

Consultation Paper

CP16/5\*\*

**FCA Handbook changes to  
reflect the introduction of the  
Innovative Finance ISA and the  
regulated activity of advising  
on peer-to-peer agreements  
Including feedback to DP15/6**



February 2016



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We are asking for comments on this Consultation Paper by 15 February 2016.

You can send them to us using the form on our website at:  
[www.the-fca.org.uk/cp16-5-response-form](http://www.the-fca.org.uk/cp16-5-response-form).

**Or in writing to:**

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Canary Wharf  
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**Email:** [cp16-05@fca.org.uk](mailto:cp16-05@fca.org.uk)

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Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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## Abbreviations used in this paper

<b>BIPRU</b>	Prudential sourcebook for banks, building societies and investment firms
<b>CIS</b>	Collective Investment Scheme
<b>COBS</b>	Conduct of Business sourcebook
<b>COMP</b>	Compensation sourcebook
<b>CP</b>	Consultation paper
<b>DISP</b>	Dispute Resolution sourcebook
<b>DP</b>	Discussion paper
<b>FAMR</b>	Financial Advice Market Review
<b>FCA</b>	Financial Conduct Authority
<b>FEES</b>	Fees manual
<b>FSA</b>	Financial Services Authority
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>HM Revenue and Customs</b>	Her Majesty's Revenue and Customs
<b>HM Treasury</b>	Her Majesty's Treasury
<b>IFISA</b>	Innovative Finance Individual Savings Account
<b>IFPRU</b>	Prudential sourcebook for investment firms
<b>IPRU(INV)</b>	Interim prudential sourcebook for investment businesses
<b>ISA</b>	Individual Savings Account

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<b>Ombudsman service</b>	Financial Ombudsman Service
<b>P2P</b>	Peer-to-peer
<b>P2P agreement</b>	Article 36H agreement, as defined in article 36H(4) of the RAO
<b>RAO</b>	Regulated Activities Order
<b>RDR</b>	Retail Distribution Review

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# 1. Overview

## Introduction

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- 1.1** In November 2015 we published a discussion paper (DP15/6)<sup>1</sup> setting out our initial thinking on changes we might make to our Handbook to take account of legislative developments that will impact the regulated loan-based crowdfunding sector.<sup>2</sup>
- 1.2** The following legislative changes<sup>3</sup> are proposed by HM Revenue and Customs and HM Treasury:
- The Individual Savings Accounts Regulations 1998 (ISA Regulations) will be amended to allow 'peer-to-peer (P2P) agreements' (also known as 'article 36H agreements') to be held in an Individual Savings Account (ISA) wrapper, in a new component to be known as an Innovative Finance ISA (IFISA).<sup>4</sup> The new IFISA will be available from 6 April 2016.
  - The Regulated Activities Order (RAO) will be amended to make advising on P2P agreements (article 36H agreements) a regulated activity (RAO article 53(2)).
- 1.3** In this consultation paper (CP) we consult on proposed changes to our Handbook to reflect the introduction of the IFISA and the new regulated activity of advising on P2P agreements. As the Financial Ombudsman Service proposes to amend its voluntary jurisdiction to mirror these changes, this is a joint consultation.

## Who does this consultation affect?

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- 1.4** This paper will be of interest to:
- consumers and consumer organisations
  - financial advisers
  - firms operating loan-based crowdfunding platforms
  - firms that wish to manage IFISAs

<sup>1</sup> DP15/6, *Possible FCA Handbook changes to reflect the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer agreements* (November 2015): [www.fca.org.uk/your-fca/documents/discussion-papers/dp-15-06](http://www.fca.org.uk/your-fca/documents/discussion-papers/dp-15-06)

<sup>2</sup> Firms operating regulated loan-based crowdfunding platforms carry on the activity of 'operating an electronic system in relation to lending' as specified in article 36H of the RAO. This may be peer-to-peer (P2P) lending, peer-to-business (P2B) lending or business-to-peer (B2P) lending, but is generally referred to as P2P lending.

<sup>3</sup> These legislative changes have not yet been made by Parliament and so the proposals in this paper remain subject to the making of the instruments that will give effect to these amendments.

<sup>4</sup> HM Treasury, *ISA qualifying investments: consultation on including peer-to-peer loans* (July 2015): [www.gov.uk/government/consultations/isa-qualifying-investments-consultation-on-including-peer-to-peer-loans/isa-qualifying-investments-consultation-on-including-peer-to-peer-loans](http://www.gov.uk/government/consultations/isa-qualifying-investments-consultation-on-including-peer-to-peer-loans/isa-qualifying-investments-consultation-on-including-peer-to-peer-loans)

- trade bodies that represent stakeholders in this market
- compliance consultants and other firms that assist stakeholders

## Context

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- 1.5** Crowdfunding is a way in which people, organisations and businesses, including business start-ups, can raise money through online portals (also known as crowdfunding platforms) to finance or re-finance their activities. Money can be donated or invested in various ways by both individuals and businesses. Some crowdfunding activity is not regulated by the Financial Conduct Authority (FCA), such as donations or rewards-based crowdfunding, some is regulated by the FCA, and some is exempt from regulation. This paper focuses on the regulated loan-based crowdfunding sector, including P2P lending.
- 1.6** We took on responsibility for regulating firms that operate loan-based crowdfunding platforms on 1 April 2014. Individuals can use these platforms to lend money to other individuals or businesses, or businesses can use them to lend to individuals, in the hope of receiving a financial return in the form of interest payments, together with repayment of capital. We do not regulate firms when they operate platforms that facilitate corporate-to-corporate loans that fall outside the scope of an article 36H agreement.
- 1.7** In 2014 we introduced rules and guidance to protect consumers investing in the regulated part of the loan-based crowdfunding market. For loan-based crowdfunding, these provisions focus on requiring that certain information is provided to consumers. The aim is to ensure information is given to consumers to help them assess the risks applying to loan-based crowdfunding, understand who will ultimately borrow the money invested, and to make informed decisions. Firms operating regulated loan-based crowdfunding platforms must also follow other core consumer protection requirements in the FCA Handbook. For example, client money must be protected and firms must meet minimum capital standards.
- 1.8** We also require firms operating these platforms to have resolution plans in place so that, should the firm operating the platform collapse, loan repayments under P2P agreements will continue to be collected and those lending money should not lose out.

## Introduction of the IFISA and regulated advice on P2P agreements

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- 1.9** To reflect the introduction of the IFISA, and the fact that providing advice on investing in P2P agreements will be a regulated activity, we propose to amend certain definitions, add guidance and extend the application of certain provisions in the FCA Handbook.
- 1.10** In particular, we propose to:
- add guidance on existing disclosure rules to clarify what information firms should disclose in relation to IFISAs
  - apply our rules on suitability to firms making personal recommendations in relation to P2P agreements

- apply rules that ban the payment or receipt of commission by firms in relation to personal recommendations involving advice on P2P agreements
- ensure that financial advisers who advise on P2P agreements are appropriately supervised and assessed as competent to carry out that activity (including attaining an appropriate qualification), and
- ensure that our rules provide consumers, who receive advice on P2P agreements, with access to the Financial Ombudsman Service (ombudsman service) and Financial Services Compensation Scheme (FSCS)

**1.11** Our proposals are designed to advance the FCA's objectives of:

- securing an appropriate degree of protection for consumers,
- promoting effective competition in the interests of consumers, and
- protecting and enhancing the integrity of the market

### **Summary of discussion in, and feedback to, DP15/6**

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**1.12** We received 15 responses to DP15/6. We also hosted a roundtable discussion on our proposals. Respondents generally agreed with our analysis and supported our proposed approach.

**1.13** We thank attendees and respondents for their interaction with us to date. In Chapter 2 we comment in more detail on the feedback we received to DP15/6, which we have taken account of in the proposals outlined in Chapters 3 and 4 of this paper.

#### **Changes in relation to the IFISA**

**1.14** In DP15/6 we discussed introducing guidance to clarify how our financial promotion and disclosure rules apply to firms when communicating about IFISAs.

**1.15** We suggested that we may consider guidance on the sort of information that should be disclosed if firms holding interim permission were able to offer IFISAs. As it has since been confirmed that only firms holding full authorisation will be able to offer IFISAs we do not need to consider this issue further.<sup>5</sup>

**1.16** Given the comments received in response to DP15/6, and the potential impact of the legislation on consumers, we are consulting on introducing guidance to clarify the types of information that firms should provide to consumers when promoting, or providing information about, investment in P2P agreements which will be held in an IFISA wrapper.

#### **Changes in relation to advising on P2P agreements**

**1.17** In DP15/6 we considered some of the regulatory implications should the RAO be amended, as expected, to make providing advice on loan-based crowdfunding a regulated activity. We discussed rules we might apply to firms giving regulated advice on P2P agreements. Possible changes included applying our rules on suitability when a personal recommendation is provided

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<sup>5</sup> Statutory Instrument 2015/TBC Individual Savings Account (Amendment No.2) Regulations 2016  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/483100/draft\\_regs\\_24\\_11\\_15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483100/draft_regs_24_11_15.pdf)

regarding a P2P agreement,<sup>6</sup> and banning the payment and receipt of commission in relation to personal recommendations involving regulated advice on investment in P2P agreements.

- 1.18** We indicated that we did not regard it as proportionate to require firms which provide independent advice to consider investment in P2P agreements when making personal recommendations or to require advisers to hold qualifications specific to this type of business. We also said that financial advisers who advise on P2P agreements should be assessed as competent to carry out that activity. We also signalled our intention to make firms advising on P2P agreements subject to prudential requirements.
- 1.19** Following consideration of the comments received in response to DP15/6, we are consulting in line with the discussion in the DP, as summarised above.
- 1.20** In addition, we have considered the redress and compensation arrangements that should apply in relation to giving advice on P2P agreements. We have concluded that it is in consumers' interests to ensure that our rules provide consumers who receive advice on P2P agreements with access to the ombudsman service and FSCS, in the same way they have such access when receiving regulated investment advice on other investments.

### The Financial Advice Market Review

- 1.21** A joint HM Treasury and FCA project, the Financial Advice Market Review (FAMR), is reviewing the provision of financial advice in the UK.<sup>7</sup> The review will consider the current regulatory and legal framework governing the provision of financial advice to consumers. It will also review the effectiveness of that framework in ensuring that all consumers have access to the information, advice and guidance necessary to empower them to make effective decisions about their finances.
- 1.22** We will consider any recommendations made by FAMR and, as a result, may in the future need to make changes to the approach outlined in this consultation paper.

### Equality and diversity considerations

- 1.23** Some consumers, in certain circumstances, may face particular problems engaging with financial services.<sup>8</sup> We have undertaken an equality impact assessment and consider that loan-based crowdfunding platforms generally, and access to them via IFISAs in particular, may carry particular risks for some people with protected characteristics under the Equalities Act 2010. In particular, we have considered:
- Those with learning difficulties or cognitive limitations who may have a limited capacity to understand fully the risks associated with loan-based crowdfunding.
  - Individuals approaching retirement and considering their options under the new pension freedoms, who may choose to invest in loan-based crowdfunding, failing to realise that it is a much higher-risk alternative to buying an annuity.
  - Individuals in retirement who have significant sums in savings and may be concerned about low interest rates, leading them to search for higher yields elsewhere. They may invest

<sup>6</sup> In COBS 9

<sup>7</sup> A call for input was published in October to invite feedback: [www.fca.org.uk/static/documents/famr-cfi.pdf](http://www.fca.org.uk/static/documents/famr-cfi.pdf)

<sup>8</sup> See, for instance, FCA, Occasional Paper no. 8, *Consumer vulnerability* (February 2015): [www.fca.org.uk/static/documents/occasional-papers/occasional-paper-8.pdf](http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-8.pdf)

significant amounts in loan-based crowdfunding platforms, potentially taking inappropriate levels of risk with their money.

- Young, inexperienced investors who may be attracted to the concept without a full understanding of the risks involved, especially in the web-based and 'social-networking' environment of crowdfunding.
- To reduce the risk consumers may face our consultation focuses in particular on the quality of firms' disclosure, including on financial promotions, to ensure that risks are made adequately clear to the target audience. See also our DP15/5 and CP15/32 on smarter consumer communications, in which we emphasise the importance of developing communications that are suitable for the intended audience.<sup>9</sup>

**1.24** We will continue to consider the equality and diversity implications of the proposals during the consultation period. We welcome feedback on these matters.

### Next steps

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**1.25** In order for the rules to be ready to take effect on 6 April 2016, the period available to us for consultation is short. We published DP15/6 last November to begin the discussion early. Please send us your response to this CP by 15 February 2016. To submit a response, please use the online response form on our website or write to us at the address on page 2.

**1.26** Following consideration of feedback to this CP, we aim to publish a policy statement (PS) making final rules in March 2016, in time for the introduction of the IFISA and new regulated activity on 6 April 2016.

<sup>9</sup> DP15/5, *Smarter consumer communications* (June 2015): [www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html?utm\\_source=smarter-comms&utm\\_medium=smarter-comms&utm\\_campaign=smarter-comms#sc2](http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html?utm_source=smarter-comms&utm_medium=smarter-comms&utm_campaign=smarter-comms#sc2) and CP15/32, *Smarter consumer communications: Removing ineffective disclosure requirements in our Handbook* (October 2015): [www.fca.org.uk/static/documents/consultation-papers/cp15-32.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp15-32.pdf)

## 2. Feedback to DP15/6

- 2.1** In this chapter we summarise the feedback received on the two questions posed in DP15/6, and set out our responses.

***DP Q1: Do you have any comments on our initial thoughts about introducing guidance on disclosures for the Innovative Finance ISA?***

- 2.2** In the DP, we considered the introduction of guidance about the information firms should provide to consumers, given the particular risks relating to IFISAs about which prospective investors should be made aware.
- 2.3** We received 14 responses to the question posed on introducing guidance on disclosures for the IFISA. There was general agreement with our proposals.
- 2.4** One respondent suggested that the guidance should also explain to potential investors that transfers between IFISA managers can only be made in cash (rather than transferring existing loan investments from one IFISA to another), which may mean that transfers take longer than for other types of ISA, and that the availability of a secondary market may be important.
- 2.5** Another respondent suggested that the differences between IFISAs and other types of ISA should be highlighted to consumers so that they are able to make informed choices about their investments. The respondent suggested that we could consider prescribing a generic disclosure.

### Our response

In Chapter 3 of this paper we set out our proposals to introduce guidance on required disclosures in relation to IFISAs.

