

**CONSUMER CREDIT (CONSEQUENTIAL AND SUPPLEMENTARY
AMENDMENTS) INSTRUMENT 2014**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the rules and guidance and varies the standard terms in Annex K to this instrument for Voluntary Jurisdiction participants in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 226A (Consumer credit jurisdiction);
 - (2) section 227 (Voluntary Jurisdiction);
 - (3) paragraph 8 (Information, advice and guidance) of Schedule 17 (The Ombudsman Scheme);
 - (4) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
 - (5) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making of these rules and the variation of the standard terms by the Financial Ombudsman Service Limited is 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 138D (Actions for damages);
 - (f) section 139A (Power of the FCA to give guidance);
 - (g) section 226 (Compulsory jurisdiction);
 - (h) section 395 (The Authority’s procedures) as applied by article 3(11) The Financial Services Act 2012 (Consumer Credit) Order 2013; and
 - (i) paragraph 13(4) (FCA’s procedural rules) of schedule 17 (The Ombudsman Scheme) to the Act;
 - (2) article 4 (Statements of policy) of the Financial Services Act 2012 (Consumer Credit) Order 2013;
 - (3) article 60E(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and
 - (4) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.

- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The FCA approves and consents to the Financial Ombudsman Service Limited making the rules and varying the standard terms in Annex K to this instrument pursuant to the following powers and related provisions in the Act:
- (1) section 226A (Consumer credit jurisdiction);
 - (2) section 227 (Voluntary jurisdiction);
 - (3) paragraph 14 (The scheme operator's rules) of Schedule 17; and
 - (4) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

Commencement

- F. This instrument comes into force on 1 April 2014.

Amendments to the FCA 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).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
General Provisions (GEN)	Annex E
Conduct of Business sourcebook (COBS)	Annex F
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex G
Client Assets sourcebook (CASS)	Annex H
Supervision manual (SUP)	Annex I
Decision Procedure and Penalties manual (DEPP)	Annex J
Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Credit Unions sourcebook (CREDS)	Annex L
Consumer Credit sourcebook (CONC)	Annex M

Amendments to material outside the Handbook

- H. The Building Societies Regulatory Guide (BSOG) is amended in accordance with Annex N to this instrument.
- I. The Enforcement Guide (EG) is amended in accordance with Annex O to this instrument.

- J. The Financial Crime: a guide for firms (FC) is amended in accordance with Annex P to this instrument.
- K. The Perimeter Guidance manual (PERG) is amended in accordance with Annex Q to this instrument.
- L. The Unfair Contract Terms Regulatory Guide (UNFCOG) is amended in accordance with Annex R to this instrument.

Citation

- M. This instrument may be cited as the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014.

By order of the Board of the Financial Ombudsman Service Limited
19 February 2014

By order of the Board of the Financial Conduct Authority
27 February 2014

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. The text is not underlined.

<i>acknowledgement letter fixed text</i>	(in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is not in square brackets.
<i>acknowledgement letter variable text</i>	(in CASS 11) the text in the template acknowledgment letters in CASS 11 Annex 1R that is in square brackets.
<i>advance payment</i>	includes any deposit but does not include a <i>repayment of credit</i> or any insurance premium or any amount entering in the <i>total charge for credit</i> .
<i>authorised business overdraft agreement</i>	a <i>borrower-lender agreement</i> which provides authorisation in advance for the <i>borrower</i> to overdraw on a current account, where the agreement is entered into by the <i>borrower</i> wholly or predominantly for the purposes of the <i>borrower's</i> business.
<i>authorised non-business overdraft agreement</i>	a <i>borrower-lender agreement</i> which provides authorisation in advance for the <i>borrower</i> to overdraw on a current account, where: (a) the <i>credit</i> must be repaid on demand or within three months; (b) the agreement is not entered into by the <i>borrower</i> wholly or predominantly for the purposes of the <i>borrower's</i> business.
<i>bill of sale loan agreement</i>	a <i>regulated credit agreement</i> secured by a bill of sale under the Bills of Sale Act 1878, the Bills of Sale Act (1878) Amendment Act 1882 or the Bills of Sale Ireland Act (1878).
<i>canvassing off trade premises</i>	(a) an activity by an individual (“the canvasser”) of soliciting the entry of another <i>individual</i> (“B”) into an agreement by making oral representations to B during a visit by the canvasser to any place (other than a place in (b)) where B is, being a visit made by the canvasser for the purpose of making such oral representations. (b) a place where a business is carried on (whether on a permanent or temporary basis) by:

- (i) the *lender* or *owner*; or
- (ii) a *supplier*; or
- (iii) the canvasser; or
- (iv) a *person* who employs the canvasser or has appointed the canvasser as an agent; or
- (v) B;

is excluded from (a).

cash price (in relation to any *goods*, services, *land* or other things) the price or charge at which the *goods*, services, *land* or any other things may be purchased by, or supplied to, the *borrower* for *cash*, account being taken of any discount generally available from the *dealer* or *supplier* in question.

CASS debt management firm

a *firm* which:

- (a) carries on the activities of *debt counselling* or *debt adjusting*, alone or together, with a view to an *individual* entering into a particular *debt solution*; or
- (b) carries on the activity of *debt counselling* where an *associate* carries on *debt adjusting* with the aim in (a) in view; or
- (c) carries on *debt adjusting* where an *associate* carries on *debt counselling* with the aim in (a) in view; or
- (d) is a *not-for-profit debt advice body*.

CASS 11 resolution pack

those documents and records specified in CASS 11.12.4R.

CASS large debt management firm

a *CASS debt management firm* falling within the classification of *CASS large debt management firm* in CASS 11.2.3R.

CASS large debt management firm external client money reconciliation

the external client money reconciliation that *CASS large debt management firms* are obliged to undertake pursuant to CASS 11.11.25R to CASS 11.11.26R.

CASS large debt management firm internal client money reconciliation

the internal client money reconciliation that *CASS large debt management firms* are obliged to undertake pursuant to CASS 11.11.13R to CASS 11.11.21R.

<i>CASS small debt management firm</i>	a <i>CASS debt management firm</i> falling within the classification of <i>CASS small debt management firm</i> in CASS 11.2.3R.
<i>CBG</i>	the Office of Fair Trading's Credit Brokers and Intermediaries Guidance.
<i>CCA Order</i>	the Financial Services Act 2012 (Consumer Credit) Order 2013.
<i>CCA Requirement</i>	a requirement imposed by or under Parts 2, 4, 5 and 6 to 12 of the CCA.
<i>CCAR 2004</i>	Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484.
<i>CCAR 2010</i>	Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970.
<i>client bank account acknowledgement letter</i>	(in CASS 11) a letter in the form of the template in CASS 11 Annex 1R.
<i>community benefit society</i>	a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 which fulfils the condition in section 1(2)(b) of that Act or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act (Northern Ireland) 1969 which fulfils the condition in section 1(2) of that Act.
<i>community finance organisation</i>	a <i>community benefit society</i> , a <i>registered charity</i> or a community interest company limited by guarantee (within the meaning of Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004).
<i>consumer hiring</i>	in accordance with article 60N of the <i>Regulated Activities Order</i> , entering into a <i>regulated consumer hire agreement</i> as <i>owner</i> or exercising, or having the right to exercise, the <i>owner's</i> rights and duties under a <i>regulated consumer hire agreement</i> .
<i>consumer credit lending</i>	in accordance with article 60B of the <i>Regulated Activities Order</i> , entering into a <i>regulated credit agreement</i> as <i>lender</i> or exercising, or having the right to exercise, the <i>lender's</i> rights and duties under a <i>regulated credit agreement</i> .
<i>continuous payment authority</i>	consent given by a <i>customer</i> for a <i>firm</i> to make one or more requests to a <i>payment service provider</i> for one or more payments from the <i>customer's payment account</i> , but excluding: <ul style="list-style-type: none"> (a) a direct debit to which the Direct Debit guarantee applies; and (b) separate consent given by a <i>customer</i> to a <i>firm</i>, following the making of the <i>credit agreement</i>, for the <i>firm</i> to make a single request to a <i>payment service provider</i> for one payment of a specified amount from the <i>customer's payment account</i> on the

same day as the consent is given or on a specified day.

<i>cost of credit</i>	any costs, including interest, commission, taxes and any other kind of fees which are required to be paid by or on behalf of the <i>borrower</i> or a relative of the <i>borrower</i> in connection with the <i>credit agreement</i> , whether payable to the <i>lender</i> or to any other <i>person</i> , and which are known to the <i>lender</i> , except for notarial costs.
<i>credit card cheque</i>	a cheque (whether or not drawn on a banker) which, whenever used, will result in the provision of <i>credit</i> under a <i>credit-token agreement</i> , which does not include a cheque to be used only in connection with a current account.
<i>credit-sale agreement</i>	an agreement for the sale of goods under which the purchase price, or part of it, is payable by instalments, but which is not a <i>conditional sale agreement</i> (see section 189 of the <i>CCA</i>).
<i>credit token</i>	<p>a credit token is a card, check, voucher, coupon, stamp, form, booklet or other document or thing <i>given</i> to an <i>individual</i> by a <i>person</i> carrying on a <i>credit-related regulated activity</i> (“the provider”), who undertakes that:</p> <ul style="list-style-type: none">(a) on production of it (whether or not some other action is also required) the provider will supply <i>cash</i>, <i>goods</i> or services (or any of them) on <i>credit</i>; or(b) where, on the production of it to a third party (whether or not any other action is also required), the third party supplies <i>cash</i>, <i>goods</i> and services (or any of them), the provider will pay the third party for them (whether or not deducting any discount or commission), in return for <i>payment</i> to the provider by the <i>individual</i> and the provider shall, without prejudice to the definition of <i>credit</i>, be taken to provide <i>credit</i> drawn on whenever a third party supplies the <i>individual</i> with <i>cash</i>, <i>goods</i> or services; and <p>the use of an object to operate a machine provided by the <i>person</i> giving the object or a third party shall be treated as the production of the object to that <i>person</i> or third party.</p>
<i>credit-token agreement</i>	a <i>regulated credit agreement</i> for the provision of <i>credit</i> in connection with the use of a <i>credit token</i> .
<i>credit-worthiness assessment</i>	the assessment required by <i>CONC</i> 5.2.1R.
<i>DCG</i>	the Office of Fair Trading’s Debt Collection Guidance.
<i>dealer</i>	in relation to a <i>hire-purchase agreement</i> , <i>credit-sale agreement</i> or <i>conditional sale agreement</i> under which this <i>person</i> is not the <i>lender</i> , a <i>person</i> who sells or proposes to sell <i>goods</i> , <i>land</i> or other things to the <i>lender</i> before they form the subject matter of any such agreements

and, in relation to any other agreements, means a *supplier* or the *supplier's* agent.

<i>debt adjuster</i>	a <i>person</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>debt adjusting</i> and who negotiates with a <i>lender</i> on behalf of a <i>customer</i> the terms of discharge of a debt due under a <i>credit agreement</i> or a <i>consumer hire agreement</i> , or takes over the <i>customer's</i> obligations to discharge such debts in return for payments by the <i>customer</i> , or carries on any similar activity concerned with the liquidation of such a debt.
<i>debt collector</i>	a <i>person</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>debt collecting</i> and who takes steps to procure payment of debts due under <i>credit agreements</i> or <i>consumer hire agreements</i> .
<i>debt counsellor</i>	a <i>person</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>debt counselling</i> and who gives advice to <i>borrowers</i> or <i>hirers</i> about the liquidation of debts under <i>credit agreements</i> or <i>consumer hire agreements</i> .
<i>debt management activity</i>	the activities of <i>debt counselling</i> or <i>debt adjusting</i> , alone or together, carried on with a view to an <i>individual</i> entering into a particular <i>debt solution</i> or in relation to any such <i>debt solution</i> , and activities connected with those activities.
<i>debt management client money chapter</i>	CASS 11.
<i>debt management client money distribution rules</i>	the rules and guidance in CASS 11.13.
<i>debt management client money rules</i>	the rules and guidance in CASS 11.1 to CASS 11.12.
<i>debt management plan</i>	a non-statutory agreement between a <i>customer</i> and one or more of the <i>customer's lenders</i> the aim of which is to discharge or liquidate the <i>customer's</i> debts, by making regular payments to a third party which administers the plan and distributes the money to the <i>lenders</i> .
<i>disclosure regulations</i>	as the case may be, the Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013 or the Consumer Credit (Disclosure of Information) Regulations 2004, SI 2004/1481.
<i>DMG</i>	the Office of Fair Trading's Debt Management (and credit repair services Guidance).
<i>green deal plan</i>	an arrangement by the occupier or owner of a property for a person to make energy efficient improvements to the property wholly or partly paid for in instalments, as defined in section 1 of the Energy Act

2011.

high-cost short-term credit

a regulated credit agreement:

- (a) which is a *borrower-lender agreement* or a *P2P agreement*;
- (b) in relation to which the *APR* is equal to or exceeds 100%;
- (c) either:
 - (i) in relation to which a *financial promotion* indicates (by express words or otherwise) that the *credit* is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the *credit* is to be provided for a short term; or
 - (ii) under which the *credit* is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the *credit* is advanced;
- (d) which is not secured by a mortgage, charge or pledge; and
- (e) which is not:
 - (i) a *credit agreement* in relation to which the *lender* is a *community finance organisation*; or
 - (ii) a *home credit loan agreement*, a *bill of sale loan agreement* or a *borrower-lender agreement* enabling a *borrower* to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.

home credit loan agreement

a regulated credit agreement which is a *borrower-lender agreement* and which either:

- (a) provides that all or most of the sums payable by the *customer* are to be collected by, or on behalf of, the *lender* at the *customer's* home or at the home of a natural person who makes payment to the *lender* on the *customer's* behalf (or, in either case, to be so collected if the *customer* so wishes); or
- (b) at the time the agreement is entered into, the *customer* could reasonably expect, from representations made by, or on behalf of, the *lender* at or before that time, that all or most of the sums payable would be so collected (or, in either case, would be collected as specified in (a) if the *customer* so wished).

ILG

the Office of Fair Trading's Irresponsible Lending Guidance.

<i>JGPPI</i>	the FSA/OFT Joint Guidance on Payment Protection Products.
<i>lead generator</i>	a <i>person</i> that acquires the personal contact details of <i>customers</i> and passes the <i>customers</i> ' details to a <i>firm</i> in return for a fee.
<i>MCG</i>	the Office of Fair Trading's Mental Capacity Guidance.
<i>non-commercial agreement</i>	a <i>credit agreement</i> or a <i>consumer hire agreement</i> not made by the <i>lender</i> in the course of a business carried on by the <i>lender</i> or <i>owner</i> .
<i>open-end agreement</i>	a <i>credit agreement</i> with no fixed duration.
<i>operator of an electronic system in relation to lending</i>	a <i>person</i> who has, or ought to have, <i>permission</i> for <i>operating an electronic system in relation to lending</i> .
<i>pawn</i>	any article subject to a <i>pledge</i> .
<i>pawnee</i>	a <i>person</i> who takes any article in <i>pawn</i> and includes any <i>person</i> to whom the rights and duties of the original pawnee have passed by assignment or operation of law.
<i>pawnor</i>	includes any <i>person</i> to whom the rights and duties of the original pawnor have passed by assignment or operation of law.
<i>pawn-receipt</i>	has the meaning given by section 114 of the <i>CCA</i> .
<i>pledge</i>	a <i>pawnee</i> 's rights over an article taken in <i>pawn</i> .
<i>provider of credit information services</i>	a <i>person providing credit information services</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>providing credit information services</i> .
<i>provider of credit references</i>	a <i>person providing credit references</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>providing credit references</i> .
<i>registered charity</i>	a charity: <ul style="list-style-type: none">(a) registered on the Charity Commission's Register of Charities;(b) registered on the Scottish Charity Register;(c) registered on the Charity Commission of Northern Ireland's Register of Charities; or(d) that is or will be required to register on the register in (c) and which is recognised as a charity for tax purposes by Her Majesty's Revenue and Customs.

<i>Regulated Activities Amendment Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (SI 2013/1881).
<i>regulated agreement</i>	any <i>credit agreement</i> which is not an exempt agreement (see articles 60C to 60H of the <i>Regulated Activities Order</i>) or any <i>consumer hire agreement</i> which is not an exempt agreement (see articles 60O to 60Q of the <i>Regulated Activities Order</i>).
<i>relevant credit activity</i>	an activity of a kind specified as a <i>relevant credit activity</i> in paragraph 2G of Schedule 6 to the <i>Act</i> .
<i>relevant credit agreement</i>	a <i>credit agreement</i> (within the meaning given by article 60B of the <i>Regulated Activities Order</i>) other than a <i>regulated mortgage contract</i> or a <i>regulated home purchase plan</i> (within the meaning of that Order) (see paragraph 28 of Schedule 1 to the <i>Financial Promotion Order</i>).
<i>relevant credit-related complaint</i>	a <i>relevant existing credit-related complaint</i> or a <i>relevant new credit-related complaint</i> .
<i>relevant debts under management</i>	in relation to a <i>firm</i> , a debt due under a <i>credit agreement</i> or a <i>consumer hire agreement</i> in relation to which the <i>firm</i> is carrying on <i>debt adjusting</i> or an activity connected to that activity.
<i>relevant existing credit-related complaint</i>	a complaint made under the ombudsman scheme before 1 April 2014 which was being dealt with under the <i>Consumer Credit Jurisdiction</i> .
<i>relevant new credit-related complaint</i>	(in accordance with the <i>Regulated Activities Amendment Order</i>) a complaint made under the ombudsman scheme on or after 1 April 2014: (a) which relates to an act or omission which took place before 1 April 2014; (b) which could have been dealt with under the <i>Consumer Credit Jurisdiction</i> (disregarding the effect of section 226A(2)(a) and (b) of the <i>Act</i>) but for the repeal of section 226A of the <i>Act</i> ; and (c) in relation to which the complainant is eligible and wishes for the complaint to be dealt with under the <i>Financial Ombudsman Service</i> .
<i>relevant provisions</i>	in accordance with article 36A of the <i>Regulated Activities Order</i> , articles 60C (exempt agreements: exemptions relating to the nature of the agreement), 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes), 60E (exempt agreements: exemptions relating to the nature of the lender), 60G (exempt agreements: exemptions relating to the total charge for

credit) and 60H (exempt agreements: exemptions relating to the nature of the borrower) of that Order.

<i>repayment</i>	includes repayment of <i>credit</i> with or without any other amount.
<i>representative APR</i>	an <i>APR</i> at or below which the <i>firm communicating or approving the financial promotion</i> reasonably expects, at the date on which the promotion is <i>communicated or approved</i> , that <i>credit</i> would be provided under at least 51% of the <i>credit agreements</i> which will be entered into as a result of the promotion.
<i>SCLG</i>	the Office of Fair Trading’s Second Charge Lending Guidance.
<i>small borrower-lender-supplier agreement</i>	a <i>borrower-lender-supplier agreement</i> which is a small agreement within the meaning of section 17 of the <i>CCA</i> .
<i>sustainable</i>	(in <i>CONC</i>) has the meaning given in <i>CONC</i> 5.3.1G.
<i>typical APR</i>	an <i>APR</i> at or below which the <i>firm communicating or approving the financial promotion</i> reasonably expects, at the date on which the <i>financial promotion</i> is <i>communicated or approved</i> , that <i>credit</i> would be provided under at least 66% of the agreements which will be entered into as a result of the <i>financial promotion</i> .
<i>unsustainable</i>	(in <i>CONC</i>) has the meaning given in <i>CONC</i> 5.3.1G.

Amend the following definitions as shown.

<i>ancillary service</i>	(1)	<u>(except in <i>CONC</i>) ...</u> [Note: article 4(1)(3) of <i>MiFID</i>]
	(2)	<u>(in <i>CONC</i>) a service that relates to <i>entering into a regulated credit agreement as lender</i> and includes, in particular, an insurance or payment protection policy.</u>
<i>appointed representative</i>	(1)	<u>(in relation to cases apart from in (2) (in accordance with section 39 of the <i>Act</i> (other than an <i>authorised person</i>) a <i>person</i> who:</u> ...
	(2)	<u>(in relation to a <i>firm with a permission only to carry on one or more regulated activities</i> prescribed for the purposes of section 39(1E)(a) of the <i>Act</i>) in accordance with section 39 of the <i>Act</i>, a person (“A”) who:</u>
	(a)	<u>is a party to a contract with another <i>authorised person</i> (A’s <i>principal</i>) which:</u>

(i) permits or requires A to carry on business of a description prescribed in the *Appointed Representatives Regulations* (“the relevant business”); and

(ii) complies with such requirements as are prescribed in those Regulations; and

(b) is someone for whose activities in carrying on the whole or part of the relevant business A’s *principal* has accepted responsibility in writing;

and, therefore, to whom sections 20(1) and (1A) and 23(1A) of the Act do not apply in relation to the carrying on by A of a regulated activity which is not one to which A’s *permission* relates, and is comprised in the carrying on of the business for which A’s *principal* has accepted responsibility.

APR

(1) (except in *CONC*) annual percentage rate.

(2) (in *CONC* for a credit agreement secured on land) the annual percentage rate of charge for credit determined in accordance with the rules in *CONC* App 1.1 and *CONC* 3.6.9R.

(3) (in *CONC* for all other credit agreements) the annual percentage rate of charge for credit determined in accordance with the rules in *CONC* App 1.2 and *CONC* 3.5.13R.

borrower

...

(3) (in relation to debt collecting and debt administration (and so far as relevant to those activities in relation to article 64 (agreeing to carry on a regulated activity) of the *Regulated Activities Order*)) “borrower” includes, in addition to the persons in (1), any person providing a guarantee or an indemnity under the credit agreement and a person to whom the rights and duties of a person providing a guarantee or an indemnity have passed by assignment or operation of law.

client

...

(B) in the *FCA Handbook*:

...

(3) (in *PROF*) (as defined in section 328(8) of the Act (Directions in relation to the general prohibition)) (in relation to members of a profession providing financial services under Part XX of the Act (Provision of Financial Services by Members of the Professions)):

...

- (c) a *person* who has rights or interests which may be adversely affected by the use of any such services by *persons* acting on his behalf or in a fiduciary capacity in relation to him; and
- (d) in relation to a *person* (“A”) carrying on a *regulated activity* of the kind specified by article 39F (Debt-collecting) or 39G (Debt administration) of the *Regulated Activities Order*, includes:
 - (i) the *borrower* under the *credit agreement* or the *hirer* under the *consumer hire agreement*;
 - (ii) someone who has been the *borrower* or *hirer* under the agreement;
 - (iii) a *person* who is treated by A as a *person* falling within (i) or (ii);
 - (iv) any *person* providing a guarantee or indemnity under the agreement; and
 - (v) a *person* to whom the rights and duties of a *person* falling within (iv) have passed by assignment or operation of law; and
- (e) in relation to a *person* (“A”) carrying on a *regulated activity* of the kind specified by article 60B (regulated credit agreements) or article 60N (regulated consumer hire agreements) of the *Regulated Activities Order*, includes a *person* who is treated by A as a *person* who is or has been:
 - (i) the *borrower* under a *regulated credit agreement* or the *hirer* under a *regulated consumer hire agreement*;
 - (ii) a *person* providing a guarantee or indemnity under the agreement; or
 - (iii) a *person* to whom the rights and duties of a *person* within (ii) have passed by assignment or operation of law; and
- (f) includes an *individual* who is, may be, has been or may have been the subject of the information referred to in article 89A (Providing credit information services) of the *Regulated Activities Order*; and

		(g)	<u>includes an <i>individual</i> who is, may be, has been or may have been the subject of information furnished in the course of a <i>person</i> carrying on an activity of the kind specified by article 89B (Providing credit references) of the <i>Regulated Activities Order</i>.</u>
	...		
<i>client bank account</i>	...		
		(3)	<u>(in CASS 11):</u>
		(a)	<u>an account at an <i>approved bank</i> which:</u>
		(i)	<u>holds the <i>money</i> of one or more <i>clients</i>;</u>
		(ii)	<u>is held in the name of the <i>firm</i> to which CASS 11.9 (segregation and the operation of client money accounts) applies;</u>
		(iii)	<u>includes in its title the word “client” (or, if the system constraints of the <i>approved bank</i> or the <i>firm</i> that holds the account (or both) make this impracticable, an appropriate abbreviation of “client” that has the same meaning); and</u>
		(iv)	<u>is a current or a deposit account.</u>
<i>client money</i>	...		
		(2B)	<u>(in CASS 11 and CONC 10) <i>money</i> which a <i>CASS debt management firm</i> receives or holds on behalf of a <i>client</i> in the course of or in connection with <i>debt management activity</i>.</u>
<i>complaint</i>	...		
		(4)	(in <i>DISP</i>) reference to a <i>complaint</i> includes:
	...		
		(b)	under the <i>Compulsory Jurisdiction</i> , all or part of a <u><i>relevant complaint</i> or a <i>relevant credit-related complaint</i>.</u>
<i>connected contract</i>	...		
		(B)	in the <i>FCA Handbook</i> :
			a <i>non-investment insurance contract</i> which:
	...		

In this definition:

- (h) the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not:
 - (i) a ~~hire-purchase agreement within the meaning of section 189(1) of the Consumer Credit Act 1974~~ hire-purchase agreement; or

...

...

Consumer Credit Jurisdiction the jurisdiction of the *Financial Ombudsman Service* ~~which resulting~~ resulted from section 226A (repealed) of the *Act* ~~which applies to~~ licensees.

controlled activity ...

(in accordance with section 21(9) of the *Act* (The classes of activity and investment)) any of the following activities specified in Part 1 of Schedule 1 to the Financial Promotions Order (Controlled Activities):

...

(fab) credit broking (paragraph 4B);

(fac) operating an electronic system in relation to lending (paragraph 4C);

...

(ga) debt adjusting (paragraph 5A);

(gb) debt-counselling (paragraph 5B);

...

(na) providing relevant consumer credit (paragraph 10BA);

(nb) providing consumer hire (paragraph 10BB);

...

controlled investment (in accordance with section 21(10) of the *Act* (Restrictions on financial promotion) and article 4 of the *Financial Promotion Order* (Definitions of controlled activities and controlled investments)) an *investment* specified in Part II of Schedule 1 to the *Financial Promotion Order* (Controlled investments) (having regard to the effect of paragraph 4C (10) of that Schedule).

credit (1) (except in relation to a *class of contract of insurance* and a

credit-related regulated activity) any kind of loan, deferment of repayment of any loan or of interest on any loan, guarantee or indemnity, and any other kind of accommodation or facility in the nature of credit.

(2) ...

(3) (in relation to a *credit-related regulated activity*) includes a cash loan and any other form of financial accommodation, but an item entering into the *total charge for credit* is not treated as credit even though time is allowed for its payment.

customer ...

(5) (in relation to a *credit-related regulated activity*) an *individual* who enters, may enter or has entered into a *credit agreement* or a *consumer hire agreement*; and:

(-a) (in relation to *consumer credit lending*) includes an *individual* who the *firm* treats as a *person* who is, or has been, the *borrower* under a *regulated credit agreement*;

(-aa) (in relation to *consumer hiring*) includes an *individual* who the *firm* treats as a *person* who is, or has been, the *hirer* under a *regulated consumer hire agreement*;

...

financial promotion rules ...

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

firm ...

(7) (in *DISP* 2 and 3) includes, in accordance with the transitional provisions in article 11 of the *Regulated Activities Amendment Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant existing credit-related complaints* and *relevant new credit-related complaints*.

legal or equitable mortgage in accordance with article 60L of the *Regulated Activities Order*, includes a *legal or equitable* charge and, in Scotland, a heritable security.

limited a *Part 4A permission* for only a relevant credit activity as defined in paragraph 2G of Schedule 6 to the *Act* (guidance on which is given in

<i>permission</i>	<u>COND 1.1A.5AG).</u>
<i>owner</i>	... (2) (in <i>CONC</i> relation to a <i>credit-related regulated activity</i>), as defined in article 60N(3) of the <i>Regulated Activities Order</i> : ... (4) <u>(in CASS 11) an event that occurs in the circumstances described in CASS 11.13.3R.</u>
<i>primary pooling event</i>	... (4) <u>(in CASS 11) an event that occurs in the circumstances described in CASS 11.13.3R.</u>
<i>principal</i>	(1) ... (b) (if the <i>person</i> is an <i>appointed representative</i> or, where applicable, a <i>tied agent</i>) the <i>authorised person</i> who is party to a contract with the <i>appointed representative</i> , or who is responsible for the acts of the <i>tied agent</i> , resulting in him being exempt, <u>or in him carrying on a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply</u> , under section 39 of the <i>Act</i> (Exemption of appointed representatives).
<i>private person</i>	... (a) ... (ii) any activity which would be a <i>regulated activity</i> apart from any exclusion made by article 72 of the <i>Regulated Activities Order</i> (Overseas persons); and ... (c) <u>a relevant recipient of <i>credit</i> (within the meaning of article 60L of the <i>Regulated Activities Order</i>) who is not an individual and who has suffered the loss in question in connection with an activity of the kind specified by article 36A, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of that Order or article 64 of that Order, so far as relevant to any of those activities; and</u> (d) <u>a person who is, by virtue of article 36J of the <i>Regulated Activities Order</i>, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by <i>authorised persons</i> in carrying on a <i>regulated activity</i> of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that</u>

activity;

...

refinance

see the definition of *finance* (except in relation to *CONC* 6.7.18R to *CONC* 6.7.23R and *CONC* 7.6.12R).

*regulated
consumer hire
agreement*

(1) ~~in accordance with section 15 of the Consumer Credit Act 1974 (as amended) an agreement made by a person with an individual "the hirer" for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which~~

(a) ~~is not a hire purchase agreement, and~~

(b) ~~is capable of subsisting for more than three months, and~~

(c) ~~is not an exempt agreement;~~

~~and expressions used in that Act have the same meaning in this definition.~~

(2) ~~(in CONC)~~ in accordance with article 60N of the *Regulated Activities Order*, a *consumer hire agreement* which is not an exempt agreement under articles 60O to 60Q of the *Regulated Activities Order*.

regulatory system

...

(B) in the *FCA Handbook*:

the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the CCA, and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the *MiFID implementing Directive*, the *MiFID Regulation* and the *EU CRR*.

*relevant credit
agreement
relating to the
purchase of land*

in accordance with article 60E (7) of the *Regulated Activities Order*:

(a) a *borrower-lender-supplier agreement financing*:

...

and secured by a *legal or equitable mortgage* on that *land*;

(b) a *borrower-lender agreement* secured by a *legal or equitable*

mortgage on land; or

- (c) *a borrower-lender-supplier agreement financing a transaction which is a linked transaction in relation to:*

...

and secured by a legal or equitable mortgage on the land referred to in (a) or the land referred to in (c)(ii).

respondent

- (1) *(in DISP, FEES 5 and CREDS 9) a firm (except a UCITS qualifier), payment service provider, electronic money issuer, licensee or VJ participant covered by the Compulsory Jurisdiction, ~~Consumer Credit Jurisdiction~~ or Voluntary Jurisdiction of the Financial Ombudsman Service.*

- (2) *(in DISP 2 and 3 and FEES 5) includes, as a result of ~~sections~~ section 226 and 226A of the Act:*

...

- (b) *~~a person who was formerly a licensee in respect of a complaint about an act or omission which occurred at the time when it was a licensee, provided the complaint falls within a description specified in the consumer credit rules in force at the time of the act or omission; [deleted]~~*

...

- (5) *(in DISP 2 and 3 and FEES 5) includes, in accordance with article 11 of the Regulated Activities Amendment Order, unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant existing credit-related complaints and relevant new credit-related complaints.*

secondary pooling event

...

- (4) *(in CASS 11) an event that occurs in the circumstances described in CASS 11.13.10R.*

security

- (1) *(except in LR and CONC) (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any of the following investments specified in that Order:*

...

- (3) *(in CONC) in accordance with article 60L of the Regulated Activities Order, in relation to a credit agreement or a consumer hire agreement, a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right*

provided by the *borrower* or *hirer* or at the implied or express request of the *borrower* or *hirer* to secure the carrying out of the obligations of the *borrower* or *hirer* under the agreement.

specified investment

any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):

...

(of) *credit agreement* (article 88D) for the purposes of the *permission* regime with respect to the *regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement, this is subdivided into:*

(i) *a credit agreement (excluding high-cost short-term credit, a home credit loan agreement and a bill of sale loan agreement);*

(ii) *high-cost short-term credit;*

(iii) *a home credit loan agreement;*

(iv) *bill of sale loan agreement;*

and this has effect as if the reference to a *credit agreement* includes a reference to an article 36H agreement within the meaning of article 36H (4) of the *Regulated Activities Order*;

(og) *consumer hire agreement* (article 88E);

...

total amount payable

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

(2) (in *CONC*) the sum of the *total charge for credit* and the *total amount of credit payable* under the *credit agreement*, as well as any *advance payment*.

total charge for credit

...

(3) (in *CONC* in relation to a *financial promotion* about a *credit agreement* secured on *land*) the sum calculated in accordance with the *rules* in *CONC* App 1.1 and, in relation to *financial promotions*, the *rules* in *CONC* 3.6.9R.

(4) (in *CONC* in relation to a *financial promotion* about all other *credit agreements*) the sum calculated in accordance with the *rules* in *CONC* App 1.2 and, in relation to *financial*

promotions, the rules in CONC 3.5.13R.

Delete the following definitions. The deleted text is not shown.

consumer credit activity [deleted]

consumer credit prohibition [deleted]

licensee [deleted]

regulated consumer credit agreement [deleted]

Annex B

Amendments to Principles for Businesses (PRIN)

In this Annex, underlining indicates new text.

1.2.3 G ...

- (1A) *Client* categorisation under *COBS 3* or *PRIN 1* Annex 1R is not relevant to *credit-related regulated activities* and therefore the guidance on *client* categorisation does not apply in relation to a *credit-related regulated activity*. The definitions of *client* and *customer* in relation to those *regulated activities* reflect the modified meaning of “consumer” in articles 36J, 39M, 60LA, 60S and 89E of the *Regulated Activities Order*, as well as the definitions of “individual” and of “relevant recipient of credit” in that Order.

...

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
<u>2.5A</u>	<u>R</u>	<u>The common platform requirements on financial crime do not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u>
	...	

Part 3	Tables summarising the application of the common platform requirements to different types of firm
	...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs
...				
SYSC 6.3.1R	Rule	Rule	Rule	Rule For firms carrying on a

				<p><i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.2G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.3R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Rule does not apply to a <i>firm</i></u></p>

				for which a <u>professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i></u> , and not the <u>FCA</u> , acts as the <u>supervisory authority for the purposes of those regulations</u> . (FCA Handbook only)
SYSC 6.3.4G	Guidance	Guidance	Guidance	Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations</u> . (FCA Handbook only)
SYSC 6.3.5G	Guidance	Guidance	Guidance	Guidance. For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the</u>

				<p><u>supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
<p>SYSC 6.3.6G</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>.</p> <p><u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
<p>SYSC 6.3.7G</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>.</p> <p><u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>

<p>SYSC 6.3.8R</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the firm. Rule does not apply to <i>firm</i> with a <i>limited permission</i> for <i>entering into a regulated credit agreement as lender</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
<p>SYSC 6.3.9R</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the firm. Rule does not apply to <i>firm</i> with a <i>limited permission</i> for <i>entering into a regulated credit agreement as lender</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the</u></p>

				<u>FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)
SYSC 6.3.10G	Guidance	Guidance	Guidance	Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)
SYSC 6.3.11G	Guidance	Guidance	Guidance	Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)

Annex D

Amendments to Threshold Conditions (COND)

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

1.1A Application

...

1.1A.5 G ...

To what extent does COND apply to credit firms with limited permission?

- 1.1A.5A G (1) The FCA threshold conditions apply to a person that carries on, or seeks to carry on, only relevant credit activities (within paragraph 2G of Schedule 6 to the Act) and which therefore has, or is applying for, limited permission with a number of modifications (see article 10(19) of the Regulated Activities Amendment Order). Regulated activities a person carries on in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply as a result of section 39(1D) of the Act are disregarded for this purpose.
- (2) For a person within (1), the FCA threshold conditions are modified as follows:
- (a) in relation to paragraph 2C of Schedule 6 to the Act (Effective supervision), paragraphs (a), (b) and (e) of subparagraph (1) do not apply (see COND 2.3);
- (b) in relation to paragraph 2D of Schedule 6 to the Act (Appropriate resources), the person has adequate financial resources if it is capable of meeting its debts as they fall due (see COND 2.4);
- (c) paragraph 2F of Schedule 6 to the Act (Business model) does not apply (see COND 2.7).
- (3) Paragraph 2G of Schedule 6 to the Act defines relevant credit activity for the purposes of the FCA Threshold Conditions. The interpretation of some of the key expressions used in this specific context is as follows:
- (a) “borrower” includes any person providing a guarantee or indemnity under an agreement, and a person to whom the rights and duties of the borrower have passed by assignment or operation of law;

- (b) “supplier” means a *person* whose main business is to sell goods or supply services and not to carry on a *regulated activity*, other than *entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement*;
 - (c) “customer” means a *person* to whom a supplier sells goods or supplies services or agrees to do so;
 - (d) “domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”).
- (4) In summary, the following *credit-related regulated activities* are relevant credit activities for the purposes of the *FCA Threshold Conditions*:
- (a) *credit broking* when carried on:
 - (i) by a supplier (other than a domestic premises supplier) for the purposes of or in connection with the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the *credit agreement* or the hirer under the *consumer hire agreement*); or
 - (ii) in relation to a *green deal plan*; or
 - (iii) in relation to a *consumer hire agreement* where the goods being hired is a vehicle;

although, other than where the *credit broking* is carried on by a *not-for-profit body*, the *credit broking* will not be a relevant credit activity where it relates to an agreement under which the obligation of the borrower to repay or the hirer to pay is secured, or is to be secured, by a legal mortgage on land;
 - (b) *consumer credit lending* if carried on by a *local authority* or if:
 - (i) it is carried on by a supplier;
 - (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of *credit*; and

(iii) the regulated credit agreement is not a hire purchase agreement or a conditional sale agreement;

although, other than where the consumer credit lending is carried on by a not-for-profit body, the consumer credit lending will not be a relevant credit activity if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land;

(c) entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement although, other than where these activities are carried on by a not-for-profit body, entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement will not be a relevant credit activity if the obligation of the hirer to pay under the agreement is secured, or is to be secured, by a legal mortgage on land;

(d) debt adjusting or debt counselling when carried on:

(i) by a supplier who also carries on credit broking within (a)(i);

(ii) by a person in connection with an activity within (b) or (c) which the person also carries on;

(iii) by a not-for-profit body;

although, other than where the debt adjusting or debt counselling is carried on by a not-for-profit body, the debt adjusting or debt counselling will not be a relevant credit activity if it relates to an agreement under which the obligation of the borrower to repay or the hirer to pay is secured, or is to be secured, by a legal mortgage on land;

(e) providing credit information services where carried on by a person in connection with an activity within (a) to (d) which the person also carries on;

(f) agreeing to carry on an activity within (a) to (e).

...

2.3 Effective supervision

...

Paragraph 2C of Schedule 6 to the Act

2.3.1A UK ...

(1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

...

2.3.1BA G For the purposes of paragraph 2C (1A) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance on the meaning of relevant credit activity is given in COND 1.1A.5AG.

...

2.4 Appropriate resources

...

2.4.1A UK ...

(3) The Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether A has appropriate financial resources include-

...

(3A) Where the only regulated activities that A carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by A,

A has adequate financial resources if A is capable of meeting A's debts as they fall due.

...

2.4.1BA G For the purposes of paragraph 2D (3A) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance

on the meaning of relevant credit activity is given in COND 1.1A.5AG.

...

2.7 **Business model**

Paragraph 2F to Schedule 6 of the Act

2.7.1 UK ...

(3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

...

2.7.2A G For the purposes of paragraph 2F(3) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance on the meaning of relevant credit activity is given in COND 1.1A.5AG.

Annex E

Amendments to the General Provisions (GEN)

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

- 1.2.2A R (1) ...
- (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
- (a) ...
 - (b) ~~the firm has a limited permission;~~ [deleted]
 - (c) ...
- ...
- (4) ~~Where a firm with a limited permission refers to its permission in a public statement or in relation to a client, it must explain in a fair, clear and not misleading way that the permission is a limited permission.~~ [deleted]

Annex F

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

4.1 Application

Who? What?

4.1.1 R This chapter applies to a *firm*:

(1) ...

(2) *communicating or approving a financial promotion* other than:

...

(c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms* may not *communicate* or *approve* such promotions); or

(d) a financial promotion in relation to a credit agreement, a consumer hire agreement or a credit-related regulated activity.

