).
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Combination of exemptions

- 3A.1.10 R A *firm* may rely on more than one exemption in relation to the same *financial promotion*.

Other relevant handbook rules

- 3A.1.11 G *Firms* are reminded that *financial promotions* (including those which are exempt) may be subject to more general *rules*, including *Principle 7* (Communications with clients), *SYSC* 3 to *SYSC* 10 (Systems and controls), and *MCOB* 3A.2.4R (Fair, clear and not misleading communications).

Territorial scope

- 3A.1.12 G The territorial scope for *rules* relating to communicating information to a *customer* is set out in *MCOB* 1.3.1R.
- 3A.1.13 R This chapter applies to a *firm* in relation to:
- (1) the *communication* of a *financial promotion* to a *person* in the *United Kingdom*;
 - (2) the *communication* of a *cold call* of *qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement*, unless it is made from a place, and for the purposes of a business which is only carried on, outside the *United Kingdom*;
 - (3) the *approval* of a *non-real time financial promotion* of *qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement* for *communication* to a *person* in the *United Kingdom*;
 - (4) the *communication* or *approval* for *communication* of a *financial promotion* that is an *electronic commerce communication* to a *person* in an *EEA State* other than in the *United Kingdom*; and
 - (5) the *communication* or *approval* for *communication* of a *financial promotion* in relation to an *MCD regulated mortgage contract* to a *person* in an *EEA State* other than in the *United Kingdom*.
- 3A.1.14 G The application under *MCOB* 3A.1.13R is relevant both when a *firm* *communicates* a *financial promotion* itself and when a *firm* *approves* a *non-real time financial promotion* for *communication* by others. However, see also *MCOB* 3A.1.15R (Exceptions to territorial scope: rules

without territorial limitation for approval of financial promotions).

Exceptions to territorial scope: rules without territorial limitation for approval of financial promotions

- 3A.1.15 R Subject to *MCOB* 3A.1.16R, the following parts of this chapter apply without any territorial limitation if a *firm* approves a *financial promotion of qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement*:
- (1) *MCOB* 3A.1 (Application and purpose);
 - (2) *rules* requiring a *financial promotion* to be fair, clear and not misleading (see *MCOB* 3A.2.4R); and
 - (3) provisions regarding the *approval of financial promotions* (except those relating to *approval of financial promotions of qualifying credit* provided by an *overseas person*) (see *MCOB* 3A.4.4G to *MCOB* 3A.4.7G, *MCOB* 3A.7.1R and *MCOB* 3A.8.5R).

Exceptions to territorial scope: financial promotions of qualifying credit relating to distance contracts

- 3A.1.16 R (1) Notwithstanding *MCOB* 3A.1.13R and *MCOB* 3A.1.15R, where a *firm* which satisfies the conditions in (2) *communicates a financial promotion of qualifying credit*, the *rules* in (3) do not apply.
- (2) The conditions are that:
- (a) the *firm* *communicates the financial promotion of qualifying credit* from an establishment maintained by the *firm* in an *EEA State* other than the *United Kingdom*, and not from an establishment maintained by the *firm* in the *United Kingdom* or outside the *EEA*;
 - (b) either that *EEA State*:
 - (i) has implemented the *Distance Marketing Directive*; or
 - (ii) has obligations in its domestic law corresponding to those provided for by the *Distance Marketing Directive*;
 - (c) the *financial promotion of qualifying credit* relates, exclusively, to a *distance contract*, for the conclusion of which the obligations provided for by the *Distance Marketing Directive* (or corresponding obligations) are applied by that state; and
 - (d) the *firm* is a national of an *EEA State* or a company or firm mentioned in article 54 of the *Treaty*.

- (3) The *rules* which do not apply are:
- (a) *MCOB* 3A.3.2R (Name and contact point); and
 - (b) *MCOB* 3A.4.1R(1) and (2) (Real time qualifying credit promotions).

Principles 6 and 7

- 3A.1.17 G This chapter amplifies, for activities within its scope, *Principle 6* (Customers' interests) and *Principle 7* (Communications with clients).

3A.2 The fair, clear and not misleading rules

Fair, clear and not misleading communications

- 3A.2.1 R (1) When a *firm* communicates information to a *customer*, it must take reasonable steps to do so in a way that is fair, clear and not misleading.
- (2) A *firm* must be able to show that it has taken reasonable steps to ensure that any *illustration* or *ESIS* is fair, clear and not misleading.
- 3A.2.2 G The purpose of *MCOB* 3A.2.1R is to restate, in a slightly amended form and as a separate *rule*, the part of *Principle 7* (Communications with clients) that relates to communication of information.

Communications to customers with different addresses

- 3A.2.3 G Where:
- (1) there are two or more *customers* or prospective *customers* in relation to the same *home finance transaction*;
 - (2) a rule in *MCOB* requires the provision of information to such *customers*; and
 - (3) the *customers* have different addresses
- a *firm* should send the information to each address. If the *customers* share the same address, it will be sufficient to send a single copy of the information addressed to each of the *customers*.

Fair, clear and not misleading financial promotions

- 3A.2.4 R (1) A *firm* communicating or approving a non-real time financial promotion of qualifying credit other than in (2), for a *home reversion plan* or a *regulated sale and rent back agreement* must be able to show that it has taken reasonable steps to ensure that the

non-real time financial promotion is fair, clear and not misleading.

- (2) A *firm communicating a financial promotion*, or *approving a non-real time financial promotion* in relation to an *MCD regulated mortgage contract* must ensure that it:
- (a) is fair, clear and not misleading; and
 - (b) in particular, does not contain wording that may create false expectations for a *consumer* regarding the availability or the cost of a credit.

[**Note:** article 10 of the *MCD*]

Fair, clear and not misleading rule: approval of home purchase plan financial promotions

- 3A.2.5 R A *firm which approves a financial promotion of a home purchase plan* must take reasonable steps to ensure that the *financial promotion* is fair, clear and not misleading.

Restrictions on use of terms

- 3A.2.6 R Any communication, including a *non-real time financial promotion*, must describe:
- (1) any *early repayment charge* as an “early repayment charge” and not use any other expression to describe such charges;
 - (2) any *higher lending charge* as a “higher lending charge” and not use any other expression to describe such charges;
 - (3) any *lifetime mortgage* as a “lifetime mortgage” and not use any other expression to describe such a mortgage;
 - (4) any *home reversion plan* as a “home reversion plan” and not use any other expression to describe it; and
 - (5) any *regulated sale and rent back agreement* as a “sale and rent back agreement” and not use any other expression such as “equity release” to describe it.

3A.3 Other general requirements for financial promotions

Financial promotions to be balanced and with appropriate warnings

- 3A.3.1 R A *firm which communicating or approving a financial promotion* within *MCOB 3A.2.4R* must, in addition, ensure that the *financial promotion*:
- (1) is accurate;

- (2) is balanced and, in particular, does not emphasise any potential benefits of the *MCD regulated mortgage contract*, other *qualifying credit*, *home reversion plan* or *regulated sale and rent back agreement* without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
- (4) makes it clear, where applicable, that the credit is secured on the *customer's* home;
- (5) does not disguise, omit, diminish or obscure important items, statements or warnings; and
- (6) where it contains a comparison or contrast, presents the comparison or contrast in a fair and balanced way and ensures that is meaningful.

Name and contact point

- 3A.3.2 R A *non-real time financial promotion* must contain the name of the *firm* or its *appointed representative* and either an address or a contact point from which an address is available.

Solicited financial promotions

- 3A.3.3 R A *financial promotion* is not a *solicited financial promotion* unless a *firm* ensures that:
- (1) it is clear from all the circumstances when the call, visit or dialogue is initiated or requested that, during the course of the visit, call or dialogue, a *financial promotion* would be made; and
 - (2) a *person* is not to be treated as expressly requesting a call, visit or dialogue:
 - (a) because they omit to indicate that they do not wish to receive any or any further visits or calls or to engage in any or any further dialogue;
 - (b) because they agree to standard terms that state that such visits, calls or dialogues will take place, unless they have signified clearly that, in addition to agreeing to the terms, they are willing for them to take place.
- 3A.3.4 R If a *financial promotion* is solicited by a *person* (“R”), it is treated as also having been solicited by any other *person* to whom it is made at the same time as R if that other *person* is a *close relative* of R or is expected to enter into a *home reversion plan*, a *regulated sale and rent back*

agreement or any contract for *qualifying credit* jointly with R.

Prohibition on cold calls

- 3A.3.5 R A *firm* must not make a *cold call* of *qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement* unless the *customer* has an established existing *customer* relationship with the *firm* and the relationship is such that the *customer* envisages receiving such *financial promotions*.

3A.4 Qualifying credit financial promotions

Real time qualifying credit promotions

- 3A.4.1 R A *firm* must ensure that an individual who makes a *real time financial promotion* of *qualifying credit* on the *firm's* behalf:
- (1) makes the purpose(s) of the *financial promotion* clear at the initial point of communication, and identifies themselves and the *firm* which they represent;
 - (2) if the time and method of *communication* were not previously agreed by the recipient:
 - (a) checks that the recipient wishes them to proceed;
 - (b) terminates the *communication* if the recipient does not wish them to proceed (but may ask for another appointment);
 - (c) recognises and respects, promptly, the right of the recipient to:
 - (i) end the *communication* at any time;
 - (ii) refuse any request for another appointment;
 - (3) gives any *person* with whom they arrange an appointment a contact point;
 - (4) does not *communicate* with a *person*:
 - (a) at an unsocial hour, unless the *person* has previously agreed to such a *communication*;
 - (b) on an unlisted telephone number, unless the *person* has previously agreed to such calls on that number.
- 3A.4.2 G In *MCOB* 3A.4.1R (4)(a) an unsocial hour usually means on a Sunday or before 9am or after 9pm on any other *day*. It could also mean other *days*

of the week or other times if the *firm* knows that a particular *customer* would not wish to be called on that *day* or at that time for reasons of, for example, religious faith or night shift working.

- 3A.4.3 G The requirements of *MCOB* 3A.4.1R and *MCOB* 3A.4.2G do not prevent, for example, a telephone call centre which has received a call from a *customer* at an hour generally regarded as unsocial, either responding to that call or asking during the call if the *customer* would like details of other *qualifying credit*.

Approval of qualifying credit promotions

- 3A.4.4 G Most of the *rules* in this chapter apply when a *firm* approves a *financial promotion* of *qualifying credit* in the same way as when a *firm* communicates a *financial promotion* of *qualifying credit* itself. Therefore, a *firm* has a similar responsibility for a *financial promotion* of *qualifying credit* that it approves, as for one that it communicates.

No approval of real time qualifying credit promotions

- 3A.4.5 R A *firm* must not approve a *financial promotion* of *qualifying credit* made in the course of a personal visit, telephone conversation or other interactive dialogue.

Approval of qualifying credit promotions when not all the rules apply

- 3A.4.6 R If a *firm* approves a *financial promotion* of *qualifying credit* in circumstances in which one or more of the *rules* in this chapter are expressly disapplied, the *approval* must be given on terms that it is limited to those circumstances.
- 3A.4.7 G If an *approval* is limited under *MCOB* 3A.4.6R, and an *unauthorised person* communicates the *financial promotion* to persons not covered by the *approval*, the *unauthorised person* may commit an *offence* under section 21(1) of the *Act* (Restrictions on financial promotion). A *firm* giving a limited *approval* may wish to advise the *unauthorised person* accordingly.

Financial promotions for the business of overseas persons

- 3A.4.8 R A *firm* must not communicate or approve a *financial promotion* which relates to *qualifying credit* provided by an *overseas person*, unless:
- (1) the *financial promotion* of *qualifying credit* makes clear which *firm* has approved or communicated it and, where relevant, explains:
 - (a) that the *rules* made under the *Act* for the protection of *customers* do not apply;
 - (b) the extent and level to which the *compensation scheme* will be available or, if the scheme will not be available, a

statement to that effect; and

- (c) if the communicator wishes, the protection or compensation available under another system of regulation; and
- (2) the *firm* has taken reasonable steps to satisfy itself that the *overseas person* will deal with *customers* in the *United Kingdom* in an honest and reliable way.

3A.5 MCD financial promotions

- 3A.5.1 R (1) When *communicating* or *approving* a *financial promotion* concerning an *MCD regulated mortgage contract* which indicates an interest rate or any figures relating to the cost of the *credit* to the *consumer*, a *firm* must ensure that the *financial promotion* includes standard information which specifies in a clear, concise and prominent way:
- (a) the identity of the *MCD creditor* or, where applicable, the *credit intermediary* or *appointed representative*;
 - (b) where applicable, that the *MCD regulated mortgage contract* will be secured by a mortgage or another comparable security or by a right related to residential immovable property;
 - (c) the *borrowing rate*, indicating whether this is fixed or variable or a combination of both, together with particulars of any charges included in the *total cost of the credit to the consumer*;
 - (d) the *total amount of the credit*;
 - (e) the *APRC* which must be included at least as prominently as any interest rate;
 - (f) where applicable, the duration of the *MCD regulated mortgage contract*;
 - (g) where applicable, the amount of the instalments;
 - (h) where applicable, the *total amount payable* by the *consumer*;
 - (i) where applicable, the number of instalments; and,
 - (j) where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the *consumer*.

[**Note:** article 11(1) and (2) of the *MCD*.]

- (2) The information listed in (1), other than that listed in (a), (b) or (j) thereof, must be specified by means of a representative example.

[**Note:** article 11(3) of the *MCD*.]

- (3) For the purposes of the requirement in (2), to specify the information in (1), including the *APRC*, by means of a representative example, an example is not representative unless the *firm* reasonably expects that at least 51% of *consumers*:
- (a) responding to the *financial promotion*; and
 - (b) who enter into a *MCD regulated mortgage contract* which is the subject of the *financial promotion*;

would be charged the specified *APRC* or below.

[**Note:** article 11(3) of the *MCD*.]

- (4) Where the conclusion of a contract regarding an ancillary service, in particular insurance, is compulsory in order to obtain the *MCD regulated mortgage contract* or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract must be stated in a clear, concise and prominent way, together with the *APRC*.

[**Note:** article 11(4) of the *MCD*.]

- (5) The information referred to in (1) and (4) must be easily legible or clearly audible as appropriate, depending on the medium used for advertising.

[**Note:** article 11(5) of the *MCD*.]

- 3A.5.2 G Inclusion of a representative example, where required, does not preclude the inclusion of additional cost information, relating to individual products or types of product, subject to this being fair, clear and not misleading. For example, a *firm* may wish to include a table setting out details of a number of products, for comparative purposes, with the required overall representative example stated (being representative of all agreements expected to result from the *financial promotion*, and shown with sufficient prominence).

3A.6 Home purchase plan financial promotions

APR equivalent for home purchase plan financial promotions

- 3A.6.1 R If a *firm* uses a figure equivalent to an *APR* in a communication of a *financial promotion* of a *home purchase plan*, when calculating that figure it must use an approach equivalent to the *APR rules*.

3A.7 Home reversion plan financial promotions

No approval of real time home reversion plan promotions

- 3A.7.1 R A *firm* must not *approve a financial promotion* of a *home reversion plan* made in the course of a personal visit, telephone conversation or other interactive dialogue.

3A.8 Sale and rent back financial promotions

Guidance on fair, clear and not misleading: sale and rent back financial promotions

- 3A.8.1 G The effect of giving no less prominence to the possible disadvantages than to the benefits associated with a feature will depend on the context of the promotion. The costs, restrictions or conditions relating to a feature, such as any option available, should be detailed for the following non-exhaustive examples:
- (1) where any part of the discount on the market value of the property is to be repaid to the *consumer* after a qualifying period; and
 - (2) where a *consumer* is to benefit from shared appreciation in the value of the property.

Ban on SRB leaflet dropping

- 3A.8.2 R A *regulated sale and rent back firm* must not *communicate* an unsolicited *financial promotion* that relates to a *regulated sale and rent back agreement* to a potential *SRB agreement seller* in the form of a leaflet or brochure or similar.

Non-real time financial promotions to customers and advertisements

- 3A.8.3 R A *non-real time financial promotion* relating to a *regulated sale and rent back agreement* and any other advertisement which is issued by a *regulated sale and rent back firm* that could lead to the conclusion of a *regulated sale and rent back agreement*, must (unless it is of a kind listed in *MCOB 3A.1.9R(1)*) contain a risk warning that uses the following wording:

"If you enter into a sale and rent back agreement you are unlikely to get the market value of your home and, as a tenant, may only be able to remain there for a limited period. There may be other options available.

Please ask for a key terms statement."

Exploitation of customer

- 3A.8.4 R A *firm* must not in any *financial promotion* of a *regulated sale and rent back agreement* exploit the vulnerable nature or circumstances of any *customer* who may be in financial difficulties and at risk of losing his or her home. As such, the *firm* must avoid using phrases or terms such as "fast sales", "rescue" or "cash quickly" or any other similar expression.

No approval of real time financial promotions of a regulated sale and rent back agreement

- 3A.8.5 R A *firm* must not approve a *financial promotion* of a *regulated sale and rent back agreement* made in the course of a personal visit, telephone conversation or other interactive dialogue.

3A.9 Systems and controls

Record keeping

- 3A.9.1 R A *firm* must make an adequate record of each *non-real time financial promotion* of *qualifying credit, home reversion plan* or *regulated sale and rent back agreement* which it has confirmed as complying with the *rules* in this chapter. The record must be retained for a year from the date at which the *financial promotion* was last *communicated*.
- 3A.9.2 G *MCOB* 2.8 (Record keeping) applies to the form in which records required in accordance with this chapter must be kept.

3B MCD general information

3B.1 Provision of general information

- 3B.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender* or a *tied MCD mortgage credit intermediary*.
- 3B.1.2 R A *firm* must make available clear and comprehensible information about *MCD regulated mortgage contracts* at all times on paper, or on another *durable medium* or in electronic form, that includes:
- (1) the identity and the geographical address of the *firm*;
 - (2) the purposes for which the *credit* may be used;
 - (3) the forms of security, including, where applicable, the possibility for it to be located in a different *EEA State*;

- (4) the possible duration of the *MCD regulated mortgage contracts*;
- (5) the types of available *borrowing rate*, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the *consumer*;
- (6) where *foreign currency loans* are available, an indication of the foreign currency or currencies, including an explanation of the implications for the *consumer* where the *credit* is denominated in a foreign currency;
- (7) a representative example of the *total amount of credit*, the *total cost of the credit to the consumer*, the *total amount payable by the consumer* and the *APRC*;
- (8) an indication of possible further costs, not included in the *total cost of the credit to the consumer*, to be paid in connection with an *MCD regulated mortgage contract*;
- (9) the different options available for repaying the *credit* to the *MCD mortgage lender*, including the number, frequency and amount of the regular repayment instalments;
- (10) where applicable, a clear and concise statement that compliance with the terms and conditions of the *MCD regulated mortgage contract* does not ensure repayment of the *total amount of credit*;
- (11) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the *consumer*;
- (12) an indication of ancillary services the *consumer* is obliged to acquire in order to obtain the *credit* or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the *MCD mortgage lender*; and
- (13) a general warning concerning possible consequences of non-compliance with the commitments linked to the *MCD regulated mortgage contract*.

[**Note:** article 13 of the *MCD*.]

- 3B.1.3 G (1) A *firm* may make the information in *MCOB 3B.1.2R* available by publishing it on a website.
- (2) The *MCD regulated mortgage contracts* in *MCOB 3B.1.2R* are those offered or entered into by the *firm*.

Amend the following text as shown.

4.4A Initial disclosure requirements

Description of a firm's services in all cases

- 4.4A.1 R Using the methods and at the times specified in this section, a *firm* must provide the *customer* with the following information
- (1) whether there are any limitations in the range of products that it will offer to the *customer*, and if so what those are; ~~and~~
 - (2) the basis on which the *firm* will be remunerated; and
 - (3) the availability of alternative finance options.
- ...
- 4.4A.3A G In making its disclosure under *MCOB* 4.4A.1R(1), a *firm* should indicate, for each relevant market, whether this is across *first charge legal mortgages*, *second charge regulated mortgage contracts* or both.
- 4.4A.4 R
- (1) If a *firm* is not offering to the *customer* products from an unlimited range from across the relevant market, in its disclosure on product range in *MCOB* 4.4A.1R, the *firm* ~~must either~~:
 - (a) where it is an *MCD mortgage credit intermediary*, list the names of all the *mortgage lenders* whose products it is offering; or
 - (b) where it is not an *MCD mortgage credit intermediary*, either
 - (i) comply with (a); or
 - (ii) inform the *customer* of the number of *mortgage lenders* whose products it is offering and that he has the right to request a list of those *mortgage lenders*.
 - (2) If a *customer* requests the list in (1)(b)(ii), the *firm* must provide it in a *durable medium* as soon as possible following the request and in any event within five *business days*. The list must also indicate whether the *firm* offers all of the products generally available from each *mortgage lender* on the list.
 - (3) An *MCD mortgage credit intermediary* must only disclose that it is independent if its consideration of *MCD regulated mortgage contracts* across the market is unlimited.

[Note: articles 15(1)(c) and 22(4) of the MCD]

...

4.4A.7 G

...

- (2) *Firms* are also reminded that *Principle 7* (Communications with clients) and *MCOB 2.2.6 R 3A.2.1R* (~~Clear, fair~~ Fair, clear and not misleading communications) are also relevant to how they describe their services, including in any business name they adopt. For example, a *firm* should not call itself an "independent mortgage adviser" unless its product range across the relevant market is unlimited.

...

4.4A.8 R (1)

The information about the basis of remuneration required by *MCOB 4.4A.1R(2)* must include all relevant information, including the following details:

...

- (c) whether the *firm* will receive commission from ~~a~~ the mortgage lender or another third party and, if applicable, any arrangements for offsetting this whether any commission will be offset against any fees charged and the arrangements for doing so; and

[Note: article 15(3) of the MCD]

- (d) for an MCD regulated mortgage contract, the amount of commissions or other inducements, or where the amount is not known at the time of disclosure, notification that the actual amount will be disclosed at a later stage in the ESIS.

[Note: article 15(1)(g) of the MCD]

- (2) The details in (1)(a) must be expressed, where possible, as a specific cash sum, but the following *rules* apply where this is not possible:

...

- (e) for an MCD regulated mortgage contract, if the firm will charge a fee calculated other than in line with 2(a) to (d), the firm must provide details of the method for calculating the fee.

[Note: article 15(1)(e) of the MCD]

Alternative finance options

- 4.4A.8A R Where a *customer* is looking to increase the borrowing secured on a property which is the subject of an existing *regulated mortgage contract*, the *firm* must first inform the *customer*, either orally or in writing, that the following alternative finance options may be available and more appropriate for the *customer*:
- (1) a further advance from the existing lender, unless the *firm* knows that the existing lender will not make a further advance to the *customer*;
 - (2) (a) a *second charge regulated mortgage contract*, where the *firm* would offer services in relation to a new *first charge regulated mortgage contract*;
 (b) a new *first charge regulated mortgage contract*, where the *firm* would offer services in relation to a *second charge regulated mortgage contract*; or
 - (3) *unsecured lending*.

- 4.4A.8B G *Firms* are not obliged to explore whether a further advance with the existing lender, a new *first charge regulated mortgage contract* with another lender, a *second charge regulated mortgage contract* or *unsecured lending* is more appropriate for the *customer* where that is not the service offered to the *customer*.

Method of providing initial disclosure in all cases

- 4.4A.9 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1), ~~and~~ *MCOB* 4.4A.8R and *MCOB* 4.4A.8AR must be communicated clearly and prominently, and in doing so:
- (1) ~~if the *initial contact* includes spoken interaction, the information must be communicated orally; and~~ an *MCD mortgage lender* or an *MCD mortgage credit intermediary* must provide the following information in a durable medium;
 - (a) for an *MCD mortgage lender*, the information in *MCOB* 4.4A.1R(1) and (2) and *MCOB* 4.4A.8R(1)(a) and (2)(e);
 - (b) for an *MCD mortgage credit intermediary*, the information in *MCOB* 4.4A.1R(1) and (2), *MCOB* 4.4A.4R(1)(a) and (3), and *MCOB* 4.4A.8R(1)(a),(c),(d) and (2); and
 - (2) ~~if the *initial contact* does not include spoken interaction, the messages must appear separately from other messages in the communication.~~ in all other cases:
 - (a) if the *initial contact* includes spoken interaction, the information must be communicated orally; and

- (b) if the *initial contact* does not include spoken interaction, the messages must appear separately from other messages in the communication.

...

...

4.4A.12 R The information required by *MCOB 4.4A.1R*, *MCOB 4.4A.2R*, *MCOB 4.4A.4R(1)*, ~~and *MCOB 4.4A.8R* and *MCOB 4.4A.8AR*~~ must be provided: ~~during the course of the *initial contact*.~~

- (1) in the case of information required by *MCOB 4.4A.1R(1)* and (2), *MCOB 4.4A.4R(1)(a)* and (3), and *MCOB 4.4A.8R(1)(a),(c),(d)* and (2), where the *firm* is an *MCD credit intermediary*, in good time before carrying out any *MCD credit intermediation activity*;

- (2) in all other cases, during the course of the *initial contact*.

[Note: article 15(1) of the *MCD*]

...

4.4A.14 G *Principle 7* and ~~*MCOB 2.2.6R*~~ *3A.2.1R* also mean that, if initial disclosure has been given but any of the information in it (for example the basis on which the *firm* will be remunerated) subsequently changes, the *firm* should bring this clearly to the *customer's* attention.

...

Additional disclosure where the services are to be provided to a consumer under a distance contract

4.4A.18 R Where a *firm* provides services to a *consumer* by way of a *distance contract*, the *firm* must provide the *consumer* with the following information in a *durable medium* in good time before the *distance contract* has been agreed:

- (1) the information which is required by *MCOB 4.4A.1R* to ~~*MCOB 4.4A.8R*~~ *4.4A.8AR*;

...

...

4.4A.20A G (1) An *MCD mortgage lender* or an *MCD credit intermediary* may comply with *MCOB 4.4A.18R(3)* and (5) to (9) by providing an *ESIS* to the *consumer* prior to the conclusion of the *MCD regulated mortgage contract*.

- (2) Provided that the provisions of MCOB 4.4A on the methods and timing of disclosure are complied with, an MCD mortgage lender or an MCD credit intermediary may comply with MCOB 4.4A.18R(1), (2) and (4) by providing the necessary information in a separate document, which may be annexed to the ESIS (MCOB 5A.6.1R).

Uncertainty whether a mortgage is regulated

- 4.4A.21 R (1) If at the point that initial disclosure must be made in accordance with *MCOB 4.4A.1R*, *MCOB 4.4A.2R*, *MCOB 4.4A.4R*, ~~and~~ *MCOB 4.4A.8R* and *MCOB 4.4A.8AR*, a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:

...

...

4.7A **Advised sales**

...

- 4.7A.4A G *Firms* are only obliged to assess the suitability of a *regulated mortgage contract* or a *shared equity credit agreement* where this forms part of the transaction between the *consumer* and the *firm*

...

Shared equity

- 4.7A.14A R When a *firm* assesses whether a *shared equity credit agreement* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.7A.5R(1)* it must consider, in addition to the factors listed in *MCOB 4.7A.6R*, whether it is appropriate for the *customer* to:
- (1) take out the *shared equity credit agreement* for a particular term, taking into account the *customer's* intentions about the repayment of that *shared equity credit agreement* and the term of the *customer's* associated *first charge regulated mortgage contract*;
 - (2) have flexibility over the payment of interest;
 - (3) have flexibility over the repayment of capital; and
 - (4) purchase a property by using his own resources, rather than by borrowing under the *shared equity credit agreement*.

...

Further advances

- 4.7A.17 R ~~Where the *customer* is looking to increase the borrowing secured on the property which is the subject of an existing *regulated mortgage contract*, unless the *firm* knows that the existing lender will not make a further advance to the *customer*, the *firm* must inform the *customer*, either orally or in writing, that it may be possible, and more appropriate, to do so rather than to enter into a *regulated mortgage contract* with another lender. [deleted]~~
- 4.7A.18 G ~~*Firms* are not under any obligation to explore whether a further advance with the existing lender is, in fact, more appropriate for the *customer*. [deleted]~~

...

Other considerations when advising

...

- 4.7A.21 G In complying with *MCOB* 4.7A.5R(1) a *firm* is not required to consider whether it would be preferable for the *customer* to:
- (1) purchase a property by using his own resources, rather than by borrowing under a *regulated mortgage contract* (save for where the *customer* is seeking to enter into a *shared equity credit agreement* (see *MCOB* 4.7A.14AR(4)); or

...

...

4.8A Execution-only sales

...

Cases where execution-only sales are not permitted

- 4.8A.7 R A *firm* must not enter into or *arrange* an *execution-only sale* for a *regulated mortgage contract* ~~contract~~ contract if:
- ...
- (3) there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale; or

- (4) the regulated mortgage contract is a shared equity credit agreement.

....

Insert the following new chapter after MCOB 4. The text is not underlined.

4A Additional MCD advising and selling standards

4A.1 Additional disclosure by MCD mortgage credit intermediaries

4A.1.1 R An *MCD mortgage arranger* who is not also an *MCD mortgage lender* carrying out direct sales only must, in good time before carrying out any *MCD mortgage credit intermediation activity*, provide the *consumer* with at least the following information in a *durable medium*:

- (1) the identity and the geographical address of the *MCD mortgage credit intermediary*;
- (2) the *Financial Services Register* or other registers in which the *MCD mortgage credit intermediary* has been included, the registration numbers, where applicable, and the means for verifying such registrations;
- (3) whether the *MCD mortgage credit intermediary* is an *MCD mortgage adviser*; and
- (4) the procedures allowing *consumers* or other interested parties to complain to the *MCD mortgage credit intermediary*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods of having access to it.

[**Note:** article 15(1)(a), (b), (d) and (f) of the *MCD*]

4A.1.2 G In *MCOB* 4A.1.1R(4):

- (1) other interested parties includes all parties to the relevant *MCD regulated mortgage contract* and parties that have an interest in the *MCD regulated mortgage contract*, such as a guarantor of the obligations under the *MCD regulated mortgage contract*;
- (2) where the *MCD mortgage arranger* provides the information in the general terms and conditions of the sales or service contracts, before carrying out any *MCD mortgage credit intermediation activity*, it need not provide it again.

- 4A.1.3 G The information listed in *MCOB* 4A.1.1R need not all be given at the same time or in the same disclosure.
- 4A.1.4 G In general, where other requirements for disclosure in a *durable medium* also apply, the *MCD mortgage arranger* may, if it would also satisfy those requirements, combine those other disclosures with the information required by *MCOB* 4A.1.1R, so long as the combined disclosure is provided to the *consumer* in good time before the *MCD mortgage arranger* carries out any *MCD mortgage credit intermediation activity*.
- 4A.1.5 R An *MCD mortgage credit intermediary* who is not a *tied MCD mortgage credit intermediary* and who is not also an *MCD mortgage lender* carrying out direct sales only, but who receives commission from one or more *MCD mortgage lenders* must, at the *consumer's* request, provide information on the variation in levels of commission payable by the *MCD mortgage lenders* providing the *MCD regulated mortgage contract* being offered to the *consumer*. The *consumer* must be informed that they have the right to request such information.

[**Note:** article 15(2) of the *MCD*]

- 4A.1.6 R An *MCD mortgage credit intermediary* who is not also an *MCD mortgage lender* carrying out direct sales only must inform the *MCD mortgage lender* of any fee payable by the *consumer* to the *MCD mortgage credit intermediary* for its services, for the purpose of calculating the *APRC*.

[**Note:** article 15(4) of the *MCD*]

- 4A.1.7 R An *MCD mortgage credit intermediary* who is not also an *MCD mortgage lender* carrying out direct sales only must require their *appointed representatives* to disclose to the *consumer* the capacity in which the *appointed representative* is acting and the *MCD mortgage credit intermediary* that the *appointed representative* is representing when contacting or before dealing with any *consumer*.

[**Note:** article 15(5) of the *MCD*]

4A.2 Adequate explanations

- 4A.2.1 R (1) An *MCD mortgage lender* or *MCD mortgage credit intermediary* must provide, orally or in a *durable medium*, adequate explanations to the *consumer* of the proposed *MCD regulated mortgage contract* and any ancillary services, before any binding offer is issued to that *consumer*, to enable the *consumer* to assess whether the proposed *MCD regulated mortgage contract* and ancillary services meets their needs and financial situation.

[**Note:** article 16(1) of the *MCD*]

- (2) The explanations must, where applicable, include:
- (a) the pre-contractual information to be provided in accordance with:
 - (i) the *ESIS* or *illustration*; and
 - (ii) in the case of an *MCD mortgage credit intermediary*, *MCOB* 4.4A.1R(1) and (2), *MCOB* 4.4A.4R, *MCOB* 4.4A.8R(1)(a), (c), (d) and (2), and *MCOB* 4A.1.1R to *MCOB* 4A.1.7R
 - (b) the essential characteristics of the products proposed;
 - (c) the specific effects the products proposed may have on the *consumer*, including the consequences of default in payment by the *consumer*; and
 - (d) where ancillary services are bundled with an *MCD regulated mortgage contract*, whether each component of the bundle can be terminated separately and the implications for the *consumer* of doing so.

[**Note:** article 16(1) of the *MCD*]

- 4A.2.2 R In complying with *MCOB* 4A.2.1R, a *firm* may adapt the manner and extent of giving the explanations, as well as the person giving them, according to:
- (1) the circumstances of the situation in which the *MCD regulated mortgage contract* is offered;
 - (2) the *consumer* to whom it is offered; and
 - (3) the nature of the *MCD regulated mortgage contract* offered.

[**Note:** article 16(2) of the *MCD*]

- 4A.2.3 G The explanations given to a *consumer* for the purposes of complying with *MCOB* 4A.2.1R do not amount to advice to that *consumer*. *Firms* may wish to refer to *PERG* (particularly *PERG* 4.6) for guidance on the regulatory perimeter in relation to *advising on a home finance transaction*.

4A.3 Record of recommendation

4A.3.1 R An *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, must, for the particular transaction, explicitly inform the *consumer* whether advisory services are being, or can be, provided to the *consumer*.

[**Note:** article 22(1) of the *MCD*]

4A.3.2 R Where an *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, advises on a transaction relating to an *MCD regulated mortgage contract*, it must give the *consumer* a record on paper, or in another *durable medium*, of the recommendation provided.

[**Note:** article 22(3)(e) of the *MCD*]

4A.3.3 G The record in *MCOB* 4A.3.2R may consist of the completed *ESIS* or *illustration*.

Amend the following text as shown.

5 Pre-application disclosure

5.1 Application

Who?

5.1.1 R ~~This~~ Subject to *MCOB* 5.1.2AR, this chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB* 5.1.2R in accordance with column (2) of that table.

...

5.1.2A R This chapter does not apply to a *firm* that is an *MCD mortgage lender* or *MCD mortgage credit intermediary*.

...

5.1.5 G This table belongs to *MCOB* 5.1.4G

Type of mortgage	Requirements that do not apply	Additional or alternative requirements
...		
Shared appreciation	N/A	MCOB 5.6.129 R MCOB

mortgages		5.6.131 R
...		

....

- 5.1.8 G ~~Although an *illustration* is a *financial promotion*, the effect of *MCOB 3.2.5R(1)*, *Section 137R(3)* of the *Act* (Financial promotion rules) and article 28 of the *Financial Promotion Order* (One-off non-real time communications and solicited real time communications) is that an *illustration* is exempt from the provisions of *MCOB 3* (Financial promotion). However, the general requirement to communicate information in a way which is clear, fair and not misleading applies to both an *illustration* and (in relation to a *home purchase plan*) a financial information statement (see *MCOB 5.8.1R*). [deleted]~~

....

5.4 Information on regulated mortgage contracts: general

~~Clear, fair and not misleading~~

- 5.4.1 R ~~A *firm* must be able to show that it has taken reasonable steps to ensure that any *illustration* it issues is clear, fair and not misleading. [deleted]~~

Accuracy

- 5.4.2 R ~~An *illustration* on a particular *regulated mortgage contract* issued by, or on behalf of, a *mortgage lender*, must be an accurate reflection of the costs of the *regulated mortgage contract*. [deleted]~~
- 5.4.3 R A *mortgage intermediary* must take reasonable steps to ensure that an *illustration* which it issues, or which is issued on its behalf, other than that provided by a *mortgage lender*:
- (1) ~~is accurate within the following tolerances:~~
- (a) ~~no more than one percent or £1, whichever is the greater, below the actual figures charged by the *mortgage lender* for the following:~~
- (i) ~~the *total amount payable* in *Section 5* of the *illustration*;~~
- (ii) ~~the amount payable for every £1 borrowed in *Section 5* of the *illustration*;~~
- (iii) ~~the amounts that the *customer* must pay by regular instalment in *Section 6* of the *illustration* (or in *Section 7* of the *illustration* for an interest rate with a~~

floor or a ceiling); and

(iv) the amount by which the regular instalment (or the *total amount payable* for loans without a term or a regular repayment plan) would increase following a one percentage point increase in interest rates in Section 7;

(b) the *APR* in Section 5 of the *illustration* cannot be understated by more than 0.1%; and

(2) except in the case of conveyancing fees and insurance premiums (where estimates may be used), is accurate in respect of other figures quoted in the *illustration* including fees payable to the *mortgage lender* or *mortgage intermediary* in Section 8 of the *illustration* and cash examples of *early repayment charges*, calculated in accordance with the rules in *MCOB 5.6.84 R* to *MCOB 5.6.88 R*, in Section 10.