The guidance explains that firms should disclose the procedure for, and tax consequences of, transferring an IFISA from one ISA manager to another, which we anticipate would include the fact that transfers can only be made in cash, and the time this is expected to take.

Existing rules require firms to disclose information on the nature of the investment and the risks associated with it so that consumers are able to make investment decisions on an informed basis.<sup>10</sup> We have guidance already in place in relation to P2P agreements.<sup>11</sup> In light of these existing rules, at present, we do not consider it necessary to specify that firms explain how IFISAs differ from other types of ISA.

<sup>10</sup> COBS 2.2.1R and COBS 14.3.2R

<sup>11</sup> COBS 14.3.7A G

We do not propose to prescribe generic disclosures for firms: there is great diversity in the market and we consider it preferable for firms to develop communications that are tailored to their individual business models.

**DP Q2: Do you have any comments on our initial thoughts about rules for firms which provide advice on investing in P2P agreements?**

- 2.6** We discussed some of the implications that may arise if the RAO is amended to make advice about loan-based crowdfunding investments a regulated activity. We set out our initial thoughts about how this could be applied in our Handbook.
- 2.7** We received 13 responses to this question. Again there was general agreement with our proposals. One respondent, while agreeing with our proposed approach, said that we should consider reviewing in the future whether or not advisers holding themselves out as independent should be expected to consider P2P agreements.
- 2.8** Eight respondents said it is important for there to be clarity on what is regulated advice on P2P agreements. One respondent suggested it would be easier for advisers to provide advice on the suitability of this type of investment in general, or investments offered by specific P2P platforms, rather than on specific P2P agreements. Another respondent said it would be helpful if we could provide some guidance on our expectations regarding the type and degree of research to be carried out by advisers before making a recommendation, and how a firm could satisfy itself that the adviser was sufficiently competent to make recommendations in this area.
- 2.9** One respondent asked if the proposed commission ban would extend to aggregator websites or those persons who do not provide regulated advice.
- 2.10** One respondent asked if we could clarify whether firms could give advice on P2P agreements by becoming an appointed representative of an authorised firm.
- 2.11** We were also asked whether advice on investing in P2P agreements would be within the FSCS remit.

**Our response**

Having considered the feedback, we are consulting in line with the approach set out in the DP.

If an adviser provides regulated advice constituting a personal recommendation, our proposed rules require the advising firm to take reasonable steps to ensure the advice is suitable.<sup>12</sup> Firms may rely on factual information provided by other firms to support their research.<sup>13</sup>

We are proposing that advisers will need to be appropriately qualified for investment advice. They must also be assessed by the firm as competent to provide advice on P2P agreements under existing high-level rules. Firms are responsible for assessing the competence of their advisers.

<sup>12</sup> COBS 9.2.1R

<sup>13</sup> See COBS 2.4

We may review this approach in future and, if appropriate, could require firms holding themselves out as independent to consider P2P agreements before making recommendations.

Our proposed commission ban will apply only to personal recommendations to invest in P2P agreements. We are not proposing to extend it to other situations, such as unadvised sales arranged on aggregator websites via firms who do not provide regulated advice.

It will be possible for a firm to provide advice on P2P agreements by becoming an appointed representative of an authorised firm with appropriate permissions.

In Chapter 4 we discuss our proposal to allow for recourse to the ombudsman service and FSCS.

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## 3.

# Guidance relating to the IFISA

- 3.1** In this chapter we outline proposed guidance on existing financial promotion and disclosure rules, which will clarify how these rules apply to firms that provide information on, or promote, IFISAs.
- 3.2** The guidance will be relevant to firms involved in promoting or providing information in relation to loan-based crowdfunding investments in an IFISA wrapper. It will apply to advisers, ISA managers, firms running loan-based crowdfunding platforms and other firms that offer investors investments that can be held in an IFISA wrapper.

### Guidance on disclosing information about the IFISA

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- 3.3** We have existing rules and guidance on the information we expect firms to disclose to consumers about the specific nature and risks of P2P agreements invested in via loan-based crowdfunding platforms.<sup>14</sup> In this consultation paper we are proposing to add further guidance on the information firms should provide to consumers, which will apply when P2P agreements are to be held in an IFISA wrapper. We consider this guidance necessary as there are particular risks relating to IFISAs about which prospective investors should be made aware.
- 3.4** The proposed guidance will clarify that firms should, where relevant, disclose details about the following:
- the potential tax disadvantages arising if a consumer invests in a P2P agreement, held in an IFISA wrapper, that is not repaid
  - the potential tax disadvantages if the firm operating the platform fails
  - the procedure applying, tax consequences arising, and timeframes if an investor wants to cash in a P2P agreement held in an IFISA wrapper, and
  - the procedure for transferring some or all of the P2P agreements held in an IFISA wrapper from one ISA manager to another and how long this may be expected to take

**Q1: Do you have comments on the proposed guidance on the information firms must disclose in relation to the IFISA?**

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<sup>14</sup> COBS 14.3.2R and COBS 14.3.7AG

### Consequential amendments and effects

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- 3.5** Following the introduction of the new IFISA, we are proposing to make a number of consequential changes to rules and guidance.
- 3.6** Firms should note that provisions in the Handbook that apply to ISAs generally, such as rules relating to a consumers' cancellation rights,<sup>15</sup> and client money will apply to IFISAs in the same way they apply to stocks and shares ISAs. The effect of the cancellation rules will differ depending on the nature of the firms' business models, and whether the investment is considered a distance contract or a non-distance contract.

**Q2: Do you agree with the minor changes to the FCA Handbook we propose to make to take account of the introduction of the IFISA?**

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<sup>15</sup> In COBS 15

## 4.

# Rules relating to advising on P2P agreements

- 4.1** In this chapter we outline proposals that take account of the new regulated activity, in article 53(2) of the RAO, of 'advising on article 36H agreements' ('advising on P2P agreements').
- 4.2** Firms with permission to carry on the current RAO article 53 activity of 'advising on investments' will be treated as having that permission automatically varied, with effect from 6 April 2016. From that date, such firms' permissions will be varied to include both the activity of 'advising on investments' (recast as the RAO article 53(1) activity) and the new RAO article 53(2) activity of 'advising on article 36H agreements' (except where a firm is not lawfully able to carry on the new activity). This change will be displayed on the Financial Services Register, so firms impacted by this variation will not need to take any action. Firms without an existing permission to advise on investments for the purposes of article 53 of the RAO, which want to provide regulated advice on P2P agreements from 6 April 2016, will need to apply for permission to carry on the new activity in article 53(2) of the RAO.

### Suitability and charging requirements

- 4.3** At present, providing any advice to potential investors about the merits of investing in P2P agreements via loan-based crowdfunding platforms is an unregulated activity. Under the proposed changes to legislation, unless exemptions apply, only authorised persons with appropriate permissions will be able to provide regulated advice on P2P agreements.
- 4.4** We propose to amend definitions and application provisions so that certain rules in our Handbook apply to firms giving investment advice on P2P agreements.<sup>16</sup> As is the case when advising on other investments, firms will need to take reasonable steps to ensure that personal recommendations in relation to P2P agreements are suitable for their clients.<sup>17</sup>
- 4.5** Separately, there may be situations where advisers provide advice that does not involve making a 'personal recommendation' or carrying on the regulated activity of advising on P2P agreements. For example, this may be the case if an adviser recommends that a client invest in an IFISA with a particular ISA manager, but does not recommend a specific loan investment. To ensure consumers understand whether they are receiving regulated or unregulated advice, in order to satisfy the fair, clear and not misleading rule, firms should ensure that financial promotions clarify to potential investors situations where they are not providing regulated advice.<sup>18</sup>
- 4.6** As indicated in DP15/6, we are not proposing that firms holding themselves out as independent should be obliged to consider P2P agreements when recommending retail investment products'

<sup>16</sup> Managing loan-based crowdfunding investments (e.g. in a discretionary investment management service) will remain an unregulated activity and will not be affected by these rule changes.

<sup>17</sup> FCA rules in relation to the suitability of advice are set out in COBS 9.

<sup>18</sup> COBS 4.2.4G(4)

to a retail client. With the sector still at an early stage of development, we do not consider it appropriate to make this a requirement at this time.

**Q3: Do you have any comments on our proposal to apply the suitability requirements to firms that make personal recommendations in relation to P2P agreements?**

- 4.7** We also propose to make advice provided to retail clients in relation to investment in P2P agreements subject to the rules which ban the payment or receipt of commission for personal recommendations, and the rule on inducements<sup>19</sup>. As is the case when advising on other investments, advisers will need to have a charging model for advice in relation to P2P agreements that does not rely on the payment of commission.

**Q4: Do you agree that loan-based crowdfunding should be subject to rules which ban the payment and receipt of commission, and the rule on inducements?**

### Prudential requirements

- 4.8** Firms that recommend investments to clients are generally required to meet minimum capital resources requirements and, in some cases, to hold a minimum level of professional indemnity insurance. We propose that firms that advise on P2P agreements should be subject to these requirements in the same way. We also propose changes to the rules to ensure that firms given permission to advise on P2P, if already authorised remain subject to the same prudential sourcebook when calculating their prudential requirements. Firms that only wish to advise on P2P agreements will be treated as personal investment firms and subject to the rules in IPRU(INV)<sup>13</sup>.
- 4.9** As at present, firms will continue to be subject to prudential requirements depending on how they are structured and the permissions they have. For example, some firms will be subject to rules in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU), and others the Prudential sourcebook for Investment Firms (IFPRU) or the Interim Prudential sourcebook for Investment Businesses (IPRU(INV)).<sup>20</sup>
- 4.10** We propose to amend, where necessary, definitions relevant to the application of those rules to reflect the changes that will be made to the RAO to introduce the Article 53(2) activity of advising on article 36H agreements. In determining the prudential requirements that apply, firms that advise on P2P agreements will need to consider any changes to the relevant factors as set out in the Prudential sourcebook that applies to them. For example, for a personal investment firm subject to IPRU(INV) Chapter 13 such factors will include its designated investment business income and whether it holds client money in connection with its Article 53(2) activity.

**Q5: Do you agree with our proposals relating to the prudential requirements that will apply to firms that advise on P2P agreements?**

<sup>19</sup> COBS 2.3.1R

<sup>20</sup> In 2015 we consulted on and introduced new capital requirements for personal investment firms (PIFs) subject to Chapter 13 of IPRU(INV). PS15/28, *Capital resources requirements for personal investment firms (PIFs): feedback on CP15/17 and final rules* (Dec 2015): <http://www.fca.org.uk/news/ps15-28-pifs-capital-resources-requirements>. These provisions will come into effect on 30 June 2016.

## Redress and Compensation

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- 4.11** The ombudsman service and the FSCS aim to protect consumers against failures by authorised firms. The ombudsman's role is to resolve disputes between consumers and regulated firms quickly and informally. The FSCS can pay compensation where an authorised firm is unable, or likely to be unable, to meet consumers' claims against it. Ombudsman awards and case fees are paid by the firm that has caused the consumer harm, while FSCS payments are funded by a levy on authorised firms.
- 4.12** We have considered the redress and compensation arrangements that should apply in relation to giving advice on P2P agreements, which will fall within the definition of 'designated investment business'. We propose that consumers receiving advice on P2P agreements should have the same access to the ombudsman service and FSCS as they do when receiving regulated investment advice on other investments.<sup>21</sup>
- 4.13** So, as with other forms of regulated advice, we propose that clients will be able to complain to the adviser firm about poor advice and, if they are not happy with the response, take their complaint to the ombudsman service. Further, if the advising firm has gone out of business, the investor may be able to seek compensation from the FSCS. As advising on P2P agreements will be 'designated investment business' there will be no need for us to amend our compensation rules in COMP.
- 4.14** The FCA is responsible for setting the scope of the ombudsman service's compulsory jurisdiction and the ombudsman service is responsible for setting the scope and standard terms for its voluntary jurisdiction. The ombudsman proposes to mirror the changes which the FCA is making to compulsory jurisdiction in its voluntary jurisdiction. So to the extent that this consultation paper proposes changes to the ombudsman service's voluntary jurisdiction, this consultation paper is issued jointly by the FCA and the ombudsman service and, where relevant, references to 'we' are to the FCA and the ombudsman service.

**Q6: Do you agree with our proposal to provide access to the ombudsman service and FSCS in relation to advising on P2P agreements?**

## Additional matters

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- 4.15** As advice to invest in P2P agreements is to be regulated, we are proposing to treat that advice in broadly the same way as other regulated advice. We propose including the new activity within the definition of 'advising on investments' and adding it to the list of 'designated investment business'. Some of the rules that will apply are:
- Senior Management Arrangements, Systems and Controls (SYSC) requirements: firms will need to ensure that they have appropriate systems and controls in place to deal with the risks of advising on P2P agreements, including that of the firm operating the P2P platform going out of business. As part of this, firms must meet the high-level requirement to employ people with the skills, knowledge and expertise necessary for the responsibilities allocated to them.

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<sup>21</sup> Note that investors will not be able to seek redress simply because a borrower defaults on a loan.

- Training and Competence (TC) requirements: firms must ensure employees giving advice on P2P agreements are appropriately supervised and assessed as competent to carry out that activity. As with other investment advice, advisers providing advice to retail clients will need to be qualified to QCF level 4 (i.e. to the same standard as those advising on retail investment products).
- Disclosure requirements in the Conduct of Business sourcebook (COBS): firms must ensure that financial promotions are fair, clear and not misleading. In particular, if a promotion names the FCA as a firm's regulator and also refers to matters not regulated by the FCA, such as general advice on the P2P sector, firms must make it clear that such advice is not regulated by the FCA.
- Fees manual (FEES): firms should note that:
  - Some clarifying adjustments are proposed in FEES 4 Annex 1A to incorporate providing regulated advice on P2P agreements into the definition of fee-block A13 (advisors, arrangers, dealers or brokers). Firms applying, or varying their permissions, to advise on P2P agreements will pay the straightforward application fee (£1,500 if they are not already authorised by us) and be subject to periodic fees in fee-block A13.
  - Remuneration for recommendations regarding P2P agreements will need to be included in the income reported for the purposes of calculating regulatory fees in fee-block A13. See FEES 4 Annex 13A for the definition of annual income and FEES 4 Annex 13 table 1 for guidance on reporting
- Dispute Resolution (DISP): firms should note that ombudsman levies will arise as a result of access to the ombudsman service, although firms with existing investment permissions will already be subject to some of these costs. Costs to firms are likely to fall into three main categories: any redress due as a consequence of ombudsman decisions, ombudsman service levies and case fees (note: there is no case fee for the first 25 cases a year ) and the administrative costs of handling complaints.
- Compensation sourcebook (COMP): the FSCS is funded by levies on authorised firms. Under our rules, the FSCS can levy firms to meet its compensation costs and management expenses. As the activity of providing regulated advice on P2P agreements will be 'advising on investments', it will fall within funding class D2 Investment Intermediation, and there will be no need for us to amend rules for FSCS funding in FEES 6.