Annex G

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

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

1.6 Application to mortgages in relation to the Consumer Credit Act 1974 Distinguishing regulated mortgage contracts and regulated credit agreements

1.6.1 G *MCOB* applies to *regulated mortgage contracts* entered into on or after 31 October 2004. ~~Variations made on or after that date to contracts entered into before that date are not subject to FCA regulation but may be subject to the Consumer Credit Act 1974.~~ A contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date, will not be a *regulated mortgage contract* but may be a *regulated credit agreement* to which the *CCA* and *CONC* apply. If, however, a new contract is entered into on or after 31 October 2004, replacing the previous contract, this may be a *regulated mortgage contract*. *PERG* 4.4.13G contains *guidance* on the variation of contracts entered into before 31 October 2004.

1.6.2 G *Principle 2* requires a *firm* to conduct its business with due skill, care and diligence. The purpose of *MCOB* 1.6.3R is to reinforce this. The *FCA* would expect *firms* to take appropriate steps to determine whether any mortgage it proposes to enter into is subject to *FCA* regulation and, if so, whether it is a *regulated mortgage contract* or a *regulated credit agreement*.

...

1.6.4 R If, notwithstanding the steps taken by a *firm* to comply with *MCOB* 1.6.3R, it transpires that a mortgage which the firm has treated as unregulated or as a *regulated credit agreement* is in fact a *regulated mortgage contract*, the *firm* must as soon as practicable after the correct status of the mortgage has been established:

- (1) contact the *customer* and provide him with the following information in a *durable medium*:
 - (a) a statement that the mortgage contract is a *regulated mortgage contract* ~~subject to FCA regulation, stating in particular the position with regard to redress and compensation;~~ and
 - (b) ~~(where relevant) a statement that the Consumer Credit Act 1974 will not apply to the mortgage contract and that any Consumer Credit Act rights or requirements set out in previous communications will not apply;~~

- (i) where the *firm* has treated the mortgage as unregulated, a statement that the mortgage contract is subject to *FCA* regulation, stating in particular the position with regard to redress and compensation; or
- (ii) where the *firm* has treated the mortgage as a *regulated credit agreement*, a statement that:
 - (A) neither the *CCA* nor *CONC* will apply to the mortgage contract;
 - (B) any rights or requirements arising under the *CCA* or *CONC* set out in previous communications will not apply; and
 - (C) *MCOB* will apply to the mortgage contract.

(2) ...

1.6.5 G ...

- (3) *MCOB* 1.6.3R and *MCOB* 1.6.4R do not override the application of *MCOB* to any *regulated mortgage contract*. *MCOB* applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated or is a *regulated credit agreement*. In deciding whether to take disciplinary action as a result of a breach of *MCOB*, the *FCA* will take into account whether the action by the *firm* was reckless or deliberate (see *DEPP* 6.2.1G(1)(a)).

...

3.1.8 G As a result of ~~articles 90 and 91 of the *Regulated Activities Order*~~ this chapter and *CONC* 3:

- (1) a *financial promotion* of ~~*qualifying credit*~~ is not subject to the advertising provisions of the Consumer Credit Act 1974, unless it is ~~an exempt generic promotion~~ *CONC* 3 to the extent that it relates to *qualifying credit*; and
- (2) where a *firm* makes a *communication*, which consists of a *financial promotion* of *qualifying credit* and ~~information relating to a *financial promotion*~~ of a different form of lending that is not *qualifying credit* (for example an unsecured personal loan), the content of the latter will need to comply with the relevant advertising provisions of the ~~Consumer Credit Act 1974~~ *CONC* 3.

...

5.6.102 R Under the sub-heading 'Credit card', the *illustration* must:

...

(2) if a credit card is offered and it is a *mortgage credit card*:

...

(b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than ~~those provided~~ the rights that the customer would have under the Consumer Credit Act 1974 and CONC if the card were issued under a regulated credit agreement, include the following text: 'This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your mortgage offer will tell you more about this.'

...

5.6.106 R (1) Where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that do not meet the definition of a *regulated mortgage contract* or a *regulated credit agreement*, the relevant parts of Section 12 of the *illustration* must include the following text:

'This additional feature is not regulated by the *FCA*'.

(2) Where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 12 of the *illustration* must include the following text ~~after the text in (1):~~ 'but is regulated under the Consumer Credit Act 1974. This additional feature is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available.'

...

6.4.4 R The *illustration* provided as part of the *offer document* in accordance with *MCOB* 6.4.1R(1) must meet the requirements of *MCOB* 5.6 (Content of illustrations) with the following modifications:

...

- (11) where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 12 of the *illustration* that is part of the *offer document* must include the following text:
"This credit facility is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available";

...

...

9.4.102 R Under the sub-heading "Credit card", the *illustration* must:

...

- (2) if a credit card is offered and it is a *mortgage credit card*:

...

- (b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than ~~those provided~~ the rights that the customer would have under the Consumer Credit Act 1974 and CONC if the card were issued under a regulated credit agreement, include the following text: "This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your lifetime mortgage offer will tell you more about this."

...

9.4.106 R (1) Where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that do not meet the definition of a *regulated mortgage contract* or a regulated credit agreement, the relevant parts of Section 14 of the *illustration* must include the following text:

"This additional feature is not regulated by the *FCA*."

- (2) Where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 14 of the *illustration* must include the following text ~~after the text in (1):~~ "but is regulated under the Consumer Credit Act 1974. This additional feature is

regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available."

...

- 9.5.4 R The *illustration* provided as part of the *offer document* in accordance with *MCOB* 6.4.1R(1) must meet the requirements of *MCOB* 9.4, with the following modifications:

...

(10) for a *lifetime mortgage*:

- (a) where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 14 of the *illustration* that is part of the *offer document* must include the following text: "This credit facility is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available.";

...

- 10.3.2 G This calculation method is the same (with the exception of *MCOB* 10.3.8R(1) and (2)) as that described in ~~the Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) as amended~~ CONC App 1.1. ~~Because of this, some~~ Some of the terminology is different from that used elsewhere in *MCOB*, e.g. the references to 'transactions' should be read as relating to *secured lending*. ~~As a guide for firms, MCOB 10 Annex 1 G lists the substantively identical provisions in MCOB 10 and the 1980 Regulations.~~

...

MCOB 10 Annex 1G (A guide to the substantively identical provisions of *MCOB* 10 and the Consumer Credit (Total Charge for Credit) Regulations 1980) is deleted in its entirety. The deleted text is not shown.

- 12.3.2 G A *firm* can choose the method it employs for calculating *early repayment charges* in accordance with *MCOB* 12.3.1R. A ~~firm~~ firm should not use the 'Rule of 78' ~~(as contained in Schedule 2 of the Consumer Credit (Rebate on Early Settlement) Regulations 1983)~~, which is not appropriate as it

effectively overstates the cost to the mortgage lender.

Annex H

Amendments to the Client Assets sourcebook (CASS)

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

1.2 General application: who? what?

...

General application: what?

1.2.7 G ...

(7) The debt management client money chapter applies to CASS debt management firms receiving or holding client money for, or on behalf of, a client in the course of or in connection with debt management activity.

1.2.8 G ...

(5) The debt management client money chapter generally applies in respect of relevant dealings with the client category known as customers. In general, the client categories of retail clients, professional clients, as well as eligible counterparties, have no relevance to credit-related regulated activities, including debt management activities.

...

1.2.11 R Where a firm is subject to two or more of the client money chapters, ~~and~~ the insurance client money chapter and the debt management client money chapter, it must ensure segregation between money held under each chapter, including that money held under different chapters is held, in different, separately designated, *client bank accounts or client transactions accounts*.

...

1.4 Application: particular activities

...

Debt management activities

- 1.4.15 G (1) The debt management client money chapter applies to CASS debt management firms receiving or holding client money.
- (2) The mandate rules apply, where relevant, to CASS debt management firms carrying on debt management activity.

...

8 Mandates

8.1 Application

- 8.1.1 R This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm's*:

...

- (2) *insurance mediation activity*, except where it relates to a *reinsurance contract*;

- (3) *debt management activity*.

...

- 8.1.2A R The *mandate rules* do not apply to a *firm*:

- (1) in relation to *client money* that the *firm* is holding in accordance with CASS 5 or CASS 7 (including *client money* that the *firm* has allowed another person to hold or control in accordance with CASS 7.5.2R) or CASS 11; or

...

Insert the following new chapter after CASS 10. The text is not underlined

11 Debt management client money chapter

11.1 Application

- 11.1.1 R This chapter (the *debt management client money chapter*) applies to a CASS *debt management firm* that receives or holds *client money* as set out in this chapter.

- 11.1.2 G The requirements imposed on a CASS *debt management firm* that holds *client money* vary depending on whether a *firm* is classified as a CASS *small debt management firm* or a CASS *large debt management firm* in CASS 11.2.3R (CASS *debt management firm* types). CASS 11.1.4R to CASS

11.1.6R indicate which rules in the *debt management client money chapter* apply to which category of *firm*.

11.1.3 G The *debt management client money chapter* applies (to the extent indicated by CASS 11.1.4R to CASS 11.1.6R) to a *CASS debt management firm*, even if at the date of the determination or, as the case may be, the notification, referred to in CASS 11.2.4R, the *CASS debt management firm* is not holding *client money*, provided that:

- (1) it held *client money* in the previous calendar year; or
- (2) it projects to hold *client money* in the current calendar year.

Application to CASS small debt management firms

11.1.4 R Subject to CASS 11.1.6R, only the rules and guidance in the *debt management client money chapter* listed in the table below apply to *CASS small debt management firms*.

Reference	Rule
CASS 11.1.1R to CASS 11.1.4R and CASS 11.1.6R	Application
CASS 11.2.1R to CASS 11.2.9R	Firm classification
CASS 11.3.1R to CASS 11.3.2R and CASS 11.3.6R	Responsibility for CASS operational oversight
CASS 11.4.1G to CASS 11.4.4G	Definition of client money and discharge of fiduciary duty
CASS 11.5.1R and CASS 11.5.2R	Organisational requirements
CASS 11.6.1R and CASS 11.6.2G	Statutory trust
CASS 11.7.1G and CASS 11.7.5G	Selecting an approved bank at which to hold client money
CASS 11.8.1G to CASS 11.8.13R	Client bank account acknowledgement letters
CASS 11.9.1R to CASS 11.9.13G	Segregation and the operation of client money accounts
CASS 11.10.1R to CASS	Payments to creditors

11.10.7G	
CASS 11.11.1R to CASS 11.11.12R , CASS 11.11.30R and CASS 11.11.32G	Records, accounts and reconciliations
CASS 11.12.1G to CASS 11.12.7R	CASS 11 resolution pack
CASS 11.13.1R to CASS 11.13.14R	Client money distribution in the event of a failure of a firm or approved bank

Application to CASS large debt management firms

- 11.1.5 R Subject to CASS 11.1.6R, the rules and guidance in the *debt management client money chapter* apply to CASS large debt management firms, except where indicated otherwise in the relevant rule.

Solicitors

- 11.1.6 R (1) An *authorised professional firm* regulated by the Law Society of England and Wales, the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the following rules of its *designated professional body*, must comply with those rules and, if it does so, it will be deemed to comply with the *debt management client money chapter*.
- (2) The relevant rules are:
- (a) if the *firm* is regulated by the Law Society of England and Wales, the SRA Accounts Rules 2011;
 - (b) if the *firm* is regulated by the Law Society of Scotland, the Law Society of Scotland Practice Rules 2011; and
 - (c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

11.2 Firm classification

- 11.2.1 R (1) A CASS *debt management firm* must, once every year and by the time it is required to make a notification in accordance with CASS 11.2.4R, determine whether it is a CASS *large debt management firm* or a CASS *small debt management firm* according to the amount of *client money* which it held during the previous year or, if it did not hold *client money* during the previous year, according to the amount of *client money* it projects to hold in the following year, in each case using the limits set out in the table in CASS 11.2.3R.

- (2) For the purpose of determining its '*CASS debt management firm type*' in accordance with *CASS 11.2.3R*, a *CASS debt management firm* must:
- (a) if it currently holds *client money*, calculate the highest total amount of *client money* held during the previous calendar year ending on 31 December and use that figure to determine its '*CASS debt management firm type*';
 - (b) if it did not hold *client money* in the previous calendar year but projects that it will do so in the current calendar year, calculate the highest total amount of *client money* that it projects that it will hold during that year and use that figure to determine its '*CASS debt management firm type*'.

11.2.2 R For the purpose of calculating the value of the total amounts of *client money* that it holds on any given *day* during a calendar year (in complying with *CASS 11.2.1R*) a *CASS debt management firm* must base its calculation on accurate internal records of *client money* holdings. A *CASS large debt management firm* must do this using the internal reconciliations performed during the previous year that are prescribed in *CASS 11.11.13R*. A *CASS small debt management firm* must use the records used in carrying out checks required of it under *CASS 11.11.7R*.

11.2.3 R CASS debt management firm types

CASS debt management firm type	Highest total amount of <i>client money</i> held during the <i>CASS debt management firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year
<i>CASS large debt management firm</i>	An amount equal to or greater than £1 million
<i>CASS small debt management firm</i>	Less than £1 million

Notification

- 11.2.4 R Once every calendar year, a *CASS debt management firm* must notify the *FCA*, in writing, of the information in (1), (2) or (3), as applicable, and the information in (4), in each case no later than the *day* specified in (1) to (4):
- (1) if it held *client money* in the previous calendar year, the highest total amount of *client money* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
 - (2) if it did not hold *client money* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total

amount of *client money* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or

- (3) in any other case, the highest total amount of *client money* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money*; and
- (4) in every case, of its 'CASS *debt management firm* type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).

11.2.5 R For the purpose of the annual notification in CASS 11.2.4R, a *CASS debt management firm* must apply the calculation rule in CASS 11.2.2R.

Option to be treated as a CASS large debt management firm

11.2.6 G CASS 11.2.7R provides a *CASS debt management firm* with the ability to opt in to a higher category of 'CASS *debt management firm* type'. This may be useful for a *CASS debt management firm* whose holding of *client money* is near the upper categorisation limit for a *CASS small debt management firm*.

11.2.7 R (1) Notwithstanding CASS 11.2.3R, provided that the conditions in (2) are satisfied, a *CASS debt management firm* that would otherwise be classified as a *CASS small debt management firm* under the limits provided for in CASS 11.2.3R may elect to be treated as a *CASS large debt management firm*.

(2) The conditions to which (1) refers are that in either case:

- (a) the election is notified to the *FCA* in writing;
- (b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and
- (c) the *FCA* has not objected.

Effective date of firm type

11.2.8 R A *firm's* 'CASS *debt management firm* type' and any change to it takes effect:

- (1) if the *firm* notifies the *FCA* in accordance with CASS 11.2.4R(1) or CASS 11.2.4R(2), on 1 February following the notification; or
- (2) if the *firm* notifies the *FCA* in accordance with CASS 11.2.4R(3), on the *day* it begins to hold *client money*; or
- (3) if the *firm* makes an election under CASS 11.2.7R and provided the conditions in CASS 11.2.7R(2) are satisfied, on the *day* the

notification made under CASS 11.2.7R(2)(a) states that the election is intended to take effect.

- 11.2.9 G Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Debt Management Client Assets Firm Classification".

11.3 Responsibility for CASS operational oversight

CASS small debt management firm other than a not-for-profit debt advice body

- 11.3.1 R A *CASS small debt management firm*, other than a *not-for-profit debt advice body*, must allocate to a *director* or *senior manager* performing a *significant-influence function* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS 11;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return in accordance with SUP 16.12.29CR.

CASS small debt management firm that is a not-for-profit debt advice body

- 11.3.2 R A *CASS small debt management firm* that is a *not-for-profit debt advice body* must allocate to a *director* or *senior manager*:

- (1) oversight of the *firm's* operational compliance with CASS 11;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return in accordance with SUP 16.12.29CR.

CASS large debt management firm: the CASS operational oversight function (CF10a)

- 11.3.3 G CASS 11.3.4R describes the *FCA controlled function* known as the *CASS operational oversight function* (CF10a) in relation to *CASS large debt management firms*, including *not-for-profit debt advice bodies*. As a consequence of CASS 11.3.4R (in conjunction with SUP 10A.4.1R and SUP 10A.7.9AR), in a *CASS large debt management firm* (including a *not-for-profit debt advice body* fitting into that category) the function described in CASS 11.3.4R is required to be discharged by a *director* or *senior manager* who is an *approved person* under the *approved persons* regime provided for in SUP.

- 11.3.4 R A *CASS large debt management firm* must allocate to a *director* or *senior*

manager the function of:

- (1) oversight of the operational effectiveness of that *CASS debt management firm's* systems and controls that are designed to achieve compliance with CASS 11;
- (2) reporting to the *CASS debt management firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return to the *FCA* in accordance with SUP 16.12.29CR.

11.3.5 R If, at the time a *CASS debt management firm* becomes a *CASS large debt management firm* in accordance with CASS 11.2.8R, the *firm* is not able to comply with CASS 11.3.4R because it has no *director* or *senior manager* who is an *approved person* in respect of the *CASS operational oversight function*, the *firm* must:

- (1) take the necessary steps to ensure that it complies with CASS 11.3.4R as soon as practicable, which must at least include submitting an application for a *candidate* in respect of the *CASS operational oversight function* within 30 *business days* of the *firm* becoming a *CASS large debt management firm*; and
- (2) until such time as it is able to comply with CASS 11.3.4R, allocate to a *director* or *senior manager* performing a *significant-influence function* responsibility for:
 - (a) oversight of the *firm's* operational compliance with CASS 11;
 - (b) reporting to the *firm's governing body* in respect of that oversight; and
 - (c) completing and submitting a CCR005 return to the *FCA* in accordance with SUP 16.12.29CR.

Record of responsibility for CASS operational oversight

- 11.3.6 R
- (1) Subject to (2), a *CASS debt management firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with, as applicable, CASS 11.3.1R, CASS 11.3.2R, and CASS 11.3.4R.
 - (2) A *CASS small debt management firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
 - (3) A *CASS debt management firm* must ensure that a record made under this *rule* is retained for a period of five years after it is made.

11.4 Definition of client money and the discharge of fiduciary duty

- 11.4.1 G CASS 11 provides important safeguards for the protection of *client money* held by *CASS debt management firms* that sit alongside the fiduciary duty owed by firms in relation to *client money*. CASS 11.4.2R to CASS 11.4.4G provide *guidance* and *rules* for when *money* ceases to be *client money* for the purposes of both those rules and of the fiduciary duty which *CASS debt management firms* owe to *clients* in relation to *client money*.
- 11.4.2 R *Money* ceases to be *client money* if:
- (1) it is paid to the *client*, or a duly authorised representative of the *client*; or
 - (2) it is:
 - (a) paid to a third party on the instruction of the *client*, or with the specific consent of the *client*; or
 - (b) paid to a third party further to an obligation on the *firm* under any applicable law; or
 - (3) it is paid into an account of the *client* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *client*;
 - (4) it is due and payable to the *firm* for its own account;
 - (5) it is paid to the *firm* as an excess in the *client bank account* (see CASS 11.11.12R(2) and CASS 11.11.23R(3)).
- 11.4.3 R When a *CASS debt management firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid.
- 11.4.4 G *Money* is not *client money* when it is properly due and payable to the *firm* for its own account. The circumstances in which *money* may become due and payable to the *firm* could include when fees have become due and payable from the *client* to the *firm* under the agreement between the *client* and the *firm*.

11.5 Organisational requirements

- 11.5.1 R A *CASS debt management firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

- 11.5.2 R A *CASS debt management firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

11.6 Statutory trust

- 11.6.1 R A *CASS debt management firm* receives and holds *client money* as trustee on the following terms:
- (1) for the purposes and on the terms of the *debt management client money rules* and the *debt management client money distribution rules*;
 - (2) subject to (3), for the *clients* for whom that *money* is held, according to their respective interests in it;
 - (3) on *failure* of the *CASS debt management firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
 - (4) after all valid claims and costs under (2) and (3) have been met, for the *CASS debt management firm* itself.
- 11.6.2 G Section 137B(1) of the *Act* provides that *rules* may make provisions which result in *client money* being held by a *firm* on trust. *CASS 11.6.1R* creates such a rule in relation to *client money* held by a *CASS debt management firm*. The consequence of this rule is there is a fiduciary relationship between a *CASS debt management firm* and its *client*, under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *CASS debt management firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

11.7 Selecting an approved bank at which to hold client money

- 11.7.1 G A *CASS debt management firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.
- 11.7.2 R Before a *CASS large debt management firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the *firm* to hold *client money* at the *approved bank* concerned.
- 11.7.3 R A *CASS large debt management firm* must consider the risks associated with

holding all *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.

- 11.7.4 G In complying with CASS 11.7.3R a *CASS large debt management firm* should consider as appropriate, together with any other relevant matters:
- (1) the amount of *client money* held by the *firm*;
 - (2) the amount of *client money* the firm anticipates holding at the *approved bank*; and
 - (3) the credit worthiness of the *approved bank*.
- 11.7.5 G A *CASS small debt management firm* can demonstrate compliance with CASS 11.7.1G by checking that the *person* it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm's* attention to cause it to believe that such *person* is not an appropriate place at which to hold *client money*.
- 11.7.6 R A *CASS large debt management firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of an *approved bank*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the *approved bank* to hold *client money*.

11.8 Client bank account acknowledgement letters

- 11.8.1 G The main purposes of a *client bank account acknowledgement letter* are:
- (1) to put the *approved bank* on notice of a *firm's clients'* interests in *client money* that has been deposited with such *person*;
 - (2) to ensure that the *client bank account* has been opened in accordance with CASS 11.9.3R, and is distinguished from any account containing money that belongs to the *firm*; and
 - (3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to such *person* (or *person* connected to such *person*).
- 11.8.2 R (1) For each *client bank account*, a *CASS debt management firm* must, in accordance with CASS 11.8.4R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the *approved bank* with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.

- (2) Subject to CASS 11.8.6R, a *CASS debt management firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the *approved bank* that has not been inappropriately redrafted and clearly identifies the *client bank account*.
- 11.8.3 R In drafting *client bank account acknowledgement letters* under CASS 11.8.2R a *CASS debt management firm* is required to use the relevant template in CASS 11 Annex 1R.
- 11.8.4 R When completing a *client bank account acknowledgement letter* under CASS 11.8.2R(1) a *CASS debt management firm*:
- (1) must not amend any of the *acknowledgement letter fixed text*;
- (2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and
- (3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.
- 11.8.5 G CASS 11 Annex 2G contains *guidance* on using the template *client bank account acknowledgement letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.
- 11.8.6 R (1) If, on countersigning and returning the *client bank account acknowledgement letter* to a *firm*, the relevant *approved bank* has also:
- (a) made amendments to any of the *acknowledgement letter fixed text*; or
- (b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;
- the *client bank account acknowledgement letter* will have been inappropriately redrafted for the purposes of CASS 11.8.2R(2).
- (2) Amendments made to the *acknowledgement letter variable text*, in the *client bank account acknowledgement letter* returned to a *firm* by the relevant *approved bank*, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the *acknowledgement letter fixed text*, have been specifically agreed with the *firm* and do not cause the *client bank account acknowledgement letter* to be inaccurate.
- 11.8.7 R A *CASS debt management firm* must use reasonable endeavours to ensure that any individual that has countersigned a *client bank account*

acknowledgement letter that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

- 11.8.8 R A *CASS debt management firm* must retain each countersigned *client bank account acknowledgement letter* it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last *client bank account* to which the acknowledgment letter relates is closed.
- 11.8.9 R A *CASS debt management firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an *acknowledgment letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*).
- 11.8.10 R A *CASS debt management firm* must, periodically (at least annually, and whenever it becomes aware that something referred to in a *client bank account acknowledgement letter* has changed) review each of its countersigned *client bank account acknowledgement letters* to ensure that they remain accurate.
- 11.8.11 R Whenever a *CASS debt management firm* finds a countersigned *client bank account acknowledgement letter* to contain an inaccuracy, the *firm* must promptly draw up a new replacement *client bank account acknowledgement letter* under CASS 11.8.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank*.
- 11.8.12 G Under CASS 11.8.10R, a *CASS debt management firm* should obtain a replacement *client bank account acknowledgement letter* whenever:
- (1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or
 - (2) it becomes aware of an error or misspelling in the letter.
- 11.8.13 R If a *CASS debt management firm's client bank account* is transferred to another *approved bank*, the *firm* must promptly draw up a new *client bank account acknowledgement letter* under CASS 11.8.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank* within 20 *business days* of the *firm* sending it to that *person*.

11.9 Segregation and the operation of client money accounts

Requirement to segregate

- 11.9.1 R A *CASS debt management firm* must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an

approved bank, rather than being first received into the *firm's* own account and then segregated.

- 11.9.2 G A *CASS debt management firm* should arrange for *clients* and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.
- 11.9.3 R A *CASS debt management firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.
- 11.9.4 R Cheques received by a *CASS debt management firm*, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.
- 11.9.5 R Where a *CASS debt management firm* receives *client money* in the form of cash, a cheque or other payable order, it must:
- (1) pay the *money* into a *client bank account* in accordance with *CASS 11.9.1R* promptly and no later than on the *business day* after it receives the *money*;
 - (2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle 10*; and
 - (3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of *CASS 11.11* (Records, accounts and reconciliations).

Mixed remittance

- 11.9.6 R If a *CASS debt management firm* receives a *mixed remittance* it must:
- (1) pay the full sum into a *client bank account* promptly and in accordance with *CASS 11.9.1R* to *CASS 11.9.5R*; and
 - (2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the *money* that is not *client money* out of the *client bank account*.

Allocation of client money receipts

- 11.9.7 R (1) A *CASS debt management firm* must allocate in its books and records any *client money* it receives to an individual *client* promptly and, in any case, no later than five *business days* following the receipt.
- (2) Pending a *CASS debt management firm's* allocation of a *client money* receipt to an individual *client* under (1), it must record the received *client money* in its books and records as "unallocated *client money*".
- 11.9.8 R If a *CASS debt management firm* receives *money* (either in a *client bank*

account or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:

- (1) take all necessary steps to identify the *money* as either *client money* or its own *money*;
- (2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as “unidentified client money” while it performs the necessary steps under (1).

- 11.9.9 G If a *CASS debt management firm* is unable to identify money that it has received as either *client money* or its own *money* under CASS 11.9.8R(1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A *firm* should have regard to its fiduciary duties when considering such matters.

Money received by appointed representatives, tied agents, field representatives and other agents

- 11.9.10 R A *CASS debt management firm* must ensure that *client money* received by its *appointed representatives, field representatives* or other agents is:
- (1) received directly into a *client bank account* of the *firm*; or
 - (2) if it is received in the form of a cheque or other payable order:
 - (a) paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt; or
 - (b) forwarded to the *firm* or, in the case of a *field representative*, forwarded to a specified business address of the *CASS debt management firm*, to ensure that the *money* arrives at the specified business address promptly and, in any event, no later than the close of the third *business day* following the receipt of the *money* from the client; or
 - (3) if it is received in the form of cash, paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt.

Interest

- 11.9.11 R A *CASS debt management firm* must pay a *client* any interest earned on *client money* held for that *client*.

Returning money to clients

- 11.9.12 R A *CASS debt management firm* must, on receipt of a written request to withdraw from a *debt management plan*, promptly return to the *client* any *client money* held by it for the *client*.
- 11.9.13 G The *FCA* would expect compliance with the requirement in *CASS 11.9.12R* to return *client money* promptly to require *client money* to be returned to a *client* within five *business days* of the date on which a *client's* withdrawal from a *debt management plan* takes effect.

11.10 Payments to creditors

- 11.10.1 R Where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, the *firm* must pay that *money* to creditors as soon as reasonably practicable, save in the circumstances in *CASS 11.10.3R*.
- 11.10.2 G In the *FCA's* view, the payment to creditors under *CASS 11.10.1R* should normally be within five *business days* of the receipt of cleared funds.
- 11.10.3 R The circumstances referred to in *CASS 11.10.1R* are:
- (1) the contract between the *client* and the *CASS debt management firm* expressly provides that *client money* might be held for more than five *business days* without being distributed to creditors;
 - (2) the existence of such a term expressly providing that *client money* might be held for more than five *business days* without being distributed to creditors has been separately brought to the attention of the *client* prior to his entering into the contract; and
 - (3) the *CASS debt management firm* has explained to the *client* the risks and implications, if any, of payment to creditors being delayed prior to the entry into the contract.
- 11.10.4 R On each occasion that a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and it is proposed not to make a *client's* payment to creditors within five *business days* of receipt of the *client money* in the circumstances described in *CASS 11.10.3R(1)*, it must:
- (1) as soon as reasonably practicable and within the five *business day* period, inform the *client's* creditors of the fact that it has received *client money* from the *client* for the purpose of distribution to his or her creditors and that it will not distribute that *client money* to the creditors within the five *business-day* period; and
 - (2) perform daily reconciliations of the money held for the *client* concerned in accordance with the provisions of *CASS 11.11*.

- 11.10.5 R On each occasion a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and is unable for any reason other than in the circumstances described in CASS 11.10.3R(1) to make a payment to the *client's* creditors within five *business days* of receipt, it must:
- (1) inform the *client* of the delay and the reason for the delay;
 - (2) inform the *client* of the risks and implications of the late payments;
 - (3) inform the *client's* creditors of this delay as soon as reasonably practicable and within the period of five *business days* of the receipt of the relevant *client money*; and
 - (4) perform daily checks of its records of the money held for the *client* concerned in accordance with the provisions of CASS 11.11.
- 11.10.6 R (1) Subject to (2), where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, and it fails to pay that *money* to creditors as soon as reasonably practicable following its receipt (see CASS 11.10.1R and CASS 11.10.2G), it must put the *client* into the financial position he would have been in had the delay not occurred.
- (2) Paragraph (1) does not apply in the circumstances described in CASS 11.10.3R or where the delay is due to circumstances beyond the *firm's* control.
- 11.10.7 G Putting a *client* into the position he would have been in had the delay not occurred under CASS 11.10.6R should include paying to the *client* a sum equivalent to the amount of any additional interest which would not have accrued but for the delay and any default charges that have been applied to the account as a result of the delay.

11.11 Records, accounts and reconciliations

Records and accounts

- 11.11.1 R A *CASS debt management firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.
- 11.11.2 G In accordance with CASS 11.11.1R, a *CASS debt management firm* must maintain internal records and accounts of the *client money* it holds (for example, a cash book). These internal records are separate to any external records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

- 11.11.3 R A *CASS debt management firm* must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *clients*.
- 11.11.4 R A *CASS debt management firm* must maintain up-to-date records that detail all payments to, from, or made on behalf of, *clients* and written and oral contact with *clients* and their creditors.

Policies and procedures

- 11.11.5 G *CASS debt management firms* are reminded that they must, under SYSC 6.1.1R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* in this chapter.

Checks and reconciliations of internal records

- 11.11.6 G So that a *CASS debt management firm* may check that it has sufficient *money* segregated in its *client bank accounts* to meet its obligations to *clients* for whom it is undertaking *debt management activity*, it is required periodically to carry out reconciliations of its internal records and accounts to check that the total amount of *client money* that it should have segregated in *client bank accounts* is equal to the total amount of *client money* it actually has segregated in *client bank accounts*. CASS 11.11.7R to CASS 11.11.23R provide *rules* that the different types of *CASS debt management firm* are obliged to follow to meet this obligation.

Checks of internal records: CASS small debt management firm

- 11.11.7 G For a *CASS small debt management firm* to demonstrate it has maintained its records and accounts in a way envisaged by CASS 11.11.3R, it should carry out checks of its internal records and accounts that are reasonable and proportionate to its business. CASS 11.11.8R provides a rule that a *CASS small debt management firm* is obliged to follow to meet this obligation.
- 11.11.8 R A *CASS small debt management firm* must undertake periodic checks of its internal accounts and records to ensure that the amount of money it holds in its *client bank accounts* is equal to the amount of *client money* that should be segregated under CASS 11.9.
- 11.11.9 R In carrying out the checks required by CASS 11.11.8R a *CASS small debt management firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).
- 11.11.10 G The checks that a *CASS small debt management firm* is required to undertake under CASS 11.11.8R include checking that its internal records and accounts accurately record the balances of *client money* held in respect of individual *clients*, and that the aggregate of those individual *client money* balances are equal to the total *client money* segregated in its *client bank*

accounts. In undertaking the comparison between the internal records of balances of *client money* and the *client money* segregated in *client bank accounts*, a *firm* should use the previous day's closing *client money* balances and should compare those with other records relating to the same day. In determining an appropriate frequency for its record checks, a *firm* should consider the volume and frequency of transactions in its *client bank accounts*.

- 11.11.11 G In seeking to comply with its obligation to carry out checks on its internal records and accounts, a *CASS small debt management firm* may choose to follow the steps specifically required of *CASS large debt management firms* in undertaking a *CASS large debt management firm internal client money reconciliation* and *CASS large debt management firm external client money reconciliation*. A *CASS small debt management firm* which follows that procedure is likely to be regarded by the *FCA* as having fulfilled its obligation under *CASS 11.11.8R*.

CASS small debt management firms: remedying discrepancies

- 11.11.12 R Where the check of its internal records and accounts that a *CASS small debt management firm* is required to undertake under *CASS 11.11.8R* reveals a difference between the amount of *money* it holds in its *client bank accounts* and the amount of *client money* that should be held and segregated under *CASS 11.9*, a *CASS small debt management firm* must:
- (1) ensure that any shortfall in the amount held in its *client bank accounts* as compared to the amount that should be held there is made up by a prompt payment into the *firm's client bank accounts*;
 - (2) ensure that any excess in the amount held in its *client bank accounts* as compared to the amount that should be held there is promptly withdrawn from its *client bank accounts*; and
 - (3) ensure that any correction of a shortfall or excess of the kind referred to in (1) and (2) is carried out, at the latest, before the end of the *business day* following the day on which difference was discovered.

CASS large debt management firms internal client money reconciliation

- 11.11.13 R A *CASS large debt management firm* must, as regularly as is necessary, but no less often than every five *business days*, carry out a *CASS large debt management firm internal client money reconciliation*.
- 11.11.14 R A *CASS large debt management firm internal client money reconciliation* requires a *CASS large debt management firm* to check whether its *client money* resource, as determined by *CASS 11.11.16R*, on the previous *business day*, was at least equal to the *client money* requirement, as determined by *CASS 11.11.17R* as at the close of business on that day.
- 11.11.15 R In carrying out a *CASS large debt management firm internal client money*

reconciliation, a CASS large debt management firm must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

Calculating the client money resource

- 11.11.16 R The *client money* resource for *client money* held in accordance with CASS 11.11.14R is the aggregate of the balances on the *firm's client bank accounts*, as at the close of business on the previous *business day*.

Calculating the client money requirement

- 11.11.17 R (1) The *client money* requirement is the sum of:
- (a) the aggregate of all individual *client* balances calculated in accordance with CASS 11.11.21R and CASS 11.11.22R;
 - (b) the amount of any unallocated *client money* under CASS 11.9.7R;
 - (c) the amount of any unidentified *client money* under CASS 11.9.8R; and
 - (d) any other amounts of *client money* included in the calculation under (2).
- (2) For the purposes of (1)(d), the CASS debt management firm must consider whether there are amounts of *client money*, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its *client money* requirement and, if so, adjust the calculation accordingly.
- 11.11.18 G The *client money* requirement calculated in accordance with CASS 11.11.17R should represent the total amount of *client money* a CASS debt management firm is required to have segregated in *client bank accounts* under the *debt management client money chapter*.
- 11.11.19 G *Firms* are reminded that, under CASS 11.4.3R, if a *firm* has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its *clients* (for example, to return *client money* to the *client* or distribute it to the *client's* creditors), the sum concerned must be included in the *firm's* calculation of its *client money* requirement until the cheque or order is presented and paid.
- 11.11.20 G The following *guidance* applies where a CASS debt management firm receives *client money* in the form of cash, a cheque or other payable order:
- (1) In carrying out the calculation of the *client money* requirement, a CASS debt management firm may initially include the amount of *client money* received as cash, cheques or payment orders that has

not yet been deposited in a *client bank account* in line with CASS 11.9.5R. If it does so, the *firm* should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the *firm's client money* requirement and *client money* resource.

- (2) In carrying out the calculation of the *client money* requirement, a *CASS debt management firm* may alternatively exclude the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with CASS 11.9.5R. If it does so, the *firm* is reminded that it must separately record the receipt of the *money* in the *firm's* books and records under CASS 11.9.5R(3).
- (3) A *CASS debt management firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* into a *client bank account* promptly and no later than on the *business day* after it receives the *money* (see CASS 11.9.5R).

11.11.21 R The individual *client* balance for each *client* must be calculated as follows:

- (1) the amount paid by the *client* to the *CASS debt management firm*;
plus

- (2) the amount of any interest, and any other sums, due to the *client*;

less:

- (3) the aggregate of the amount of money:

- (a) paid back to that *client*; and

- (b) due and payable by the *client* to the *CASS debt management firm*; and

- (c) paid out to a third party for, or on behalf of, that *client*.

11.11.22 R Where the individual *client* balance calculated in respect of an individual *client* under CASS 11.11.21R is a negative figure (because the amounts paid by or due to a *client* under CASS 11.11.21R(1) and (2) are less than the amounts paid out or due and payable by that *client* under CASS 11.11.21R(3)), that individual *client* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in CASS 11.11.17R.

Large debt management firms: reconciliation differences and discrepancies

11.11.23 R When a *CASS large debt management firm internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a *CASS large debt management firm* must:

- (1) identify the reason for the difference;
- (2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which difference was discovered; and
- (3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

CASS large debt management firm external client money reconciliation

- 11.11.24 G The purpose of the reconciliation process required by CASS 11.11.25R is to ensure the accuracy of a *firm's* internal accounts and records against those of any third parties by whom *client money* is held.
- 11.11.25 R A *CASS large debt management firm* should perform a *CASS large debt management firm external client money reconciliation*:
- (1) as regularly as is necessary; and
 - (2) no less frequently than the *CASS large debt management firm internal client money reconciliations*; and
 - (3) as soon as reasonably practicable after the date to which the reconciliation relates;
- to ensure the accuracy of its internal accounts and records against those of *approved banks* with whom *client money* is deposited.
- 11.11.26 R A *CASS large debt management firm external client money reconciliation* requires a *CASS large debt management firm* to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.
- 11.11.27 G The *FCA* expects a *CASS large debt management firm* which carries out transactions for its clients on a daily basis to carry out a *CASS large debt management firm external client money reconciliation* on a daily basis.
- 11.11.28 R When any discrepancy is revealed by a *CASS large debt management firm external client money reconciliation*, a *CASS large debt management firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.
- 11.11.29 R While a *CASS large debt management firm* is unable to resolve a

discrepancy arising from the *CASS large debt management firm external client money reconciliation*, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant account.

Notification requirements

- 11.11.30 R A *CASS debt management firm* must inform the *FCA* in writing without delay if:
- (1) its internal records and accounts of *client money* are materially out of date or materially inaccurate so that the *firm* is no longer able to comply with the requirements in *CASS 11.11.1R* to *CASS 11.11.4R*;
or
 - (2) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in *CASS 11.9*.
- 11.11.31 R A *CASS large debt management firm* must inform the *FCA* in writing without delay if:
- (1) after having carried out a *CASS large debt management firm internal client money reconciliation* in accordance with *CASS 11.11.13R* it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a *client bank account* so that the *firm* is unable to comply with *CASS 11.11.23R*;
 - (2) after having carried out a *CASS large debt management firm external client money reconciliation* in accordance with *CASS 11.11.25R* it will be unable to, or materially fails to, identify and correct any discrepancies in accordance with *CASS 11.11.28R*;
 - (3) it will be unable to or materially fails to conduct a *CASS large debt management firm internal client money reconciliation* in compliance with *CASS 11.11.13R*; or
 - (4) it will be unable to or materially fails to conduct a *CASS large debt management firm external client money reconciliation* in compliance with *CASS 11.11.25R*.
- 11.11.32 G *CASS debt management firms* are also reminded of their obligation to notify the *appropriate regulator* of a significant breach of a *rule* under *SUP 15.3.11R*.