- 5.4.4 G Given that the *APR* is presented as a percentage, and must be rounded to one decimal place in accordance with *MCOB 10* (Annual Percentage Rate), *firms* should note that the tolerance allowed for the *APR* in *MCOB 5.4.3R(1)(b)* means that, for example, where the actual *APR* is 5.0% the quoted *APR* must be no lower than 4.9%, or where the actual *APR* is 16.0%, the quoted *APR* must be no lower than 15.9%. [deleted]
- 5.4.5 G There are no restrictions on figures which are quoted as higher than those actually charged by the *mortgage lender* although this should not be purposely done in order to make one *regulated mortgage contract* look more expensive than another. [deleted]
- 5.4.6 G It is the responsibility of a *mortgage intermediary* to ensure compliance with *MCOB 5.4.3R*. However, where a *firm* can show that it was reasonable for it to rely on information provided to it by another *person*, other than the *mortgage lender*, that an *illustration* was within the tolerances described in *MCOB 5.4.3R*, he accurate, it may be able to rely on *MCOB 2.5.2R*, if this turns out not to be the case.
- 5.4.7 G An *offer document* may not always exactly match the *illustration* provided before application even when the loan requirements have not changed. For example, where a fixed rate has a defined end date, the *total amount payable* may be different because the number of payments at the fixed rate has reduced assuming a later date at which the *regulated mortgage contract* will start. [deleted]
- ...
- 5.4.13A G When providing information on *regulated mortgage contracts*, *firms* should bear in mind that the information must be clear, fair and not misleading in accordance with *Principle 7* and *MCOB 2.2.6R*; and must be given in accordance with *MCOB 2.5A.1R* (The customer's best

interests).

...

- 5.4.16 G *MCOB 5* places no restrictions on the provision of information that is not specific to the amount the *customer* wants to borrow, for example, marketing literature including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. Such literature may, however, constitute a *financial promotion* and be subject to the provisions of *MCOB 3* (~~Financial promotion~~) 3A (Financial promotions and communications with customers).

...

5.5 Provision of illustrations

...

- 5.5.1C R If, notwithstanding *MCOB 5.5.1AR(1)*, a *firm* chooses to give an *illustration* in relation to a *direct deal*, it ~~need not comply with *MCOB 5.4.2R* or *MCOB 5.4.3R* (Accuracy)~~ remains subject to *MCOB 3A.2.1R(2)* (fair, clear and not misleading communications).
- 5.5.1D G ~~In the circumstances in *MCOB 5.5.1CR*, a *firm* remains subject to *MCOB 5.4.1R* (Clear, fair and not misleading).~~ [deleted]

...

5.6 Content of illustrations

...

- 5.6.8 G In relation to *MCOB 5.6.6R(3)*, ~~in order~~ for the *firm* to comply with the principle of 'clear, fair, clear and not misleading' in *MCOB 2.2.6 3A.2.1R(1)*, an estimated valuation, where the estimated valuation is not that provided by the *customer*, must be a reasonable assessment based on all the facts available at the time. For example, an overstated valuation could enable a more attractive *regulated mortgage contract* to be illustrated on the basis of a lower ratio of the loan amount to the property value - for example, one with a lower rate of interest, or without a *higher lending charge*.
- 5.6.64 G ~~For guidance on prominence see *MCOB 2.2.9G*.~~ [deleted]
- ...
- 5.6.125 G ~~For guidance on prominence see *MCOB 2.2.9G*.~~ [deleted]

...

- 5.6.128 R The text at *MCOB* 5.6.124 R must be immediately followed by the following additional text, prominently displayed (~~see *MCOB* 2.2.9G~~): 'Changes in the exchange rate may increase the sterling equivalent of your debt.'

...

MCOB 5.6.129R, and *MCOB* 5.6.130G and *MCOB* 5.6.131R are deleted in their entirety. The deleted text is not shown.

~~Shared appreciation mortgages~~

- 5.6.129 R ~~[deleted]~~

- 5.6.130 G ~~[deleted]~~

~~Risk warning~~

- 5.6.131 R ~~[deleted]~~

...

- 5.6.144 G ~~For guidance on prominence see *MCOB* 2.2.9G. [deleted]~~

...

5.7 Business loans and loans to high net worth mortgage customers: tailored provisions

...

- 5.7.2 R *A business illustration or high net worth illustration provided to a customer must:*

...

- (2) include the content required by *MCOB* 5.6.3R to ~~*MCOB* 5.6.130G~~ *MCOB* 5.6.128R (except *MCOB* 5.6.5R, *MCOB* 5.6.101R, *MCOB* 5.6.109R to *MCOB* 5.6.112G, *MCOB* 5.6.120R and *MCOB* 5.6.121R)

- 5.7.3 G ...

- (3) *A firm may also choose to include other information beyond that required by *MCOB* 6. However, when adding additional material a firm should have regard to:*

...

- (b) the requirement in *MCOB 2.2.6 3A.2.1R* that any communication should be ~~clear~~, fair, clear and not misleading.

...

5 Annex 1R The mortgage illustration: table of contents, prescribed text and prescribed section headings and subheadings

...

1. About this illustration

We are required by the Financial Conduct Authority (FCA) – the independent watchdog that regulates financial services – to provide you with this illustration.

All firms selling mortgages are required to give you illustrations like this one, that contain similar information ~~presented in the same way~~.

...

Insert the following new chapter, MCOB 5A, after MCOB 5. The text in MCOB 5A is new and is not underlined.

5A MCD Pre-application disclosure

5A.1 Application and purpose

5A.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender* or *MCD mortgage credit intermediary*.

- 5A.1.2 G (1) *MCOB 5A* amplifies *Principle 6* and *Principle 7*.
- (2) The purpose of *MCOB 5A* is to ensure that, before a *consumer* submits an application for a particular *MCD regulated mortgage contract*, they are supplied with information that makes clear:
- (a) its features, any *linked deposits*, any *linked borrowing* and any *tied products*; and
- (b) the price that the *consumer* will be required to pay under that contract, to enable the *consumer* to make a well-informed purchasing decision.

- (3) *MCOB 5A* requires information to be disclosed in a consistent way to facilitate comparison between products of different providers.

5A.2 Applying for an MCD regulated mortgage contract

- 5A.2.1 R An *MCD mortgage lender* must not enter into an *MCD regulated mortgage contract*, or agree to do so, with a *consumer* unless the *consumer* has submitted an application for that particular *MCD regulated mortgage contract*.
- 5A.2.2 G (1) The purpose of *MCOB 5A.2.1R*, along with other *rules* in this chapter, is to ensure that the *consumer* has received details of the particular *MCD regulated mortgage contract* for which they have applied, and has had the opportunity to satisfy themselves that it is appropriate for them.
- (2) The application should identify the type of interest rate, rate of interest and the *MCD mortgage lender* at the point it is submitted by the *consumer*.

5A.3 Information on MCD regulated mortgage contracts: general

Accuracy

- 5A.3.1 R A *firm* that is an *MCD mortgage credit intermediary* must take reasonable steps to ensure that an *ESIS* which it issues, or which is issued on its behalf, other than that provided by an *MCD mortgage lender* is accurate.
- 5A.3.2 R It is the responsibility of the *firm* to ensure compliance with *MCOB 5A.3.1R*. However, where a *firm* can show that it was reasonable for it to rely on information provided by another *person*, other than the *MCD mortgage lender*, that an *ESIS* was accurate, it may be able to rely on *MCOB 2.5.2R*, if this turns out not to be the case.

ESISs where consumer is ineligible

- 5A.3.3 R A *firm* must not issue an *ESIS* to a *consumer* for an *MCD regulated mortgage contract* for which the *consumer* is clearly ineligible on the basis of the information that the *firm* has obtained from the *consumer* or the *MCD mortgage lender's* lending criteria.
- 5A.3.4 G The purpose of *MCOB 5A.3.3R* is not to require a *firm* to ascertain whether a *consumer* is eligible for a particular *MCD regulated mortgage contract* before providing an *ESIS*. Instead, the purpose is to ensure that the *firm* takes into account the information it has obtained from the *consumer* before providing an *ESIS* to the *consumer*.

Explaining the importance of an ESIS

- 5A.3.5 R In providing an *ESIS* to a *consumer*, a *firm* must explain to the *consumer* the importance of reading the *ESIS* and understanding it.
- 5A.3.6 G A *firm* may satisfy *MCOB* 5A.3.5R by drawing the *consumer's* attention orally to the importance of reading and understanding the *ESIS*. For example, in a face-to-face meeting, or by referring to its importance in a covering letter or electronic communication, or other written information that accompanies the *ESIS*.

Form of an ESIS

- 5A.3.7 R Any *ESIS* provided to a *consumer* by a *firm* must be in a *durable medium*.
- [**Note:** article 14(2) of the *MCD*]

Provision of information

- 5A.3.8 G When providing information on an *MCD regulated mortgage contract*, a *firm* should bear in mind that the information must be given in accordance with *MCOB* 2.5A.1R (The customer's best interests).
- 5A.3.9 G *MCOB* 5A places no restrictions on the provision of information that is not specific to the amount the *consumer* wants to borrow. For example, marketing literature, including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. However, such literature may constitute a *financial promotion* and be subject to *MCOB* 3A (Financial promotions and communications with customers).

Messages to be given with information on MCD regulated mortgage contracts

- 5A.3.10 R (1) Whenever a *firm* provides a *consumer* with information specific to the amount that the *consumer* wants to borrow on a particular *MCD regulated mortgage contract*, following an assessment of the *consumer's* needs and circumstances to comply with *MCOB* 4.7A.2R, it must give, clearly and prominently, the following information:
- (a) the same information on the *firm's* product range as is required by *MCOB* 4.4A.1R(1), *MCOB* 4.4A.2R and *MCOB* 4.4A.4R(1) (which require firms to provide information about limitations on the range of products they offer); and
- (b) that the *consumer* has the right to request an *ESIS* for any *MCD regulated mortgage contract* which the *firm* is able to offer the *consumer*.
- (2) A *firm* need not give the information in (1) if it has previously given that information in compliance with this *rule* within the last

ten *business days*.

- 5A.3.11 G To demonstrate compliance with *MCOB 5A.3.10R(1)*, a *firm* may wish to consider, for example, doing one or more of the following actions:
- (1) giving the messages to the *consumer* in a *durable medium*;
 - (2) building the requirements into the *firm's* training of staff, as evidenced by its training and compliance manuals;
 - (3) insert appropriate prompts into paper-based or automated sales systems;
 - (4) having procedures to monitor compliance by its staff with that *rule*.

What is required in each case will depend on all the circumstances.

Messages to be given when consumer requests an execution-only sale

- 5A.3.12 R (1) Whenever, as part of an *execution-only sale* (or potential *execution-only sale*), a *consumer* provides a *firm* with the information in *MCOB 4.8A.14R(1)*, (2) or (3), the *firm* must inform the *consumer*, clearly and prominently, that the *consumer* has the right to request an *ESIS* for any *MCD regulated mortgage contract* which the *firm* is able to offer the *consumer*.
- (2) A *firm* need not give the information in (1) if it has previously given that information in compliance with this *rule* within the last ten *business days*.

Record keeping

- 5A.3.13 R A *firm* must make an adequate record of each *ESIS* that it issues to a *consumer* under *MCOB 5A.4.1R* where the *consumer* applies for that particular *MCD regulated mortgage contract*.
- 5A.3.14 R The record required by *MCOB 5A.3.13R* must be retained for one year from the date of the application made by the *consumer*.
- 5A.3.15 R *MCOB 5A.3.13R* does not require a *firm* to keep records of *ESISs* that are issued to a *consumer* when the *consumer* does not apply to enter into that particular *MCD regulated mortgage contract*.
- 5A.3.16 G The record maintained under *MCOB 5A.3.13R* should contain or refer to matters such as:
- (1) the date on which the *ESIS* was provided to the *consumer*;
 - (2) the date of the application made by the *consumer*; and
 - (3) details of the medium through which the *ESIS* was provided.

5A.4 Provision of a European Standardised Information Sheet (ESIS)

Timing

- 5A.4.1 R (1) A *firm* must provide the *consumer* with an *ESIS* for an *MCD regulated mortgage contract* before the *consumer* submits an application for that *MCD regulated mortgage contract* to an *MCD mortgage lender*, unless an *ESIS* for that *MCD regulated mortgage contract* has already been provided.
- (2) Except in the circumstances in *MCOB 5A.4.2R*, a *firm* must provide the *consumer* with an *ESIS* for an *MCD regulated mortgage contract* when any of the following occurs, unless an *ESIS* for that *MCD regulated mortgage contract* has already been provided:
- (a) the *firm* advises the particular *consumer* to enter into that *MCD regulated mortgage contract*, then an *ESIS* must be provided at the point the advice is given, unless the advice is given by telephone, in which case the *firm* must provide an *ESIS* within five *business days*; or
 - (b) the *consumer* requests an *ESIS* for that *MCD regulated mortgage contract*, unless the *firm* is aware that it is unable to offer that *regulated mortgage contract* to them; or
 - (c) as part of an *execution-only sale* (or potential *execution-only sale*) the *consumer* has provided the *firm* with the information in *MCOB 4.8A.14R(1)* to *MCOB 4.8A.14R(3)* to indicate which *MCD regulated mortgage contract* they wish to enter into.
- (3) Except in the circumstances in *MCOB 5A.4.2R*, and unless an *ESIS* for that *MCD regulated mortgage contract* has already been provided, a *firm* must provide the *consumer* with an *ESIS* for an *MCD regulated mortgage contract*:
- (a) without undue delay after the *consumer* has given the necessary information on his needs, financial situation and preferences under *MCOB 11.6.5R(2)* (assessment of affordability) and *MCOB 11.6.34R(2)* (alternative provisions for loans with high net worth mortgage customers); and
 - (b) in good time before the *consumer* is bound by any *MCD regulated mortgage contract* or offer.

[**Note:** article 14(1) of the *MCD*]

- 5A.4.2 R A *firm* need not provide an *ESIS*:

- (1) in relation to a *direct deal*;
 - (2) if the *consumer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *consumer* is not interested in pursuing the enquiry; or
 - (3) if the *firm* does not wish to do business with the *consumer*.
- 5A.4.3 R If the *firm* chooses not to give an *ESIS* in the circumstances in *MCOB* 5A.4.2R(1), where it has given advice on a *direct deal*, the *firm* must give the *consumer* a written record of the advice.
- 5A.4.4 G In the circumstances in *MCOB* 5A.4.2R(2), the *rule* in *MCOB* 5A.4.1R(1) will mean that the *consumer* may not make an application for an *MCD regulated mortgage contract*, as an *ESIS* has not been provided.
- 5A.4.5 G The effect of *MCOB* 5A.2.1R and *MCOB* 5A.4.1R(1) is that, if a *consumer's* application to enter into an *MCD regulated mortgage contract* with a *MCD mortgage lender*, made through an *MCD credit intermediary*, is subsequently passed by that *firm* to another *MCD mortgage lender*, then the *firm* must ensure that the application is amended and the *consumer* is provided with an *ESIS* for the other *MCD mortgage lender's MCD regulated mortgage contract* before the application is passed to the other *MCD mortgage lender*.
- 5A.4.6 G If a *firm* chooses to issue an *offer document* in addition to an *ESIS*, it will need to comply with *MCOB* 6A.3.1R (*MCD Mortgages: content of the offer document*).
- 5A.4.7 R A *firm* must not undertake any action that commits the *consumer* to an application (including accepting product-related fees for the *MCD regulated mortgage contract* concerned) until the *consumer* has had the opportunity to consider an *ESIS*.
- 5A.4.8 G The effect of *MCOB* 5A.4.1R(1) and *MCOB* 5A.4.7R is that a *consumer* will be deemed to be committed to an application if, for example, they pay a product-related fee (including a valuation fee) or provides electronic or verbal authority to process an application. It is not necessary for a *consumer* to provide an *MCD mortgage lender* with a completed application form to submit an application for an *MCD regulated mortgage contract*.
- 5A.4.9 R The *firm* dealing directly with the *consumer* is responsible for ensuring compliance with the content and timing requirements, ie, an *MCD mortgage lender* is not responsible for ensuring that a *consumer* has received an *ESIS* before accepting an application from an *MCD mortgage credit intermediary*.
- 5A.4.10 R Where a *firm* has already provided an *ESIS* under *MCOB* 5A.4.1R and the terms for the proposed *regulated mortgage contract* are subsequently materially altered or different, the *firm* must ensure that the *consumer* is

provided with a revised *ESIS*, before acting on the amendment, when the change occurs at the point that a *consumer* submits an application for the *MCD regulated mortgage contract*.

- 5A.4.11 G What constitutes “materially altered” or “different” requires consideration of the facts of each individual case. For example, a change of product such that the underlying terms and conditions of the *MCD regulated mortgage contract* have changed should normally be regarded as material or different, as would an additional charge, such as a *higher lending charge*, applying to the *MCD regulated mortgage contract* when it did not previously.

Uncertainty whether a mortgage is regulated

- 5A.4.12 R (1) If, at the point an *ESIS* must be provided under *MCOB 5A.4.1R*, a *firm* is uncertain whether the contract will be an *MCD regulated mortgage contract*, the *firm* must:
- (a) provide an *ESIS*; or
 - (b) seek to obtain from the *consumer*, information that will enable the *firm* to ascertain whether the contract will be an *MCD regulated mortgage contract*.
- (2) Where (1)(b) applies, an *ESIS* must be provided, unless, on the basis of the information provided by the *consumer*, the *firm* has reasonable evidence that the contract is not an *MCD regulated mortgage contract*.

Providing an *ESIS* without delay in response to a customer request

- 5A.4.13 G Where the *consumer* requests an *ESIS* for a particular *MCD regulated mortgage contract* (see *MCOB 5A.4.1R(2)(b)*), the purpose of *MCOB 5A.4.14R*, *MCOB 5A.4.15R* and *MCOB 5A.4.16G* is to ensure that the *consumer* receives an *ESIS* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *consumer* after it has provided the *consumer* with an *ESIS*.
- 5A.4.14 R In meeting a request for an *ESIS* under *MCOB 5A.4.1R(2)(b)*, the *firm* must not delay the provision of the *ESIS* by requesting information other than:
- (1) such information as is necessary to complete the *ESIS* in accordance with *MCOB 5A.5.2R* and *MCOB 5A.5.3R*, if the *firm* does not already know it;
 - (2) where the *firm* acts in accordance with *MCOB 5A.4.12R(2)*, such information as is necessary to ascertain whether or not the contract will be an *MCD regulated mortgage contract*;
 - (3) where the interest rates, payments or any other terms and conditions to be included in the *ESIS* are dependent on the *consumer's* credit

record, such information as is necessary to produce an *ESIS*;

- (4) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *ESIS*, such information as is necessary to produce those quotations;
- (5) any of the following information where it affects the availability of the *MCD regulated mortgage contract* that the *consumer* has requested information on, or affects the information to be included in, the *ESIS*:
 - (a) whether the *consumer* is a first-time buyer, a subsequent buyer moving home or entering into an *MCD regulated mortgage contract* without moving home;
 - (b) whether the *MCD regulated mortgage contract* is required for a right-to-buy purchase or for a shared ownership purchase;
 - (c) the location of the property to be purchased, where known; and
 - (d) whether the terms are dependent on a third-party guarantee.

5A.4.15 R Where *MCOB* 5A.5.14R(3) applies:

- (1) a *firm* must ask the *consumer* relevant questions about their credit history or obtain information on their credit record from a credit reference agency;
- (2) a credit reference agency must not be used unless:
 - (a) it would be quicker than asking the *consumer* the relevant questions about their credit history; or
 - (b) the *consumer* is not able to provide sufficient information on their credit history.

5A.4.16 G A *firm* may use information that it already holds on the *consumer* for the purpose of producing the *ESIS* (for example, if it already holds the *consumer's* credit record), providing the use of this information does not delay the *consumer* receiving the *ESIS* and the *consumer's* consent is obtained, where appropriate.

5A.4.17 R If, on the basis of the information obtained from the *consumer* or, on the basis of information that the *firm* already holds on the *consumer*, the *firm* would do business with the *consumer* but not on the terms requested, the *firm* may provide the *consumer* with an *ESIS* for a different *MCD regulated mortgage contract*, if it chooses to do so.

5A.5 Content of European Standardised Information Sheets (ESISs)

Content, order, format etc

- 5A.5.1 G *MCOB 5A.5* sets out the required content of an *ESIS* provided to a *consumer* by a *firm*.
- 5A.5.2 R An *ESIS* provided to a *consumer* must follow the form and contain the material in *MCOB 5A Annex 1R*.
- 5A.5.3 R A *firm* must:
- (1) reproduce the text in *MCOB 5A Annex 1R* in the *ESIS*;
 - (2) replace the indications between square brackets with the corresponding information;
 - (3) complete the *ESIS* in accordance with *MCOB 5A Annex 2R*;
 - (4) wherever the words “where applicable” are indicated:
 - (a) provide the information required, if it is relevant to the *MCD regulated mortgage contract*; or
 - (b) where the information is not relevant to the *MCD regulated mortgage contract*, delete the information in question or the entire section (for example, in cases where the section is not applicable);
 - (5) if it deletes an entire section, adjust the numbering of the *ESIS* sections accordingly;
 - (6) provide the *ESIS* in a single document;
 - (7) ensure that the font used is clearly readable;
 - (8) use bold font, shading or larger font sizes for the information elements to be highlighted; and
 - (9) highlight all applicable risk warnings.
- [**Note:** article 14(2) and Annex II, Part A, preamble of the *MCD*]
- 5A.5.4 G
- (1) The *ESIS* can contain the *MCD mortgage lender's* or *MCD mortgage credit intermediary's* logo and other 'brand' information, so long as the requirements of *MCOB 5A.5* are satisfied.
 - (2) The *ESIS* can contain page numbers and other references that aid understanding, record keeping and identification of a particular *ESIS*, such as the date and time it is produced or a unique reference number, provided these do not detract from the content of the *ESIS*.

- (3) *Firms* are reminded of their general obligation for communications to *consumers* to be clear, fair and not misleading. Sections of the *ESIS* may be split across pages where it is impractical to do otherwise. When splitting sections, *firms* should split the section at an appropriate place, for example at the end of a sub-section, and not split tables or risk warnings.

Content: required information

- 5A.5.5 R The *ESIS* provided to *consumers* must:
- (1) contain only the material prescribed in *MCOB 5A.5* and no other material; and
 - (2) be in a document separate from any other material that is provided to the *consumer*.
- 5A.5.6 G A *firm* should not illustrate more than one *MCD regulated mortgage contract* in the same *ESIS*, for example by using one *ESIS* to compare alternative products, repayment methods or repayment terms.
- 5A.5.7 G *Firms* are reminded that they must comply with *MCOB 7.6.5R* in respect of the release of loan instalments after the start of the *MCD regulated mortgage contract*.

5A.6 Other information

- 5A.6.1 R
- (1) A *firm* may provide information to the *consumer* in addition to that contained in the *ESIS*.
 - (2) A *firm* must provide the additional information in (1) in a separate document.
 - (3) A *firm* may annexe the separate document in (2) to the *ESIS*.
- [**Note:** article 14(8) of the *MCD*]
- 5A.6.2 R
- (1) Where a *firm* issues an *ESIS* in relation to an *MCD lifetime mortgage*, the *firm* must simultaneously issue the *consumer* with a document in a *durable medium* containing the statements and warnings set out in the following rules, as modified by (2) below, as if the mortgage was an *MCD exempt lifetime mortgage*: *MCOB 9.4.33R*, *MCOB 9.4.35R*, *MCOB 9.4.62R*, and *MCOB 9.4.63R* only.
 - (2) The document issued under (1) must contain the prescribed section headings but need not contain section numbers or otherwise comply with the format of an *illustration*.
- 5A.6.3 G *Firms* are reminded of their general obligation for communications to

customers to be fair, clear and not misleading.

5A European Standardised Information Sheet (ESIS)

Annex

1R [Note: Annex II Part A of the *MCD*]

MCOB 5A Annex 1 R

1. This annex belongs to *MCOB 5A.5.2R*.

(Introductory text)

This document was produced for [name of consumer] on [current date].

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until [validity date], (where applicable) apart from the interest rate and other costs. After that date, it may change in line with market conditions.

(Where applicable) This document does not constitute an obligation for [name of creditor] to grant you a loan.

1. Lender

[Name]

[Telephone number]

[Geographical address]

(Optional) [Email address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

(Where applicable, information as to whether advisory services are being provided:)

[(We recommend, having assessed your needs and circumstances, that you take out this mortgage. We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]

2. (Where applicable) Credit intermediary

[Name]

[Telephone number]

[Geographical address]

(Optional) [Email address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

(Where applicable [information as to whether advisory services are being provided]):

[(We recommend, having assessed your needs and circumstances, that you take out this mortgage. We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]

[Remuneration]

3. Main features of the loan

Amount and currency of the loan to be granted: [value][currency]

(Where applicable) This loan is not in [national currency of the borrower].

(Where applicable) The value of your loan in [national currency of the borrower] could change.

(Where applicable) For example, if the value of [national currency of the borrower] fell by

20% relative to [credit currency], the value of your loan would increase to [insert amount in national currency of the borrower]. However, it could be more than this if the value of [national currency of the borrower] falls by more than 20%.

(Where applicable) The maximum value of your loan will be [insert amount in national currency of the borrower]. (Where applicable) You will receive a warning if the credit amount reaches [insert amount in national currency of the borrower]. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions].

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Total amount to be reimbursed (repaid):

This means that you will pay back [amount] for every [unit of the currency] borrowed.

(Where applicable) [This/Part of this] is an interest-only loan. You will still owe [insert amount of loan on an interest- only basis] at the end of the mortgage term.

(Where applicable) Value of the property assumed to prepare this information sheet: [insert amount]

(Where applicable) Maximum available loan amount relative to the value of the property [insert ratio] or Minimum value of the property required to borrow the illustrated amount [insert amount]

(Where applicable) [Security]

4. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is [APRC].

It comprises:

Interest rate [value in percentage or, where applicable, indication of a reference rate and percentage value of creditor's spread]

[Other components of the APRC]

Costs to be paid on a one-off basis

(Where applicable) You will need to pay a fee to register the mortgage. [Insert amount of fee where known or basis for calculation.]

Costs to be paid regularly

(Where applicable) This APRC is calculated using assumptions regarding the interest rate.

(Where applicable) Because [part of] your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to [scenario as described in Part B], the APRC could increase to [insert illustrative APRC corresponding to the scenario].

(Where applicable) Please note that this APRC is calculated on the basis that the interest rate remains at the level fixed for the initial period throughout the duration of the contract.

(Where applicable) The following costs are not known to the lender and are therefore not included in the APRC: [Costs]

(Where applicable) You will need to pay a fee to register the mortgage.

Please make sure that you are aware of all other taxes and costs associated with your loan.

5. Frequency and number of payments

Repayment frequency: [frequency]

Number of payments: [number]

6. Amount of each instalment

[Amount] [currency]

Your income may change. Please consider whether you will still be able to afford your

[frequency] repayment instalments if your income falls.

(Where applicable) Because [this/part of this] is an interest-only loan you will need to make separate arrangements to repay the [insert amount of loan on an interest-only basis] you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the instalment amount shown here.

(Where applicable) The interest rate on [part of] this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to [scenario as described in Part B], your payments could increase to [insert instalment amount corresponding to the scenario].

(Where applicable) The value of the amount you have to pay in [national currency of the borrower] each [frequency of instalment] could change. (Where applicable) Your payments could increase to [insert maximum amount in national currency of the borrower] each [insert period]. (Where applicable) For example, if the value of [national currency of the borrower] fell by 20% relative to [credit currency], you would have to pay an extra [insert amount in national currency of the borrower] each [insert period]. Your payments could increase by more than this.

(Where applicable) The exchange rate used for converting your repayment in [credit currency] to [national currency of the borrower] will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].

(Where applicable) [Details on tied savings products, deferred-interest loans]

7. (Where applicable) Illustrative repayment table

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no]) are the sum of interest to be paid (column [relevant no]), where applicable, capital paid (column [relevant no]) and, where applicable, other costs (column [relevant no]). [Where applicable] The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no]) is the amount of the loan that remains to be reimbursed (repaid) after each instalment.

[Table]

8. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.

[Obligations]

(Where applicable) Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.

(Where applicable) Please note the possible consequences of terminating at a later stage any of the ancillary services relating to the loan:

[Consequences]

9. Early repayment

You have the possibility (the right to) to repay this loan early, either fully or partially.

(Where applicable) [Conditions]

(Where applicable) Exit charge (Early repayment charge): [insert amount or, where not possible, the method of calculation]

(Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge (early repayment charge) at that moment.

10. Flexible features

(Where applicable) [Information on portability/subrogation] You have the possibility to (the right to) transfer this loan to another [lender][or] [property]. [Insert conditions]

(Where applicable) You do not have the possibility to (the right to) transfer this loan to another [lender] [or] [property].

(Where applicable) Additional features: [insert explanation of additional features listed in Part B and, optionally, any other features offered by the lender as part of the credit agreement not referred to in previous sections].

11. Other rights of the borrower

You have [length of reflection period] after [point in time when the reflection period begins] to reflect before committing yourself to taking out this loan.

12. Complaints

If you have a complaint, please contact [insert internal contact point and source of information on procedure].

(Where applicable) Maximum time for handling the complaint [period of time]

(Where applicable) [If we do not resolve the complaint to your satisfaction internally,] you can also contact: [insert name of external body for out-of-court complaints and redress]

(Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country.

13. Non-compliance with the commitments linked to the loan: consequences for the borrower

[Types of non-compliance]

[Financial and/or legal consequences]

Should you encounter difficulties in making your [frequency] payments, please contact us straight away to explore possible solutions.

(Where applicable) As a last resort, your home may be repossessed if you do not keep up with payments.

(Where applicable) 14. Additional information

(Where applicable) [Indication of the law applicable to the credit contract].

(Where the lender intends to use a language different from the language of the ESIS) Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the credit agreement.

[Insert statement on right to be provided with or offered, as applicable, a draft credit agreement]

15. Supervisor

This lender is supervised by [Name(s), and web address(es) of supervisory authority/ies]

(Where applicable) This credit intermediary is supervised by [Name and web address of supervisory authority].

[Note: Annex II Part B of the MCD]

1.1	R	This Annex belongs to <i>MCOB 5A.5.3R(3)</i> .	
1.2	R	Where a <i>MCD regulated mortgage contract</i> is divided into more than one part, the <i>firm</i> must set out the required <i>ESIS</i> content in respect of each part.	
1.3	R	Unless otherwise specified, the sections referred to in this Annex are sections in the <i>ESIS</i> .	
1.4	R	Where the form includes the following words and phrases in round brackets:	
		(1)	“repaid” (in sections 3 and 7);
		(2)	“right to” (in sections 9 and 10);
		(3)	“early repayment charge” (in section 9);
			the <i>firm</i> may use that word or phrase instead of the one immediately before it.
		(4)	<i>MCOB Annex 2, 5.7R(3), 9.1R(2), 11.2R(3) and 12.1R(2)</i> explain this in more detail.
2	Section ‘Introductory text’		
2.1	R	(1)	The <i>firm</i> must properly highlight the validity date.
		(2)	For the purpose of (1), the ‘validity date’ means the length of time the information, eg, the borrowing rate, contained in the <i>ESIS</i> will remain unchanged and will apply should the <i>MCD mortgage lender</i> grant the <i>MCD regulated mortgage contract</i> within this period of time.
		(3)	Where the determination of the applicable <i>borrowing rate</i> and other costs depends on the results of the selling of underlying bonds, the eventual <i>borrowing rate</i> and other costs may be different from those stated. In those circumstances only, the <i>firm</i> must stipulate that the validity date does not apply to the <i>borrowing rate</i> and other costs by adding the words: ‘apart from the interest rate and other costs’.
3	Section ‘1. Lender’		
3.1	R	(1)	The <i>firm</i> must provide the name, telephone number and geographical address of the <i>MCD mortgage lender</i> .
		(2)	The information provided under (1) must be the contact information that the <i>consumer</i> may use for future correspondence.
3.2	G	The <i>firm</i> need not provide the <i>MCD mortgage lender</i> ’s email address, fax number, web address or contact person/point.	

3.3	R	Where the <i>MCD regulated mortgage contract</i> is offered at a distance, the <i>firm</i> must, where applicable, provide the name and geographical address of the <i>MCD mortgage lender's</i> representative in the <i>EEA State</i> where the <i>consumer</i> is resident.
3.4	G	The <i>firm</i> need not provide the telephone number, email address or web address of the <i>MCD mortgage lender's</i> representative referred to at <i>MCOB 5A Annex 2, 3.3R</i> .
3.5	R	Where section 2 does not apply, an <i>MCD mortgage lender</i> must inform the <i>consumer</i> whether advisory services are being provided and on what basis using the wording at the end of section 1 of <i>MCOB 5A Annex 1R</i> .
4		(Where applicable) Section '2. Credit intermediary'
4.1	R	Where an <i>MCD mortgage credit intermediary</i> provides an <i>ESIS</i> to a <i>consumer</i> , the <i>MCD mortgage credit intermediary</i> must include the following information:
		(1) the name, telephone number and geographical address of the <i>MCD mortgage credit intermediary</i> ;
		(2) whether the <i>MCD mortgage credit intermediary</i> is providing advisory services and on what basis, using the wording at the end of section 2 of <i>MCOB 5A Annex 1R</i> ; and
		(3) an explanation of how the <i>MCD mortgage credit intermediary</i> is being remunerated.
4.2	R	The information provided under <i>MCOB 5A Annex 2, 4.1R(1)</i> must be the contact information that the <i>consumer</i> may use for future correspondence.
4.3	R	The explanation provided under <i>MCOB 5A Annex 2, 4.1R(3)</i> must include:
		(1) where the <i>MCD mortgage credit intermediary</i> receives commission from an <i>MCD mortgage lender</i> , the amount of that commission;
		(2) where the <i>MCD mortgage lender</i> from whom the <i>MCD mortgage credit intermediary</i> receives commission is different from the <i>MCD mortgage lender</i> referred to section 1, the name of that <i>MCD mortgage lender</i> ; and
		(3) where the amount of remuneration is not known at the time when the <i>ESIS</i> is provided, a range of representative examples.
4.4	R	The explanation provided under <i>MCOB 5A Annex 2, 4.1R(3)</i> must not include remuneration paid to a third party.
4.5	G	An <i>MCD mortgage credit intermediary</i> need not provide its email address, fax number, web address or contact person/point.