**Q7: Do you have any comments on the impact of the existing rules on firms that provide advice on P2P agreements?**

**Q8: Should we require individuals wishing to advise on P2P agreements to be qualified to the same standard as those advising on retail investment products?**

# Annex 1

## List of questions

- Q1:** Do you have comments on the proposed guidance on the information firms must disclose in relation to the IFISA?
- Q2:** Do you agree with the minor changes to the FCA Handbook we propose to make to take account of the introduction of the IFISA?
- Q3:** Do you have any comments on our proposal to apply the suitability requirements to firms that make personal recommendations in relation to P2P agreements?
- Q4:** Do you agree that loan-based crowdfunding should be subject to rules which ban the payment and receipt of commission, and the rule on inducements?
- Q5:** Do you agree with our proposals relating to the prudential requirements that will apply to firms that advise on P2P agreements?
- Q6:** Do you agree with our proposal to provide access to the ombudsman service and FSCS in relation to advising on P2P agreements?
- Q7:** Do you have any comments on the impact of the existing rules on firms that provide advice on P2P agreements?
- Q8:** Should we require individuals wishing to advise on P2P agreements to be qualified to the same standard as those advising on retail investment products?
- Q9:** Do you have any comments on our analysis of the market or further information about it?
- Q10:** Do you have any comments on our cost benefit analysis?
- Q11:** Do you have any comments on the compatibility statement?

## Annex 2

# Cost benefit analysis

1. The Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis of our proposed rules. Specifically, section 138I requires us to publish a cost benefit analysis of proposed rules, defined as ‘an analysis of the costs, together with an analysis of the benefits’ that will arise if the proposed rules are made. It also requires us to include estimates of those costs and those benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.

### Our proposed rule changes

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2. To reflect the introduction of the IFISA, and the new regulated activity of giving advice about investing in loan-based crowdfunding, we propose to amend sections of our Handbook.
3. In particular, we are proposing to:
  - introduce guidance on the existing disclosure rules to clarify the information firms should provide in financial promotions and other material relating to investment in an IFISA
  - apply our rules on suitability to firms making personal recommendations in relation to a P2P agreement
  - apply rules to ban the payment or receipt of commission for investment in article 36H agreements
  - require firms to ensure financial advisers are appropriately qualified to advise on P2P agreements, and
  - ensure that rules provide consumers, who receive advice on P2P agreements, with access to the ombudsman service and FSCS
4. As with other investments, firms will need to take reasonable steps to ensure that personal recommendations are suitable for the client.

### The market

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5. In this section we describe the market for loan-based crowdfunding, ISAs and advice.
6. **Firms running loan-based crowdfunding platforms**  
At present six firms have been fully authorised to operate loan-based crowdfunding platforms. We are also considering 42 applications for full authorisation from firms that hold interim

permission, and a further 38 applications for authorisation from firms that wish to enter the market. There is no guarantee that firms with interim permission will succeed in achieving full authorisation, however, and not all firms may be viable in the long term.

7. To provide a reasonable estimate for our cost benefit analysis, accepting that firms will enter and leave the market over time, we are assuming that between 50 and 70 firms will run loan-based crowdfunding platforms at any one time. We also expect it to be the aim, in the long term at least, of all firms in this market to allow their clients to hold P2P agreements in IFISA tax wrappers.
8. Given our understanding of this market, for the purposes of this cost benefit analysis, we expect firms operating loan-based crowdfunding platforms to apply to become ISA managers but do not expect them to apply for permission to provide regulated advice on P2P agreements.
9. Firms operating loan-based crowdfunding platforms are at risk of failure if their revenues do not at least cover operating costs. There is an additional risk that a firm with only interim permission running a platform may not be granted full authorisation in due course.
10. FCA rules require firms to have arrangements in place to ensure that existing loan contracts will continue to be managed and administered in accordance with the contract terms if at any time a firm ceases to carry on the activity (The Living Will). Even with these arrangements in place, however, it is impossible to remove all risk, and there is still the possibility of detriment to consumers if these back-up arrangements fail to work as expected.

#### **Existing ISA managers**

11. HM Revenue and Customs figures show that there were 505 persons authorised as ISA managers on 11 December 2015.<sup>22</sup> From initial discussions with the industry, we do not expect many of the existing ISA managers to offer IFISA components in the near future, but we would expect some to do so in the longer term.
12. If 10% of these firms were to offer their clients an IFISA component this would add an additional 50 firms to the estimated 50 to 70 firms operating loan-based crowdfunding platforms. The market would therefore include an estimated 100 to 120 IFISA managers.
13. For the purposes of the cost benefit analysis we do not expect existing ISA managers to choose to provide regulated advice on P2P agreements.

#### **Firms providing investment advice**

14. Our rules will not mandate that independent advisers should consider P2P agreements when providing advice. (From feedback at the roundtable discussion, we understand that few adviser firms will recommend P2P agreements in a way that would constitute a personal recommendation from next April.) There was also no expectation that this will change significantly in the coming years as the P2P model is disintermediated and designed to operate without advice. The introduction of the IFISA may lead to changes, however, and it is sensible to have consumer protections in place if advice is provided.

### **Q9: Do you have any comments on our analysis of the market or further information about it?**

<sup>22</sup> HM Revenue and Customs list of authorised ISA managers:  
[www.gov.uk/government/publications/list-of-authorised-isa-managers/isas-authorised-managers](http://www.gov.uk/government/publications/list-of-authorised-isa-managers/isas-authorised-managers)

### Market failure analysis

15. We analysed market failures when we introduced rules for firms running loan-based crowdfunding platforms.<sup>23</sup> Please refer to that analysis for more detail. In brief, we still consider the following to be the principal causes of market failures in the loan-based crowdfunding sector:
- Information asymmetries: investors know less than the firms with which they do business and may be unaware of the level of risk associated with their investments. This risk may materialise and result in significant harm, which could be worsened by illiquidity in the secondary market. If assets cannot be easily sold or exchanged in a secondary market (if one exists) without a loss in value, investors may not be able to regain rapidly (or at all) the amount they invested.
  - Behavioural biases: these biases (discussed further below) lead some investors to act on the basis of “headline” returns without due consideration to risks in relation to investment options, which may result in excessive risk-taking and losses for which they are unprepared.
16. These potential market failures may contribute to consumer harm in a number of ways. Of particular relevance in the context of this consultation paper is that harm may arise due to investors underestimating credit risk, through the failure of the firm operating the crowdfunding platform, or through the failure of the ISA manager.

### Credit risk and due diligence

17. The key risk facing investors is default by borrowers. The credit risk may be difficult to assess because of the inherent information asymmetries between investors and borrowers, as well as firms and borrowers. Investors may suffer harm if they underestimate credit risk or overestimate the financial returns.
18. The impact of credit risk can be mitigated by carrying out due diligence checks on the person or organisation seeking funding. This can be done by:
- the adviser (if there is one)
  - the firm operating the platform, or
  - the investor (depending on their resources and expertise)
19. Where investors lack the ability, resources or expertise needed to carry out their own due diligence assessment of potential borrowers, the absence of any adequate due diligence by firms operating the platforms might lead to losses.

### Behavioural biases

20. Consumer behavioural biases can combine with information asymmetries and misaligned incentives to create further risk. Biases that are likely to be relevant include:
- Overconfidence: where investors are over-confident about their investment choices and overestimate their ability to assess risk. This could lead to unexpected financial loss.
  - Anchoring and limited attention: where investors base their evaluation and purchase decision exclusively on one fact (such as the headline rate of return), not taking costs (such

<sup>23</sup> CP13/13, *The FCA's regulatory approach to crowdfunding (and similar activities)* (October 2013): [www.fca.org.uk/static/documents/consultation-papers/cp13-13.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp13-13.pdf)

as fees) and risks (probability of default) into account.

- Herding: where investors use sub-optimal rules of thumb to make investment decisions. For example, the more other investors appear to show interest in a particular investment, the more some investors will assume that it is a good investment.
21. Lack of investor sophistication or experience, and behavioural biases such as these, are likely to interact and reinforce each other.

## Costs

### Incremental costs for firms following our guidance on IFISAs

22. We estimate that costs may arise as a result of firms developing new disclosures in relation to IFISAs. However, existing high-level rules already require firms to provide clients with a fair and prominent indication of any relevant risks in enough detail to enable the client to make informed decisions about investments. This means that the guidance we are introducing does not impose any incremental requirement as it merely spells out the need to include information that we would already expect to see disclosed under these high-level rules.

### Incremental costs for firms in relation to advice on P2P agreements and banning commission on loan-based crowdfunding

23. As noted above, we expect limited provision of investment advice. The market primarily operates on a non-advised basis and few firms currently provide advice that would constitute a personal recommendation from next April. From discussions with the industry, there is little expectation that this situation will change rapidly. Firms already in the market that do wish to recommend P2P agreements will already have processes in place for investment advice, which could be adapted for loan-based crowdfunding. We therefore expect the incremental costs of our proposals to be minimal.
24. Where regulated firms provide unregulated advice, as is the case for P2P agreements at present, they do not currently need to apply our more detailed conduct of business rules about the suitability of advice, as per our Conduct of Business Sourcebook (COBS) 9. However, they must nevertheless comply with our Principles for Businesses. Relevant Principles include:<sup>24</sup>
- Principle 2 requires firms to conduct their business with due skill, care and diligence.
  - Principle 6 requires firms to pay due regard to the interests of their customers and treat them fairly.
  - Principle 7 requires firms to pay due regard to the information needs of their clients, and communicate information to them in a way that is clear, fair and not misleading.
  - Principle 9 requires firms to take reasonable care to ensure the suitability of their advice for any customer who is entitled to rely upon their judgment.
25. This means that firms recommending investment in P2P agreements should already be following some of our rules.
26. Adviser firms will already have processes in place to meet our requirements for other types

<sup>24</sup> PRIN 2.1.1R

of regulated investment, including in relation to adviser charging and record-keeping. As a result they will not need to develop new processes to use in this sector when advice on P2P agreements becomes a regulated activity.

27. We also note that our proposals do not oblige advisers to consider loan-based crowdfunding when providing advice, so changes will only affect firms interested in including them within the range of products they may recommend to their clients.
28. If a firm chooses not to give advice on P2P agreements, in order to avoid the cost of compliance and gave up potential profit opportunities, there would be opportunity costs (the cost of losing potential business benefits) for the firm. However, as noted above, we do not anticipate any significant interest from new entrants looking to establish intermediary business models that provide regulated advice on loan-based crowdfunding. So we consider the opportunity costs to be minimal.
29. Loan-based crowdfunding currently takes place without advice, so firms running article 36H platforms are unlikely to pay commissions to advisers or platforms. We therefore do not expect there to be significant costs for firms as a result of the ban on payment of commission.
30. We note that there will be modest incremental costs as a result of the redress and compensation arrangements required for those firms that give advice on P2P agreements. Firms in the D2 Investment Intermediation class will be subject to some increase in fees relating to the ombudsman service and FSCS. However, P2P agreements will be one of a large number of investment classes affected and should not be a significant class.
31. As the market does not yet exist and, as noted above, is unlikely to develop significantly in the coming years, the amount of redress firms that give advice on P2P agreements may need to pay consumers is difficult to predict and will vary depending on the individual circumstances of the case. Firms can have up to 25 cases a year at the ombudsman service but will usually have to pay a case fee of £550 for the 26<sup>th</sup> and subsequent cases that are referred to the ombudsman service. Firms may also incur administrative costs if additional cases are referred to the ombudsman service. In a survey carried out for FSA CP 10/12, the FSA found that the administrative costs for handling cases at the ombudsman service in addition to the case fee (including the costs of gathering evidence, corresponding with the ombudsman service, etc.) varied from low tens to several thousands of pounds per complaint depending on firm type.

#### **Indirect costs to the market**

32. Our proposals may have indirect effects on the market, including:
  - Deterring some sound investment as a result of the new warnings. Since the guidance on information to be disclosed relates to material risks that investors need to understand prior to making an investment decision, we expect the risk of deterring sound investment to be negligible.
  - Investors will no longer be able to receive advice from unauthorised persons, which may reduce take-up. We understand, however, that most investment in P2P agreements is currently undertaken without advice and this is unlikely to change significantly. The impact of this is likely to be minimal or null.
  - Some authorised firms may have been more willing to provide advice under the Principles and be less willing to do so if they must follow the more detailed conduct of business rules in relation to the suitability of advice. As above, since most, if not all, investment in P2P agreements is currently made without advice being given, the impact of this is likely to be

minimal or null.

**Benefits**

33. Our proposals will provide benefits by addressing potentially harmful outcomes for consumers.

**Benefits in relation to guidance on IFISAs**

34. Our proposed guidance on IFISAs should help reduce information asymmetries and the associated risk of consumers underestimating the risks of P2P lending. In particular, appropriate disclosure may help investors assess risks more accurately and enable them to make better investment decisions, reducing potential harm to them and driving more effective competition in the market.
35. The disclosures we expect to be provided to clients should be targeted to address the relevant risks, including risks in relation to credit and platform failure. The disclosures given should warn investors of the relevant risks.
36. The proposed requirements are not prescriptive in terms of format so each firm may adopt a different, tailored approach. The effectiveness of the policy will rely on whether the disclosed information will be readily available and understandable by recipients.
37. It is estimated that approximately £1.3bn was invested in loan-based crowdfunding platforms in 2014.<sup>25</sup> The amount invested has been growing rapidly in recent years and may increase further when it is possible to invest via IFISAs. However, only a proportion of the money invested on loan-based crowdfunding platforms is made by individual investors eligible to take out ISAs (the £1.3bn figure includes loans made by businesses to individuals) and there is a £15,240 limit on the sum that each eligible investor can put in an IFISA tax wrapper. Industry data shows that institutional involvement accounts for 27% of the volume of the P2P market and is growing.<sup>26</sup> So, if we assume that around 27% of investment in this sector is from institutional investors, this leaves just under £1bn from investors eligible to invest in IFISAs. If we assume that around 50% will be invested in IFISAs, we estimate that around £500 million may be invested in IFISA wrappers on an annual basis.
38. To estimate the value of the benefits of our proposals, we refer to the cost benefit analysis in the first crowdfunding consultation paper, CP13/13. In that paper we made the following assumptions:
- 5% to 10% of investors on loan-based platforms, across the market as a whole, can be considered 'less sophisticated'
  - we therefore assume that 5% of investments on platforms are mis-invested
  - the rules introduced in that consultation would reduce the amount of mis-investment by 50%
39. Assuming that this remains correct, we could make a conservative estimate of a remaining 2.5% mis-investment in the market. If we assume that the new proposals outlined in this consultation paper reduce this by 10% in the future, mis-investment may be reduced by 0.25% or £1.25m (£500m x 0.25%).
40. The harm from mis-investment will vary across individual cases. Investors may achieve lower

<sup>25</sup> Nesta, *Understanding alternative finance: the UK alternative finance industry report 2014* (November 2014): [www.nesta.org.uk/sites/default/files/understanding-alternative-finance-2014.pdf](http://www.nesta.org.uk/sites/default/files/understanding-alternative-finance-2014.pdf)

<sup>26</sup> [www.altfi.com/article/1055\\_is\\_p2p\\_lending\\_a\\_thing\\_of\\_the\\_past](http://www.altfi.com/article/1055_is_p2p_lending_a_thing_of_the_past)

returns than expected, or no tax advantage, or may lose their capital. Taxes are paid on returns only. So, if one expects 5% return and has a 20% marginal tax rate, the tax benefits potential lost will equal 1% of investment. For illustration purposes, if we assume an average consumer loss of 1%, this would result in an estimated reduction of harm, or benefit, of £12,500 per annum (£1.25m x 1%).