11.12 CASS 11 resolution pack

- 11.12.1 G The purpose of the *CASS 11 resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in dealing with *client money* in a timely manner.
- 11.12.2 R A *CASS debt management firm* which holds *client money* must maintain at all times and be able to retrieve, in the manner described in this section, a *CASS 11 resolution pack*.
- 11.12.3 R A *CASS debt management firm* must include within its *CASS 11 resolution pack* all those documents referred to in CASS 11.12.4R.
- 11.12.4 R The documents in CASS 11.12.3R that a *CASS debt management firm* must include within its *CASS 11 resolution pack* are:
- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS 11 resolution pack*;
 - (2) a document which identifies all the *approved banks* with whom *client money* may be deposited;
 - (3) a document which identifies each *appointed representative, field representative* or other agent of the *firm* which may receive *client money* in its capacity as the *firm's* agent;
 - (4) a document which identifies each *senior manager* and *director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* under the *debt management client money rules*;
 - (5) for all *approved banks* identified in (2) the written *client bank account acknowledgement letters* sent and received in accordance with CASS 11.8.2R; and
 - (6) records relating to the internal and external client money checks it is required to carry out under CASS 11.11.
- 11.12.5 R In relation to each document in a *CASS debt management firm's CASS 11 resolution pack* a *firm* must:
- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and, in any event, within 48 hours of that officer's appointment; and
 - (2) ensure that it is able to retrieve each document as soon as practicable and, in any event, within 48 hours where it has taken a decision to do

so or as a result of an *FCA* request.

- 11.12.6 R (1) A *CASS debt management firm* must ensure that it reviews the content of its *CASS 11 resolution pack* on an ongoing basis to ensure that it remains accurate.
- (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in *CASS 11.12.4R*, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.
- 11.12.7 R A *CASS debt management firm* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, *CASS 11.12.2R* and *CASS 11.12.6R*.

11.13 Client money distribution in the event of a failure of a firm or approved bank

Application

- 11.13.1 R This section (the *debt management client money distribution rules*) applies to a *CASS debt management firm* that holds *client money* which is subject to the *debt management client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

Purpose

- 11.13.2 G The *debt management client money distribution rules* seek, in the event of the *failure* of a *CASS debt management firm* or of an *approved bank* at which the *CASS debt management firm* holds *client money*, to protect *client money* and to facilitate the timely payment of sums to creditors or the timely return of *client money* to clients.

Failure of a *CASS debt management firm*: primary pooling event

- 11.13.3 R A *primary pooling event* occurs:
- (1) on the *failure* of a *CASS debt management firm*;
- (2) on the vesting of assets in a *trustee* in accordance with an 'assets requirement' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act* where such a *requirement* is imposed in respect of all *client money* held by the *firm*.

Pooling and distribution after a primary pooling event

- 11.13.4 R If a *primary pooling event* occurs:
- (1) all *client money*:

- (a) held in the *CASS debt management firm's client bank accounts*; and
- (b) received by the *CASS debt management firm* on behalf of a *client* but not yet paid into the *firm's client bank accounts*;

is treated as pooled together to form a notional pool;

- (2) a *CASS debt management firm* must calculate the amount it should be holding on behalf of each individual client as at the time of the *primary pooling event* using the method of calculating individual client balance provided for by *CASS 11.11.21R*;
- (3) a *CASS debt management firm* must decide whether it is in the best interests of its *clients* to transfer all its *debt management activity* business to another *CASS debt management firm*.

Distribution if client money not transferred to another firm

- 11.13.5 R Where a *primary pooling* event occurs and the *client money* is not transferred to another *firm* in accordance with *CASS 11.13.4R*, a *CASS debt management firm* must distribute client money comprising the notional pool so that each client receives a sum that is rateable to their entitlement to the notional pool calculated in *CASS 11.13.4R(2)*.

Transfer of client money to another firm

- 11.13.6 G If in the event of a *primary pooling* event occurring the *debt management activity* business undertaken by a *CASS debt management firm* (“the transferor”) is to be transferred to another *CASS debt management firm* (“the transferee”), then the transferor may also move the *client money* associated with that business to the transferee.
- 11.13.7 R The remaining *client money* may be transferred under *CASS 11.13.6G* only if it will be held by the transferee in accordance with the *debt management client money chapter*, including the statutory trust in *CASS 11.6.1R*.
- 11.13.8 R If there is a *shortfall* in the *client money* transferred under *CASS 11.13.6G* then the *client money* must be allocated to each of the *clients* for whom the *client money* was held so that each client is allocated a sum which is rateable to that client’s *client money* entitlement in accordance with *CASS 11.13.4R(2)*. This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.
- 11.13.9 R The transferee must, within seven *days* after the transfer of *client money* under *CASS 11.13.6G* notify *clients* that:
- (1) their *money* has been transferred to the transferee; and
 - (2) they have the option of having *client money* returned to them or to their order by the transferee, otherwise the transferee will hold the

client money for the *clients* and conduct *debt management activities* for those *clients*.

Failure of an approved bank: secondary pooling event

- 11.13.10 R A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *CASS debt management firm* holds *client money* in a *client bank account*.
- 11.13.11 R (1) Subject to (2), if a *secondary pooling event* occurs as a result of the *failure* of an *approved bank* where one or more *client bank accounts* are held then in relation to every *client bank account* of the *firm*, the provisions of CASS 11.13.12R (1), (2), and (3) will apply.
- (2) CASS 11.13.12R does not apply if, on the *failure* of the *approved bank*, the *CASS debt management firm* pays to its *clients*, or pays into a *client bank account* at an unaffected *approved bank*, an amount equal to the amount of *client money* that would have been held if a shortfall had not occurred as a result of the *failure*.
- 11.13.12 R *Money* held in each *client bank account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *client bank accounts*, that has arisen as a result of the *failure* of the *approved bank*, must be borne by all *clients* whose *client money* is held in a *client bank account* of the *firm*, rateably in accordance with their entitlements to the pool;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *CASS debt management firm* must make and retain a record of each *client's* share of the *client money* shortfall at the *failed approved bank* until the *client* is repaid; and
- (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in CASS 11.11.17R.
- 11.13.13 R The term 'which should have been held' is a reference to the *failed approved bank's* failure to hold the *client money* at the time of the pooling event.
- 11.13.14 R Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with CASS 11.9.11R (Interest).

**11 Annex 1R CASS debt management firm client bank account acknowledgement
letter template**

[Content of Annex 1R to be inserted at a later date]

11 Annex 2G

Guidance notes for client bank account acknowledgement letters (CASS 11.8.5G)

[Content of Annex 2G to be inserted at a later date]

Amend the Transitional Provisions and Schedules as shown.

Transitional Provisions

TP 1.1

(1)	Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
13	<u>CASS 11</u>	<u>R</u>	(1)	<u>CASS 11 does not apply to a CASS debt management firm which is a not-for-profit debt advice body treated as having Part 4A permission on and after 1 April 2014 by virtue of article 60 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 until 1 October 2014, if the firm acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</u>	Indefinitely	<u>1 April 2014</u>
(2)	<u>CASS 11 applies in relation to money held by a CASS debt management firm within (1) on 1 October 2014 to the extent that such money was received, or is held on behalf of an individual, in the course of</u>					

				or in connection with <i>debt management activity</i> carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be a <i>debt management activity</i>).		
14	CASS 11	R	(1)	This rule applies to a CASS <i>debt management firm</i> where the FCA or PRA has granted an application made by the firm for Part 4A permission and an interim permission the firm was treated as having ceased to have effect.	Indefinitely	1 April 2014
			(2)	CASS 11 applies in relation to money held by the CASS <i>debt management firm</i> on the date on which the written notice given by the FCA or PRA under section 55V(5) of the Act takes effect, to the extent that such money was received, or is held on behalf of an individual, in the course of or in connection with <i>debt management activity</i> carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be a <i>debt management activity</i>).		

Sch 1.3

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
--------------------	-------------------	--------------------	--------------------------	------------------

...				
<u>CASS 11.3.6R</u>	<u>Allocation of CASS oversight function in CASS 11.3.1R or CASS 11.3.2R, or CASS operational oversight function in CASS 11.3.4R</u>	<u>The person to whom (as applicable) the CASS oversight responsibilities have been allocated, or to whom the CASS operational oversight function has been allocated</u>	<u>Upon allocation</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 11.7.6R</u>	<u>Appropriateness of a CASS large debt management firm's selection of an approved bank</u>	<u>Grounds upon which a CASS large debt management firm satisfies itself as to the appropriateness of the firm's selection of an approved bank at which to hold client money</u>	<u>Date of the selection</u>	<u>5 years (from the date the firm ceases to use the approved bank to hold client money)</u>
<u>CASS 11.8.8R</u>	<u>Client bank account acknowledgement letters sent in accordance with CASS 11.8.2R</u>	<u>Each countersigned client bank account acknowledgement letters received</u>	<u>On receipt of each letter</u>	<u>5 years (following closure of the last client bank account to which the letter relates)</u>
<u>CASS 11.8.9R</u>	<u>Demonstration that a CASS debt management firm has complied with CASS 11.8.2R to CASS 11.8.7R</u>	<u>Evidence of such compliance</u>	<u>On compliance with the relevant provision</u>	<u>None specified</u>
<u>CASS 11.9.5R</u>	<u>Money received from clients in the form of cash, cheques or other payable orders</u>	<u>Details of money received</u>	<u>On receipt</u>	<u>None specified</u>
<u>CASS 11.9.8R(2)</u>	<u>Unidentified client money under CASS 11.9.8R(2)</u>	<u>Details of unidentified client money held</u>	<u>Being unable to identify money as client money or its own money, and deciding it is reasonably prudent to so record</u>	<u>Until it performs the necessary steps to identify the money under CASS 11.9.8R(1)</u>
<u>CASS 11.11.1R</u>	<u>Client money held for each client and the CASS debt</u>	<u>All that is necessary to enable the CASS debt management firm to</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>

	<u>management firm's own money</u>	<u>distinguish client money held for one client from client money held for any other client, and from the firm's own money</u>		
<u>CASS 11.11.3R</u>	<u>Client money held for each client</u>	<u>Accurate records to ensure the correspondence between the records and accounts of the entitlement of each client for whom the CASS debt management firm holds client money with the records and accounts of the client money the firm holds in client bank accounts</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 11.11.4R</u>	<u>Payments made to, for or on behalf of clients by a CASS debt management firm and written and oral contact with clients and creditors</u>	<u>Details of payments made and of the written or oral contact</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 11.12.4R</u>	<u>A CASS debt management firm's CASS 11 resolution pack</u>	<u>The documents to which CASS 11.12.3R and CASS 11.12.4 R refer.</u>	<u>From the date on which a CASS debt management firm becomes subject to CASS 11.12.3R</u>	<u>None is specified</u>
<u>CASS 11.13.12R (3)</u>	<u>A CASS large debt management firm's record of each client's shortfall in the event of a secondary pooling event</u>	<u>Details of the shortfall</u>	<u>On the secondary pooling event occurring</u>	<u>None specified</u>

Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
--------------------	-----------------------	--------------------------	---------------	--------------

...				
<u>CASS 11.2.4R(1) to (3)</u>	<u>The highest total amount of <i>client money</i> held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4R</u>	<u>The highest total amount of <i>client money</i> held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4R</u>	<u>The need to comply with CASS 11.2.4R(1) to (3)</u>	<u>By the fifteenth day of January unless contrary provision is made in CASS 11.2.4R(1) to (4)</u>
<u>CASS 11.2.4R(4)</u>	<u>A <i>firm's CASS debt management firm</i> type classification</u>	<u>A <i>firm's CASS debt management firm</i> type classification</u>	<u>The need to comply with CASS 11.2.4R(4)</u>	<u>At the same time as the notification in CASS 11.2.4R(1) to (4)</u>
<u>CASS 11.11.30R (1)</u>	<u>Non-compliance with requirements in CASS 11.11.1R to CASS 11.11.4R</u>	<u>Non-compliance with requirements in CASS 11.11.1R to CASS 11.11.4R</u>	<u>The non-compliance</u>	<u>Without delay</u>
<u>CASS 11.11.30R (2)</u>	<u>Amount of <i>money</i> segregated in <i>client bank accounts</i> is materially different from total aggregate of <i>client money</i> required to be segregated</u>	<u>The fact that there is a material difference</u>	<u>Awareness of the difference</u>	<u>Without delay</u>
<u>CASS 11.11.32R</u>	<u>A CASS <i>large debt management firm's</i> inability or failure to comply with CASS 11.11.23R, CASS 11.11.28R, CASS 11.11.13R or CASS 11.11.25R</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>
<u>CASS 11.12.7R</u>	<u>A CASS <i>large debt management firm's</i> inability or failure to comply with CASS 11.12.2R or CASS 11.12.6R</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>

Annex I

Amendments to the Supervision manual (SUP)

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

3.1 Application

...

3.1.2 R Applicable sections

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
<u>(5B)</u> <u>[FCA]</u>	<u>CASS debt management firm</u>	<u>SUP 3.1</u> <u>SUP 3.10</u> <u>SUP 3.11</u>	<u>SUP 3.1</u> <u>SUP 3.10</u>
...			

...

3.10 Duties of auditors: notification and report on client assets

Application

...

3.10.2 R An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the *client money rules* in the *client money chapter* or the debt management client money rules if:

- (1) ...
- (2) that *firm* is subject to the rules of its *designated professional body* as specified in CASS 7.1.15R(2) or CASS 11.1.6R(2) with respect to its *regulated activities*.

...

3.10.5 Client assets report

Whether in the auditor's opinion	
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> and the <i>mandate rules</i> throughout the period;
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> and the <i>mandate rules</i> , at the date at which the report has been made;
...	
(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the <i>rules</i> in CASS 5.6 and CASS 7A (client money distribution) and CASS 11.13 (<i>debt management client money distribution rules</i>) in relation to that pooling event.

3 Annex 1R

Auditor's client assets report Part 1 – Auditor's Opinion

...

Opinion

In our opinion:

[The firm has maintained] [Except for...the firm has maintained] [Because of...the firm did not maintain] systems adequate to enable it to comply with [the custody rules,] [the collateral rules,] [the mandate rules] ~~and~~ [the client money rules] and [the debt management client money rules] throughout the period since [the last date at which a report was made] [the firm was authorised] [the firm became subject to SUP 3.11 and we, its auditor, became subject to SUP 3.10].*

[The firm was] [Except for...the firm was] [Because of...the firm was not] in compliance with the [the custody rules,] [the collateral rules,] [the mandate rules] ~~and~~ [the client money rules] and [the debt management client money rules] as at the period end date.*

...

In relation to the secondary pooling event during the period, the firm has complied with the rules in [CASS 5.6] ~~and~~ [CASS 7A (client money distribution)] and [CASS 11.13 (the debt management client money distribution rules)] in relation to that pooling event.

...

6.3.15 D (1) A Subject to (1A), a *firm* other than a *credit union* wishing to make an application under SUP 6 must apply online using the form

specified on the ONA system.

(1A) A firm wishing to make an application under SUP 6 which covers only credit-related regulated activities must submit any form, notice or application by using the form in SUP 6 Annex 5D and submitting it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

6.4.5 D (1) A Subject to (1A), a firm other than a credit union wishing to cancel its Part 4A permission, must apply online at the appropriate regulator website using the form specified on the ONA system.

(1A) An FCA-authorized person wishing to cancel its Part 4A permission which covers only credit-related regulated activities must submit any form, notice or application by using the form in SUP 6 Annex 6D and submitting it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

Insert new links at the address referred to below to the following form and notes

Variation of Permission (VOP) Application Consumer Credit Activities

Variation of Permission (VOP) Application Consumer Credit - notes

The form and notes set out below are new and are not underlined.

Variation of permission application form

**6 Annex D This annex consists only of one or more forms. Forms are to be found
5 through the following address:**

Supervision forms http://fshandbook.info/FS/form_links.jsp

The form and notes which form this annex are set out at the end of this instrument.

Insert the following new chapter after SUP 8. The text is not underlined.

8A Directions and determinations by the FCA waiving, varying or disapplying CCA requirements

8A.1 Application, purpose and interpretation

8A.1.1 D This chapter applies to every *firm* which:

- (1) is subject to the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA* that wishes to apply for a direction from the *FCA* waiving or varying those requirements;
- (2) is subject to the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement that wishes to apply for a determination by the *FCA* that that requirement can be dispensed with; and
- (3) wishes to apply for a direction from the *FCA* that the *hirer's* rights to terminate a *regulated consumer hire agreement* under section 101 of the *CCA* do not apply to *regulated consumer hire agreements* made by that *firm*.

8A.1.2 G This chapter explains how the regime works for obtaining:

- (1) a direction from the *FCA* waiving or varying the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA*;
- (2) a determination by the *FCA* that the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement can be dispensed with; and
- (3) a direction from the *FCA* that the *hirer's* rights to terminate a *regulated consumer hire agreement* under section 101 of the *CCA* do not apply to *regulated consumer hire agreements* made by the relevant *firm*.

8A.1.3 G Unless italicised, and except where the contrary intention appears, expressions used in this chapter have the same respective meanings as in the *CCA*.

8A.2 Introduction and conditions

Directions under section 60(3) of the CCA

- 8A.2.1 G Under section 60(3) of the CCA, if, on an application made to the FCA by a *firm* carrying on a consumer credit business or a consumer hire business, it appears to the FCA impracticable for the *firm* to comply with any requirement of the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) or the Consumer Credit (Agreements) Regulations (SI 2010/1014) in a particular case, it may direct that the requirement be waived or varied in relation to the regulated agreement and subject to such conditions (if any) as it may specify.
- 8A.2.2 G Under section 60(4) of the CCA, the FCA will make the direction only if it is satisfied that to do so would not prejudice the interests of debtors or hirers.
- 8A.2.3 G An application may be made under section 60(3) of the CCA only if it relates to:
- (1) a consumer credit agreement secured on land; or
 - (2) a consumer credit agreement under which a person takes an article in *pawn*; or
 - (3) a consumer credit agreement under which the creditor provides the debtor with a credit that exceeds £60,260; or
 - (4) a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him; or
 - (5) a consumer hire agreement.

Determinations under section 64(4) of the CCA

- 8A.2.4 G The requirement under section 64(1)(b) of the CCA to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement does not apply in the case of the agreements described in SUP 8A.2.5G, if:
- (1) on application by a *firm* to the FCA, the FCA has determined, having regard to:
 - (a) the manner in which antecedent negotiations for the relevant agreements with the *firm* are conducted; and
 - (b) the information provided to debtors or hirers before those agreements are made;

the requirement can be dispensed with without prejudicing the interests of debtors or hirers; and

- (2) any conditions imposed by the *FCA* in making the determination are complied with.

- 8A.2.5 G A determination under 64(4) of the *CCA* may only be made in respect of agreements specified in the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983.

Directions under section 101(8) of the *CCA*

- 8A.2.6 G If on an application made to the *FCA* by a *firm* carrying on a consumer hire business, it appears to the *FCA* that it would be in the interests of hirers to do so, the *FCA* may direct that subject to such conditions (if any) as it may specify, section 101 of the *CCA* shall not apply to consumer hire agreements made by that *firm*.

Transitional provision

- 8A.2.7 G Under article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013, any of the following given or made by the Office of Fair Trading which were in effect immediately before 1 April 2014 have effect as if they had been given or made by the *FCA*:

- (1) a direction given under section 60(3) of the *CCA* (form and content of agreements);
- (2) a determination made under section 64(4) of the *CCA* (duty to give notice of cancellation rights) and the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983;
- (3) a direction given under section 101(8) or (8A) of the *CCA* (right to terminate hire agreement).

8A.3 Applying for a direction or determination by the *FCA* waiving, varying or disapplying *CCA* requirements

Publication

- 8A.3.1 G The *FCA* intends to include any direction or determination made by the *FCA* waiving, varying or disapplying *CCA* requirements in the public register under section 347 of the *Act*.

Form and method of application

- 8A.3.2 D A *firm* wishing to apply for a direction under section 60(3) of the *CCA*, must complete the application form in *SUP* 8A Annex 1D and submit it to the *FCA* in the way set out in *SUP* 15.7.4R, *SUP* 15.7.5AR, *SUP* 15.7.

6AG and SUP 15.7.9G.

- 8A.3.3 D A *firm* wishing to apply for a determination under section 64(4) of the CCA must apply to the FCA in the way set out in SUP 15.7.4R, SUP 15.7.5AR, SUP 15.7.6AG and SUP 15.7.9G.
- 8A.3.4 D A *firm* wishing to apply for a direction under section 101(8) of the CCA must complete the application form in SUP 8A Annex 2D and the information form in SUP 8A Annex 3D, and submit them to the FCA in the way set out in SUP 15.7.4R, SUP 15.7.5AR, SUP 15.7. 6AG and SUP 15.7.9G.

Procedure on receipt of an application

- 8A.3.5 G The FCA will acknowledge an application promptly and, if necessary, will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. However, the FCA will aim to give decisions within 20 *business days* of receiving an application which includes sufficient information. If the FCA expects to take longer, it will tell the *firm* and give an estimated decision date. A *firm* should make it clear in the application if it needs a decision within a specific time.
- 8A.3.6 G The FCA will treat a *firm's* application as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The FCA will not do this if the *firm* has made it clear to the FCA in some other way that it intends to pursue the application.
- 8A.3.7 G If the FCA decides not to give a direction or a determination, it will give reasons for the decision.
- 8A.3.8 G A *firm* may withdraw its application at any time up to the giving of the direction or determination. In doing so, a *firm* should give the FCA its reasons for withdrawing the application.

8A.4 Notification of altered circumstances relating to directions or waivers

- 8A.4.1 R A *firm* which has applied for or has been granted a direction or determination must notify the FCA immediately if it becomes aware of any matter which could affect the continuing relevance or appropriateness of the application or the direction or determination.
- 8A.4.2 G *Firms* are also referred to SUP 15.6 (Inaccurate, false or misleading information). This requires a *firm* to notify the FCA if false, misleading, incomplete or inaccurate information has been provided (see SUP 15.6.4R). This would apply in relation to information provided in an application for a direction or a determination.

8A.5 Revoking or varying directions and determinations

- 8A.5.1 G The *FCA* may revoke or vary any of the directions or determinations referred to in this chapter.

8A Annex 1D Application form for a direction under section 60(3) of the *CCA*

CONSUMER CREDIT ACT 1974

Application for a direction under section 60(3)

A direction waiving or varying a requirement of regulations made under section 60(3)

What is a direction under section 60(3)?

Regulated agreements made by a consumer credit or consumer hire business must comply with the requirements of the Consumer Credit (Agreements) Regulations 1983 or the Consumer Credit (Agreements) Regulations 2010, as applicable. Where it is impracticable to comply with those requirements, it is possible to apply to the Financial Conduct Authority (FCA) for a direction under section 60(3) of the Act to waive or vary the requirements for some types of agreement (see below). The FCA must be satisfied that it is impracticable (rather than merely difficult) to comply with the requirements. The test for granting a direction is that the FCA believes that to do so would not prejudice the interests of debtors or hirers. The nature of the waiver or variation will depend on individual circumstances. The FCA may make the direction subject to such conditions as it may specify.

Who can apply?

Any consumer hire business, and some consumer credit businesses, can apply for a direction. The business must hold a valid consumer credit licence permitting that business to enter into the types of agreements in question – we cannot process applications for directions before a licence has been granted.

Please seek independent legal advice if you are unsure about whether to apply or whether your agreements are eligible for being considered for a direction.

Which agreements are eligible for consideration for a direction?

Only certain agreements that are regulated by the Act may be considered for a direction.

An application may be made under section 60(3) only if it relates to:

- a consumer credit agreement secured on land
- a consumer credit agreement under which a person takes an article in pawn

- a consumer credit agreement under which the creditor provides the debtor with credit which exceeds £60,260
- a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him, or
- a consumer hire agreement.

Directions only apply to the agreements specified and cannot be used in connection with any other agreements. **Directions do not apply retrospectively.**

It is for you to satisfy yourself that your agreements comply with the Act and Regulations other than the parts for which you are applying to waive or vary. **If agreements are not compliant with the Regulations other than as waived or varied, any directions issued will be of no effect.**

Data protection

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the *FCA* to discharge its functions under the consumer Credit Act 1974, the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the applicant.

Can someone else fill in this form for me?

Yes, you can ask someone else to fill in this form and sign the declaration for you.

The individual who signs the form is responsible for making sure it is accurate and complete. Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000).

Contents of the form

The contents of the form are as follows:

- Part I**
- Section A: Applicant's details
 - Section B: Description of the agreement for which a direction is sought
 - Section C: Agreement to which the direction will apply
 - Section D: Reasons for the application for a direction
- Part II** Declaration

Part I: Information to support an application for a Direction

We need the information we ask for in the following sections to help us decide whether or not to issue a direction. If you do not provide the information required, the FCA may have to ask for this and your application will be delayed. Please continue your answers on a separate

sheet of paper where necessary.

Section A: Applicant's details

1. Name of the business seeking a direction

--

2. Main place of business in the UK

--

3. Firm reference number

--

4. Please tick which type of activity the agreements will relate to:

Consumer credit Consumer

5. Details of contact for the purposes of this application

Title		Surname		Name	
-------	--	---------	--	------	--

Your contact telephone number and email address

Tel:		Email:	
------	--	--------	--

6. Your position in relation with the business (eg, sole trader, director, partner, lawyer)

--

7. Authority for acting on the applicant's behalf where you are not the applicant (attach document)

--

8. Correspondence address (where different from above)

--

--

Contact telephone number and email address (where different from above)

Tel:		Email:	
------	--	--------	--

Section B: Description of the agreement for which a direction is sought

Please describe the salient financial features of the agreement and how the agreement will work in practice (for example, details like type of agreement, duration, interest charges, rates, whether fixed or variable and any restrictions on partial early repayments).

--

Section C: Agreement to which the direction will apply

Please attach the following to your application:

- A copy of the agreement, described in Section B, for which a direction is sought.
- A copy of the generic illustration (such as 'Buyer's Illustration') of the way in which the agreement operates that will be given to potential borrowers before the agreement is signed.

1. Please list here the enclosures you are submitting with your application.

--

--

Section D: Reasons for the application for a direction

1. Please specify the requirement(s) of the Regulations with which it would be impracticable for you to comply, the reasons why it would be impracticable for you to comply, whether you are applying for a waiver or variation, the nature of the variation you are seeking (where applicable), whether the information excluded from the agreement will be given to the debtor/hirer at a later date and if so, when and how, and if not, why not.

For paragraph and Schedule numbers see the Consumer Credit (Agreements) Regulations 1983 as amended and the Consumer Credit (Agreements) Regulations 2010.

Please complete for each requirement:

Paragraph and Schedule number(s)	
Reasons for impracticability	

Please indicate if you are requesting a waiver or a variation

Nature of variation (where applicable)	
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, when will this be provided?	

How will this be provided?		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/> or a variation <input type="checkbox"/>		
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, when will this be provided?		
How will this be provided?		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/> or a variation <input type="checkbox"/>		
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, when will this be provided?		

How will this be provided?		
<hr/>		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/> or a variation <input type="checkbox"/>		
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, when will this be provided?		
How will this be provided?		
<hr/>		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/> or a variation <input type="checkbox"/>		
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, when will this be provided?		

How will this be provided?	
-----------------------------------	--

2. Please give below the details of any information you will be providing to the borrower before the agreement is concluded (for example, buyer illustration, marketing material describing the features of credit being provided, etc).

--

Part II: All applicants

Warning

Knowingly or recklessly giving the *FCA* information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). *SUP* 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the *FCA* information that is false or misleading in a material particular.
- I/we will notify the *FCA* immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

Name	
Signature	
Date	
APPLICANT:	
I have authority to sign this application by virtue of (state position or authority)	
Signature:	

What to do next:

- Check that you have filled in the form correctly and answered all relevant questions and attached all the documents.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

What happens next?

- We will confirm receipt of your application.
- We may write to you to ask for more information.
- We will confirm our decision in writing.

Any queries?

If you have any queries regarding the progress of your application please send an email to: centralwaiversteam@fca.org.uk

**8A Annex 2D Application form for a direction under section 101(8) of the CCA
*Consumer Credit Act 1974***

*Application for a
Direction under section 101(8)*

(A direction that the hirer's rights to terminate a hire agreement do not apply to a trader's consumer hire agreement)

This is the application form for a direction under section 101(8) of the Consumer Credit Act 1974.

WARNING

Knowingly or recklessly giving the *FCA* information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). *SUP 15.6.4R* requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

Consumer Credit Act 1974

Application for a direction under section 101(8)

I hereby apply for a direction that the hirer's rights to terminate a hire agreement do not apply to those agreements listed in this application.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the *FCA* information that is false or misleading in a material particular.
- I/we will notify the *FCA* immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

<p>Signature:</p>	<p>4. Describe the agreement or class of agreements for which a direction is sought and attach a copy of each agreement. (Any direction given will apply only to the agreements described.) If necessary, give answers on a separate sheet quoting this question number.</p>
<p>Date:</p>	
<p>Name in BLOCK LETTERS of person signing:</p>	
<p>Address:</p>	
<p>I have authority to sign this application by virtue of (state position or authority):</p>	

<p>1. Give full name of person (the applicant) for whom a direction is required, ie, the name of the individual, partnership, company etc.</p>	
<p>2. Give full address of the principle place of business in the United Kingdom of the applicant</p>	
<p>3. Give firm reference number</p>	

8A Annex 3D Information form in support of an application for a direction under section 101(8) of the CCA

<p>Consumer Credit Act 1974</p> <p>Information in support of an application for a direction under section 101(8)</p>
<p>This is the form required to provide information in support of an application for a direction under section 101(8). The Financial Conduct Authority (FCA) needs this information to reach a decision. Further information may be required in some cases.</p> <p>WARNING</p> <p>Knowingly or recklessly giving the <i>FCA</i> information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). <i>SUP</i> 15.6.4R requires an authorised person to take reasonable steps to ensure the</p>

accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

1. For each agreement listed on the application form, give full details of:

a the goods, or type of goods, you hire out:

b the period for which they are normally hired out

2. For **each** agreement or class of hire agreement, please set out the reasons why you consider that you should be given a direction. If necessary, answer on a separate sheet quoting this question number.

<p>c the period of notice normally required for cancellation and the cancellation fees required (if any):</p>	
<p>d the cash price of the goods hired out (or typical cash prices of the type of goods hired out):</p>	
<p>e hire charges (or typical charges over the normal): hire period</p>	
<p>f the potential second-hand or recoverable value of the goods or type of goods at 18 months intervals up to the end of the normal period of hire:</p>	
<p>3 For each agreement or class of hire agreements, please set out the reasons why you consider that it would be in the interest of hirers that you should be given a direction. If necessary answer on a separate sheet, quoting this</p>	<p>4 If your reasons are based on financial considerations, please give the following information:</p> <p>a an analysis of costs involved in previous similar transactions.</p>

question number	<p>b an analysis of costs you would expect to incur in future transactions if you were not given a direction. Answer on a separate sheet, quoting this question number.</p> <p>Both these analyses should be confirmed as reasonable by an independent qualified accountant or auditor using the form below.</p> <p>Declaration</p> <p>By submitting this application form:</p>
	<ul style="list-style-type: none"> • I/we confirm that this information is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
	<ul style="list-style-type: none"> • I am/we are aware that it is a criminal offence knowingly or recklessly to give the <i>FCA</i> information that is false or misleading in a material particular.
	<ul style="list-style-type: none"> • I/we will notify the <i>FCA</i> immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.
	Signature
	Name in BLOCK LETTERS of individual signing
	Position or authority

	Telephone number
	Date
<p>Report of independent accountant or auditor</p>	
Regarding application by:	<ul style="list-style-type: none"> I/We* have the following additional comments
<ul style="list-style-type: none"> I/We* have examined the record on which the analyses of previous and expected future costs are based. I/We* have received satisfactory answers to my/our questions. I/We* have carried out such tests as considered necessary. <p>I/We* consider the analyses to be reasonable.</p> <p>(*delete if not applicable)</p>	
	<p>WARNING</p> <p>Knowingly or recklessly giving the <i>FCA</i> information, which is false or misleading in a material particular, may be a criminal offence (sections 398 of the Financial Services and Markets Act 2000).</p>
	Signature

	Address
	Telephone no.
	Date

Amend the following as shown

10A FCA Approved Persons

10A.1 Application

...

Appointed representatives

...

10A.1.16 R (1) ...

(2) The conditions are that:

(a) the scope of appointment of the *appointed representative* includes *insurance mediation activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity*, but no other *regulated activity*; and

(b) ...

10A.1.16A R This chapter applies to an *appointed representative* that has a *limited permission* to carry on a *regulated activity* prescribed for the purposes of section 39(1E)(a) of the *Act* as follows:

(1) *FCA controlled functions* apply to the *appointed representative* as set out in *SUP 10A.1.15R* and *SUP 10A.1.16R* in relation to the *carrying on of the regulated activity*, for which it does not have *permission*, comprised in the business for which its *principal* has accepted responsibility;

(2) (a) unless it is a *not-for-profit debt advice body*, the *apportionment and oversight function* applies in relation to the *carrying on of the regulated activity* for which it has *limited permission*;

(b) if it is a *not-for-profit debt advice body* and a *CASS large debt management firm*, the *CASS operational oversight function* applies in relation to the *carrying on of debt management activity*.

...

Credit firms with limited permission

10A.1.25 R (1) Subject to (2) and (3), this chapter, except in respect of the *apportionment and oversight function*, does not apply to a *firm* that has *limited permission* in relation to the *carrying on of the*

relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has *limited permission*.

(2) Subject to (3), this chapter does not apply to a *not-for-profit debt advice body*.

(3) This chapter applies to a *not-for-profit debt advice body* that is a *CASS large debt management firm* with respect to the *CASS operational oversight function* only.

...

10A.7 FCA required functions

...

Compliance oversight function (CF 10)

10A.7.8 R The *compliance oversight function* is the function of acting in the capacity of:

(1) a *director* or *senior manager* who is allocated the function set out in SYSC 3.2.8R, ~~or~~ SYSC 6.1.4R(2) or SYSC 6.1.4CR; or

...

CASS operational oversight function (CF10a)

10A.7.9 R In relation to a *CASS medium firm* and a *CASS large firm* (other than a *CASS large debt management firm*), the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in CASS 1A.3.1AR.

10A.7.9A R In relation to a *CASS large debt management firm*, the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function in CASS 11.3.4R.

...

10A.9 Significant management functions

...

Significant management function (CF29)

10A.9.9 R The *significant management function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit that:

...

(2A) carries on credit-related regulated activity;

...

...

10A.10 Customer-dealing functions

...

10A.10.3 G The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to general insurance business or credit-related regulated activity.

...

10A.16 How to apply for approval and give notifications

...

10A.16.1 D ...

(2) ~~A~~ Subject to (2A), an application by a *firm* other than a *credit union* must be made by submitting the Form online at fca.org.uk using the form specified on the *FCA's* and *PRA's* ONA system.

(2A) An application by a *firm* whose application for *permission* or whose *Part 4A permission* covers only *credit-related regulated activities* must be made using the form in *SUP 10A Annex 4D* or *SUP 10A Annex 8D* and must be submitted in the way set out in *SUP 15.7.4R* to *SUP 15.7.9G* (Form and method of notification).

...

...

11 Controllers and close links

11.1 Application

...

11.1.2 R Table Applicable sections (see *SUP 11.1.1R*)

	Category of firm	Applicable sections

(1)	A <i>UK domestic firm</i> other than a <i>building society</i> , a non-directive friendly society, or a <i>non-directive firm</i> or (in the case of an <u>FCA-<i>authorised person</i></u>) a <u><i>firm with only a limited permission</i></u>	All except <i>SUP 11.3</i> , <i>SUP 11.4.2AR</i> and <i>SUP 11.4.4R</i>
...		
(2B)	(In the case of an <u>FCA-<i>authorised person</i></u>) a <u><i>firm with only a limited permission</i></u>	<u>All except <i>SUP 11.3</i>, <i>SUP 11.4.2R</i>, and <i>SUP 11.4.4R</i></u>
...		

...

11.3 Requirements on controllers or proposed controllers under the Act

...

11.3.2A G The Treasury have made the following exemptions from the obligations under section 178 of the Act:

...

(3) potential controllers of non-directive firms (other than, in the case of an FCA-*authorised person*, firms with only a limited permission) ("A") are exempt from the obligation to notify a change in *control* unless the change results in the potential *controller* holding:

...

(4) (in the case of a change in control over an FCA-*authorised person*) potential controllers of firms with only a limited permission ("A") are exempt from the obligation to notify a change in *control*, unless the change would result in the potential *controller* holding:

(a) 33% or more of the shares in A or in a parent undertaking of A ("P"); or

(b) 33% or more of the voting power in A or P; or

(c) shares or voting power in A or P as a result of which the controller is able to exercise significant influence over the management of A;

or where the change in control over A would lead to the controller ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

...

11.4 Requirements on firms

...

11.4.2A R A non-directive firm (including, in the case of an FCA-authorised person, a firm with only a limited permission) must notify the appropriate regulator of any of the following events concerning the firm:

...

...

11.4.7 R The notification by a firm under SUP 11.4.2R, SUP 11.4.2AR or SUP 11.4.4R must:

...

...

11.6 Subsequent notification requirements by firms

Changes in the information provided to the appropriate regulator

11.6.1 G *Firms* are reminded that SUP 15.6.4R requires them to notify the appropriate regulator if information notified under SUP 11.4.2R, SUP 11.4.2AR or SUP 11.4.4R was false, misleading, inaccurate, incomplete, or changes, in a material particular. This would include a firm becoming aware of information that it would have been required to provide under SUP 11.5.1R if it had been aware of it.

...

11 Annex 1 G Summary of notifications required in this chapter

References in this annex to a “firm with only a limited permission” are to an FCA-authorised person only.

Event triggering a notification	Requirement	Reference
---------------------------------	-------------	-----------

	When	How
<p><u>Notifications from a controller or proposed controller of a UK domestic firm other than a non-directive firm or a firm with only a limited permission)</u></p> <p>...</p>		
<p><u>Notifications from a controller or potential controller of a non-directive firm other than a firm with only a limited permission</u></p>		
<p>1. When a potential <i>controller</i> of a <i>non-directive firm other than a firm with only a limited permission</i> (“A”) decides to acquire (a) 20% or more of the <i>shares</i> in A or in a <i>parent undertaking</i> of A (“P”); (b) 20% or more of the <i>voting power</i> in A or P; or (c) <i>shares</i> or <i>voting power</i> in A or P as a result of which the potential <i>controller</i> will be able to exercise significant influence over the management of A</p>	<p><i>SUP</i> 11.3.2AG(3)</p>	<p><i>SUP</i> 11.3.7D to <i>SUP</i> 11.3.14G</p>
<p>...</p>		
<p><u>Notifications from a controller or potential controller of a firm with only a limited permission</u></p>		
<p>1. <u>When a potential controller of a firm with only a limited permission</u> (“A”) decides to acquire (a) 33% or more of the <i>shares</i> in A or in a <i>parent undertaking</i> of A (“P”); (b) 33% or more of the <i>voting power</i> in A or P; or (c) <i>shares</i> or <i>voting power</i> in A or P as a result of which the potential <i>controller</i> will be able to exercise significant influence over the management of A</p>	<p><i>SUP</i> <u>11.3.2AG(4)</u></p>	<p><i>SUP</i> <u>11.3.7D</u> to <i>SUP</i> <u>11.3.14G</u></p>
<p>2. <u>When an existing controller decides to reduce control over A in a manner which will result in the controller failing to fall in any of the cases described in 1 above</u></p>	<p><i>SUP</i> <u>11.3.2AG(4)</u></p>	<p><i>SUP</i> <u>11.3.15AD</u></p>

Notifications from a UK domestic firm other than a non-directive firm (or a firm with only a limited permission) relating to a change in control

...

- | | | | |
|----|--|--------------------|-----------------|
| 3. | When a <i>firm</i> becomes aware of any material inaccuracies, omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i> | <i>SUP</i> 11.6.1G | <i>SUP</i> 15.7 |
| | | <i>SUP</i> 11.6.2R | |

...

Notification from a non-directive firm relating to a change in control other than a firm with only a limited permission

...

- | | | | |
|----|---|--------------------|-----------------|
| 3. | When a <i>firm</i> becomes aware of any material inaccuracies omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i> | <i>SUP</i> 11.6.1G | <i>SUP</i> 15.7 |
| | | <i>SUP</i> 11.6.2R | |

...