4.6	G	In the event that an <i>MCD mortgage lender</i> provides a <i>consumer</i> with a binding offer and the characteristics of the offer are different from the information in the <i>ESIS</i> previously provided by the <i>MCD mortgage credit intermediary</i> , if the <i>MCD mortgage credit intermediary</i> confirms to the <i>MCD mortgage lender</i> that the revised transaction can proceed, the <i>MCD mortgage lender</i> may complete section 2 and update the wording referred to at <i>MCOB 5A Annex 2, 4.1R(2)</i> to say “[Name of credit intermediary] recommends ... / [Name of credit intermediary] is not recommending...” instead of “We recommend .../We are not recommending”.
5	Section ‘3. Main features of the loan’	
5.1	R	In section 3, the <i>firm</i> must clearly explain the main characteristics of the <i>MCD regulated mortgage contract</i> , including the value and currency and the potential risks associated with the <i>borrowing rate</i> , including the ones referred to in <i>MCOB 5A Annex 2, 5.7R</i> , and the amortisation structure.
5.2	R	Where the currency of the <i>MCD regulated mortgage contract</i> is different from the national currency of the <i>consumer</i> , the <i>firm</i> must:
		(1) indicate that the <i>consumer</i> will receive a regular warning at least when the exchange rate fluctuates by more than 20 %;
		(2) where there is a provision in the <i>MCD regulated mortgage contract</i> to limit the exchange rate risk, indicate the maximum amount the <i>consumer</i> could have to pay back;
		(3) where there is no provision in the <i>MCD regulated mortgage contract</i> to limit the exchange rate risk to which the <i>consumer</i> is exposed to a fluctuation in the exchange rate of less than 20 %, provide an <i>illustration</i> of the effect of a 20 % fall in the value of <i>consumer’s</i> national currency relative to the currency of the <i>MCD regulated mortgage contract</i> on the value of the <i>MCD regulated mortgage contract</i> ;
		(4) where applicable, indicate that the <i>consumer</i> has the right to convert the currency of the <i>MCD regulated mortgage contract</i> ;
		(5) where applicable, indicate to the <i>consumer</i> the right to renegotiate the conditions of the <i>MCD regulated mortgage contract</i> ; and
		(6) indicate any other arrangements available to the <i>consumer</i> to limit his exposure to exchange rate risk.
5.3	R	(1) The <i>firm</i> must express the duration of the <i>MCD regulated mortgage contract</i> in years and months (or a combination of the two), whichever is the most relevant.
		(2) Where the duration of the <i>MCD regulated mortgage contract</i> can vary during the lifetime of the <i>MCD regulated mortgage contract</i> , the <i>firm</i>

			must explain when and under which conditions this can occur.
		(3)	Where the <i>MCD regulated mortgage contract</i> is open-ended, for example, for a secured credit card, the <i>firm</i> must clearly state that fact.
		(4)	Where the <i>MCD regulated mortgage contract</i> is an <i>MCD lifetime mortgage</i> , the duration of the mortgage must be estimated in accordance with <i>MCOB 9.4.10R</i> , as if the mortgage is an <i>MCD exempt lifetime mortgage</i> .
5.4	R	(1)	The <i>firm</i> must clearly indicate the type of <i>MCD regulated mortgage contract</i> (eg, mortgage credit, home loan, secured credit card).
		(2)	The description under (1) must clearly indicate how the capital and the interest shall be repaid during the life of the <i>MCD regulated mortgage contract</i> (ie, the amortisation structure), specifying clearly whether the <i>MCD regulated mortgage contract</i> is on a capital repayment or interest-only basis, or a mixture of the two.
5.5	R		Where all or part of the <i>MCD regulated mortgage contract</i> is an interest-only <i>MCD regulated mortgage contract</i> , the <i>firm</i> must insert a statement, clearly indicating that fact, prominently at the end of section 3 using the wording in section 3 of <i>MCOB 5A Annex 1R</i> .
5.6	R	(1)	In section 3, the <i>firm</i> must explain whether the <i>borrowing rate</i> of the <i>MCD regulated mortgage contract</i> is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the <i>borrowing rate</i> variability, such as caps or floors.
		(2)	The <i>firm</i> must explain the formula used to revise the <i>borrowing rate</i> and its different components (eg, reference rate, interest-rate spread).
		(3)	The <i>firm</i> must indicate (eg, by means of a web address) where further information on the indices or rates used in the formula referred to in (2) can be found (eg, Euribor or central bank reference rate).
		(4)	If different borrowing rates apply in different circumstances, the <i>firm</i> must provide the information required by (1), (2) and (3) on all applicable rates.
5.7	R	(1)	The ‘total amount to be repaid’ corresponds to the <i>total amount payable by the consumer</i> . The <i>firm</i> must show this as the sum of the <i>credit</i> amount and the <i>total cost of the credit to the consumer</i> .
		(2)	Where the <i>borrowing rate</i> is not fixed for the duration of the <i>MCD regulated mortgage contract</i> , the <i>firm</i> must highlight that the amount in (1) is illustrative and may vary, in particular in relation with the variation in the <i>borrowing rate</i> .
		(3)	The <i>firm</i> may replace “reimbursed” with “repaid” (shown in round

			brackets), ie, “Total amount to be repaid”.
5.8	R	(1)	Where the <i>credit</i> will be secured by an <i>MCD regulated mortgage contract</i> , another comparable security or by a right related to land, the <i>firm</i> must draw the <i>consumer</i> ’s attention to this.
		(2)	Where applicable, the <i>firm</i> must indicate the assumed value of the land or other security used for the purpose of preparing the <i>ESIS</i> .
5.9	G		In order for the <i>firm</i> to comply with the principle of 'fair, clear and not misleading' in <i>MCOB 3A.2.1R(1)</i> , where the assumed value is not a value provided by the <i>consumer</i> , the valuation must be a reasonable assessment based on all the facts available at the time. For example, an overstated valuation could enable a more attractive <i>MCD regulated mortgage contract</i> to be illustrated on the basis of a lower ratio of the loan amount to the property value - for example, one with a lower rate of interest or without a <i>higher lending charge</i> .
5.10	R		The <i>firm</i> must indicate, where applicable, either:
		(1)	The ‘maximum available loan amount relative to the value of the property’, indicating the loan-to-value ratio. This ratio must be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value; or
		(2)	the ‘minimum value of the property required by the <i>firm</i> to lend the illustrated amount’.
5.11	R		Where an <i>MCD regulated mortgage contract</i> has more than one part (eg, concurrently part fixed rate, part variable rate), the <i>firm</i> must indicate this and must provide the information required by section 3 for each part.
5.12	R		The amount of the loan to be granted is:
		(1)	in cases where, on the basis of the information obtained from the <i>consumer</i> , before providing the <i>ESIS</i> it is clear that the <i>consumer</i> would not be eligible to borrow the amount he requested, an estimate of the amount that the <i>consumer</i> could borrow based on the information obtained from the <i>consumer</i> . This does not require information to be obtained from the <i>consumer</i> before providing an <i>ESIS</i> to ascertain the amount the <i>consumer</i> is eligible to borrow, instead, this means that the <i>firm</i> does not have to provide a consumer with an <i>ESIS</i> for an amount it knows the <i>consumer</i> would not be eligible for, based on whatever information it has obtained from the <i>consumer</i> before providing the <i>ESIS</i> ; or
		(2)	where the <i>MCD regulated mortgage contract</i> is a revolving credit agreement, such as a secured overdraft or <i>mortgage credit card</i> , the total borrowing that the <i>firm</i> is willing to provide under the <i>MCD regulated mortgage contract</i> ; or

		(3)	where it is known that the loan will be released in instalments, for example, in the case of a self-build mortgage:
		(a)	where the lender has made a binding offer for the full amount, the total amount of the loan required and not the amount of the initial instalment;
		(b)	where the lender has made a binding offer for an initial amount, the initial amount; and
		(c)	where the lender's binding offer for an initial amount has been replaced by a binding offer for a larger amount, the larger amount.
6			Section '4. Interest rate' and other costs
6.1	R		The reference to 'interest rate' corresponds to the <i>borrowing rate</i> or <i>borrowing rates</i> .
6.2	R		The <i>firm</i> must state the <i>borrowing rate</i> as a percentage value.
6.3	R	(1)	Where the <i>borrowing rate</i> is variable and based on a reference rate, the <i>firm</i> may indicate the <i>borrowing rate</i> by stating a reference rate and a percentage value of the <i>MCD mortgage lender's</i> spread.
		(2)	The <i>firm</i> must state the value of the reference rate in (1) as at the day it issues the <i>ESIS</i> .
6.4	R		Where the <i>borrowing rate</i> is variable, the <i>firm</i> must include:
		(1)	the assumptions used to calculate the <i>APRC</i> ;
		(2)	where relevant, the applicable caps and floors; and
		(3)	a warning that the variability could affect the actual level of the <i>APRC</i> .
6.5	R		In order to attract the <i>consumer's</i> attention the <i>firm</i> must:
		(1)	use a font size for the warning required by <i>MCOB 5A Annex 2, 6.4R(3)</i> that is bigger than the font size it uses for the rest of the <i>ESIS</i> ;
		(2)	ensure that warning required by <i>MCOB 5A Annex 2, 6.4R(3)</i> figures prominently in the main body of the <i>ESIS</i> .
6.6	R	(1)	The <i>firm</i> must accompany the warning required by <i>MCOB 5A Annex 2, 6.4R(3)</i> with an illustrative example of the <i>APRC</i> .
		(2)	Where there is a cap on the <i>borrowing rate</i> , the example required by (1) must assume that the <i>borrowing rate</i> rises at the earliest possible opportunity to the highest level foreseen in the <i>MCD regulated</i>

			<i>mortgage contract.</i>
		(3)	Where there is no cap, the example required by (1) must illustrate the <i>APRC</i> at the highest <i>borrowing rate</i> in at least the last 20 years. Or, where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the <i>borrowing rate</i> , where applicable, or the highest value of a benchmark rate specified by the <i>FCA</i> or another competent authority or the European Banking Authority where the <i>MCD mortgage lender</i> does not use an external reference rate.
		(4)	The requirement under (1) does not apply to an <i>MCD regulated mortgage contract</i> where the <i>borrowing rate</i> is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the <i>MCD mortgage lender</i> and the <i>consumer</i> .
		(5)	For an <i>MCD regulated mortgage contract</i> within (4), the <i>firm</i> must include a warning that the <i>APRC</i> is calculated on the basis of the <i>borrowing rate</i> for the initial period.
		(6)	The <i>firm</i> must accompany the warning required by (5) with by an additional, illustrative <i>APRC</i> calculated in accordance with <i>MCOB 10A.1.4R</i> .
6.7	R	(1)	Where the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> is a multi-part <i>credit</i> (eg, concurrently part fixed rate, part variable rate), the <i>firm</i> must provide the information about the <i>borrowing rate</i> required by <i>MCOB 5A Annex 2, 6</i> for each part of the <i>credit</i> .
		(2)	Where the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> is a multi-part <i>credit</i> , the <i>firm</i> must calculate and provide the additional illustrative <i>APRC</i> required by <i>MCOB 5A Annex 2, 6</i> once in respect of the entire <i>MCD regulated mortgage contract</i> .
6.8	R		The <i>FCA</i> 's benchmark rate is the difference in percentage points between the Bank of England's base rate on the date the <i>ESIS</i> is issued and the highest value of the Bank of England's base rate over at least the last 20 years, added to the <i>borrowing rate</i> shown in the <i>ESIS</i> .
6.9	R		When more than one interest rate applies during the term of the <i>MCD regulated mortgage contract</i> , for example, because there is an initial fixed or discounted interest rate period, the <i>firm</i> must calculate the <i>FCA</i> 's benchmark rate by reference to the reversionary <i>borrowing rate</i> shown in the <i>ESIS</i> .
6.10	G		When calculating the <i>FCA</i> 's benchmark rate, the <i>firm</i> may:
		(1)	calculate the last 20 years from up to three <i>months</i> prior to the date the

			<i>ESIS</i> is issued; and
		(2)	extend the period for calculating the <i>FCA</i> 's benchmark rate beyond the last 20 years to any period longer than 20 years.
6.11	R	In the event of a scenario in column (1) in the table at <i>MCOB 5A Annex 2, 6.12R</i> , the <i>firm</i> must calculate the illustrative example of the <i>APRC</i> (the additional <i>APRC</i>) in accordance with column (2) of that table.	
6.12	R	This table belongs to <i>MCOB 5A Annex 2, 6.11R</i>	
		(1) Scenario	(2) Calculation of additional <i>APRC</i> NB: A <i>MCD mortgage lender</i>'s standard variable rate is not to be used as an external reference rate (ERR)
		Mortgage with an interest-rate cap	Calculate the <i>APRC</i> based on the <i>borrowing rate</i> rising at the earliest possible opportunity to the level of the cap.
		Where the product is not linked to an ERR	Use the <i>FCA</i> 's benchmark rate.
		<i>MCD mortgage lender</i> uses an ERR and has 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i>	Use the highest ERR in the previous 20 years, and apply the highest margin over that or lowest margin under it, to produce the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> uses an ERR and has less than 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i>	Use the highest ERR in the previous 20 years, and apply the highest margin over that or lowest margin under it, used in the period of data available, to produce the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> comprises a group which contains separate legal entities or comprises distinct product brands and has 20 years of data relating to the margin applied by that legal entity or product brand. It may have similar products across entities or brands within the same group or company with different margins above or below the ERR	Use the highest ERR in the previous 20 years with respect to the pricing approach for the specific legal entity or product brand and apply the highest margin over that or lowest margin under it to produce the highest additional <i>APRC</i> .

		<i>MCD mortgage lender</i> comprises a group which contains separate legal entities or comprises distinct product brands and has less than 20 years of data relating to the margin applied by that legal entity or product brand. It may have similar products across entities or brands within the same group or company with different margins above or below the ERR.	Use the highest ERR in the previous 20 years with respect to the pricing approach for the specific legal entity or product brand and apply the highest margin over that or lowest margin under it used in the period of data available to produce the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> has previously purchased a brand that uses an ERR and has 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i> for the same product	Where the purchaser is carrying on new lending under the purchased brand - same as above, using previous <i>firm's</i> data where relevant and where it may be reasonably obtained.
		<i>MCD mortgage lender</i> has previously purchased a brand that uses an ERR and has less than 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i> for the same product	Where the purchaser is carrying on new lending under the purchased brand - same as above, using previous <i>firm's</i> data, where relevant and where it may be reasonably obtained. Otherwise, use the <i>FCA's</i> benchmark rate.
		<i>MCD mortgage lender</i> has different ERR calculation methods that apply over time (eg, 0.5% over Bank of England rate for the first two years and then 2% over Bank of England rate for the rest of the mortgage lifetime).	Calculate using the method which produces the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> has different methods that apply to different proportions of the principal (eg, ERR + x% applies to 50% principal and SVR applies to the other 50%)	Calculate using the ERR where applicable and the <i>FCA's</i> benchmark rate, where applicable, and use both to calculate the additional <i>APRC</i> .
		<i>MCD mortgage lender</i> uses an ERR where its basis has	Consider whether there was an equivalent predecessor ERR and use the ERR (and its

		changed in the past 20 years	equivalent predecessor(s), if any) provided that it (or they) have existed at least 20 years, otherwise use the <i>FCA</i> 's benchmark rate.
		<i>MCD mortgage lender</i> has an ERR calculation method that applies for a fixed period of time after which the lender's standard variable rate applies (eg, 0.5% over Bank of England rate for the first two years and then the lender's standard variable rate applies for the rest of the mortgage lifetime).	Calculate using the method which produces the highest additional <i>APRC</i> .
6.13	R	(1)	The <i>firm</i> must list all the costs other than the <i>borrowing rate</i> in the section on 'other components of the <i>APRC</i> ', including one-off costs, such as administration fees, and regular costs, such as annual administration fees.
		(2)	the <i>firm</i> must list each of the costs referred to in (1) by the categories set out in in (3) and indicate for each cost:
		(a)	the amount;
		(b)	to whom the cost is to be paid; and
		(c)	when the cost is to be paid.
		(3)	The categories referred to in (1) are:
		(a)	costs to be paid on a one-off basis;
		(b)	costs to be paid regularly and included in the instalments; and
		(c)	costs to be paid regularly but not included in the instalments.
		(4)	Where the amount in (2)(a) is not known, the <i>firm</i> must provide an indication of the amount if possible or, if not possible, how the amount will be calculated and specify that the amount provided is indicative only.
		(5)	The <i>firm</i> must highlight where certain costs are not included in the <i>APRC</i> because they are unknown to the <i>firm</i> .
6.14	G	The costs in <i>MCOB 5A Annex 2, 6.13R(1)</i> need not include costs incurred for breaches of contractual obligations.	
6.15	R	Where a <i>consumer</i> has informed the <i>firm</i> of one or more components of his	

		preferred <i>MCD regulated mortgage contract</i> , such as the duration of the <i>MCD regulated mortgage contract</i> and the total amount of <i>credit</i> , the <i>firm</i> must, where possible, use those components.
6.16	R	If an <i>MCD regulated mortgage contract</i> provides for different ways of drawdown with different charges or borrowing rates and the <i>MCD mortgage lender</i> uses the assumptions set out in <i>MCOB 10A.3.1R</i> , the <i>firm</i> must indicate that other drawdown mechanisms for this type of <i>MCD mortgage lender</i> may result in a higher <i>APRC</i> .
6.17	R	Where the <i>firm</i> uses the conditions for drawdown for calculating the <i>APRC</i> , the <i>firm</i> must highlight the charges associated with other drawdown mechanisms that are not necessarily the ones used in calculating the <i>APRC</i> .
6.18	R	(1) Where a fee is payable for registration of the <i>MCD regulated mortgage contract</i> or comparable security, the <i>firm</i> must disclose that in section 3 with the amount, where known, or where this is not possible the basis for determining the amount.
		(2) Where the fees in (1) are known and included in the <i>APRC</i> , the <i>firm</i> must list the existence and amount of the fee under 'Costs to be paid on a one-off basis'.
		(3) Where the fees in (1) are not known to the <i>firm</i> and, therefore, not included in the <i>APRC</i> , the <i>firm</i> must clearly indicate the existence of the fee in the list of costs which are not known to the lender.
		(4) The <i>firm</i> must use the standardised wording in section 4 of <i>MCOB 5A Annex 1R</i> under the appropriate heading.
7	Section '5. Frequency and number of payments'	
7.1	R	Where a <i>consumer</i> will be required to make payments under an <i>MCD regulated mortgage contract</i> on a regular basis, the <i>firm</i> must indicate the frequency of those payments (eg, monthly).
7.2	R	Where a <i>consumer</i> will be required to make payments under an <i>MCD regulated mortgage contract</i> on an irregular basis, the <i>firm</i> must clearly explain this to the <i>consumer</i> .
7.3	R	The <i>firm</i> must indicate the number of payments under the <i>MCD regulated mortgage contract</i> that the <i>consumer</i> will be required to make over the entire duration of the <i>MCD regulated mortgage contract</i> .
8	Section '6. Amount of each instalment'	
8.1	R	The <i>firm</i> must clearly indicate the currency of the <i>MCD regulated mortgage contract</i> and the currency and amount of the instalments.
8.2	R	Where the amount of the instalments may change during the life of the <i>MCD regulated mortgage contract</i> , the <i>firm</i> must specify the period during

		which that initial instalment amount will remain unchanged and when and how frequently afterwards it will change.	
8.3	R	Where all or part of the <i>MCD regulated mortgage contract</i> is an interest-only <i>MCD regulated mortgage contract</i> , the <i>firm</i> must insert a statement clearly indicating that fact, prominently at the end of section 6 using the wording in section 6 of <i>MCOB 5A Annex 1R</i> .	
8.4	R	If there is a requirement for the <i>consumer</i> to take out a tied savings product as a condition for being granted an interest-only <i>MCD regulated mortgage contract</i> , the <i>firm</i> must provide the amount and frequency of any payments for this product.	
8.5	R	(1)	Where the <i>borrowing rate</i> is variable, the <i>firm</i> must include a statement indicating that fact, using the wording in section 6 of <i>MCOB 5A Annex 1R</i> and an illustration of a maximum instalment amount.
		(2)	Where there is a cap, the illustration under (1) must show the amount of the instalments if the <i>borrowing rate</i> rises to the level of the cap.
		(3)	Where there is no cap, the illustration under (1) must illustrate the level of instalments at the highest <i>borrowing rate</i> in the last 20 years, or where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on:
		(a)	the highest value of any external reference rate used in calculating the <i>borrowing rate</i> , where applicable,
		(b)	or the highest value of a benchmark rate specified by:
		(i)	the <i>FCA</i> in <i>MCOB 5A Annex 2, 6.8R to 6.10G</i> ;
		(ii)	another competent authority; or
		(iii)	the European Banking Authority
			where the <i>MCD mortgage lender</i> does not use an external reference rate.
		(4)	The requirement under (1) does not apply to an <i>MCD regulated mortgage contract</i> where the <i>borrowing rate</i> is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the <i>MCD mortgage lender</i> and the <i>consumer</i> .
		(5)	Where the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> is a multi-part <i>credit</i> (eg, concurrently part fixed rate, part variable rate), the <i>firm</i> must provide the information about the <i>borrowing rate</i>

			required by <i>MCOB 5A Annex 2, 8</i> for each part of the <i>credit</i> and for the overall <i>credit</i> .
8.6	R	(1)	Where the currency of the <i>MCD regulated mortgage contract</i> is different from the <i>consumer's</i> national currency or where the <i>MCD regulated mortgage contract</i> is indexed to a currency which is different from the <i>consumer's</i> national currency, the <i>firm</i> must include a numerical example clearly showing how changes to the relevant exchange rate may affect the amount of the instalments using the wording in section 6 of <i>MCOB 5A Annex 1R</i> .
		(2)	The <i>firm</i> must base the example under (1) on a 20 % reduction in the value of the <i>consumer's</i> national currency.
		(3)	The <i>firm</i> must accompany the example under (1) with a prominent statement that the instalments could increase by more than the amount assumed in that example.
		(4)	Where there is a cap which limits the increase in (1) to less than 20 %, the <i>firm</i> must state the maximum value of the payments in the <i>consumer's</i> currency instead and omit the statement in (3) on the possibility of further increases.
8.7	R		Where the <i>MCD regulated mortgage contract</i> is fully or partly a variable rate <i>MCD regulated mortgage contract</i> and <i>MCOB 5A Annex 2, 8.3R</i> applies, the <i>firm</i> must give the <i>illustration</i> under <i>MCOB 5A Annex 2, 8.6R(1)</i> on the basis of the instalment amount indicated under <i>MCOB 5A Annex 2, 8.1R</i> .
8.8	R	(1)	Where the currency used for the payment of instalments is different from the currency of the <i>MCD regulated mortgage contract</i> or where the amount of each instalment expressed in the <i>consumer's</i> national currency depends on the corresponding amount in a different currency, the <i>firm</i> must in section 6 indicate the date at which the applicable exchange rate is calculated and either the exchange rate or the basis on which it will be calculated and the frequency of their adjustment.
		(2)	Where applicable, the <i>firm</i> must include in its indication under (1) the name of the institution publishing the exchange rate.
8.9	R		Where the <i>MCD regulated mortgage contract</i> is a deferred-interest <i>MCD regulated mortgage contract</i> under which interest due is not fully repaid by the instalments and is added to the total amount of the <i>MCD regulated mortgage contract</i> outstanding, the <i>firm</i> must include an explanation of how and when deferred interest is added to the <i>MCD regulated mortgage contract</i> as a cash amount, and what the implications are for the <i>consumer</i> in terms of his remaining debt.
9			Section '7. Illustrative repayment table'

9.1	R	(1)	The <i>firm</i> must include section 7 where the <i>MCD regulated mortgage contract</i> is a deferred-interest <i>MCD regulated mortgage contract</i> under which interest due is not fully repaid by the instalments and is added to the total amount of <i>MCD regulated mortgage contract</i> outstanding, or where the <i>borrowing rate</i> is fixed for the duration of the <i>MCD regulated mortgage contract</i> .
		(2)	The <i>firm</i> may replace the word “reimbursed” with “repaid” (shown in round brackets), ie “...the amount of the loan that remains to be repaid after each instalment”.
9.2	R		Where the <i>consumer</i> has the right to receive a revised amortisation table, the <i>firm</i> must indicate this along with the conditions under which the <i>consumer</i> has that right.
9.3	R		The <i>firm</i> must include in section 7 an illustrative amortisation table including the following columns:
		(1)	‘repayment schedule’ (eg, month 1, month 2, month 3);
		(2)	‘amount of the instalment’;
		(3)	‘interest to be paid per instalment’;
		(4)	‘other costs included in the instalment’ (where relevant);
		(5)	‘capital repaid per instalment’; and
		(6)	‘outstanding capital after each instalment’.
9.4	R		The <i>firm</i> must:
		(1)	for the first repayment year, provide an illustrative amortisation table in accordance with <i>MCOB 5A Annex 2, 9.3R</i> for each instalment and include a subtotal for each of the columns at the end of that first year;
		(2)	for the following years, provide an illustrative amortisation table in accordance with <i>MCOB 5A Annex 2, 9.3R</i> on an annual basis;
		(3)	add an overall total at the end of the table and provide the total amounts for each column; and
		(4)	clearly highlight the total cost of the <i>MCD regulated mortgage contract</i> paid by the <i>consumer</i> (ie, the overall sum of the ‘amount of the instalment’ column) and present it as such.
9.5	G		Where the <i>borrowing rate</i> is subject to revision and the amount of the instalment after each revision is unknown, the <i>firm</i> may indicate in the illustrative amortisation table required by <i>MCOB 5A Annex 2, 9.3R</i> the same instalment amount for the whole credit duration.

9.6	R	If the <i>firm</i> acts in accordance with MCOB 5A Annex 2, 9.5G, the <i>firm</i> must:	
		(1)	draw the fact that the <i>borrowing rate</i> is subject to revision and the amount of the instalment after each revision is unknown to the attention of the <i>consumer</i> by visually differentiating the amounts which are known from the hypothetical ones (eg, using a different font, borders or shading); and
		(2)	in a clearly legible text explain for which periods the amounts represented in the table may vary and why.
10	Section '8. Additional obligations'		
10.1	R	(1)	The <i>firm</i> must specify in section 8 any obligations imposed on the <i>consumer</i> in order to benefit from the <i>MCD regulated mortgage contract</i> , such as the obligation to insure the property, to purchase life insurance, to have a salary paid into an account with the <i>MCD mortgage lender</i> or to buy any other product or service.
		(2)	For each obligation specified under (1), the <i>firm</i> must specify:
		(a)	towards whom and by when the obligation needs to be fulfilled;
		(b)	the duration of the obligation, eg, until the end of the <i>MCD regulated mortgage contract</i> ;
		(c)	any costs to be paid by the <i>consumer</i> which are not included in the <i>APRC</i> .
10.2	R	(1)	The <i>firm</i> must state whether it is compulsory for the <i>consumer</i> to purchase any ancillary services to obtain the <i>MCD regulated mortgage contract</i> on the stated terms and, if so, whether the <i>consumer</i> is obliged to purchase them from the <i>MCD mortgage lender's</i> preferred supplier or whether they may be purchased from a provider chosen by the <i>consumer</i> .
		(2)	Where the possibility referred to in (1) is conditional on the ancillary services meeting certain minimum characteristics, the <i>firm</i> must describe those characteristics in section 8.
		(3)	Where applicable, the <i>firm</i> must state the possible consequences of terminating the ancillary services.
10.3	R	Where the <i>MCD regulated mortgage contract</i> is bundled with other products the <i>firm</i> must clearly state:	
		(1)	the key features of those other products; and
		(2)	whether the <i>consumer</i> has a right to terminate the <i>MCD regulated mortgage contract</i> or the bundled products separately and the

			conditions for and implications of doing so.
11	Section '9. Early repayment'		
11.1	R	The <i>firm</i> must indicate under what conditions the <i>consumer</i> can repay the <i>MCD regulated mortgage contract</i> early, either fully or partially.	
11.2	R	(1)	In the section on early repayment charges, the <i>firm</i> must draw the <i>consumer's</i> attention to any early repayment charge or other costs payable on early repayment in order to compensate the <i>MCD mortgage lender</i> and, where possible, indicate their amount.
		(2)	In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the <i>firm</i> must indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the <i>consumer</i> the level of compensation under different possible scenarios.
		(3)	The <i>firm</i> may make the following changes to the wording in this section:
		(a)	replace the word "possibility" with "right" (shown in round brackets) ie, "You have the right to repay this loan early, either fully or partially";
		(b)	replace the words "Exit charge" and "exit charge" with "Early repayment charge" or "early repayment charge" (shown in round brackets).
12	Section '10. Flexible features'		
12.1	R	(1)	Where applicable, the <i>firm</i> must explain the right to, and conditions for, transferring the <i>MCD regulated mortgage contract</i> to another <i>MCD mortgage lender</i> or property.
		(2)	The <i>firm</i> may replace "possibility to" with the "the right to" (shown in round brackets).
12.2	R	Where the product contains any of the features listed in <i>MCOB 5A Annex 2, 12.6R</i> , the <i>firm</i> must list those features as additional features in section 10 and provide a brief explanation of:	
		(1)	the circumstances in which the <i>consumer</i> can use the feature;
		(2)	any conditions attached to the feature;
		(3)	if the feature being part of the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> or comparable security means that the <i>consumer</i> loses any statutory or other protections usually associated with the

			feature; and
		(4)	the <i>firm</i> providing the feature (if not the <i>MCD mortgage lender</i>).
12.3	R	If the feature listed in accordance with <i>MCOB 5A Annex 2, 12.2R</i> contains any additional <i>credit</i> , then the <i>firm</i> must, in section 10, state:	
		(1)	the <i>total amount of credit</i> (including the <i>credit</i> secured by the <i>MCD regulated mortgage contract</i> or comparable security);
		(2)	whether the additional <i>credit</i> is secured or not;
		(3)	the relevant <i>borrowing rates</i> ; and
		(4)	whether the additional <i>credit</i> is regulated or not.
12.4	R	The <i>firm</i> must either include any additional <i>credit</i> amount in the original creditworthiness assessment or, if it is not, the <i>firm</i> must, in section 10, make clear that the availability of the additional amount is dependent on a further assessment of the <i>consumer's</i> ability to repay.	
12.5	R	If the feature listed in accordance with <i>MCOB 5A Annex 2, 12.2R</i> involves a savings vehicle, the <i>firm</i> must explain the relevant interest rate.	
12.6	R	The possible additional features are:	
		(1)	'Overpayments/Underpayments' (paying more or less than the instalment ordinarily required by the amortisation structure);
		(2)	'Payment holidays' (periods where the consumer is not required to make payments);
		(3)	'Borrow back' (ability for the <i>consumer</i> to borrow again funds already drawn down and repaid);
		(4)	'Additional borrowing available without further approval';
		(5)	'Additional secured or unsecured borrowing' (completed in accordance with <i>MCOB 5A Annex 2, 12.3R</i>);
		(6)	'Credit card';
		(7)	'Linked current account'; and
		(8)	'Linked savings account'.
12.7	G	The <i>firm</i> may include any other features offered by the <i>MCD mortgage lender</i> as part of the <i>MCD regulated mortgage contract</i> not mentioned in previous sections.	
13	Section '11. Other rights of the borrower'		

13.1	R	The <i>firm</i> must clearly specify the <i>consumer</i> 's reflection period.	
13.2	R	Where applicable, the <i>firm</i> must clearly state any other rights of the <i>consumer</i> (other than the reflection period), such as portability (including subrogation) that exist and for each right specify:	
		(1)	the conditions to which that right is subject;
		(2)	the procedure that the <i>consumer</i> will need to follow in order to exercise that right, including payment of any fees;
13.3	R	Where the <i>firm</i> offers the <i>MCD regulated mortgage contract</i> at a distance, the <i>firm</i> must inform the <i>consumer</i> of the absence of a right of withdrawal.	
14	Section '12. Complaints'		
14.1	R	(1)	The <i>firm</i> must, in section 12, indicate to whom within the <i>firm</i> , the <i>consumer</i> can make a complaint and provide:
		(a)	the name of the relevant department;
		(b)	contact details, such as a geographical address, telephone number or contact person (including in the case of the contact person, their contact details); and
		(c)	a link to the complaints procedure on the relevant page of the <i>firm</i> 's website or similar information source.
		(2)	The information required by (1) is in respect of the <i>firm</i> providing the <i>ESIS</i> .
14.2	R	The <i>firm</i> must, in section 12, indicate:	
		(1)	the name of the <i>Financial Ombudsman Service</i> ; and
		(2)	that using the <i>firm</i> 's internal complaint procedure is a precondition for access to the <i>Financial Ombudsman Service</i> , using the wording in section 12 of <i>MCOB 5A Annex 1R</i> .
14.3	R	In the case of an <i>MCD regulated mortgage contract</i> with a <i>consumer</i> who is resident in another <i>EEA State</i> , the <i>firm</i> must refer to the existence of FIN-NET (http://ec.europa.eu/internal_market/fin-net/).	
15	Section '13. Non-compliance with the commitments linked to the MCD regulated mortgage contract: consequences for the borrower'		
15.1	R	(1)	The <i>firm</i> must in section 13, describe the different main cases (eg, late payments/ default, failure to respect the obligations set out in Section 8 'Additional obligations') where non-observance of any of the <i>consumer</i> 's obligations linked to the <i>MCD regulated mortgage contract</i> may have financial or legal consequences for the <i>consumer</i>

		and indicate where the <i>consumer</i> can obtain further information.
	(2)	The description required by (1) must be a summary which can be read and understood on its own.
	(3)	For each of the cases described under (1), the <i>firm</i> shall specify, in clear, easy comprehensible terms, the sanctions or consequences to which they may give rise and highlight any serious consequences.
15.2	G	The disclosure required by <i>MCOB 5A Annex 2, 15.1R(1)</i> relates to “main cases”, rather than every case.
15.3	G	The <i>firm</i> may provide the detail relating to the summary provided under <i>MCOB 5A Annex 2, 15.1R(2)</i> separately in the terms and conditions of the <i>MCD regulated mortgage contract</i> .
15.4	R	Where the land used to secure the <i>MCD regulated mortgage contract</i> may be returned or transferred to the <i>MCD mortgage lender</i> , if the <i>consumer</i> does not comply with the obligations, the <i>firm</i> must, in section 13, include a statement indicating that fact, using the wording in section 13 of <i>MCOB 5A Annex 1R</i> .
16	Section ‘14. Additional information’	
16.1	R	If the <i>firm</i> is carrying on distance marketing, it must, in section 14 of <i>MCOB 5A Annex 1R</i> , state the law applicable to the <i>MCD regulated mortgage contract</i> or the competent court.
16.2	R	Where the <i>MCD mortgage lender</i> intends to communicate with the <i>consumer</i> during the life of the <i>MCD regulated mortgage contract</i> in a language different from the language of the <i>ESIS</i> , the <i>firm</i> must include that fact and state the language that will be used.
16.3	R	The <i>firm</i> must state the <i>consumer’s</i> right to be provided with a copy of the draft <i>MCD regulated mortgage contract</i> when the <i>MCD mortgage lender</i> provides the <i>consumer</i> with a binding offer.
17	Section ‘15. Supervisor’	
17.1	R	The <i>firm</i> must state the relevant authority or authorities for the supervision of the pre-contractual stage of the <i>MCD regulated mortgage contract</i> .

Amend the following text as shown.

6 Disclosure at the offer stage

6.1 Application

Who?

- 6.1.1 R ~~This~~ Subject to MCOB 6.1.2AR, this chapter applies to a *firm* in a category listed in column (1) of the table in MCOB 6.1.2R in accordance with column (2) of that table.
- 6.1.2 R ...
- 6.1.2A R This chapter does not apply to a *firm* that is an *MCD mortgage lender*.

...

6.3 General

- 6.3.1 G ~~MCOB 2.2.6R (Clear, fair and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.~~ [deleted]

...

~~Accuracy of the offer document~~

- 6.4.2 G ~~MCOB 5.4.7G acknowledges that the *offer document* and *illustration* provided before an application may not always be the same, even where the *customer's* requirements have not changed. However, the *FCA* expects the *offer document* to be an accurate reflection of the actual costs of the *regulated mortgage contract*.~~ [deleted]

...

Insert the following new chapter, MCOB 6A, after MCOB 6. The text in MCOB 6A is new and is not underlined.

6A MCD disclosure at the offer stage

6A.1 Application and purpose

- 6A.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender*.
- 6A.1.2 R This chapter applies to an offer made by a *firm* to a *consumer* with a view to the *firm*:
- (1) entering into an *MCD mortgage contract*;
 - (2) varying the terms of an *MCD mortgage contract* entered into by the *consumer* in any of the following ways:

- (a) adding or removing a party;
- (b) making a further advance; or
- (c) switching all or part of the *MCD regulated mortgage contract* from one interest rate to another;

(whether or not the *consumer* agrees to enter into the *MCD regulated mortgage contract* or variation).

- (3) In *MCOB 6A*, a reference to varying an *MCD regulated mortgage contract* is to be read as including a reference to an offer to vary an existing *MCD regulated mortgage* in a manner specified in this section.

6A.1.3 G *MCOB 6A* amplifies *Principle 6* and *Principle 7*. The purpose of *MCOB 6A* is to ensure that a *customer* receives a clear *offer document* to enable them to check the features and price of the *MCD regulated mortgage contract* before they enter into it

6A.2 General

6A.2.1 R Any *communication* required by *MCOB 6A* to be given to a *consumer* by a *firm* must be in a *durable medium*.

[Note: article 14(3) of the *MCD*]

6A.3 MCD mortgages: binding offer, content of the offer document and reflection period

- 6A.3.1 R
- (1) If a *firm* offers to enter into an *MCD regulated mortgage contract* with a *consumer*, it must provide the *consumer* with a binding offer set out in an *offer document*.
 - (2) The *firm* may also provide an *ESIS*.
 - (3) The *firm's* offer in the *offer document* must be on the basis of the information in the *ESIS* relevant to that offer.
 - (4) When an *MCD mortgage lender* provides the *consumer* with a binding offer, that offer must be accompanied by an *ESIS* where the characteristics of the offer are different from the information contained in the *ESIS* previously provided.

[Note: article 14(3)(b) and (4) of the *MCD*]

6A.3.2 R (1) If a *firm* offers to vary an *MCD regulated mortgage contract* with a

consumer, it must provide the *consumer* with an *offer document*.

- (2) The *firm* may also provide an *ESIS*.
- (3) The *firm's* offer in the *offer document* must be on the basis of the information in the *ESIS* relevant to that offer.
- (4) When an *MCD mortgage lender* offers to vary an *MCD regulated mortgage contract* with a *consumer*, the *offer document* must be accompanied by an *ESIS* where:
 - (a) the characteristics of the offer are different from the information contained in any *illustration* or *ESIS* previously provided in relation to the offer.
 - (b) no *illustration* or *ESIS* has been previously provided in relation to the offer.

- 6A.3.3 G (1) *MCOB* 6A.3.1R does not prevent a binding offer from being subject to lawful conditions, including conditions which make the binding offer subject to one or more of the matters listed below:
- (a) there being no material change to the facts and circumstances relating to the binding offer which occurs after the date on which the binding offer is made;
 - (b) the fact that the consumer has not knowingly provided incomplete or inaccurate information for the purpose of the assessment of affordability, and has not knowingly falsified or withheld the information provided for the purpose of that assessment.
- (2) The material changes referred to in (1)(a) include a material change:
- (a) affecting the condition, value or title to the property;
 - (b) in the borrower's circumstances (such as loss of employment or further secured borrowing taken out after the borrower's application for an *MCD regulated mortgage contract*) which is likely to have a material impact upon the borrower's ability to afford the loan.
- (3) However, the lender cannot use conditions in binding offers as a means of avoiding the requirement to undertake a proper affordability assessment under *MCOB* 11 before the binding offer is made.

Reflection period

- 6A.3.4 R (1) Where an *MCD mortgage lender* provides the *consumer* with a binding offer, it must give the *consumer* a reflection period of at least

seven *days*.

- (2) The *MCD mortgage lender* must ensure that, during the reflection period:
- (a) the offer remains binding on the *MCD mortgage lender*;
 - (b) the *consumer* may accept the offer at any time.

[**Note:** article 14(6) of the *MCD*]

- 6A.3.5 G The purpose of the reflection period is to provide the *consumer* with sufficient time to compare offers, assess their implications and make an informed decision.
- 6A.3.6 R A *firm* must provide the *consumer* with a copy of the draft agreement for the *MCD regulated mortgage contract* at the beginning of the reflection period.

[**Note:** article 14(11) of the *MCD*]

Self-build mortgages and other tranching forms of lending

- 6A.3.7 G Where it is known that a loan will be released in instalments, for example in the case of a self-build mortgage, the loan can involve a binding offer, *ESIS* and the reflection period either for:
- (1) the full amount; or
 - (2) an initial amount, which would be replaced by a binding offer, an *ESIS* and reflection period for a larger amount and so on.

Records

- 6A.3.8 R (1) A *firm* must make an adequate record of each *offer document* which it issues to a *consumer* under *MCOB 6A*.
- (2) The record required by (1) must be retained for one year from the date that the *offer document* is issued to the *consumer*.
- (3) If, in accordance with *MCOB 6A.4* (Information to be provided in the offer document or separately), information is included in a separate document that is sent with the *offer document*, that information must also be retained as part of the record required by (1).