41. The analysis above indicates that the overall benefit (reduction in harm) is modest, and subject to uncertainties related to estimations of the value of the market and behavioural impacts. Nevertheless, benefits are expected to exceed the negligible or nil costs estimate, which makes our proposals net beneficial.

**Benefits of regulated investment advice on P2P agreements and banning commission for loan-based crowdfunding**

42. As noted in our market failure analysis, where investors lack the resources or expertise to carry out their own due diligence assessments of potential borrowers, the absence of adequate due diligence by firms might lead to losses. If firms choose to give regulated advice on investing in loan-based crowdfunding, those following our rules about advice will need to take reasonable steps to ensure that their recommendations are suitable, thus improving the benefits and protection available to advised investors in this market.
43. We also expect the quality of advice, if given, will be improved by there being no potential for bias that could be created if we allowed for commission to be paid on P2P agreements.
44. The introduction of redress and compensation arrangements will also benefit consumers who receive regulated advice on P2P agreements.
45. This analysis indicates that there will be overall benefit. However, given the likely small size of the P2P advice market, we estimate that the benefits detailed above will be modest, but in excess of the costs estimate.

**Q10: Do you have any comments on our cost benefit analysis?**

## Annex 3

# Compatibility statement

1. We are required by section 138I(2)(d) of the Financial Services and Markets Act (FSMA) to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA. We are also required by section 138K(2) of FSMA to state whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This annex also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule making) in a way that promotes effective competition in the interests of consumers (section 1B(4) of FSMA). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

### Our regulatory objectives

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3. The proposals in this consultation paper are intended to advance our operational objectives of consumer protection, effective competition and market integrity. We consider our proposals to be compatible with these objectives because:
  - They are based on our assessment of the risks applying to loan-based crowdfunding and the needs of consumers. The rules on which we are consulting are focused on mitigating these risks. The rules are also concerned with providing adequate consumer protection by helping investors to identify risks and make informed investment decisions, and by helping to ensure investment advice is suitable.
  - We recognise that crowdfunding has a role to play in the wider economy and it is our aim to develop, as far as possible, a proportionate framework of rules that encourages beneficial competition while reducing the possibility of ineffective competition. The rules we propose are aimed in particular at enhancing the quality of disclosure by firms, helping investors to make better investment decisions, and ultimately to drive effective competition in these markets.
  - If consumers are unaware of the risks they face or if investment advice received is unsuitable, they may lose faith in the market if problems or unexpected losses occur in the future, allowing the market to lose integrity. We are proposing measures to help consumers understand the risks in the market and to ensure investment advice is suitable.

## Compatibility with the principles of good regulation

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### **The need to use our resources in the most efficient and economic way**

4. The approach on which we are consulting builds on existing rules and guidance, rather than creating new systems and processes.

### **Proportionality of burdens or restrictions imposed on persons or on carrying on an activity**

5. We believe we are putting forward a proportionate approach that sets an appropriate level of investor protection while minimising, as far as possible, burdens on firms and the impact on competition, including competitive entry.

### **The desirability of sustainable growth in the UK economy in the medium or long term**

6. We see crowdfunding as a sector that is likely to continue to grow and may start to exert competitive pressure on other markets. As such, its significance in the medium- to long-term may increase. Consequently we have sought to deliver a set of proposals that is proportionate and ensure a sufficient degree of investor protection, while minimising, as far as possible, any negative impact on competition and the long-term growth prospects of the crowdfunding sector.

### **The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons**

7. We recognise that each crowdfunding platform differs from others, so we are not making detailed rules that apply the same standards to all firms. Instead, our approach imposes high-level rules that apply in a manner proportionate to the business affected and the specific risks to which customers will be exposed.

### **The responsibilities of senior management**

8. Firms' senior managers are responsible for ensuring their processes provide adequate protection for investors.

### **The desirability of publishing information relating to persons**

9. We do not consider that our proposals will have an impact on this.

### **The principle that we should exercise our functions as transparently as possible**

10. We are using this consultation paper to seek input into the approach we adopt. We invite feedback to help shape the final rules and guidance to be introduced.

### **The general principle that consumers should take responsibility for their decisions**

11. The approach on which we are consulting will place the onus on consumers to take responsibility for their actions and investment decisions. Our proposed rules focus on ensuring that firms disclose adequate information to allow investors to make informed investment decisions.

### **Expected effect on mutual societies**

12. At present, there are no mutual societies involved in providing regulated crowdfunding activities so there should be no direct impact. If a mutual society was to enter the sector, it would be expected to comply with our rules in the same way as other regulated firms.

### **Compatibility with the duty to promote effective competition in the interests of consumers**

13. We have a duty to discharge our general functions (which include rule making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA). This duty

applies insofar as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

14. As noted above, loan-based crowdfunding is likely to continue to grow and may start to exert competitive pressure on neighbouring markets, including consumer and business loans provided by other financial institutions. Our proposals will help investors make informed decisions and put them in a place to drive effective competition in this market.

**Legislative and Regulatory Reform Act 2006 (LRR)**

15. We are required under the LRR to have regard to the principles in the LRR and to the Regulators' Compliance Code when determining general policies and principles and giving general guidance (but not when exercising other legislative functions).
16. We have also considered the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance.
17. We consider that the proposals are proportionate to the potential market failures identified.

**Q11: Do you have any comments on the compatibility statement?**

## Annex 4

# List of non-confidential respondents to DP15/6

AltFi Data Limited

Association of Professional Financial Advisers (APFA)

Capitalstackers Ltd

Compliancy Services Limited

Funding Circle Limited

Funding Empire Ltd

Funding Knight Ltd

GLI Finance Limited

Goji Holdings Ltd

Nabarro LLP Solicitors

Octopus Investments Limited

QuidCycle

Tenet Group Limited

UK Crowdfunding Association

UP Investments Limited

# Appendix 1

## Draft Handbook text

## PEER-TO-PEER LENDING INSTRUMENT 2016

### **Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes and amends the voluntary jurisdiction rules and fixes and varies the standard terms for voluntary jurisdiction participants as set out in Annexes A and G to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
  - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The making and amendment of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited, as set out in Annexes A and G, are subject to the approval of the Financial Conduct Authority.

### **Powers exercised by the Financial Conduct Authority**

- C. 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 Act:
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137B (FCA general rules: clients’ money, right to rescind etc);
    - (c) section 137R (Financial promotion rules);
    - (d) section 137T (General supplementary powers);
    - (e) section 138C (Evidential provisions);
    - (f) section 139A (Power of the FCA to give guidance);
    - (g) section 213 (The compensation scheme);
    - (h) section 214 (General);
    - (i) section 226 (Compulsory jurisdiction);
    - (j) paragraph 13 (Authority’s procedural rules) of Schedule 17; and
    - (k) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the voluntary jurisdiction rules made and amended, and the standard terms fixed and varied, by the Financial Ombudsman Service Limited in this instrument.

## Commencement

F. This instrument comes into force on 6 April 2016.

## Amendments to the Handbook

G. 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
Fees manual (FEES)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Client Assets sourcebook (CASS)	Annex E
Supervision manual (SUP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G
Collective Investment Schemes sourcebook (COLL)	Annex H

## Amendments to material outside the Handbook

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

## Citation

I. This instrument may be cited as the Peer-to-Peer Lending Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited  
[date] 2016

By order of the Board of the Financial Conduct Authority  
[date] 2016

## 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.

*advising on investments (except P2P agreements)* the *regulated activity*, specified in article 53(1) of the *Regulated Activities Order* (Advising on investments), which is in summary: advising a *person* if the advice is:

- (1) given to the *person* in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or a potential investor; and
- (2) advice on the merits of his doing any of the following (whether as principal or agent):
  - (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security* or *relevant investment* (that is, any *designated investment* (other than a *P2P agreement*), *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interests in a *funeral plan contract*); or
  - (b) exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.

*advising on P2P agreements* the *regulated activity*, specified in article 53(2) of the *Regulated Activities Order* (Advising on investments), which is in summary: advising a *person* if the advice is:

- (1) given to the *person* in his capacity as a *lender* or potential *lender* under a relevant P2P agreement or in his capacity as agent for a *lender* or potential *lender* under a relevant P2P agreement; and
- (2) advice on the merits of his doing any of the following (whether as principal or agent):
  - (a) entering into a relevant P2P agreement as *lender* or assuming the rights of a *lender* under such an agreement by assignment or operation of law;
  - (b) providing instructions to a *P2P platform operator* with a view to entering into a relevant P2P agreement as a *lender*

or assuming the rights of a *lender* under such an agreement by assignment or operation of law, where the instructions involve:

- (i) accepting particular parameters for the terms of the agreement presented by a *P2P platform operator*; or
  - (ii) choosing between options governing the parameters of the terms of the agreement presented by a *P2P platform operator*; or
  - (iii) specifying the parameters of the terms of the agreement by other means;
- (c) enforcing or exercising the *lender's* rights under a relevant P2P agreement; or
- (d) assigning rights under a relevant P2P agreement;

in this definition “relevant P2P agreement” means a *P2P agreement* which has been, or may be, entered into with the facilitation of a *person* carrying on an activity of the kind specified by article 36H(1) or 36H(2D) of the *Regulated Activities Order*.

<i>innovative finance component</i>	a qualifying investment as prescribed in regulation 8A of the <i>ISA Regulations</i> .
<i>innovative finance ISA</i>	an <i>individual savings account</i> which includes an <i>innovative finance component</i> .
<i>innovative finance ISA business</i>	a <i>firm's</i> activities, in its capacity as an <i>ISA manager</i> , in connection with an <i>ISA</i> which contains only an <i>innovative finance component</i> and is not <i>designated investment business</i> .
<i>P2P platform operator</i>	a <i>firm</i> carrying on an activity of the kind specified by article 36H(1) or 36H(2D) of the <i>Regulated Activities Order</i> .

Amend the following definitions as shown.

<i>adviser charge</i>	any form of charge payable by or on behalf of a <i>retail client</i> to a <i>firm</i> in relation to the provision of a <i>personal recommendation</i> by the <i>firm</i> in respect of a <i>retail investment product</i> <u>or <i>P2P agreement</i></u> (or any related service provided by the <i>firm</i> ) which: <ul style="list-style-type: none"><li>(a) is agreed between that <i>firm</i> and the <i>retail client</i> in accordance with the <i>rules</i> on adviser charging and remuneration (<i>COBS</i> 6.1A); and</li></ul>
-----------------------	---

- advising on investments*
- (b) is not a *consultancy charge*.
  - (1) ~~(except in SUP 10A (Approved Persons) and APER) the regulated activity, specified in article 53 of the Regulated Activities Order (Advising on investments), which is in summary: advising a person if the advice is:~~
    - (a) ~~given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and~~
    - (b) ~~advice on the merits of his doing any of the following (whether as principal or agent):~~
      - (i) ~~buying, selling, subscribing for or underwriting a particular investment which is a security or relevant investment (that is, any designated investment (other than a P2P agreement), funeral plan contract, pure protection contract, general insurance contract or right to or interests in a funeral plan contract); or~~
      - (ii) ~~exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.~~
- (except in SUP 10A (Approved Persons) and APER) the regulated activities, specified in articles 53(1) and 53(2) of the Regulated Activities Order (Advising on investments), which are:
- (a) *advising on investments (except P2P agreements); and*
  - (b) *advising on P2P agreements.*
- (2) (in SUP 10A (Approved Persons) and APER) the ~~regulated activity~~ *activities* specified in ~~article 53~~ articles 53(1) and 53(2) (Advising on investments) of the *Regulated Activities Order*. For these purposes, *advising on investments* includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the *Regulated Activities Order*.
- advising on investments (except pension transfers and pension opt-outs)* *advising on investments (except P2P agreements) except other than in respect of pension transfers and pension opt-outs.*
- advising on* any of the following *regulated activities*:

<i>pension transfers and pension opt-outs</i>	(a) <i>advising on investments (except P2P agreements) in respect of pension transfers and pension opt-outs (article 53 53(1));</i>
	(b) ...
<i>borrower</i>	(1) ...
	(2) <i>in relation to a P2P agreement other than a credit agreement or a regulated mortgage contract, <del>an individual</del> a person who receives credit under a P2P agreement or a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law and under which the lender provides credit to the individual of less than or equal to £25,000 or the agreement is not entered into by the individual for the purposes of a business carried on by the individual.</i>
	(3) ...
<i>cash deposit ISA</i>	<i>a cash component of an ISA which does not include the qualifying investments prescribed in paragraphs 8(2)(c), (d), (e) or (f) or paragraph 8A(2) of the ISA Regulations.</i>
<i>category B3 firm</i>	<i>a category B firm:</i>
	(a) <i>whose permission includes only insurance mediation activity in relation to non-investment insurance contracts, home finance mediation activity, assisting in the administration and performance of contracts of insurances, arranging transactions in life policies and other insurance contracts, advising on investments (except P2P agreements) and receiving and transmitting, on behalf of investors, orders in relation to securities and units in collective investment schemes, advising on P2P agreements; and</i>
	(b) ...
<i>client money</i>	...
	(2A) <i>(in FEES, CASS 6, CASS 7, CASS 7A and CASS 10 and, in so far as it relates to matters covered by CASS 6, CASS 7, COBS or GENPRU and IPRU(INV) 11) subject to the client money rules, money of any currency:</i>
	...
	(bb) <i><u>that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its innovative finance ISA business; or</u></i>
	...