Notification from a firm with only a limited permission relating to a change in control

- | | | | |
|----|--|---|---|
| 1. | <u>When a <i>firm</i> becomes aware that a <i>person</i> (“A”) is acquiring (a) 33% or more of the <i>shares in the firm</i> (“B”) or in a <i>parent undertaking</i> of B (“P”); (b) 33% or more of the <i>voting power</i> in B or P; or (c) <i>shares</i> or <i>voting power</i> in B or P as a result of which the <i>controller</i> is able to exercise significant influence over the management of B</u> | <u><i>SUP</i> 11.4.2</u>
<u>AR</u> | <u><i>SUP</i> 11.5.1R</u> |
| | | <u><i>SUP</i> 11.4.7R</u>
<u><i>SUP</i> 11.4.8G</u> | <u><i>SUP</i> 11.5.2R</u> |
| 2. | <u>When a <i>firm</i> becomes aware that A is ceasing to fall in any of the cases described in 1 above</u> | <u><i>SUP</i> 11.4.2</u>
<u>AR</u>
<u><i>SUP</i> 11.4.7R</u>
<u><i>SUP</i> 11.4.8G</u> | <u><i>SUP</i> 11.5.7R</u>
<u><i>SUP</i> 15.7</u> |

- | | | | |
|----|--|--------------------|-----------------|
| 3. | <u>When a <i>firm</i> becomes aware of any material inaccuracies omissions or changes in information previously provided to the <i>appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i></u> | <u>SUP 11.6.1G</u> | <u>SUP 15.7</u> |
| | | <u>SUP 11.6.2R</u> | |
| 4. | <u>When a change in <i>control</i> actually takes place or, although a notification has been submitted, is not, after all, going to take place</u> | <u>SUP 11.6.4R</u> | <u>SUP 15.7</u> |
| | | <u>SUP 11.6.5R</u> | |

Notifications from an *overseas firm* relating to a change in *control*

...

- | | | | |
|----|---|--------------------|-----------------|
| 2. | When a <i>firm</i> becomes aware of any material inaccuracies, omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> by the <i>firm</i> | <u>SUP 11.6.1G</u> | <u>SUP 15.7</u> |
|----|---|--------------------|-----------------|

...

12 Appointed representatives

...

12.2 Introduction

...

- 12.2.2 G (1) A person (other than a *firm* with only a *limited permission*) must satisfy the conditions in section 39(1) of the *Act* to become an *appointed representative*. These are that:

...

Appointed representatives with limited permission to carry on certain credit activities

- 12.2.2A G (1) Under sections 20(1) and (1A) of the Act (Authorised persons acting without permission), if an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission, he is to be taken to have contravened a requirement imposed by the FCA (in the case of a FCA-authorized person) or the FCA and the PRA (in the case of a PRA-authorized person).
- (2) In addition, under section 23(1A) of the Act (Contravention of the general prohibition or section 20(1) or (1A)), an authorised person is guilty of an offence if he carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission. For these purposes, entering into a regulated credit agreement as lender, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and debt collecting are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the borrower to repay is secured on land (see the Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014).
- (3) Section 39(1D) of the Act provides, however, that sections 20(1) and (1A) and 23(1A) of the Act do not apply:
- (a) to an authorised person with only a limited permission;
- (b) in relation to the carrying on by him of a regulated activity which is not one to which his limited permission relates;
- if the conditions in section 39(1C) of the Act are met. Guidance on these conditions is given at SUP 12.2.2BG. A firm carrying on a regulated activity in circumstances where, as a result of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply is also referred to as an appointed representative.
- 12.2.2B G (1) A firm must satisfy the conditions in section 39(1C) of the Act to become an appointed representative. These are that:
- (a) the firm must have only a limited permission (section 39(1C)(a) of the Act);
- (b) the firm must have entered into a contract with another authorised person, referred to in the Act as the 'principal', which:
- (i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(i) of the Act) (see SUP

12.2.7G); and

(ii) complies with any requirements that may be prescribed in the *Appointed Representatives Regulations* (section 39(1C)(b)(ii) of the *Act*); and

(c) the *principal* must have accepted responsibility, in writing, for the authorised activities of the *firm* in carrying on the whole, or part, of the business specified in the contract.

(2) The *appointed representative* is not subject to sections 20(1) or (1A) or 23(1A) of the *Act* in relation to the carrying on of the *regulated activity* which is comprised in the business for which his *principal* has accepted responsibility and for which he does not have *limited permission*.

Who can be an appointed representative?

12.2.3 G As long as the conditions in section 39 of the *Act* are satisfied, any *person*, other than an *authorised person* (unless he has only a *limited permission*), may become an *appointed representative*, including a *body corporate*, a *partnership* or an individual in business on his own account. However, an *appointed representative* cannot be an *authorised person* under the *Act* unless he has only a *limited permission*.; that is, it A *person* cannot be exempt for some *regulated activities* and *authorised* for others. An *appointed representative* with a *limited permission* is not an *exempt person*, but he may carry on the *regulated activity* comprised in the business for which his *principal* has accepted responsibility without being taken to have contravened a requirement imposed on him by the *FCA* or *PRA* or committing an offence, even though the activity is not covered by his *limited permission*.

...

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 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:

...

(ea) *credit broking* (article 36A of the *Regulated Activities Order*);

(eb) *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*);

(f) ...

- (fa) debt adjusting (article 39D of the *Regulated Activities Order*);
- (fb) debt counselling (article 39E of the *Regulated Activities Order*);
- (fc) debt collecting (article 39F of the *Regulated Activities Order*);
- (fd) debt administration (article 39G of the *Regulated Activities Order*);
- ...
- (j) advising on a home finance transaction (articles 53A, 53B and 53C of the *Regulated Activities Order*); ~~and~~
- (ja) entering into a regulated credit agreement as lender or exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B of the *Regulated Activities Order*) when carried on in relation to a credit agreement under which the credit is provided free of interest and without any other charges;
- (jb) entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement (article 60N of the *Regulated Activities Order*);
- (k) agreeing to carry on a regulated activity (article 64 of the *Regulated Activities Order*) where the regulated activity is one of those in (a) to (h) or (ja) or (jb); and
- (l) providing credit information services (article 89A of the *Regulated Activities Order*).

...

12.3 What responsibility does a firm have for its appointed representatives or EEA tied agent?

...

- 12.3.4 G SYSC 6.1.1R requires a MiFID investment firm and a credit firm to ensure the compliance of its appointed representative with obligations under the regulatory system. The concept of a relevant person in SYSC includes an officer or employee of a tied agent.

...

12.5 Contracts: required terms

...

12.5.2 G ...

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

...

- (g) ...;
- (h) effects introductions (within article 36A (Credit broking) of the *Regulated Activities Order*) of individuals to other counterparties;
- (i) facilitates persons becoming the lender and borrower under an article 36H agreement (within the meaning of the *Regulated Activities Order*) 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) by the *appointed representative* or its principal;
- (k) takes steps (within article 39D (Debt adjusting) of the *Regulated Activities Order*) on behalf of other counterparties;
- (l) gives advice to a borrower (within article 39E (Debt-counselling) of the *Regulated Activities Order*) on behalf of other counterparties;
- (m) takes steps (within article 39F (Debt-collecting) of the *Regulated Activities Order*) to procure the payment of debts on behalf of other counterparties;
- (n) performs duties (within article 39G (Debt administration) of the *Regulated Activities Order*) under, or exercises or enforces rights under, an agreement on behalf of other counterparties;
- (o) enters into regulated credit agreements or exercises or has the right to exercise the lender's rights and duties under such agreements (within article 60B (Regulated credit agreements) of the *Regulated Activities Order*) on behalf of other counterparties;

- (p) enters into regulated consumer hire agreements or exercises, or has the right to exercise, the owner's rights and duties under such agreements (within article 60N (Regulated consumer hire agreements) of the Regulated Activities Order) on behalf of other counterparties;
- (q) takes steps on behalf of, or gives advice to, an individual in relation to the taking of any steps (in circumstances constituting the carrying on of providing credit information services) on behalf of other counterparties.

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

- 12.6.6 R A firm must take reasonable steps to ensure that each of its *appointed representatives*:
- (1) does not carry on *regulated activities* in breach of the *general prohibition* in section 19 of the *Act* or (if the *appointed representative* is a firm with a *limited permission*) in breach of section 20(1) or (1A) of the Act; and
 - (2) carries on the *regulated activities* for which the firm has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the *appointed representative's* other business:
 - (a) which is performed as an *appointed representative* of another firm or in accordance with a *limited permission*; or

...

...

- 12.6.8 G (1) Some of the *controlled functions*, as set out in SUP 10A.4.1R, apply to an *appointed representative* of a firm, other than an *introducer appointed representative*, just as they apply to a firm (see SUP 10A.1.15R). These are the *governing functions* and the *customer function*. In the case of an appointed representative that also has a limited permission, an FCA required function may apply to it. As explained in SUP 10A.1.16R and SUP 10A.3.2G respectively:
- (b) although the *customer function* applies to an *appointed representative*, the descriptions of the functions themselves

...

do not extend to *home finance mediation activity*, ~~or~~ *insurance mediation activity* or *credit-related regulated activity*; and

- (ba) if an appointed representative also has a limited permission:
- (i) the apportionment and oversight function applies to it in relation to the carrying on of the regulated activity for which it has limited permission, unless it is a not-for-profit debt advice body;
 - (ii) if it is a not-for-profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity; and
- (c) ...

- (2) The *approved persons* regime applies differently to an *appointed representative* whose scope of appointment includes *insurance mediation activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity* but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These appointed representatives need only one person performing one of the *governing functions*. This means that only one *director* (or equivalent) of these appointed representatives must be approved under section 59 of the *Act* for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see SUP 10A.1.16R).

...

12.7 Notification requirements

...

- 12.7.1A R (1) A *firm* other than;
- (a) a credit union; or
 - (b) a firm which intends to appoint, or has appointed, an appointed representative to carry on only credit-related regulated activity;

must submit the form in SUP 12 Annex 3R online at <http://www.fca.org.uk> using the FCA's ONA system.

- (2) A credit union or a firm which intends to appoint, or has appointed, an appointed representative to carry on only credit-related regulated activity must submit the form in SUP 12 Annex 3R in the way set

out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

12.7.8A R (1) A Subject to (2A), a firm other than a *credit union* must submit the form as set out in SUP 12 Annex 4R online at <http://www.fca.org.uk> using the FCA's ONA system.

(2) ...

(2A) If the notification:

(a) relates to an appointed representative whose scope of appointment covers only credit-related regulated activity;
or

(b) is of a change to the scope of appointment of an appointed representative to add or remove credit-related regulated activity;

the firm must submit the form in SUP 12 Annex 4R in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

12.8 Termination of a relationship with an appointed representative or EEA tied agent

...

12.8.1A R (1) A Subject to (2A), a firm other than a *credit union* must submit any notification under SUP 12.8.1R(1) in the form set out in SUP 12 Annex 5R, online at ~~www.fsa.gov.uk~~ www.fca.org.uk using the FCA's ONA system.

(2) ...

(2A) A firm must submit any notification under SUP 12.8.1R(1) that relates to an appointed representative whose scope of appointment covers only credit-related regulated activity in the form set out in SUP 12 Annex 5R and in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

(3) ...

...

12 Annex 3R Appointed representative appointment form

...

13 ...

14 Will the appointed representative undertake credit-related regulated activities? † §

...

12 Annex 4R Appointed representative notification form

13 ...

Yes No

13A Does the appointed representative undertake credit-related regulated activities?

Do you wish to change this? If “Yes”, please provide details below: †

...

13A Qualifying for authorisation under the Act

...

13A.6 Which rules will an incoming EEA firm be subject to?

...

13A.6.2 G An *incoming EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation* and only provides services in the *United Kingdom*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see SUP 13A.4.4G, SUP 13A.4.6G and SUP 13A.5.4G) and other relevant *UK legislation*. For example where the business includes:

- (1) business covered by the Consumer Credit Act 1974, then an *incoming EEA firm* or *incoming Treaty firm* must comply with the provisions of that Act, as modified by paragraph 15(3) of

Schedule 3 to the Act; or

...

...

13A Annex 1G Application of the Handbook to Incoming EEA firms

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>REC</i>
<i>CONC</i> [FCA]	<u>CONC applies except to the extent necessary to be compatible with European law.</u> <u>Provisions on the territorial application of CONC are contained in CONC 1.2.5R and CONC 1.2.6R</u>	<u>As column (2).</u>
<i>LR</i>	...	

15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

- 15.3.11 R (1) A firm must notify the appropriate regulator of:
- (a) ...
 - (aa) a significant breach of any requirement imposed by the CCA or by regulations or an order made under the CCA (except if the breach is an offence, in which case (c) applies), but any notification under (aa) is required to be made only to the FCA; or
 - (b) ...
 - (c) the bringing of a prosecution for, or a conviction of, any

offence under the Act or the CCA; or

...

...

...

- 15.3.12 G In *SUP* 15.3.11R(1)(a) or (1)(aa), significance should be determined having regard to potential financial losses to *customers* or to the *firm*, frequency of the breach, implications for the *firm's* systems and controls and if there were delays in identifying or rectifying the breach

...

15.5 Core information requirements

...

- 15.5.9 R (1) A *firm* other than:
- (a) a *credit union*; or
 - (b) an FCA-authorised person with permission to carry on only credit-related regulated activity;

must submit any notice under *SUP* 15.5.1R, *SUP* 15.5.4R and *SUP* 15.5.5R by submitting the form in *SUP* 15 Ann 3R online at the appropriate regulator's website.

- (2) A *credit union* or an FCA-authorised person with permission to carry on only credit-related regulated activity (other than a firm with only an interim permission to which the modifications to *SUP* 15 in *CONC* 12 apply) must submit any notice under *SUP* 15.5.1R, *SUP* 15.5.4R, *SUP* 15.5.5R and *SUP* 15.5.7R by submitting the form in *SUP* 15 Ann 3R in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).

...

...

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
...			
	(j)	a <i>firm</i> with <i>permission</i> to carry on only <i>insurance mediation activity</i> , <i>home finance mediation activity</i> , or both;	
	(ja)	an <i>FCA-<u>authorised person</u></i> with <i>permission</i> to carry on <u>only credit-related regulated activity</u> ;	
	(k)	a <i>firm</i> falling within a <u>combination of both (i), and (j) and (ja)</u> .	
...			
SUP 16.11	A <i>firm</i> , other than a <i>managing agent</i> , which is:		Entire section
...			
	(4)	a <i>person</i> who issues or manages the relevant assets of the issuer of a <i>structured capital-at-risk product</i> ; <u>or</u>	
	(5)	a <i>firm</i> with <i>permission</i> to <u>enter into a regulated credit agreement as lender in respect of high-cost short-term credit or home credit loan agreements</u> .	

16.10 Verification of standing data

...

- 16.10.4A R (1) A *firm* other than:
- (a) a *credit union*; or
 - (b) an FCA-*authorised person with permission to carry on only credit-related regulated activity*;

must submit any corrected *standing data* under SUP 16.10.4R(3) online at the *appropriate regulator's* website using the ONA system.

- (2) A *credit union* or a *firm with permission to carry on only credit-related regulated activity* must submit any corrected *standing data* under SUP 16.10.4R(3) to static.data@fca.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team'.

...

16.11 Product Sales Data Reporting

Application

- 16.11.1 R This section applies to a firm which is a *home finance provider* or a *firm with permission to enter into a regulated credit agreement as lender in respect of high-cost short-term credit or home credit loan agreements*, or in respect of sales to a *retail client* or a *consumer*:

...

...

- 16.11.2 G (1) The purpose of this section is to set out the requirements for *firms* in the retail mortgage, investment, *consumer credit lending* and *pure protection contract* markets specified in SUP 16.11.1R to report individual product sales data to the FCA. In the case of *firms* in the sale and rent back market, there is a requirement to record, but not to submit, the data. These requirements apply whether the regulated activity has been carried out by the *firm*, or through an intermediary which has dealt directly with the *firm*.

...

...

- 16.11.5 R The data must contain sales data in respect of the following products:

...

- (5) *home reversion plans*; ~~and~~

(6) *regulated sale and rent back agreements*;

(7) *High-cost short-term credit*; and

(8) *home credit loan agreements*.

...

16.12 Integrated Regulatory Reporting

Application

16.12.1 G The effect of *SUP* 16.1.1R is that this section applies to every *firm* carrying on business set out in column (1) of *SUP* 16.12.4R except:

...

(3) an *authorised professional firm* (other than one that must comply with *IPRU(INV)* 3, 5 or 13 in accordance with *IPRU(INV)* 2.1.4R, or that is a *CASS debt management firm*, where *SUP* 16.12.4R will apply in respect of the business the firm undertakes), which must (unless it is within (3A)) comply with *SUP* 16.12.30R and *SUP* 16.12.31R; ~~and~~

(3A) an *authorised professional firm* if the only regulated activity it carries on is *credit-related regulated activity* as a *non-mainstream regulated activity*; and

(4) ...

...

Reporting requirement

16.12.3 R (1) Any *firm* permitted to carry on any of the activities within each of the *RAGs* set out in column (1) of the table in *SUP* 16.12.4R must:

(a)

(i) ...

(ii) unless (iii) applies, where a *firm* is required to submit completed *data items* for more than one *RAG*, that *firm* must only submit the *data item* of the same name and purpose in respect of the lowest numbered *RAG* applicable to it, *RAG* 1 being the lowest and *RAG* ~~10~~ 12 the highest;

...

...

...

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
...				
<u>RAG 12</u> [FCA]	• <u>credit-related regulated activity</u>	<u>SUP 16.12.29CR</u>	<u>SUP 16.12.29CR</u>	<u>SUP 16.12.29CR</u>

...

16.12.29A R ...

Regulated Activity Group 12

16.12.29B R SUP 16.12.29CR does not apply:

- (1) to a credit firm if the only credit-related regulated activity it carries on is providing credit references;
- (2) to a credit firm that is a not-for-profit body, unless it is a not-for-profit debt advice body;
- (3) with respect to credit-related regulated activity to the extent that it relates to credit agreements secured by a legal or equitable mortgage on land.

16.12.29C R The applicable data items, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

<u>Description of data item</u>	<u>Data item (note 1)</u>	<u>Frequency</u>		<u>Submission deadline</u>
		<u>Annual revenue from credit-related regulated activities up to and including £5 million (note 2)</u>	<u>Annual revenue from credit-related regulated activities over £5 million</u>	

<u>Financial data</u> (note 3)	<u>CCR001</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Volumes</u> (note 4)	<u>CCR002</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Lenders</u> (note 5)	<u>CCR003</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Debt management</u> (note 6)	<u>CCR004</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Client Money & Assets</u> (note 7)	<u>CCR005</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Debt collection</u> (note 8)	<u>CCR006</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Key data</u> (note 9)	<u>CCR007</u>	<u>Annually</u>	<u>Annually</u>	<u>30 business days</u>
<u>Note 1</u>	<u>When submitting the required data item, a firm must use the format of the data item set out in SUP 16 Annex 35AR. Guidance notes for the completion of the data items is set out in SUP 16 Annex 35BG.</u>			
<u>Note 2</u>	<u>References to revenue in SUP 16.12.29CR in relation to any firm do not include the amount of any repayment of any credit provided by that firm as lender.</u>			
<u>Note 3</u>	<p>(a) <u>Subject to (b) to (d) below, this data item applies to all credit firms.</u></p> <p>(b) <u>This data item does not apply to a firm if the only credit-related regulated activity for which it has permission is operating an electronic system in relation to lending.</u></p> <p>(c) <u>This data item does not apply to a firm required to submit a Balance Sheet, Income Statement or Capital Adequacy data item from a RAG other than RAG 12.</u></p> <p>(d) <u>This data item does not apply to a firm with limited permission unless it is a not-for-profit debt advice body and at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.</u></p>			
<u>Note 4</u>	<p>(a) <u>Subject to (b) below, this data item applies to all credit firms.</u></p> <p>(b) <u>This data item does not apply to a firm with limited permission unless it is a not-for-profit debt advice body and at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.</u></p>			
<u>Note 5</u>	<u>This data item applies to all firms with permission for entering into a regulated credit agreement as lender or exercising, or having the right to</u>			

	<u>exercise, the lender's rights and duties under a regulated credit agreement.</u>
<u>Note 6</u>	<p>(a) <u>Subject to (b) to (d) below, this data item applies to a debt management firm and to a not-for-profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or, as the case may be, projects that it will hold £1million or more in client money in the next 12 months.</u></p> <p>(b) <u>This data item does not apply to a firm with limited permission other than a not-for-profit debt advice body within (a).</u></p> <p>(c) <u>This data item does not apply to a firm required to submit a Capital Adequacy data item from a RAG other than RAG 12, or under SUP 16.13, unless (d) applies.</u></p> <p>(d) <u>Where a firm is required to submit a Capital Adequacy data item from a RAG other than RAG 12 or under SUP 16.13 but the firm's highest capital requirement derives from its activity under RAG 12, the firm should submit both CCR004 and the Capital Adequacy data item required from the RAG other than RAG 12 or SUP 16.13.</u></p>
<u>Note 7</u>	<u>This data item applies to a CASS debt management firm.</u>
<u>Note 8</u>	<u>This data item applies to a firm with permission to carry on debt collecting or operating an electronic system in relation to lending.</u>
<u>Note 9</u>	<p>(a) <u>Subject to (b) and (c) below, this data item applies to a firm that has limited permission.</u></p> <p>(b) <u>This data item does not apply to an authorised professional firm that is a CASS debt management firm. Such a firm is instead required to submit the other data items in SUP 16.12.29CR as appropriate.</u></p> <p>(c) <u>This data item does not apply to a not-for-profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or, as the case may be, projects that it will hold £1million or more in client money in the next 12 months. Such a not-for-profit debt advice body is instead required to submit data items CCR001, CCR002, CCR004 and CCR005.</u></p>

Authorised professional firms

- 16.12.30 R (1) An authorised professional firm, other than one that must comply with IPRU(INV) 3, 5 or 13 in accordance with IPRU(INV) 2.1.4R, or one that is a CASS debt management firm or one that carries on only credit-related regulated activity as a non-mainstream regulated activity, must submit an annual questionnaire, contained in SUP 16 Annex 9R, unless:

...

...

16.12.30B R An authorised professional firm that is a CASS debt management firm and is not within SUP 16.12.1G(3A) must complete the appropriate reports specified in SUP 16.12.4R and SUP 16.12.29CR.

...

16 Annex 9R

Annual Questionnaire for Authorised Professional Firms

Handbook Reference: SUP 16 Annex 9R

...

2.02 Income from mainstream regulated activities

...

<p>b During the period, please indicate the proportion of this income generated from:</p> <p>(An estimate to the nearest 10% is sufficient)</p>	i) Investment management activities	
	ii) Corporate finance activities	
	iii) Retail investment activities	
	iv) Home finance mediation activities	
	v) Insurance mediation activities	
	vi) <u>Credit-related regulated activities</u>	
	vii) Other	
	TOTAL	100%

...

16 Annex 19BG

NOTES FOR COMPLETION OF THE MORTGAGE LENDING ADMINISTRATION RETURN ('MLAR')

...

INTRODUCTION: GENERAL NOTES ON THE RETURN

...

4. Regulated mortgage contracts and the wider mortgage market

...

(ii) Residential loans to individuals

...

Examples of non-regulated mortgage contracts which fall under the wider category of residential loans to individuals include: buy-to-let loans and other types of loan where the property is not for use by the borrower (or qualifying dependants); and residential loans to individuals where the lender does not have a first charge. In the case where a lender takes a first and a second charge over the same residential property (for different purposes), we consider that generally the loan secured by the first charge will be a regulated mortgage contract, but that the loan secured by the second charge will invariably not and should be reported as non-regulated.

Pending the UK implementation of the Mortgage Credit Directive, even though loans secured by a second or subsequent charge on residential property may potentially be regulated credit agreements, firms completing the MLAR in the period after 1 April 2014 should continue to include second charge mortgage business as business falling within non-regulated mortgage contracts.

...

16
Annex
20G

Products covered by the reporting requirement in SUP 16.11

G

In the case of mortgage transactions, the reporting requirement only applies to loans for house purchase and remortgages and not to further advances. A reportable mortgage transaction applies where the mortgage transaction has completed (i.e. funds have been transferred and have been applied for the purpose of the mortgage).

In the case of *high-cost short-term credit* and *home credit loan agreements*, a reportable transaction has taken place where the loan monies have been advanced to the *borrower*.

Part 1 – Products

The following tables provide *guidance* on the products for which sales data is to be reported. These tables are not intended to be a complete list of relevant products; *firms* should report sales data on all products which would fall within the scope of *retail investments*, *pure protection contracts*, *regulated mortgage contracts*, other *home finance transactions*, *high-cost short-term credit* and *home credit loan agreements*.

...

Table 5 – SHORT TERM LOANS

Relevant loan types comprise:

High-cost short-term credit

Home credit loan agreements

Part 2: Supporting product definitions/guidance for product sales data reporting

...

Short-term loans

<u>Loan Type</u>	<u>Description</u>
<u><i>High-cost short-term credit</i></u>	Defined in the Handbook <i>Glossary</i>
<u><i>Home credit loan agreements</i></u>	Defined in the Handbook <i>Glossary</i>

...

		<u>payment</u>
<u>Rollover</u>	<u>Y = yes</u> <u>N = no</u>	<u>Indicate if the loan is rolled over from a previous loan. For this purpose, a loan is rolled over if the period over which loan repayments are to be made has been extended, or if the due date for any loan repayment has been moved to a later date, whether by means of an agreement that replaces, varies or supplements an earlier loan or otherwise (excluding any forbearance by the lender where the firm does not receive any consideration in connection with the rollover and the effect is that no interest or other charges (other than where a charge is a reasonable estimate of the cost of the additional administration required as a result of the customer having rolled over the agreement) accrue from the date of the rollover).</u>
<u>Order of rollover</u>	<u>Numeric integer</u>	<u>Indicate how many times the same original loan has been rolled over</u>
<u>Length of term</u>	<u>Numeric integer</u>	<u>Provide the length of the agreed loan period in days</u>
<u>Reason for loan</u>	<u>S = subsistence</u> <u>P = one off purchase</u> <u>O = other</u>	<u>Select only one code to indicate the reason for the loan.</u>
<u>Date of birth of borrower</u>	<u>DD/MM/YYYY</u> <u>Y</u>	
<u>Post code of borrower</u>	<u>e.g. XY45</u> <u>6XX</u>	<u>Provide the post code of the main place of residence of the borrower</u>
<u>Monthly income of borrower</u>	<u>Numeric £</u>	<u>Provide monthly income after tax of borrower</u>
<u>Marital status of borrower</u>	<u>M = married</u> <u>S = single</u> <u>D = divorced</u>	<u>Select only one code that most appropriately represents the borrower's marital status</u>

		<u>W = widowed</u> <u>L = living together</u> <u>P = separated</u> <u>O = other</u>	
	<u>Residential status of borrower</u>	<u>O = owner occupier</u> <u>L = living with parents</u> <u>T = tenant</u> <u>C = council tenant</u> <u>J = joint owner</u> <u>X = other</u>	<u>Select only one code that most appropriately represents the borrower's residential status</u>
	<u>Employment status of borrower</u>	<u>EF = employed full time</u> <u>EP = employed part time</u> <u>ET = employed temporary</u> <u>SE = self-employed</u> <u>S = student</u> <u>HM = home maker</u> <u>U = unemployed</u> <u>OB = on benefits</u> <u>AF = in armed forces</u> <u>R = retired</u>	<u>Select only one code that most appropriately represents the borrower's employment status</u>
		...	

Insert the following new Annexes after SUP 16 Annex 34B. The following text is all new and is not underlined.

16 Annex 35AR

CCR001 Consumer Credit data: Financial Data

Balance Sheet Items

A

1 Total shareholder funds/Partnership capital/Sole trader capital

2 Intangible Assets/Investments in Subsidiaries/Investment in Own Shares

3 Subordinated debt and subordinated loans

Current Assets

4 Cash

5 Debtors/Other

Current Liabilities

6 Creditors

7 Largest Exposures (including inter-company)

Amount	Counterparty name	Type of exposure
<input type="text"/>	<input type="text"/>	Please select
<input type="text"/>	<input type="text"/>	Please select

Income Statement (including regulated business revenue)

8 Total income

9 Retained Profit

CCR002 Consumer Credit data: Volumes

Activities		A	B	C	D
		Fee Mechanism	Revenue	Total Customers	Total Transactions
Lending					
1	Debt purchasing				
2	Hire purchase/conditional sale agreements				
3	Home credit loan agreements				
4	Bill of sale loan agreements				
5	Pawnbroking				
6	High-cost short-term credit				
7	Running-account credit				
8	Other lending				
9 Credit Broking					
10 Debt Management Activity					
11 All other credit-related regulated activity					

CCR003 Consumer Credit data: Lenders

	A	B	C	D	E	F	G
Activities	Total Value (000s)	Total number of Loans	Total number of Loans in Arrears	Total Value in Arrears (000s)	Value of new advances in period (000s)	Ave. annual percentage rate of charge (Total Loan Book)	Highest annual percentage rate of charge (in Period)
1 Debt purchasing							
2 Hire purchase/conditional sale agreements							
3 Home credit loan agreements							
4 Bill of sale loan agreements							
5 Pawnbroking							
6 High-cost short-term credit							
7 Running-account credit							
8 Other lending							

9	Does the firm use charging orders?	A
10	If yes, how many have been issued during the period?	

CCR004 Consumer Credit data: Debt Management Firms

A

1 Total value of relevant debts under management outstanding

2 Total prudential resources requirement

3 Total prudential resources

--

4 Number of debt management plans that end before the end of the term originally agreed

--

CCR005 Consumer Credit data: Client Money & Assets

A

1 What was the highest balance of client money held at any one time during the reporting period?

2 What was the highest number of clients for whom client money was held at any one time during the period?

3 How much client money (if any) did you hold in excess of 5 days following receipt?

CCR006 Consumer Credit data: Debt collection

Firms with permission to operate an electronic system in relation to lending only

A

1 Have you undertaken any debt collection business during the reporting period?

(If the answer to 1 is "no" then do not complete the remainder of the form)

A

B

C

D

E

F

All firms

- 2** Total value of debts being pursued for collection
- 3** Total value of debts under collection
- 4** Total number of debts being pursued for collection
- 5** Total number of debts under collection
- 6** Number of debts under collection with missed repayments
- 7** Total income per placement

Stage of debt placement					
A	B	C	D	E	F
1st	2nd	3rd	4th	5th	Subsequent

CCR007 Consumer Credit Data: key data for credit firms with limited permission

A

1	Revenue from credit-related regulated activities	<input type="text"/>
2	Total revenue (including from activities other than credit-related regulated activities)	<input type="text"/>
3	Number of transactions involving credit-related regulated activities in reporting period	<input type="text"/>
4	Number of complaints related to credit-related activities received in period	<input type="text"/>
5	Credit-related regulated activity carried on in relation to the greatest number of customers in reporting period	<input type="text"/>

16 Annex 35BG

**NOTES FOR COMPLETION OF THE DATA ITEMS RELATING TO CONSUMER
CREDIT ACTIVITIES**

Contents

Introduction	General notes on the data items
CCR001:	Financial data for <i>credit firms</i>
CCR002:	Volumes
CCR003:	Lenders
CCR004:	Debt management
CCR005:	Client Money and Assets
CCR006:	Debt Collecting
CCR007:	Key data for firms with <i>limited permission</i>

Introduction

1. These notes aim to assist firms in completing and submitting the data items relevant to credit-related regulated activities.
2. The purpose of these data items is to provide a framework for the collection of information by the FCA as a basis for its supervisory and other activities. They also have the purpose set out in paragraph 16.12.2G of the Supervision manual, i.e. to help the FCA to monitor firms' financial soundness.
3. The data should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm omits a material item, includes an immaterial item or presents items in a manner which is misleading.

Defined Terms

4. These notes are not intended to provide any new definitions. Some of the terms we use below will already be included in the Glossary of definitions in the FCA Handbook. Where we use an alternative word or phrase we expect firms to apply an ordinary meaning to those phrases.

Scope

5. Most firms with *limited permission* are only required to submit data item CCR007 (Key Data). A firm is not required to submit any data items if the only credit-related regulated activity it carries on is providing credit references. The reporting requirements also do not apply to a not-for-profit body unless it is a not-for-profit debt advice body (and most apply only if, at any point in the last 12 months it has held £1 million or more in client money or, as the case may be, projects that it will hold £1million or more in client money in the next 12 months). An authorised professional firm does not need to submit the data items in *SUP* 16.12.29CR unless it is a CASS debt management firm.
6. All other firms undertaking *credit-related regulated* activities are required to complete the data items applicable to the activities they undertake as set out in *SUP* 16.12.29CR.
7. The credit-related regulated activities are:
 - a. Entering into a regulated credit agreement as lender;
 - b. Exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement
 - c. Credit broking;
 - d. Debt adjusting;
 - e. Debt counselling;
 - f. Debt collecting;
 - g. Debt administration
 - h. Operating an electronic system in relation to lending;
 - i. Regulated consumer hire agreements;
 - j. Providing credit information services;
 - k. Providing credit references

Currency

8. Unless otherwise stated, you should report in the currency of your annual audited accounts, where this is Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Where annual audited accounts are reported in a currency outside those specified above, please translate these values into an equivalent within the list using an appropriate rate of exchange at the reporting date or, where appropriate, at the rates of exchange fixed under the terms of any relevant currency hedging transaction, and that value used in the return.

Unless otherwise stated, figures should be reported in single units.

Data elements

9. These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

CCR001 – Financial data for consumer credit firms

This data item provides the FCA with a snapshot of the assets, liabilities, income and expenditure of a firm, giving an idea of the on-going financial viability and whether this poses any potential risks to consumers.

Balance sheet items		
Total shareholder funds/Partnership capital/Sole trader capital	1A	Incorporated firms: add the value of all types of shares, reserves, retained earnings and verified current year profit. Partnerships and sole traders: add the value of all capital accounts, retained earnings and verified current year profit. LLPs: add the value of all cash and capital accounts.
Intangible Assets/Investments in subsidiaries/Investment in Own Shares	2A	Add the value of intangible assets/goodwill, investments in own shares, investments in subsidiaries, material current year losses and, if applicable, excess LLP member's drawings.
Subordinated debt and subordinated loans	3A	Add the value of any subordinated loans and other subordinated debt.
Current Assets		
Cash	4A	This is money physically held by the firm and money deposited with banks or building societies.
Debtors/Other	5A	Add the value of all types of debtors, stocks, investments (other than those included in 2A) and loans.
Current Liabilities		
Creditors	6A	Add the value of all types of creditors.
Largest Exposures (including inter-company): Amount	7A	Identify the amount of the two largest exposures (including those between the firm and a related entity). These exposures can either be amounts owed to the firm by debtors, or amounts owed by the firm to creditors.
Largest Exposures (including inter-	7B	Identify the name of the counterparty from

company): Counterparty name		or to whom the amounts are owed.
Largest Exposures (including inter-company): Type of exposure	7C	Identify whether the amounts are owed to the firm (debtor) or owed by the firm (creditor).
Income Statement (including regulated business revenue)		
Total income	8A	Submit the total income of the firm in the reporting period, from all activities, both regulated and non-regulated.
Retained Profit	9A	<p>This figure should be the amount of profit or loss retained from the period being reported on.</p> <p>This figure does not relate to the accumulated retained profit figure that appears on the firm's balance sheet, but to the retained profit or loss figure for the period shown on their income statement/P&L.</p>

CCR002 – Consumer Credit data: volumes

This data item provides the FCA with an overall picture of the size of the consumer credit market and how revenue is generated. On an individual firm level, it allows us to look at the relationship between customer numbers, transaction numbers and revenue.

In this data item, firms should complete each row relating to an activity they have permission to undertake.

Column A: Fee mechanism

In this column, firms should identify the predominant method used for applying fees to customers.

For the purposes of answering this question, an upfront fee is a single fee incurred once at the time of the transaction occurring. There are no further fees associated with the transaction. For example, a one-off broking fee.

An ongoing fee is where the fee is split into multiple payments across the lifetime of the product. For example, a percentage charge taken from monthly payments on a debt management plan.

Where a firm only uses upfront fees or only uses ongoing fees, the firm should select “upfront only” or “ongoing only”. “Mainly upfront” and “mainly ongoing” should be used when more than two-thirds of the relevant revenue from that activity is achieved using that method.

With respect to lending activities, “interest only” should be selected if revenue is generated solely from charging interest on loans. “Mainly interest” should be selected if interest accounts for more than two-thirds of the revenue generated. For example, an agreement for high-cost short-term credit may incur a fixed fee plus interest.

“Combination” should be used when no single revenue source (upfront fees, ongoing fees and interest) accounts for more than two-thirds of the relevant revenue from that activity.

Column B: Revenue

In this column, firms should enter the amount of revenue generated by each activity undertaken.

Column C: Total Customers:

In this column, firms should enter the total number of individual customers that have taken up a credit-related product during the period. This figure should be the number of customers, rather than the number of transactions. For example, if the same customer has taken out three loans, this counts as one towards the “total customers” figure.

A *credit repair firm* should count the number of individual customers who have engaged their services during the period.

Column D: Total Transactions:

In this column, firms should identify the total number of transactions that were made during the period. This figure should always be equal to or greater than the figure in column C. For example, if the same customer has taken out three loans, this counts as three towards the “total transactions” figure.

In the case of pawnbroking, each separate item held as security should be counted as a single transaction.

A debt management firm or a not-for-profit debt advice body to which this data item applies should record the number of debt management plans that they have entered into during the reporting period.

A credit repair firm does not need to complete this field.

Rows 1 to 8: Lending

The rows under the heading “Lending” relate to the different types of lending that are covered by *consumer credit lending*. For each type of lending that a firm undertakes, the row relating to that activity should be completed in full.

Firms undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

Row 9: Credit Broking

This row should be completed in full by all firms carrying on the activity of *credit broking* as defined in article 36A of the *Regulated Activities Order*.

Row 10: Debt Management Activity

This row should be completed in full by a *debt management firm* or a *not-for-profit debt advice body* to which this data item applies.

Row 11: All other credit-related regulated activity

Firms should include in this row data relating to all other *credit-related regulated activities* (defined in the Handbook *Glossary*) not covered in rows 1 to 10. The row should be completed in full and include the total of all other *credit-related regulated activities* that a firm undertakes.

CCR003 – Consumer Credit data: Lenders

The purpose of this data item is to give the FCA an understanding of the number and value of credit-related loans that exist, and the extent of arrears attached to those loans. This data item will also provide information on interest rates being charged on those loans.

In this data item, firms should complete each row relating to lending sub-category that they have permission to undertake.

Firms undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

Column A: Total Value (000s)

In this column, a firm should enter the total value of loans outstanding at the end of the reporting period.

Column B: Total # Loans

In this column, the firm should enter the total number of loans in its loan book at the end of the reporting period. In the case of pawnbroking, each item that has been used as security should be counted as a separate loan.

Column C: Total # Loans in Arrears

In this column, a firm should enter the number of loans that had overdue repayments at the end of the reporting period.

Column D: Total Value of Arrears (000s)

In this column, a firm should enter the total value of arrears that existed in its loan book at the end of the reporting period.

Column E: Total Value of New Advances in Period (000s)

In this column, a firm should enter the total value of loans made during the reporting period. In the case of Debt Purchasing, a firm should report the value of loans purchased during the period.

Column F: Ave. rate of interest (Total loan book)

The firm should calculate the average (mean) APR on all the current loans in its loan book at the period end. APR should be calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook.

The amount entered will be a percentage with no decimal places.

Worked example:

A firm has the following loans:

- 4 loans of £1000 with 300% APR
- 3 loans of £500 with 400% APR
- 2 loans of £200 with 500% APR
- 1 loan of £100 with 750% APR

Average rate of interest is calculated as follows:

$$((4 \times 300) + (3 \times 400) + (2 \times 500) + (1 \times 750)) / 10$$

Column G: Highest rate of interest (in period)

Firms should enter the highest APR that has been applied during the reporting period to a single loan. APR should be calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook.

The amount entered will be a percentage with no decimal places.

CCR004 – Consumer Credit data: Debt Management Firms

This data item is intended to reflect the underlying prudential requirements contained in CONC 10 and allows monitoring against the requirements set out there.

This data item must be completed in sterling (000's).

Total value of <i>relevant debts under management</i> outstanding	1A	Firms should enter the total of the value of all the <i>relevant debts under management</i> that are used to calculate the firm's current prudential resources requirement. This should be the figure calculated at the latest accounting reference date, or, if there has been a change in the value of all the <i>relevant debts under management</i> of more than 15%, the re-calculated figure. See <i>CONC 10.2.5R</i> to <i>CONC 10.2.10G</i> and <i>CONC 10.2.13R</i> to <i>CONC 10.2.14R</i> .
Total prudential resources requirement	2A	Firms should enter whichever figure is higher out of: a) £5000; and b) the variable prudential resources requirement that is calculated based on the value of relevant debts under management outstanding entered in element 1A (See <i>CONC 10.2.5R</i> , <i>CONC 10.2.8R</i> and <i>CONC 10.2.11G</i> to <i>CONC 10.2.12G</i>). NB: this data item must be completed in '000s, so if £5000 is the highest requirement, this should be submitted as "5".
Total prudential resources	3A	Firms should enter their total prudential resources, calculated in accordance with <i>CONC 10</i> .
Number of debt management plans that end before the end of the term originally agreed	4A	Firms should identify the number of debt management plans that ended earlier than stated in the original contract during the reporting period.