Information contained in the offer

- 6A.3.9 R A *firm* must ensure that the *offer document* contains a prominent statement explaining:
- (1) the period for which the offer is valid;

- (2) where the *MCD regulated mortgage contract* contains features, such as additional unsecured borrowing facilities, which could result in the *consumer* borrowing more money than, where such features are used, the amount of the *consumer's* debt will increase;
 - (3) when any interest rate change on the *MCD regulated mortgage contract* takes effect. This statement must be used, for example, to explain cases where an annual review system is used;
 - (4) the consequences that might arise from the *consumer* not entering into the *MCD regulated mortgage contract*, including any fees that the *consumer* has paid which will not be reimbursed;
 - (5) that once the *MCD regulated mortgage contract* is concluded, there will be no right of withdrawal; and
 - (6) that, although no right of withdrawal exists, the *consumer* will have a right to repay the *MCD regulated mortgage contract* in accordance with the terms of the *MCD regulated mortgage contract*.
- 6A.3.10 G When setting the period for which the offer is valid (referred to in *MCOB* 6A.3.9R(1)), a *firm* should bear in mind the requirement under *MCOB* 6A.3.4R for a reflection period.
- 6A.3.11 R The *offer document* must state the *repayment strategy* the *consumer* intends to use.
- 6A.3.12 G The *offer document* may contain information about any retentions or re-inspections that will be required by the *firm*
- 6A.3.14 R A *firm* must ensure that the *offer document* includes information on how to complain to the *firm* about the services provided by the *firm* in relation to the *MCD regulated mortgage contract* and whether or not complaints may subsequently be referred to the *Financial Ombudsman Service*.
- 6A.3.15 G *DISP* 1 requires a *firm* to deal promptly and fairly with *complaints*, including referring to another *firm's* *complaints* about that other *firm's* services.
- 6A.3.16 G In addition to the information required by *MCOB* 6A.3.9R, a *firm* may include information about how to complain to any other *firm* about the services that *firm* provided to the *consumer* in relation to the *MCD regulated mortgage contract*. For example, where the *consumer* received advice from another *firm*, an *MCD mortgage lender* may include contact details for the *firm* that provided the advice.
- 6A.3.17 R If the *firm* knows, at the point that the offer is made to the *consumer*, that its interest in the *MCD regulated mortgage contract* will be assigned (by sale or transfer) and the *firm* will no longer be responsible for setting interest rates and charges, the *offer document* must:
- (1) state this; and

- (2) state, where known, who will be responsible for setting interest rates and charges after the sale or transfer.

- 6A.3.18 R Where *MCOB* 6A.3.17R applies, if the name of the party who will be responsible for setting interest rates and charges after the sale or transfer is not known at the point the offer is made, the *firm* must notify the *consumer* of this as soon as it becomes known.
- 6A.3.19 G *MCOB* 6A.3.17R and *MCOB* 6A.3.18R could apply where the ownership of an *MCD regulated mortgage contract* is transferred to a third party through *securitisation*.

6A.4 MCD mortgages: information to be provided in the offer document or separately

Tariff of charges

- 6A.4.1 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract*, it must provide the *consumer*, along with the *offer document*, with a *tariff of charges* that could be incurred on the *regulated mortgage contract*.
- 6A.4.2 R If the *MCD regulated mortgage contract* has any *linked borrowing* or *linked deposits*, details of the charges on these linked facilities (for example, charges payable on a linked current account) must be included in the *firm's tariff of charges*.
- 6A.4.3 G A *firm* may include the *tariff of charges* as an integral part of the *offer document*, or provide it separately along with the *offer document*.

Mortgage credit cards

- 6A.4.4 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract* that includes a *mortgage credit card*, it must provide the *customer* with information explaining that the card will not give the *customer* the statutory rights associated with traditional credit cards.
- 6A.4.5 G A *firm* may include the information described in *MCOB* 6A.4.4R as an integral part of the *offer document*, or provide it separately along with the *offer document*.

6A.5 MCD distance contracts with retail customers

- 6A.5.1 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) the *EEA State* or states whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the *MCD regulated mortgage contract*;
- (2) any contractual clause on law applicable to the *MCD regulated mortgage contract* or a competent court, or both;
- (3) the language in which the contract is supplied and in which the *firm* will communicate during the course of the *MCD regulated mortgage contract*; and
- (4) if not provided previously:
 - (a) all of the contractual terms and conditions of the *MCD regulated mortgage contract* to which the *offer document* relates; and
 - (b)
 - (i) an appropriate status disclosure statement (compliant with *GEN 4*) for the *MCD mortgage lender*;
 - (ii) the *MCD mortgage lender's* firm reference number; and
 - (iii) confirmation that the *customer* can check the *Financial Services Register* on the *FCA's* website www.fca.org.uk/firms/systems-reporting/register or by contacting the *FCA* on 0800 111 6768.

Amend the following text as shown.

7 Disclosure at start of contract and after sale

7.1 Application

Who?

- 7.1.1 R ~~This~~ Subject to *MCOB 7.1.2AR*, this chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 7.1.2R* in accordance with column (2) of that table.
- 7.1.2 R ...
- 7.1.2A R *MCOB 7.6.7R* to *MCOB 7.6.17R* do not apply to a *firm* that is an *MCD mortgage lender* or *MCD mortgage credit intermediary*.
- 7.1.2B G *MCOB 7B* applies to a *firm* that is an *MCD mortgage lender* or *MCD mortgage credit intermediary*, instead of *MCOB 7.6.7R* to *MCOB 7.6.17R*.

...

7.3 General

- 7.3.1 G ~~MCOB 2.2.6~~ 3A.2.1R (Clear, fair Fair, clear and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.

...

7.6 Mortgages: event-driven information

...

Rate switches

- 7.6.18 R Before a *customer* submits an application to a *firm* to change all or part of a *regulated mortgage contract* from one interest rate to another (for example, a transfer from a variable rate *regulated mortgage contract* to a fixed rate *regulated mortgage contract*, or from one fixed rate *regulated mortgage contract* to another fixed rate *regulated mortgage contract*), the *firm* must provide the *customer* with either:
- (1) an *illustration* for the whole loan that complies with the requirements of *MCOB 5* (Pre-application disclosure); or
 - (2) an *ESIS* for the whole loan that complies with the requirements of *MCOB 5A* (MCD Pre-application disclosure),
- unless such an *illustration* or *ESIS* has already been provided.
- 7.6.19 G If a number of different *firms* are involved in relation to the transaction referred to in *MCOB 7.6.18R*, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* or *ESIS* required by *MCOB 7.6.18R*.
- 7.6.20 R (1) The *illustration* provided in accordance with *MCOB 7.6.18R(1)* may diverge from the requirements of *MCOB 5* where it is necessary to do so ~~in order~~ to reflect the fact that the *illustration* is being provided for a rate switch.
- (2) The *ESIS* provided under *MCOB 7.6.18R(2)* may diverge from the requirements of *MCOB 5A* where it is necessary to do so to reflect that the *ESIS* is being provided for a rate switch.
- 7.6.21 G ~~*MCOB 7.6.20R(1)* and (2)~~ allows allow a *firm* to make changes to wording and to add, remove or alter information that would otherwise be

misleading to the *customer*. For example, a *firm* could replace the statement in Section 3 of the *illustration*, explaining that if information provided by the *customer* changes, the *illustration* may be affected, with a statement explaining that the *illustration* is based on information gathered in the past, which may no longer be accurate.

Addition or removal of a party to the contract

- 7.6.22 R Before a *customer* submits an application to add or remove a party to a *regulated mortgage contract*, a *firm* must provide any *customer* who will remain or become a party to the contract with either:
- (1) an *illustration* for the whole loan that complies with the requirements of *MCOB* 5 (Pre-application disclosure); or
 - (2) an *ESIS* for the whole loan which complies with the requirements of *MCOB* 5A (MCD Pre-application disclosure).
- ...
- 7.6.24 G If a number of different *firms* are involved in ~~relation to~~ the transaction referred to in *MCOB* 7.6.22R, having regard to *MCOB* 2.5.4R(2), those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* or *ESIS* required by *MCOB* 7.6.22R.
- 7.6.25 R (1) The *illustration* provided in accordance with *MCOB* 7.6.22R(1) may diverge from the requirements of *MCOB* 5 (Pre-application disclosure) where it is necessary to do so ~~in order~~ to reflect the fact that the *illustration* is being provided in respect of the addition or removal of a party to the contract.
- (2) The *ESIS* provided under *MCOB* 7.6.22R(2) may diverge from the requirements of *MCOB* 5A (MCD Pre-application disclosure) where it is necessary to do so to reflect that the *ESIS* is being provided for the addition or removal of a party to the contract.
- 7.6.26 G *MCOB* 7.6.25R(1) and (2) ~~allows~~ allow the *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading to the *customer*. For example, a *firm* may choose not to include a property valuation in the 'What you have told us' section of the *illustration* if the property value does not have a bearing on the terms of the *regulated mortgage contract*.

...

Use of illustrations or *ESIS*s in place of information under *MCOB* 7.6.28R

- 7.6.31 R Where *MCOB* 7.6.28R applies, a *firm* may issue either:
- (1) an *illustration* in accordance with *MCOB* 5 (Pre-application

disclosure); or

- (2) an ESIS in accordance with MCOB 5A (MCD Pre-application disclosure).

in place of the information set out in MCOB 7.6.28R.

- 7.6.31A R (1) The illustration provided under MCOB 7.6.31R(1) may diverge from the requirements of MCOB 5 (Pre-application disclosure) where it is necessary to do so to reflect the circumstances in which it is being provided.
- (2) The ESIS provided under MCOB 7.6.31R(2) may diverge from the requirements of MCOB 5A (MCD Pre-application disclosure) where it is necessary to do so to reflect the circumstances in which it is being provided.
- 7.6.31B G MCOB 7.6.31AR(1) and (2) allow the firm to make changes to wording and to add, remove or alter information that would otherwise be misleading to the customer.
- 7.6.32 R Where MCOB 7.6.28R applies and the customer simultaneously requests a rate switch or the addition or removal of a party to the contract, a firm will not be required to provide the information in accordance with MCOB 7.6.28R where it is provided as part of:
- (1) an illustration issued in accordance with MCOB 7.6.18R(1) or MCOB 7.6.22R(1); or
- (2) an ESIS issued under MCOB 7.6.18R(2) or MCOB 7.6.22R(2).

Simultaneous request for a rate switch and addition or removal of a party to a contract

- 7.6.33 G (1) Where a customer simultaneously requests a rate switch and the addition or removal of a party to the loan, a firm will not be required to provide the customer with a separate illustration for each in accordance with MCOB 7.6.18 R(1) and MCOB 7.6.22R(1). The firm may provide the customer with a single illustration that complies with the requirements of MCOB 5 (Pre-application disclosure) for both.
- (2) Where a customer simultaneously requests a rate switch and the addition or removal of a party to the loan, a firm will not be required to provide the customer with a separate ESIS for each under MCOB 7.6.18R(2) and MCOB 7.6.22R(2). The firm may provide the customer with a single ESIS that complies with the requirements of MCOB 5A (MCD Pre-application disclosure) for both.

European Standardised Information Sheet (ESIS): additional APRC

- 7.6.34 R Where a *firm* is required to provide a *customer* with an *ESIS* under *MCOB 7.6.18R(2)* or *MCOB 7.6.22R(2)*, or a *firm* chooses to provide a *customer* with an *ESIS* under *MCOB 7.6.31R(2)*, the *firm* need not include the additional *APRC* required under *MCOB 10A.1.6R*, Section 4 of *MCOB 5A Annex 1R* and *MCOB 5A Annex 2, 6.2R to 6.8R*.
- 7.6.35 R Where a *firm* provides a *customer* with an *ESIS* under *MCOB 7.6.18R(2)*, *MCOB 7.6.22R(2)* or *MCOB 7.6.31R(2)*, that includes an additional *APRC*, the *firm* must either:
- (1) base that additional *APRC* on the *APRC* previously provided to the *customer* under *MCOB 5A (MCD Pre-application disclosure)*; or
- (2) calculate that additional *APRC* in accordance with *MCOB 10A.1.6R*, Section 4 of *MCOB 5A Annex 1R* and *MCOB 5A Annex 2, 6.2R to 6.12R*.
- 7.6.36 G When considering whether to apply *MCOB 7.6.35R(1)* or *MCOB 7.6.35R(2)*, a *firm* should consider its obligations under *MCOB 3A.2.1R(2)* to communicate in a way that is fair, clear and not misleading.

7.7 Business loans and loans to high net worth mortgage customers: tailored provisions

Further advances

- 7.7.1 R (1) Where, in relation to a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer who is not a consumer* under an *MCD regulated mortgage contract*, a *customer* either:

...

...

- 7.7.3 R Where a *customer* applies for a further advance that is a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer who is not a consumer* under an *MCD regulated mortgage contract* and *MCOB 7.7.1R* does not apply:

...

Insert the following new chapters, MCOB 7A and MCOB 7B, after MCOB 7. The text is new and is not underlined.

7A Additional MCD disclosure: start of contract and after sale**7A.1 Application and general**

7A.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender* or an *MCD mortgage administrator*.

7A.1.2 R A *firm* must provide the information required by this chapter in a *durable medium*.

7A.2 Notification of interest-rate changes

7A.2.1 R When giving notice to a *consumer* of any changes that the *consumer* is required to make resulting from interest-rate changes for an *MCD regulated mortgage contract*, a *firm* must:

- (1) give notice of the amount of the payments to be made after the new interest-rate change takes effect; and
- (2) where the number or frequency of the payments will change, give particulars of these changes.

[**Note:** article 27(1) of the *MCD*]

7A.3 Early repayment disclosure

7A.3.1 R (1) If a *consumer* notifies a *firm* that they wish to discharge their obligations under an *MCD regulated mortgage contract* prior to its expiry, the *firm* must provide the *consumer*, without delay, with the information necessary to allow them to consider that option.

- (2) The information under (1) must:
 - (a) quantify the implications for the *consumer* of discharging their obligations prior to the expiry of the *MCD regulated mortgage contract*; and
 - (b) clearly set out any assumptions that have been used.

(3) The assumptions under (2)(b) must be reasonable and justifiable.

[**Note:** article 25(4) of the *MCD*]

7A.4 Foreign currency loans and significant exchange-rate movement disclosure

7A.4.1 R (1) A *firm* must warn any *consumer* with a *foreign currency loan*, on a

regular basis, where the value of either:

- (a) the *total amount payable* by the *consumer* which remains outstanding; or
- (b) the regular instalments;

varies by more than 20% from what it would be if the exchange rate between the currency of the *MCD regulated mortgage contract* and the currency of the *EEA State*, applicable at the time of the conclusion of the *MCD regulated mortgage contract*, were applied.

- (2) The warning in (1) must inform the *consumer* of a rise in the *total amount payable* by the *consumer*, setting out the right to convert to an alternative currency, where applicable, and the conditions for doing so. It must also explain any other applicable mechanisms for limiting the exchange-rate risk to which the *consumer* is exposed.

[**Note:** article 23(4) of the *MCD*]

- 7A.4.2 R A *firm* must disclose to the *consumer* its arrangements for complying with the obligations in *MCOB 7A.4.1R* in the *MCD regulated mortgage contract*.

[**Note:** article 23(6) of the *MCD*]

7A.5 Notification of changes resulting from auctions on the capital market

- 7A.5.1 R In relation to an *MCD regulated mortgage contract*, where there is an auction on the capital markets which will, or might reasonably be expected to, result in an interest-rate change, the *firm* must give the *consumer*, in good time before the auction, notice in a *durable medium* of:

- (1) the upcoming procedure for the auction; and
- (2) an indication of how the interest rates could be affected.

[**Note:** article 27(4) of the *MCD*]

7B MCD: further advances

7B.1 Information to be provided for further advances

- 7B.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender* or an *MCD mortgage credit intermediary*.
- 7B.1.2 R Before a *consumer* submits an application to a *firm* for a further advance on an existing or new *MCD regulated mortgage contract* or for a further

advance that is a new *MCD regulated mortgage contract*, if the further advance requires the approval of the *MCD mortgage lender*, the *firm* must provide the *consumer* with an *ESIS* that complies with *MCOB 5A* (MCD pre-application disclosure) and *MCOB 7B.1.4R* for the further advance, unless an *ESIS* has already been provided.

- 7B.1.3 G If a number of different *firms* are involved in relation to the transaction in *MCOB 7B.1.2R*, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish which one of them is responsible for providing the *consumer* with the *ESIS* required by *MCOB 7B.1.2R*.
- 7B.1.4 R The *ESIS* provided under *MCOB 7B.1.2R* must be based on the amount of the further advance only.
- 7B.1.5 G To comply with *MCOB 7B.1.4R*, a *firm* should calculate the *APRC* on the basis of the further advance amount only.

Amend the following text as shown.

8.1 Equity release: advising and selling standard

...

- 8.1.6 G *Firms* are reminded that *MCD lifetime mortgages* are also subject to the advising and selling standards in *MCOB 4.4A* and *MCOB 4A* that apply to *MCD regulated mortgage contracts*.

9 Equity release: product disclosure

9.1 Application

...

MCD application

- 9.1.7 G (1) This chapter does not apply to an *MCD lifetime mortgage*, except as set out in (2) to (3), below.
- (2) *MCOB 9.4.33R*, *MCOB 9.4.35R*, *MCOB 9.4.62R* and *MCOB 9.4.63R* apply to the extent specified by *MCOB 5A.6.2R*.
- (3) *MCOB 9.6* to *MCOB 9.8* apply, except for *rules* that modify or replace *MCOB 7.6.7R* to *MCOB 7.6.17R* (because those *rules* do not apply to an *MCD mortgage lender* or an *MCD mortgage credit intermediary*, *MCOB 7B* applies instead: see *MCOB 7.1.2AR* and *MCOB 7.1.2BG*).

9.4 Content of illustrations

...

9.4.34 G ~~For guidance on prominence see *MCOB 2.2.9G*. [deleted]~~

...

9.4.61 G ~~For guidance on prominence see *MCOB 2.2.9G*. [deleted]~~

...

9.4.129 R The text at *MCOB 9.4.33R(8)* must be immediately followed by the following additional text, prominently displayed (~~for guidance on prominence see *MCOB 2.2.9G*~~): "Changes in the exchange rate may increase the sterling equivalent of your debt."

...

9.4.132 R The requirements at *MCOB 9.4.130R(1)* must be immediately followed by the following additional text, prominently displayed (~~see *MCOB 2.2.9G*~~): "You will need to pay this share in the value of your home to [name of mortgage lender] [insert time at which share must be paid - for example 'when your lifetime mortgage is repaid']. Think carefully about how this will affect the amount left over for you or your estate."

...

9.4.146 G ~~For guidance on prominence see *MCOB 2.2.9G*. [deleted]~~

...

Insert the following new chapter, *MCOB 10A*, after *MCOB 10*. The text is new and is not underlined.

10A MCD Annual Percentage Rate of Charge

10A.1 Calculation of the APRC

10A.1.1 R The *APRC* must be calculated for an *MCD regulated mortgage contract* in accordance with the mathematical formula in *MCOB 10A.2.2R*.

[**Note:** article 17(1) of the *MCD*]

- 10A.1.2 R Whenever the opening or maintaining of an account is obligatory to obtain the *credit*, or to obtain it on the terms and conditions marketed, the *total cost of credit to the consumer* must include the following costs:
- (1) opening and maintaining a specific account;
 - (2) using a means of payment for both transactions and drawdowns on that account;
 - (3) other costs relating to payment transactions;
- [**Note:** article 17(2) of the *MCD*]
- 10A.1.3 R The calculation of the *APRC* must be based on the assumption that the *MCD regulated mortgage contract* is to remain valid for the period agreed and that the *MCD mortgage lender* and the *consumer* will fulfil their obligations under the terms and by the dates specified in the *MCD regulated mortgage contract*.
- [**Note:** article 17(3) of the *MCD*]
- 10A.1.4 R If an *MCD regulated mortgage contract* allows variations in the:
- (1) *borrowing rate*; or
 - (2) charges contained in the *APRC*;
- and they are unquantifiable at the time the *APRC* is calculated, the *APRC* must be calculated on the assumption that the *borrowing rate* and other charges will remain fixed in relation to the level set when the contract is entered into.
- [**Note:** article 17(4) of the *MCD*]
- 10A.1.5 R If an *MCD regulated mortgage contract* contains a fixed *borrowing rate* in relation to the initial period of at least five years, at the end of which a negotiation on the *borrowing rate* must take place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative *APRC* disclosed in the *ESIS* must:
- (1) cover only the initial fixed-rate period; and
 - (2) be based on the assumption that, at the end of the fixed *borrowing rate* period, the capital outstanding is repaid.
- [**Note:** article 17(5) of the *MCD*]
- 10A.1.6 R If an *MCD regulated mortgage contract*:
- (1) allows for variations in the *borrowing rate*; and
 - (2) it does not fall within *MCOB* 10A.1.5R,

the *ESIS* must contain an additional *APRC* which illustrates the possible risks linked to a significant increase in the *borrowing rate*. Where the *borrowing rate* is not capped, this information must be accompanied by a warning highlighting that the *total cost of the credit to the consumer*, shown by the *APRC*, may change.

[**Note:** article 17(6) of the *MCD*]

- 10A.1.7 R The assumptions in *MCOB* 10A.2 and, where applicable, in *MCOB* 10A.3 must be used and applied in calculating the *APRC*.

[**Note:** article 17(7) of the *MCD*]

10A.2 **APRC: mathematical formula and assumptions**

- 10A.2.1 G The mathematical formula for calculating the *APRC* in *MCOB* 10A.2.2R is a basic equation for establishing the *APRC*. This equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other.

[**Note:** Annex I, Part I of the *MCD*]

- 10A.2.2 R The equation referred to in *MCOB* 10A.2.1R is:

$$\sum_{k=1}^m C_k (1+X)^{-t_k} = \sum_{l=1}^{m'} D_l (1+X)^{-s_l}$$

where:

- X is the *APRC*
- m is the number of the last drawdown
- k is the number of a drawdown, thus $1 \leq k \leq m$
- C_k is the amount of drawdown k
- t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$
- m' is the number of the last repayment or payment of charges
- l is the number of a repayment or payment of charges
- D_l is the amount of a repayment or payment of charges
- s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or

payment of charges.

[**Note:** Annex I, Part I of the *MCD*]

- 10A.2.3 R The following matters must be applied when calculating the *APRC*.
- (1) The amounts paid by both parties at different times must not necessarily be equal and must not necessarily be paid at equal intervals.
 - (2) The starting date must be that of the first drawdown.
 - (3)
 - (a) Intervals between dates used in the calculations must be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (ie, 365/12), regardless of whether or not it is a leap year.
 - (b) Where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals must be expressed as a whole number of one of those periods in combination with a number of days. Where using days:
 - (i) every day must be counted, including weekends and holidays;
 - (ii) equal periods and then days must be counted backwards to the date of the initial drawdown;
 - (iii) the length of the period of days must be obtained excluding the first day and including the last day and must be expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year.
 - (4) The result of the calculation must be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at the preceding decimal place must be increased by one.
 - (5) The equation can be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to n, expressed in years, using the following formula:

$$s = \sum_{k=1}^n A_k (1 + X)^{-t_k}$$

where s is the present balance of flows. If the aim is to maintain the equivalence of flows, the value of s will be zero.

[**Note:** Annex I, Part I of the *MCD*]

10A.3 **APRC: additional assumptions**

- 10A.3.1 R (1) If an *MCD regulated mortgage contract* gives the consumer **freedom of drawdown**, the *total amount of credit* must be deemed to be drawn down immediately and in full.
- (2) **If an *MCD regulated mortgage contract* provides different ways of drawdown with different charges or borrowing rates**, the *total amount of credit* must be deemed to be drawn down at the highest charge and *borrowing rate* applied to the most common drawdown mechanism for that type of *MCD regulated mortgage contract*.
- (3) **If an *MCD regulated mortgage contract* gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time**, the amount of *credit* must be deemed to be drawn down on the earliest date provided for in the *MCD regulated mortgage contract* and in accordance with those drawdown limits.
- (4) **If different borrowing rates and charges are offered for a limited period or amount**, the highest *borrowing rate* and charges must be deemed to be the *borrowing rate* and charges for the whole duration of the *MCD regulated mortgage contract*.
- (5) **For an *MCD regulated mortgage contract* for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate** the calculation of the *APRC* must be based on the assumption that, at the end of the fixed *borrowing rate* period, the *borrowing rate* is the same as at the time of calculation of the *APRC*, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed *borrowing rate*.
- (6) **If the ceiling applicable to the credit has not yet been agreed**, that ceiling must be assumed to be EUR 170,000. In the case of an *MCD regulated mortgage contract* (other than an *MCD contingent liability or guarantee*) the purpose of which is not to acquire or retain a right in immovable property or land, an *overdraft facility*, a deferred debit card or a credit card, this ceiling must be assumed to be EUR 1,500.

(7) **In the case of an *MCD regulated mortgage contract* that does not fall within *MCOB 10A.3.1 R(9), (10), (11) or (12)*:**

- (a) if the date or amount of a repayment of capital to be made by the *customer* cannot be ascertained, it must be assumed that the repayment is made at the earliest date provided for in the credit agreement, and is for the lowest amount for which the *MCD regulated mortgage contract* provides;
- (b) if the interval between the date of initial drawdown and the date of the first payment to be made by the *customer* cannot be ascertained, it must be assumed to be the shortest interval.

(8) **Where the date or amount of a payment to be made by the *consumer* cannot be ascertained** on the basis of the *MCD regulated mortgage contract* or the assumptions set out at *MCOB 10A.3.1R(7), (9), (10), (11) or (12)*, it must be assumed that the payment is made in accordance with the dates and conditions required by the *MCD mortgage lender* and, when these are unknown:

- (a) interest charges are paid together with the repayments of the capital;
- (b) non-interest charges expressed as a single sum are paid at the date of entering into the *MCD regulated mortgage contract*;
- (c) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital and, if the amount of such payment is not known, they must be assumed to be equal amounts;
- (d) the final payment clears the balance of capital, interest and other charges, if any.

[**Note:** Annex I, Part II, paragraph (h) of the *MCD*]

(9) **In the case of an *MCD regulated mortgage contract* that is an *overdraft facility***, the *total amount of credit* must be deemed to be drawn down in full and for the whole duration of the *MCD regulated mortgage contract*. If the duration of the *overdraft facility* is not known, the *APRC* must be calculated on the assumption that the duration of the *credit* is three months.

(10) **In the case of an open-ended *MCD regulated mortgage contract*, other than an *overdraft facility* and an *MCD exempt bridging loan***: it must be assumed that:

- (a) the *credit* is provided for a period of time starting from the date of the initial drawdown, and the final payment made by the *consumer* clears the balance of capital, interest and other

charges, if any, where that period of time is:

- (i) 20 years for an *MCD regulated mortgage contract*, the purpose of which is to acquire or retain rights in immovable property;
 - (ii) 1 year for an *MCD regulated mortgage contract* the purpose of which is not to acquire or retain rights in immovable property or which is drawn down by a deferred debit card or a credit card.
- (b) the capital is repaid by the *consumer* in equal monthly payments, commencing one month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the *consumer* must be assumed to occur over the period of one year. Interest and other charges must be applied in accordance with those drawdowns and repayments of capital and as provided for in the *MCD regulated mortgage contract*.

For the purposes of this *rule*, an open-ended *MCD regulated mortgage contract* is an *MCD regulated mortgage contract* without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

- (11) **In the case of an *MCD contingent liability or guarantee***, the *total amount of credit* must be deemed to be drawn down in full as a single amount at the earlier of:
- (a) the latest drawdown date permitted under the *MCD regulated mortgage contract* being the potential source of the *MCD contingent liability or guarantee*; or
 - (b) for a rolling *MCD regulated mortgage contract*, at the end of the initial period prior to the rollover of the agreement.
- (12) **In the case of a *shared equity credit agreement***:
- (a) the payments by a *consumer* must be deemed to occur at the latest date or dates permitted under the *shared equity credit agreement*;
 - (b) percentage increases in value of the immovable property which secures the *shared equity credit agreement*, and the rate of any inflation index referred to in the agreement, must be assumed to be:
 - (i) a percentage equal to the higher of:

- (aa) the current central bank target inflation rate; or
- (bb) the level of inflation in the *EEA State* where the immovable property is located at the time that the *MCD regulated mortgage contract* is entered into; or

(ii) 0% if those percentages are negative.

[**Note:** Annex I, Part II of the *MCD*]

10A.3.2 G Articles 17(1) to (5), (7) and (8) and Annex I of the *MCD*, which *MCOB* 10A transpose, are subject to maximum harmonisation.

[**Note:** article 2(2) of the *MCD*]

Amend the following text as shown.

11.6 Responsible lending and financing

...

11.6.2 R (1) ...

(a) ...

[**Note:** article 18(1) of the *MCD*]

(b) ...

[**Note:** article 18(5)(a) of the *MCD*]

...

11.6.3 R ...

(2) ...

(a) ...

[**Note:** article 18(6) of the *MCD*]

...

...

- 11.6.5 R (1) ...
[Note: article 18(3) of the MCD]
- (2) ...
[Note: article 20(1) of the MCD]
- ...
- (4) ...
[Note: article 18(1) of the MCD]
- ...
- 11.6.11 G (1) Examples of committed expenditure are: credit commitments such as secured and unsecured loans and credit cards; ...
- ...
- ...
- 11.6.18A R (1) Under MCOB 11.6.5R(4), in taking account of likely future interest rate increases for the purposes of its assessment of whether the customer will be able to pay the sums due, a second charge lender must also consider the likely future interest rates of any regulated mortgage contract in existence at the time of the assessment and remaining in existence after the relevant second charge regulated mortgage contract has been entered into.
- (2) The second charge lender must, at a minimum, base its assessment under (1) on the balance outstanding of any regulated mortgage contract relevant under (1).
- ...
- 11.6.20 R ...
[Note: article 18(2) of the MCD]
- ...
- 11.6.21A R An MCD mortgage lender must keep a record of the valuation and types of immovable property accepted as a security, as well as the related mortgage underwriting policies used.
[Note: article 19(2) and second sentence of article 26(1) of the MCD]
- 11.6.21B G When considering the period for which the records kept under MCOB 11.6.21AR are to be retained, MCD mortgage lenders are reminded of the high-level record-keeping provisions in SYSC.

...

11.6.34 R ...

(1) ...

[Note: article 18(3) of the MCD]

(2) ...

[Note: article 20(1) of the MCD]

...

11.6.40A G A shared equity credit agreement may be an interest-only mortgage.

...

11.6.45 G ...

(2) the periodic repayment of capital from irregular sources of income (such as bonuses or some other sources of income from self-employment); ~~and~~(3) the sale of assets such as another property or other land owned by the *customer*; and(4) for a shared equity credit agreement, the sale of the property which is the subject of the agreement.

...

11.6.58 R A mortgage lender may not enter into an *interest roll-up mortgage*, or vary an existing *regulated mortgage contract* so that it becomes an *interest roll-up mortgage*, unless it is:

...

(4) a loan solely for business purposes; or(5) a shared equity credit agreement.

...

11.6.59A G A shared equity credit agreement may be an interest roll-up mortgage.

Record-keeping

11.6.60 R ...

[Note: article 18(2) of the MCD]

...

11.7 Transitional arrangements

11.7.1 R When considering *entering into a first charge regulated mortgage contract* or varying a *first charge regulated mortgage contract*...

(1) the *customer has*:

- (a) an existing *first charge regulated mortgage contract* (whether or not entered into on or after 31 October 2004) *with the firm, or home purchase plan* (whether or not entered into on or after 6 April 2007) which was in existence prior to 26 April 2014; or
- (b) an existing *first charge regulated mortgage contract with the firm, or home purchase plan* which was entered into in reliance on, and in compliance with, *MCOB 11.7*;

...

11.7.2 R ...

(5) the proposed transaction is:

- (a) the variation of an existing non-MCD *first charge regulated mortgage contract*,
- (b) the entry into a non-MCD *first charge regulated mortgage contract*, or
- (c) a *home purchase plan* or variation of a *home purchase plan*.

11.7.3 R (1) When considering *entering into a first charge regulated mortgage contract which is an interest-only mortgage* or varying a *first charge regulated mortgage contract which is an interest-only mortgage*...

...

11.7.6 R Where a *firm* has elected to apply any of *MCOB TPs 22, 24, 26, 28, 30, 32, 34, 36, 38* or *40* in *MCOB TP1.1*, any *first charge regulated mortgage contract* they propose to enter into between *21 September 2015* and *21 March 2016* is not to be regarded as an *MCD regulated mortgage contract* for the purposes of this chapter.

Insert the following new chapter, MCOB 11A, after MCOB 11. The text is not underlined.

11A Additional MCD responsible lending requirements**11A.1 MCD mortgage credit intermediary: submission of information to MCD mortgage lender**

- 11A.1.1 R An *MCD mortgage credit intermediary* must accurately submit any relevant information obtained from the *consumer* to the *MCD mortgage lender* to enable an assessment of affordability to be carried out.

[**Note:** article 20(2) of the *MCD*]

11A.2 Prohibition on cancellation or variation of MCD regulated mortgage contract on grounds of creditworthiness

- 11A.2.1 R An *MCD mortgage lender* must not cancel, or vary the terms of, an *MCD regulated mortgage contract* to the detriment of the *consumer* on the grounds that the assessment of affordability was incorrectly conducted or the information provided by the *consumer* prior to the agreement of the *MCD regulated mortgage contract* was incomplete. However, this does not apply where the *MCD mortgage lender* can demonstrate that the *consumer* knowingly withheld or falsified information relevant to the assessment of affordability of the *MCD regulated mortgage contract*.

[**Note:** articles 18(4) and 20(3) of the *MCD*]

11A.3 Obtaining information for, and assessment of, affordability from the consumer and rejecting an application

- 11A.3.1 R (1) An *MCD mortgage lender* must specify in a fair, clear and not misleading way, in good time before assessing affordability of a *MCD regulated mortgage contract*, to a *consumer*:
- (a) all the necessary information and independently verifiable evidence that the *consumer* needs to provide; and
 - (b) the timeframe within which the *consumer* needs to provide the information or evidence.
- (2) A request for information or evidence under (1) must be proportionate and limited to what is necessary to conduct a proper affordability assessment.
- (3) A request for information or evidence under (1) may be made directly or through an *MCD mortgage credit intermediary*. The *MCD mortgage lender* or the *MCD mortgage credit intermediary*, if requesting on behalf of the *MCD mortgage lender*, must:

- (a) ensure the *consumer* is aware of the need to provide correct information in response to the request and that such information is as complete as necessary to conduct a proper assessment of affordability; and
 - (b) warn the *consumer* that, where the *MCD mortgage lender* is unable to carry out an assessment of affordability because the *consumer* chooses not to provide the information or evidence necessary for an assessment of affordability, the credit cannot be granted.
- (4) The *MCD mortgage lender* may seek clarification, directly or through an *MCD mortgage credit intermediary*, of the information or evidence received in response to a request under (1), where necessary, to enable the assessment of affordability of an *MCD regulated mortgage contract*.

[**Note:** article 20(3) and (4) of the *MCD*]

- 11A.3.2 G Under the Data Protection Act 1998, an *MCD mortgage lender* must inform a *consumer* in advance if a database is to be consulted in conducting any assessment of affordability for an *MCD regulated mortgage contract*.

[**Note:** article 18(5)(b) of the *MCD*]

- 11A.3.3 R (1) Where an *MCD mortgage lender* rejects a *consumer's* application for an *MCD regulated mortgage contract*, the *MCD mortgage lender* must inform the *consumer* without delay:
- (a) of the rejection and, where applicable, that the decision is based on automated processing of data; and
 - (b) where the rejection is based on the result of the database consultation, of the result of such consultation and of the particulars of the database consulted.

[**Note:** article 18(5)(c) of the *MCD*]

- (2) No obligation under (1) shall be interpreted in a manner which contravenes the Data Protection Act 1998.

Amend the following text as shown.

12 Charges

12.1 Application

...

Charges under second charge regulated mortgage contracts

- 12.1.5A **R** The rules in MCOB 12.4 (Payment shortfall charges: regulated mortgage contracts) and MCOB 12.5 (Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements) apply to second charge regulated mortgage contracts entered into before 21 March 2016 in relation to charges imposed on a customer for events occurring from that date onwards.

...

12.3 Early repayment charges: regulated mortgage contracts

...

Early settlement charges on second charge regulated mortgage contracts

- 12.3.5 **G** The Consumer Credit (Early Settlement) Regulations 2004 continue to apply to a second charge regulated mortgage contract entered into before 21 March 2016.

...

12.5 Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements

...

- 12.5.5 **R** A second charge lender may only charge interest on charges applied to a customer for breach of a second charge regulated mortgage contract if the interest is simple interest.

12.6 Business loans and loans to high net worth mortgage customers: tailored provisions

- 12.6.1 **G** Firms are reminded that, in relation to a regulated mortgage contract which is solely for a business purpose or is with a high net worth mortgage customer, who is not a consumer under an MCD regulated mortgage contract, in circumstances where MCOB 7.7.1R applies, if there is a new early repayment charge or a change to the existing early repayment charge, MCOB 7.7.1R(2) requires a firm to notify the customer within five business days of the maximum amount payable as an early repayment charge.

...

13.3 Dealing fairly with customers with a payment shortfall: policy and procedures

...

Vulnerable customers

13.3.1C R A firm must establish and implement clear, effective and appropriate policies and procedures for the fair and appropriate treatment of customers whom the firm understands, or reasonably suspects, to be particularly vulnerable.

13.3.1D G (1) Customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers.

(2) In developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, a firm may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt".

Customers in payment difficulties: procedures

13.3.2A R ...

...

Insert the following new sub-chapter, MCOB 13.4A, after MCOB 13.4. The text is not underlined.