	...
<i>controlled activity</i>	... (i) <i>advising on investments (<u>except P2P agreements</u>)</i> (paragraph 7(1)); (ia) <i>advising on P2P agreements</i> (paragraph 7(2)); ...
<i>controlled investment</i>	(in accordance with section 21(10) of the Act (Restrictions on financial promotion) and article 4 of the <i>Financial Promotion Order</i> (Definitions of controlled activities and controlled investments)) an <i>investment</i> specified in Part II of Schedule 1 to the <i>Financial Promotion Order</i> (Controlled investments) (having regard to the effect of paragraph 4C(10) <u>and paragraph 7(4)</u> of that Schedule).
<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business: ... (m) <i>advising on investments (<u>except P2P agreements</u>)</i> (article 53(1)), but only in relation to <i>designated investments</i> (other than <i>P2P agreements</i> ); for the purposes of the <i>permission</i> regime, this includes: (i) <i>advising on investments (<u>except P2P agreements</u>)</i> (except <i>pension transfers</i> and <i>pension opt-outs</i> ); (ii) <i>advising on investments (<u>except P2P agreements</u>)</i> in respect of <i>pensions transfers</i> and <i>pension opt-outs</i> ; (ma) <i>advising on P2P agreements</i> (article 53(2)); (mb) <i>advising on conversion or transfer of pension benefits</i> (article 53E); ...
<i>insurance mediation activity</i>	any of the following <i>regulated activities</i> carried on in relation to a <i>contract of insurance</i> or rights to or interests in a life policy: ... (e) <i>advising on investments (<u>except P2P agreements</u>)</i> (article 53(1)); ...

- lender*
- (a) ...
  - (b) ...
  - (c) in relation to a *P2P agreement* other than a *credit agreement* or a *regulated mortgage contract*;
    - (i) the person providing credit under the *P2P agreement*; or
    - (ii) the person who by *assignment* or operation of law has assumed the rights of a person who provided credit under the *P2P agreement*.
- marketing*
- (1) (in *COLL*) (in relation to marketing *units* in a *regulated collective investment scheme* in a particular country or territory):
    - (a) ...
    - (b) giving *advice on investments (except P2P agreements)* to, or arranging (bringing about) a deal in an investment for a *person* in that country or territory to become a *holder* in that *regulated collective investment scheme*.
  - (2) ...
- P2P agreement*
- (a) ~~(in relation to a *borrower*) in accordance with article 36H of the *Regulated Activities Order*, an agreement between one *person* (“the *borrower*”) and another *person* (“the *lender*”) by which the *lender* provides the *borrower* with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which the *borrower* is an *individual* and either:~~
    - ~~(i) the *lender* provides credit (within that meaning) of less than or equal to £25,000; or~~
    - ~~(ii) 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*.~~
  - (in relation to a *borrower*) in accordance with article 36H of the *Regulated Activities Order*, an agreement by which one *person* provides another *person* with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which:
    - (i) the *P2P platform operator* which facilitates the agreement does not provide credit (within that meaning), assume the rights (by *assignment* or operation of law) of a *person* who provided credit, or receive credit under the agreement;

- (ii) the borrower is an *individual* or was an *individual* at the time the agreement was entered into; and
  - (iii) either condition (A) or (B) is satisfied, or was satisfied at the time the agreement was entered into:

    - (A) the lender provides credit (within that meaning) of less than or equal to £25,000; or
    - (B) 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.
- (b) ~~(in relation to a lender) in accordance with article 36H of the *Regulated Activities Order*, an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which either the lender is an *individual*, or if the lender is not an *individual*, the borrower is an *individual* and either:~~
- ~~(i) the lender provides credit (within that meaning) of less than or equal to £25,000; or~~
  - ~~(ii) 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.~~
- (in relation to a lender) in accordance with article 36H of the *Regulated Activities Order*, an agreement by which one person provides another person with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which either:
- (i) the lender is an *individual* or was an *individual* at the time the agreement was entered into; or
  - (ii) if the lender is not an *individual* or was not an *individual* at the time the agreement was entered into, either condition (A) or (B) is satisfied, or was satisfied at the time the agreement was entered into:

    - (A) the lender provides credit (within that meaning) of less than or equal to £25,000; or
    - (B) 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;

provided, in either case, that the P2P platform operator which facilitates the agreement does not provide credit (within that meaning), assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.

*personal  
investment firm*

a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, IFPRU investment firm, BIPRU firm, building society, collective portfolio management firm, credit union, energy market participant, ICVC, insurer, media firm, oil market participant, service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission) or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):

...

(c) a firm:

..

(ii) for which the most substantial part of its gross income (including commissions) from the *designated investment business* included in its *Part 4A permission* is derived from one or more of the following activities (based, for a firm given a *Part 4A permission* after commencement, on the business plan submitted as part of the firm's application for permission or, for a firm authorised under section 25 of the Financial Services Act 1986, on the firm's financial year preceding its authorisation under the Act):

- (A) *advising on investments (except P2P agreements), arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments, in relation to packaged products;*
- (B) *managing investments for retail clients;*
- (C) *advising on P2P agreements.*

*regulated activity*

...

(p) *advising on investments (except P2P agreements)* (article 53 53(1)); for the purposes of the permission regime, this is subdivided into:

(i) *advising on investments (except P2P agreements)* (except pension transfers and pension opt-outs);

(ii) *advising on pension transfers and pension opt-outs;*

(pa) *advising on P2P agreements (article 53(2));*

~~(pb)~~ *advising on regulated mortgage contracts (article 53A);*

~~(pb)~~ *advising on a home reversion plan (article 53B);*

~~(pc)~~

~~(pe)~~ *advising on a home purchase plan (article 53C);*

~~(pd)~~

~~(pe)~~ *advising on a regulated sale and rent back agreement (article 53D);*

~~(pe)~~

...

*transaction-  
specific advice*

*advice on investments (except P2P agreements):*

...

## Annex B

### Amendments to the Training and Competence sourcebook (TC)

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

## 2 Competence

### 2.1 Assessing and maintaining competence

...

#### Supervisors

2.1.4 G *Firms* should ensure that those supervising *employees* carrying on an activity in TC Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge and experience to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate to require those supervising *employees* not assessed as competent to attain an appropriate qualification as well except where the *employee* is giving advice on *retail investment products* or advising on P2P agreements, see TC 2.1.5 R.

2.1.5 R Where an *employee* ~~is~~ has not been assessed as competent to do so and:

(1) ~~giving gives~~ gives advice on *retail investment products* to *retail clients* ~~and has not been assessed as competent to do so~~, the *firm* must ensure that the individual supervising and assessing that *employee* has attained an appropriate qualification;

(2) gives advice on P2P agreements to retail clients, the firm must ensure that the individual supervising and assessing that employee has attained a qualification that would be an appropriate qualification if the employee were giving advice on retail investment products to retail clients.

...

#### Knowledge and competence requirements when advising on P2P agreements

2.1.5G R TC 2.1.5HR applies to a firm advising on P2P agreements.

2.1.5H R A firm must not, for the purposes of TC 2.1.1R, assess an employee as competent to carry on activity 9A in TC Appendix 1 until the employee has attained each module of a qualification that would be an appropriate qualification if the employee were giving advice on retail investment products to retail clients.

2.1.5I G An employee who only carries on activity 9A in TC Appendix 1 is not a retail investment adviser. As such, the rules in this section applicable to

retail investment advisers are not relevant to employees who only advise on P2P agreements.

Qualification requirements before starting activities

- 2.1.6 R A *firm* must ensure that an *employee* does not carry on an activity in TC Appendix 1 (other than an overseeing activity) for which there is a qualification requirement without first attaining the relevant regulatory module of:
- (1) (in respect of activities other than activity 9A in TC Appendix 1) an appropriate qualification;
  - (2) (in respect of activity 9A in TC Appendix 1) a qualification that would be an appropriate qualification if the *employee* were giving advice on retail investment products to retail clients.

...

Exemption from appropriate qualification requirements

- 2.1.9 R ...
- (3) The relevant activities are:
    - (a) *advising on investments (except P2P agreements) which are retail investment products, if that advice is given to retail clients;*
    - (aa) *advising on P2P agreements, if that advice is given to retail clients;*

...

...

**Appendix 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?
<i>Designated investment business carried on for a retail client</i>		

...			
Advising	...		
	<u>9A.</u>	<u>Advising on P2P agreements</u>	<u>Yes</u>
...			
<b>Notes</b>			
...			
<u>2A.</u>	<u>In relation to activity number 9A, see TC 2.1.5HR and TC 2.1.6R(2). There is no qualification for this activity in the list of qualifications set out in TC Appendix 4E. However, the effect of TC 2.1.5HR is that an <i>employee advising on P2P agreements</i> must be qualified to the same standard as if that <i>employee</i> were providing investment advice to <i>retail clients on retail investment products</i>.</u>		
...			

...

## Appendix 4.1 Appropriate Qualification tables

### App E Part 1: Activities 4.1.1

**Note:** The activity numbers in this table relate to the activities in TC App 1.1.1R. These tables do not cover activities 1, 5, 13A, 13B, 13C, 20A, 21B, 23A, 23B, 23C, 23D, 23E, 24, 25 or 26 as these activities do not have a qualification requirement. In relation to activity 9A, see TC 2.1.5HR and TC 2.1.6R(2).

...

Annex C

Amendments to the Fees manual (FEES)

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

4 Periodic fees

...

4 Annex FCA Activity groups, tariff bases and valuation dates

1AR

<p>Part 1</p> <p>This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i>.</p>	
Activity group	Fee payer falls in the activity group if
...	
A.13 Advisors, arrangers, dealers or brokers	<p>...</p> <p>(2) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p>(i) in relation to one or more <i>designated investments</i>:</p> <p>...</p> <p><i>advising on investments (except P2P agreements) (except pension transfers and pension opt-outs);</i></p> <p>...</p> <p><i>advising on syndicate participation at Lloyd's;</i></p> <p>(ii) <u><i>advising on P2P agreements;</i></u></p> <p>(b) ...</p>
...	

## Annex D

### Amendments to the Conduct of Business sourcebook (COBS)

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

## 2 Conduct of business obligations

...

### 2.3 Inducements

...

Rule on inducements

- 2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* or, in the case of its *MiFID or equivalent third country business*, another *ancillary service*, carried on for a *client* other than:
- (1) ...
  - (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
    - (a) ...
    - (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;
      - (i) this requirement only applies to business other than *MiFID or equivalent third country business* if it includes giving a *personal recommendation* in relation to a *retail investment product*, or giving a *personal recommendation involving advice on P2P agreements*, or giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*;
- ...
- (c) in relation to *MiFID or equivalent third country business* or when carrying on a *regulated activity* in relation to a *retail investment product*, or when advising on *P2P agreements*, the payment of the fee or commission, or the provision of

the non-monetary benefit is designed to enhance the quality of the service to the *client*; or

...

...

#### Guidance on inducements

...

2.3.6A G *COBS* 6.1A (Adviser charging and remuneration), *COBS* 6.1B (Retail investment product provider, P2P platform operator and platform service provider requirements relating to adviser charging and remuneration), *COBS* 6.1C (Consultancy charging and remuneration) and *COBS* 6.1D (Product provider requirements relating to consultancy charging and remuneration) set out specific requirements as to when it is acceptable for a *firm* to pay or receive commissions, fees or other benefits:

(1) relating to the provision of a *personal recommendation on retail investment products or P2P agreements*; or

(2) ...

...

#### Providing credit and other benefits to firms that advise on retail investment products or P2P agreements

2.3.11A G The following *guidance and evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* in relation to a *personal recommendation of a retail investment product, or involving advice on P2P agreements provided*, to a *retail client*.

2.3.12 E (1) This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations to retail clients on retail investment products or involving advice on P2P agreements*, except where the relevant transaction is between *persons* who are in the same *immediate group*.

(2) A *retail investment product provider or P2P platform operator* should not take any step which would result in it:

...

unless all the conditions in (4) are satisfied. A *retail investment product provider or P2P platform operator* should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).

- (3) A *firm* in (1) should not take any step which would result in a *retail investment product* provider or *P2P platform operator* having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.
- (4) The conditions referred to in (2) and (3) are that:
- (a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product* provider or *P2P platform operator* would, taking into account all relevant circumstances, be willing to acquire the holding or provide *credit*;
  - ...
  - (c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product* provider or *P2P platform operator*; and
  - (d) the *retail investment product* provider or *P2P platform operator* is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products* or *P2P agreements* given by the *firm* or the advice given, or services provided to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- (5) In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product* provider's or *P2P platform operator's* *associate* is to be regarded as held by, or provided by, that *retail investment product* provider or *P2P platform operator*.
- ...

2.3.12A G Where a *retail investment product* provider or *P2P platform operator*, or its *associate*, provides *credit* to a *retail client* of a *firm* making *personal recommendations* in relation to *retail investment products* or *involving advice on P2P agreements* or giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products* or *P2P platform operator* may need to consider the examples in COBS 2.3.12E as if it had provided the *credit* to the *firm*.

...

## 4 Communicating with clients, including financial promotions

...

### 4.5 Communicating with retail clients

...

#### Innovative finance ISA

4.5.9 G Examples of information about relevant risks (COBS 4.5.2R) that a firm should give a retail client in relation to an innovative finance ISA include:

- (1) an explanation of the tax consequences if:
  - (a) the innovative finance component is a P2P agreement that is not repaid;
  - (b) the P2P platform operator which facilitates a P2P agreement fails;
- (2) the procedure for, timing and tax consequences of:
  - (a) withdrawing a P2P agreement from the innovative finance ISA;
  - (b) a request for transfer of all or part of the innovative finance components in the innovative finance ISA; and
- (3) a warning, as relevant, that it may, or will, not be possible to sell or trade P2P agreements at market value on a secondary market.

4.5.10 G P2P platform operators and firms which advise on P2P agreements should also have regard to the guidance in COBS 14.3.7AG and COBS 14.3.7BG regarding the types of information they should provide to clients to explain the specific nature and risks of P2P agreements.

...

## 6 Information about the firm, its services and remuneration

...

### 6.1A Adviser charging and remuneration

Application – Who? What?

6.1A.1 R (1) This section applies to a firm which makes personal recommendations to retail clients in relation to retail investment products or P2P agreements.