CCR005 – Consumer Credit data: Client Money and Assets

The purpose of this data item is so that the FCA has an understanding of how much client money and assets is being held by firms in relation to credit activities.

<p>What was the highest balance of client money held during the reporting period?</p>	<p>1A</p>	<p>A CASS debt management firm should enter the highest total amount of client money that was held in respect of debt management activity at a single point in time during the reporting period.</p>
<p>What was the highest number of clients for whom client money was held during the reporting period?</p>	<p>2A</p>	<p>A CASS debt management firm should enter the highest number of clients for whom client money was held in respect of debt management activity at a single point in time during the reporting period.</p>
<p>How much client money (if any) did you hold in excess of five days following receipt?</p>	<p>3A</p>	<p>If a CASS large debt management firm, at any point during the reporting period, held client money for an individual client, relating to a single transaction, in excess of five days of receipt of cleared funds, it should report the aggregate balance of this client money (ie, the sum of all the amounts that were held longer than five days). A CASS large debt management firm should report '0' if it did not hold client money in excess of five days at any point during the reporting period.</p> <p>In accordance with CASS 11, a CASS large debt management firm must pay any client money it receives to creditors as soon as reasonably practicable, save in the circumstances set out in in CASS 11. In the FCA's view the payment to creditors should normally be within five business days of the receipt of cleared funds.</p>

CCR006 – Consumer Credit data: Debt collection

The purpose of this data item is to give the FCA an understanding of the activities of firms undertaking debt collection, the size of the market and identify potential areas where there is risk of consumer detriment.

1A Have you undertaken any debt collection business during the reporting period?

Firms that have the permission to operate an electronic system in relation to lending (peer-to-peer lending) are required to submit CCR006 because the scope of that permitted activity allows firms to undertake debt collection. If a peer-to-peer lender has not undertaken any debt collection business, they should answer “no” and do not have to complete the remainder of the data item.

Stage of debt placement

The firm should complete each column in which they have debts to collect. All debts at sixth stage or lower should be aggregated and reported in column F.

Debt placement is the placement of an overdue account, passed out for debt collection either through an internal collection strategy (also known as in-house) or outsourced to a specialist third party debt collection agency. Each time the debt is passed to a new agency for collection, the stage of debt placement increases.

Total value of debts being pursued for collection	2	The firm should report the total value of all the debts that are being actively pursued for collection at the end of the reporting period.
Total value of debts under collection	3	The firm should report the total value of all the debts that it has on its books to collect at the end of the reporting period.
Total number of debts being pursued for collection	4	The firm should report the number of all the debts that are being actively pursued for collection at the end of the reporting period.
Total number of debts under collection	5	The firm should report the number of individual debts that it has on its books to collect at the end of the reporting period.
Number of debts under collection with missed repayments	6	The firm should identify the number of debts under collection on its books that have missed repayments.
Total income per placement (000s)	7	The firm should indicate the amount of income that has been attributed to debts collected under each stage of placement.

CCR007 – Key data for credit firms with limited permission

The purpose of this data item is so that the FCA can collect a small, proportionate amount of data from the large population of firms with limited permission undertaking *credit-related regulated activities*, to enable monitoring of the market with a risk-based approach.

Revenue from credit-related regulated activities	1A	A firm should include the total revenue received from all <i>credit-related regulated activities</i> during the period.
Total revenue (including from activities other than credit-related regulated activities)	2A	A firm should all include the total revenue received from all its business undertaken during the reporting period, both regulated and unregulated.
Number of credit-related regulated transactions in reporting period	3A	A firm should identify how many credit-related regulated activity transactions it has undertaken during the period. In relation to debt counselling, the amount should relate to the number of occasions on which advice has been given.
Number of complaints relating to credit-related activities received in period	4A	A firm should submit the total number of complaints received in relation to credit-related activities undertaken by the firm which it has been required to deal with under the rules in <i>DISP</i> .
Credit-related regulated activity carried on in relation to the greatest number of customers in reporting period	5A	Selecting from the following options, a firm should identify which <i>credit-related regulated activity</i> generates the highest amount of turnover. <ul style="list-style-type: none"> • Lending • Consumer hire • Not-for-profit debt counselling • Secondary credit broking • Other

Insert the following new transitional provisions after TP 1.8 AIFMD. The text is not underlined.

TP 1.9 Credit-related regulated activities

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	The changes to SUP 16.11 and SUP 16.12 set out in Annex I of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014	R	The changes effected by the Annex listed in column (2) to SUP 16.11 and SUP 16.12 do not apply until 1 October 2014.	1 April 2014 to 1 October 2014	1 April 2014
2	The changes to SUP 16.12 set out in Annex I of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014	G	The effect of (1) is that, for a <i>firm</i> with <i>permission</i> to carry on only a <i>credit-related regulated activity</i> , the reporting frequencies and submission deadlines for the <i>data items</i> in SUP 16.12.29CR are calculated from the <i>firm's</i> next <i>accounting reference date</i> that follows 1 October 2014. The first <i>data items</i> should cover the period from 1 October 2014 to the <i>accounting reference date</i> or the end of the first reporting period if the frequency is half-yearly.	1 April 2014 to 1 October 2014	1 April 2014
3	SUP 16.12	G	<i>Firms</i> are reminded that CONC 12.1.4R further provides that (a) SUP 16 does not apply to a <i>firm</i> with only an <i>interim permission</i> ; and (b) SUP 16.11 and SUP 16.12 apply to a <i>firm</i> with an <i>interim permission</i> that is treated as a variation of <i>permission</i> for <i>credit-</i>	1 April 2014 until <i>interim permission</i> ceases to have effect	1 April 2014

		<p><i>related regulated activity</i> as if the changes effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made. So, if such a <i>firm</i> is granted <i>permission</i> to carry on (or is granted a variation to add to its <i>permission</i>) <i>credit-related regulated activity</i> (and an <i>interim permission</i> the firm was treated as having ceases to have effect) on a date after 1 October 2014, the reporting frequencies and submission deadlines for the <i>data items</i> in SUP 16.12.29CR are calculated by reference to the <i>firm's accounting reference date</i> that follows the date on which the notice of the grant of <i>permission</i> or the variation of <i>permission</i> under section 55V(5) of the <i>Act</i> takes effect. The first <i>data items</i> should cover the period from that date (not 1 October 2014) to the <i>accounting reference date</i> or the end of the first reporting period if the frequency is half-yearly.</p>		
--	--	---	--	--

Annex J

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013	Description	Handbook reference	Decision maker
...			

<u>The Financial Services Act 2012 (Consumer Credit) Order 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article 3(3)</u>	<u>when the FCA is proposing or deciding to take action against an approved person for being knowingly concerned in a contravention of a CCA Requirement by an authorised person, by exercising the disciplinary powers conferred by section 66*</u>		<u>RDC</u>
<u>Article 3(7)</u>	<u>when the FCA is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a permission or</u>		<u>RDC</u>

	<u>impose a restriction in relation to the carrying on of a <i>regulated activity</i> (under section 206A) for the contravention of a <i>CCA Requirement</i>. This applies in respect of an <i>authorised person</i>, or an <i>unauthorised person</i> to whom section 404C applies*</u>		
<u>Article 3(10)</u>	<u>when the <i>FCA</i> is proposing or deciding to exercise the power under section 384(5) to require a <i>person</i> to pay restitution in relation to the contravention of a <i>CCA Requirement</i>*</u>		<u>RDC</u>

2 Annex 2G Statutory notices and the allocation of decision making

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
...			

<u>The Financial Services Act 2012 (Consumer Credit) Order 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article 3(6)</u>	<u>when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i> by reference to the contravention or likely contravention of a <i>CCA Requirement</i></u>	<u>SUP 14</u>	<u>RDC or executive procedures</u> <u>See DEPP 2.5.7G and DEPP 2.5.7AG</u>

...

Sch 3 Fees and other required payments

...

Sch 3.2G	The <i>FCA</i> 's power to impose financial penalties is contained in:
	...
	the <i>Referral Fees Regulations</i>
	<u>the <i>CCA Order</i></u>

...

Sch 4 Powers Exercised

...

Sch 4.2G	The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
	...
	Regulation 30 (Application of Part 26 of the 2000 Act) of the <i>Referral Fees Regulations</i>
	<u>Article 3(11) (Application of provisions of FSMA 2000 in connection with failure to comply with the 1974 Act) of the <i>CCA Order</i></u>
	<u>Article 4 (Statement of policy) of the <i>CCA Order</i></u>

Annex K

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

INTRO 1 Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, ~~licensees~~* and *VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FCA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FCA*.

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, ~~licensees~~* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

Chapter 2 sets out the scope of the *Financial Ombudsman Service's* ~~three~~ two jurisdictions:

- the *Compulsory Jurisdiction*;
- ~~the *Consumer Credit Jurisdiction*~~; and
- the *Voluntary Jurisdiction*.

The scope of the ~~three~~ two jurisdictions is defined by...

...

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) ...; and
- (2) ~~*persons covered by the Consumer Credit Jurisdiction (licensees)*~~; and [deleted]
- (3) ...

...

1.1.10 R In relation to a *firm's* obligations under this chapter, references to a *complaint* also include an expression of dissatisfaction which is capable of becoming a *relevant new complaint*, ~~or a *relevant transitional complaint* or a *relevant new credit-related complaint*.~~

...

Application to licensees and VJ participants

1.1.14 R ~~This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to licensees for complaints from eligible complainants. [deleted]~~

...

1.1.16 G Although ~~licensees and VJ participants~~ are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should it be necessary.

1.1.17 R ~~In relation to the *Consumer Credit Jurisdiction* only, FOS Ltd may dispense with, or modify, the application of the *rules* in this chapter to licensees where it considers it appropriate to do so and is satisfied that:~~

(1) ~~compliance by the licensee with the *rules* would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and~~

(2) ~~it would not result in undue risk to the persons whose interests the *rules* were intended to protect. [deleted]~~

1.1.18 G ~~This power is intended to deal with exceptional circumstances, for example, where it is not possible for a licensee to meet the specified time limits, and any dispensation or modification is likely to be rare. [deleted]~~

...

1.10.1 R (1) ~~Twice Unless (2) applies, twice a year a firm must provide the FCA with a complete report concerning complaints received from eligible complainants. The report must be set out in the format in DISP 1 Annex 1R.~~

(2) If a firm has permission to carry on only credit-related regulated activities and has revenue arising from credit-related regulated activities that is less than or equal to £5,000,000 a year, the firm must provide the FCA with a complete report concerning complaints received from eligible complainants once a year.

(3) The report required by (1) and (2) must be set out in the format in DISP 1 Annex 1R.

(4) Paragraphs (1) and (2) do not apply to a firm with only a limited permission unless that firm is a not-for-profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.

1.10.1-A G A firm with only a limited permission to whom DISP 1.10.1R(1) and (2) do not apply is required to submit information to the FCA about the number of complaints it has received in relation to credit-related activities under the reporting requirements in SUP 16.12 (see, in particular, data item CCR007 in SUP 16.12.29CR). A firm with limited permission to whom DISP 1.10.1R(1) and (2) do not apply is also subject to the complaints data publication rules in DISP 1.10A.

...

1.10.1D G Not all the firms in the group need to submit the report jointly. Firms should only consider submitting a joint report if it is logical to do so, for example, where the firms have a common central complaints handling team, and the same accounting reference date and are all subject to the same reporting frequencies and submission deadlines.

...

1.10.2 R Part A of DISP 1 Annex 1R requires (for the relevant reporting period) information about:

...

1.10.2-A R Part B of DISP 1 Annex 1R requires (for the relevant reporting period) information about:

(1) the total number of complaints received by the firm;

(2) the total number of complaints closed by the firm;

(3) the total number of complaints:

(a) upheld by the firm in the reporting period; and

(b) outstanding at the beginning of the reporting period; and

(4) the total amount of redress paid in respect of complaints during the reporting period.

...

1.10.3 G For the purpose of DISP 1.10.2R, DISP 1.10.2-AR and DISP 1.10.2AR, when completing the return, the firm should take into account the following matters.

...

(2) Under *DISP* 1.10.2R(3)(a) or *DISP* 1.10.2-AR, a *firm* should report ...

(3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, redress should be interpreted ...

(4) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, redress should not, however, include ...

...

1.10.4 R ~~The~~ Unless *DISP* 1.10.4AR applies, the relevant reporting periods are:

...

1.10.4A R If a *firm* has *permission* to carry on only *credit-related regulated activities* and has revenue arising from *credit-related regulated activities* that is less than or equal to £5,000,000 a year, the relevant reporting period is the year immediately following the *firm's accounting reference date*.

...

Meaning of revenue

1.10.10 G In *DISP* 1.10, references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

...

Obligation to publish summary of complaints data or total number of complaints

1.10A.1 R (1) ~~Where~~ Unless (1A) applies to the *firm*, where, in accordance with *DISP* 1.10.1R, a *firm* submits a report to the *FCA* reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

(1A) (a) This paragraph applies to a *firm* which:

(i) has *permission* to carry on only *credit-related regulated activities*; and

(ii) has revenue arising from *credit-related regulated activities* that is less than or equal to £5,000,000 a year.

(b) Where a *firm* to which this paragraph applies submits a report to the *FCA* in accordance with *DISP* 1.10.1R reporting 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data

summary).

- (2) Where, in accordance with *DISP* 1.10.1CR, a *firm* submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 500 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary), unless it is a *firm* to which (1A) applies.
- (3) Where, in accordance with *DISP* 1.10.1CR, a *firm* to which (1A) applies submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary).
- (4) Where, in accordance with *SUP* 16.12.4R and *SUP* 16.12.29CR, a *firm* with a *limited permission* submits data item CCR007 to the *FCA* reporting 1000 or more *complaints*, it must publish the total number of *complaints* received.

...

- 1.10A.3 R
- (1) Where the *firm's* relevant reporting period (as defined in *DISP* 1.10.4R or *DISP* 1.10.4AR as the case may be) ends between 1 January and 30 June, the *firm* must publish the *complaints* data summary no later than 31 August of the same year.
 - (2) Where the *firm's* relevant reporting period (as defined in *DISP* 1.10.4R or *DISP* 1.10.4AR as the case may be) ends between 1 July and 31 December, the *firm* must publish the *complaints* data summary no later than 28 February of the following year.
 - (3) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 January and 30 June, the *firm* must publish the total number of *complaints* received no later than 31 August of the same year.
 - (4) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 July and 31 December, the *firm* must publish the total number of *complaints* received no later than 28 February of the following year.

...

- 1.10A.4 R
- A *firm* must immediately confirm to the *FCA*, in an email submitted to complaintsdatasummary@fca.org.uk, that the *complaints* data summary or total number of *complaints* (as appropriate) accurately reflects the report submitted to the *FCA*, that the summary or total number of *complaints* (as appropriate) has been published and where it has been published.

...

1.10A.5 E A *firm* will be taken to have complied with *DISP* 1.10A.1R(1)₂ ~~or~~ (1A)₂, (2)₂, (3) or (4) if within the relevant time limit set out in *DISP* 1.10A.3R the *firm*:

- (1) ensures that another *person* publishes the *complaints* data summary or total number of complaints (as appropriate) on its behalf; and
- (2) publishes details of where this summary or total number of complaints (as appropriate) is published.

...

1.10A.6 R Any *firm* covered by a joint report, other than the *firm* that submitted the joint report, must provide details of where the *complaints* data summary or total number of complaints (as appropriate) is published to any *person* who requests them.

...

1.10A.7 G *Firms* may choose how they publish the *complaints* data summary or total number of complaints (as appropriate). However, the summary or total number of complaints (as appropriate) should be readily available. For this reason, the *FCA* recommends that *firms* should publish the summary or total number of complaints (as appropriate) on their websites.

1.10A.8 G (1) The *FCA* recommends that *firms* should publish additional information alongside their *complaints* data summaries or total number of complaints (as appropriate) in order to relate the number of complaints to the scale of the *firm's* relevant business. *Firms* are recommended to publish the relevant standard metrics set out in the table at *DISP* 1 Annex 1AG with the summaries. Where the *complaints* data summary or total number of complaints (as appropriate) relates to a joint report the metrics should cover all the *firms* included in the joint report.

...

Meaning of revenue

1.10A.9 G In *DISP* 1.10A, references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

...

1 Annex 1R Complaints return form
This annex consists only of one or more forms. Forms are to be found through the following address:

Complaints return form - DISP 1 Annex 1 R

DISP 1 Ann 1R

Illustration of the reporting requirements, referred to in *DISP 1.10.1R*

Complaints Return (DISP 1 Ann 1R)

GROUP REPORTING / NIL RETURN DECLARATION						
1	Does the data reported in this return cover complaints relating to more than one entity? If 'Yes', then list the <i>firm</i> reference numbers (FRNs) of all the entities included in this return.	Yes / No				
2	We wish to declare a nil return	Yes / No				
RETURN DETAILS REQUIRED						
3	Total complaints outstanding at reporting period start date					

PART A

Complaints closed and total redress paid during the reporting period

		A	B	C	D	E
	Product/service grouping	Complaints closed within 4 weeks	Complaints closed > 4 but within 8 weeks	Complaints closed > 8 weeks	Total complaints upheld by firm	Total redress paid
4	Banking <u>and credit cards</u>					
5	Home finance					
6	General insurance and pure protection					
7	Decumulation, life and					

	pensions					
8	Investments					

Complaints opened

			A	B	C	D	E
	Product/ service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/ customer service	Arrears related	Other
9	<u>Banking and credit cards</u>	Current accounts					
10		Credit cards					
46		<u>Overdrafts</u>					
11		<u>Unregulated loans</u>					
12		Savings (inc. Cash ISA) and other banking					
13	Home finance	Equity release products					
14		Impaired credit mortgages					
15		Other regulated home finance products (<u>including second and subsequent charge mortgages</u>)					
16		Other unregulated home finance products					
17	General insurance & pure protection	Payment protection insurance					

PART B

		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
	<u>Activities</u>	<u>Total complaints outstanding at reporting period start date</u>	<u>Complaints Received</u>	<u>Complaints Closed</u>	<u>Complaints Upheld by firm</u>	<u>Total Redress paid £</u>

	<u>Lending</u>					
<u>35</u>	<u>Debt purchasing (including complaints in relation to the underlying debt that has been purchased)</u>					
<u>36</u>	<u>Hire purchase/ conditional sale agreements</u>					
<u>37</u>	<u>Home credit loan agreements</u>					-
<u>38</u>	<u>Bill of sale loan agreements, e.g. logbook lending</u>					
<u>39</u>	<u>Pawnbroking</u>					
<u>40</u>	<u>High-cost short-term credit</u>					
<u>41</u>	<u>Other lending</u>					
<u>42</u>	<u>Credit Broking</u>					
<u>43</u>	<u>Debt Management activity</u>					
<u>44</u>	<u>Debt collecting</u>					
<u>45</u>	<u>All other credit-related activity</u>					

NOTES ON THE COMPLETION OF THIS RETURN

Nil returns

If no *complaints* have been received during the reporting period and no *complaints* were outstanding at the beginning of the period, the *firm* may submit a NIL RETURN by clicking on the relevant box...

Product/service groupings

~~Complaints~~ Unless otherwise specified, *complaints* should be allocated to these groupings based on the product or service the *complaint* relates to.

If a *firm* has not received any *complaints* relating to a particular product or service during the reporting period, the relevant box should be left blank.

Product and cause categories

The 'other' categories should only be used in exceptional circumstances when none of the specific product or cause categories are appropriate.

A *complaint* should be reported against the product/service element complained about; this may be different to the main policy itself. For example, for a term assurance policy with an attaching critical illness option, where the *complaint* relates to the term assurance element, it should be reported under 'other pure protection' but where the *complaint* relates to the critical illness element, it should be reported under 'critical illness'.

A *complaint* should only be reported in Part B if it is not covered by a specific category in Part A.

A lender should report *complaints* about the way in which it collects debts due under loans where it is the lender in the relevant lending category.

1 Annex 1AG Recommended metrics

This table belongs to *DISP* 1.10A.8G

Type of business	Contextualised new complaint numbers	Recommended metrics

Banking and loans <u>credit cards</u>	<i>Complaints</i> per 1,000 accounts	The tariff base (number of accounts) at row 1, column 2 of the table in <i>FEES 5 Annex 1 R</i> as reported in the <i>firm's</i> most recent statement of total amount of <i>relevant business</i> <u>or if this tariff base is not relevant, the applicable tariff base under <i>FEES 5 Annex 1R</i></u>
...		
Decumulation, life and pensions (intermediation)	<i>Complaints</i> per £1m of annual eligible income	The <i>firm's</i> annual eligible income as defined in class C2 of <i>FEES 6 Annex 3R</i>
<u>Credit-related activities</u>	<u><i>Complaints</i> per £1m of annual eligible income</u>	<u>The applicable tariff base under <i>FEES 5 Annex 1R</i></u>
Note 1: ...		
<u>Note 5: Where a <i>firm</i> undertakes both (a) banking and credit cards and (b) other credit-related activities, it can chose to use the metric which forms the greater part of its business.</u>		
<u>Note 6: Where a <i>firm</i> undertakes both (a) home finance and (b) credit-related activities, it can chose to use the metric which forms the greater part of its business.</u>		

...

1 Annex 1BR Complaints publication report

This table belongs to *DISP 1.10A.2R*

Complaints publication report

Firm name:

Group: (if applicable):

Other firms included in this report (if any):

Period covered in this report: [e.g. 1 January – 30 June ~~2010~~ 2015 or 1 January – 31 December 2015]

Brands/trading names covered:

	Number of complaints opened	Number of complaints closed	Complaints closed within 8 weeks (%)	Closed complaints upheld by firm (%)
<u>Banking and credit cards</u>				
...				
<u>Credit-related</u>			<u>Not applicable</u>	

...

1 Annex 2G Application of DISP 1 to type of respondent/complaint

...

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4-1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...						
<i>licensee</i>	Applies for <i>eligible complaints</i>	Applies for <i>eligible complainants</i> (DISP 1.3.4G to DISP 1.3.5G do not apply)	Applies for <i>eligible complainants</i> (DISP 1.6.8G does not apply)	Does not apply	Does not apply	Does not apply
...						

...

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, ~~the Consumer Credit Jurisdiction~~ and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* ~~three~~ two jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services* and issuance of *electronic money*, and covers:
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about); ~~and~~

(b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order*,² and the *Mortgages and General Insurance Complaints Transitional Order*; and

(c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 11 of the *Regulated Activities Amendment Order*;

(2) ~~the *Consumer Credit Jurisdiction* covers certain *complaints* against *licensees* (and businesses which were *licensees* at the time of the events complained about); and [deleted]~~

(3) ...

2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise

(1) ...

(2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*; ~~and~~

(3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgages and General Insurance Complaints Transitional Order*;²

(4) *relevant existing credit-related complaints* referred to the *Financial Ombudsman Service* before 1 April 2014 which were formerly being dealt with under the *Consumer Credit Jurisdiction* and which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*; and

(5) *relevant new credit-related complaints* about events which took place before 1 April 2014 but referred to the *Financial Ombudsman Service* on or after 1 April 2014 which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*.

...

2.2.1 G The scope of the *Financial Ombudsman Service*'s ~~three~~ two jurisdictions depends on:

...

...

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory*

Jurisdiction if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) ...
 - (1A) ...
 - (2) ~~*consumer credit activities*~~; [deleted]
 - (3) ...
 - (4) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - (5) paying money by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
- ...

...

Activities by firms and unauthorised persons previously subject to the Consumer Credit Jurisdiction

2.3.2-A G In accordance with article 11 of the *Regulated Activities Amendment Order*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) a relevant existing credit-related complaint referred to the *Financial Ombudsman Service* before 1 April 2014 which was formerly being dealt with under the *Consumer Credit Jurisdiction*; and
- (2) a relevant new credit-related complaint referred to the *Financial Ombudsman Service* on or after 1 April 2014 which relates to an act or omission which took place before 1 April 2014;

provided that:

- (a) the *complaint* could have been dealt with under the *Consumer Credit Jurisdiction* (disregarding whether the complainant would have been eligible under rules made for the purposes of the *Consumer Credit Jurisdiction* and whether the complaint would have fallen within a description specified in those rules) but for the repeal of section 226A of the *Act*; and
- (b) the complainant is eligible and wishes to have the *complaint* dealt with under the *Financial Ombudsman Service*.

...

2.3.2A R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *payment service provider* in carrying on:

- (1) *payment services*; or
- (2) ~~*consumer credit activities*~~ *credit-related regulated activities*;

...

2.3.2B R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by an *electronic money issuer* in carrying on:

- (1) issuance of *electronic money*; or
- (2) ~~*consumer credit activities*~~ *credit-related regulated activities*;

...

...

2.4 ~~To which activities does the Consumer Credit Jurisdiction apply?~~ [deleted]

2.4.1 R ~~The *Ombudsman* can consider a *complaint* under the *Consumer Credit Jurisdiction* if:~~

- ~~(1) it is not covered by the *Compulsory Jurisdiction*; and~~
- ~~(2) it relates to an act or omission by a *licensee* in carrying on~~
 - ~~(a) one or more *consumer credit activities*; or~~
 - ~~(b) any ancillary activities, including advice carried on by the *licensee* in connection with them. [deleted]~~

...

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

- (1) it is not covered by the *Compulsory Jurisdiction* ~~or the *Consumer Credit Jurisdiction*~~; and
- (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 ~~22 July 2013~~ 1 April 2014) 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 1 G*);
- (d) ~~activities which would be *consumer credit activities* if they~~

were carried on from an establishment in the *United Kingdom*; [deleted]

...

- (f) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
- (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);

...

Consumer Credit Jurisdiction

2.6.3 R ~~The *Consumer Credit Jurisdiction* covers only *complaints* about the activities of a *licensee* carried on from an establishment in the *United Kingdom*.~~ [deleted]

...

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(10) the complainant gave the *respondent* a guarantee or security for:

...

(c) an actual or prospective *regulated consumer credit agreement*;

...

(11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in ~~operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended)~~ *providing credit references*;

(12) the complainant is a *person*:

(a) from whom the *respondent* has sought to recover payment under a ~~*regulated consumer credit agreement*~~ or ~~*regulated consumer hire agreement*~~ (whether or not the *respondent* is a party to the agreement); or

(b) in relation to whom the *respondent* has sought to perform duties, or exercise or enforce rights, on behalf of the creditor or owner, under a ~~*regulated consumer credit agreement*~~ or

~~regulated consumer hire agreement~~ in carrying on ~~debt administration as defined by section 145(7A) of the Consumer Credit Act (1974) (as amended)~~ debt administration;

...

(14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* to the *respondent*;

(15) the complainant is either a *borrower* or a *lender* under a *P2P agreement* and the *respondent* is the *operator of an electronic system in relation to lending*.

...

2.7.9 R The following are not *eligible complainants*:

(1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:

(a) ...

(ab) ...

(b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, ~~the *Consumer Credit Jurisdiction*~~, or the *Voluntary Jurisdiction*;

(2) ...

(3) ~~(in the *Consumer Credit Jurisdiction*):~~

(a) ~~a *body corporate*~~;

(b) ~~a *partnership* consisting of more than three persons~~;

(c) ~~a *partnership* all of whose members are *bodies corporate*~~; or

(d) ~~an *unincorporated body* which consists entirely of *bodies corporate*~~. [deleted]

...

2 Annex 1G Regulated activities for the Voluntary Jurisdiction at ~~22 July 2013~~ 1 April 2014

This table belongs to *DISP 2.5.1R*

- 2.1 G The activities which were covered by the Compulsory Jurisdiction (at ~~22 July 2013~~ 1 April 2014) were:
- (1) for *firms*:
 - ...
 - (c) ~~*consumer credit activities*~~; [deleted]
 - ...
 - (e) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - (f) paying *money* by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - ...
 - (2) for payment service providers:
 - (a) ...
 - (b) ~~*consumer credit activities*~~ *credit-related regulated activities*;
 - ...
 - (3) for electronic money issuers:
 - (a) issuance of electronic money; ~~or~~
 - (b) ~~*consumer credit activities*~~ *credit-related regulated activities*;
 - ...

The activities which (at ~~22 July 2013~~ 1 April 2014) 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*:

- ...
- (14C) ...
- (14D) *credit broking* (article 36A);
- (14E) *operating an electronic system in relation to lending* (article 36H);
- (16) ...
- (16A) *debt adjusting* (article 39D(1) and (2));

(16B) debt counselling (article 39E(1) and (2));

(16C) debt collecting (article 39F(1) and (2));

(16D) debt administration (article 39G(1) and (2));

...

(32A) entering into a regulated credit agreement (article 60B(1));

(32B) exercising, or having the right to exercise, rights and duties under a regulated credit agreement (article 60(B)(2));

(32C) entering into a regulated consumer hire agreement (article 60N(1));

(32D) exercising, or having the right to exercise rights and duties under a regulated consumer hire agreement (article 60N(2));

...

(40A) providing credit information services (article 89A);

(40B) providing credit references (article 89B);

...

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a *person's* financial standing.

...

3.1.2 R In this chapter, 'out of jurisdiction' means outside the *Compulsory Jurisdiction*, ~~the *Consumer Credit Jurisdiction*~~ and the *Voluntary Jurisdiction* in accordance with *DISP 2*.

...

3.6.2 G Section 228 of the *Act* sets the "fair and reasonable" test for the *Compulsory Jurisdiction* (other than in relation to *consumer redress schemes*) ~~and the *Consumer Credit Jurisdiction*~~ and *DISP 3.6.1R* extends it to the *Voluntary Jurisdiction*.

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms* except where the context requires otherwise:

(1) ...

(2) *DISP 2* (Jurisdiction of the Financial Ombudsman Service), except:

- (a) ...
- (b) ~~DISP 2.4 (Consumer Credit Jurisdiction); and~~

...

...

Schedule 2 Notification requirements

...

Sch 2.1 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>DISP</i> 1.10.1R(1)
<u><i>DISP</i> 1.10.1R(2)</u>	<u>Complaints report</u>	<u>Details</u>	<u>A year immediately following the firm's accounting reference date</u>	<u>30 business days</u>
...				
<i>DISP</i> 1.10A.4R	Publication of <i>complaints</i> data summary/ <u>total number of complaints</u> (as appropriate)	Email confirmation of publication, containing also a statement that the data summary <u>or total number of complaints</u> (as appropriate) accurately reflects the report submitted to the <i>FCA</i> and stating where the summary/ <u>total number of complaints</u> has been published	Upon publication of <i>complaints</i> data summary/ <u>total number of complaints</u> (as appropriate)	Immediately

...

TP 1.1 Transitional Provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>32</u>	<u>The changes to DISP 1.10 and 1.10A set out in Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>R</u>	<u>The changes referred to in column (2) to DISP 1.10 and 1.10A do not apply until 1 October 2014.</u>	<u>1 April 2014 to 1 October 2014</u>	<u>1 April 2014</u>
<u>33</u>	<u>The changes to DISP 1.10 and 1.10A set out in Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>G</u>	<p><u>Firms are reminded that CONC 12.1.4R provides that DISP 1.10 and DISP 1.10A (a) do not apply to a person with only an interim permission; and (b) apply to a firm with an interim permission that is treated as a variation of permission with respect to credit-related regulated activity as if the changes to DISP 1.10 and DISP 1.10A effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</u></p> <p><u>The effect of TP 32 and CONC 12.1.4R is that:</u></p> <p><u>(1) for a firm with only an interim</u></p>	<u>1 April 2014 to the date on which interim permission ceases to have effect</u>	<u>1 April 2014</u>

		<p><u>permission:</u></p> <p><u>(a) the reporting frequencies, submission deadlines and time limits for publication for the returns and complaints data summaries in DISP 1.10 and 1.10A are calculated by reference to the firm's next accounting reference date that follows 1 October 2014 or, if later, the date on which the firm's application for permission to carry on credit-related regulated activity is granted;</u></p> <p><u>(b) the first complaints return in the form in DISP 1 Annex 1R should cover complaints received in the period:</u></p> <p><u>(i) starting on either 1 October 2014 or, if later, on the date on which the firm's application for permission to carry on credit-related regulated activity is granted; and</u></p> <p><u>(ii) ending on either the accounting reference date or (if the frequency is twice a year and the start of the period under (i) is more than six months before the accounting reference date) the date that falls six months before the firm's accounting reference date.</u></p> <p><u>(2) For a firm with an interim permission that is treated as a variation of permission, where the relevant reporting period includes a period after the date on which the firm's application for a variation of permission to add credit-related regulated activity is granted (or, if that date is before 1 October 2014, where the relevant reporting period includes a period after 1 October</u></p>		
--	--	---	--	--

			<p><u>2014):</u></p> <p><u>(a) the complaints return form should be submitted in the form in DISP 1 Annex 1R as amended by Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014);</u></p> <p><u>and</u></p> <p><u>(b) items 35 to 46 of the form should cover complaints received from 1 October 2014 or, if later, from the date on which the firm's application for permission to carry on credit-related regulated activity is granted.</u></p>		
<u>34</u>	<u>DISP 1.10 and 1.10A</u>	<u>R</u>	<p><u>DISP 1.10 and DISP 1.10A do not apply to a firm with permission to carry on only one or more credit-related regulated activities (and no other regulated activity) until 1 October 2014.</u></p>	<u>1 April 2014 to 1 October 2014</u>	<u>1 April 2014</u>

Annex L

Amendments to the Credit Unions sourcebook (CREDS)

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

- 1.1.2 G ...
- (2) Other *permissions* are covered elsewhere in the *Handbook*. So, for example, a *credit union* seeking a *permission* to undertake a *regulated mortgage activity* would need to comply with the requirements in the Mortgages and Home Finance: Conduct of Business sourcebook (*MCOB*), and a *credit union* seeking a *permission* to undertake *insurance mediation* in relation to *non-investment insurance contracts* would need to comply with the requirements in the Insurance: Conduct of Business sourcebook (*ICOBS*).
- ...
- 1.1.2A G A credit union seeking a permission to undertake a credit-related regulated activity would need to comply with the requirements in the Consumer Credit sourcebook (CONC).
- ...
- 2.2.24 G *SYSC 9.1.1R* requires that a *credit union* takes reasonable care to make and retain adequate records of all matters governed by the *Act* or the *CCA*, *secondary* legislation under the *Act* or the *CCA*, or *rules* (including accounting records). These records should be capable of being reproduced in the English language and on paper.
- ...
- 9.2 Reporting**
- 9.2.1 R A *credit union* must provide the *FCA*, once a year, with a report in the format set out in *CREDS 9 Annex 1R* (Credit Union complaints return) which contains (for the relevant reporting period) information about:
- ...
- (2) (for the product/service groupings within section 5) the number of *complaints* closed by the *credit union*:

...

(2A) (for other lending or credit-related activity within section 5A) the number of *complaints* closed by the *credit union*;

...

[**Note:** a transitional ~~provision~~ applies provisions apply to this *rule*: see *CREDS* TP 1.16, *CREDS* TP 1.17 and *CONC* 12.1.4R.]

...

9 Annex 1R Credit union complaints return

for FCA use only)

Credit union complaints return

FCA Handbook Reference: CREDS 9 Annex 1R
This is the report referred to in CREDS 9.2.1R

Please read the notes on completion before completing this return

Firm details and reporting period	Section 1
--	------------------

1.01	Firm reference number																		
1.02	Name of credit union																		
1.03	Reporting period	From	mm	yyyy	To	mm	yyyy												

Nil return declaration	Section 2
-------------------------------	------------------

SECTIONS 1 AND 6 MUST STILL BE COMPLETED.

2.01	We wish to declare a Nil Return (Tick the box if applicable)	Nil return	<input type="checkbox"/>
------	---	------------	--------------------------

Complaints outstanding	Section 3
-------------------------------	------------------

3.01	Number of complaints outstanding as at reporting period start date	
------	--	--

Complaints opened during reporting period

Section 4

Product/service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	other
Banking and credit cards	Current Accounts					
	Credit cards					
	Overdrafts					
	Unregulated loans					
	Savings (inc. Cash ISA) and other banking					
Home finance	Equity release products					
	Impaired credit mortgages					
	Other regulated home finance products (including second and supplementary charge mortgages)					
	Other unregulated home finance products					
General insurance and pure protection	Payment Protection Insurance					
	Other general insurance					
	Critical illness					
	Income protection					
	Other pure protection					
Decumulation, life and pensions	Personal pensions and FSAVCs					
	Investment linked annuities					
	Income drawdown products					
	Endowments					
	Other decumulation, life and pensions					
Investments	Investment bonds					
	PEPs/ISAs (exc. cash ISAs)					
	Unit trusts/OEICs					
	Investment trusts					
	Structured products					
	Other investment products/funds					
	Investment management/services(inc. platforms)					

Complaints closed during reporting period

Section 5

Product/service grouping	Number of complaints closed within 8 weeks	Number of complaints closed after more than 8 weeks	Number of complaints upheld by the credit union in the period	Total amount of redress paid to consumers in the period
Banking and credit cards				
Home finance				
General insurance and pure protection				
Decumulation, life and pensions				
Investments				

Credit-related complaints

Section 5A

Activities	<u>Total complaints outstanding at reporting period start date</u>	<u>Complaints Received</u>	<u>Complaints Closed</u>	<u>Complaints Upheld by firm</u>	<u>Total Redress paid £</u>
<u>Other lending</u>					
<u>All other credit-related activity</u>					

Declaration and signature Section 6

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000) and a breach of regulatory requirements.

In signing this form, the credit union acknowledges that the data supplied may be used by the FCA in a variety of different ways (including making it publicly available) in support of its principal functions and statutory objectives as provided for under the Financial Services and Markets Act 2000.

I confirm that I have read the notes and that the information given in this return about complaints received by the credit union named at Section 1.02 is accurate and complete to the best of my knowledge and belief.

6.01	Name of person completing on behalf of the credit union	
------	---	--

6.02	Job title	
------	-----------	--

6.03	Signature	
------	-----------	--

6.04	Date	
------	------	--

Notes on completion of this return

...

Leave blanks where no complaints have been received.

All credit unions provide the ~~products~~ product "Savings (inc Cash ISA) and other banking" (members' shares) and ~~"Unregulated loans" (members' loans not secured on land)~~ and may receive complaints for ~~these products~~ this product. The corresponding ~~rows~~ row in the form ~~have~~ has been left shaded to help credit unions with completion; all other rows are clear. Some categories of complaint (shown in the column headings) may not apply to those products.

...

Section 5 – Complaints closed during reporting period

Credit unions will usually receive complaints relating to the 'Banking and credit cards' product/service grouping only and this row is shaded to help with completion. As above – some credit unions may also provide other products; if so they should also fill in the appropriate row even though it is not shaded.

Section 5A – Credit-related complaints

All credit unions carry on "Other lending" (i.e. lending other than credit cards, overdrafts or loans secured on land) and may receive complaints about those activities. The corresponding row in the form has been left shaded to help credit unions with completion (a complaint should only be reported in section 5A if it is not covered by a specific category in sections 4 and 5). Complaints should be included irrespective of whether the lending is regulated under the Consumer Credit Act 1974 and CONC, or is exempt.

Some credit unions may also carry on other credit-related activities (such as debt counselling or debt adjusting), for which they may require further permission. If so, they should enter the number of complaints received in relation to these activities in the box for "All other credit-related activity".

Section 6 – Declaration & signature

The declaration must be signed by an appropriate individual for the credit union submitting this return.

If you have any questions or need help with this return, please approach your usual supervisory contact at the FSA FCA.

...

TP 1 Transitional Provision

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
<u>17</u> [FCA]	<u>The changes to CREDS 9.2.1R and CREDS 9 Annex 1R set out in Annex L of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>R</u>	<u>The changes referred to in column (2) to CREDS 9.2.1R and CREDS 9 Annex 1R do not apply until 1 April 2015.</u>	<u>1 April 2014 to 31 March 2015</u>	<u>1 April 2014</u>
<u>18</u> [FCA]	<u>The changes to CREDS 9.2.1R and CREDS 9 Annex 1R set out in Annex L of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>G</u>	<u>Under CREDS 9.2.7R, the relevant reporting period is from 1 April to 31 March each year. The effect of (17) is, therefore, that the credit union complaints return in respect of the reporting period 1 April 2014 to 31 March 2015 should be in the format set out in CREDS 9 Annex 1R as it stood before the changes to it by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 were made. The first occasion on which a credit union has to report complaints in the new format required by CREDS 9 Annex 1R, as amended by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 is for the reporting period from 1 April 2015 to 31 March 2016.</u>	<u>1 April 2014 to 31 March 2015</u>	<u>1 April 2014</u>

Annex M

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

App
1.3.1

R ...