13.4A Data sharing with other charge holders

13.4A.1 R (1) If a *firm* commences legal proceedings against a *customer* in respect of a *regulated mortgage contract* or a *home purchase plan*, it must give notice of the commencement of the legal proceedings to all *persons* specified in MCOB 13.4A.2R at the time of their commencement, or as soon as reasonably practicable afterwards.

(2) If a *customer* voluntarily surrenders possession of their property to a *firm*, the *firm* must give all *persons* specified in MCOB 13.4A.2R notice of the surrender at the time it happens, or as soon as reasonably practicable afterwards.

- (3) If a *customer* is placed in an *assisted voluntary sale process*, a *firm* must give all *persons* specified in *MCOB 13.4A.2R*:
- (a) notice that the *customer* has entered an *assisted voluntary sale process* within ten working days from the date the customer entered the *assisted voluntary sale process*;
 - (b) notice of the proposed sale and details of the proposed sale price and method of sale at least ten working days before the date when the property is proposed to be offered for sale; and
 - (c) details of the sale price within no more than ten working days from the acceptance of an offer to purchase the property.

Relevant other charge holders

- 13.4A.2 R Notices and other details under *MCOB 13.4A.1R* are to be given to each *person* having a *legal or equitable mortgage* in the relevant property over which the *firm* has security under a *regulated mortgage contract* or a *home purchase plan*.
- 13.4A.3 G In complying with *MCOB 13.4A.2R*, a *firm* should make reasonable efforts to discover the existence of other charge holders at the start of the assisted voluntary sale/litigation process.

...

Amend the following text as shown.

TP1.1

(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
45	<u><i>MCOB 5A, MCOB 6A and MCOB 7B</i></u>	R	<u><i>A firm that is an MCD mortgage lender or MCD mortgage credit intermediary may provide an illustration instead of an ESIS for an MCD regulated mortgage contract that is not a second charge</i></u>	<u>From 21 March 2016 until 21 March 2019</u>	<u>21 March 2016</u>

...

regulated mortgage contract.

[**Note:** article 14(5) of the MCD]

46	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<p><u>A firm that applies TP 45 must also provide the information in (1) to (3) below:</u></p> <p><u>(1) for a variable interest-rate loan, the warning and the additional APRC required by section 4 of MCOB 5A Annex 1R and MCOB 5A Annex 2, 6.2R to 6.8R;</u></p> <p><u>(2) for a foreign currency loan, the warning and illustrative example required by section 6 of MCOB 5A Annex 1R and MCOB 5A Annex 2, 8.6R; and</u></p> <p><u>(3) the reflection period required by MCOB 6A.3.4R(1) and (2), section 11 of MCOB 5A Annex 1R and MCOB 5A Annex 2, 13.1R.</u></p>	<p><u>From 21 March 2016 until 21 March 2019</u></p>	<p><u>21 March 2016</u></p>
47	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<p><u>A firm must provide the information required by TP 46 no later than when it provides the illustration.</u></p>	<p><u>From 21 March 2016 until 21 March 2019</u></p>	<p><u>21 March 2016</u></p>
48	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<p><u>A firm may provide the information required by MCOB TP 46 either within the illustration or separately in a durable medium. Where a firm provides that information within the illustration, it should either add the information within the most relevant section of the illustration or it should add a new section which should be marked “[number of the preceding section]A” to identify the additional information.</u></p>	<p><u>From 21 March 2016 until 21 March 2019</u></p>	<p><u>21 March 2016</u></p>
49	<u>MCOB 5A,</u>	R	<p><u>Where a firm provides an</u></p>	<p><u>From 21</u></p>	<p><u>21 March</u></p>

	<u>MCOB 6A and MCOB 7B</u>		<u>additional APRC in accordance with TP 46R(1) above, the <i>firm</i> is not required to comply with <u>MCOB 5.6.59R(1)(g) and (h).</u></u>	<u>March 2016 until 21 March 2019</u>	<u>2016</u>
50	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<u>Where a <i>firm</i> applies MCOB TP 45, MCOB 5.6.34R(3) has effect with the following amendment: “ ‘The overall cost for comparison is [insert the APR]% APR’ or ‘The APRC applicable to your loan is [APRC]’.”</u>	<u>From 21 March 2016 until 21 March 2019</u>	<u>21 March 2016</u>
51	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<u>A <i>firm</i> may cease to apply MCOB TP 45 at any time,</u>	<u>From 21 March 2016 until 21 March 2019</u>	<u>21 March 2016</u>
52	<u>MCOB 2A.6.1R</u>	R	<u>MCOB 2A.6.1R does not apply to information provided for a contract entered into before 21 March 2016 that would be an <i>MCD regulated mortgage</i> contract if it were entered into on, or after, 21 March 2016</u>	<u>From 21 March 2016 indefinitely</u>	<u>21 March 2016</u>

Sch 1 Record keeping requirements

Sch 1.3	G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		...				
		<u>MCOB 3.10.1R</u>	<u>Each <i>non-real time financial promotion</i></u>	<u>Name of individual who confirmed compliance or approved the <i>financial promotion</i>, and the date of confirmation</u>	<u>Date of confirmation or approval</u>	<u>One year from the date on which the <i>financial promotion</i> was last <i>communicated</i></u>
		<u>MCOB 3.10.2G(2)</u>	<u>Each <i>non-real time</i></u>	<u>Details of: the medium for which</u>	<u>Date of confirma</u>	<u>One year from the date on</u>

to (5)	<i>financial promotion</i>	the <i>financial promotion</i> was authorised; evidence supporting a material factual statement; evidence to show that any typical <i>APR</i> was representative of business	tion or approval	which the <i>financial promotion</i> was last <i>communicated</i>
<i>MCOB 3.10.3G(1)</i>	Each <i>non-real time financial promotion</i>	A copy of the <i>financial promotion</i> as finally published	Date of confirmation or approval	One year from the date on which the <i>financial promotion</i> was last <i>communicated</i>
...				

Annex E

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 21 December 2015

13 Exercise of passport rights by UK firms

...

13.2 Introduction

...

13.2.2 G A *UK firm* should be aware that the *guidance* is the ~~FSA's~~ FCA's interpretation of the *Single Market Directives*, the *Act* and the legislation made under the *Act*. The *guidance* is not exhaustive and is not a substitute for *firms* consulting the legislation or taking their own legal advice in the *United Kingdom* and in the relevant *EEA States*.

...

13.2.6 G As set out in article 32(1) of the *MCD*, a *UK firm* will only be able to carry on *MCD credit intermediation activity* in relation to an *MCD credit agreement* offered by a *non-credit institution* in an *EEA state* if that *EEA state* permits *non-credit institutions* to offer *MCD credit agreements*.

13.3 Establishing a branch in another EEA State

...

The conditions for establishing a branch

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the relevant conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

...

- (3) (a) if the *UK firm's EEA right* derives from the *Insurance Mediation Directive* or the *MCD*, one month has elapsed beginning on the date on which the *UK firm* received notice

that the *appropriate UK regulator* had given a *consent notice* as described in SUP 13.3.6G(1) (see SUP 13.3.2AG);

...

...

Issue of a consent notice to the Host State regulator

13.3.5 G ...

(3) If the UK firm's EEA right derives from the MCD, the FCA will give the Host State regulator a consent notice within one month of the date on which it received the UK firm's notice of intention. The Host State regulator then has a further two months to prepare for the supervision of the UK firm.

...

13.3.6 G ...

(5) Where a consent notice is given under the MCD in relation to a tied MCD credit intermediary, it will include details of:

- (a) any MCD creditor or group to which it is tied; and
- (b) whether the MCD creditor or group take full and unconditional responsibility for the tied MCD credit intermediary's activities.

...

13.4 Providing cross border services into another EEA State

The conditions for providing cross border services into another EEA State

13.4.2 G A UK firm, other than a UK pure reinsurer or an AIFM exercising an EEA right to market an AIF under AIFMD, cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from the Insurance Directives, AIFMD, MiFID or the UCITS Directive, paragraph 20(4B) of Part III of Schedule 3 to the Act. If a UK firm derives its EEA right from the MCD, it cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and paragraph 20(4BB) of Part III of Schedule 3 to the Act. It is an offence for a UK firm which is not an authorised person to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). The conditions are that:

...

- (4) if the *UK firm* is passporting under *AIFMD*, the ~~firm~~ *firm* has received written notice from the *FCA* as described in *SUP 13.4.4-AG(1)(c)*; or
- (5) if the *UK firm* is passporting under the *MCD*, one month has elapsed, beginning with the date on which the *firm* receives the notice, as described in *SUP 13.4.5G*.

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G ...

- (3) If the *UK firm's EEA right* derives from the *MCD*, the *FCA* will give the *Host State regulator* a consent notice within one month of the date on which it received the *UK firm's notice of intention*.
- (4) Where a consent notice is given under the *MCD* in relation to a *tiered MCD credit intermediary*, the consent notice will include details of:
- (a) any *MCD creditor* or *group* to which the *firm* is tied; and
 - (b) whether the *MCD creditor* or *group* take full and unconditional responsibility for the *tiered MCD credit intermediary's* activities.

...

Applicable provisions for cross border services

13.4.6A G If a *UK firm* is passporting under the *MCD*, then the *Host State regulator* will notify the *UK firm* if there are any *applicable provisions* within two months of receiving a consent notice.

13.4.7 G ...

13.5 Notices of intention

...

Specified contents: notice of intention to provide cross border services

13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* other than under the *auction regulation* must submit a notice in the form set out in:

...

(7) SUP 13 Annex 9R, if the UK firm is passporting under the MCD

...

13.6 Changes to branches

...

Firms passporting under the MCD

- 13.6.9D G (1) A UK firm which has exercised an EEA right deriving from the MCD to establish a branch, must not make any material changes to the requisite details of the branch unless it has complied with the requirements in regulation 17(B)(2).
- (2) The requirements in regulation 17(B)(2) are that
- (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
- (b) the period of one month beginning with the day on which the UK firm gave notice has elapsed.
- (3) Paragraph (1) does not apply to changes occasioned by circumstances beyond the control of the UK firm.

Changes arising from circumstances beyond the control of a UK firm

- 13.6.10 G ...
- (3) This guidance is not applicable to MiFID investment firms, firms passporting under the MCD or AIFMs.

The process

- 13.6.11 G When the *appropriate UK regulator* receives a notice from a *UK firm* other than a *MiFID investment firm* (see SUP 13.6.5G(1) and SUP 13.6.7G(1)) a *pure reinsurer* (see SUP 13.6.9BR), a *UK firm exercising an EEA right under the MCD* (see (SUP 13.6.9DG) or an *AIFM* (see SUP 13.6.9CG), it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from the day on which it received the notice.

...

The process: MCD

- 13.6.19 G When the FCA receives a notice from a UK firm exercising an EEA right under the MCD it will, under regulation 17(B)(3), inform the relevant Host State regulator of the proposed change as soon as reasonably practicable.

The UK firm in question may make the change once a period of one month has elapsed beginning with the day on which it gave notice.

13.7 Changes to cross border services

- 13.7.1 G Where a *UK firm* is exercising an *EEA right* under the *UCITS Directive*, *MiFID*, the *Insurance Directives*, the *MCD* or *AIFMD* and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*. References to regulations in this section are to the *EEA Passport Rights Regulations*. A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence. It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

...

Firms passporting under the MCD

- 13.7.15 G (1) A UK firm which has exercised an EEA right deriving from the MCD to provide a cross border service, must not make any material changes to the service unless it has complied with the requirements in regulation 17(B)(2).
- (2) The requirements in regulation 17(B)(2) are that:
- (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
- (b) the period of one month has elapsed, beginning with the day on which the UK firm gave notice.
- (3) Paragraph (1) does not apply to a changes occasioned by circumstances beyond the control of the UK firm.

13.8 Changes of details: provision of notices to the appropriate UK regulator

- 13.8.1 R (1) Where a *firm* is required to submit a notice of a change to a *branch* referred to in *SUP 13.6.5G(1)*, *SUP 13.6.5BG(1)*, *SUP 13.6.7G(1)*, *SUP 13.6.8G*, *SUP 13.6.9BR*, *SUP 13.6.10G(1)*, and *SUP 13.6.9CG* and *SUP 13.6.9DG* or a notice of a change to *cross border services* referred to in *SUP 13.7.3G(1)*, *SUP 13.7.3AG(1)*, *SUP 13.7.5G(1)*, *SUP 13.7.6G*, *SUP 13.7.13BG*, and *SUP 13.7.14G* and *SUP 13.7.15G*, it must complete and submit that notice in accordance with the procedures set out in *SUP 13.5* for notifying the establishing of a *branch* or the provision of *cross*

border services.

...

13 Annex **Passporting: MCD**
9R

This annex consists of one or more forms. Forms can be completed online now by [address to follow]:

Passporting: MCD - SUP 13 Annex 9R

13A **Qualifying for authorisation under the Act**

13A.1 **Application and purpose**

...

13A.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act* , a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(g) authorised in Gibraltar under the *MCD*

...

(2) Gibraltar insurance companies, *credit institutions, insurance intermediaries* , *investment firms, management companies*, ~~and~~ *AIFMs and MCD credit intermediaries* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in this chapter to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

...

...

13A.4 **EEA firms establishing a branch in the United Kingdom**

...

The notification procedure

13A.4.4-A G When the FCA receives a consent notice from the EEA firm's Home State regulator in respect of a EEA firm within paragraph 5(i) of Part I of Schedule 3 to the Act, it will, under paragraph 13(3A);

- (1) notify the firm of the applicable provisions (if any); and
- (2) use the information received from the EEA firm's Home State regulator to enter the necessary information into the Financial Services Register.

...

13A.5 EEA firms providing cross border services into the United Kingdom

...

13A.5.4 G ...

13A.5.4-A G When the FCA receives a consent notice from the EEA firm's Home State regulator in respect of a firm within paragraph 5(i) of Part I of Schedule 3 to the Act, it will, under paragraph 14(3ZA), use the information received from the EEA firm's Home State regulator to enter the necessary information into the Financial Services Register.

...

**13A
Annex
1G Application of the Handbook to Incoming EEA Firms**

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>MCOB</i>	Applies where the activity is carried on with or for a	Applies where the activity is carried on with or for a

	<i>customer</i> resident in the <i>United Kingdom</i> or another <i>EEA State</i> at the time that the activity is carried on, but see the territorial scope in <i>MCOB 3.3</i> (Application: where?) <u>3.3A</u>	<i>customer</i> resident in the <i>United Kingdom</i> at the time that the activity is carried on but see <i>MCOB 1.3.4R</i> (Distance contracts entered into from an establishment in another <i>EEA State</i>) and <i>MCOB 3.3</i> (Application: where?) <u>3.3A</u>
...		

13A
Annex 2G

Matters reserved to a Home State regulator

...	
Requirements in the interest of the general good	
2.	The <i>Single Market Directives</i> , and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i> . To summarise, the <i>FCA</i> or <i>PRA</i> , as <i>Host State regulator</i> , is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i> :
(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>CRD credit institution</i> , <i>UCITS management company</i> <i>AIFM</i> or passporting <i>insurance undertaking</i> to the <i>Firm's Home State regulator</i> . The <i>Insurance Mediation Directive</i> reaches and the <u><i>MCD</i></u> reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> , as <i>Host State regulator</i> , is entitled to regulate only the conduct of the firm's business within the <i>United Kingdom</i> ;
...	
Requirements under <i>MCD</i>	
<u>11L</u>	<u>Under article 34(2) of the <i>MCD</i>, ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the <i>MCD</i> by <i>incoming EEA branches</i> is the responsibility of the</u>

	<u>Host State. Responsibilities for ensuring compliance with all other obligations are the responsibility of the Home State.</u>
11M	<u>Ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the MCD by EEA firms providing cross border services is the responsibility of the Home State.</u>
...	

14 Incoming EEA firms changing details, and cancelling qualification for authorisation

14.1 Application and purpose

...

- 14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(g) authorised in Gibraltar under the MCD

...

- (2) Gibraltar insurance companies, *credit institutions, insurance intermediaries, investment firms, management companies, and AIFMs and MCD credit intermediaries* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in *SUP 14* to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

...

14.2 Changes to branch details

...

Firms passporting under the MCD

- 14.2.17 G As required by regulation 7B(1), where an incoming EEA firm passporting under the MCD has established a branch in the UK, it must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or regulation 3(6)(b) to (e), unless it has complied with the relevant requirements.

- 14.2.18 G The relevant requirements are set out in regulation 7B(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, regulation 7B(5).
- 14.2.19 G The relevant requirements in regulation 7B(4) are that:
- (1) the *incoming EEA firm* has given a notice to the *FCA* and its *home state regulator* stating the details of the proposed changes; and
- (2) either:
- (a) the *FCA* has informed the *incoming EEA firm* that it may make the change; or
- (b) a period of one *month* has elapsed beginning with the day on which the *incoming EEA firm* gave the notice under (1).
- 14.2.20 G Where the change arises from circumstances beyond the *incoming EEA firm's* control, the *incoming EEA firm* is required by regulation 7B(5) to give notice to the *FCA* and to its *Home State regulator* stating the details of the change, as soon as reasonably practicable.
- 14.2.21 G The *FCA* believes that, for a change to arise from circumstances beyond the control of an *incoming EEA firm*, the circumstances should be outside the control of the *incoming EEA firm* as a whole and not just its *UK branch*. For example, the *FCA* considers that this provision would be unlikely to apply to circumstances in which lack of planning at the *incoming EEA firm's* head office resulted in a problem arising in a *UK branch*. In practice, therefore, use of this provision is likely to be rare.

14.3 Changes to cross border services

- 14.3.1 G Where an *incoming EEA firm* passporting under the *MiFID*, *UCITS Directive*, *Insurance Directives*, *MCD* or *AIFMD* is exercising an *EEA right* and is providing *cross border services* into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. Where an *incoming EEA firm* has complied with the *EEA Passport Rights Regulations*, then the *firm's permission* under Schedule 3 to the *Act* is to be treated as varied.

...

Firms passporting under the MCD

- 14.3.11 G As required by regulation 7B(1), where an *incoming EEA firm* is providing *cross border services* under the *MCD* in the *UK*, it must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or regulation 3(6)(b) to (e), unless it has complied with the relevant requirements.

- 14.3.12 G The relevant requirements are set out in regulation 7B(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, regulation 7B(5).
- 14.3.13 G Where the change arises from circumstances within the control of the *incoming EEA firm*, the relevant requirements in regulation 7B(4) are that:
- (1) the *incoming EEA firm* has given a notice to the *FCA* and its *Home State regulator* stating the details of the proposed changes; and
- (2) either:
- (a) the *FCA* has informed the *incoming EEA firm* that it may make the change; or
- (b) a period of one *month* has elapsed beginning with the day on which the *incoming EEA firm* gave the notice under (1).
- 14.3.14 G Where the change arises from circumstances beyond the *incoming EEA firm's* control, the *incoming EEA firm* is required by regulation 7B(5) to give a notice to the *FCA* and to its *Home State regulator* stating the details of the change as soon as reasonably practicable.

...

App 3 Guidance on passporting issues

...

App 3.3 Background

App 3.3.6 G ...

- (2) The European Commission has not produced an interpretative communication on the *Insurance Mediation Directive*, *AIFMD*, the *MCD* or the *UCITS Directive*.

...

App 3.3.13 G The *Single Market Directives* require *credit institutions*, *insurance undertakings* (other than *reinsurance undertakings*, *MiFID investment firms*, *AIFMs*, *UCITS management companies*, ~~and~~ *insurance intermediaries* and *MCD credit intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services* ...

...

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

App 3.9.1 G The following Tables 1, 2, 2ZA 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passport activities* under the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the *MCD* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the *MCD* or the *Insurance Mediation Directive*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passport activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

...

App 3.9.8 G Activities set out in article 4 of the *MCD*

	<u>Table 3: <i>MCD</i> activities</u>	<u>Part II RAO specified activities</u>	<u>Part III RAO Investments</u>
<u>1</u>	<u>Acting as credit intermediary</u>	<u>Articles 25A(1), 25(2A), 53A, 36A(1)(d), (e), (f) and 53DA</u>	<u>Articles 88 and 88D</u>

Part 2: Comes into force on 21 March 2016

12 Appointed representatives

...

12.2 Introduction

What is an appointed representative?

12.2.1 G ...

- (4) If an appointed representative has entered into a contract with an MCD credit intermediary and is a person to whom section 39(1BA) of the Act applies, they must also satisfy the conditions in section 39(1BB) of the Act to be an exempt person. See SUP 12.4.10CG for guidance on those conditions.

...

Business for which an appointed representative is exempt

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under section 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:

...

- (d) *arranging (bringing about) a home finance transaction* (articles 25A(1), 25A(2A), 25B(1) and 25C(1) of the *Regulated Activities Order*);

...

- (jaa) *advising on regulated credit agreements for the acquisition of land* (article 53DA of the *Regulated Activities Order*);

...

What is an introducer appointed representative?

12.2.8 G ...

- (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:

...

- (d) *advising on investments, giving basic advice on a stakeholder product, advising on a home finance transaction, advising on regulated credit agreements for the acquisition of land, or other activity ...*

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

...

Appointed representative carrying on MCD credit intermediation activity

12.4.10A R Before a firm appoints a person as an appointed representative to carry on an MCD credit intermediation activity, it must ensure that the person has, and will maintain on a continuing basis after appointment, professional indemnity insurance in accordance with the rules applicable to MCD credit intermediaries. A firm will satisfy this requirement if:

- (1) the appointed representative has professional indemnity insurance which satisfies the rules in MIPRU 3.2 applicable to the activities of the appointed representative, as if the appointed representative were an MCD credit intermediary;
- (2) professional indemnity insurance which would satisfy the requirements of SUP 12.4.10AR(1) is provided by the firm; or
- (3) the appointed representative holds a comparable guarantee (as understood by reference to MIPRU 3.1.1R(3)(b)) provided by the firm.

[Note: article 31(2) of the MCD]

12.4.10B R (1) Before a firm appoints a person as an appointed representative to carry on MCD credit intermediation activity and on a continuing basis after appointment, it must, in relation to such activities, ensure that:

(a) if the appointed representative is an individual, the individual:

(i) has not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and

(ii) has not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and

(iii) possesses the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative;

- (b) if the appointed representative is a body corporate, the members of the board of the appointed representative, and persons performing equivalent tasks:
- (i) have not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and
 - (ii) have not been adjudged bankrupt (unless the bankruptcy has been discharged);
- under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and
- (iii) possess the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative.

[**Note:** article 31(2) of the MCD]

- 12.4.10C G (1) If an appointed representative's scope of appointment is to include MCD credit intermediation activity, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see SUP 12.7.1R(1)).
- (2) An appointed representative must not commence an MCD credit intermediation activity until they are included on the Financial Services Register.
- (3) If an appointed representative's scope of appointment is to include MCD credit intermediation activity, the Act provides that that appointed representative's principal may not be a tied MCD credit intermediary.

...

12.5 Contracts: required terms

...

Prohibition of multiple principals for certain activities

12.5.6A R ...

- (1B) In relation to any MCD credit intermediation activity, the prohibition must prevent the appointed representative acting as an appointed representative in respect of MCD credit intermediation

activity for any other firm.

...

12.5.6B G ...

- (2) The effect of the *rule* prohibiting multiple *principals* for certain activities is that, in relation to *home finance activities*, *appointed representatives* are restricted to having four *principals*: one for *regulated mortgage contracts* other than *lifetime mortgages*, one for *lifetime mortgages*, one for *home reversion plans* and one for *home purchase plans*. However, if any of the business of the appointed representative involves MCD credit intermediation activity, the appointed representative is restricted to having one principal in relation to that business.

...

Required contract terms for appointed representatives of MCD credit intermediaries

12.5.10 R A firm must ensure that, if appointing an appointed representative to carry on MCD credit intermediation activity, its written contract requires the appointed representative to provide such evidence to the FCA as to the knowledge and competence of the staff of the appointed representative, as the FCA may require from time to time.

[Note: article 9(4) of the MCD]

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

12.6.1B R A firm that is a principal of an appointed representative that carries on MCD credit intermediation activity must monitor the activities of that appointed representative to ensure compliance with obligations imposed under the MCD (including those in MCOB and TC).

[Note: article 31(3) of the MCD]

12.6.1C G SUP 12.6.1BR requires a firm to which that rule applies to monitor the knowledge and competence of the appointed representative that carries on MCD credit intermediation activity and its staff.

...

12.7 Notification requirements

Notification of appointment of an appointed representative

- 12.7.1 R (1) This *rule* applies to a *firm* which intends to appoint:
- (a) an *appointed representative* to carry on *insurance mediation activities*; ~~or~~
 - (b) a *tied agent*; or
 - (c) an *appointed representative* to carry on *MCD credit intermediation activity*.

...

Notification of changes in information given to the FCA

- 12.7.7 R ...
- (1B) If:
- (a) (i) the scope of appointment of an *appointed representative* is extended to cover *MCD credit intermediation activity* for the first time; and
 - (ii) the *appointed representative* is not included on the *Financial Services Register*; or
 - (b) the scope of appointment of an *appointed representative* ceases to include *MCD credit intermediation activity*;

the *appointed representative's principal* must give written notice to the *FCA* of that change before the *appointed representative* begins to carry on *MCD credit intermediation activity* under the contract (see *SUP* 12.4), or as soon as the scope of appointment of the *appointed representative* ceases to include *MCD credit intermediation activity*.

[Note: article 31(4) of the *MCD*]

...

Notification of changes in conditions of appointment

- 12.7.8 R (1) As soon as a *firm* has reasonable grounds to believe that any of the conditions in *SUP* 12.4.2R, *SUP* 12.4.6R, ~~or~~ *SUP* 12.4.8AR, *SUP* 12.4.10AR or *SUP* 12.4.10BR (as applicable) are not satisfied ...

...

...

15.8 Notification in respect of particular products and services

...

15.8.9 R ...

MCD credit intermediaries

15.8.10 R A tied MCD credit intermediary must notify the FCA, as soon as reasonably practicable, if it intends to cease acting on behalf of and under the full responsibility of any firm.

15.8.11 R A MCD credit intermediary must notify the FCA, as soon as reasonably practicable, if it intends to start acting on behalf of and under the full responsibility of any firm.

...

16.11 Product Sales Data Reporting

...

...

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 5	<i>home finance administration or home finance providing activity</i>	<u>SUP 16.12.18AR₂ and SUP 16.12.18BR and SUP 16.12.18CR</u>	<u>SUP 16.12.18AR₂ and SUP 16.12.18BR and SUP 16.12.18CR</u>	<u>SUP 16.12.18AR₂ and SUP 16.12.18BR and SUP 16.12.18CR</u>
...				

...

16.12.18A R (1) *SUP 16.12.18BR and SUP 16.12.18CR does do not apply to:*

A

...

...

16.12.18B R The applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP 16.12.4R* are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency	Submission deadline
Capital Adequacy (<u>note 4</u>)	...	...	...
...			
Credit Risk (note <u>notes 2 and 4</u>)	...	...	...
Liquidity (note <u>notes 3 and 4</u>)	...	...	...
...			
...			
<u>Note 4</u>	<u>Not applicable if the firm exclusively carries on home finance administration or home finance providing activities in relation to second charge regulated mortgage contracts.</u>		

16.12.18C R Additional applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP 16.12.4R* are set out in the table below for a *firm carrying on home finance administration or home finance providing activities in relation to second charge regulated mortgage contracts*. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

<u>Description of <i>data item</i></u>	<u><i>Data item</i> (note 1)</u>	<u>Frequency</u>	<u>Submission deadline</u>
<u>Analysis of second charge loans to customers</u>	<u>Section A3(a) MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Second charge business</u>	<u>Sections D1(a) and</u>	<u>Quarterly</u>	<u>20 business days</u>

<u>flow and rates</u>	<u>D2(a) MLAR</u>		
<u>Second charge lending to individuals</u>	<u>Sections E1(a) and E2(a)</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Second charge lending – arrears analysis</u>	<u>Section F(a)</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Second charge mortgage administration – arrears analysis</u>	<u>Sections H1(a) and H2(a)</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Note 1</u>	<u>When submitting the completed data item required, a firm must use the format of the data item set out in SUP 16 Annex 19AAR. Guidance notes for the completion of the data items are set out in SUP 16 Annex 19BG.</u>		

...

16.12.28A R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency		Submission deadline
		Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million	
...				
Capital Adequacy (note 3)	Section D1 RMAR	Half yearly	Quarterly	30 business days
...				
Client money and client assets (note 3)	Section C RMAR	Half yearly	Quarterly	30 business days
...				
Note 3	<u>This item does not apply to firms who only carry on home finance mediation activities exclusively in relation to second charge regulated mortgage contracts and who are not otherwise expected to complete it by virtue of carrying out other regulated activities.</u>			

...

16 Annex 18AR

SECTION B: Profit and Loss account

B1: Regulated Business Revenue

	A	B	C	D	E
	Commissions		Fees/Adviser charges/Consultancy charges	Other income (reg activities)	Regulated business revenue
	Gross	Net			
1 Regulated mortgage contracts_of which:					
15 <u>Second (or subsequent) charge</u>					
2 Non-investment insurance					
3 Retail investment products					
4 TOTAL					

B2: Other P&L

5 Income from other regulated activities	
6 Other Revenue (income from non-regulated activities)	
7 TOTAL REVENUE	
8 TOTAL EXPENDITURE	
9 Profit/(Loss) on ordinary activities before taxation	
10 Profit/(Loss) on extraordinary activities before taxation	
11 Taxation	
12 Profit/(Loss) for the period before dividends and appropriations	
13 Dividends and other appropriations	
14 Retained Profit	

SECTION G: Training and Competence

Special Instructions

	A	B	C	E	D
	Advising on mortgages	Advising on non-investment insurance (retail customers)	Advising on retail investment products	Advising on second (and subsequent) charge mortgages	Total
1	Total number of all staff				
	Of which:				
2	Number of staff that give advice				
3	Number of staff that give advice (Full time equivalent)				
4	Number of staff that supervise others to give advice				
5	Number of advisers that have been assessed as competent				
6	Number of advisers that have passed approved examinations				
7	Number of advisers that have left since the last reporting date				

What types of advice were provided?

	Mortgage	Non-Inv Insurance	Retail Investment Products	Second (and subsequent) charge mortgage
15	Independent			
8	Independent (w hole of market plus option of fee-only)			
9	Whole of market (w ithout fee-only option)			
10	On the basis of a fair analysis of the market			
11	Restricted / Multi-tie (the products of a limited number of providers)			
12	Restricted / Single-tie (the products of one provider)			
16	Restricted (limited types of products)			

Clawed back commission (retail investment firms only)

13	Clawed back commission by:	Number	
14		Value	

16 Annex 18BG Notes for Completion of the Retail Mediation Activities Return ('RMAR')

...

Section D: Capital Resources

...

(i) Section **D1** covers the appropriate capital resources and connected requirements in *MIPRU* chapter 4 for *firms* carrying on *home finance mediation activity* (save for firms carrying on home finance mediation activities exclusively in relation to second charge regulated mortgage contracts), and/or *insurance mediation activity* relating to *non-investment insurance contracts* (the requirements have to be completed for all applicable categories). ...

...

Section E: guide for completion of individual fields

...

Part 2

PII basic information

...	
Limit of indemnity	<p>You should record here the indemnity limits on the <i>firm's</i> PII policy or policies, both in relation to single claims and in aggregate.</p> <p>Those firms subject to the <u><i>Mortgage Credit Directive (MCD)</i></u> (see <u><i>MIPRU 3.2.9AR</i></u>) or the <u><i>Insurance Mediation Directive (IMD)</i></u> requirements should state their limit in Euros; those that are not subject to the <u><i>MCD</i></u> or <u><i>IMD</i></u> should select 'Sterling' from the drop-down list.</p> <p><u><i>Insurance intermediaries</i></u>, see <i>MIPRU 3.2.7R</i> and select either 'Euros' or 'Sterling' as applicable. <u><i>Home finance intermediaries that are not MCD credit intermediaries</i></u> should state their limit in Sterling (see <i>MIPRU 3.2.9R</i>).</p>

...

Insert the following new form, SUP 16 Annex 19AAR, after SUP 16 Annex 19AR. The text is not underlined.

16 Annex 19AAR

A(3)a BALANCE SHEET (SECOND CHARGE)		(£000s)						
		c1	c2	c3	c4	c5	c6	c7
		<u>a Unsecured balances</u>			<u>b Securitised balances</u>			
		<i>Gross balances</i>	<i>Provisions</i>	<i>Net balances</i>	<i>Gross balances</i>	<i>Provisions</i>	<i>Non recourse finance</i>	<i>Net balances</i>
A3a	Analysis of loans to customers							
A3a.1	Residential loans to individuals, of which							
A3a.2	Second (or subsequent) charge	_____	_____	_____	_____	_____	_____	_____

D(1)a **SECOND CHARGE LENDING : Business flows & rates**

	c1	c2	c3	c4	c5	c6	c7	c8	c9	c10
	Balance at end of previous quarter	Advances made in quarter	Repayment of principal	Write offs in quarter	Other debits/ (credits) and transfers (net)	Balance at end of quarter	Of which: Loans excluding overdrafts	Overdrafts	Overdrafts: Aggregate of credit limits	
D1a Loans: Advances/ Repayments										
D1a.1 Residential loans to individuals, of which Second (or subsequent) charge										
Transactions in quarter included in D1 [col 5]						Balance at end of quarter on loan assets subject to non-recourse funding				
	Loans acquired	Loans sold	Loans securitised	Other	Total					
D2a Loans: Book movements										
D2a.1 Residential loans to individuals, of which Second (or subsequent) charge										
Balances at end of quarter							Interest rates at end of quarter (to 2 decimal places)			
	TOTAL	Of which at:		Of which at:			Weighted average nominal annual rate on:			
		Fixed rates	Variable rates	Less than 2% above BBR	2 < 3% above BBR	3 < 4% above BBR	4% or more above BBR	All balances	Balances at fixed rates	Balances at variable rates
D3a Loans: Interest rates	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	%	%	%
D3a.1 Second (or subsequent) charge Total book										
D3a.2 Advances in quarter										

D(2)a **SECOND CHARGE LENDING: Business flows**

	Commitments outstanding at end of previous quarter	Commitments made since end of previous quarter	Cancellations in quarter	Advances made in quarter	Other debits/ (credits) and transfers (net)	Commitments outstanding at end of quarter
	c1	c2	c3	c4	c5	c6
D4a Loans: commitments						
D4a.1 Residential loans to individuals, of which Second (or subsequent) charge						
a) New loan						
b) Remortgage						
d) Total						

E(1)a SECOND CHARGE LOANS TO INDIVIDUALS: Income Multiple & LTV

		<u>Gross advances in quarter : (amount) by LTV</u>			
		<u>< = 75 %</u>	<u>Over 75 < = 90 %</u>	<u>Over 90 < = 95 %</u>	<u>Over 95 %</u>
		c1	c2	c3	c4
E1a SINGLE income multiple					
	Second (or subsequent) charge mortgages				
E1a.1	Less than 2.50	_____	_____	_____	_____
E1a.2	2.50 < 3.00	_____	_____	_____	_____
E1a.3	3.00 < 3.50	_____	_____	_____	_____
E1a.4	3.50 < 4.00	_____	_____	_____	_____
E1a.5	4.00 or over	_____	_____	_____	_____
E1a.6	Other	_____	_____	_____	_____
E1a.7	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
E1a.7a	of which: Not evidenced	_____	_____	_____	_____

		<u>Gross advances in quarter : (amount) by LTV</u>			
		<u>< = 75 %</u>	<u>Over 75 < = 90 %</u>	<u>Over 90 < = 95 %</u>	<u>Over 95 %</u>
		c1	c2	c3	c4
E2a JOINT income multiple					
	Second (or subsequent) charge mortgages				
E2a.1	Less than 2.00	_____	_____	_____	_____
E2a.2	2.00 < 2.50	_____	_____	_____	_____
E2a.3	2.50 < 2.75	_____	_____	_____	_____
E2a.4	2.75 < 3.00	_____	_____	_____	_____
E2a.5	3.00 or over	_____	_____	_____	_____
E2a.6	Other	_____	_____	_____	_____
E2a.7	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
E2a.7a	of which: Not evidenced	_____	_____	_____	_____

E(2)a SECOND CHARGE LOANS TO INDIVIDUALS: Nature of loan and purpose

<u>Second (or subsequent) charge mortgages</u>				
<u>Gross advances in quarter</u>		<u>Balances outstanding</u>		
<i>Number</i>	<i>Amount</i>	<i>Number</i>	<i>Amount</i>	
c1	c2	c3	c4	
E3a By credit history				
E3a.1	Impaired credit history	_____	_____	_____
E3a.2	Other	_____	_____	_____
E3a.3	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>
E4a By payment type				
E4a.1	Repayment (capital & interest)	_____	_____	_____
E4a.2	Interest only	_____	_____	_____
E4a.3	Combined	_____	_____	_____
E4a.4	Other	_____	_____	_____
E4a.5	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>
E5a By drawing facility				
E5a.1 Loans with extra drawing facility :				
	(a) Loans including unused facility	_____	_____	_____
	(b) Unused facility	_____	_____	_____
	(c) Net loans (a - b)	_____	_____	_____
E5a.2	Loans with no extra drawing facility	_____	_____	_____
E5a.3	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>
E6a By purpose				
House Purchase:				
E6a.1	Home improvement	_____	_____	_____
E6a.2	Debt consolidation	_____	_____	_____
E6a.3	Home improvement and debt consolidation	_____	_____	_____
E6a.4	Other	_____	_____	_____
E6a.5	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>

F(1)a SECOND CHARGE LENDING: Arrears analysis (£000s)

Arrears categorisation by type of loan	<u>Cases entering higher (ie more serious) arrears band in quarter</u>			<u>Position on all arrears cases at end of quarter</u>			<u>Performance of current arrears cases during the quarter</u>
	<i>Number</i>	<i>Amount of arrears</i>	<i>Balance outstanding</i>	<i>Number</i>	<i>Amount of arrears</i>	<i>Balance outstanding</i>	%
F1a Second (or subsequent) charge mortgages							
F1a.1 1.5 < 2.5 %							
F1a.2 2.5 < 5 %							
F1a.3 5.0 < 7.5 %							
F1a.4 7.5 < 10 %							
F1a.5 10% or more							
F1a.6 In possession							
F1a.7 TOTAL							

F(2)a LENDING: Arrears analysis (£000s)

F5a Arrears management	Those cases no longer reported (ie not included in F1a)			Capitalisation of arrears cases in quarter			Arrears cases reported in F1a		
	<i>Number</i>	<i>Balance outstanding</i>		<i>Number</i>	<i>Amount of arrears</i>	<i>Balance outstanding</i>	<i>A temporary concession</i>	<i>A formal arrangement</i>	<i>No concession arrangement</i>
F5a.1 Residential loans to individuals, of which Second (or subsequent) charge									

H(1)a SECOND CHARGE MORTGAGE ADMINISTRATION: Arrears analysis		(£000s)						
		c1	c2	c3	c4	c5	c6	c7
Arrears categorisation by type of loan		<u>Cases entering higher (ie more serious) arrears band in quarter</u>			<u>Position on all arrears cases at end of quarter</u>			<u>Performance of current arrears cases during the quarter</u>
		<u>Number</u>	<u>Amount of arrears</u>	<u>Balance outstanding</u>	<u>Number</u>	<u>Amount of arrears</u>	<u>Balance outstanding</u>	%
H1a	Second (or subsequent) charge mortgages							
H1a.1	1.5 < 2.5 %							
H1a.2	2.5 < 5 %							
H1a.3	5.0 < 7.5 %							
H1a.4	7.5 < 10 %							
H1a.5	10% or more							
H1a.6	In possession							
H1a.7	TOTAL							

H(2)a MORTGAGE ADMINISTRATION: Arrears analysis		(£000s)								
		c1	c2	c3	c4	c5	c6	c7	c8	c9
Arrears categorisation by type of loan		<u>Those cases no longer reported (ie not included in H1 to H3.7)</u>			<u>Capitalisation of arrears cases in quarter</u>			<u>Arrears cases reported in H1 to H3.7 at end quarter</u>		
		<u>Possession sales during quarter</u>			<u>Number</u>			<u>Number of cases for which there is in place:</u>		
		<u>Number</u>	<u>Balance outstanding</u>	<u>Number</u>	<u>Amount of arrears</u>	<u>Balance outstanding</u>	<u>A temporary concession</u>	<u>A formal arrangement</u>	<u>No concession arrangement</u>	
H5a	Arrears management									
H5a.1	Residential loans to individuals, of which Second (or subsequent) charge									

16 Annex 19BG Notes for Completion of the Mortgage Lenders & Administrators Return ('MLAR')

...