...

6.1A.1A G *Guidance on the regulated activity of advising in relation to a new or existing investment can be found in PERG 8.24 to PERG 8.29. Although the guidance in PERG 8.29.7G relates to advising on investments (except P2P agreements) under article 53 53(1) of the Regulated Activities Order, exactly the same answers apply to a personal recommendation because the examples given relate to the relationship between a firm and a particular client and advice given to that specific client. A firm wishing to know when it will be giving advice but not making a personal recommendation should refer to PERG 13.3. The guidance in PERG 8.24 to PERG 8.29 does not apply to the regulated activity of advising on P2P agreements.*

6.1A.1B G In this section references to a firm making personal recommendations in relation to P2P agreements should be understood as referring to a firm making personal recommendations involving advice on P2P agreements where that advice is advice within the scope of article 53(2)(b)(i) or 53(2)(b)(ii) of the Regulated Activities Order.

6.1A.1C G In this section COBS 6.1A.4AR, COBS 6.1A.4ABR and COBS 6.1A.4BR are not relevant to a firm making personal recommendations in relation to P2P agreements.

...

#### Requirement to be paid through adviser charges

6.1A.4 R Except as specified in COBS 6.1A.4AR, COBS 6.1A.4ABR, COBS 6.1A.4ACG and COBS 6.1A.4BR, a firm must:

...

- (3) not solicit or accept (and ensure that none of its associates solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product or P2P agreement* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

...

#### Related and other services

6.1A.6 R 'Related service(s)' for the purposes of COBS 6.1A includes:

...

- (2) managing a relationship between a *retail client* (to whom the *firm* provides *personal recommendations on retail investment products or P2P agreements*) and a *discretionary investment manager* or providing a service to such a client in relation to the investments

managed by such a manager; or

- (3) recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides *personal recommendations* or other services in relation to *retail investment products* or *P2P agreements*).

6.1A.6A G 'Other services' in COBS 6.1A.6R (3) includes:

- (1) providing information relating to *retail investment products*, *P2P agreements* or *P2P platform operators* to the *retail client*, for example, general market research; or

...

Guidance on the requirement to be paid through adviser charges

6.1A.7 G ...

6.1A.8 G Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:

- (1) a share of the *retail investment product* charges or *platform service provider's* charges, or *retail investment product* provider's or *platform service provider's* revenues or profits; ~~and~~
- (2) a commission set and payable by a *retail investment product* provider or *P2P platform operator* in any jurisdiction; ~~and~~
- (3) a share of the *P2P platform operator's* charges, revenues or profits.

Requirements on a retail investment product provider or *P2P platform operator* making a personal recommendation in respect of its own retail investment products or *P2P agreements*

6.1A.9 R If the *firm* or its *associate* is the *retail investment product* provider or *P2P platform operator*, the *firm* must ensure that the level of its *adviser charges* is at least reasonably representative of the services associated with making the *personal recommendation* (and related services).

...

Requirement to use a charging structure

...

6.1A.13 G In determining its charging structure and *adviser charges* a *firm* should have regard to its duties under the *client's best interests rule*. Practices which may indicate that a *firm* is not in compliance with this duty include:

- (1) ...

(2) allowing the availability or limitations of services offered by third parties to facilitate the payment of *adviser charges* to influence inappropriately its charging structure or *adviser charges*; or

(3) varying its *adviser charges* inappropriately according to *P2P platform operator*.

...

6.1A.14 R A *firm* must not make a *personal recommendation* to a *retail client* in  
A relation to a *retail investment product* or *P2P agreement* if it knows, or ought to know, that:

(1) the product's charges ~~or~~, the *platform service provider's charges* or *P2P platform operator's charges* are presented in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable by that *retail client*; or

(2) the product's charges or other payments are maintained by the *retail investment product* provider or *P2P platform operator* at a level such that a cash rebate, other than a cash rebate permitted by *COBS 6.1B.7AR* or *COBS 6.1E.10R(2)*, is payable to the *retail client*.

6.1A.15 G A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *adviser charges* if, for example:

...

(2) it provides other services to a *retail client* (for example, *advising on a home finance transaction* or *advising on an equity release transaction*), and its *adviser charges* do not represent a reasonable proportion of the costs associated with the *personal recommendation* for the *retail investment product* or *P2P agreement* and its related services.

...

Ongoing payment of adviser charges

6.1A.22 R A *firm* must not use an *adviser charge* which is structured to be payable by  
the *retail client* over a period of time unless (1) or (2) applies:

...

(2) the *adviser charge* relates to a *retail investment product* or *arrangement with a *P2P platform operator** for which an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or service will be provided.

6.1A.22 G To comply with the *rule* on providing a *retail client* with the right to cancel  
A an ongoing service for the provision of *personal recommendations* or related  
services without penalty (*COBS* 6.1A.22R (1)(b)) a *firm* should:

...

- (3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* or to assign any *P2P agreements* to which the ongoing service relates.

...

Disclosure of total adviser charges payable

6.1A.24 R ...

- (2) A disclosure under (1) must:

...

- (d) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the *adviser charge* is payable and the implications for the *retail client* if the *retail investment product* or arrangement with the *P2P platform operator* is cancelled before the *adviser charge* is paid and, if there is no ongoing service, the sum total of all payments.

...

**6.1B Retail investment product provider, P2P platform operator and platform service provider requirements relating to adviser charging and remuneration**

Application – Who? What?

6.1B.1 R (1) This section applies to:

- (a) a *firm* which is a *retail investment product* provider; ~~and~~  
(b) in relation to *COBS* 6.1B.9R, *COBS* 6.1B.10G and *COBS* 6.1B.11G, a *platform service provider*; and  
(c) a *firm* which is a *P2P platform operator*;

in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product* or *P2P agreement* and also where a *retail investment product* transaction is executed by a *platform service provider* and no *personal recommendation* has been made.

...

6.1B.1A G *Guidance* on the regulated activity of advising in relation to a new or existing *investment* can be found in *PERG* 8.24 to *PERG* 8.29. Although the *guidance* in *PERG* 8.29.7G relates to *advising on investments (except P2P agreements)* under article 53 53(1) of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to *PERG* 13.3.

6.1B.1B G *Guidance* on when a *firm* will be making *personal recommendations* in relation to *P2P agreements* for the purposes of this section can be found in *COBS* 6.1A.1BG.

6.1B.1C G In this section *COBS* 6.1B.5AR and *COBS* 6.1B.7AR are not relevant in circumstances where a *retail client* receives a *personal recommendation* in relation to a *P2P agreement*.

...

6.1B.3 G This section applies to a *firm* when it makes a *personal recommendation* on a *retail investment product* or *P2P agreement* and where a *retail investment product* for which it is the *retail investment product* provider or *P2P agreement* which it facilitates as the *P2P platform operator* is the subject of a *personal recommendation* made by another *firm*.

...

Distinguishing product and *P2P platform* charges from adviser charges

- 6.1B.7 R A *firm* must:
- (1) take reasonable steps to ensure that its *retail investment product* charges or its charges as a *P2P platform operator* are not structured so that they could mislead or conceal from a *retail client* the distinction between those charges and any *adviser charges* payable in respect of its *retail investment products* or investments in *P2P agreements* made through the system of which it is the *P2P platform operator*;
  - (2) not include in any marketing materials in respect of its *retail investment products*, the service it offers as a *P2P platform operator* or facilities for collecting *adviser charges* any statements about the appropriateness of levels of *adviser charges* that a *firm* could charge in making *personal recommendations* or providing related services in relation to its *retail investment products* or investments through its *P2P platform*; and
  - (3) not defer, discount or rebate *retail investment product* charges or its charges as a *P2P platform operator* in a way that offsets or may

appear to offset any *adviser charges* or *platform charges* that are payable, including by maintaining *retail investment product charges* or its charges as a *P2P platform operator* at a level such that a cash rebate, other than a cash rebate permitted by COBS 6.1B.7AR or COBS 6.1E.10R(2), is payable to the *retail client*.

...

Requirements on firms facilitating the payment of adviser charges

...

- 6.1B.11 G COBS 6.1B.9R(3) does not prevent a *firm*, if this is in the *retail client's* best interests, from entering into an agreement with another *firm* which is providing a *personal recommendation* to a *retail client*, or with a *retail client* of such a *firm*, to provide it with *credit* separately in accordance with the *rules* on providing credit and other benefits to *firms* that advise on *retail investment products* or *P2P agreements* (COBS 2.3.12E and COBS 2.3.12AG).

...

## 6.2A Describing advice services

Application – Who? What?

...

- 6.2A.1B G *P2P agreements* are not *retail investment products*. This section does not apply to a *firm* when it is *advising on P2P agreements*.

...

## 9 Suitability (including basic advice)

### 9.1 Application and purpose provisions

...

Making personal recommendations

- 9.1.1 R This chapter applies to a *firm* which makes a *personal recommendation* in relation to a *designated investment* (other than a *P2P agreement*) or *involving advice on P2P agreements*.

...

Advising on P2P agreements

- 9.1.10 G (1) This chapter applies when a *firm* makes a *personal recommendation* involving *advice on P2P agreements*.

- (2) This chapter does not apply to a firm which manages investments when that firm takes a decision to trade for a client and that decision relates to a P2P agreement. This is because the regulated activity of managing investments does not extend to the management of assets where those assets are P2P agreements.

...

## 14 Providing product information to clients

...

### 14.3 Information about designated investments

#### Application

14.3.1 R This section applies to a firm in relation to:

- (1) ...
- (2) the following regulated activities when carried on for a retail client:
- (a) ...
- (aa) making a personal recommendation involving advice on P2P agreements; or

...

...

#### P2P agreements

14.3.7A G Examples of information a firm should provide to explain the specific nature and risks of a P2P agreement include:

...

- (3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the ~~firm~~ P2P platform operator considers the borrower eligible for a P2P agreement;

...

- (8) an explanation of the ~~firm's~~ P2P platform operator's procedure for dealing with a loan in late payment or default;

...

- (10) an explanation of what would happen if the ~~firm~~ P2P platform operator fails, including confirmation that there is no recourse to the

Financial Services Compensation Scheme.

- 14.3.7B G The guidance in COBS 14.3.7AG is relevant both to P2P platform operators and firms advising on P2P agreements.
- 14.3.7C G Firms providing information to clients, and communicating information, about an innovative finance ISA should also have regard to the guidance in COBS 4.5.9G.

## Annex E

### Amendments to the Client Assets sourcebook (CASS)

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

#### 7 Client money rules

...

#### 7.10 Application and purpose

7.10.1 R This chapter applies to a *firm* that receives *money* from or holds *money* for, or on behalf of, a *client* in the course of, or in connection with, its:

...

(3) *stocks and shares ISA business; and/or*

(4) *innovative finance ISA business;*

...

**Annex F**

**Amendments to the Supervision manual (SUP)**

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

**10A FCA Approved Persons**

...

**10A.10 Customer-dealing functions**

...

Customer function (CF 30)

...

10A.10.9 G The *FCA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC 2.1.9R(2)* provides that the *firm* will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC 2.1.9R(2)* are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *retail investment products, gives advice on P2P agreements to retail clients* or is a *broker fund adviser*). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see *TC 2.1.9R(2)*).

...

**10A Frequently asked questions**

**Annex**

**1G**

...

<b>How does the customer function relate to the training and competence requirements?</b>			
<b>Activity</b>	<b>Products/sectors in TC Appendix 1</b>	<b>FCA controlled function</b>	<b>SUP</b>
Advising only, ...	2 - <del>9</del> <u>9A</u> ...	<i>customer function</i> (CF 30) ...	10A.10.4R ...

...

**12 Appointed representatives**

...

## 12.2 Introduction

...

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:

...

(i) *advising on investments (except P2P agreements)* (article ~~53~~ 53(1) of the *Regulated Activities Order*) (that is in summary, on any *designated investment* (other than a *P2P agreement*), *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

(ia) *advising on P2P agreements* (article 53(2) of the *Regulated Activities Order*);

...

...

...

## 12.5 Contracts: required terms

Required contract terms for all appointed representatives

...

12.5.2 G ...

(2) Under the *Appointed Representative Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:

...

(c) gives advice (within article ~~53~~ 53(1) of the *Regulated Activities Order* (Advising on investments)) on the merits of entering into investment transactions with other counterparties;

...

- (ia) facilitates a person assuming the rights of the lender under an article 36H agreement (within the meaning of the Regulated Activities Order) by assignment or operation of law on behalf of other counterparties;
- (j) carries on any of the other activities specified in article 36H(3) of the *Regulated Activities Order* on behalf of other counterparties in the course of, or in connection with, facilitation mentioned in (i) or (ia) by the *appointed representative* or its principal;
- (ja) gives advice (within article 53(2) of the Regulated Activities Order) on the merits of:
  - (i) a person entering into a 'relevant article 36H agreement' (within the meaning of the Appointed Representatives Regulations) as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law;
  - (ii) a person providing instructions to a P2P platform operator with a view to entering into a 'relevant article 36H agreement' as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve:
    - (A) accepting particular parameters for the terms of the agreement presented by a P2P platform operator;
    - (B) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator;
    - (C) specifying the parameters of the terms of the agreement by other means;
  - (iii) a person enforcing or exercising the lender's rights under a 'relevant article 36H agreement';
  - (iv) a person assigning rights under a 'relevant article 36H agreement' (within that meaning);

on behalf of other counterparties;

...

## 16 Reporting requirements

### 16.1 Application

...

- 16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17)

(1) Section (s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:	Entire sections
	...	
	(ia) <u>a firm with permission only to advise on P2P agreements (unless that activity is carried on exclusively with or for professional clients);</u>	
	...	
	(k) a <i>firm</i> falling within a combination of (i), (ia), (j) and (ja).	

...

### 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
...				

<p>RAG 3</p>	<p>...</p> <ul style="list-style-type: none"> <li>• advising on investments (<u>except P2P agreements</u>) (excluding retail investment activities)</li> <li>• <u>advising on P2P agreements</u> (when <u>carried on exclusively with or for professional clients</u>)</li> </ul> <p>...</p>	<p>...</p>	<p>...</p>	<p>...</p>
<p>...</p>				
<p>RAG 7</p>	<ul style="list-style-type: none"> <li>• retail investment activities</li> <li>• <u>advising on P2P agreements</u> (<u>except when carried on exclusively with or for professional clients</u>)</li> <li>• advising on pensions transfers &amp; opt-outs</li> <li>• arranging (bringing about deals) in retail investments</li> </ul>	<p>...</p>	<p>...</p>	<p>...</p>
<p>...</p>				

...