(2) Where the *lender* is a body specified in CONC App 1.3.2R or an *authorised person* with *permission to accept deposits*, article 60E(2) of the *Regulated Activities Order* applies only to:

(a) ...

(b) a *borrower-lender agreement* secured by any *legal or equitable mortgage on land to finance*:

...

(c) a *borrower-lender agreement* secured by any *legal or equitable mortgage on land to refinance* any existing indebtedness of the *borrower*, whether to the *lender* or another *person*, under any agreement by which the *borrower* was provided with *credit* for any of the purposes specified in (b)(i) to (iii) above.

(3) (2)(b)(iii) above applies only

(a) where the *lender* is the *lender* under

...

being, in either case, an agreement relating to the *land* referred to in (2)(b)(iii) and secured by a *legal or equitable mortgage on that land*; or

(b) where a *borrower-lender agreement to finance* the alteration, enlarging, repair or improvement of a dwelling, secured by a *legal or equitable mortgage on that dwelling*, is made as a result of any such services as are described in section 4(3)(e) of the Housing Associations Act 1985 which are certified as having been provided by:

...

Annex N

Amendments to the Building Societies Regulatory Guide (BSOG)

In this Annex, striking through indicates deleted text.

1.1.3 G ...
“official list” ...
~~“OFT”~~ ~~Office of Fair Trading~~
...

Annex O

Amendments to the Enforcement Guide (EG)

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

10.19 Where the *person* is not a *firm* or an *appointed representative*, the *FCA* will ~~generally pass the case to the Office of Fair Trading, with a recommendation that it take the enforcement action. The Office of Fair Trading may then decide whether or not to take enforcement action~~ liaise with the Competition and Markets Authority or (as appropriate) a qualifying body under the *Unfair Terms Regulations*.

...

19. Non-FSMA powers

...

19.39 The *FCA*, together with several other UK authorities, has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. Where a breach has been committed, the *FCA* will liaise with other authorities, particularly ~~the Office of Fair Trading (the OFT)~~ Competition and Markets Authority (the CMA), to determine which authority is best placed to take enforcement action. The *FCA* would generally expect to be the most appropriate authority to deal with breaches by authorised firms in relation to regulated activities.

...

19.41 The Community legislation falling within the *FCA*'s scope under the Enterprise Act is:

- the Unfair Terms in Consumer Contracts Directive;¹⁴
- the Comparative and Misleading Advertising Directive;¹⁵
- the E-Commerce Directive;¹⁶
- the Distance Marketing Directive;¹⁷ ~~and~~
- the Unfair Commercial Practices Directive;¹⁸ and
- the Consumer Credit Directive.¹⁹

¹⁹ Directive 2008/48/EC

...

- 19.45 Before the *FCA* may apply for an enforcement order, it must ~~consult with:~~
- ~~the OFT give notice to the CMA of its intention to apply for an enforcement order;~~ and
 - consult the person against whom the enforcement order would be made.

The period for notification and consultation is 14 days before an application for an enforcement order ~~can be~~ is made, or 7 days in the case of an application for an interim enforcement award. The aim of consultation is to ensure that any action taken is necessary and proportionate, and to ensure that businesses are given a reasonable opportunity to put things right before the courts become involved.

...

- 19.49 The *FCA* anticipates that its powers under the *Act* will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the *FCA* does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the ~~OFT's~~ CMA's website.¹⁹

19 ~~www.offt.gov.uk/advice-and-resources/resource-base/legal/enterprise-act/part8/~~ www.gov.uk/governmentorganisations

...

Financial Services (Distance Marketing) Regulations 2004

...

- 19.61 The *FCA* may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of the Regulations. ~~The *FCA* must consult with the OFT before exercising this power.~~ The *FCA* may also accept undertakings from the person who committed the breach that he will comply with the Regulations. The *FCA* must publish details of any applications it makes for injunctions; the terms of any orders that the court subsequently makes; and the terms of any undertakings given to it or to the court.

...

The Consumer Protection Co-operation Regulation²²

- 19.66 The *FCA* is a competent authority under the CPC Regulation, which aims to encourage and facilitate co-operation between competent authorities across the EU in consumer protection matters. The *FCA* is a competent authority for the purposes of specified EU consumer protection laws²³ in the context of the regulated activities of authorised firms and of breaches by UK firms concerning “specified contracts” as defined in the Financial Services (Distance Marketing) Regulations 2004 (for which see paragraphs 19.60 to 19.62).

²³ These are the Unfair Terms in Consumer Contracts Directive; the Comparative and Misleading Advertising Directive; the E-Commerce Directive; the Distance

Marketing Directive; ~~and~~ the Unfair Commercial Practices Directive; and the Consumer Credit Directive.

...

After EG 19 insert the following new chapter. The text is not underlined.

20. Enforcement of the Consumer Credit Act 1974

20.1 *The CCA Order* gives the *FCA* the power to enforce the *CCA* through the application of its investigation and sanctioning powers in the *Act* by reference to the contravention of *CCA Requirements* and criminal offences under the *CCA*.

The *FCA*'s investigation and sanctioning powers include the following:

- power to censure or fine an approved person, or impose a suspension or a restriction on their approval under section 66 of the *Act*, for being knowingly concerned in a contravention by the relevant *authorised person* of a *CCA Requirement*;
- power to require information and documents, under section 165 of the *Act*, it reasonably requires in connection with the exercise of the functions conferred on it by the *CCA Order*;
- power to appoint an investigator under section 167 of the *Act* for reasons related to its functions under the *CCA Order*;
- power to appoint an investigator under section 168 of the *Act* where there are circumstances suggesting that an offence under the *CCA* may have been committed or that a person may have failed to comply with a *CCA Requirement*;
- power to impose a requirement under section 196 of the *Act* on an *incoming firm* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to censure (under section 205 of the *Act*) or fine (under section 206 of the *Act*) an authorised person, or impose a suspension or restriction on their permission (under section 206A of the *Act*) for the contravention of a *CCA Requirement*;
- power to apply to the court for an injunction under section 380 of the *Act* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to apply to the court for a restitution order under section 382 of the *Act* by reference to the contravention of a *CCA Requirement*;
- power to impose a restitution requirement under section 384 of the *Act* by reference to the contravention of a *CCA Requirement*; and
- power to prosecute under section 401 of the *Act* an offence committed under the *CCA*.

20.2 The *FCA*'s approach to taking enforcement action under the *CCA Order* will mirror its general approach to enforcing the *Act*, as set out in EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate,

responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

- 20.3 The *FCA* has decided to adopt procedures and policies that it currently has in place for the enforcement of the *Act* in exercising its powers to enforce the *CCA*. Key features of the *FCA*'s approach are described below.

Information gathering and investigation powers

- 20.4 The *CCA Order* applies much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating contraventions of the *CCA Requirements* and offences committed under the *CCA*.

- 20.5 The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *CCA Order* and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in civil investigations under the *CCA Order* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the CCA Order

- 20.6 The *RDC* is the *FCA*'s decision maker for decisions which require the giving of warning or decision notices under the *CCA Order*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*.
- 20.7 The *CCA Order* does not require the *FCA* to publish procedures about its approach towards the commencement of criminal prosecutions. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in *EG 12*.
- 20.8 The *CCA Order* does not require the *FCA* to publish procedures about its approach towards applications to the court for an injunction or restitution order. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in *EG 10* and *EG 11*.
- 20.9 The *CCA Order* requires the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to material, as set out in section 394 of the *Act*, in relation to warning notices and decision notices given under the *CCA Order*.
- 20.10 The *CCA Order* applies the procedural provisions of Part 9 of the *Act*, as modified by the *CCA Order*, in respect of matters that can be referred to the Tribunal. Referrals to the Tribunal in respect of decision notices given under sections 67 (pursuant to article 3(3) of the *CCA Order*) and 208 (pursuant to article 3(7) of the

CCA Order) of the *Act* are treated as disciplinary referrals for the purpose of section 133 of the *Act*.

Public censures, imposition of penalties and the impositions of suspensions or restrictions in relation to contraventions of the Consumer Credit Act 1974

- 20.11 When determining whether to take action to impose a penalty or to issue a public censure in relation to the contraventions of a *CCA Requirement*, the *FCA's* policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA's* policy includes having regard to relevant principles and factors in *DEPP 6.5* to *DEPP 6.5B*, *DEPP 6.5D* and *DEPP 6.7*.
- 20.12 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil contraventions of *CCA Requirements* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA's* settlement process and the settlement discount scheme.
- 20.13 When determining whether to take action to impose a suspension or restriction in relation to the contraventions of *CCA Requirements*, the *FCA's* policy includes having regard to the relevant factors in *DEPP 6A.2* and *6A.4*. When determining the length of the period of suspension or restriction, the *FCA's* policy includes having regard to relevant principles and factors in *DEPP 6A.3*.
- 20.14 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.

Prosecution of criminal offences under the Consumer Credit Act 1974

- 20.15 The *FCA's* policy with respect to the prosecution of criminal offences is set out in *EG 12* and applies to the prosecution of *CCA* offences under section 401 of the *Act*. The *FCA* will not prosecute a person for an offence under the *CCA* in respect of an act or omission where the *FCA* has already disciplined the person under section 66, 205, 206 or 206A of the *Act* in respect of that act or omission.

Annex P

Amendments to the Financial Crime Guide (FC)

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

Part 1

...

Annex 1: Common Terms

...

Term	Meaning
...	
occasional transaction	...
Office of Fair Trading (OFT)	The Office of Fair Trading has responsibilities under the Money Laundering Regulations 2007 to supervise many lenders and estate agents.
OFT	See ‘Office of Fair Trading’.
...	

Annex Q

Amendments to the Perimeter Guidance manual (PERG)

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

1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
...
<u><i>PERG 17: Consumer credit debt counselling</i></u>	<u><i>Any person who needs to know whether his activities in relation to debts will amount to debt counselling.</i></u>	<u><i>The scope of the regulated activities relating to consumer credit debt counselling.</i></u>

...

1.5.1 G General *guidance* on the perimeter is also contained in various *FCA* documents (mainly fact sheets and frequently asked questions) that are available on the *FCA* website at www.fca.org.uk. These documents, and the URL on which they may be accessed, include:

- (1) ~~*FCA Guidance Note GN9 (2010) on financial regulation for social housing providers*~~ which is available at <http://www.fca.org.uk/your-fca/documents/fsa-guidance-9>; ~~[deleted]~~

...

...

2.2.1 G Under section 23 of the *Act* (Contravention of the general prohibition or section 20 (1) or (1A)), a *person* commits a criminal offence if he carries on activities in breach of the *general prohibition* in section 19 of the *Act* (The general prohibition). An *authorised person* also commits a criminal offence if he carries on a credit-related regulated activity in the *UK*, or purports to do so, otherwise than in accordance with his *permission* (unless the *person* is an *appointed representative* carrying on the activity in circumstances where, as a result of section 39 (1D) of the *Act*, sections 20(1) and (1A) and 23(1A) of the *Act* do not apply). For these purposes, *entering into a regulated credit agreement as lender, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and debt collecting* are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the *borrower* to repay is secured on

land. Although a *person* who commits the criminal offence is subject to a maximum of two years imprisonment and an unlimited fine, it is a defence for a *person* to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

2.2.1A G A regulated credit agreement that is made by an authorised person who does not have permission to do so, in contravention of section 20 of the Act, could be unenforceable against the borrower (see section 26A of the Act).

...

...

2.2.3 G Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG 2 Annex 1 G*):

...

(3B) Are my activities related to information about a person's financial standing (see *PERG 2.7.20KG*)?

(4) If the answer is 'Yes' to (3), (3A) or (3B) or (3a), will my activities be, or include, *regulated activities* (see *PERG 2.7*)?

...

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. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476),¹ the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 (SI 2005/922), and the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013. The result is that the business element differs depending on the activity in question. This in part reflects certain differences in the nature of the activities:

...

(3B) If a not-for-profit body is carrying on debt adjusting, debt counselling or providing credit information services (or agreeing to

carry on a regulated activity so far as relevant to any of those activities), it is to be regarded as doing so by way of business. It is immaterial whether the *not-for-profit body* also carries on other activities. This change to the business element does not apply, however, if the *not-for-profit body* carries on that activity only on an occasional basis.

- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract, entering into a home finance transaction or administering a home finance transaction, and operating a dormant account fund and credit-related regulated activities carried on by persons other than not-for-profit bodies.*

...

2.3.4 G ...

Whether someone is carrying on his or her own business

2.3.5 G Another aspect of the *general prohibition* is that an employee will not breach the *general prohibition* by carrying on a *regulated activity* on behalf of his employer. The reason for that is that it is the employer who is carrying on that activity. The employee is simply carrying on the employer's business.

2.3.6 G This principle potentially also applies to agents and others who assist another to carry on that other's business. That does not mean however that agents and other such *persons* can never carry on a *regulated activity*. Apart from anything else it is clear that some *regulated activities* are meant to be carried on by such *persons*, such as *dealing in investments as agent*.

2.3.7 G In the *FCA's* view the following factors are relevant in deciding whether a *person* (referred to in this paragraph as "an individual") is to be treated as carrying on his own business (in which case he may require *authorisation unless an exemption or exclusion is available*) or whether he is carrying on the business of the *person* for whom he works (in which case he will not require *authorisation*). In this paragraph, the *person* for whom the individual works is referred to as the principal *firm*.

- (1) The degree of control the principal *firm* has over the individual (the greater the control the more likely it is that the *general prohibition* does not apply). This takes into account the power of deciding the tasks to be carried out, the way in which the tasks are to be done, the means to be employed in doing them and the time when and the place where they are to be done. For example, at one end of the spectrum the individual may merely agree to achieve an end result without that end result being specified in detail. At the other end of the spectrum, the individual may be controlled in every detail of how things are to be done.
- (2) The degree to which the individual is integrated into the principal *firm*'s business (the greater the integration the more likely it is that the *general prohibition* does not apply). One may look at how much the individual is subject to the managerial procedures of the principal *firm* in relation to such matters as quality of work and performance.
- (3) The degree to which the individual takes on the financial risks and rewards of an independent business (the more the individual takes on such risks the more likely it is that the *general prohibition* does not apply). For example, one might take into account whether the individual provides his own equipment; whether he hires his own helpers; what degree of financial risk he takes; what degree of responsibility for investment and management he has; whether and how far he has an opportunity of profiting from sound management in the performance of his task.
- (4) For example, if the individual is tasked with finding customers it may be relevant whether he is paid a commission for each customer gained. However, commission is not a particularly strong factor as many conventional employees are paid by commission.
- (5) The degree to which the individual deals with the principal *firm*'s customers in his own name (if the individual deals with customers in his own name that points towards the *general prohibition* applying). For example, it may be relevant whether the individual receives monies from the principal *firm*'s customers into a bank account in the individual's name.
- (6) The degree to which the services supplied by the individual to the principal *firm* are ones that the individual supplies to other clients as well. If the individual supplies services to more than one client (principal *firm*), it is very likely that the individual is in the business of providing those services generally and that, as a result, he is carrying on his own business and hence needs *authorisation* or an exemption from the *general prohibition*.
- (7) Whether the individual is a natural *person*. It is unlikely that a company or a partnership will fall outside the *general prohibition* on the grounds in *PERG 2.3.6G*.

- 2.3.8 G In practice, a *person* is only likely to fall outside the *general prohibition* on the grounds that he is not carrying on his own business if he is an employee or performing a role very similar to an employee.
- 2.3.9 G Even though working for more than one *firm* is likely to mean that the *person* will not be able to rely on the grounds in *PERG* 2.3.6G to escape the *general prohibition* (see *PERG* 2.3.7G(6)), that will not always be the case. In particular, say that a *person* is acting as an employee of one *firm* (Firm A) and as a self-employed agent of another *firm* (Firm B). In his capacity as an employee of Firm A, the *person* would not be carrying on his own business. Thus, the *general prohibition* does not apply in relation to his work for Firm A. If the only *firm* for which that *person* acts on a self-employed basis is Firm B, he could still fall outside the *general prohibition* in relation to Firm B too. The situation would be different if he was providing services to, or on behalf of, more than one client *firm* on a self-employed basis as under such circumstances he would be likely to be carrying on his own business.
- 2.3.10 G One example in the consumer credit industry of how the factors in *PERG* 2.3.7G might apply can be found in the home collected credit sector. Home collected credit *firms* supply small, short-term, unsecured loans direct to customers in their homes. It is common practice in this sector for some of the larger *firms*, in particular, to deal with their customers via self-employed agents. Self-employed agents are not paid a salary by an employer. These agents call on customers in their homes to provide loans and/or collect repayments due on loans, on behalf of the home collected credit providers they represent, and they receive commission on the repayments they collect. Agents of home collected credit firms may:
- introduce new clients to the credit provider;
 - arrange for the completion of the relevant credit agreements by new clients; and
 - collect repayments.
- 2.3.11 G Although the overall relationship between a home collected credit provider (the principal *firm*) and a *person* providing the services described in *PERG* 2.3.10G (the individual) will need to be taken into account, meeting the following criteria is likely to mean that the individual is carrying on the business of the principal *firm* (as its agent) and not his own, meaning that the individual does not require *authorisation* or to be exempt:
- (1) the principal *firm* appoints the individual as an agent;
 - (2) the individual only works for one principal *firm*;
 - (3) the principal *firm* has a *permission* from the *FCA* for every activity the individual is carrying on for which the principal *firm* would need *permission* if it was carrying on the activity itself;

- (4) the contract sets out effective measures for the principal *firm* to control the individual;
- (5) (in the case of collecting debts) receipt of repayment by the individual is treated as receipt by the principal *firm* so that the debtor is not disadvantaged if the individual becomes insolvent before the money is passed to the principal *firm*;
- (6) the principal *firm* accepts full responsibility for the conduct of the individual when the individual is acting on the principal *firm*'s behalf in the course of its business; and
- (7) the individual makes clear to customers that it is representing a principal *firm* as its agent and the name of that principal *firm*.

...

...

2.4.8 G ...

2.4.9 G Whether a *credit agreement* or *consumer hire agreement* is subject to the law of a country outside the *United Kingdom* is immaterial to whether an activity is *credit broking*, see *PERG 2.7.7EG*.

...

2.5.1A G ...

2.5.1B G The activities of *providing credit information services* and *providing credit references* are not required to relate to a *specified investment* to be *regulated activities*, but rather relate to information about a *person's* financial standing.

...

...

2.6.29 G ...

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*.

Rights under a consumer hire agreement

2.6.31 G In accordance with article 60N(3) of the *Regulated Activities Order*, a *consumer hire agreement* is an agreement between a *person* (“the owner”) and an *individual* (“the hirer”) for the bailment or, in Scotland, the hiring, of *goods* to the hirer which:

- (1) is not a *hire-purchase agreement*; and
- (2) is capable of subsisting for more than three months.

...

2.7.7D G ...

Credit broking

2.7.7E G There are six activities that fall within *credit broking*. These are:

- (1) effecting an introduction of an *individual* who wishes to enter into a *credit agreement* to another *person*, with a view to that *person* entering as *lender* into a *credit agreement* by way of business;
- (2) effecting an introduction of an *individual* who wishes to enter into a *consumer hire agreement* to another *person*, with a view to that *person* entering as *owner* into a *consumer hire agreement* by way of business (except where the exemption relating to the supply of essential services would apply to the *consumer hire agreement*, see *PERG 2.7.19OG*);
- (3) effecting an introduction of an *individual* who wishes to enter into a *credit agreement* or a *consumer hire agreement* to a *person* who carries on an activity in (1) or (2) by way of business;
- (4) presenting or offering an agreement which would (if entered into) be a *credit agreement*;
- (5) assisting an *individual* by undertaking preparatory work with a view to that *person* entering into a *credit agreement*;
- (6) entering into a *credit agreement* on behalf of a *lender*.

2.7.7F G An activity is not *credit broking* within *PERG 2.7.7EG*(1), (4), (5) or (6) if the exemption relating to the number of repayments to be made would apply to the *credit agreement*, see *PERG 2.7.19GG*.

2.7.7G G An activity is also not *credit broking* within PERG 2.7.7EG(1) to (6) in so far as the activity is *operating an electronic system in relation to lending*, see PERG 2.7.7HG.

Operating an electronic system in relation to lending

2.7.7H G (1) This activity is aimed at what are sometimes referred to as peer-to-peer lending platforms. A person (“A”) will be *operating an electronic system in relation to lending* if he operates an electronic system which enables him to facilitate *persons* (“B” and “C”) becoming the *lender* and *borrower* under an article 36H agreement.

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

(a) the electronic system operated by A must be capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise);

(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 capital due under the article 36H agreement from C; and

(ii) make payments in respect of interest and capital due under the article 36H agreement to B; and

(c) A, or another *person* (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another *person* to perform either or both of the following activities:

(i) taking steps to procure the payment of a debt under the article 36H agreement;

(ii) exercising or enforcing rights under the article 36H agreement on behalf of B.

(3) For the purposes of (2)(b):

(a) an agreement by A to appoint X to perform the activities is to be treated as an undertaking by A; and

(b) it is immaterial that:

(i) payments may be subject to conditions;

(ii) A, or X, may be entitled to retain a portion or the

entirety of any payment received from C.

- (4) An article 36H agreement is an agreement by which one *person* provides another *person* with *credit* and either:
- (a) the lender is an *individual*; or
 - (b) the borrower is an *individual*; and
 - (i) the amount of *credit* provided is 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*. If the agreement includes a declaration by the borrower that it is entered into by the borrower wholly or predominantly for business purposes, this may create a presumption that this is the case (see *PERG 2.7.19DG*).
- (5) An agreement may be an article 36H agreement and not a *credit agreement*, for example if it is an agreement by which an *individual* provides *credit* to a company. An agreement may, equally, be both an article 36H agreement for the purposes of *operating an electronic system in relation to lending* and a *credit agreement* for the purposes of other *credit-related regulated activities* if it is within the relevant definitions.
- (6) It is immaterial whether the *lender* is carrying on a *regulated activity*.
- (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):
- (a) presenting or offering article 36H agreements to B and C with a view to B becoming the *lender* under the article 36H agreement and C becoming the *borrower* under the article 36H agreement;
 - (b) furnishing information relevant to the financial standing of a *person* to assist a potential *lender* to determine whether to provide *credit* to that person under an article 36H agreement;
 - (c) taking steps to procure the payment of a debt due under an article 36H agreement;
 - (d) performing duties, or exercising or enforcing rights under an article 36H agreement on behalf of the *lender*;
 - (e) ascertaining whether a *credit information agency* holds

information relevant to the financial standing of an individual;

- (f) ascertaining the contents of such information;
- (g) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information; or
- (h) securing that a credit information agency which holds such information stops holding the information, or does not provide it to any other person.

...

Debt adjusting

2.7.8B G This activity comprises:

- (1) negotiating with the lender or owner, on behalf of the borrower or hirer, terms for the discharge of a debt;
- (2) taking over, in return for payments by the borrower or hirer, that person's obligation to discharge a debt; or
- (3) any similar activity concerned with the liquidation of a debt;

when carried on in relation to debts due under a credit agreement or consumer hire agreement.

Debt-counselling

2.7.8C G Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a regulated activity. Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement is a regulated activity. See PERG 17 for further guidance on debt-counselling.

Debt-collecting

- 2.7.8D G
- (1) Taking steps to procure the payment of a debt due under a credit agreement or a consumer hire agreement is a regulated activity.
 - (2) Taking steps to procure the payment of a debt due under an article 36H agreement (see PERG 2.7.7HG(3)) which has been entered into with the facilitation of an operator of an electronic system in relation to lending is also a regulated activity.
 - (3) The activity is not a regulated activity in so far as the activity is operating an electronic system in relation to lending (article 36H of the Regulated Activities Order) see PERG 2.7.7HG.

Debt administration

- 2.7.8E G (1) Taking steps to perform duties or to exercise or to enforce rights under a *credit agreement* or a *consumer hire agreement* on behalf of the *lender* or *owner* is a *regulated activity*.
- (2) Taking steps to perform duties or to exercise or to enforce rights under an article 36H agreement (see *PERG 2.7.7HG(3)*) which has been entered into with the facilitation of an *operator of an electronic system in relation to lending* is also a *regulated activity*.
- (3) In so far as the activity is *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*, see *PERG 2.7.7HG*) or *debt-collecting* (article 39F of the *Regulated Activities Order*) it is not also *debt administration*.

...

Regulated credit agreements

- 2.7.19A G (1) Entering into a *regulated credit agreement as lender* is a *regulated activity*.
- (2) It is also a *regulated activity* for the *lender* or another *person* to exercise, or to have the right to exercise, the *lender's* rights and duties under a *regulated credit agreement*.

Exempt agreements

- 2.7.19B G A *credit agreement* is not a *regulated credit agreement* for the purposes of *PERG 2.7.19AG* if it is an *exempt agreement*. *PERG 2.7.19CG* to *PERG 2.7.19JG* describe the categories of *exempt agreement*.

Exemptions relating to the nature of the agreement

- 2.7.19C G A *credit agreement* is an *exempt agreement* in the following cases:
- (1) if it is a *regulated mortgage contract* or a *home purchase plan*;
- (2) if:
- (a) the *lender* provides the *borrower* with *credit* exceeding £25,000;
 and
- (b) the agreement is entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*;
- (3) if:
- (a) the *lender* provides the *borrower* with *credit* of £25,000 or less;
 and

- (b) the agreement is entered into by the *borrower* wholly for the purposes of a business carried on, or intended to be carried on, by the *borrower*; and
- (c) the agreement is a *green deal plan*;
- (4) if it is made in connection with trade in goods or services:
 - (a) between the *United Kingdom* and a country outside the *United Kingdom*; or
 - (b) within a country outside the *United Kingdom*; or,
 - (c) between countries outside the *United Kingdom*; andthe *credit* is provided to the *borrower* in the course of a business carried on by the *borrower*.

2.7.19D G If a *credit agreement* includes a declaration which:

- (1) is made by the *borrower*;
- (2) provides that the agreement is entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*; and
- (3) complies with the *rules* in *CONC App 1.4*;

the *credit agreement* is to be presumed to have been entered into by the *borrower* wholly or predominantly for business purposes. This presumption does not apply, however, if the *lender* or any *person* who has acted on behalf of the *lender* knows or has reasonable cause to suspect that the agreement is not entered into by the *borrower* wholly or predominantly for business purposes. This also applies to the exemption in *PERG 2.7.19CG(3)*, as if the word “predominantly” were omitted.

Exemption relating to the purchase of land for non-residential purposes

2.7.19E G A *credit agreement* is an *exempt agreement* if, at the time it is entered into:

- (1) any sums due under it are secured by a *legal or equitable mortgage* on *land*; and
- (2) less than 40% of the *land* is used, or is intended to be used, as or in connection with a dwelling:
 - (a) by the *borrower* or a related person of the *borrower*; or
 - (b) in the case of *credit* provided to trustees, by an individual who is a beneficiary of the trust or a related person of a beneficiary.
- (3) For these purposes, a person is related to a *borrower* or a beneficiary

of a trust if they are a spouse or civil partner, or a parent, brother, sister, child, grandparent or grandchild of the *borrower* or beneficiary or if their relationship with the *borrower* or beneficiary has the characteristics of the relationship between husband and wife.

- (4) This exemption is intended to mirror the definition of *regulated mortgage contract* so that buy-to-let loans (that are not secured by a legal mortgage on the *borrower's* or a related person's residence) are not regulated either as *regulated mortgage contracts* or as *regulated credit agreements*.

Exemptions relating to the nature of the lender

2.7.19F G A credit agreement is an exempt agreement in the following cases:

- (1) if the credit agreement is a relevant credit agreement relating to the purchase of land and the lender is a local authority;
- (2) if the credit agreement is a relevant credit agreement relating to the purchase of land specified in CONC App 1.3 and the lender is a person or within a class of persons specified in CONC App 1.3;
- (3) if the credit agreement is secured by a legal or equitable mortgage on land, that land is used or is intended to be used as, or in connection with, a dwelling and the lender is a housing authority; or
- (4) If the lender is an investment firm or a credit institution, and the agreement is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more financial instruments.

Exemptions relating to number of repayments to be made

2.7.19G G A credit agreement is also an exempt agreement in the following cases:

- (1) if (subject to PERG 2.7.19HG):
- (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit;
- (b) the number of payments to be made by the borrower is not more than four;
- (c) those payments are required to be made within a period of 12 months or less (beginning on the date of the agreement); and
- (d) the credit is:
- (i) secured on land; or
- (ii) provided without interest or other charges;
- (2) if (subject to PERG 2.7.19HG):

- (a) the agreement is a *borrower-lender-supplier agreement for running-account credit*;
 - (b) the *borrower* is to make payments in relation to specified periods which must be, unless the agreement is secured on *land*, of three months or less;
 - (c) the number of payments to be made by the *borrower* in repayment of the whole amount of *credit* provided in each period is not more than one; and
 - (d) the *credit* is:
 - (i) secured on *land*; or
 - (ii) provided without interest or other significant charges;
- (3) if:
- (a) the agreement is a *borrower-lender-supplier agreement financing the purchase of land*;
 - (b) the number of payments to be made by the *borrower* is not more than four; and
 - (c) the *credit* is:
 - (i) secured on *land*; or
 - (ii) provided without interest or other charges;
- (4) if:
- (a) the agreement is a *borrower-lender-supplier agreement for fixed-sum credit*;
 - (b) the *credit* is to finance a *premium* under a *contract of insurance* relating to *land* or anything on *land* (for example, house or contents insurance);
 - (c) the *lender* is the *lender* under a *credit agreement* secured by a *legal or equitable mortgage* on that *land*;
 - (d) the *credit* is to be repaid within the period (which must be 12 months or less) to which the *premium* relates;
 - (e) in the case of an agreement secured on *land*, there is no charge forming part of the *total charge for credit* under the agreement (see *CONC App 1*) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (c);
 - (f) in the case of an agreement which is not secured on *land*, the

credit is provided without interest or other charges; and

- (g) the number of payments to be made by the *borrower* is not more than 12;
- (5) if:
 - (a) the agreement is a *borrower-lender-supplier agreement* for *fixed-sum credit*;
 - (b) the *lender* is the *lender* under a *credit agreement* secured by a *legal or equitable mortgage on land*;
 - (c) the agreement is to finance a premium under a life insurance policy that meets certain conditions;
 - (d) in the case of an agreement secured on *land*, there is no charge forming part of the *total charge for credit* under the agreement (see *CONC App 1*) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (b);
 - (e) in the case of an agreement which is not secured on *land*, the *credit* is provided without interest or other charges; and
 - (f) the number of payments to be made by the *borrower* is not more than 12.

2.7.19H G The exemptions in *PERG 2.7.19GG* (1) and (2) do not apply to:

- (1) *credit agreements* financing the purchase of *land*;
- (2) *conditional sale agreements* or *hire-purchase agreements*; or
- (3) *credit agreements* secured by a pledge (other than a pledge of documents of title or of bearer bonds).

Exemptions relating to the total charge for credit

2.7.19I G A *credit agreement* is also an *exempt agreement* in the following cases:

- (1) if it is a *borrower-lender agreement*, the *lender* is a *credit union* and the rate of the *total charge for credit* (see *CONC App 1*) does not exceed 42.6 per cent;
- (2) if (subject to (5) and (6)):
 - (a) it is a *borrower-lender agreement*;
 - (b) it is offered to a particular class of *individual* and not offered to the public generally;
 - (c) it provides that the only charge included in the *total charge for*

credit (see CONC App 1) is interest; and

- (d) interest under the agreement may not, at any time, be more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the interest is charged;
- (3) if (subject to (5) and (6)):
- (a) it is a borrower-lender agreement;
 - (b) it is an agreement of a kind offered to a particular class of individual and not offered to the public generally;
 - (c) it does not provide for or permit an increase in the rate or amount of any item which is included in the total charge for credit (see CONC App 1); and
 - (d) the total charge for credit under the agreement is not more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the charge is imposed;
- (4) the banks (referred to in (3)(d)) are:
- (a) the Bank of England;
 - (b) Bank of Scotland;
 - (c) Barclays Bank plc;
 - (d) Clydesdale Bank plc;
 - (e) Co-operative Bank Public Limited Company;
 - (f) Coutts & Co;
 - (g) National Westminster Bank Public Limited Company;
 - (h) the Royal Bank of Scotland plc;
- (5) the exemptions in (2) and (3) do not apply, however, if the total amount to be repaid by the borrower may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor;
- (6) unless the agreement:
- (a) is secured on land; or
 - (b) is offered by a lender who is an employer to a borrower as an incident of employment with the lender;
- the exemptions in (2) and (3) apply only if:
- (c) the agreement is offered under an enactment with a general

interest purpose; and

- (d) the terms on which the *credit* is provided are more favourable to the *borrower* than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market or because the rate of interest is no higher than that prevailing on the market, but the other terms on which *credit* is provided are more favourable to the *borrower*.

High net worth exemption

2.7.19J G A *credit agreement* is an *exempt agreement* if:

- (1) the *borrower* is an individual;
- (2) the agreement is either secured on *land* or for *credit* which exceeds £60,260;
- (3) the agreement includes a declaration, made by the *borrower* which provides that the *borrower* agrees to forgo the protection and remedies that would be available to the borrower if the agreement were a *regulated credit agreement*, which complies with CONC App 1.4;
- (4) a statement has been made in relation to the income or assets of the *borrower* which complies with CONC App 1.4; and
- (5) the connection between that statement and the *credit agreement* complies with CONC App 1.4; and
- (6) a copy of that statement was provided to the *lender* before the agreement was entered into.

Regulated consumer hire agreements

2.7.19K G (1) Entering into a *regulated consumer hire agreement* as owner is a *regulated activity*.

- (2) It is also a *regulated activity* for the *owner* or another *person* to exercise, or to have the right to exercise, the *owner's* rights and duties under a *regulated consumer hire agreement*.

Exempt agreements

2.7.19L G A *consumer hire agreement* is not a *regulated consumer hire agreement* for the purposes of PERG 2.7.19KG if it is an *exempt agreement*. PERG 2.7.19MG to PERG 2.7.19PG describe the categories of *exempt agreement*.

Exemptions relating to nature of agreement

2.7.19M G A *consumer hire agreement* is an *exempt agreement* if the *hirer* is required by the agreement to make payments exceeding £25,000, and the agreement is entered into by the *hirer* wholly or predominantly for the purposes of a

business carried on, or intended to be carried on, by the *hirer*.

2.7.19N G As in the case of a *credit agreement* (see *PERG 2.7.19DG*), if a *consumer hire agreement* includes a declaration which:

- (1) is made by the *hirer*;
- (2) provides that the agreement is entered into by the *hirer* wholly or predominantly for business purposes; and
- (3) complies with *CONC App 1.4*;

the *consumer hire agreement* is to be presumed to have been entered into by the *hirer* for business purposes. This presumption does not apply, however, if the *owner* or any *person* who has acted on behalf of the *owner* knows, or has reasonable cause to suspect, that the agreement is not entered into by the *hirer* for business purposes.

Exemption relating to supply of essential services

2.7.19O G A *consumer hire agreement* is an *exempt agreement* if the *owner* is a body corporate which supplies gas, electricity or water under an enactment and the subject of the agreement is a meter or metering equipment which is used in connection with that purpose.

High net worth exemption

2.7.19P G This exemption is substantially the same as the one for *credit agreements* in *PERG 2.7.19JG*.

...

Providing credit information services

2.7.20K G (1) Taking any of the steps in (2) on behalf of an *individual* is a *regulated activity*.

- (2) This activity catches steps taken with a view to:
 - (a) ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*;
 - (b) ascertaining the contents of such information;
 - (c) securing the correction of, the omission of anything from, or the making of, any other kind of modification of, such information; or
 - (d) securing that a *credit information agency* which holds such information stops holding the information or does not provide it to any other *person*.

- (2) Giving advice to an individual in relation to the taking of any of the steps in PERG 2.7.20KG(1)(a) to (d) is also a regulated activity.
- (3) A credit information agency that takes any of the steps in PERG 2.7.20KG(1) (a) to (d) in relation to information held by that agency does not provide credit information services.
- (4) In so far as taking any of the steps in PERG 2.7.20KG(1)(a) to (d) is the activity of operating an electronic system in relation to lending, then it is not also providing credit information services.

Providing credit references

- 2.7.20L G (1) Furnishing of persons with information relevant to the financial standing of individuals is a regulated activity if the person has collected the information for that purpose.
- (2) A person requires authorisation for this activity only if its business primarily consists of the activities in (1).
- (3) This activity does not include an activity in so far as it is operating an electronic system in relation to lending.

...

...

- 2.8.2 G ~~Two~~ Three exclusions apply to the regulated activity of accepting deposits. The first is that a deposit taker providing its services as an *electronic commerce activity* from another EEA State into the United Kingdom (see PERG 2.9.18G) does not carry on a regulated activity. The second relates to a firm with a Part 4A permission to manage an AIF or manage a UCITS (see PERG 2.9.22G (Managers of UCITS and AIFs)). There is also excluded from accepting deposits any activity which is carried on by a local authority (see PERG 2.9.23G). In addition to the situations that are excluded from being 'deposits' (see PERG 2.6.2G to PERG 2.6.4G), several persons are exempt persons in relation to the regulated activity of accepting deposits (see PERG 2.10.8G(2)).

...

- 2.8.4 G The regulated activity of dealing in investments as principal applies to specified transactions relating to any security or to any contractually based investment (apart from rights under funeral plan contracts or rights to or interests in such contracts). The activity is cut back by exclusions as follows:

...

- (6) A person will not be treated as carrying on the activity of dealing in

investments as principal if, in specified circumstances (outlined in *PERG 2.9*), he enters as principal into a transaction:

...

- (h) where it is in connection with or for the purposes of *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G (Managers of UCITS and AIFs)*);
- (i) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

...

...

2.8.5 G The *regulated activity of dealing in investments as agent* applies to specified transactions relating to any *security* or to any *relevant investment* (apart from rights under *funeral plan contracts* or rights to or interests in such rights). In addition, the activity is cut back by exclusions as follows:

...

- (3) In addition, exclusions apply in specified circumstances (outlined in *PERG 2.9 (Regulated activities: exclusions available in certain circumstances)*) where a *person* enters as agent into a transaction:

...

- (k) where it is in connection with or for the purposes of *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G (Managers of UCITS and AIFs)*);
- (l) as a *local authority* in relation to certain *contracts of insurance* (see *PERG 2.9.23G*);
- (m) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

...

...

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

...

- (13) The following exclusions from both article 25(1) and (2) (outlined in *PERG 2.9*) apply in specified circumstances where a *person* makes arrangements:

...

- (m) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs));
- (n) as a local authority in relation to certain contracts of insurance (see *PERG 2.9.23G*);
- (o) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

The exclusions referred to in (a), (b), (g), (h), ~~and~~ (m) and (n) also apply to *arranging* activities related to *home finance transactions* (in that context, the exclusion in (n) covers any activity which is carried on by a local authority). More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in *PERG 5* (Insurance mediation activities).

...

Credit broking

2.8.6C G The following activities are excluded from the *regulated activity of credit broking*:

Introducing by individuals in the course of canvassing off trade premises

- (1) Activities carried on by an individual by *canvassing off trade premises*:
 - (a) a restricted-use credit agreement to finance a transaction between the lender or a member of the lender's group and the borrower; or
 - (b) a regulated consumer hire agreement;

are excluded from *credit broking*, as long as the individual does not carry on any other activity in *PERG 2.7.7EG*(1) to (3).

Activities for which no fee is paid

- (2) The activities in *PERG 2.7.7EG*(4) to (6) carried on by a *person* for which that *person* does not receive a fee are excluded from *credit broking*.

Transaction to which the broker is a party

- (3) Activities carried on by a *person* in relation to a *credit agreement* or a *consumer hire agreement* into which that *person* enters or is to enter as *lender* or *owner* are excluded from *credit broking*.

Activities in relation to certain agreements relating to land

- (4) Activities carried on with a view to an individual entering into a regulated mortgage contract are excluded from credit broking if the person carrying on the activity is an authorised person who has permission to:
- (a) enter into a regulated mortgage contract as lender (see PERG 4.7); or
 - (b) make an introduction to an authorised person who has permission to enter into a regulated mortgage contract as lender (see PERG 4.5 on arranging regulated mortgage contracts).
- (5) Activities carried on with a view to an individual entering into a home purchase plan are excluded from credit broking if the person carrying on the activity is an authorised person who has permission to:
- (a) enter into a home purchase plan as home purchase provider (see PERG 14.4); or
 - (b) make arrangements for a client to enter into a home purchase plan as home purchaser by introducing the client to an authorised person who has permission to enter into a home purchase plan as home purchase provider (see PERG 14.4).