1. Introduction

This section covers a number of points that have relevance across the return generally:

...

- Loans made before 31 October 2004
- Second charge regulated mortgage contracts

...

2. Overview of reporting requirements

...

Because the *MLAR* is activity based, not all sections are applicable to all types of *home finance activity firm*. The applicability of each section is explained in the table below:

Section	Applicability
...	
<u>A3(a): Analysis of second charge loans to customers</u>	<u>Applies to all home finance activity firms in respect of second charge regulated mortgage contracts.</u>
...	
C: Capital	Applies to all <i>home finance activity firms</i> except: <p>...</p> <ul style="list-style-type: none"> - A firm which is a solo-consolidated <i>subsidiary</i> of an <i>authorised credit institution</i> - <u>A firm which exclusively carries on home finance activities in relation to second charge regulated mortgage contracts, as set out in SUP 16.12.18BR (note 4).</u>
...	
<u>D(a): Second charge business flow and rates</u>	<u>Applies to all home finance providing activity firms in respect of second charge regulated mortgage contracts.</u>

E: Residential lending to individuals: new business profile	...
<u>E1(a) and E2(a): Second charge lending to individuals</u>	<u>Applies to all home finance providing activity firms in respect of second charge regulated mortgage contracts.</u>
F: Lending: Arrears Analysis	...
<u>F(a): Second charge lending – arrears analysis</u>	<u>Applies to all home finance providing activity firms in respect of second charge regulated mortgage contracts.</u>
...	
H: Mortgage Administration: Arrears analysis	
<u>H(a): Second charge mortgage administration – arrears analysis</u>	<u>Applies to all firms with permission to undertake administering a home finance transaction, in respect of second charge regulated mortgage contracts.</u>
...	
L: Credit Risk	Applies to a firm that meets the conditions of SUP 16.12.18BR (note notes 2 and 4).
M: Liquidity	Applies to a firm that meets the conditions of SUP 16.12.18BR (note notes 3 and 4).

...

4. Regulated mortgage contracts and the wider mortgage market

...

(ii) Residential loans to individuals

...

Examples of **non-regulated mortgage contracts** which fall under the wider category of residential loans to individuals include: buy-to-let loans and other types of loan where the property is not for use by the borrower (or qualifying dependants); ~~and residential loans to individuals where the lender does not have a first charge. In the case where a lender takes a first and a second charge over the same residential property (for different purposes) we consider that generally the loan secured by the~~

~~first charge will be a regulated mortgage contract, but that the loan secured by the second charge will invariably not and should be reported as non-regulated.~~

~~Pending the UK implementation of the Mortgage Credit Directive, even though loans secured by a second or subsequent charge on residential property may potentially be regulated credit agreements, firms completing the MLAR in the period after 1 April 2014 should continue to include second charge mortgage business as business falling within non-regulated mortgage contracts.~~

~~It is important, therefore, to separate this category from all other forms of secured lending.~~

...

(iv) **Regulated mortgage contract**

This is defined in the *Handbook* as follows:

- (a) (in relation to a contract) (in accordance with article 61(3) of the *Regulated Activities Order*) a contract which, at the time it was entered into, meets the following conditions:

...

- (ii) the obligation of the borrower to repay is secured by a ~~first legal mortgage on land (other than timeshare accommodation) in the United Kingdom~~ EEA, at least 40% of which is used, or is intended to be used, for credit provided to an individual, as or in connection with a dwelling ~~by the borrower or (in the case of credit provided to trustees), as or in connection with a dwelling by a related person by an individual who is a beneficiary of the trust, or by a person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:~~

- (A) ~~that person's spouse; or~~
- (B) ~~a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or~~
- (C) ~~that person's parent, brother, sister, child, grandparent or grandchild.~~

...

This means that in relation to a *regulated mortgage contract*, the following conditions must all be satisfied:

- ...
- the lender must take a ~~first legal mortgage over~~ UK EEA property; and

- the property must be at least 40% occupied by the borrower or his immediate family as a dwelling.

The definition of a *regulated mortgage contract* means that many kinds of loan are caught by regulation, not just loans for house purchase. For example, it includes a significant amount of short-term ~~first charge~~ lending. ...

(v) **Second charge regulated mortgage contracts**

A second charge regulated mortgage contract is defined in the Handbook as a regulated mortgage contract which is not a first charge legal mortgage. Therefore, it includes second and subsequent charge mortgages.

Data which is provided in relation to a second charge regulated mortgage contract in A3(a), D (a), E(1)(a), E(2)(a), F(a), or H(a) in SUP 16 Annex 19AAR will also need to be provided as part of the data items in A3, D, E, F or H, as the case may be, in SUP 16 Annex 19AR.

The guidance on how to submit the data items in A3, D, E, F or H of SUP 16 Annex 19AR applies to A3(a), D(a), E(1)(a), E(2)(a), F(a) or H(a) of SUP 16 Annex 19AAR where the same terms are used in the corresponding parts of SUP 16 Annex 19AAR.

...

8. Loans made before 31 October 2004

This section does not apply to second charge regulated mortgage contracts.

(i) **Classifying the ‘back book’**

...

(ii) **Specific treatment of residential loans to individuals**

Any loans made before 31 October 2004, that otherwise satisfy the specific requirements of a *regulated mortgage contract*, should be reported as **non-regulated loans** in the various parts of the *MLAR* (~~since only those loans advanced after this date are required to be treated as a regulated mortgage contract for the purposes of MLAR reporting~~).

...

Section E: Residential Loans to individuals: New business profile

...

E1/2 By Income Multiple and LTV (Loan to Valuation ratio)

The amount to be included in the table is the **gross advance**, but its allocation to a specific cell is determined according to income multiple and LTV which are both

defined using the size of the loan (as defined below)

For second charge regulated mortgage contracts, the calculation of income multiples and LTVs are to also include the outstanding balance of the first charge regulated mortgage contract and any higher priority second charge regulated mortgage contracts.

...

16 Annex 21R Reporting Fields

...

2 SPECIFIC REPORTING FIELDS

...

(c) Mortgages

The following data reporting fields must be completed, where applicable for all relevant regulated mortgage contracts, except any second charge regulated mortgage contract that is entered into before 1 April 2017:

...

Data reporting field	Code (where applicable)	Notes
Sales Data (report for all regulated mortgage contracts)		
...		
Type of mortgage	... SE = secured overdraft <u>SC = second charge regulated mortgage contract</u> ...	...
Mortgage characteristics	... OS = offset positive and/or negative balances <u>EL = a second charge regulated</u>	...

	<u>mortgage contract that is a shared equity credit agreement</u> ...	
...		
Type of borrower	...	... Report 'O' for <u>lifetime mortgages, and bridging loans and second charge regulated mortgage contracts that are not for remortgage purposes.</u>
...		
The purpose of a <u>second charge regulated mortgage contract</u> or extra money withdrawn for remortgages	H = home improvements D = debt consolidation O = other	Use codes to indicate the purpose(s) of the <u>second charge regulated mortgage contract</u> or the extra money withdrawn for <u>first or second charge remortgages.</u> <u>Report all that apply.</u>
...		
Affordability data		
...		
...		
Were the <i>MCOB</i> 11.7 transitional arrangements used?	...	Report where the transitional arrangements were used when entering into the mortgage as set out in <i>MCOB</i> 11.7. <u>Second charge regulated mortgage contracts must be reported as 'N'.</u>
...		
Data reporting field	Code (where applicable)	Notes
Performance Data (report for all <i>regulated mortgage contracts</i>)		
...		

Sales value achieved (for repossessions)	...	...
Is the transaction a second charge mortgage?	Yes No	Report 'Yes' only where the mortgage is a <u>second charge regulated mortgage contract</u> and 'No' where the mortgage is a <u>first charge regulated mortgage contract</u> . If the <i>firm</i> does not have second charge mortgages to report, the <i>firm</i> does not need to report against this field.

...

TP1 Transitional Provisions

...

TP1.10 Mortgage activities

<u>(1)</u>	<u>(2) Material to which the transitional provision applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provision: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
<u>1</u>	<u>SUP 16.11.5R(3), SUP 16.11.5AR and SUP 16 Annex 21R, section 2 (c) (sales data report and performance data report for mortgages)</u>	<u>R</u>	When reporting sales data and performance data on <u>regulated mortgage contracts</u> , a <i>firm</i> should not include sales data and performance data on <u>second charge regulated mortgage contracts</u> .	<u>21 March 2016 to 31 March 2017</u>	<u>21 March 2016</u>

...

Annex F

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

14 Participation by EEA Firms

14.1 Application and Purpose

...

14.1.2 R This chapter also applies to an *incoming EEA firm* which is a *credit institution*, or an *MiFID investment firm* (or both), an *IMD insurance intermediary*, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*

Purpose

14.1.3 G This chapter provides supplementary rules and guidance for an *incoming EEA firm* which is a *credit institution*, an *IMD insurance intermediary*, an *MiFID investment firm*, *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*....

14.1.4 G (1) An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, an *MCD mortgage credit intermediary* or an *MiFID investment firm* is not a participant firm in relation to its passported activities unless it "tops-up" into the compensation scheme ...

...

...

14.2 Obtaining top-up cover

...

14.2.3 G A notice under *COMP* 14.2.1R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

(1) the *firm* must be:

...

(g) an *MCD mortgage credit intermediary*

...

TP 1 Transitional Provisions

1.1 Transitional Provisions Table

(1)	(2) Material to which the transitional applies	(3)	(4) Transitional Provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
35	<u>All the rules and guidance in COMP applicable to protected home finance mediation.</u>	R	<p><u>The compensation scheme does not provide cover for claims in respect of any mortgage mediation activity relating to a second charge regulated mortgage contract if:</u></p> <p><u>(1) the relevant person was in default before 21 March 2016; or</u></p> <p><u>(2) the basis for the claim arose before 21 March 2016.</u></p>	From 21 March 2016 indefinitely	<u>Not applicable</u>

Annex G**Amendments to the Professional Firms (PROF)**

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

- 5.3.8 G *MCOB* 1.2.10R provides that *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for ~~*MCOB 2.2 (Clear, fair and not misleading communication)*~~ and *MCOB 3A (Financial promotions and communications with customers)*.

...

Annex H

Amendments to the Perimeter Guidance Manual (PERG)

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

2.5 Investments and activities: general

...

Modification of certain exclusions as a result of MiFID, ~~and~~ the Insurance Mediation Directives and the Mortgage Credit Directive

- 2.5.3 G The application of certain of the exclusions considered in *PERG 2.8* (Exclusions applicable to certain regulated activities) and *PERG 2.9* (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who are subject to ~~MiFID or the Insurance Mediation Directive~~ MiFID, the Insurance Mediation Directive and the MCD. The reasons for this and the consequences of it are explained in *PERG 2.5.4G* ~~as respects for MiFID, and PERG 5 (Insurance mediation activities), as respects for the Insurance Mediation Directive and PERG 4.10A for the MCD~~.

...

2.6 Specified investments: a broad outline

...

Rights under a regulated mortgage contract

- 2.6.27 G In accordance with article 61(3)(a) of the *Regulated Activities Order*, a *regulated mortgage contract* is a contract which, at the time it is entered into, satisfies the following conditions:

...

- (2) the obligation of the borrower to repay is secured by a first legal charge mortgage on land ~~(other than timeshare accommodation) in the United Kingdom~~ in the EEA; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling ~~by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related person.~~

Detailed guidance on this is set out in *PERG 4.4* (Guidance on regulated activities connected with mortgages). However, generally, the definition of

regulated mortgage contract does not include certain loans to commercial borrowers, second charge loans by a credit union and second charge bridging loans (see *PERG 4.4.1-AG*).

...

2.7 Activities: a broad outline

...

2.7.7A G ...

- (3) *arranging (bringing about) regulated mortgage contracts*, which includes arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into by him as borrower after 31 October 2004 (article 25A(1) and (2A));

...

2.7.16E ...

Advising on regulated credit agreements for the acquisition of land

2.7.16F G Under article 53DA of the *Regulated Activities Order*, advising a person (“P”) is a *regulated activity* if:

- (1) the advice is given to P in P’s capacity as a recipient of credit, or potential recipient of credit, under a *regulated credit agreement*;
- (2) P intends to use the credit to acquire or retain property rights in *land* or in an existing or projected building; and
- (3) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to *regulated credit agreements*.

...

2.7.19FA G The exclusion referred to in *PERG 2.7.19FG* will not be available to a *firm* that is an *MCD firm* (see *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*).

...

2.7.19GA G The exclusion referred to in *PERG 2.7.19GG* will not be available to a *firm* that is an *MCD firm* (see *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*).

...

- 2.7.19J G ...
- (2) the agreement is either: ~~either secured on land or for credit which exceeds £60,260;~~
- (a) secured on land; or
- (b) for credit which exceeds £60,260 and
- (i) for a purpose other than the renovation of residential property; or
- (ii) to acquire or retain property rights in land or in an existing or projected building

2.7.19JA G The exclusion referred to in PERG 2.7.19JG will not be available to a firm that is an MCD firm (see PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

...

2.8 Exclusions applicable to particular regulated activities

...

- 2.8.6 G ...
- (1) those relating to arranging a particular transaction or a contract, agreement or plan variation (articles 25(1), 25A(1), 25A(2A) 25B(1), 25C(1) , and 25E(1) of the *Regulated Activities Order*); and

...

...

2.8.6BA G The exclusion referred to in PERG 2.8.6AG(4) will not be available to persons who, when carrying on an arranging activity, are MCD firms (see PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

...

- 2.8.12 G ...
- (4) *advising on a home purchase plan; and*
- (5) *advising on a regulated sale and rent back agreement; and*
- (6) *advising on regulated credit agreements for the acquisition of land.*

...

2.8.12A G Advice given by an *unauthorised person* in relation to a *home finance transaction* or advising on regulated credit agreements for the acquisition of land in the circumstances referred to in *PERG 2.8.6AG(5)(a)* or (b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:

- (1) the following exclusions apply in specified circumstances where a *person* is *advising on investments*, advising on regulated credit agreements for the acquisition of land or *advising on a home finance transaction*:

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

2.9.3 G ...

- (7) *advising on investments* ~~or~~, advising on regulated credit agreements for the acquisition of land or *advising on a home finance transaction*.

...

The exclusion is, however, disapplied where a *person* is carrying on *insurance mediation* ~~or reinsurance mediation~~, reinsurance mediation or the *person* would be an *MCD firm*. This is due to article 4(4A) and 4(4B) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance mediation activities* is in *PERG 5 (Insurance mediation activities)* and *guidance* on activities and exclusions relevant to the *MCD* is in *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*.

...

2.9.5 G ...

- (5) *advising on investments* ~~or~~, advising on regulated credit agreements for the acquisition of land or *advising on a home finance transaction*.

...

... The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see *PERG 2.5.4G* to *PERG 2.5.5G* (*Investment services*)).

and activities)).

The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MCD firms* (see *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*).

...

2.9.23 G ...

(20A) advising on regulated credit agreements for the acquisition of land;

...

2.9.24 G (1) Subject to (2), ~~(3)~~ and ~~(3)~~ (4), the exclusions apply, in relation to any activity carried on by a *local authority*.

...

(3) The exclusion relating to *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* applies only in so far these activities are not carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building and relate to credit agreements of a kind to which the Consumer Credit Directive does not apply under article 2(2) of that Directive. In summary, these include credit agreements:

(a) ~~which are secured by a legal or equitable mortgage on land;~~

(b) ~~the purpose of which is to acquire or retain property rights in land or in an existing or prospective building;~~

...

(4) The exclusion relating to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement for activities that are carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building apply to local authorities and (in some cases) their subsidiaries only when the relevant credit agreement:

(a) is of a kind to which the Consumer Credit Directive does not apply under article 2(2) of that Directive, and

(b) meets one of the following conditions:

(i) it is an agreement listed in PERG 4.10A.5G;

- (ii) it is a *bridging loan* described in *PERG* 4.13.6G;
or
- (iii) it is a *restricted public loan* described in *PERG* 4.13.7G.

...

2 Annex 2 G

...

2 Table

...	
Regulated home finance activity	
(v) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25A(1) and (2A))	<i>regulated mortgage contract</i> (article 88), <u>except for (xa), see note 11 to table 1</u>
...	
(x) <i>advising on regulated mortgage contracts</i> (article 53A)	
<u>(xa) <i>advising on regulated credit agreements for the acquisition of land</i> (article 53DA)</u>	
...	
...	

3Table

...
Note 11: <u>The specified investment in relation to which the regulated activity of <i>advising on regulated credit agreements for the acquisition of land</i> (article 53DA) may be carried on, is a <i>regulated credit agreement</i> which meets the description in <i>PERG</i> 2.7.16FG.</u>

...

4 Guidance on regulated activities connected with mortgages

...

4.2.3 G ...

(5) ...

(5A) if so, is the exclusion on which I am relying disapplied because the business is subject to the *Mortgage Credit Directive* (see *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive)?)

...

...

- 4.3.1 G ...
- (1) *arranging (bringing about) regulated mortgage contracts* (article 25A(1) and (2A) (Arranging regulated mortgage contracts));

...

- 4.3.5 G Summary of which variant of the business test applies to the different regulated mortgage activities. This table belongs to *PERG* 4.3.4G.

By way of business	Carrying on the business
...	<i>Arranging (bringing about) regulated mortgage contracts</i> (article 25A(1)) <u>and</u> <i>arranging (bringing about) mortgage contracts behalf of a lender</i> (article 25A(2A))
...	

...

- 4.4.1 G ...
- (1) ...
- (2) the contract provides for the obligation of the borrower to repay to be secured by a ~~first legal mortgage on land (other than timeshare accommodation)~~ in the *United Kingdom* EEA; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling ~~by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related person.~~

~~*PERG* 4.4.2G to *PERG* 4.4.9G set~~ This section sets out the FCA's understanding of some key concepts contained in article 61(3)(a) ...

- 4.4.1-A G A contract is not a regulated mortgage contract if it is:
- (1) a loan to a commercial borrower excluded under *PERG* 4.4.17G or *PERG* 4.4.21G; or
- (2) a second charge loan by a credit union excluded under *PERG* 4.4.24G; or

- (3) a second charge bridging loan excluded under PERG 4.4.27G.

Provision of credit

- 4.4.1A G ...
- (2) In the *FCA's* view, an obligation to repay implies the existence, or the potential for the existence, of a debt owed by the individual to whom the financial accommodation is provided (the 'borrower') to the person who provides it (the 'lender'). Consequently, for any facility under which any form of financial accommodation is being provided, the test is whether it allows for the possibility that the person providing the financial accommodation may be placed in a position where he becomes a creditor of the individual to whom he is providing it. ~~An example of this would be the issue of a guarantee by a bank to a third party for an individual customer (such as a rent guarantee or a performance bond) where the guarantee is secured on a first legal charge over the customer's residential property. In the *FCA's* view, this would amount to a regulated mortgage contract as the customer would owe a debt to the bank in the event that the bank had to pay the third party under the guarantee.~~
- ...
- 4.4.2 G ...
- 4.4.2A G (1) A loan to a trustee is caught, even if the trustee or the beneficiary is not an individual.
- (2) Therefore, it is possible that a loan to a trustee acting for a large commercial company is a regulated mortgage contract.
- (3) In practice, the exclusions for loans to commercial borrowers (in particular, see PERG 4.4.17G and PERG 4.4.21G) are likely to prevent such loans from being regulated mortgage contracts.
- (4) If:
- (a) the loan is made to a trustee;
- (b) the trustee is a bare trustee or nominee; and
- (c) the beneficiary of the trust is acting for commercial purposes;
- it is likely that the trustee will also be acting for commercial purposes.
- 4.4.2B G A loan to a partnership may be a loan to an individual if the partnership is made up of real people (that is natural, as opposed to legal, persons).

...

Land in the ~~United Kingdom~~ EEA

- 4.4.5 G The condition set out in *PERG* 4.4.1G(2) means that a *regulated mortgage contract* must be secured on land in the ~~United Kingdom~~ EEA ...

Occupancy requirement

- 4.4.6 G The condition set out in *PERG* 4.4.1G(3) means that loans secured on property which is entirely used for business purposes (such as an office block) cannot fall within the definition. However, loans secured on 'mixed use' property could be covered, provided that the ~~borrower (or trust beneficiary, where the borrowers are trustees) or a 'related person'~~ occupier uses at least 40% of the total of the land as or in connection with a dwelling. Loans secured on a six-floor property, half of which was occupied by ~~the borrower~~ a family as their home and half let out for business purposes would therefore satisfy the definition. (Article 61(4)(b) makes it clear that 'land', in the context of a multi-storey building, means the aggregate of the floor area of each of the storeys.)

- 4.4.6A G The most obvious example of a *regulated mortgage contract* is a loan made to an individual to enable the individual to buy a home for themselves where the loan is secured on that home. However, there is no requirement that the borrower should occupy the property. There is a requirement that at least 40% of the land should be used as a house, but no requirement that it is the borrower who uses it as a house. So, for example:

- (1) a loan may be a *regulated mortgage contract* if the property on which it is secured is to be occupied by the borrower's relatives as their home; or
- (2) a loan may be a *regulated mortgage contract* if the borrower does not occupy the property on which the loan is secured and instead intends to sell the property to a third party, with the mortgage remaining on the house until then.
- (3) However, if the borrower is acting on a commercial basis, the loan in (2) may be excluded as a loan to a commercial borrower under the exclusions in *PERG* 4.4.17G or *PERG* 4.4.21G.

...

- 4.4.8 G ~~The requirement that at least 40% of the land area be used as or in connection with a dwelling means that 'buy to let' loans secured on the property to be let will usually be excluded. However, such loans will not be excluded if:~~
- (1) ~~the lessee is a 'related person' to the borrower. This will be the case even if the borrower subsequently takes possession of the property, as the conditions set out in *PERG* 4.4.1G(1) to *PERG*~~

~~4.4.1G(3) were not satisfied at the outset of the contract (see PERG 4.4.3G); or~~

- (2) ~~at the time the contract is entered into, the borrower has a real intention to use the land as, or in connection with, a dwelling (for example a member of the British Forces Posted Overseas who buys a property in the *United Kingdom* intending to live there on his return but which he lets out in the meantime). [deleted]~~

- 4.4.9 G ~~'Related person' is defined in article 61(4)(c) of the *Regulated Activities Order* as meaning the borrower's spouse, civil partner, parents, grandparents, siblings, children and grandchildren. An unmarried partner of the borrower whose relationship with the borrower has the characteristics of the relationship between a husband and wife is also included; this can include a *person* of the same sex as the borrower. Stepchildren, however, would seem to be excluded. [deleted]~~

...

- 4.4.11 G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a *bridging loan* (although *bridging loans* described in PERG 4.4.27G are not *regulated mortgage contracts*), a secured credit card facility and *regulated lifetime mortgage contracts* under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.

- 4.4.12 G ~~A number of products, however, are excluded from the definition, such as: Loans secured on commercial premises are not *regulated mortgage contracts* as the property will not be used as or in connection with a dwelling.~~

- (1) ~~loans secured by a second or subsequent charge (as the lender does not have a first charge); and~~
- (2) ~~loans secured on commercial premises (as the borrower will not be using the land as or in connection with a dwelling).~~
- (3) ~~[deleted]~~

~~Regulated mortgage contracts and contract variations~~

- 4.4.13 G ~~The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:~~
- (1) ~~a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in PERG 4.4.1 G(1) to PERG 4.4.1G(3), will not be a *regulated mortgage contract* (because it was not a~~

~~regulated mortgage contract at the time it was entered into);~~

- (2) ~~a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a regulated mortgage contract (provided, of course, that it meets the definition in the Regulated Activities Order); and~~
- (3) ~~a regulated mortgage contract that was originally entered into on or after 31 October 2004, and which is subsequently varied by, for example, making a further advance, will remain a regulated mortgage contract. [deleted]~~

- 4.4.14 G ~~It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and therefore not be a regulated mortgage contract) and a second contract entered into on or after 31 October 2004 (and be a regulated mortgage contract). [deleted]~~

Type of security

- 4.4.15 G A loan may be a regulated mortgage contract whether it is secured by a first, second or subsequent mortgage.

- 4.4.16 G A mortgage has a wide meaning for the purpose of the definition of a regulated mortgage contract. It includes:

- (1) a legal mortgage;
- (2) equitable security;
- (3) (in Scotland) a heritable security; and
- (4) security commonly used in another EEA State for loans secured on residential property.

Exclusions for lending to commercial borrowers

- 4.4.17 G A contract is excluded from the definition of regulated mortgage contract if, at the time it is entered into, it meets the following conditions:

- (1) it meets the conditions in PERG 4.4.1G(1) to (3); and
- (2) less than 40% of the land secured by the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower or (for credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person; and
- (3) the agreement is 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.

- 4.4.18 G The *Regulated Activities Order* refers to this as an “investment property loan”.
- 4.4.19 G Under the *Regulated Activities Order* ‘related person’ means, in relation to the borrower or (for credit provided to trustees) a beneficiary of the trust:
- (1) that *person’s* spouse or civil partner;
 - (2) a *person* (whether or not of the opposite sex) whose relationship with that *person* has the characteristics of the relationship between husband and wife; or
 - (3) that *person’s* parent, brother, sister, child, grandparent or grandchild.
- 4.4.20 G (1) If less than 40% of the land secured by the mortgage is used, or intended to be used, as or in connection with a dwelling then the exclusion for loans to commercial borrowers described in *PERG* 4.4.17G is irrelevant, as the loan falls outside *PERG* 4.4.1G and so cannot be a *regulated mortgage contract*.
- (2) The exclusion becomes relevant (if all the conditions in *PERG* 4.4.17G are met) if at least 40% of the land secured by the mortgage is used, or intended to be used, as or in connection with a dwelling by:
- (a) someone other than the borrower; or
 - (b) the borrower and someone else, if the percentage used by the borrower as residential property is less than 40%.
- (3) Therefore, the exclusion would, for example, cover a loan secured on residential property where a commercial borrower is not going to occupy any of the property but is going to sell it to a third party.
- 4.4.21 G There is also an exclusion for loans to commercial borrowers secured by a second or subsequent security. A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:
- (1) it meets the conditions in *PERG* 4.4.1G(1) to (3); and
 - (2) the lender provides the borrower with credit exceeding £25,000; and
 - (3) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
 - (4) the agreement is 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.

- 4.4.22 G The Regulated Activities Order refers to this as a “second charge business loan”.
- 4.4.23 G (1) There is no exclusion from the £25,000 floor in PERG 4.4.21G(2) for an item entering into the *total charge for credit*.
- (2) Giving time for payment of interest if the borrower gets into difficulty, does not affect the calculation of the sum as the definition relates to the time at which the contract is entered into.
- (3) However, for example, if the credit includes a broker fee, that fee may be excluded in the calculation of the floor.

Exclusion for lending by credit unions

- 4.4.24 G A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:
- (1) it meets the conditions in PERG 4.4.1G(1) to (3); and
- (2) the lender is a *credit union*; and
- (3) it is a *borrower-lender agreement*; and
- (4) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (5) the rate of the *total charge for credit* does not exceed 42.6 per cent.

- 4.4.25 G The Regulated Activities Order refers to this as a “limited interest second charge credit union loan”.

- 4.4.26 G The exclusion in PERG 4.4.24G only applies if the loan meets the following conditions:
- (1) the borrower receives timely information on the main features, risks and costs of the contract at the pre-contractual stage; and
- (2) any advertising of the contract is fair, clear and not misleading.

Exclusion for second charge bridging loans

- 4.4.27 G A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:
- (1) it meets the conditions in PERG 4.4.1G(1) to (3); and
- (2) it is a *borrower-lender-supplier agreement* financing the purchase of land; and

- (3) it is used by the borrower as a temporary financing solution while changing to another financial arrangement for the land secured by the mortgage; and
- (4) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (5) the number of payments to be made by the borrower under the contract is not more than four.

4.4.28 G The *Regulated Activities Order* refers to this as a “limited payment second charge bridging loan”.

Certificate that borrower is not a consumer

4.4.29 G The two exclusions for loans to commercial borrowers (*PERG* 4.4.17G and *PERG* 4.4.21G) depend on the borrower not being a consumer. For these purposes, if an agreement includes a declaration which:

- (1) is made by the borrower; and
- (2) includes:
 - (a) a statement that the agreement is 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) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under the *Act* if the agreement were a *regulated mortgage contract* under the *Act*; and
 - (c) a statement that the borrower is aware that if the borrower is in any doubts as to the consequences of the agreement not being regulated by the *Act*, then the borrower should seek independent legal advice;

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in (2)(a).

4.4.30 G However, the presumption in *PERG* 4.4.29G does not apply if, when the agreement is entered into:

- (1) the lender (or, if there is more than one lender, any of the lenders); or
- (2) any *person* who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement;

knows, or has reasonable cause to suspect, that 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.

Insert the following new chapter, PERG 4.4A, after PERG 4.4. The text is not underlined.

4.4A Transitional issues

Regulated mortgage contracts entered into before 2004: variations

- 4.4A.1 G There are special provisions for mortgages entered into before 31 October 2004.
- 4.4A.2 G The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:
- (1) a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in:
 - (a) *PERG 4.4.1G(1) to PERG 4.4.1G(3)*; or
 - (b) the old versions of those paragraphs as referred to in *PERG 4.4A.5G*;

will not be a *regulated mortgage contract* (because it was not a *regulated mortgage contract* at the time it was entered into);
 - (2) a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a *regulated mortgage contract* (provided that it meets the definition in the *Regulated Activities Order*); and
 - (3) a *regulated mortgage contract* that was originally entered into on or after 31 October 2004 and which is subsequently varied by, for example, making a further advance, will remain a *regulated mortgage contract*.
- 4.4A.3 G It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and, therefore, not be a *regulated mortgage contract*) and a second contract entered into on or after 31 October 2004 (and be a *regulated mortgage contract*).

Regulated mortgage contracts entered into before 2016

- 4.4A.4 G In some cases (described in this section), the definition applicable to a contract that existed before 21 March 2016 is different from the one in *PERG 4.4* (What is a regulated mortgage contract?).
- 4.4A.5 G The definition in *PERG 4.4* applies to a contract which, immediately before 21 March 2016, met the following conditions:
- (1) it was a *regulated credit agreement* (under the definition existing at that time); and
 - (2) it provided for the obligation of the borrower to repay to be secured by a mortgage on land that ranked in priority behind one or more other mortgages affecting the land in question.
- 4.4A.6 G Except for the contracts mentioned in *PERG 4.4A.5G*, the definition applicable to pre-2016 contracts is the version in force on 20 March 2016.
- 4.4A.7 G The old definition referred to in *PERG 4.4A.6G* can be found in historical versions of *PERG*, which can be found on the *FCA*'s website along with the current version.
- 4.4A.8 G In summary, the old definition of a *regulated mortgage contract* was a contract that, at the time it was entered into, met the following conditions:
- (1) the contract was one under which a person ("the lender") provided credit to an individual or to trustees ("the borrower");
 - (2) the contract provided for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*;
 - (3) at least 40% of that land was used, or was intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who was a beneficiary of the trust, or by a *related person*.
- 4.4A.9 G As is still the case, the old definition excluded *regulated home purchase plans*.
- 4.4A.10 G In practice, there may not be many contracts entered into prior to 21 March 2016 that are not *regulated mortgage contracts* but which would be *regulated mortgage contracts* if they had been entered into after 21 March 2016. Examples include:
- (1) a loan secured by a first-ranking mortgage on land elsewhere in the *EEA*;
 - (2) a loan secured by first-ranking equitable security;
 - (3) a loan that was not a *regulated credit agreement* and is secured by second-ranking security.

4.5 Arranging regulated mortgage contracts

Definition of the regulated activities involving arranging

- 4.5.1 G ...
- (1) making arrangements ~~for another person to:~~
- (a) for another person to enter into a regulated mortgage contract as borrower; or
- (b) ~~vary the terms of a regulated mortgage contract entered into by him as borrower on or after 31 October 2004 in such a way as to vary his obligations under the contract; and to enter into a regulated mortgage contract with a borrower on behalf of a lender; or~~
- (c) for another person to vary the terms of a regulated mortgage contract entered into by him as borrower on or after 31 October 2004 in such a way as to vary his obligations under the contract; and
- (2) ...
- 4.5.2 G The first activity (article 25A(1) and (2A)) is referred to in this *guidance* as *arranging (bringing about) regulated mortgage contracts*. Various points arise:
- ...
- (2) This activity is carried on only if the arrangements bring about, or would bring about a *regulated mortgage contract*. This is because of the exclusion in article 26 (see *PERG* 4.5.4G). As explained in *PERG* 4.5.4AG, this exclusion does not apply to the activity in *PERG* 4.5.1G(1)(b).
- ...
- 4.5.3 G The second activity (article 25A(2)) is referred to in this *guidance* as making *arrangements with a view to regulated mortgage contracts*. This activity is different from article 25A(1) and (2A) because
- Exclusion: article 25A(1) arrangements not causing a deal
- 4.5.4 G ...
- 4.5.4A G (1) Article 26 does not apply to the activity described in *PERG* 4.5.1G(1)(b).

- (2) As the activity in PERG 4.5.1G(1)(b) covers a person that concludes a regulated mortgage contract with a borrower on behalf of a lender, in many cases the activity will only apply if the arrangements bring about, or would bring about, a regulated mortgage contract. Therefore, in many cases the fact that article 26 does not apply will make no difference.
- (3) However, if a person enters into a regulated mortgage contract on behalf of a lender, that person carries out the regulated activity described in PERG 4.5.1G(1)(b). That activity is not excluded just because most of the work is done by another.

...

4.5.7 G

4.5.7A G Article 28A does not apply to the activity described in PERG 4.5.1G(1)(b). This is because the activity described in PERG 4.5.1G(1)(b) is defined so that it cannot apply to an activity carried out by the lender. There is, therefore, no need to apply article 28A.

Exclusion: article 25A(1) and (2) arrangements with or through authorised persons

4.5.8 G An *unauthorised person* who makes arrangements for, or with a view to, a *regulated mortgage contract* between a borrower and an *authorised person*, is excluded from article 25A(1) and (2), 25A(2A) and by article 29 of the *Regulated Activities Order* (Arranging deals with or through authorised persons) if specified conditions as to advice and remuneration are satisfied. ...

4.5.8A G Article 29 does not apply if applying the exclusion would take activities outside article 25A that should be regulated under the MCD. Please see PERG 4.10A (Activities regulated under the Mortgage Credit Directive) for more details.

...

4.6.2 G ...

amounts to *entering into a new regulated mortgage contract* (see PERG 4.4.4G and ~~PERG 4.4.13G(2)~~). ...

...

4.7.2 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal

representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities* and their wholly-owned subsidiaries. ...

...

4.8.2 G ... The definition also does not include administration of a mortgage which was entered into before 31 October 2004. See, however, *PERG 4.4.4G* and ~~*PERG 4.4.13G*~~ for a discussion of ...

...

4.8.8 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities* and their wholly-owned subsidiaries. ...

...

4.10 Exclusions applying to more than one regulated activity

...