16.12.22 R  
A

...	
Note 26	This item only applies to <i>firms</i> that provide advice on <i>retail investment products</i> and <i>P2P agreements</i> .
...	

...

### Appendix 3 Guidance on passporting issues

...

#### App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and Insurance Mediation Directive to the Regulated Activities Order

...

App 3.9.4 G Activities set out in Annex 1 of the CRD

Table 1: CRD activities		Part II RAO Activities	Part III RAO Investments
...			
8.	Participation in share issues and the provision of services relating to such issues	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 89
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-80, 83-85, 89

	undertakings		
...			
11.	Portfolio management and advice	Article 14, 21, 25, 37, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89
...			

...

App  
3.9.5

G Services set out in Annex I to MiFID

<b>Table 2: MiFID investment services and activities</b>		<b>Part II RAO Investments</b>	<b>Part III RAO Investments</b>
	<i>A MiFID investment services and activities</i>		
...			
5.	Investment advice	Article <del>53</del> <u>53(1)</u>	Article 76-81, 83-85, 89
...			
	Ancillary services	Part II RAO Activities	Part III RAO Investments
...			
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-80, 83-85, 89
4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 83-85, 89
5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89

6.	Services related to underwriting	Article 25, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89
7.	Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.	Article 14, 21, 25, 25D, 37, <del>53</del> <u>53(1)</u> , 64	Article 83 and 84

...

App  
3.9.5A

G Activities set out in article 6(2) to (4) of AIFMD

<b>Table 2ZA: AIFMD activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
...			
3.	Investment advice (Note 2).	Articles <del>53</del> <u>53(1)</u> , 64	Articles 76 to 81, 83 to 85, 89
...			

App  
3.9.6

G Activities set out in Article 6(2) and (3) of the UCITS Directive

<b>Table 2A: UCITS Directive activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
...			
3.	Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i>	Articles <del>53</del> <u>53(1)</u> , 64	Articles 76-81, 83-85, 89
...			

App  
3.9.7

G Activities set out in Article 2(3) of the IMD

<b>Table 2B: Insurance Mediation Directive activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
1.	Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance	Articles 25, <del>53</del> <u>53(1)</u> and 64	Articles 75, 89 (see Note 1)
2.	Concluding contracts of insurance	Articles 21, 25, <del>53</del> <u>53(1)</u> and 64	Articles 75, 89
...			

## Annex G

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### 2 Jurisdiction of the Financial Ombudsman Service

...

#### 2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~24 April 2015~~ 6 April 2016) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

...

#### 2 Annex 1G Regulated activities for the Voluntary Jurisdiction at ~~24 April 2015~~ 6 April 2016

This table belongs to *DISP 2.5.1 R*

The activities which were covered by the *Compulsory Jurisdiction* (at ~~24 April 2015~~ 6 April 2016) were:

...

The activities which (at ~~24 April 2015~~ 6 April 2016) were *regulated activities* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

(26) *advising on investments (except P2P agreements)* (article ~~53~~ 53(1));

(26A) *advising on P2P agreements* (article 53(2));

...

## Annex H

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

#### 6 Operating duties and responsibilities

...

#### 6.9 Independence, names and UCITS business restrictions

...

Restrictions of business for UCITS management companies

6.9.9 R A *UCITS management company* must not engage in any activities other than:

...

(5) *advising on investments* (*except P2P agreements*) where:

...

...

## Annex I

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 1 Introduction to the Perimeter Guidance manual

...

#### 1.2 Introduction

...

1.2.3A G Except in PERG 2 and PERG 7, where PERG uses the defined term of *advising on investments*, this term refers only to the *regulated activity* (in article 53(1) of the *Regulated Activities Order*) of *advising on investments* (except P2P agreements) and related text should be read and construed accordingly.

...

#### 2 Authorisation and regulated activities

...

#### 2.3 The business element

...

2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things...

...

- (2) Except as stated in *PERG 2.3.2G(2A)* and *PERG 2.3.2G(3)*, the business element is not to be regarded as satisfied for any of the *regulated activities* carried on in relation to *securities* or *contractually based investments* (or for those *regulated activities* carried on in relation to 'any property') unless a *person* carries on the business of engaging in one or more of the activities. This also applies to the *regulated activities* of *advising on P2P agreements*, *advising on a home finance transaction* and *arranging a home finance transaction*. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.

...

...

## 2.6 Specified investments: a broad outline

...

Rights under a credit agreement and an article 36H agreement

- 2.6.30 G In accordance with article 60B(3) of the *Regulated Activities Order*, a *credit agreement* is an agreement between an *individual* ("A") and any other *person* ("B") under which B provides A with *credit* of any amount. In accordance with article 36H(10) of the *Regulated Activities Order*, rights under an article 36H agreement are also *specified investments*. The definition of an article 36H agreement is set out in *PERG 2.7.7HG*. In addition and in accordance with article 53(5) of the *Regulated Activities Order*, rights under a 'relevant article 36H agreement' (within the meaning of that Order) are also *specified investments*.

...

## 2.7 Activities: a broad outline

...

Effecting or carrying out contracts of insurance as principal

...

- 2.7.4 G In addition, certain other activities carried on in relation to rights under *contracts of insurance* are *regulated activities*. These are where the activity is carried on in relation to:

...

- (2) rights under any *contract of insurance*, where the *regulated activities* concerned are:

...

- (d) *advising on investments (except P2P agreements)* (see *PERG 2.7.15G*); and

...

...

Operating an electronic system in relation to lending

- 2.7.7H G ...

- (2) To be caught, all of the following conditions must be met:

...

- (b) A, or another *person* (“X”) acting under an arrangement with A or at A’s direction, undertakes to:
- (i) receive payments in respect of interest ~~and~~ or capital or both due under the article 36H agreement from C; and
  - (ii) make payments in respect of interest ~~and~~ or capital or both due under the article 36H agreement to B; and

...

...

- (4) Subject to the condition in (4A), an ~~An~~ article 36H agreement is an agreement by which one *person* provides another *person* with *credit* and either:

...

- (4A) It is a condition to be an article 36H agreement that A does not provide *credit*, assume the rights (by *assignment* or operation of law) of a *person* who provided *credit*, or receive *credit* under the agreement.

...

- (6A) A *person* operating an *electronic system* in relation to *lending* (A) also carries on a *regulated activity* where he operates an *electronic system*:
- (a) that enables A to facilitate a *person* (B) assuming the rights of the *lender* under an article 36H agreement by *assignment* or operation of law; and
  - (b) that meets all of the conditions in *PERG 2.7.7HG(2)*, where C is the *borrower* under the agreement in (a).

- (7) The following activities are also caught by *operating an electronic system in relation to lending* if carried on by the operator in the course of, or in connection with, the activity in (1) or (6A):

- (a) presenting or offering article 36H agreements to B ~~and~~ or C with a view to B becoming the *lender* under the article 36H agreement ~~and~~ or C becoming the *borrower* under the article 36H agreement;

...

- (d) ~~performing duties, or exercising or enforcing~~ taking steps to perform duties or exercise or enforce rights under an article 36H agreement on behalf of the *lender*;
- (e) taking steps with a view to ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*;
- (f) taking steps with a view to ascertaining the contents of such information;
- (g) taking steps with a view to securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information;
- (h) taking steps with a view to securing that a *credit information agency* which holds such information stops holding the information, or does not provide it to any other *person*; or
- (i) giving advice in relation to the taking of any of the steps in (e) to (h).

...

#### Providing basic advice on stakeholder products

- 2.7.14A G This activity covers advice in the form of a recommendation given to a retail *consumer*. The recommendation must relate to a *stakeholder product* and certain conditions must be met. These conditions are based on the need for the adviser to make an assessment of the *consumer's* needs based on the answers that the *consumer* provides to a series of pre-scripted questions. A fuller description of the activity is given in *PERG 2.7.14BG* and explains what is meant by "retail customer". This activity is separate to the *regulated activity of advising on investments (except P2P agreements)* (see *PERG 2.7.15G* (Advising on investments)). The existence of this separate advising activity does not prevent a *person* from giving advice on *stakeholder products* in circumstances that do not satisfy the conditions set out in *PERG 2.7.14BG*. But such advice is likely to amount to *advising on investments (except P2P agreements)* unless the *stakeholder product* is a *deposit*. Neither does the existence of the activity prevent a *person* from selling *stakeholder products* in any other manner provided the *person* has the appropriate *permission*.

...

#### Advising on investments

- 2.7.14C G There are two regulated activities which constitute advising on investments in article 53 of the Regulated Activities Order. These are:
- (1) advising on investments (except P2P agreements) (in article 53(1) of the Regulated Activities Order); and
  - (2) advising on P2P agreements (in article 53(2) of the Regulated Activities Order).
- 2.7.15 G The regulated activity of advising on investments (except P2P agreements) under article ~~53~~ 53(1) of the *Regulated Activities Order* applies to advice on securities or *relevant investments*...
- 2.7.16 G ... Further guidance on the meaning of *advising on investments (except P2P agreements)* is in *PERG* 8.24 (*Advising on investments*).
- 2.7.16A G In certain circumstances, the activity of *advising on investments (except P2P agreements)* can also amount to *providing basic advice on a stakeholder product* (see *PERG* 2.7.14AG (*Providing basic advice on stakeholder products*)).
- 2.7.16AA G The regulated activity of advising on P2P agreements under article 53(2) of the Regulated Activities Order applies to advice given to a person in his capacity as a lender or potential lender under a relevant article 36H agreement (defined in article 53(4) of the Regulated Activities Order), or as an agent for a lender or potential lender under such an agreement, where that advice is on the merits of his doing any of the following (whether as principal or agent):
- (1) entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law;
  - (2) providing instructions to a P2P platform operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve:
    - (a) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or
    - (b) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or
    - (c) specifying the parameters of the terms of the agreement by other means;
  - (3) enforcing or exercising the lender's rights under a relevant article 36H agreement; or

- (4) assigning rights under a relevant article 36H agreement.

...

## 2.8 Exclusions applicable to particular regulated activities

...

Arranging deals in investments and arranging a home finance transaction

...

- 2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.

...

- (1) ... This will require something more than the mere giving of advice (although giving such advice may be the *regulated activity of advising on investments (except P2P agreements) or advising on home finance transactions*).

...

...

Operating an electronic system in relation to lending

- 2.8.6D G (1) An activity of a kind specified below is excluded from the *regulated activity of operating an electronic system in relation to lending*:

...

- (e) *advising on investments (except P2P agreements)*.

- (1A) The regulated activity of advising on P2P agreements does not apply where such advice is given in relation to a relevant article 36H agreement which has been facilitated by the person giving the advice in the course of carrying on an activity specified by article 36H of the *Regulated Activities Order* and is given by:

- (a) an authorised person with permission to carry on the regulated activity of operating an electronic system in relation to lending;
- (b) an appointed representative in relation to the regulated activity of operating an electronic system in relation to lending;
- (c) an exempt person in relation to the regulated activity of operating an electronic system in relation to lending;

(d) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to the regulated activity of operating an electronic system in relation to lending.

...

Debt adjusting, debt counselling, debt collecting and debt administration

...

**2.8.7D** **G** The regulated activity of advising on P2P agreements does not apply in so far as the advice is given in the course of carrying on an activity of a kind specified by:

(1) article 39F of the Regulated Activities Order (debt collecting); or

(2) article 39G of the Regulated Activities Order (debt administration).

by a person carrying on that activity not in contravention of the general prohibition.

...

**2 Annex Regulated activities and the permission regime**  
**2G**

...

<b>Table 1: Regulated Activities (excluding PRA-only activities)</b> [see note 1 to Table 1]	
<b>Regulated activity</b>	<b>Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on</b>
...	
<b>Designated investment business</b> [see notes 1A, 1B and 1C to Table 1]	
... (j) <u>advising on investments (except P2P agreements)</u> (article 53 53(1) [see note 1B to Table 1] [also see Section of Table 1 headed 'Regulated mortgage activity'] ...	

<p><u>(jaa) advising on P2P agreements (article 53(2))</u></p> <p>...</p>	
<b>Insurance mediation activity [see note 5A to Table 1]</b>	
<p>...</p> <p>(pf) <u>advising on investments (except P2P agreements) (article 53 53(1))</u></p> <p>...</p>	

Notes to Table 1	
<p>...</p>	
<p>Note 1A:</p> <p><i>Funeral plan contracts are contractually based investments. Accordingly, the following are regulated activities when carried on in relation to a funeral plan contract: (a) arranging (bringing about) deals in investments, (b) making arrangements with a view to transactions in investments, (c) managing investments, (d) safeguarding and administering investments, (e) advising on investments (except P2P agreements), (f) sending dematerialised instructions and (g) causing dematerialised instructions to be sent (as well as agreeing to carry on each of the activities listed in (a) to (g)). However, they are not designated investment business.</i></p>	
<p>...</p>	
<p>Note 4:</p> <p>For the purposes of the <i>permission</i> regime, the activity in (j)(ii) of <i>advising on pension transfers and pension opt-outs</i> includes the following two <i>regulated activities</i>: (1) <i>advising on investments (except P2P agreements)</i> where it is carried on in respect of the following <i>specified investments</i>: ...</p>	
<p>...</p>	
<p>Note 9:</p> <p>...</p> <p>For the purposes of <i>operating an electronic system in relation to lending</i>, rights under a <i>credit agreement</i> include rights under an article 36H agreement within</p>	

the meaning of article 36H (4) of the *Regulated Activities Order*.

For the purposes of *advising on P2P agreements*, rights under a *credit agreement* include rights under a relevant article 36H agreement within the meaning of article 53(4) of the *Regulated Activities Order*.

...

...

## 5 Guidance on insurance mediation activities

...

### 5.2 Introduction

...

Approach to implementation of the IMD

...

5.2.8 G It follows that each of the *regulated activities* below potentially apply to any *contract of insurance*:

...

(5) *advising on investments (except P2P agreements)* (article ~~53~~ 53(1) (Advising on investments));

...

...

### 5.3 Contracts of insurance

...

Specified investments

5.3.9 G For an activity to be a *regulated activity*, it must be carried on in relation to 'specified investments'...

...

*'Relevant investments'* is the term used in articles 21 (Dealing in investments as agent), 25 (Arranging deals in investments) and ~~53~~ 53(1) (Advising on investments (except P2P agreements)) of the *Regulated Activities Order* to help define the types of investment to which the activities in each of these articles relate.

...

**5.8 The regulated activities: advising on contracts of insurance**

5.8.1 G Article 53 53(1) of the *Regulated Activities Order* (Advising on Investments (except P2P agreements)) makes advising on *contracts of insurance* a regulated activity...