Activities carried on by members of the legal profession

- (6) Activities carried on by:
- (a) a barrister or advocate acting in that capacity;
 - (b) a solicitor acting in the course of contentious business;
 - (c) a person acting in the course of contentious business who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from credit broking. For these purposes, business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business, is contentious business.

Other exclusions

- (7) The exclusions for electronic commerce activities by an incoming ECA provider (see PERG 2.9.18G) and activities carried on by local authorities (see PERG 2.9.23G) also apply to credit broking.

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*.
- (a) *dealing in investments as principal*;
 - (b) *arranging (bringing about) deals in investments*;
 - (c) *making arrangements with a view to transactions in investments*;
 - (d) *managing investments*;
 - (e) *advising on investments*.
- (2) The exclusion for *electronic commerce activities by an incoming ECA provider* (see *PERG 2.9.18G*) also applies to the *regulated activity of operating an electronic system in relation to lending*.

Managing investments

- 2.8.7 G The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order*, from the *regulated activity of managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on *insurance mediation* or *reinsurance mediation* and is subject to further limitations discussed below. In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* manages assets:

...

- (6) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)); or

- (7) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

...

...

- 2.8.7B G The following exclusions from *assisting in the administration and performance of a contract of insurance* also apply to a *person* in specified circumstances:

...

- (7) where it is in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G*)

(Managers of UCITS and AIFs)); or

- (8) as a local authority in relation to certain contracts of insurance (see PERG 2.9.23G); or
- (9) while acting as an insolvency practitioner (see PERG 2.9.25G).

Debt adjusting, debt counselling, debt collecting and debt administration

2.8.7C

G

(1) Activities carried on by:

- (a) the lender or owner under the agreement;
- (b) the supplier in relation to the credit agreement;
- (c) a credit broker who has acquired the business of the person who was the supplier in relation to the credit agreement; or
- (d) a person who would be a credit broker but for the exclusion in PERG 2.8.6CG(1) where the agreement was made in consequence of an introduction (by that person or another person) to which that exclusion applies;

are excluded from the regulated activities of debt adjusting, debt counselling and debt collecting.

- (2) Steps taken under, or in relation to, an agreement by any of the persons in (1) are excluded from being debt administration.
- (3) Activities carried on by a relevant energy supplier in relation to debts due under a green deal plan associated with the supplier are excluded from being debt adjusting, debt counselling, debt collecting or debt administration. A green deal plan is associated with a supplier if the payments under the plan are to be made to the supplier.
- (4) There is also an exclusion from debt adjusting, debt counselling, debt collecting and debt administration for any activity that relates to a regulated mortgage contract or a home purchase plan to the extent that the activity constitutes a regulated activity (other than only debt adjusting, debt counselling, debt collecting and debt administration), where entering into that contract as lender constitutes entering into a regulated mortgage contract or entering into that home purchase plan as provider constitutes entering into a home purchase plan.
- (5) Activities carried on by:
 - (a) a barrister or advocate acting in that capacity;
 - (b) a solicitor acting in the course of contentious business;
 - (c) a person acting in the course of contentious business who, for the purposes of the Legal Services Act 2007, is authorised to

exercise a right of audience or conduct litigation;

are excluded from *debt adjusting, debt counselling, debt collecting and debt administration*. For these purposes, contentious business means business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business.

- (6) The exclusions relating to *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) and for activities carried on by a *local authority* (see *PERG 2.9.23G*) or an *insolvency practitioner* (see *PERG 2.9.25G*) also apply to these *regulated activities*.

Safeguarding and administering investments

- 2.8.8 G The exclusions from the *regulated activity* of *safeguarding and administering investments* are as follows:
- ...
- (4) The following exclusions apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):
- ...
- (h) belonging to the participants in a business angel-led enterprise capital fund, but only where such safeguarding and administration is carried on by a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*; ~~and~~
- (i) in connection with or for the purposes of *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission* to *manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)); and
- (j) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

Sending dematerialised instructions

- 2.8.9 G Exclusions from the *regulated activity* of *sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertificated Securities Regulations 2001 (SI 2001/3755). The various exclusions relate to the roles played by participating issuers, settlement *banks* and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* sends dematerialised instructions:

...

- (4) where it is in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs));

- (5) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

Managing a UCITS, managing an AIF and establishing etc collective investment schemes

- 2.8.10 G (1) The exclusion for *incoming ECA providers* (see *PERG 2.9.18G*) applies to the range of activities specified as being regulated in relation to *AIFs* and *collective investment schemes* (see *PERG 2.7.13AG*). The exclusion for business angel-led capital funds (see *PERG 2.9.20G*) applies to the activities of *managing an AIF*, *managing a UCITS* and *establishing, operating and winding up a collective investment scheme*. There is a third exclusion for insolvency practitioners (see *PERG 2.9.25G*).

...

Establishing etc pension schemes

- 2.8.11 G ~~Two~~ Three exclusions apply to the range of activities specified as being regulated in relation to *stakeholder pension schemes* and *personal pension schemes*. The first relates to *incoming ECA providers* (see *PERG 2.9.18G*). The second relates to *firms* with a *Part 4A permission to manage an AIF* or *manage a UCITS* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)). The third relates to insolvency practitioners (see *PERG 2.9.25G*).

...

- 2.8.12A G Advice given by an *unauthorised person* in relation to a *home finance transaction* in the circumstances referred to in *PERG 2.8.6AG(5)(a)* or (b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:

- (1) the following exclusions apply in specified circumstances where a *person* is *advising on investments* or *advising on a home finance transaction*:

...

- (c) as an *incoming ECA provider* (see *PERG 2.9.18G*); ~~and~~

- (d) where it is in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)); and

(e) as a local authority (in the case of advising on investments, in relation to certain contracts of insurance) (see PERG 2.9.23G);

(2) the following exclusions apply in specified circumstances where a person is *advising on investments*:

...

(g) to be made by or on behalf of the participants of a business angel-led enterprise capital fund, when the advice is given to the participants in that fund and that person is as specified in article 72E(7) of the *Regulated Activities Order*;

(h) while acting as an insolvency practitioner (see PERG 2.9.25G).

...

2.8.14B G The following exclusions apply in specified circumstances where a *person* is administering a *home finance transaction*:

...

(3) as an *incoming ECA provider* (see PERG 2.9.18G); ~~and~~

(4) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission* to *manage a UCITS* or *manage an AIF* (see PERG 2.9.22G (Managers of UCITS and AIFs)); and

(5) if the *person* is a local authority (see PERG 2.9.23G).

Regulated credit agreements

2.8.14Z G A *person* who is not an *authorised person* and exercises, or has the right to exercise, the *lender's* rights and duties under a *regulated credit agreement* does not require *authorisation* to do so where he:
A

(1) arranges for another *person* to do so and the other *person* is an *authorised person* with *permission* to carry on that *regulated activity*;

(2) does so for up to one month after an arrangement of the kind in (1) comes to an end; or

(3) does so under an agreement with an *authorised person* who has *permission* to carry on that *regulated activity*.

2.8.14Z G Activities carried on by an *EEA authorised payment institution* or an *EEA authorised electronic money institution* exercising passport rights in the *United Kingdom* in accordance with article 16(3) of the *Payment Services Directive* (in the latter case, as applied by article 6 of the *Electronic Money Directive*) are excluded from the *regulated activities* of entering into a
B

regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement.

- 2.8.14Z C G (1) The exclusion for *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) applies to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement.
- (2) There is also an exclusion from *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* for any activity carried on by a *local authority* in so far as the *credit agreement* is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive (see *PERG 2.9.23G*).

Regulated consumer hire agreements

- 2.8.14Z D G (1) The exclusions for *electronic commerce activities* provided by an *incoming ECA provider* and an activity carried on by a *local authority* (see *PERG 2.9.23G*) also apply to the regulated activities of entering into a regulated consumer hire agreement as owner and exercising, or to having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.

...

Providing credit information services or credit references

- 2.8.14C G (1) The exclusions relating to activities carried on by members of the *legal profession* (see *PERG 2.8.6CG(6)*), and to *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) apply to providing credit information services and providing credit references.
- (2) The exclusions for activities carried on by a *local authority* (see *PERG 2.9.23G*) and *insolvency practitioners* (see *PERG 2.9.25G*) also apply to providing credit information services.

...

...

Local authorities

- 2.9.23 G This group of exclusions applies, in specified circumstances, to the regulated activities of:
- (1) *accepting deposits*;
- (2) *dealing in investments as agent*;

- (3) arranging (bringing about) deals in investments;
- (4) making arrangements with a view to transactions in investments;
- (5) arranging (bringing about) regulated mortgage contracts;
- (6) making arrangements with a view to regulated mortgage contracts;
- (7) arranging (bringing about) a home reversion plan;
- (8) making arrangements with a view to a home reversion plan;
- (9) arranging (bringing about) a home purchase plan;
- (10) making arrangements with a view to a home purchase plan;
- (11) arranging (bringing about) a regulated sale and rent back agreement;
- (12) making arrangements with a view to a regulated sale and rent back agreement;
- (13) credit broking;
- (14) assisting in the administration and performance of a contract of insurance;
- (15) debt adjusting;
- (16) debt counselling;
- (17) debt collecting;
- (18) debt administration;
- (19) advising on investments;
- (20) advising on regulated mortgage contracts;
- (21) advising on a home reversion plan;
- (22) advising on a home purchase plan;
- (23) advising on a regulated sale and rent back agreement;
- (24) entering into a regulated credit agreement as lender;
- (25) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;
- (26) entering into a regulated consumer hire agreement as owner;

- (27) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;
- (28) entering into a regulated mortgage contract;
- (29) administering a regulated mortgage contract;
- (30) entering into a home reversion plan;
- (31) administering a home reversion plan;
- (32) entering into a home purchase plan;
- (33) administering a home purchase plan;
- (34) entering into a regulated sale and rent back agreement;
- (35) administering a regulated sale and rent back agreement;
- (36) providing credit information services.

2.9.24

G

- (1) Subject to (2) and (3), the exclusions apply, in relation to any activity carried on by a local authority.
- (2) The exclusion relating to the regulated activities of:
 - (a) dealing in investments as agents;
 - (b) arranging (bringing about) deals in investments;
 - (c) making arrangements with a view to transactions in investments;
 - (d) assisting in the administration and performance of a contract of insurance; and
 - (e) advising on investments;

applies to any activity carried on by a local authority which relates to a contract of insurance which is not a life policy.

- (3) The exclusion relating to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement applies only to credit agreements of a kind to which the Consumer Credit Directive does not apply under article 2(2) of that Directive. In summary, these include credit agreements:
 - (a) which are secured by a legal or equitable mortgage on land;
 - (b) the purpose of which is to acquire or retain property rights in land or in an existing or prospective building;

- (c) involving a total amount of credit less than £160 or more than £60,260;
- (d) which are *hire-purchase agreements*, where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement (such an obligation is deemed to exist if it is so decided unilaterally by the *lender*);
- (e) in the form of an *overdraft facility* and where the *credit* has to be repaid within one month;
- (f) where the *credit* is granted free of interest and without any other charges;
- (g) under which the *credit* has to be repaid within three months and only insignificant charges are payable;
- (h) where the *credit* is granted by an employer to his employees as a secondary activity free of interest or at an *APR* lower than those prevailing on the market and which are not offered to the public generally;
- (i) which are the outcome of a settlement reached in court or before another statutory authority;
- (j) which relate to the deferred payment, free of charge, of an existing debt;
- (k) for pawnbroking where the liability of the consumer is strictly limited to the pledged item; and
- (l) which relate to loans granted to a restricted group (not the public generally) under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest, or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

Insolvency practitioners

- 2.9.25 G This group of exclusions applies, in specified circumstances, to the regulated activities of:
- (1) *dealing in investments as principal;*
 - (2) *dealing in investments as agent;*
 - (3) *arranging (bringing about) deals in investments;*

- (4) making arrangements with a view to transactions in investments;
- (5) operating a multilateral trading facility;
- (6) managing investments;
- (7) assisting in the administration and performance of a contract of insurance;
- (8) debt adjusting;
- (9) debt counselling;
- (10) debt collecting;
- (11) debt administration;
- (12) safeguarding and administering investments;
- (13) sending dematerialised instructions;
- (14) managing a UCITS;
- (15) acting as trustee or depositary of a UCITS;
- (16) managing an AIF;
- (17) acting as a trustee or depositary of an AIF;
- (18) establishing, operating or winding up a collective investment scheme;
- (19) establishing, operating or winding up a stakeholder pension scheme;
- (20) establishing, operating or winding up a personal pension scheme;
- (21) advising on investments;
- (22) providing credit information services.

2.9.26 G These exclusions apply to a person acting as an insolvency practitioner. The term “insolvency practitioner” is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to debt adjusting, debt counselling and providing credit information services also apply to any activity carried on by a person acting in reasonable contemplation of that person’s appointment as an insolvency practitioner.

2.9.27 G A person acting as an insolvency practitioner or in reasonable contemplation of that person’s appointment as an insolvency practitioner include anything done by the person’s firm in connection with that person so acting. For these purposes, the reference to “the person’s firm” means the person’s

employer, the *partnership* in which he is a *partner* or the *limited liability partnership* of which he is a member, as the case may be.

...

2.10.3 G The *Act* provides that *appointed representatives* (see *PERG* 2.10.5G), *recognised investment exchanges* and *recognised clearing houses* (see *PERG* 2.10.6G) and certain other *persons* exempt under miscellaneous provisions (see *PERG* 2.10.7G) are *exempt persons* (although in certain circumstances, an *appointed representative* may not be an *exempt person*, but may have a *limited permission* to carry on certain *credit-related regulated activities*). Members of Lloyds and members of the professions are not '*exempt persons*' as such, but the *general prohibition* in section 19 of the *Act* only applies to them in certain circumstances. The distinction is significant in relation to various provisions (such as those in the *Regulated Activities Order*) that apply only to transaction and other activities that involve *exempt persons*.

2.10.5 G A *person* is exempt if he is an *appointed representative* of an *authorised person*. In some circumstances, however, a *person* may be an *appointed representative* and not be exempt, if the *person* has a *limited permission* for certain *credit-related regulated activities*. See *SUP* 12 (*Appointed representatives*). But where an *appointed representative* carries on *insurance mediation* or *reinsurance mediation* he will not be exempt unless he is included on the register kept by the *FCA* under article 93 of the *Regulated Activities Order* (*Duty to maintain a record of unauthorised persons carrying on insurance mediation activities*) (see *PERG* 5.13 (*Appointed representatives*)).

Insert the following new section after *PERG* 2.10. The text is not underlined.

2.11 Persons who are exempt for credit-related regulated activities

2.11.1 G Various persons are exempted by Order made by the Treasury under section 38 of the *Act* from the need to obtain *authorisation* for certain *credit-related regulated activities* in the circumstances specified in the Order (for example, in some cases, a *person* is exempt only when acting in a particular capacity or for particular purposes). *Persons* exempt under the Order cannot be exempt in relation to some *regulated activities* and *authorised* in relation to others (except where the *person* is an *authorised person* with only *interim permission*).

Official receivers

2.11.2 G A *person* acting as:

- (1) an official receiver; or
- (2) a judicial factor;

is exempt in respect of *debt adjusting, debt counselling, debt collecting, debt administration or providing credit information services*.

Cycle to work

- 2.11.3 G This exemption applies to a scheme under which an employer provides or makes available to their employees a cycle or cyclist's safety equipment up to the value of £1,000 (which is designed to allow employees to take advantage of section 244 of the Income Tax (Earnings and Pensions) Act 2003). An employer does not require *authorisation* for the *regulated activities* relating to *regulated consumer hire agreements* just because it operates such a scheme.

Tracing agents

- 2.11.4 G A *person* who takes steps to ascertain the identity or location (or the means of ascertaining the identity or location) of a *borrower* or *hirer* is exempt from *debt-collecting* as long as the *person* is not the *lender* or *owner* under the agreement concerned, takes no other steps to collect debts due under the agreement and carries on no other activity which requires *authorisation*.

Enterprise schemes

- 2.11.5 G There are also exemptions from *credit broking, debt adjusting, debt-counselling* and *providing credit information services* for an enterprise scheme as long as it does not carry on the activity for, or with the prospect of, direct or indirect pecuniary gain. Sums reasonably regarded as necessary to meet the costs of carrying on the activity do not constitute a pecuniary gain for this purpose.

PERG 2 Annex 1G Authorisation and regulated activities

Amend the following as described below.

The flowchart shown in this annex has been amended by the Alternative Investment Fund Managers Directive (Consequential Amendments) Instrument 2014 (FCA 2013/14). Following the amendments made by that instrument, the following further amendments are made by *this* instrument to that flowchart:

A new 'balloon' is inserted between the current second and third balloon (i.e. after the balloon which reads "Are you, or will you be, involved with *specified investments* of any kind?").

The new balloon reads "Are your activities related to information about a *person's financial standing*?"

A linking arrow "No" is inserted linking the left side of the previous balloon to the top side of the new balloon (replicating the arrow from the current second to the current third balloon).

A linking arrow "No" is inserted linking the left side of the new balloon to the top side of the next balloon (replicating the arrow from the current second to the current third balloon).

The new balloon is linked, at its right side, to the vertical line, with "Yes" appearing above the link.

To the right of the right-hand link is inserted the following text "Consult articles 89A and 89B of the *RAO*".

2 Annex 2 Regulated activities and the permission regime

...

1.3 G	Part II of the <i>Regulated Activities Order</i> (Specified activities) specifies the activities for the purposes of section 22 of the Act. This section states that an activity is a regulated activity if it is an activity of a specified kind which is carried on by way of business and:	
	(1)	relates to an investment of a specified kind; or
	(2)	in the case of an activity specified for the purposes of section 22(1)(b) of the Act, is carried on in relation to property of any kind; <u>or</u>
	(3)	<u>relates to information about a <i>person's</i> financial standing.</u>
...		

2 Table

...	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
<i>(zo) administering a regulated sale and rent back agreement (Article 63(J)(2))</i>	<i>rights under a regulated sale and rent back agreement (Article 88C)</i>
<u>Credit-related regulated activity</u>	
<i><u>(zp) entering into a regulated credit agreement as lender (article 60B(1))</u></i> <i><u>(zq) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B(2))</u></i> <i><u>(zr) credit broking (article 36A)</u></i> <i><u>(zs) operating an electronic system in relation to lending (article 36H)</u></i> <i><u>(zt) debt adjusting (article 39D(1))</u></i> <i><u>(zu) debt counselling (article 39E(1))</u></i>	<i><u>Rights under a credit agreement (article 88D) (see note 9 to Table 1)</u></i>

<p><u>(zv) debt collecting (article 39F(1))</u></p> <p><u>(zw) debt administration (article 39G(1))</u></p>	
<p><u>(zx) entering into a regulated consumer hire agreement as owner (article 60N(1))</u></p> <p><u>(zy) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement (article 60N(2))</u></p> <p><u>(zz) credit broking (article 36A)</u></p> <p><u>(zaa) debt adjusting (article 39D(2))</u></p> <p><u>(zab) debt counselling (article 39E(2))</u></p> <p><u>(zac) debt collecting (article 39F(2))</u></p> <p><u>(zad) debt administration (article 39G(2))</u></p>	<p><u>Rights under a consumer hire agreement (article 88E)</u></p>
<p><u>(zae) providing credit information services (article 89A)</u></p> <p><u>(zaf) providing credit references (article 89B)</u></p>	<p><u>(see note 10 to Table 1)</u></p>

3 Table

<p>...</p>
<p>Note 8:</p> <p>...</p>
<p><u>Note 9:</u></p> <p><u>For the purposes of the permission regime with respect to the regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement, this is sub-divided into:</u></p> <p><u>(i) a regulated credit agreement (excluding high-cost short-term credit, a home credit loan agreement and a bill of sale loan agreement);</u></p> <p><u>(ii) high-cost short-term credit;</u></p> <p><u>(iii) a home credit loan agreement;</u></p> <p><u>(iv) a bill of sale loan agreement.</u></p> <p><u>For the purposes of operating an electronic system in relation to lending, rights under a credit agreement include rights under an article 36H agreement within the meaning of article 36H (4) of the Regulated Activities Order.</u></p>
<p><u>Note 10:</u></p> <p><u>Article 4 (2A) of the Regulated Activities Order specifies the activities (zae) and (zaf) for the</u></p>

purposes of section 22(1A)(a) of the Act (these activities are expressed as relating to information about a person's financial standing rather than to a *specified investment*) and accordingly will be *regulated activities* when carried on by way of business.

...

- 4.2.4 G ~~Even if the *person* does not require *authorisation*, he may still require a licence under the Consumer Credit Act 1974 to carry on the activity (see *PERG* 4.17 (Interaction with the Consumer Credit Act 1974)).~~ [deleted]

...

4.7 Entering into a regulated mortgage contract

...

Exclusions

- 4.7.2 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities*. ~~This is~~ These are referred to in *PERG* 4.10 (Exclusions applying to more than one regulated activity). ~~There~~ In addition, there is also an exclusion where both the lender and borrower are overseas, which is referred to in *PERG* 4.11 (Link between activities and the United Kingdom).

...

...

Other Exclusions

- 4.8.8 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *administering regulated mortgage contracts*. There is also an exclusion for *local authorities*. ~~This is~~ These are referred to in *PERG* 4.10 (Exclusions applying to more than one regulated activity). ~~There~~ In addition, there is also an exclusion where both the administrator and borrower are overseas, which is referred to in *PERG* 4.11 (Link between activities and the United Kingdom).

...

4.10.9 G ...

Exclusion: Local authorities

4.10.10 G There are exclusions that apply, in relation to each of the regulated mortgage activities if the person carrying on the activity is a local authority.

...

4.12.2 G Unless a person has only a limited permission for certain credit-related regulated activities, A a person who is an authorised person cannot be an appointed representative (see section 39(1) of the Act (Exemption of appointed representatives)).

...

4.13.1 G ...

(1) ~~local authorities (paragraph 47 of the Schedule to the Exemption Order) but not their subsidiaries; [deleted]~~

...

...

4.17 Interaction with the Consumer Credit Act

Entering into and administering a regulated mortgage contract

4.17.1 G ~~Article 90 of the Regulated Activities Order essentially carves out regulated mortgage contracts from regulation under the Consumer Credit Act 1974 (CCA). Many loans that fall within the regulated mortgage contract definition are already exempt from much of the detail required under the CCA. The cumulative effect of article 20(3) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (the 2013 Order) and Chapter 14A of Part 2 of the Regulated Activities Order is to essentially carve out regulated mortgage contracts from regulation under the CCA and from regulation as a credit-related regulated activity.~~

4.17.2 G ~~Some loans that will fall within the regulated mortgage contract definition are also currently classified as regulated agreements under the CCA. In these cases, the impact of the carve-out in article 90 of the Regulated Activities Order is likely to be more significant. In particular, most of the CCA controls in respect of entering into, operation and termination of agreements will not apply. Article 90 also, however, provides that section 126 of the~~

CCA (Enforcement of land mortgages) and other provisions relating to it, apply to agreements which would otherwise be *regulated agreements*. In the FCA's view, it follows that section 126 of the CCA and related provisions including sections 129, 130, 131, 135 and 136 (dealing amongst other things with extension of time and protection of property pending proceedings) will apply to these *regulated mortgage contracts*. Section 126(2) of the CCA (as inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014) provides, however, that for the purposes of section 126(1) of the CCA (a land mortgage securing a *regulated credit agreement* is enforceable (so far as provided in relation to the agreement) on an order of the court only) and Part 9 of the CCA (judicial control) a *regulated mortgage contract* which would, but for the exemption in PERG 2.7.19CG(1), be a *regulated credit agreement* is to be treated as if it were a *regulated credit agreement*. This is subject to section 140A(5) of the CCA (unfair relationships between creditors and debtors), which provides that an order under section 140B of the CCA (powers of court in relation to unfair relationships) shall not be made in connection with a *credit agreement* which is an exempt agreement under PERG 2.7.19CG.

- 4.17.3 G *Regulated mortgage contracts* that were in place at 31 October 2004 and which are subject to the ~~CCA~~ CCA will remain subject to ~~that the~~ the regime in the CCA and may be *regulated credit agreements* for the purposes of the credit-related regulated activities in Chapter 14A of Part 2 of the Regulated Activities Order and will come within the FCA's remit. But there may be instances where a variation of an existing contract amounts to entering into a new *regulated mortgage contract* (see PERG 4.4.4G and PERG 4.4.13G).
- 4.17.4 G Unsecured loans, as well as loans secured on second and subsequent charges on property, are not subject to ~~the article 90~~ the carve-out described above and may be regulated credit agreements for the purposes of the CCA and the credit-related regulated activities for which a *person* may need *permission*. Many of these loans are currently covered by the CCA and the position will not change.
- 4.17.5 G ~~In some cases, lenders may provide a flexible mortgage product comprising both a secured first charge loan and unsecured borrowing, for example credit card facilities. In this example, in addition to considering the need for full authorisation, the lender will also require a CCA licence in respect of the unsecured lending, even where the product is sold under a single agreement.~~
[deleted]

~~Advising on and arranging a regulated mortgage contract~~

- 4.17.6 G The CCA also regulates *persons* who carry on certain types of ancillary credit business including "credit brokerage", "debt adjusting" and "debt-counselling", as defined by section 145 of the CCA. One aspect of the CCA regime is that a licence is required for these activities. Article 20 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475) adds new exceptions to section 145 of the CCA in relation to these activities. [deleted]

- 4.17.7 G Article 20(2) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 amends section 146 of the CCA (Exceptions from section 145) so that it is not "credit brokerage" for a *person* to introduce an individual seeking to obtain credit if the introduction is made (a) to an *authorised person* who has *permission* to enter as lender into "relevant agreements"; or (b) to a "qualifying broker", with a view to that individual obtaining credit under a "relevant agreement". [deleted]
- 4.17.8 G Amended section 146 of the CCA defines "relevant agreement" as meaning a consumer credit agreement secured by a land mortgage, where entering into that agreement as lender is a *regulated activity*. "Qualifying broker" is defined in the same section as meaning a *person* who may effect introductions of the kind mentioned in PERG 4.17.7 G without contravening the *general prohibition* under section 19 of the *Act*. "Credit brokerage" itself includes introducing an individual seeking to obtain credit to finance the acquisition of a dwelling to be occupied by himself or his relatives, to any *person* carrying on a business in the course of which he provides credit secured on land (for full definition see section 145(2) of the CCA). [deleted]
- 4.17.9 G In addition to the provisions of the exception under amended section 146 of the CCA, introducers are referred to the *guidance* in PERG 4.5.10 G dealing with the provisions relating to introducing in the *Regulated Activities Order*. [deleted]
- 4.17.10 G Article 20(2) amends section 146 of the CCA by providing that it is not "debt adjusting" to carry on an activity which would otherwise be "debt adjusting" under section 146(5) of the CCA if (a) the debt in question is due under a "relevant agreement"; and (b) that activity constitutes a *regulated activity*. "Debt adjusting" includes in relation to debts due under consumer credit agreements (a) negotiating with the creditor, on behalf of the debtor, terms for discharge of the debt, or (b) taking over, in return for payments by the debtor, his obligation to discharge a debt, or (c) any similar activity concerned with the liquidation of the debt (see full definition in section 145(5) of the CCA). [deleted]
- 4.17.11 G In addition to the provisions of the exception under amended section 146 of the CCA, debt adjusters and arrangers are referred to the *guidance* in PERG 4.5 dealing with the provisions relating to *arranging* and, in particular, PERG 4.5.1G(1)(b) dealing with varying a *regulated mortgage contract*. [deleted]
- 4.17.12 G Article 20(2) amends section 146 CCA by providing that it is not "debt-counselling" for a *person* to give advice to debtors if (a) the debt in question is due under a "relevant agreement"; and (b) giving that advice constitutes a *regulated activity*. "Debt counselling" includes the giving of advice to debtors about the liquidation of debts due under consumer credit agreements (see the full definition in section 145(6) of the CCA). [deleted]
- 4.17.13 G In addition to the provisions of the exception under amended section 146 of the CCA, debt counsellors and advisers are referred to the *guidance* in

~~PERG 4.6 dealing with *advising on regulated mortgage contracts* and, in particular, PERG 4.6 (Definition of '*advising on regulated mortgage contracts*') dealing with varying a *regulated mortgage contract*. [deleted]~~

- 4.17.14 G ~~The CCA's licensing regime will still apply to credit brokers, debt adjusters and debt counsellors in respect of non-regulated mortgages and other loans, as well as to *authorised persons* or *appointed representatives* who carry on ancillary credit business in addition to *regulated activities*. Accordingly, *mortgage intermediaries* requiring *authorisation* may also need to retain their CCA licences. [deleted]~~

Financial Promotion and advertisements

- 4.17.15 G ~~Articles 90 and 91 of the *Regulated Activities Order* include provisions that have the effect of removing from CCA regulation *financial promotions* about *qualifying credit*. Such promotions will not therefore be subject to Part IV of the CCA or regulations made under that Part. Article 17 of the 2013 Order has the effect that the *controlled activity* of providing relevant consumer credit for the purposes of the *financial promotion* regime does not include *regulated mortgage contracts*.~~
- 4.17.16 G ~~For more detailed *guidance* concerning the ~~interface between application of the *financial promotion* regime and the regulation of credit advertisements under the CCA to *qualifying credit* and relevant consumer credit~~, see *PERG* 8.17.19G.~~

...

5.11 Other aspects of exclusions

- 5.11.1 G This part of the *guidance* deals with:

...

- (3) the following exclusions applying to more than one *regulated activity*:

...

- (c) large risks (article 72D (Large risks contracts where risk situated outside the EEA)); ~~and~~
- (d) activities carried on by *firms* with a *Part 4A permission to manage a UCITS* or *manage an AIF* (article 72AA (Managers of UCITS and AIFs));
- (e) activities carried on by a *local authority* (article 72G); and
- (f) activities carried on by a *person acting as an insolvency practitioner* (article 72H).

...

- 5.11.8 G Chapter XVII of the *Regulated Activities Order* (Exclusions applying to several specified kinds of activity) contains various exclusions applying to several kinds of activity. ~~Four~~ Five exclusions of relevance in relation to *contracts of insurance* are dealt with in this section and a ~~fifth~~ sixth, *overseas persons*, in PERG 5.12 (Link between activities and the United Kingdom).

...

- 5.11.18 G Article 72G (Local authorities) excludes from the activities of *dealing in investments as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance and advising on investments* any activity carried on by a *local authority* which relates to a *contract of insurance* which is not a *life policy*.

- 5.11.19 G Article 72H (Insolvency Practitioners) excludes from the activities of *dealing in investments as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance and advising on investments* any activity carried on by a *person acting as an insolvency practitioner*.

...

- 5.13.1 G Section 39 of the *Act* (Exemption of appointed representatives) exempts *appointed representatives* from the need to obtain *authorisation* (or, in relation to an *appointed representative with a limited permission*, provides that sections 20(1) and (1A) and 23(1A) of the *Act* do not apply in relation to the carrying on of the *regulated activity* which is comprised in the business for which his *principal* has accepted responsibility and for which he does not have *limited permission*).

- 5.13.2 G Unless a *person* has only a *limited permission* for certain *credit-related regulated activities*, A a *person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the *Act* (Exemption of appointed representatives)).

- 5.13.6 G Where a *person* is already an *appointed representative* and he proposes to carry on any *insurance mediation activities*, he will need to consider the following matters.
- (1) He must become *authorised* if his proposed *insurance mediation activities* include activities that do not fall within the table in PERG 5.13.4G (for example, *dealing as agent in pure protection contracts*) and he wishes to carry on these activities. The *Act* does not permit any *person* to be exempt for some activities and *authorised* for

others (although a *person with only a limited permission* for certain *credit-related regulated activities* may also be an *appointed representative* for other *regulated activities* specified in the *Appointed Representatives Regulations* (see SUP 12.2.2AG)). He will, therefore, need to apply for *permission* to cover all the *regulated activities* that he proposes to carry on.

...

...

5.14.5 G In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to *insurance mediation activities* that do not relate to *life policies*:

(1) ~~local authorities but not their subsidiaries;~~ [deleted]

(2) ...

...

Introductions (article 15)

8.12.11 G ...

8.12.11A G This exemption does not apply to any *financial promotion* that is made with a view to, or for the purpose of, an introduction to a person who carries on the *controlled activities* of:

(1) credit broking;

(2) operating an electronic system in relation to lending; or

(3) agreeing to carry on the above activities.

Exempt persons (article 16)

8.12.12 G This exemption covers ~~two~~ three distinct situations. Article 16(1) applies to all *exempt persons* where they make *financial promotions* for the purpose of their exempt activities. These *persons* would include *appointed representatives* (except *appointed representatives* to whom the exemption in article 16(1A) applies; see PERG 8.12.12AG), *recognised investment exchanges*, *recognised clearing houses*, *recognised auction platforms* and those who are able to take advantage of the *Exemption Order*. So, it allows *exempt persons* both to promote that they have expertise in certain *controlled activities* and to make *financial promotions* in the course of carrying them on. Article 16(1) does not apply to *unsolicited real time financial promotions*. *Persons* to whom the *general prohibition* does not apply because of Part XX (Provision of financial services by members of the professions) or Part XIX (Lloyd's members

and former underwriting members) of the *Act* are not, for the purposes of article 16, *exempt persons* for their Part XX or Part XIX activities.

8.12.12A G Article 16(1A) applies to non-real time financial promotions and solicited real time financial promotions made:

- (1) by an appointed representative who is carrying on an activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply as a result of section 39(1D) of the Act; and
- (2) for the purposes of the appointed representative's business of carrying on a controlled activity which is also a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D) of the Act.

SUP 12.2.2AG(3) provides guidance on section 39(1D) of the Act.

...

...

8.14.18 G This exemption allows a *person* in another *EEA State* who lawfully carries on a *controlled activity* in that State to promote into the *United Kingdom*. The terms of the exemption are that the promotion must comply with the rules in *COBS 4*, ~~or~~ *MCOB 3* or *CONC 3* (as relevant). Care should be taken, as any failure to satisfy any of the relevant requirements of these rules may mean that this exemption is not satisfied and the *financial promotion* may breach section 21 if it has not been *approved* and no other exemption applies to it. The *FCA* recommends that anyone seeking to rely on this exemption either seeks professional advice or contacts the *FCA* before *communicating* the *financial promotion*. This exemption does not apply to *unsolicited real time financial promotions*.

...

8.14.40A G ...
E

Credit agreements offered to employees by employers (article 72F)

8.14.40A G Article 72F exempts any financial promotion which is made to an
EA employee by or on behalf of a person in relation to an exempt staff loan. An exempt staff loan is defined as a credit agreement which is:

- (1) entered into by the employee as borrower and the employer, or an undertaking in the same group as the employer, as lender; and
- (2) an exempt agreement under a provision of article 60G (exempt agreements: exemptions relating to the total charge for credit) of the Regulated Activities Order other than article 60G(2) (relating to

loans by credit unions). Guidance on article 60G can be found in PERG 2.7.19IG.

- 8.14.40A F G The exemptions described in *PERG 8.14.40AG* to *PERG 8.14.40AEAG* should enable employers (and their contracted service providers) to promote employee benefits packages that include any *pension schemes*, *work-related insurance schemes* ~~and~~, *staff mortgages* and certain staff loans to employees without undue concern that they may be breaching the restriction in section 21 of the *Act*. *PERG 8.14.34G* (Communications by employers and contracted service providers to employees) has further *guidance* about the application of section 21 to employers and contracted service providers generally.

...

...

- 8.15.6 G A *financial promotion* made under article 55A must contain a statement in the following terms: "The [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment and consumer credit-related services to clients because we are members of [relevant designated professional body]. We can provide these investment and consumer credit-related services if they are an incidental part of the professional services we have been engaged to provide". The *financial promotion* may also set out the Part XX activities which the *person* is able to offer to his clients, provided it is clear that these are the incidental services to which the statement relates. The exemption also provides that a defect in the wording of the statement does not affect its validity. This is provided that the defect does not alter the meaning of the communication.

...

8.17 Financial promotions concerning agreements for qualifying credit

- 8.17.1 G Section 21 applies to *financial promotions* concerning agreements for qualifying credit and relevant consumer credit. *PERG 8.17.1AG* to *PERG 8.17.18G* has guidance about the treatment of ~~such~~ *financial promotions concerning agreements for qualifying credit*. *PERG 8.17-AG* has guidance about financial promotions concerning relevant consumer credit. ~~Section 21 applies not only to financial promotions about regulated mortgage contracts but also to financial promotions about certain other types of credit agreement. This is explained in more detail in PERG 8.17.2G to PERG 8.17.3G.~~

...

8.17.10 G Article 46 (Qualifying credit to bodies corporate) exempts any *financial promotion* about providing qualifying credit (or relevant consumer credit or consumer hire) if it is:

...

...

8.17.12 G Article 28B (Real time communications: introductions) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about regulated mortgage contracts, as well as home reversion plans, home purchase plans, and regulated sale and rent back agreements, certain consumer hire agreements and relevant credit agreements. The exemption is subject to the following conditions being satisfied:

(1) the *financial promotion* must be made for the purpose of, or with a view to, introducing the recipient to a *person* ('N') who is:

...

(b) an *appointed representative*, where the *controlled activity* is also a *regulated activity* in respect of which the *appointed representative* is exempt or in relation to which sections 20 (1) and (1A) and 23 (1A) of the Act do not apply by virtue of section 39(1D) of the Act (see SUP 12.2.2AG(3)); or

(c) an overseas person who carries on the *controlled activity* to which the communication relates; for this purpose, an 'overseas person' is a *person* who carries on any of the *controlled activities* about home finance transactions or of providing relevant consumer credit or consumer hire but does not do so, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*; and

...

...

Interaction with the Consumer Credit Act

8.17.17 G ~~Most credit advertisements are, with various exceptions, regulated under the Consumer Credit Act 1974. However, article 90(3) (Consequential amendments of the Consumer Credit Act 1974) and Article 91(1) (Consequential amendments to subordinate legislation under the Consumer Credit Act 1974) of the *Regulated Activities Order* disapply the provisions of the Consumer Credit Act 1974 to any *financial promotion* other than an exempt generic communication. An exempt generic communication is a *financial promotion* that is exempt under article 17 of the *Financial Promotion Order (Generic promotions)* (see PERG 8.12.14 G (Generic promotions (article 17))). Hence, an advertisement about credit of any kind~~

will either be regulated under Section 21 of the Act or under the Consumer Credit Act 1974. Such an advertisement will only be subject to regulation under both statutes if it is about secured and unsecured lending. Typical examples showing which statute regulates particular types of credit advertisements are given in the table in PERG 8.17.18 G (Table – Guide to the application of the Act and the Consumer Credit Act 1974 to credit advertisements). [deleted]

8.17.18 G Guide to application of the Act and the Consumer Credit Act 1974 to credit advertisements. This table belongs to PERG 8.17.17G

-	Subject of advertising or promotion	FSMA regulated	CCA regulated
(1)	regulated mortgage contracts	Yes	No
(2)	other loans secured on land where the lender also enters into regulated mortgage contracts as lender	Yes	No
(3)	loans not secured on land whether or not the lender also enters into regulated mortgage contracts as lender	No	Yes
(4)	loans not secured on land but which form part of a loan product that is otherwise secured on land and where the lender enters into regulated mortgage contracts as lender	Yes	No
(5)	loans as in (1), (2) or (4) but where the advertisement is subject to exemptions under the <i>Financial Promotion Order</i> other than article 17 (Generic promotions)	Yes	No
(6)	loans as in (1), (2) or (4) but where the advertisement is exempt under article 17 of the <i>Financial Promotion Order</i> (Generic Promotions)	No	Yes
(7)	loans with features as in (1), (2), (4) or (5) promoted in combination with other loans	Yes	Yes

[deleted]

Interaction with providing relevant consumer credit

8.17.19 G Rights under a relevant credit agreement are also a *controlled investment*. A

relevant credit agreement is a *credit agreement* other than a *regulated mortgage contract* or a *regulated home purchase plan*. Entering into a relevant credit agreement as lender, or exercising or having the rights to exercise the rights of the lender under such an agreement, is a *controlled activity* under paragraph 10BA of Schedule 1 to the *Financial Promotion Order*, except where the agreement is for the provision of *qualifying credit*. Further guidance on providing relevant consumer credit is given in *PERG 8.17-A*.