4.10.4 G ...

4.10.4A G (1) The exclusion in article 67 of the Regulated Activities Order (Activities carried on in the course of a profession or non-investment business) does not apply if applying the exclusion would take activities covered by the MCD outside the definition of certain regulated mortgage activities.

(2) Please see PERG 4.10A (Activities regulated under the Mortgage Credit Directive) for more details.

...

4.10.8 ...

4.10.8A G (1) The exclusion in article 66 of the Regulated Activities Order (Trustees, nominees and personal representatives) does not apply if applying the exclusion would take activities covered by the MCD outside the definition of certain regulated mortgage activities.

(2) Please see PERG 4.10A (Activities regulated under the Mortgage Credit Directive) for more details.

...

- 4.10.10 G There are exclusions that apply, in relation to each of the *regulated mortgage activities* if the *person* carrying on the activity is a *local authority* or a wholly owned subsidiary of a local authority. They can be found in article 72G of the *Regulated Activities Order*.

Insert new the following new chapter, PERG 4.10A, after PERG 4.10. The text is all new and is not underlined.

4.10A Activities regulated under the Mortgage Credit Directive

General treatment for activities regulated under the Mortgage Credit Directive

- 4.10A.1 G Article 4(4B) of the *Regulated Activities Order* says that certain exclusions in the *Regulated Activities Order* do not apply in cases covered by the *MCD*. This section explains the situations in which this applies.
- 4.10A.2 G Article 4(4B) of the *Regulated Activities Order* says that where:
- (1) a *person* is:
 - (a) a mortgage creditor (see *PERG* 4.10A.6G); or
 - (b) a credit intermediary (see *PERG* 4.10A.12G); or
 - (c) a *person* providing advisory services (see *PERG* 4.10A.20G);

under the *MCD*; and
 - (2) that *person* is (ignoring the exclusions in (3)) carrying on one of the following *regulated activities*:
 - (a) article 25A (*arranging (bringing about) regulated mortgage contracts and making arrangements with a view to regulated mortgage contracts*);
 - (b) article 53A (*advising on regulated mortgage contracts*); or
 - (c) article 61(1) (*entering into a regulated mortgage contract as lender*); and
 - (3) in acting as described in (1), that *person* is relying on one of the following exclusions to take it outside the *regulated activities* in (2):

- (a) article 29 (Arranging deals with or through authorised persons);
- (b) article 66 (Trustees, nominees and personal representatives); or
- (c) article 67 (Activities carried on in the course of a profession or non-investment business);

then the result is that:

- (4) the exclusions in (3) are switched off; and
- (5) that *person* is treated as carrying on the *regulated activity* in (2) in question.

The meaning of mortgage intermediary

- 4.10A.3 G The *Regulated Activities Order* refers to credit intermediaries (*PERG* 4.10A.2G(1)(b)) and providers of advisory services (*PERG* 4.10A.2G(1)(c)) as mortgage intermediaries.

What mortgages are covered by the Mortgage Credit Directive?: General

- 4.10A.4 G Article 4(4B) of the *Regulated Activities Order* only applies if the *regulated mortgage contract* is covered by the *MCD*. A *regulated mortgage contract* is covered if:
- (1) the lender is acting in the course of his trade, business or profession; and
 - (2) the borrower is an individual; and
 - (3) the borrower is acting for purposes which are outside their trade, business or profession; and
 - (4) the *regulated mortgage contract* does not come within one of the exclusions summarised in *PERG* 4.10A.5G.
- 4.10A.5 G (1) This paragraph lists the *regulated mortgage contracts* outside the *MCD*.
- (2) *MCD exempt lifetime mortgages* are excluded from the *Mortgage Credit Directive*. These are *regulated mortgage contracts* or *article 3(1)(b) credit agreements* where the creditor:
- (a) contributes a lump sum, periodic payments or other forms of credit disbursement;
 - (b) contributes the sums in (a) in return for a sum deriving from the future sale of a residential property or a right

relating to residential property; and

- (c) will not seek repayment of the capital until the occurrence of one or more *specified life events* of the consumer.

However, notwithstanding (c), the creditor may seek early repayment if the consumer breaches his contractual obligations and the breach allows the creditor to terminate the credit agreement.

Only *lifetime mortgages* that do not meet these conditions fall within the *Mortgage Credit Directive*. Normally, these will be mortgages where partial repayment of the capital is, or may become, due. These are known as *MCD lifetime mortgages*.

- (3) Agreements where:
 - (a) the credit is granted by an employer to his employees;
 - (b) the employer does so as a secondary activity; and
 - (c) such a credit agreement is offered:
 - (i) free of interest; or
 - (ii) at an *APRC* lower than those prevailing on the market and not offered to the public generally;

are excluded from the *MCD*.

- (4) Agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit are excluded from the *MCD*.
- (5) An *MCD exempt overdraft loan* is excluded from the *MCD*.
- (6) Agreements which are the outcome of a settlement reached in court or before another statutory authority are excluded from the *MCD*.
- (7) An *MCD exempt bridging loan* is excluded from the *MCD*.
- (8) An *MCD exempt credit union loan* is excluded from the *MCD*.

What mortgages are covered by the Mortgage Credit Directive?: Borrower as consumer

What effect does article 4(4B) have on lenders?

- 4.10A.6 G To work out the effect of article 4(4B) of the *Regulated Activities Order* (see *PERG* 4.10A.2G) on the *regulated activity* of *entering into a regulated mortgage contract as lender*, it is necessary to look at what a

mortgage creditor means.

- 4.10A.7 G In relation to a *regulated mortgage contract*, mortgage creditor means a *person* who grants or promises to grant credit falling within the scope of the definition of a *regulated mortgage contract* in the course of its trade, business or profession.
- 4.10A.8 G Therefore, article 4(4B) means that the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) do not apply to *entering into a regulated mortgage contract as lender* unless:
- (1) the *regulated mortgage contract* falls outside the *MCD* (see *PERG* 4.10A.5G); or
 - (2) the lender is not acting in the course of his trade, business or profession.

The effect of article 4(4B) on arrangers: The basics

- 4.10A.9 G Article 4(4B) of the *Regulated Activities Order* (see *PERG* 4.10A.2G) does not affect the *regulated activity* of *making arrangements with a view to regulated mortgage contracts*. This is because, in the *FCA's* view, the activities covered by this *regulated activity* are not covered by the *MCD*.
- 4.10A.10 G Article 4(4B) of the *Regulated Activities Order* disapplies the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) for the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*, but only in relation to the credit intermediary activities described in *PERG* 4.10A.12G.
- 4.10A.11 G To work out the effect of article 4(4B) of the *Regulated Activities Order* on the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*, it is necessary to look at what a credit intermediary (as referred to in *PERG* 4.10A.2G(1)(b)) means.

The effect of article 4(4B) on arrangers: What does credit intermediary mean?:
General

- 4.10A.12 G A credit intermediary means a *person* who:
- (1) is not acting as a creditor or notary; and
 - (2) is not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary; and
 - (3) carries out the following activities:
 - (a) presenting or offering *regulated mortgage contracts* to consumers;
 - (b) assisting consumers by undertaking preparatory work or other pre-contractual administration in respect of

regulated mortgage contracts, other than as referred to in (a); or

- (c) concluding *regulated mortgage contracts* with consumers on behalf of the creditor.
 - (4) carries out those activities in the course of his trade, business or profession, for remuneration;
- 4.10A.13 G The remuneration in *PERG* 4.10A.19G may take a pecuniary form or any other agreed form of financial consideration.
- 4.10A.14 G (1) A *person* who merely introduces or refers a consumer to a creditor or credit intermediary does not act as a credit intermediary.
- (2) An example of a *person* who merely introduces is someone who just indicates to a potential borrower:
- (a) the existence of a creditor or credit intermediary; or
 - (b) a type of product provided by a particular creditor or credit intermediary;

without further advertising or engaging in the presentation, offering, preparatory work or conclusion of the *regulated mortgage contract*.

The effect of article 4(4B) on arrangers: Conclusion about the effect on arranging (bringing about) regulated mortgage contracts

- 4.10A.15 G In the *FCA's* view, credit intermediation under the *MCD* covers the same activities as the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*, except that:
- (1) credit intermediation only applies if the intermediary acts for remuneration; and
 - (2) the *MCD* does not cover the *regulated mortgage contracts* listed in *PERG* 4.10A.5G; and
 - (3) the *MCD* only applies to services provided to consumers;
 - (4) if the intermediary only acts for the creditor, the *MCD* intermediation activity is narrower, as described in *PERG* 4.10A.17G.
- 4.10A.16 G Except as described in *PERG* 4.10A.15G, the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) do not apply to the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*.

The effect of article 4(4B) on arrangers: Remuneration under the *MCD*

- 4.10A.17 G *PERG* 5.4 (The business test for insurance mediation) has *guidance* on the meaning of remuneration in the *Insurance Mediation Directive*. That *guidance* is also applicable to the meaning of remuneration for the purpose of *PERG* 4.10A.12G.
- 4.10A.18 G Article 4(4B) is not relevant to an intermediary that carries on its activities by way of business (see *PERG* 4.3.3G to *PERG* 4.3.9G) but does not act for remuneration. The *FCA* does not expect this distinction to apply in practice.

The effect of article 4(4B) on arrangers: Acting for the creditor

- 4.10A.19 G
- (1) The *MCD* applies to credit intermediation activities performed for the creditor, as well as for the borrower.
 - (2) However, the activities carried out for the creditor are defined differently from the ones carried out for the borrower. They seem to be narrower. The activities are limited to concluding *regulated mortgage contracts* with consumers on behalf of the creditor.
 - (3) Just assisting the creditor by undertaking preparatory work or other pre-contractual administration is not enough on its own.
 - (4) The activity covers actually entering into the *regulated mortgage contract* on behalf of the creditor.
 - (5) The activity also covers activities that result in the lender entering into the *regulated mortgage contracts* if the role of the creditor and any *person* acting for the creditor is minimal.
 - (6) When deciding whether the intermediary is acting for the creditor alone, the *FCA* will not just look at the contractual position. In particular, the *FCA* will also look at whether a separate intermediary is acting for the borrower.
 - (7) The *guidance* in *PERG* 4.5.4AG (*Guidance* on making arrangements to enter into a *regulated mortgage contract* with a borrower on behalf of a lender) applies here too.

The effect of article 4(4B) on advisers

- 4.10A.20 G To work out the effect of article 4(4B) of the *Regulated Activities Order* (see *PERG* 4.10A.2G) on the *regulated activity* of *advising on regulated mortgage contracts*, it is necessary to look at what advisory services as referred to in *PERG* 4.10A.2G(1)(c) means.
- 4.10A.21 G Advisory services mean the provision of personal recommendations to a consumer in respect of one or more transactions relating to *regulated mortgage contracts* covered by the *MCD*.
- 4.10A.22 G Where *advising on regulated mortgage contracts* falls within the *MCD*,

the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) do not apply to this activity. Advisers should note that:

- (1) if the adviser does not act for remuneration, the *MCD* does not apply;
- (2) the *MCD* does not cover the *regulated mortgage contracts* listed in *PERG* 4.10A.5G;
- (3) the *MCD* only applies to advisory services provided to consumers;
- (4) the *MCD* only applies to personal recommendations.

- 4.10A.23 G Giving personal recommendations is narrower than giving advice. The *guidance* on this point in relation to *MiFID* in Q18 to Q21 in *PERG* 13.3 (Investment Services and Activities) is relevant here.
- 4.10A.24 G A *firm* that does not give personal recommendations is not affected by article 4(4B).
- 4.10A.25 G A *firm* can provide advisory services even though it does not act as a credit intermediary.

The effect of article 4(4B) on professional firms

- 4.10A.26 G Article 4(4B) does not apply to advising or arranging activities if:
- (1) they are carried out on an incidental basis in the course of professional activity;
 - (2) that professional activity is regulated; and
 - (3) the rules governing that professional activity do not prohibit the carrying out, on an incidental basis, of credit intermediation activities.
- 4.10A.27 G Work carried out by a *professional firm* which may reasonably be regarded as a necessary part of legal conveyancing services provided by that *professional firm* can still take advantage of the exclusion in article 67 (Activities carried on in the course of a profession or non-investment business).
- 4.10A.28 G Article 4(4B) does not cut back the *Part XX exemption*.

Amend the following text as shown.

4.11 Link between activities and the United Kingdom

...

4.11.3 G A contract is only a *regulated mortgage contract* if the land is in the *United Kingdom EEA* (see *PERG 4.4.5G (Land in the United Kingdom EEA)*).

...

4.11.5 G ...
 (1) Section 418(2) refers to a case where a *UK*-based person carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*. The only *Single Market Directive Directives* which is are relevant to mortgages is are the *CRD* and the *MCD*.

...

4.11.6 G ...
 (3) ...
 of the borrower (and each of them, if more than one) is an individual and is normally resident ~~overseas~~ outside the *United Kingdom*. In the case of arranging a variation of, or administration of, an existing *regulated mortgage contract*, each borrower must be an individual who was normally resident ~~overseas~~ outside the *United Kingdom* when he entered into the contract. ...

4.11.6A G The exclusion for overseas persons described in *PERG 4.11.6G* does not apply where the overseas person is a mortgage intermediary whose *home Member State* is the *United Kingdom*. A mortgage intermediary is defined in *PERG 4.10A.3G*.

...

4.11.9 G Simplified summary of the territorial scope of the regulated mortgage activities, to be read in conjunction with the rest of this section.

This table belongs to *PERG 4.11.8G*

		Individual borrower resident and located	
		in the <i>UK</i>	outside the <i>UK</i>
Service provider carrying on	in the <i>UK</i>	Yes	Yes

<i>regulated activity</i> from establishment:	outside the <i>UK</i>	Yes	No
Yes = <i>authorisation</i> or exemption required			
No = <i>authorisation</i> or exemption not required			

<u>Regulated activities other than advice</u>				
<u>Location of establishment of service provider:</u>	<u>Location of land:</u>	<u>Individual borrower resident and located:</u>		
<u>UK or non-UK person: Establishment in the UK</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
	<u>land in another EEA State</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
	<u>land in another EEA State (Note 1)</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Non-UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
	<u>land in another EEA State</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Yes = authorisation or exemption required</u>				
<u>No = authorisation or exemption not required</u>				
<u>Note 1: If the service provider is a UK firm operating from an office in another EEA State in the exercise of rights under a Single Market Directive, the activities will be treated as taking place in the United Kingdom and the firm will need to make sure that its permission covers the regulated mortgage activities it is carrying out. See PERG 4.11.5G(1).</u>				

<u>The regulated activity of advice</u>				
<u>Location of establishment of service provider:</u>	<u>Location of land:</u>	<u>Individual borrower resident and located:</u>		
<u>UK or non-UK person: Establishment in the UK</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
	<u>land in another EEA State</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
	<u>land in another EEA State (Note 1)</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Non-UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
	<u>land in another EEA State</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Yes = authorisation or exemption required</u>				
<u>No = authorisation or exemption not required</u>				
<u>Note 1: If the service provider is a UK firm operating from an office in another EEA State in the exercise of rights under a Single Market Directive, the activities will be treated as taking place in the United Kingdom and the firm will need to make sure that its permission covers the regulated mortgage activities it is carrying out. See PERG 4.11.5G(1).</u>				

...

4.11.12 G ...

4.11.12A G If the service provider is a UK firm exercising its rights under a Single Market Directive by providing services from another EEA State, section

418 of the Act means that the services are treated as being carried on in the United Kingdom. This factor is not covered further in the remainder of this section.

- 4.11.13 G When a *person* is *arranging (bringing about) regulated mortgage contracts* or *making arrangements with a view to regulated mortgage contracts* from overseas, the question of whether he will be carrying on *regulated activities* in the *United Kingdom* will depend on the relevant circumstances. In the *FCA's* view, factors to consider include:
- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation only applies if the land is in the *United Kingdom EEA*;
- ...
- 4.11.14 G In the *FCA's* view:
- (1) if the borrower is *normally resident* in the *United Kingdom* and the land is in the *United Kingdom*, the clear territorial limitation in the definition of *regulated mortgage contract* carries most weight in determining where regulation should apply; it is likely that the arranger will be carrying on *regulated activities* in the *United Kingdom*;
 - (2) if the borrower is *normally resident* overseas, the arrangements are excluded by the *overseas persons* exclusion if the lender is an *overseas person*.
- ...
- 4.11.17 G In the *FCA's* view, in circumstances other than those excluded by article 72(5D) of the *Regulated Activities Order*, the need for an overseas lender is likely to carry on the *regulated activity* of *entering into regulated mortgage contracts* in the *United Kingdom* to be *authorised* or to have an exemption will depend on the location of the land. This is because of:
- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation applies only if the land is in the *United Kingdom EEA*;
 - (2) the general principle and practice that contracts relating to land are usually governed by the law of the place where the land is situated; and
 - (3) practical issues of conveyancing; a lender is likely to use the services of a ~~solicitor~~ lawyer or licensed conveyancer operating from the *United Kingdom* or the other *EEA State* in question, who enters into the *regulated mortgage contract* as agent for the lender in the *United Kingdom* or the other *EEA State* in question; and

...

...

4.11.19 G In the *FCA's* view, in circumstances other than those excluded by article 72(5E) of the *Regulated Activities Order*, the need for an overseas administrator is likely to carry on the regulated activity of administering a regulated mortgage contract in the United Kingdom to be authorised or to have an exemption will depend on the location of the land. This is because:

- (1) the territorial limitation in the definition of *regulated mortgage contract* means that regulation applies only if the land is in the *United Kingdom EEA*;
- (2) when administrators notify borrowers resident in the *United Kingdom or the other EEA State in question* of matters pursuant to a *regulated mortgage contract*, such notification is likely to be carried on in the *United Kingdom or the other EEA State in question*;
- (3) the steps involved in collecting or recovering payments will generally include giving notice to the borrower at his *UK* address in the United Kingdom or the other EEA State in question;
- (4) legal action to recover sums due under *regulated mortgage contracts* will in many cases require proceedings before courts in the *United Kingdom or the other EEA State in question*, either to enforce *regulated mortgage contracts* subject to the jurisdiction of these courts or to register and enforce judgements obtained elsewhere, in the case of contracts subject to non-UK jurisdictions; and

...

...

4.12.5 G ...

The mortgage register

4.12.6 G SUP 12.4.10AR to SUP 12.4.10CR explain some special requirements that apply to an appointed representative for an MCD mortgage lender or MCD mortgage credit intermediary. For example, it may be necessary for the appointed representative to be included in the Financial Services Register.

...

- 4.13.1 G Certain named *persons* are exempted by the *Exemption Order* from the need to obtain *authorisation*. The following bodies ~~are exempt~~ have exemptions (which are explained in more detail in this section) in relation to carrying on by them of ~~any of~~ the *regulated mortgage activities*:
- ...
- (4) ~~The Office of Tenants and Social Landlords (known as the Tenant Services Authority) (paragraph 48(2)(c) of the Schedule to the Exemption Order);~~
 - (5) Scottish Homes (paragraph 48(2)(d) of the Schedule to the *Exemption Order*); ~~and~~
 - (6) The Northern Ireland Housing Executive (paragraph 48(2)(e) of the Schedule to the Exemption Order);
 - (7) Communities Scotland (paragraph 48(2)(f) of the Schedule to the Exemption Order);
 - (8) a housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992 (paragraph 48(2)(g) of the Schedule to the Exemption Order); and
 - (9) a wholly-owned subsidiary of a registered social landlord within the meaning of Part I of the Housing Act 1996 (paragraph 48(3) of the Schedule to the Exemption Order).
- 4.13.2 G The bodies in PERG 4.13.1G are exempt in relation to the regulated activity of arranging the variation of a regulated mortgage contract (article 25A(1)(b) of the Regulated Activities Order).
- 4.13.3 G The bodies in PERG 4.13.1G are exempt in relation to the following regulated activities:
- (1) arranging (bringing about) regulated mortgage contracts (except in relation to variations) (article 25A(1)(a) and (2A));
 - (2) advising on regulated mortgage contracts (article 53A);
 - (3) entering into a regulated mortgage contract (article 61(1)); and
 - (4) administering a regulated mortgage contract (article 61(2)).
- 4.13.4 G The exemption in PERG 4.13.3G only applies in relation to a limited range of regulated mortgage contracts. These are set out in the table in PERG 4.13.5G.
- 4.13.5 G Exempted regulated mortgage contracts

<u>Type of regulated mortgage contract</u>	<u>Explanation</u>
<u>Exempted under article 3(2) of the Mortgage Credit Directive</u>	<u>See PERG 4.10A.5G(1) to (6)</u>
<u>Bridging loan</u>	<u>See PERG 4.13.6G</u>
<u>Restricted public loan</u>	<u>See PERG 4.13.7G</u>

4.13.6 G A bridging loan is exempt if it meets the following conditions:

- (1) it is:
 - (a) either of no fixed duration; or
 - (b) is due to be repaid within 12 months; and
- (2) the borrower is:
 - (a) an individual; and
 - (b) acting for purposes which are outside their trade, business or profession; and
- (3) the loan is used by the borrower as a temporary financing solution while transitioning to another financial arrangement for the land.

4.13.7 G A loan is exempted as a restricted public loan if it meets the following conditions:

- (1) it is granted to a restricted public under a statutory provision with a general interest purpose; and
- (2) it meets the condition in (a) or (b):
 - (a) it is:
 - (i) free of interest; or
 - (ii) at lower borrowing rates than those prevailing on the market; or
 - (b) it meets the condition in (i) and (ii):
 - (i) it is on other terms which are more favourable than those prevailing on the market; and
 - (ii) it is at borrowing rates not higher than those prevailing on the market; and

(3) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and

(4) any advertising of the loan is fair, clear and not misleading.

...

4.14.2 G ...

4.14.2A G PERG 4.10A (Activities regulated under the Mortgage Credit Directive) explains that some of these exclusions do not apply to activities which fall under the MCD.

...

4.16.1 G It is common practice in the mortgage industry for the original lender which makes the loan to pass on ownership of the loan to a third party through *securitisation*. *Securitisation* transactions take different forms, but the essence is that the original lender sells the beneficial interest (with or without the legal interest) in a mortgage portfolio to a special purpose vehicle ('SPV'), which raises finance to pay for the portfolio by selling its own *securities*. The original lender may (or may not) retain the ~~first~~ legal charge on each mortgage in the portfolio. ...

...

4.16.3 G ... a new *regulated mortgage contract* (see *PERG 4.4.4G* and ~~*PERG 4.4.13 G*~~) ...

...

4.17 Interaction with the Consumer Credit Act and consumer credit regulated activities

...

4.17.2 G Section 126(2) of the CCA (as inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014) provides, however, that for the purposes of section 126(1) of the CCA (a land mortgage securing a regulated credit agreement is enforceable (so far as provided in relation to the agreement) on an order of the court only) and Part 9 of the CCA (judicial control) a regulated mortgage contract which would, but for the exemption in *PERG 2.7.19CG(1)*, be a regulated credit agreement is to be treated as if it were a regulated credit agreement. This is subject to section 140A(5) of the CCA (unfair relationships between creditors and debtors), which provides that an order under section 140B of

the CCA (powers of court in relation to unfair relationships) shall not be made in connection with a credit agreement which is an exempt agreement under *PERG 2.7.19CG*. It therefore follows that, for example, the CCA provisions relating to time orders apply to regulated mortgage contracts.

- 4.17.3 G ... a new *regulated mortgage contract* (see *PERG 4.4.4G* and ~~*PERG 4.4.13G*~~).
- 4.17.4 G Unsecured loans, ~~as well as loans secured on second and subsequent charges on property,~~ are not subject to carve-out described above and may be *regulated credit agreements* for the purposes of the CCA and the *credit-related regulated activities* for which a person may need *permission*.

...

- 4.17.16 G ...

Consumer credit regulated activities

- 4.17.17 G Whether a business decides that this chapter does or does not apply to its mortgage activities, it should go on to consider whether the activities are consumer credit regulated activities. *PERG 2* has guidance on consumer credit regulated activities.

- 4.17.18 G A number of *Regulated Activities Order* exclusions from the consumer credit regulated activities are relevant to lenders under loans secured on land. These include:

- (1) article 60C(2) (*regulated mortgage contract is an exempt credit agreement*, as summarised in *PERG 2.7.19CG(1)*);
- (2) article 60C(3) (commercial lending, as summarised in *PERG 2.7.19CG(2)*);
- (3) article 60D (loans secured on non-residential property, as summarised in *PERG 2.7.19EG*);
- (4) article 60F (loans with a limited number of repayments, as summarised in *PERG 2.7.19GG*);
- (5) article 60H (high net worth borrowers, as summarised in *PERG 2.7.19JG*); and
- (6) articles 36E and 39H (exclusions for lenders in relation to *credit broking, debt adjusting, debt counselling, debt collecting and debt administration*, as summarised in *PERG 2.8.6CG* and *PERG 2.8.7CG*).

...

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* or *home finance transactions* and who wishes to determine whether he will be carrying on the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*.

7.1.2 G ...

(1) when a *person* involved in publishing periodicals, or in providing news services or broadcasts, requires *authorisation* to carry on the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* (see *PERG 7.3* (Does the activity require authorisation));

... ..

7.2.1 G Advice is excluded by article 54 of the *Regulated Activities Order* from the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* and *advising on a home finance transaction* if:

...

7.2.2 G If a *person* would, but for the exclusion, be carrying on the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*, or any or each of them, and will be doing so as a business in the *United Kingdom* (see *PERG 7.3*), he may wish to apply to the *FCA* for a certificate that the exclusion applies (see *PERG 7.6*). However, a *person* does not need a certificate to get the benefit of the exclusion. In many cases it will be clear that the exclusion in article 54 applies and a certificate is not called for. A certificate may be appropriate, however, where the exclusion appears to apply but there may be an element of doubt. The granting of a certificate would remove any such doubt.

...

7.3 Does that activity require authorisation?

...

7.3.1DA G Under article 53DA of the *Regulated Activities Order* (Advising on regulated credit agreements for the acquisition of land), advising a *person* (“P”) is a specified kind of activity if:

- (1) the advice is given to P in P's capacity as a recipient of credit, or potential recipient of credit, under a regulated credit agreement;
- (2) P intends to use the credit to acquire or retain property rights in land or in an existing or projected building; and
- (3) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to regulated credit agreements.

7.3.2 G Articles 53, 53A, 53B, 53C ~~and 53D~~, 53D and 53DA of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG* 8 (Financial promotion and related activities), *PERG* 4 (Guidance on regulated activities connected with mortgages), *PERG* 14.3, *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion, home purchase and regulated sale and rent back agreement activities). Guidance on the activity in article 53DA (advising on regulated credit agreements for the acquisition of land) of the *Regulated Activities Order* is in *PERG* 2.7.16FG.

...

7.3.4A G For persons carrying on *advising on regulated credit agreements for the acquisition of land* the by the way of business test is set out in *PERG* 2.3.2G(4)

...

7.3.7 G But even if advice is given in the *United Kingdom*, the *general prohibition* will not be contravened if the giving of advice does not amount to the carrying on, in the *United Kingdom*, of the business of *advising on investments*, *advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*. Also, the *general prohibition* will not be contravened if the exclusion for *overseas persons* in article 72 of the *Regulated Activities Order* (*Overseas persons*) applies. That exclusion applies in relation to the giving of advice on *securities* or *relevant investments* by an *overseas person* as a result of a 'legitimate approach' (defined in article 72(7)). In many cases where publications or services are provided from outside the *United Kingdom* it is likely that they will fall within the terms of this exclusion. For example, this will exclude any advice in a publication or service from being a *regulated activity* if it is given in response to an approach that has not been solicited in any way. It should be noted, however, that the exclusions in article 72 do not apply to the regulated activities that involve *advising on a home finance transaction* or *advising on regulated credit agreements for the acquisition of land*. The effect of this is that, where the principal purpose of an overseas periodical publication is to offer advice on *securities* or *relevant investments* 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*.

...

7.3.8 G If a *person* is carrying on the business of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* in the *United Kingdom*, he will not require *authorisation* if:

(1) ...

(2) he is an *exempt person* (see *PERG 2.11 (What to do now?)*); since *persons* are exempt only in relation to specified *regulated activities*, his exemption must apply to the *regulated activity* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* as the case may be.

7.3.9 G Many people may be involved in the production of a periodical publication, news service or broadcast. But if the *regulated activity* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* is being carried on so that *authorisation* is required, the *FCA's* view is that the *person* carrying on the activity (and who will require *authorisation*) is the *person* whose business it is to have the editorial control over the content. In the case of a periodical publication, this will often be the proprietor. But particular circumstances may vary so that the responsibility for content and editorial control rests with a freelance journalist rather than with the proprietor. In such cases it may well be that the journalist may properly be viewed as carrying on his own business, using the periodical publication as the vehicle for doing so - in which case it is likely to be the journalist alone who needs the *authorisation*.

...

...

7.4.2 G ...

(2) ...

(f) to enter as a recipient of credit into a *regulated credit agreement* the purpose of which is to acquire or retain property rights in *land* or in an existing or projected building.

7.4.3 G ...

(3) The second is that of a regularly updated news or information service. As with periodical publications, it does not matter how the

service is accessed by, or delivered to, the user as long as it can be read. This will include, for example, a service provided through teletext, a fax retrieval system or a website (including websites that are used through handheld devices). The fact that it must be a 'regularly updated' service means that the provision of up-to-date news or information must be a primary feature of the service (for example, where it is likely to be of commercial value to the recipient). But, in the *FCA's* view, a news or information 'service' is not restricted only to the giving of news or information since this would not generally constitute the *regulated activity* of *advising on investments* (see *PERG* 8.28 (Advice or information)), *advising on regulated mortgage contracts* (see *PERG* 4.6.13G to *PERG* 4.6.16G (Advice or information)), *advising on regulated credit agreements for the acquisition of land* (see *PERG* 4.10A.20G), *advising on a home reversion plan*, *advising on a home purchase plan* or *advising on regulated sale and rent back agreements*. So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

...

7.4.5 G ...
(2) ...

(f) to enter as a recipient of credit into a *regulated credit agreement* the purpose of which is to acquire or retain property rights in *land* or in an existing or projected building.

...

7.4.8 G Looking at the first disqualifying purpose set out in the exclusion, all the matters relevant to whether the *regulated activities* of *advising on investments*, *advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* are being carried on must be taken into account (see *PERG* 8.24 (Advising on investments)). If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors), as borrowers, as *reversion occupiers* or reversion providers or as *home purchasers* or as *SRB agreement sellers* or *SRB agreement providers* (as the case may be), advice as referred to in *PERG* 7.4.5G(1), then the publication or service will not be able to benefit from this exclusion.

7.4.9 G ...
(1) material in a publication or service that invites or seeks to procure *persons* to engage in a relevant transaction can be said to "lead" to those transactions even if it would not constitute the *regulated activities* of *advising on investments*, *advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*; this includes, for example, material that consists of

generic *buy* or *sell* recommendations, corporate brochures or invitations to invest in particular products or with a particular broker or fund manager; and

...

...

...

8.14.18 G ... The terms of the exemption are that the promotion must comply with the *rules* in *COBS* 4, *MCOB* 3 3A or *CONC* 3 ...

...

...

8.17.20 G *CONC* 3 contains *rules* about *financial promotions* relating to *credit-related regulated activity*. *CONC* 3 does not apply, however, to the *communication*, or *approval for communication*, of a *financial promotion* to the extent it concerns *qualifying credit*. *MCOB* 3 3A applies to the *communication* or *approval* of a *financial promotion* of *qualifying credit*. This means that a *financial promotion* about *credit* will not usually be subject to both *MCOB* 3 3A and *CONC* 3 unless it is about secured and unsecured lending. *Guidance* on the potential application of *MCOB* 3 3A and *CONC* 3 ...

8.17.21 G Guide to potential application of *MCOB* 3 3A and *CONC* 3 to *financial promotion of credit*. This table belongs to *PERG* 8.17.20G

	Subject of promotion	<i>MCOB</i> 3 <u>3A</u> may apply	<i>CONC</i> 3 may apply
(1)	<i>regulated mortgage contracts</i>	Yes	No
...			

...

...

14.8 Financial promotions

Q44 ...

If you are an authorised person who is communicating or approving the financial

promotion and it is not exempt, you will need to comply with the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook (*MCOB 3 3A* for financial promotions of qualifying credit, a home reversion ~~plans~~ plan, and ~~MCOB 2.2.6AR~~ for financial promotions of a home purchase plans and plan or a *regulated sale and rent back ~~agreements~~ agreement*).

...

Annex I

Amendments to the Responsibilities of Providers and Distributors for the Fair Treatments of Customers (RPPD)

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

...

Notes

...

- (12) For example ... ~~MCOB 3.6 (Form and content of non real time qualifying credit promotions); MCOB 3.8A (Form and content of financial promotions of home reversion plans); MCOB 2.2.6AR (Clear, fair and not misleading promotions for home purchase plans). 3A.2 (the fair, clear and not misleading rules) and MCOB 3A.3 (Other general requirements for financial promotions and communications with customers)~~ ...

...

- (14) For example, ... ~~MCOB 2.2.6R~~ 3A.2.1R(1) (Clear, fair and not misleading communication) ...

...

- (16) COBS 4.10.10R, ICOBS 3.7.5R, ~~MCOB 3.9.5R (Communicating a financial promotion where another firm has confirmed compliance)~~ ...

- (17) For regulated activities ... ~~MCOB 2.2.6R~~ 3A.2.1R(1)). In doing so ...

...

Appendix 2: Made rules (legal instrument) Fees

FEES (MORTGAGE CREDIT DIRECTIVE) INSTRUMENT 2015

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 137T (General supplementary powers); and
 - (3) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. (1) Part 2 of Annex B (FEES) of this instrument comes into force on 1 April 2016.
(2) The remainder of this instrument comes into force on 20 April 2015.

Amendments to the FCA Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Notes

- F. In Annex A to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Citation

- G. This instrument may be cited as the Fees (Mortgage Credit Directive) Instrument 2015.

By order of the Board of the Financial Conduct Authority
25 March 2015

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. This text is not underlined.

advising on regulated credit agreements for the acquisition of land the *regulated activity*, specified in article 53DA of the *Regulated Activities Order* which is, in summary, advising a *person* if the advice:

- (a) is given to the *person* in his capacity as a recipient, or potential recipient, of *credit* under a *regulated credit agreement*;
- (b) the *person* intends to use the *credit* to acquire or retain property rights in land or in an existing or projected building; and
- (c) the advice consists of the provision of personal recommendations to the *person* in respect of one or more transactions relating to *regulated credit agreements*.

[**Note:** article 4(21) of the *MCD*]

Amend the following definition as shown.

credit-related regulated activity (1) (except in *FEES*) (in accordance with section 22 of the *Act* (the classes of activity and categories of investments)) any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order* (Specified Activities):

...

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (j) and (k), relates to information about a *person's* financial standing.

(2) (in *FEES*) (in accordance with section 22 of the *Act* (the classes of activity and categories of investments)) any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order* (Specified Activities):

- (a) the activities in (1)(a) – (m); and
- (b) *advising on regulated credit agreements for the acquisition of land* (article 53DA);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (j) and (k) listed in (1), relates to information about a *person's* financial standing.

Annex B

Amendments to the Fees manual (FEES)

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

Part 1: Comes into force on 20 April 2015

3 Annex 1R Authorisation fees payable

...

Part 3 Complexity Groupings relating to *credit-related regulated activities*

Straightforward cases

Activity Grouping	Description
CC.2	<i>Credit broking;</i> <i>Providing credit information services;</i> <u><i>Advising on regulated credit agreements for the acquisition of land</i></u>

...

Part 2: Comes into force on 1 April 2016

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

...

<p>Part 3</p> <p>This table indicates the tariff base for each fee-block set out in Part 1.</p> <p>The tariff base in this Part is the means by which the <i>FCA</i> measures the amount of business conducted by a <i>firm</i> for the purposes of calculating the annual periodic fees payable to the <i>FCA</i> by that <i>firm</i>.</p>

Activity group	Tariff base
...	...
A.2	NUMBER OF MORTGAGES OR OTHER HOME

	<p>FINANCE TRANSACTIONS ENTERED INTO AND ADMINISTERED</p> <p>The number of new mortgage contracts, home purchase plans, home reversion plans and regulated sale and rent back agreements <u>home finance transactions</u> entered into;</p> <p>AND</p> <p>The number of mortgage contracts, home purchase plans, home reversion plans and regulated sale and rent back agreements <u>home finance transactions</u> being administered,;</p> <p>(a) multiplied by 0.05 for mortgage outsourcing firms or other home finance outsourcing firms with permission for administering a home finance transaction but not permission for entering into a home finance transaction; and or</p> <p>(b) by 0.5 for all other firms.</p>
	<p>Notes:</p> <p>(1) Mortgage outsourcing firms are firms with permission for administering regulated mortgage contracts, but not to enter the contract as lender. Home finance outsourcing firms are firms with permission for administering a home finance transaction, but not entering into a home finance transaction. [deleted]</p> <p>(2) In this context a 'mortgage' means a loan secured by a first charge over residential property in the United Kingdom. For the measure of the number of contracts being administered, each first charge counts as one contract, irrespective of the number of loans involved.</p> <p>(3) Mortgages, home purchase plans, home reversion plans and regulated sale and rent back agreements <u>Home finance transactions</u> administered include those that the firm administers on behalf of other firms.</p>
<p>...</p>	

Appendix 3: Further example ESIS documents

The following pages contain further examples, in addition to those included in Appendix 2 of CP14/20 to show how different types of mortgage products could be presented using the ESIS disclosure document. These are not definitive formats and firms will be free to develop their own documents.

These documents are presented as examples for illustrative purposes only and are not intended to be treated as guidance. Firms should independently ensure that their own ESIS documents comply with the requirements in MCOB 5A.