5.8.2 G For advice to fall within article 53 53(1), it must: ...

...

Advice must relate to a particular contract of insurance

5.8.4 G Advice about *contracts of insurance* will come within the *regulated activity* in article 53 53(1) of the *Regulated Activities Order* only if it relates to a particular *contract of insurance*. So, generic or general advice will not fall under article 53 53(1). In particular:

(1) advice would come within article 53 53(1) if it took the form of a recommendation that a person should buy the ABC Insurers motor insurance;

...

(3) the table in *PERG 5.8.5G* identifies several typical recommendations and indicates whether they will be regarded as advice under article 53 53(1).

5.8.5 G Typical recommendations and whether they will be regulated as advice on contracts of insurance under article 53 53(1) of the *Regulated Activities Order*. This table belongs to *PERG 5.8.4G*.

Recommendation	Regulated under article 53 53(1) or not?
...	

Advice given to a person in his capacity as an investor or potential investor

5.8.6 G For the purposes of article 53 53(1), advice must be given to a *person* in his capacity as an investor or potential investor (which, in the context of *contracts of insurance*, will mean as *policyholder* or potential *policyholder*). So, article 53 53(1) will not apply where advice is given to *persons* who receive it as: ...

5.8.7 G Advice will still be covered by article 53 53(1) even though it may not be given to any particular *policyholder* (for example, advice given in a periodical publication or on a website).

Advice or information

...

5.8.10 G In the case of article ~~53~~ 53(1), information relating to *buying* or *selling contracts of insurance* may often involve one or more of the following: ...

5.8.11 G In the *FCA's* opinion, however, such information is likely to take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. Examples of situations where information provided by a *person* (P) might take the form of advice are given below.

...

(2) P may, as a result of going through the sales process, discuss the merits of one *contract of insurance* over another, resulting in advice to enter into a particular one. In contrast, advice on how to complete an application form, without an explicit or implicit recommendation on the merits of *buying* or *selling* the *contract of insurance* whilst 'advice' in the general sense of the word, is not, in the view of the *FCA*, advice within the meaning of article ~~53~~ 53(1)...

Advice must relate to the merits (of buying or selling a contract of insurance)

5.8.12 G Advice under article ~~53~~ 53(1) relates to the advantages and disadvantages of *buying, selling, subscribing for or underwriting* a particular *contract of insurance*.

...

5.8.14 G Generally speaking, advice on the merits of using a particular *insurance undertaking*, broker or adviser in their capacity as such, does not amount to advice for the purpose of article ~~53~~ 53(1)...

...

Medium used to give advice

5.8.20 G With the exception of:

...

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article ~~53~~ 53(1).

...

## **5.10 Renewals**

5.10.1 G It must be emphasised that activities which concern invitations to renew *policies* and the subsequent effecting of renewal of *policies* are likely to fall within *insurance mediation activity*... Where it contains a recommendation to renew existing cover this is likely to constitute *advising on investments (except P2P agreements)* (under article ~~53~~ 53(1) of the *Regulated Activities*

Order)...

...

**5.15 Illustrative tables**

...

5.15.4 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
<b>MARKETING AND EFFECTING INTRODUCTIONS</b>		
...		
Recommending a broker/ <i>insurance undertaking</i> and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)	Yes, but article 72C may be available.	This will constitute making arrangements under article 25(2). But, the exclusion in article 72C will apply if all the intermediary does is supply information to the customer and the conditions of article 72C are otherwise met (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). Generally, this will not amount to advice under article <del>53</del> <u>53(1)</u> unless there is an implied recommendation of a particular <i>policy</i> (see <i>PERG</i> 5.8.4G), in which case article 72C would not be available.
...		
<b>PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE</b>		
...		
Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then	Yes. Subject to article 72C exclusion where available.	This will constitute <i>arranging</i> although article 72C may be of application (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). If there is no

<p>suggests several <i>policies</i> which suit the answers given)</p>		<p>express or implied recommendation of a particular policy, this activity will not amount to advice under article 53 53(1) (see PERG 5.8.15G to PERG 5.8.19G).</p>
<p>Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies</p>	<p>Possibly. Article 72C available.</p>	<p>This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments (except P2P agreements)</i> (see PERG 5.8.8G (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i>, and does not involve <i>advising on investments (except P2P agreements)</i>, article 72C may be of application (see PERG 5.6.5G to PERG 5.6.9G), and where information is provided by a professional in the course of a profession, article 67 may apply (see PERG 5.11.9G to PERG 5.11.12G).</p>
<p>Advising that a customer take out a particular <i>policy</i></p>	<p>Yes.</p>	<p>This amounts to advice on the merits of a particular <i>policy</i> under article 53 53(1) (see PERG 5.8.4G to PERG 5.8.5G).</p>
<p>Advising that a customer does not take out a particular <i>policy</i></p>	<p>Yes.</p>	<p>This amounts to advice on the merits of a particular <i>policy</i> under article 53 53(1) (see PERG 5.8.4G to PERG 5.8.5G).</p>

...

**7 Periodical publications, news services and broadcasts: applications for certification**

**7.1 Application and purpose**

Application

- 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, P2P agreements* or *home finance transactions*...

...

**7.3 Does the activity require authorisation?**

Advising on investments and advising on home finance transactions

- 7.3.1 G Under article ~~53~~ 53(1) of the *Regulated Activities Order* (Advising on investments), advising a *person* is a specified kind of activity if:

...

- ...
- 7.3.1AA G Under article 53(2) of the *Regulated Activities Order* (Advising on investments), advising a *person* is a specified kind of activity if:

- (1) the advice is given to the *person* in his capacity as a *lender* or potential *lender* under a relevant article 36H agreement (defined in article 53(4) of the *Regulated Activities Order*) or as an agent for a *lender* or potential *lender* under such an agreement; and
- (2) it is advice on the merits of his doing any of the following (whether as principal or agent):
  - (a) entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by assignment or operation of law;
  - (b) providing instructions to a *P2P platform operator* with a view to entering into a relevant article 36H agreement as a *lender* or assuming the rights of a *lender* under such an agreement by assignment or operation of law, where the instructions involve:
    - (i) accepting particular parameters for the terms of the agreement presented by a *P2P platform operator*;  
or

(ii) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or

(iii) specifying the parameters of the terms of the agreement by other means;

(c) enforcing or exercising the lender's rights under a relevant article 36H agreement; or

(d) assigning rights under a relevant article 36H agreement.

...

Carrying on the regulated activity by way of business

...

7.3.4 G ... For example, a newspaper may reply to readers' letters to generate goodwill or to generate a supply of further material that it can publish or a website that is 'free' to the user will be sponsored or paid for by advertising. In such cases, if advice on *securities*, *relevant investments*, P2P agreements or *home finance transactions* is given, then, in the FCA's view, the business of *advising on investments* or *advising on a home finance transaction* is being carried on...

...

Carrying on the regulated activity in the United Kingdom

...

7.3.7 G ... The effect of this is that, where the principal purpose of an overseas periodical publication is to offer advice on *securities* or *relevant investments* or P2P agreements 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*.

...

## 7.4 Does the article 54 exclusion apply?

The formats

...

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:  
  
(1) to advise on *securities* or *relevant investments* or P2P agreements or

*home finance transactions* or amounts to carry on *advising on conversion or transfer of pension benefits*; or

(2) to lead or enable *persons*:

(a) ...

(aa) to enter into a relevant article 36H agreement (within the meaning of article 53(4) of the *Regulated Activities Order*) as a lender, to assume the rights of a lender under such an agreement by assignment or operation of law, or to assign rights under such an agreement;

...

...

The principal purpose test

7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:

(1) to give advice on *securities, relevant investments, P2P agreements* or *home finance transactions* (see *PERG 7.3.1G*); or

(2) to lead or enable *persons* to:

(a) ...

(aa) enter into a relevant article 36H agreement (within the meaning of article 53(4) of the *Regulated Activities Order*) as a lender, to assume the rights of a lender under such an agreement by assignment or operation of law, or to assign rights under such an agreement;

...

...

7.4.9 G For the second disqualifying purpose, the focus switches to assessing whether the principal purpose of a publication or service is to lead a *person* to engage in a relevant transaction or enable him to do...

...

In the *FCA's* view, material will not lead or enable a *person* to engage in a relevant transaction where the material is intended merely to raise people's awareness of matters relating to *securities, relevant investments, P2P agreements* or *home finance transaction*.

...

## 8 Financial promotion and related activities

...

### 8.23 Regulated activities

...

8.23.5 G As explained in PERG 1.2.3AG, where the guidance that follows uses the defined term *advising on investments*, this term should be read as referring only to the regulated activity (in article 53(1) of the Regulated Activities Order) of *advising on investments (except P2P agreements)*. Related text should be construed accordingly.

### 8.24 Advising on investments

8.24.1 G Under article ~~53~~ 53(1) of the *Regulated Activities Order*, *advising on investments (except P2P agreements)* covers advice which:

...

...

### 8.26 The investment must be a particular investment

8.26.1 G For the purposes of article ~~53~~ 53(1), advice must relate to a particular investment – generic or general advice is not covered. Generic or general advice may, however, be a financial promotion (see *PERG* 8.4).

8.26.2 G Generic advice will not be caught by article ~~53~~ 53(1). Examples of generic advice may include:

...

8.26.3 G In the *FCA's* view, guiding a *person* through a decision tree should not, of itself, involve advice within the meaning of article ~~53~~ 53(1) (it should be generic advice). For example, helping a *person* to understand what the questions or options are and how to determine which option applies to his particular circumstances. But a recommendation that the *person* concerned should, if the results of using the decision tree so indicate, buy a stakeholder personal pension from a particular provider (or any other particular *investment*) would be advice for the purpose of article ~~53~~ 53(1). An *unauthorised person* guiding another through a decision tree needs to make it clear that the decision tree aids generic decisions and that the *person* doing the guiding is not recommending any particular *investment*.

...

### 8.27 Advice to be given to persons in their capacity as investors (on the merits of

**their investing as principal or agent)**

- 8.27.1 G For the purposes of article ~~53~~ 53(1), advice must be given to or directed at someone who either holds *investments* or is a prospective investor (or their agent). Where the *investment* is a risk-only *contract of insurance* such as house contents insurance, the *policyholder* or prospective *policyholder* is regarded as an investor.
- 8.27.2 G Article ~~53~~ 53(1) does not apply where the advice is given to *persons* who receive it as:
- ...
- 8.27.3 G Article ~~53~~ 53(1) does not apply to advice given to a *person* (such as an independent financial adviser) who is acting as an agent for an investor if it does not relate to a transaction into which the *person* is to enter as agent for the investor.
- 8.27.4 G Article ~~53~~ 53(1) does apply where the recipient is someone who invests on behalf of other *persons* (whether as a principal or agent), such as:
- ...
- 8.27.5 G Advice will still be covered by article ~~53~~ 53(1) even though it may not be given to or directed at a particular investor (for example, advice given in a periodical publication or on a website). The expression ‘investor’ has a broad meaning and will include institutional or professional investors.

...

**8.29 Advice must relate to the merits (of buying or selling a particular investment)**

...

- 8.29.3 G Neither does advice on the merits of using a particular stockbroker or investment manager in his capacity as such amount to advice for the purpose of article ~~53~~ 53(1). This is because it is not advice on the merits of *buying* or *selling* an *investment*.
- ...
- 8.29.5 G Without an explicit or implicit recommendation on the merits of *buying* or *selling* an *investment*, advice will not be covered by article ~~53~~ 53(1) if it is advice on:
- ...
- 8.29.6 G Advice as to what might happen to the price or value of an *investment* if certain events were to take place, however, may be covered by article ~~53~~ 53(1) in some circumstances.

- 8.29.7 G Typical recommendations and whether they will be regulated as *advising on investments (except P2P agreements)* under article 53 53(1) of the *Regulated Activities Order*. This table belongs to *PERG* 8.29.1G to *PERG* 8.29.6G.

Recommendation	Regulated under article 53 <u>53(1)</u> or not?
...	

### 8.30 Medium used to give advice or information

- 8.30.1 G With the exception of periodicals, broadcasts and other news or information services (see *PERG* 8.31.2G), the medium used to give advice should make no difference to whether or not it is caught by article 53 53(1).

...

- 8.30.3 G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problems. The provider of the service will be giving advice for the purpose of article 53 53(1) only if the service results in something more than a generic recommendation, as with a paper version.

...

- 8.30.5 G ... These signals are liable, as a general rule, to be advice for the purposes of article 53 53(1) (as well as *financial promotions*) given by the *person* responsible for the provision of the software...

...

### 8.31 Exclusions for advising on investments

...

- 8.31.2 G As respects article 53 53(1), the main exclusion relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54: Advice given in newspapers etc). The exclusion applies if the principal purpose of any of these is not to give advice covered in article 53 53(1) or to lead or enable *persons* to acquire or dispose of *securities* or *contractually based investments*. This is explained in greater detail, together with the provisions on the granting of certificates, in *PERG* 7.

...

## 10 Guidance on activities related to pension schemes

...

### 10.4 Pension scheme service providers other than trustees

...  
Q.39 I give advice to the members of a pension scheme. Is this likely to be regulated advice and mean that I must be authorised or exempt?

It is likely to be regulated advice under article ~~53~~ 53(1) of the *Regulated Activities Order* if the advice concerns a *personal pension scheme* but probably not if it concerns an OPS that is not a *stakeholder pension scheme*...

... In addition to advice that may fall under article ~~53~~ 53(1) of the *Regulated Activities Order*, giving advice to *members of a pension scheme* could amount to *advising on conversion or transfer of pension benefits* where the advice relates to rights or interests under a pension scheme which provides *safeguarded benefits* (see *PERG 2.7.16FG*)...

...

...  
**10**  
**Annex**  
**3G**      **Table summarising regulatory position of pension scheme trustees and service providers**

Potential regulated activity	When will such regulated activities be carried on?
...	
<i>Advising on investments (except P2P agreements)</i> (article <del>53</del> <u>53(1)</u> of the <i>Regulated Activities Order</i> )	...
...	

...  
**13**      **Guidance on the scope of MiFID and CRD IV**

...  
**13**  
**Annex**  
**2G**      Table 1 - Table summarising regulatory position of pension scheme trustees and service providers

MiFID Investment Services and Activities	Part 4A permission	Comments

...		
A5- Investment advice	Advising on investments ( <u>except P2P agreements</u> ) (article <del>53</del> <u>53(1)</u> <i>RAO</i> )	...
...		

Financial Conduct Authority



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