The examples are in the following order:

Example ESIS for a Bridging Loan

Example ESIS for a foreign currency loan

Example ESIS for a second charge mortgage

Aardvark Mortgages

Centipede Mortgages

Dogfish Brokers

Oxpecker Mortgage Brokers

Example ESIS – Bridging Loan

This document was produced for Joe Bloggs on 21 March 2016.

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until **24 March 2016**. After that date, it may change in line with market conditions.

This document does not constitute an obligation for A Bank Ltd to grant you a loan.

1. Lender

A Bank Ltd

Telephone: 0111 1111 1111

Address: 25 The Street, The Town, United Kingdom

2. Credit intermediary

S.U.S. Pension Bridge Brokers

Telephone: 0222 2222 2222

Address: 7 Bridge Road, Avon, United Kingdom

Contact: Cliff Ton-Gorge

S.U.S. Pension Bridge Brokers recommend, having assessed your needs and circumstances, that you take out this mortgage.

A Bank will pay S.U.S Pension Bridge Brokers £500 if you take out this mortgage.

3. Main features of the loan

Amount and currency of the loan to be granted: £150,000.

Duration of the loan: 12 months.

This is a twelve month variable rate bridging loan. The rate varies in accordance with changes made at the discretion of A Bank to its Standard Variable Rate.

Total amount to be repaid: £164,682.47. This means that you will pay back £1.10 for every £1 borrowed.

This amount is for illustration purposes only. A variation in the interest rate, for example, will lead to a

change in the amount to be repaid.

Value of the property assumed to prepare this information sheet: £300,000.

Maximum available loan amount relative to the value of the property: 50%.

The following property: 1 The Street, The City ZA1 2FG will be the security for this loan.

4. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is 10%

It comprises:

Interest rate: 7.8% (monthly interest rate of 0.65%)

Costs to be paid on a one-off basis:

- Lenders facility fee of 1%: £1500 payable on completion
- Valuation fee: £275 required before completion
- Lenders administration fee: £295 payable on completion
- Lenders legal fee: £450 payable on completion
- Telegraphic transfer fee: £35 payable on completion

Costs to be paid regularly:

None.

Because your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to 14.8%, the APRC could increase to 17.9%

Please make sure that you are aware of all other taxes and costs associated with your loan.

This is an interest-only loan. You will still owe £150,000 at the end of the mortgage term in addition to the interest of £12,127.47 that has been rolled-up.

5. Frequency and number of payments

Repayment frequency: Instalment amounts are due every month, but are deferred. The deferred amount is added to the capital at the start of the next month.

Number of payments: 1, at the end of the duration of the loan

6. Amount of each instalment

Because this is an interest only loan you will need to make separate arrangements to repay the £162,127.47 you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the amount shown here.

The interest rate on this loan can change. This means the amount you owe can increase or decrease. For example, if the interest rate rose to 14.8%, your payment could increase to £173,769.56.

Interest will be added to the outstanding amount at the end of the loan term. This means that when the loan is due to be repaid, the interest will be added to the amount you borrowed.

7. Illustrative repayment table

This table shows the amount to be paid every month.				
The instalments (column 2) are the sum of interest to be paid (column 3), and capital paid (column 4)). Outstanding capital (column 5) is the amount of the loan that remains to be reimbursed after each instalment.				
Repayment schedule	Amount of the instalment	Interest to be paid per instalment	Capital repaid per instalment	Outstanding capital after each instalment
Month 0	2555.00	0.00	0.00	150,000.00
Month 1	0.00	975.00	0.00	150,975.00
Month 2	0.00	981.34	0.00	151,956.34
Month 3	0.00	987.72	0.00	152,944.05
Month 4	0.00	994.14	0.00	153,938.19
Month 5	0.00	1000.60	0.00	154,938.79
Month 6	0.00	1007.11	0.00	155,945.89
Month 7	0.00	1013.66	0.00	156,959.54

Month 8	0.00	1020.24	0.00	157,979.78
Month 9	0.00	1026.88	0.00	159,006.64
Month 10	0.00	1033.55	0.00	160,040.19
Month 11	0.00	1040.27	0.00	161,080.45
Month 12	0.00	1047.03	0.00	162,127.47
Overall total	£0.00	£12,127.55	£0.00	£162,127.47

8. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document:

- The property must be insured and maintained in good order.

9. Early repayment

You have the right to repay this loan early, either fully or partially. Repayment of this facility will incur no fee.

10. Flexible Features

You do not have the possibility to transfer this loan to another lender or property.

11. Other rights of the borrower

You have 7 days after 21 March 2016 to reflect before committing yourself to taking out this loan.

12. Complaints

If you have a complaint please contact Mr John Smith, Customer Relations Manager on 0222 2222 2223.

Further details on our complaint arrangements are at www.suspensionbridgebrokers.com

If we do not resolve the complaint to your satisfaction internally, you can also contact The Financial Ombudsman Service

13. Non-compliance with the commitments linked to the loan: consequences for the borrower

Failure to maintain buildings insurance or the condition of your property may lead to the cancellation of this loan.

As a last resort, your home may be repossessed if you do not keep up with payments

14. Supervisor

This lender is supervised by the Financial Conduct Authority – www.fca.org.uk.

Example ESIS – Foreign currency mortgage

This document was produced for Jane Bloggs on 21 March 2016.

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until **24 March 2016**. After that date, it may change in line with market conditions.

This document does not constitute an obligation for A Bank to grant you a loan.

1. Lender

A Bank Ltd

Telephone: 0111 1111 1111

Address: 25 The Street, The Town, United Kingdom

abc@abankmortgagesforyou.co.uk

Advisory services are not being provided. We are not recommending a particular mortgage for you.

However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.

2. Main features of the loan

Amount and currency of the loan to be granted: €90,000.

This loan is not in Pounds Sterling.

The value of your loan in Pounds Sterling could change.

For example, if the value of the Pound Sterling fell by 20% relative to the euro, the value of your loan would increase to £79,920. However, it could be more than this if the value of the Pound Sterling falls by more than 20%.

Duration of the loan: 300 months.

This is a 25 year variable rate capital repayment mortgage. The interest rate is a variable one which tracks the European Central Bank base rate.

Total amount to be repaid: €157,803.

This amount is illustrative and may vary, in particular in relation with the variation of the interest rate.

This means that you will pay back €1.75 for every €1 borrowed.

Value of the property assumed to prepare this information sheet: €150,000

Maximum available loan amount relative to the value of the property: 75%. The maximum theoretically possible to borrow would be €112,500.

This loan would be secured on your home – 1 The Street, The Town, Spain.

3. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is 5.2%.

It comprises:

Interest rate - 4.9% above European Central Bank Base Rate for the term of the mortgage. The current European Central Bank base rate is 0.05%. This gives a current rate payable of 4.95%.

Costs to be paid on a one-off basis:

- Valuation Fee (payable to A Bank on application): £300
- Solicitors fees (payable to your Solicitor when the mortgage starts): £450

Costs to be paid regularly:

None.

This APRC is calculated using assumptions regarding the interest rate.

Because your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to 9.65% the APRC could increase to 10.2%.

Please make sure that you are aware of all other taxes and costs associated with your loan.

4. Frequency and number of payments

Repayment frequency: Monthly

Number of payments: 300

5. Amount of each instalment

€523.51

Your income may change. Please consider whether you will still be able to afford your monthly repayment instalments if your income falls.

The interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 9.65% your payments could increase to €795.73.

The value of the amount you have to pay in Pounds Sterling each month could change. For example, if the value of the Pound fell by 20% relative to the Euro you would have to pay an extra £79.27 each month. Your payments could increase by more than this.

6. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document:

- The property must be insured and maintained in good order.
- If the guarantee is called and arrangements are not made to repay then your property could be repossessed.

7. Early repayment

You have the right to repay this loan early, either fully or partially. Repayment of this loan will incur no fee.

8. Flexible Features

You do not have the possibility to transfer this loan to another lender or property.

9. Other rights of the borrower

You have 7 days after 21 March 2016 to reflect before committing yourself to taking out this loan.

10. Complaints

If you have a complaint please contact Mr John Smith, Customer Relations Manager on 0111 1111 1112.

Further details on our complaint arrangements are at www.abankmortgagesforyou.co.uk

If we do not resolve the complaint to your satisfaction internally, you can also contact The Financial Ombudsman Service or you can contact FIN-NET (http://ec.europa.eu/internal_market/fin-net/) for details of the equivalent body in your own country.

11. Non-compliance with the commitments linked to the loan: consequences for the borrower

Failure to maintain buildings insurance or the current condition of your property may lead to the

cancellation of this loan.

Failure to make your mortgage payments on time may result in additional costs being charged to cover our administrative expenses.

Should you encounter difficulties in making your monthly payments, please contact us straight away to explore possible solutions.

For further information on the consequences of non-compliance with your loan commitments please see A Bank's lending conditions or go to www.abankmortgagesforyou.com/help

As a last resort, your home may be repossessed if you do not keep up with payments.

12. Supervisor

This lender is supervised by the Financial Conduct Authority – www.fca.org.uk.

Example ESIS – Second Charge lending

This document was produced for **Mr Jim Bloggs** on 21 March 2016.

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until 21 April 2016.

After that date, it may change in line with market conditions.

This document does not constitute an obligation for A Lending Ltd to grant you a loan.

1. Lender

A Lending Ltd
Phone number: 0111 111 1111
The Street
The City
X1 YZA

2. Credit intermediary

A Broker Ltd
Phone number: 0222 222 2222
1 The Street
The Town AB1 2CD
Contact John Smith

A Brokers recommend, having assessed your needs and circumstances, that you take out this loan.

Based on your desired loan size A Lending Ltd will pay A Broker Ltd £400 in cash and/or benefits if you take out this mortgage.

3. Main features of the loan

Amount and currency of the loan to be granted: £50,000

Duration of the loan: 10 years

This is an A Lending Secured Loan. The interest rate is a variable one.

Total amount to be repaid: £70,358.40

This means that you will pay back £1.41 for every £1 borrowed.

The amount shown here is for illustration purposes only. A variation in the interest rate will lead to a change in the total amount to be repaid.

Value of the property assumed to prepare this information sheet: £125,000

Maximum available loan amount relative to the value of the property: 40%. The maximum theoretically possible to borrow would be £50,000.

Your home (1 The Street, The Village DE1 2FG) will be the security for this loan.

4. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different

offers.

The APRC applicable to your loan is 7.50%.

It comprises:

Interest rate – 5.11%

Costs to be paid on a one-off basis

- A fee to the lender of £5000, which will be added to the loan

Costs to be paid regularly

- None

Because your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to 12.11% the APRC could increase to 15.5%.

Please make sure that you are aware of all other taxes and costs associated with your loan.

5. Frequency and number of payments

Repayment frequency: Monthly

Number of payments: 120

6. Amount of each instalment

£586.32

Your income may change. Please consider whether you will still be able to afford your monthly repayment instalments if your income falls.

The interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 12.11% your payments could increase to £792.59.

7. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document:

Possession of valid buildings insurance for the life of the mortgage. You can choose to buy this insurance from any authorised insurer.

Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.

8. Early repayment

You have the right to repay this loan early, either fully or partially. There are no conditions or charges that apply to this right.

9. Flexible Features

You do not have the possibility to transfer this loan to another lender or property.

10. Other rights of the borrower

You have seven days after being given a binding mortgage offer to reflect before committing yourself to taking out this loan.

11. Complaints

If you have a complaint please contact A Broker's Customer Hotline on 0800 555 5557. Our complaints guide and further information can be found at www.abrokersrus.com/resolvingcomplaints
Maximum time for handling the complaint: 8 weeks
In the event that we are unable to resolve your complaint, you can refer it to the Financial Ombudsman Service.

12. Non-compliance with the commitments linked to the loan: consequences for the borrower

You have a responsibility to make your mortgage payments on time. If you fail to do so, you may incur further costs to cover our administrative expenses.

We require the property to have buildings insurance. If you do not arrange this we will take out an appropriate level of cover and charge you the cost of the premiums.

This property must not be let by you to another person and must not be used as a place of business. Any contravention of these conditions may result in a request for immediate repayment of the loan.

For further information on the consequences of non-compliance please see A's lending conditions or go to www.alendingforyou.com/help

Should you encounter difficulties in making your monthly payments, please contact us straight away to explore possible solutions.

As a last resort, your home may be repossessed if you do not keep up with payments.

13. Additional information

A Lending will give you a draft credit agreement when they give you a binding mortgage offer.

14. Supervisor

This lender is supervised by The Financial Conduct Authority – www.fca.org.uk
This credit intermediary is supervised by The Financial Conduct Authority – www.fca.org.uk

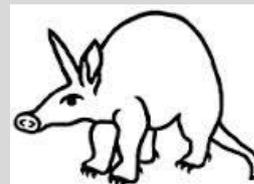
This document was produced for Anthony Eater on 21 March 2016.

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until 21 April 2016. After that date, it may change in line with market conditions.

This document does not constitute an obligation for Aardvark Mortgages to grant you a loan.

Aardvark



Mortgages

1. Lender

Aardvark Mortgages.

Tel: 0800 555 555

Aardvark Mortgages, 1 Noah's Ark, Antrim, AN1 1TT

Contact: I.B.A Platypus

We recommend, having assessed your needs and circumstances that you take out this mortgage.

2. Main features of the loan

Amount and currency of the loan to be granted: GBP 90,000

Duration of the loan: 300 months

This is a 25 year fixed rate capital repayment mortgage. The interest rate is fixed for the life of the loan.

Total amount to be reimbursed: GBP 165,925

This means that you will pay back GBP 1.84 for every GBP 1.00 borrowed.

Value of the property assumed to prepare this information sheet: GBP 119,995

Minimum value of the property required to borrow the illustrated amount: GBP 115,000

This loan is secured on your home.

3. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is 5.7%.

It comprises:

Interest rate: 5.48%

Costs to be paid on a one-off basis: Application fee – payable on application to Aardvark Mortgages GBP 295.00

Conveyancing fee – payable to Aardvark Mortgages on receipt of a binding offer GBP 150.00

Costs to be paid regularly None

Please make sure that you are aware of all other taxes and costs associated with your loan.

4. Frequency and number of payments

Repayment frequency: Every month

Number of payments: 300

5. Amount of each instalment

GBP 551.60

Your income may change. Please consider whether you will still be able to afford your monthly repayment instalments if your income falls.

6. Illustrative repayment table

This table shows the amount to be paid every month.

The instalments (column 2) are the sum of interest to be paid (column 3), and capital paid (column 4). Outstanding capital (column 5) is the amount of the loan that remains to be reimbursed after each instalment.

Repayment schedule	Amount of the instalment	Interest to be paid per instalment	Capital repaid per instalment	Outstanding capital after each instalment
Month 0	445.00	0.00	0.00	90,000.00
Month 1	551.60	411.0	140.60	89,859.40
Month 2	551.60	410.36	141.24	89,718.16
Month 3	551.60	409.71	141.89	89,576.27
Month 4	551.60	409.06	142.54	89,433.73
Month 5	551.60	408.41	143.19	89,290.54
Month 6	551.60	407.76	143.84	89,146.70
Month 7	551.60	407.10	144.50	89,002.20
Month 8	551.60	406.44	145.16	88,857.04
Month 9	551.60	405.78	145.82	88,711.22
Month 10	551.60	405.11	146.49	88,564.73
Month 11	551.60	404.45	147.15	88,417.58
Month 12	551.60	403.77	147.83	88,269.75
Year 1 subtotal	6,619.20	4888.95	1730.25	88,269.75
Year 2	6,619.20	4,791.73	1,827.52	86,442.20
Year 3	6,619.20	4,689.03	1,930.22	84,511.98
Year 4	6,619.20	4,580.56	2,038.70	82,473.28
Year 5	6,619.20	4,465.99	2,153.26	80,320.02
Year 6	6,619.20	4,344.98	2,274.27	78,045.74
Year 7	6,619.20	4,217.17	2,402.08	75,643.66
Year 8	6,619.20	4,082.18	2,537.07	73,106.59
Year 9	6,619.20	3,939.60	2,679.65	70,426.94
Year 10	6,619.20	3,789.01	2,830.24	67,596.70
Year 11	6,619.20	3,629.96	2,989.29	64,607.41
Year 12	6,619.20	3,461.97	3,157.28	61,450.12
Year 13	6,619.20	3,284.54	3,334.72	58,115.41
Year 14	6,619.20	3,097.13	3,522.12	54,593.29
Year 15	6,619.20	2,899.20	3,720.05	50,873.24
Year 16	6,619.20	2,690.14	3,929.11	46,944.13
Year 17	6,619.20	2,469.34	4,149.92	42,794.21
Year 18	6,619.20	2,236.12	4,383.13	38,411.08
Year 19	6,619.20	1,989.80	4,629.45	33,781.63
Year 20	6,619.20	1,729.63	4,889.62	28,892.01

Year 21	6,619.20	1,454.85	5,164.40	23,727.61
Year 22	6,619.20	1,164.62	5,454.63	18,272.98
Year 23	6,619.20	858.09	5,761.17	12,511.82
Year 24	6,619.20	534.32	6,084.93	6,426.89
Year 25	6,619.20	192.36	6,426.89	0.00
Total of instalments	£165,925			

7. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document:

You must have appropriate buildings insurance for your property for the duration of this mortgage, and confirm to us that you have this cover in place. However, you are not obliged to buy this insurance from us.

8. Early repayment

You have the possibility to repay this loan early, either fully or partially.

Exit charge: Early repayment charges are payable on this mortgage until 21 March 2037. The table below illustrates the maximum charge that might apply within specified periods but you can repay the loan in full without paying an early repayment charge during April in years 6, 8, 10, 12, 14, 16 and 18. An administration fee and deeds sealing fee is also payable if you repay this loan early. The current level of these fees is GBP 85.00

Date of repayment	Basis of charge	Amount of charge (GBP)
21 March 2016 – 20 March 2021	5% of the loan amount plus fees	4,585.00
21 March 2021 – 20 March 2025*	4% of the loan amount plus fees	3,685.00
21 March 2025 – 20 March 2029*	3% of the loan amount plus fees	2,785.00
21 March 2029 – 20 March 2033*	2% of the loan amount plus fees	1,885.00
21 March 2033 – 20 March 2037*	1% of the loan amount plus fees	985.00
*April 2020, 2023, 2025, 2027, 2029, 2031, 2033	Admin & deeds fees only	85.00

Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.

9. Flexible features

You have the possibility to transfer this loan to another property. This portability is subject to you meeting our lending criteria at that time

Overpayments/Underpayments

- You can make lump sum or regular overpayments of up to £5,000 per 12 month period – amounts above this are subject to an early repayment charge (see Section 8 for basis of charge). Following receipt of a regular overpayment or a lump sum repayment, we will immediately recalculate the amount that you owe and the amount of interest that you pay. This means that you will get the benefit straight away.
- Regular underpayments are possible if you have overpaid previously (7 days

notice required).

Payment holidays

- Payment holidays are available if you have overpaid previously (7 days notice required).

Borrow back

- Lump sum withdrawals can be made against accrued overpayments. Minimum withdrawal is £500 and maximum is £25,000 per transaction (7 days notice required).

Incentives

- Free standard mortgage valuation (or an equivalent contribution to an approved Building Survey). Free Accident, Sickness and Unemployment cover for 3 months.

10. Other rights of the borrower

You have seven days after we have confirmed our binding offer to you to reflect before committing yourself to taking out this loan.

11. Complaints

If you have a complaint please contact Aardvark Mortgage's Customer Service Department on 0800 555 556. Details of our complaints process can be found at www.mortgagesareaardvark/complaints

Maximum time for handling the complaint: 8 weeks

If we do not resolve the complaint to your satisfaction internally, you can also contact: The Financial Ombudsman Service.

12. Non-compliance with the commitments linked to the loan: consequences for the borrower

We will provide you with a booklet of the terms and conditions relating to this mortgage. This will provide further information on your obligations under the contract. We would particularly highlight that failing to meet the required payments (or to make such payments on time) may mean further costs where this results in further work for us. **Continuing to miss payments or increase your debts under the contract may ultimately lead us to take action to repossess.**

You are also obliged to keep the property in good condition and to have appropriate buildings insurance. Failing to do either may cause us to take action on your behalf (e.g. to insure the property) and you will be liable for our costs should we need to do this. If you fail to make your payments then this information will be passed to credit reference agencies, which may impact on your ability to take out further loans.

Should you encounter difficulties in making your monthly payments, please contact us straight away to explore possible solutions.

As a last resort, your home may be repossessed if you do not keep up with payments.

13. Additional information

We will give you a copy of the draft credit agreement when we make a binding offer to you.

14. Supervisor

This lender is supervised by The Financial Conduct Authority, www.fca.org.uk

This document was produced for Milli Pede on 21 March 2016
This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until 22 March 2016.

After that date, it may change in line with market conditions.

This document does not constitute an obligation for Centipede Mortgages to grant you a loan.



1. Lender

Centipede Mortgages
Tel 0000 00000050 Shoepairs Drive, Creepy Crawley CR3 3PY
www.centipedemortgages.com

We recommend, having assessed your needs and circumstances, that you take out this mortgage.

2. Main features of the loan

Amount and currency of the loan to be granted: £90,000

Duration of the loan: 15 years and 5 months

This is a multi-part (part capital repayment and part interest-only) mortgage.

- Part 1 is an interest-only loan of £60,000 with a variable rate, which we determine, that has an initial discount for a period of 3 years.
- Part 2 is a capital repayment loan of £30,000 with a variable rate, which we determine, that is initially fixed for 5 years.

Total amount to be reimbursed: £154,545.40

This means that you will pay back £1.72 for every £1 borrowed. **This amount is illustrative and may vary, in particular in relation with the variation of the interest rate.**

Value of the property assumed to prepare this information sheet: £100,000

Maximum available loan amount relative to the value of the property: 90%

This mortgage would be secured on your home – 13 Old Tree Lane, Deadwood

Part of this is an interest-only loan. You will still owe £60,000 at the end of the mortgage term.

3. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is 6.4%.

It comprises:

- Part 1 - a variable rate currently 6.00%, with a discount of 1.75% for 3 years, giving a current rate payable of 4.25%
- Part 2 - a variable rate of 7% that is initially fixed for 5 years before reverting to a variable rate.
- Both Parts 1 and 2 revert to Centipede Mortgages Standard Variable Rate, currently 6%, at the end of their respective incentive periods.

Costs to be paid on a one-off basis

Arrangement fee payable to Centipede Mortgages on application	£295.00
A higher lending charge is payable because you are borrowing 90% of the property's price. This is payable to Centipede Mortgages at the start of the mortgage	£900.00
A non-refundable legal fee to your conveyancer before the loan starts. The figure quoted here is an estimate – the total fee for conveyancing may be higher	£117.00
You will need to pay a fee to register the mortgage. This is likely to be	£140.00

Costs to be paid regularly

None

This APRC is calculated using assumptions regarding the interest rate. Because part of your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to 14% the APRC could increase to 15.3%.

Please make sure that you are aware of all other taxes and costs associated with your loan.

4. Frequency and number of payments

Repayment frequency: Monthly

Number of payments: 179 payments on Part 1, 120 payments on Part 2

5. Amount of each instalment

For the first 36 months you will have a total installment of £ 560.83 (Part 1 = £212.50 and Part 2 = 348.33)

After 3 years your discount on part 1 will end, and assuming rates do not change, your new payment on the total loan will be £648.33

After 22 March 2021 your fixed rate on part 2 will end, and assuming rates do not change, your new payment on the total loan will be £633.06

Your income may change. Please consider whether you will still be able to afford your monthly repayment instalments if your income falls.

The interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 14% your payments could increase to £1189.09.

Because part of this is an interest-only loan you will need to make separate arrangements to repay the £60,000 you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the instalment amount shown here.

6. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.

You are required to fully insure your property while you have a mortgage with us.

7. Early repayment

You have the possibility to repay this loan early, either fully or partially.

Exit charge: There will be a charge during the incentive periods of either part of the mortgage. The charge basis is illustrated in the example below. Please note the early repayment charge for repaying part 1 of the loan is based on current interest rates. Rates may vary and so the amount payable may change subject to the maximum amount shown.

Part	Loan amount	Basis of the charge	Cash examples		
			The maximum charge you could pay	Charge payable in first 3 years	Charge payable after 3 years but before the end of 5 years
1	£60,000	6 months interest on the amount repaid at the discounted variable rate for the first 3 years	£3,825	£1,275	Nil
2	£30,000	5% of original balance for the first 5 years	£1,500	£1,500	£1,500
	£90,000		£5,325	£2,775	£1,500

Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.

8. Flexible features

You have the possibility to transfer this loan to another property. If you think you might like to do this, please contact us so that we can confirm if this will be possible. We will need to check that at the time you wish to transfer the mortgage you meet our current lending criteria

9. Other rights of the borrower

You have seven days after we have given you a binding offer, or confirmed our willingness to be bound by a previous conditional offer, to reflect before committing yourself to taking out this loan.

10. Complaints

If you have a complaint please contact our complaints department at 50 Shoepairs Drive, Creepy Crawley CR3 3PY or Tel 0000 00000100. You can find full details of our complaints processes by asking for details in any branch or by going to: www.centipedemortgages/complaintsstuff

Maximum time for handling the complaint: 8 weeks

If we do not resolve the complaint to your satisfaction internally, you can also contact: The Financial Ombudsman Service.

11. Non-compliance with the commitments linked to the loan: consequences for the borrower

We expect you to:

- Maintain the regular repayments on your mortgage
- Make and keep to arrangements for repaying the capital outstanding at the end of the interest-only part of this mortgage
- Look after the property and keep it in a good state of repair
- Insure the property using an appropriate policy

Where you fail to meet these (or other) obligations there may be additional costs for you where we have to carry out further work. Details of any fees and charges can be found in our tariff of fees and charges - www.centipedemortgages/feesandcharges
In the event of severe breaches of your obligations the ultimate consequence may be legal action by us to take possession of your property

Your full obligations are spelt out in the Terms and Conditions document we will give you. You can see these online at www.centipedemortgages/tandcs
Should you encounter difficulties in making your monthly payments, please contact us straight away to explore possible solutions.

As a last resort, your home may be repossessed if you do not keep up with payments.

12. Additional information

We will give you a copy of the draft mortgage agreement when we make you a binding mortgage offer.

13. Supervisor

This lender is supervised by the Financial Conduct Authority – www.fca.org.uk

This document was produced for Mr & Mrs Yogi-Bare on 21 March 2016.

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.

The information below remains valid until **21 March 2016**. After that date, it may change in line with market conditions.

This document does not constitute an obligation for Intellectual Flounder to grant you a loan.

1. Lender

Intellectual Flounder Tel: 01391 7777 7777

Intellectual Flounder, C Floor, 40 Fathoms Deep, Ocean Drive, S3A B3D

Contact Mrs Gill Breather

2. Credit intermediary

Dogfish Brokers

Tel: 0800 555 5555

4 Foot Square

Fishtank-on-the-Sideboard

F1 5HY

Rock@dogfishthemortgagebrokers.com

Contact Rock Salmon – Mortgage Adviser

Dogfish Brokers recommend, having assessed your needs and circumstances, that you take out this mortgage.

Our fee is described in Section 4. In addition, Intellectual Flounder will pay us £450 for arranging this mortgage.

3. Main features of the loan

Amount and currency of the loan to be granted: £90,000.

Duration of the loan: 25 years.

This is a variable rate interest-only mortgage with a discount rate applying for the first five years. The rate varies in accordance with changes made at the discretion Intellectual Flounder to its Standard Variable Rate

Total amount to be reimbursed: £207,522. **This amount is illustrative and may vary, in particular in relation with the variation of the interest rate.**

This means that you will pay back £2.31 for every £1 borrowed.

Value of the property assumed to prepare this information sheet: £120,000

Minimum value of the property required to borrow the illustrated amount £115,000

The mortgage will be secured against your current home, The Old Cave, Yellowstone, Y0 G1

This is an interest-only loan. You will still owe £90,000 at the end of the mortgage term.

4. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is 5.2%.

It comprises:

Interest rate Currently 5.49% with a discount of 1.50% for 5 years, giving a current rate payable of 3.99%. After 5 years, the rate that will apply is Intellectual Flounder's standard variable rate, currently 5.49%, for the remaining term of the mortgage.

Costs to be paid on a one-off basis

Intellectual Flounder's application fee (payable to Intellectual Flounder on application)
£300

Valuation fee payable to Intellectual Flounder on application £102

Advice fee payable to Dogfish Brokers on application £250

Fee payable to Intellectual Flounder on final repayment. Please note that this is the current fee and may change. £95

You will need to pay a fee to register the mortgage. The precise amount of this is not known, but you should assume a figure of around £400 based on fees charged to register similar loans, the size of the loan and other relevant considerations

Costs to be paid regularly

None – but see section 5 for the loan repayments

This APRC is calculated using assumptions regarding the interest rate.

Because your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to 12.49%, the APRC could increase to 13.3%.

Please make sure that you are aware of all other taxes and costs associated with your loan.

5. Frequency and number of payments

Repayment frequency: monthly

Number of payments: 300

6. Amount of each instalment

You will have to make 60 payments of £299.25 at a variable rate currently 3.99% followed by 240 payments of £411.75 at a variable rate currently 5.49%

Your income may change. Please consider whether you will still be able to afford your monthly repayment instalments if your income falls.

The interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 12.49% your payments could increase to £936.75 per month.

Because this is an interest-only loan you will need to make separate arrangements to repay the £90,000 you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the instalment amount shown here.

7. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.

While you keep this mortgage you must insure the property, with the insurance cover at least meeting the standards set out in our model policy document. We offer insurance to meet these standards – and if you opt to take out insurance elsewhere there will be a £50 fee for checking that this insurance meets the required standards

8. Early repayment

You have the possibility to repay this loan early, either fully or partially.

Exit charge: An early repayment charge is payable on this mortgage during the first 5 years, calculated as 3% of the original loan plus the repayment of the cashback referred to in section 9. An administration fee, currently £95 is also payable if you repay this mortgage early. This charge will be £3,054 during the first 5 years.

Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.

9. Flexible features

You have the possibility to transfer this loan to another property, subject to the new property and your circumstances meeting our lending criteria at that time.

You do not have the possibility to transfer this loan to another lender.

Additional features:

Overpayments/Underpayments

- You can make overpayments or lump sum payments of up to 10% of the original loan amount in the first 5 years and for any amount after this without having to pay an early repayment charge. Otherwise an early repayment charge will apply on the basis set out in Section 8
- The amount you owe and the interest you pay is not recalculated immediately following any regular or lump sum overpayment, but is recalculated annually on 31st December.
- Underpayments can be made if sufficient overpayments have previously been made.

Payment holidays

- Payment holidays are available if sufficient overpayments have previously been made.

Incentives

- You will receive a Cashback of £250 within 7 days of the start of your mortgage.
- We will pay your standard legal fees.

10. Other rights of the borrower

You have 7 days after you have been given a binding mortgage offer to reflect before committing yourself to taking out this loan.

11. Complaints

If you have a complaint please contact our complaints supervisor, Capt. Haddock at Dogfish Brokers, 4 Foot Square, Fishtank-on-the-Sideboard, F1 5HY. You can find details on our complaints procedure at www.dogfishthemortgagebroker.com/complaintshandling

Maximum time for handling the complaint 8 weeks

If we do not resolve the complaint to your satisfaction internally, you can also contact the Financial Ombudsman Service.

12. Non-compliance with the commitments linked to the loan: consequences for the borrower

Late payments or defaulting on the loan will result in additional costs for you to reflect the extra work for the lender. Full details of these costs will be included in the terms and conditions of your mortgage offer and the tariff of fees and charges.

If you do not take out and maintain insurance for the property the lender will instead take out similar insurance cover and you will have to pay for this.

If you fail to adequately maintain the property, or if you take actions that negatively affect the property's value the lender has the right to take remedial steps and for the cost of these and to recover these costs from you.

For further information please use the contact details in Section 1 or you can visit www.intellectualflounder.co.uk/stuff

Should you encounter difficulties in making your monthly payments, please contact us straight away to explore possible solutions.

As a last resort, your home may be repossessed if you do not keep up with payments.

13. Additional information

Intellectual Flounder will give you a copy of the draft credit agreement when they provide you with a binding mortgage offer

14. Supervisor

This lender is supervised by the Financial Conduct Authority – www.fca.org.uk

This credit intermediary is supervised by the Financial Conduct Authority – www.fca.org.uk

This document was produced for **Mr S.Y. & Mrs M. Biotic** on 21 March 2016.

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.



Oxpecker Mortgage Brokers

The information below remains valid until 21 April 2016.

After that date, it may change in line with market conditions.

This document does not constitute an obligation for Red Offsetter Finance to grant you a loan.

1. Lender

Red Offsetter Finance, a division of The Badger Mortgage Group
Phone number: 0444 4444 4444
Hector's House
London
W1 WM

2. Credit intermediary

Oxpecker Mortgage Brokers
Phone number: 0444 4444 4444
1 Beak Row
Oxford OX9 3CK
Contact Woody Oxpecker
Oxpecker Mortgage Brokers recommend, having assessed your needs and circumstances, that you take out this mortgage.

Based on your desired loan size Red Offsetter Finance will pay Oxpecker Mortgage Brokers £400 in cash and/or benefits if you take out this mortgage.

3. Main features of the loan

Amount and currency of the loan to be granted: £90,000
Duration of the loan: 25 years
This is a flexible 'One-pot' capital repayment mortgage. The interest rate is a variable one which tracks the Bank of England Base Rate
Total amount to be reimbursed: £157,803

This amount is illustrative and may vary, in particular in relation with the variation of the interest rate.

This means that you will pay back £1.75 for every £1 borrowed.
Value of the property assumed to prepare this information sheet: £150,000
Maximum available loan amount relative to the value of the property: 90%. The maximum theoretically possible to borrow would be £135,000.
This loan would be secured on your home – 10 Mistletoe Court, Greater Lamprey, Beds

4. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is 5.2%.

It comprises:

Interest rate - 4.45% above Bank of England Base Rate for the term of the mortgage, to give a current rate payable of 4.95%.

Costs to be paid on a one-off basis

- Valuation Fee (payable to Red Offsetter on application) £300
- Solicitors fees (payable to your Solicitor when the mortgage starts) £450
- You will need to pay a fee to register the mortgage. For the purposes of this document this fee is assumed to be included in the solicitors fees.

Costs to be paid regularly

- None

This APRC is calculated using assumptions regarding the interest rate. Because your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to 11.95% the APRC could increase to 12.8%.

Please make sure that you are aware of all other taxes and costs associated with your loan.

5. Frequency and number of payments

Repayment frequency: Monthly

Number of payments: 300

6. Amount of each instalment

£523.51

Your income may change. Please consider whether you will still be able to afford your monthly repayment instalments if your income falls.

The interest rate on this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to 11.95% your payments could increase to £944.58.

7. Additional obligations

The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.

Possession of valid buildings insurance for the life of the mortgage. You can choose to buy this insurance from any authorised insurer.

Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.

8. Early repayment

You have the possibility to repay this loan early, either fully or partially. There are no conditions or charges that apply to this right.

9. Flexible features

You have the possibility to transfer this loan to another property. This transfer will be subject to Red Offsetter Finance's normal lending requirements at the time that you apply to make the change. These requirements may not be the same as those existing today.

Additional features:

Overpayments/underpayments - There are no restrictions to making overpayments at any time. If you overpay or make a lump sum repayment, the amount you owe and the amount of interest you pay is recalculated and reduced immediately. You can make underpayments up to the total value of previous overpayments.

Payment holidays - Payment holidays can be arranged if you have made previous overpayments of at least £500.

Additional borrowing available without further approval - You can borrow up to an additional £10,000, secured on your home, without the need for further approval. This additional borrowing would be regulated in the same way and be on the same terms and conditions as the mortgage and so would need to be repaid if the mortgage was repaid in full. There are no early repayment charges. The maximum amount available, the interest rate payable, and so the total monthly payments are subject to change. This would increase your payment as follows: **Total loan of £100,000 and a Monthly payment of £581.69**

Linked current account - You have indicated that you wish to take advantage of our Red Offsetter's optional linked current account facility. Money in your current account has the effect of reducing the balance of your mortgage and so the amount of interest you will pay. This example shows the effect on your mortgage of managing your account as you have indicated:

Amount paid in each month	Amount spent each month	Amount saved each month	Total amount you must pay back reduced by	Effective term of mortgage reduced by
£2,000	£1,900 evenly throughout the month.	£100	£21,107	6 years and 9 months

The amount spent includes your monthly mortgage payment. This example assumes that you save £100 in your current account every month for the term of the mortgage.

10. Other rights of the borrower

You have seven days after being given a binding mortgage offer to reflect before committing yourself to taking out this loan.

11. Complaints

If you have a complaint please contact Oxpecker Mortgage Broker's Customer Hotline on 0800 555 5557. Our complaints guide and further information can be found at www.oxpeckermortgagebrokersrrus.com/resolvingcomplaints

Maximum time for handling the complaint: 8 weeks

If we do not resolve the complaint to your satisfaction internally, you can also contact: The Financial Ombudsman Service.

12. Non-compliance with the commitments linked to the loan: consequences for the borrower

You are responsible for meeting your mortgage payments in a timely fashion. If you don't do this you will also be liable for the costs of any extra work we have to do.

You are responsible for arranging buildings insurance. If you don't do this, we may take out cover on your behalf and charge you the cost of this.

You must not let out this property or use it as a place of business. A consequence of breaching either of these conditions is that we may ask you to repay the loan within 60 days.

For further information on the consequences of non-compliance please see Red Offsetter's lending conditions or go to www.redoffsetterfinance.org/help

Should you encounter difficulties in making your monthly payments, please contact us straight away to explore possible solutions.

As a last resort, your home may be repossessed if you do not keep up with payments.

13. Additional information

Red Offsetter will give you a draft credit agreement when they give you a binding mortgage offer.

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Financial Conduct Authority



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