8.17.20 G *CONC 3* contains *rules* about *financial promotions* relating to *credit-related regulated activity*. *CONC 3* does not apply, however, to the *communication, or approval for communication, of a financial promotion* to the extent it concerns *qualifying credit*. *MCOB 3* applies to the *communication or approval of a financial promotion of qualifying credit*. This means that a *financial promotion about credit* will not usually be subject to both *MCOB 3* and *CONC 3* unless it is about secured and unsecured lending. *Guidance on the potential application of MCOB 3 and CONC 3 to particular types of financial promotion of credit* is given in the table in *PERG 8.17.21G*. *Firms* must also comply with *Principle 7* (a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading).

8.17.21 G Guide to potential application of *MCOB 3* and *CONC 3* to *financial promotion of credit*. This table belongs to *PERG 8.17.20G*.

-	<u>Subject of promotion</u>	<u>MCOB 3</u> <u>may</u> <u>apply</u>	<u>CONC 3</u> <u>may</u> <u>apply</u>
(1)	<u><i>regulated mortgage contracts</i></u>	<u>Yes</u>	<u>No</u>
(2)	<u>credit agreements secured on land where the lender also enters into <i>regulated mortgage contracts</i> as lender</u>	<u>Yes</u>	<u>No</u>
(3)	<u>credit agreements not secured on land, whether or not the lender also enters into <i>regulated mortgage contracts</i> as lender</u>	<u>No</u>	<u>Yes</u>
(4)	<u>credit agreements secured on land where the lender does not enter into <i>regulated mortgage contracts</i> as lender</u>	<u>No</u>	<u>Yes</u>
(5)	<u>credit agreements partly secured on land that include some unsecured credit and where the lender enters into <i>regulated mortgage contracts</i> as lender</u>	<u>Yes</u>	<u>No</u>
(6)	<u>credit agreements with features as in (1), (2) or (5) promoted in combination with other unsecured credit agreements</u>	<u>Yes</u>	<u>Yes</u>

Insert the following new section after PERG 8.17 and before PERG 8.17A. The text is not underlined.

8.17-A Financial promotions concerning consumer credit and consumer hire

8.17-A.1 G Section 21 of the *Act* applies to *financial promotions* in relation to relevant consumer credit and consumer hire. This section sets out guidance about such *financial promotions*.

Controlled investments

8.17-A.2 G Rights under a relevant credit agreement are a *controlled investment*. A relevant credit agreement is defined as a *credit agreement* other than a *regulated mortgage contract* or a *regulated home purchase plan*.

8.17-A.3 G Rights under a *consumer hire agreement* are also a *controlled investment*.

Controlled activities

8.17-A.4 G Providing relevant consumer credit is a *controlled activity*. This is defined as entering into a relevant credit agreement (other than an agreement under which *qualifying credit* is provided) as *lender*, or exercising or having the rights to exercise the rights of the *lender* under such an agreement.

8.17-A.5 G The *controlled activities* also include providing consumer hire. A *person* provides consumer hire if he enters into a *regulated consumer hire agreement* (or an agreement that would be such an agreement were it not exempt under article 60O (exempt agreements: exemptions relating to the nature of the agreement) or 60Q (exempt agreement: exemptions relating to nature of hirer) of the *Regulated Activities Order*) as *owner* or exercises or has the right to exercise the rights of the *owner* under such an agreement.

8.17-A.6 G Operating an electronic system in relation to lending is a *controlled activity*. For the purposes of this *controlled activity*, the *controlled investment* of rights under a relevant credit agreement includes rights under an agreement within paragraph 4C(4) of Schedule 1 to the *Financial Promotion Order* (which is similar to an agreement within article 36H of the *Regulated Activities Order*, guidance on which is given in *PERG 2.7.7HG*).

8.17-A.7 G There are three other *controlled activities* that involve both of the *controlled investments* of relevant credit agreements and consumer hire agreements:

- (1) credit broking;
- (2) debt adjusting;

(3) debt counselling;

- 8.17-A.8 G The *controlled activities* in PERG 8.17-A.6G and PERG 8.17-A.7G are substantially the same as the *regulated activities* of *operating an electronic system in relation to lending, credit broking, debt adjusting and debt counselling* (although there are some technical differences between the *controlled activity* of credit broking and the *regulated activity* of *credit broking*. For example, the credit broking *controlled activity* captures all relevant credit agreements (including those to which the exemption relating to number of repayments to be made in article 60F of the *Regulated Activities Order* applies). Also, an activity is not the *controlled activity* of credit broking to the extent that it constitutes the *controlled activity* of arranging *qualifying credit*). *Guidance* on these *regulated activities* is given in PERG 2.7.7EG (credit broking), 2.7.7HG (operating an electronic system), 2.7.8BG (debt adjusting) and 2.7.8CG (debt counselling). Agreeing to carry on the above activities also constitutes a *controlled activity*.

Application of exemptions to financial promotions about agreements for relevant consumer credit or consumer hire

- 8.17-A.9 G *Financial promotions* about relevant consumer credit or consumer hire are subject to the exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities). A number of the exemptions in Part VI of the *Financial Promotion Order* (Exempt communications: certain controlled activities) also apply. *Guidance* on some of these (which apply to *financial promotions* about both *qualifying credit* and relevant consumer credit) is given in PERG 8.17.10G to PERG 8.17.12G. There is one exemption that applies specifically to relevant consumer credit and consumer hire, referred to in PERG 8.17-A.10G.

Promotions of credit for business purposes (article 46A)

- 8.17-A.10 G (1) Article 46A of the *Financial Promotion Order* exempts a *communication* which relates to the *controlled activities* of operating an electronic system in relation to lending, providing relevant consumer credit or providing consumer hire.
- (2) This exemption applies only if the *communication*:
- (a) indicates clearly that a *person* is willing to engage in the investment activity for the purposes of another *person's* business; and
 - (b) does not indicate (by express words or otherwise) that the *person* is willing to engage in the investment activity for any other purpose.
- (3) For the purposes of this exemption, references to a “business” do not include a business carried on by the *person communicating* the promotion, or by a *person* who is a *credit broker* in relation to the

agreement to which the promotion relates.

Amend the following provisions as shown.

8.36.3 G Table Controlled activities

...	
4A.	Operating a multilateral trading facility
4B.	<u>Credit broking</u>
4C.	<u>Operating an electronic system in relation to lending</u>
5.	Managing investments
5A.	<u>Debt adjusting</u>
5B.	<u>Debt counselling</u>
...	
12.	Advising on qualifying credit etc
12A.	<u>Providing relevant consumer credit</u>
12B.	<u>Providing consumer hire</u>
...	

8.36.4 G Table Controlled investments

...	
17A.	Rights under a regulated sale and rent back agreement
17B.	<u>Rights under a relevant credit agreement (including rights under a paragraph 4C agreement)</u>
17C.	<u>Rights under a consumer hire agreement</u>
...	

...

8.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG 8</i> reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)

...				
<u>46A</u>	<u>Promotions of credit etc. for business purposes (8.17-A.10G)</u>	*	*	*
...				
<u>72F</u>	<u>Credit agreements offered to employees by employers</u>	*	*	*
...				

...

14.3 Activities relating to home reversion plans

...

Q9. What exclusions may be available to me if I am entering into home reversion plans?

The main exclusions are those:

- for trustees who enter into a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); ~~and~~
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q11. What exclusions may be available to me if I am administering home reversion plans?

...

The other main exclusions are those:

- for trustees who administer a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); ~~and~~
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q15. What exclusions may be available to me if I am arranging home reversion plans?

...

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

...

- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); ~~and~~
- *overseas persons* (article 72 of the Regulated Activities Order) (see Q39); and
- arrangements made by local authorities (article 72G of the Regulated Activities Order).

...

Q20. What exclusions may be available to me if I am advising on home reversion plans?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); ~~and~~
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); and
- advice given by local authorities (article 72G of the Regulated Activities Order).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

...

14.4 Activities relating to home purchase plans

...

Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?

The main exclusions are:

- for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for providers that are local authorities (article 72G of the Regulated Activities Order).

...

Q30. What exclusions may be available to me if I am administering home

purchase plans?

...

The other main exclusions are those:

- for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

...

Q32. What exclusions may be available to me if I am arranging home purchase plans?

...

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

...

- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by local authorities (article 72G of the *Regulated Activities Order*).

...

Q36. What exclusions may be available to me if I am advising on home purchase plans?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); ~~and~~
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); and
- advice given by local authorities (article 72G of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

...

14.4A Activities relating to regulated sale and rent back agreements

...

Q37 D. What exclusions may be available to me if I am entering into regulated sale and rent back agreements as agreement provider?

The main exclusions are those:

- for trustees who enter into a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q37 G. Are there any other exclusions available in relation to administering a regulated sale and rent back agreement?

The other main exclusions are those:

- for trustees who administer a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q37 K. What exclusions may be available to me if I am arranging regulated sale and rent back agreements?

...
Whether or not you are an unauthorised person, the other main exclusions that may apply include:

...

- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by local authorities (article 72G of the *Regulated Activities Order*).

...

Q37 P. What exclusions may be available to me if I am advising on regulated sale and rent back agreements?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); ~~and~~

- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); and
- advice given by local authorities (article 72G of the Regulated Activities Order).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

...

14.7 Exemptions

Q40. Am I an exempt person in relation to home finance activities?

Yes, if you are:

- a *person* who is specifically exempt under the Financial Services and Markets Act 2000 (Exemption) Order 2001, such as a ~~local authority~~ or a registered social landlord; or
- an *appointed representative* whose agreement with his principal permits him to carry on the activities in question; or
- an *exempt professional firm*.

...

14.8 Financial promotions

...

Q45. What exemptions may be likely to be available to me when I communicate financial promotions about home finance plans or activities?

...

- (2) Exempt persons (article 16 of the Financial Promotion Order). This applies, subject to certain conditions, if you are an exempt person such as a ~~local authority~~, a registered social landlord or an *appointed representative*.

...

After PERG 16 insert the following new chapter. The text is not underlined.

17 Consumer credit debt counselling

17.1 Introduction

Q1.1 What is the purpose of the questions and answers in this chapter?

The purpose is to consider the scope of the *regulated activities* specifically relating to consumer credit debt counselling.

Q1.2 What are the regulated activities specifically relating to consumer credit debt counselling?

The *regulated activities* that specifically relate to consumer credit debt counselling are both to be found in article 39E of the *Regulated Activities Order*. They are:

- (1) giving advice to a *borrower* about the liquidation of a debt due under a *credit agreement*; and
- (2) giving advice to a *hirer* about the liquidation of a debt due under a *consumer hire agreement*.

Q1.3 What is the scope of this chapter?

This chapter is not a complete discussion of the *regulated activities* relating to consumer credit. It just concentrates on the things that are specific to *debt counselling*. In particular, it does not discuss the meaning of *borrower*, *credit agreement*, *consumer hire agreement* or *hirer*.

Q1.4 Are there transitional arrangements?

Yes, but they are outside the scope of this chapter.

17.2 The basic elements of debt counselling

Q2.1 What is the basic definition of debt counselling?

It involves the following elements:

- (1) It is advice given to:
 - (a) a *borrower* about the liquidation of a debt due under a *credit agreement*; or
 - (b) a *hirer* about the liquidation of a debt due under a *consumer hire agreement*;

(see *PERG* 17.3 for more about what the advice must be about).

- (2) The advice must relate to a particular debt and debtor (see *PERG* 17.4).
- (3) It covers the giving of advice. It does not cover just giving mere information. This is explained in *PERG* 17.5.

- (4) If an exclusion applies, the activity is not a *regulated activity* (see *PERG* 17.6).

Q2.2 Can you give some examples of what is and is not debt counselling?

Yes. There are examples in *PERG* 17.7.

Q2.3 What other factors are relevant to whether authorisation is needed?

- (1) Whether the activity is carried on by way of business (see *PERG* 2.3).
- (2) Whether an exemption is available (see *PERG* 2.11).
- (3) Whether the *person* can carry on the activity without *authorisation* (see *PERG* 2.10.12G to *PERG* 2.10.16G).

17.3 What the advice must be about

Q3.1 What does liquidation of a debt mean?

It has a wide meaning. For example, it would cover the following:

- paying off the debt in full and in time;
- agreeing a rescheduling or a temporary halt to paying off the debt;
- the debtor being released from the debt;
- agreeing a reduced repayment amount (including the creditor agreeing to accept token repayments);
- a third party taking over the debtor's obligation to discharge the debt;
- discharging the debt or making it irrecoverable through personal insolvency procedures such as bankruptcy, a voluntary arrangement or a debt relief order.

Q3.2 What does due mean?

As described in the answer to Q2.1 (What is the basic definition of debt counselling?), *debt counselling* relates to debts that are due under a *credit agreement* or a *consumer hire agreement*. As the regulation of *debt counselling* is a consumer protection measure the "due" should in the *FCA's* view be interpreted fairly broadly and should not be limited to debts that are immediately payable (for example, where the debtor is in default). Therefore, for instance, it would cover present obligations to make payments in the future.

Debt counselling is not limited to debts that are overdue. It also covers debts that are not overdue.

Q3.3 Does it matter if the advice also covers debts that are not due under a credit agreement or a consumer hire agreement?

No. If advice is given to a debtor about his debts, some of which are not payable under a *credit agreement* or a *consumer hire agreement*, that advice is regulated as long as some of the debts are due under a *credit agreement* or a *consumer hire agreement*. There is nothing in the definition of *debt counselling* or in the policy for regulating it that restricts *debt counselling* to a situation in which all the debts are consumer credit ones. Where advice covers both the consumer credit debt and the other debt, the advice on both types of debt is likely to be *debt counselling* as what is done about non-consumer credit debt is likely to affect consumer credit debt, particularly if the advice does not distinguish between the two types of debt. This is similar to the position for the advisory *regulated activities* in relation to transactions in regulated investments, which cover not only advice on the transaction in the regulated investment itself but also any advice with a view to, or in connection with, that transaction and advice as to any associated or ancillary matter.

For the same reason other kinds of advice that would not otherwise be treated as *debt counselling* will be included if that other kind of advice is given with a view to or in connection with the liquidation of consumer credit debts. See example (11) in the table in the answer to Q7.1 for an example of this.

17.4 Advice must relate to a particular debt and debtor

Q4.1 Does debt counselling cover advice given to the public in general rather than to a particular debtor?

Debt counselling covers giving advice about “a” debt. This means that the advice must relate to the debts of a particular debtor or debtors. Advice will normally not be covered if it is not given to any particular debtor. So for example, it would not generally cover advice in a newspaper, periodical publication, journal, magazine, publication or a radio or television broadcast. General advice open to everyone on a website is unlikely to be *debt counselling* for the same reason. On the other hand advice given to a particular debtor over the Internet may be regulated. Please see Q5.5 about whether decision trees involve *debt counselling*.

Q4.2 Must advice be given to a borrower?

Yes. *Debt counselling* means giving advice to a *borrower* under a *credit agreement* or a *hirer* under a *consumer hire agreement*. So for example it does not cover advice given to *persons* who receive it as:

- a lender under a *credit agreement* or the owner under a *consumer hire agreement*; or
- an adviser who will only use it to inform advice given by him to others (but see Q4.3); or
- a journalist or broadcaster who will use it only for journalistic purposes.

Q4.3 What about advice that is passed on through an intermediary?

This question covers advice prepared by A which is then passed on to the debtor by B.

If the debtor knows of this arrangement and knows that B does not exercise any judgement but just acts as a conduit, it is likely that A is *debt counselling* and B is not.

17.5 The meaning of advice

Q5.1 Broadly speaking, what is advice?

Advice means giving an opinion as a guide to action to be taken, in this case the liquidation of debts. It either explicitly or implicitly steers the customer to a particular course of action.

A key question is whether an impartial observer, having due regard to the regulatory regime and *guidance*, context, timing and what passed between the parties, would conclude that advice had been given. One should look at whether what the adviser says could reasonably have been understood by the client as being advice which would help him make up his mind.

The concept of advice is broad enough to include any communication with the debtor which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the debtor's decision whether or not to undertake the course of action in question.

Any course of action does not have to be identified in any detail. For example advice to opt for one of a number of identified possible debt solutions without advising which one of those the client should adopt may, depending on the circumstances, be *debt counselling*.

Q5.2 Does advice include a recommendation?

Yes, a recommendation to carry out a specific course of action to liquidate a relevant debt is likely to be *debt counselling*. However, something falling short of an explicit recommendation can be regulated too. Any element of evaluation, value judgment or persuasion is likely to mean that advice is being given.

Q5.3 Is giving information advice?

In the *FCA's* view, advice requires an element of opinion on the part of the adviser or something that might be taken by the debtor, expressly or by implication, to suggest or influence a course of action. Information, on the other hand, involves statements of facts or figures.

In general terms, simply giving balanced and neutral information without making any comment or value judgement on its relevance to decisions which a debtor may make is not advice. The provision of purely factual information does not become regulated advice merely because it feeds into the debtor's own decision-making process and is taken into account by him.

Therefore, a neutral and balanced explanation of the implications of entering into different debt solutions need not, itself, involve *debt counselling*.

In the *FCA's* opinion, however, such information is likely take on the nature of advice if the circumstances in which it is provided give it, expressly or by implication, the force of a recommendation.

For example the adviser may provide information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of the debtor. This may arise where the adviser offers to provide information about certain ways of liquidating the debtor's debts that contain features specified by the debtor. The adviser may then exercise discretion as to which course of action to highlight.

A key to the question whether advice is given is whether that information is either accompanied by a comment or value judgment on the relevance of that information to the client's decision, or is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision of the recipient. In both these scenarios, the information acquires the character of a recommendation.

One factor in deciding whether what was said by an adviser in a particular situation did or did not amount to advice is to look at the inquiry to which the adviser was responding. If a debtor asks for a recommendation, any response is likely to be regarded as advice.

On the other hand, if a debtor makes a purely factual inquiry it may be the case that a reply which simply provides the relevant factual information is no more than that. In this case it is relevant whether the adviser makes it clear that it does not give advice or whether the adviser runs a *debt counselling* business.

Q5.4 PERG says a lot about generic advice in relation to other sorts of regulated advice. Is the idea of generic advice relevant to debt counselling?

Generic advice is a term the *FCA* uses to refer to something that is advice rather than mere information but which is not regulated because, although it relates to investments, it is not about the merits of buying or selling a particular investment.

The concept of generic advice is potentially relevant to *debt counselling*. As explained in the answer to Q1.2 (What are the regulated activities specifically relating to consumer credit debt counselling?) and Q4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?) *debt counselling* relates to the particular debts of a debtor. Advice that does not relate to particular debts in this way is likely to be generic advice.

However, as explained in the answer to Q5.1, advice may be *debt counselling* even though the advice does not identify a course of action with any precision. This narrows the types of advice that will be excluded from being *debt counselling* on the grounds of being generic advice. Another reason for generic advice being less relevant to *debt counselling* is that other types of regulated advice relate to a very specific activity, such as buying or selling investments, while the range of activities covered by *debt counselling* is wide.

See example (5) in the table in Q7.1 for an example of where generic advice is relevant to *debt counselling*.

Q5.5 Does a decision tree involve debt counselling?

Scripted questioning involves using any form of sequenced questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a method of liquidating his debts under a *credit agreement* or a *consumer hire agreement*. A decision tree is an example of scripted questioning. The process of going through the questions will usually narrow down the range of options that are available. Scripted questions must be prepared in advance of their actual use.

Undertaking the process of scripted questioning gives rise to particular issues concerning *debt counselling*. Whether or not scripted questioning in any particular case is *debt counselling* will depend on all the circumstances. If the process involves identifying one or more particular courses of action then, in the *FCA's* view, to avoid *debt counselling*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the debtor as, assisting the debtor to make his own choice of how to liquidate his debts. The questioner will need to avoid making any judgement on the suitability of one or more courses of action for the debtor.

The potential for variation in the form, content and manner of scripted questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, the nature and size of the debts). There are various possible scenarios, including the following:

- (1) The questioner may go on to identify several courses of action which match features identified by the scripted questioning; provided these are presented in a balanced and neutral way (for example, they identify all the possible courses of action, without making a recommendation as to a particular one) this need not, of itself, involve *debt counselling*.
- (2) The questioner may go on to advise the debtor on the merits of one particular course of action over another. This would be *debt counselling*.
- (3) The questioner may, before or during the course of the scripted questioning, give information that considered on its own would not involve *debt counselling* and, following the scripted questioning, identify one or more particular courses of action. The factors described in the answer to Q5.6 are relevant to deciding whether there is *debt counselling*.

The second type of scripted questioning involves providing questions and answers incorporating opinion, judgement or recommendations. This will involve advice not just information. There are various possible scenarios, including the following:

- (4) The scripted questioning may not lead to the identification of any particular course of action; in this case, the questioner has provided advice, but it is generic advice and does not amount to *debt counselling*. As explained in the answer to Q5.4 (generic advice) this will be an uncommon scenario.
- (5) The scripted questioning may lead to the identification of one or more particular courses of action. This is likely to be *debt counselling*.

Q5.6 What are the factors mentioned in paragraph (3) of the answer to Q5.5?

The *FCA* considers that it is necessary to look at the process and outcome of scripted questioning as a whole. Factors that may be relevant in deciding whether the process involves *debt counselling* include the following:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the role played by any questioner who guides a *person* through the scripted questions;
- (4) the outcome of the questioning (how many courses of action are highlighted, how precise they are, whether the questioner will help the debtor to carry out the course of action, whether the questioner identifies any third party who might help the debtor to carry out the course of action and the relationship between the questioner and that third party and so on); and
- (5) whether the scripted questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party (for example, the *FCA*), and all that the questioner has done is help the debtor understand what the questions or options are and how to determine which option applies to his particular circumstances.

Q5.7 Does the medium used to give advice matter?

The medium used to give advice should make no material difference to whether or not the advice is *debt counselling*. Advice can be provided in many ways including:

- face to face;
- orally to a group;
- by telephone;
- by correspondence (including e-mail and text messaging);
- through the provision of an interactive software system.

However advice given in a publication, broadcast or website raises different issues (see the answer to Q4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?)).

17.6 Exclusions

Q6.1 What exclusions are available?

There are a number of exclusions that apply to *debt counselling*. The following table lists them and says where further information on them can be found in *PERG*.

Exclusions that apply to debt counselling		
What the exclusion covers	<i>RAO</i> article	Where summarised in <i>PERG</i>
Activities where person has a connection to the agreement	Article 39H	<i>PERG</i> 2.8.7CG(1)
Activities carried on by certain energy suppliers	Article 39I	<i>PERG</i> 2.8.7CG(3)
Activities carried on in relation to a <i>regulated mortgage contract</i> or a <i>home purchase plan</i>	Article 39J	<i>PERG</i> 2.8.7CG(4) and examples (17) and (18) in the table in the answer to Question 7.1.
Activities carried on by members of the legal profession etc.	Article 39K	<i>PERG</i> 2.8.7CG(5)
Information society services	Article 72A	<i>PERG</i> 2.9.18G
Local authorities	Article 72G	<i>PERG</i> 2.9.23G to 2.9.24G
Insolvency practitioners	Article 72H	<i>PERG</i> 2.9.25G to 2.9.27G

17.7 Examples

Q7.1 Please give me some examples of what is and is not debt counselling

Please see the following table. All the examples assume that the advice or information relates to debts under a *consumer credit agreement* or a *consumer hire agreement* or to a group of debts that include such debts.

Examples of what is and is not <i>debt counselling</i>
--

Example	Explanation
(1) Adviser: “I recommend you enter into a debt management plan”	This is <i>debt counselling</i> . This is advice which steers the debtor in the direction of a debt solution which the debtor could enter into as a means of liquidating his debts.
(2) Adviser: “I recommend you do not enter into a debt management plan”	This is <i>debt counselling</i> . This is advice which steers the debtor away from a particular debt solution which the debtor could have entered into as a means of liquidating his debts.
(3) Adviser: “I suggest you change (or do not change) from a debt management plan to a debt arrangement scheme” A debt arrangement scheme refers to a debt payment programme under the Scottish debt arrangement scheme (DAS).	This is <i>debt counselling</i> . This is advice that steers the debtor in the direction of a different debt solution from the one that he has already entered into as an alternative means of liquidating his debts.
(4) Adviser: “I recommend you do not borrow more than you can comfortably afford”	This is not <i>debt counselling</i> as it is about incurring debts, not liquidating them.
(5) Adviser: “I would recommend that you explore the pros and cons of all the different debt solutions that may be available to you”	This is not <i>debt counselling</i> . It is unregulated generic advice because it does not steer the debtor to any particular course of action in liquidating his debts.
(6) Adviser: “I think that reaching an informal agreement with your creditors about repaying your debts may not be the best option available to you given your circumstances. I will set out the pros and cons of various other debt solutions that may be more appropriate to your circumstances – but ultimately the option you choose will be a matter for you.”	This is likely to be <i>debt counselling</i> . It does not recommend a precise course of action but, as described in the answer to Q5.1 (Broadly speaking, what is advice?), this does not necessarily matter. The adviser is making a value judgement and giving an opinion and is steering the debtor towards certain courses of action and away from others. In particular, the adviser has recommended that the debtor does not deal with his debts by way of an informal agreement.

<p>(7) The adviser gives an explanation of the way that various types of debt solution work.</p>	<p>If this is given in a balanced and neutral way it is likely not to be <i>debt counselling</i> as it is just factual information.</p>
<p>(8) The adviser gives a comparison of the features and benefits of one type of debt solution with another and the implications of entering into the two different types of debt solutions.</p>	<p>Same as the answer to (7).</p>
<p>(9) An adviser advises on uncertain questions about a debt management plan.</p>	<p>The element of uncertainty is likely to mean that the advice has a strong element of opinion and hence is likely to be advice, rather than mere information. It is likely to be <i>debt counselling</i> as long as it steers the debtor towards a course of action in liquidating his debts.</p> <p>If the advice is given by a lawyer it is likely to be excluded from <i>debt counselling</i> by the exclusion in article 39K of the <i>RAO</i> (Activities carried on by members of the legal profession etc.) referred to in the answer to Q6.1.</p>
<p>(10) A <i>person</i> distributes leaflets or illustrations that help debtors to decide how they will liquidate their debts</p>	<p>This is not <i>debt counselling</i> as it is advice given to the general public. See the answer to Q4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?) for more about this.</p>

<p>(11) A <i>person</i> explains how to fill in a form for entering into an IVA</p>	<p>It is unlikely that a <i>person</i> would provide this advice on its own by way of business.</p> <p>If a <i>person</i> provides this help in the course of carrying on some other unregulated activities he will not be <i>debt counselling</i> as it should be seen as providing information not advice.</p> <p>If though he provides this help in the course of a wider <i>debt counselling</i> business it will be included as part of that <i>debt counselling</i> activity.</p> <p>If the explanation is given by the insolvency practitioner the exclusion in article 72H of the <i>RAO</i> (Insolvency practitioners) is likely to be available (see Q6.1 (What exclusions are available?)).</p>
<p>(12) A <i>person</i> uses direct marketing and other forms of advertising (for example, on websites promoted on search engines) and cold calling, to gather personal information from debtors, which is then sold on to providers of debt advice.</p>	<p>It is not <i>debt counselling</i> as it does not involve advice to debtors about the liquidation of debts due.</p> <p>However, a person providing such referrals will be <i>debt counselling</i> if during the course of communicating with a debtor he makes a recommendation to the debtor as to how he might liquidate his consumer credit debt.</p>
<p>(13) A <i>person</i> recommends that a debtor obtains advice from a particular <i>debt counselling firm</i>, ABC Debt Management.</p>	<p>Taken on its own it is not <i>debt counselling</i> because the adviser is advising the debtor to obtain advice from another adviser.</p> <p>However, if ABC Debt Management only offers one debt solution (e.g. a debt management plan), the referral could constitute a recommendation intended implicitly to steer the debtor in the direction of that particular debt solution and, therefore, could be advice (in which case it would be <i>debt counselling</i>).</p> <p>Consequently, whether or not <i>debt counselling</i> is involved will depend on the individual circumstances in each case and is likely to involve a</p>

	consideration of the process as a whole.
(14) Adviser: “I recommend you prioritise the repayment of your electricity bill over all other debts”	This is likely to constitute <i>debt counselling</i> if, having considered all of a debtor’s outstanding debts, an adviser advises the debtor to prioritise the repayment of a utility bill (e.g. an electricity bill) over his other outstanding debts (including debts arising under <i>credit agreements</i> or <i>consumer hire agreements</i>). This constitutes advising on the liquidation of debts due, since there is an implied recommendation that the debtor should postpone repaying his consumer credit related debts until he has repaid another debt or debts.
(15) A <i>person</i> (for example, a money adviser) helps a debtor to draw up a budget, e.g. providing a budget planner to see how much disposable income the client has each month or how long the client’s money could last over a particular period.	<p>This is not <i>debt counselling</i> if all the adviser does is to provide a debtor with information about his budget and the process is limited to, and likely to be perceived by the debtor as, assisting him to make his own choice as to a course of action he might take in liquidating his consumer credit-related debts.</p> <p>It may not be advice at all, in that it just puts into a convenient form information that the consumer has himself supplied.</p> <p>Even if it goes beyond just organising information supplied by the debtor, as long as the adviser gives the information in a balanced and neutral way, the adviser should be seen as providing information rather than advice. The adviser is supplying material that could be used for the purposes of deciding how to liquidate debts but not advising on liquidating them.</p>
(16) An adviser gives budgetary advice	This is <i>debt counselling</i> if the adviser goes beyond the services in example (15) and advises the debtor on how to match income and debts. For example, the adviser may advise the debtor to reduce discretionary spending to a set amount each month to enable him to

	<p>pay off a certain amount of a large credit card bill each month.</p> <p>It does not matter if the result of the advice is that the debtor should pay off his debts in full, rather than by instalments over a period of time or by entering into some sort of repayment plan, as <i>debt counselling</i> is not limited to advice about being released from paying the debt in full or rescheduling.</p>
<p>(17) Mortgage adviser: “I advise you to consolidate your unsecured consumer credit debts into this <i>regulated mortgage contract</i>”</p>	<p>This is unlikely to be <i>debt counselling</i>.</p> <p>Leaving aside the exclusions, this would be <i>debt counselling</i> as the mortgage adviser is proposing that the debtor should consolidate a number of his consumer credit debts into a single (potentially more manageable) debt with a view to the debtor being better able to liquidate all of his debts.</p> <p>However, the exclusion in article 39J of the <i>RAO</i> (Activities carried on in relation to a <i>regulated mortgage contract</i> or a <i>home purchase plan</i>) is likely to apply. So far as applicable to this example, the exclusion works like this:</p> <p>(a) The advice must relate to a <i>regulated mortgage contract</i>.</p> <p>This condition is satisfied.</p> <p>Example (18) illustrates the issues that would arise if the adviser did not advise on specific <i>regulated mortgage contracts</i>.</p> <p>(b) Giving the advice must be a <i>regulated activity</i>. If the only <i>regulated activity</i> involved in giving the advice is <i>debt adjusting</i>, that is not enough. Another <i>regulated activity</i> must apply too. However, the exclusion can still apply if the advice involves <i>debt adjusting</i> in addition to another <i>regulated activity</i>.</p> <p>This condition is met because the adviser is <i>advising on regulated mortgage contracts</i>.</p>

	<p>Note: Technically this condition (giving the advice must be a <i>regulated activity</i>) would not be satisfied if the only <i>regulated activity</i> carried on by the adviser is <i>debt adjusting</i>, <i>debt collecting</i> or <i>debt administration</i>. However, this example only mentions <i>debt adjusting</i> as, if any of these three <i>regulated activities</i> apply, it is likely only to be <i>debt adjusting</i>.</p> <p>(c) When the mortgage lender enters into the mortgage it will be carrying on the <i>regulated activity</i> of <i>entering into a regulated mortgage contract</i>.</p> <p><i>PERG 4.7</i> explains when <i>entering into a regulated mortgage contract</i> applies.</p>
<p>(18) Mortgage adviser: “I advise you to consolidate your unsecured consumer credit debts into a single <i>regulated mortgage contract</i>. However, I can’t advise you what mortgage contract you should enter into or which mortgage lender you should use.”</p>	<p>This is <i>debt counselling</i>. The exclusion in article 39J of the <i>RAO</i> (Activities carried on in relation to a <i>regulated mortgage contract</i> or a <i>home purchase plan</i>) does not apply.</p> <p>The difference between this example and example (17) is that the advice in this example does not relate to a particular <i>regulated mortgage contract</i> (or several different <i>regulated mortgage contracts</i>). As explained in more detail in <i>PERG 4.6.5G</i> this means that the adviser is not <i>advising on regulated mortgage contracts</i>. The exclusion in article 39J does not apply because the adviser is not carrying on another <i>regulated activity</i>, which means that one of the conditions for article 39J to apply is not met.</p> <p>See example (17) for an explanation of the conditions that must be satisfied if the article 39J exclusion is to apply.</p>
<p>(19) A <i>person</i> operating a peer-to-peer lending platform advises a debtor on the liquidation of a debt due under a consumer credit agreement entered into with a lender or lenders (via the platform). In this example, the platform operator is carrying on the <i>regulated activity</i> of <i>operating an electronic</i></p>	<p>This is <i>debt counselling</i> as long as the loan agreement is a <i>credit agreement</i>.</p> <p>The <i>regulated activity</i> of <i>operating an electronic system in relation to lending</i> covers agreements that are called article 36H agreements, which covers more than just <i>credit agreements</i>. If the consumer credit agreement is an article</p>

<i>system in relation to lending.</i>	36H agreement but not a <i>credit agreement</i> the advice will not be <i>debt counselling</i> .
---------------------------------------	--

Annex R

Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

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

- 1.1.2 G We have agreed with the ~~Office of Fair Trading (“OFT”)~~ Competition and Markets Authority (“CMA”) that the *FCA* will consider the fairness (within the meaning of the Regulations) of financial services contracts for carrying on any *regulated activity*.
- 1.1.3 G ~~The OFT will consider the fairness of other financial services contracts which involve activities governed by the Consumer Credit Act 1974. This includes second charge mortgage loans, buy to let mortgages, and non mortgage personal loans (including credit cards). Also, where~~ Where the *firm* concerned is not a *firm* or an *appointed representative*, the ~~OFT~~ CMA may take enforcement action under the Regulations in respect of financial services contracts involving the carrying on of *regulated activities* (see *EG* 10.16 and *EG* 10.17).
- ...
- 1.2.4 G ...
- (2) Under regulation 14 of the Regulations the *FCA* has a duty to pass details of these cases to the ~~OFT~~ CMA.
- (3) The ~~OFT~~ CMA also publishes details of cases that it, and other qualifying bodies, have dealt with in accordance with the ~~OFT's~~ CMA's duties under regulation 15 of the Regulations.
- ...
- 1.4.2 G There are three main ways in which we might receive a complaint from a *consumer* or other person. These are:
- ...
- (3) from the ~~OFT~~ CMA.
- ...
- 1.4.5 G (1) ...

- (2) In some cases, it might be appropriate for us to use other powers to deal with issues identified under the Regulations. The powers available to the *FCA* under the *Act* may vary depending on the *regulated activities* which the *firm* carries out. For example, the use of the unfair term might involve a breach of a *Principle* or a *rule* in *COBS*, *CONC*, *MCOB* or *ICOBS*. If so, the *FCA* might also address the issue as a *rule* breach.

...

...

1.5.1 G ...

- (3) As part of their risk management, ~~firms~~ *firms* that have not themselves given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions about other *firms*, since these will be of potential value in indicating the likely attitude of the courts, the *FCA*, the ~~OFF~~ *CMA* or other qualifying bodies to similar terms or to terms with similar effects.

**SUP 6 Annex 5D Variation of Permission (VOP) Application Consumer Credit
Activities (form and notes)**



Variation of Permission (VOP) Application

Consumer Credit Activities

Firm Name

Firm Reference Number

Important information you should read before completing this form

Purpose of this form

This form is **only** for firms wishing to change the scope of their permission for **consumer credit business**. You must answer all sections.

The notes that accompany the forms will help you complete the questions. They also explain why we need the information that we are asking for.

We will only grant an application to vary the permission of a firm if we are satisfied it meets conditions known as the threshold conditions. We need the information in this form so we can assess whether the applicant firm can continue to satisfy the threshold conditions.

It is important that you give accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence, it may increase the time taken to assess your application and may call into question your suitability to be authorised.

Submit your application to:

If the appropriate regulator is the FCA send to:

consumercreditVOP@fca.org.uk

If the appropriate regulator is the PRA send to:

Assessment and Monitoring Team
The Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

Contents of this form

Page

1 Contact Details and Timings	2
2 Variation of Permission – Consumer Credit activities	3
3 Variation of Permission – Client Money	5
4 Reason for Variation	7
5 Threshold Conditions	8
6 Approved Persons	11
7 EEA Notifications and Third Country Banking/Investment Groups	12
8 Fees	13
9 Declaration and Signature	15

1

Contact details and timings for this application

We need this information in case we need to contact you when we assess this application.

Contact for this application

1.1 Details of the person we should contact about this application.

Title	
First names	
Surname	
Job title	
Business address	
Postcode	
Phone number (including STD code)	
Email address	

Timings for this application

1.2 Does the applicant firm have any timing factors that it would like us to consider?

We will attempt to process your application as quickly as possible. If you wish your application to be granted by a specific date, we will try to do so. If we cannot, we will contact you with the reason why. However, please note that we must determine an application for a variation of permission once we have received it and deemed it to be complete within six months of it becoming complete.

2

Variation of Permission – Consumer Credit activities

Tell us what it is you wish to do to change your firm's permission.

2.1 Answer this section if you wish to do the following:

- add a new consumer credit activity to your permission;
- delete an activity from your permission; or
- change, add or delete a limitation.

If you wish to add or amend several activities in different ways, copy this page and attach it to this form.

Select activity(ies)			
Add new activity	Amend current activity	Delete activity	
<u>Credit Activities</u>			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit Broking
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Operating an electronic system related to lending
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt adjusting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt counselling
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt collecting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt administration
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into regulated credit agreement as lender (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into a regulated home-credit loan agreement as lender
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties under a regulated home-credit loan agreement
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into high-cost short-term credit as lender
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties in relation to high-cost short-term credit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into a bill of sale loan agreement as lender
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties under a bill of sale loan agreement
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into a regulated consumer hire agreement as owner
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise owner's rights and duties under a regulated consumer hire agreement
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Providing credit information services
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Providing credit references

Limitation(s) on your firm's activity(ies)

- Add a new limitation
- Delete a current limitation
- Amend a current limitation

Enter the limitation(s) below, clearly indicating the amendments if applicable.

Requirement(s)

2.2 Are you adding, amending or deleting a requirement on your firm's permission? (tick all that are applicable)

- Adding a new requirement ▶ Enter a non-standard requirement below.
- Amending a current requirement ▶ Enter the current requirement along with the proposed changes.
- Deleting a current requirement ▶ Enter the current requirement.
- No ▶ Continue to Section 3

3

Variation of Permission – Client Money

Tell us what it is you wish to do to change your firm's client money permission.

3.1 Does your firm wish to change its client money or assets permission?

- No ▶ Continue to Section 4
- Yes ▶ Answer the relevant questions in this section

3.2 What is the firm able to do now, and how does it wish to change its permission for client money?

Firm is currently able to:	Firm wishes to be able to:
<input type="checkbox"/> Hold and control client money	<input type="checkbox"/> Hold and control client money
<input type="checkbox"/> Not hold and not control client money	<input type="checkbox"/> Not hold and not control client money

3.3 Are you applying to stop holding client money?

- No ▶ Continue to Question 3.4
- Yes ▶ Please tick this box if you have included a report from your auditors confirming that you have done this and it has either been paid back to the clients concerned or transferred to another entity that is authorised to hold it.

If you cannot confirm the above option, explain further below.

3.4 Are you applying to hold client money?

- No ▶ Continue to Section 4
- Yes ▶ Continue to Question 3.5

3.5 Is the account held at an approved bank that meets the requirement imposed under CASS?

- Yes ▶ Continue to Question 3.7
- No ▶ Explain why below

3.6 Have you read and understood the Client money rules that you are required to follow?

Yes ▶ Continue to Section 4

No ▶ Explain why below

4

Reason for Variation

Tell us why you are applying to change your firm's permission.

We need to know why your firm is applying to change its permission. You should give as much information as possible, including:

- how this change will affect your firm and the long-term strategy for your business;
- any new operational, legal, market risks that you have identified and will need to consider; and
- details on any outsourcing.

5

Threshold Conditions

We need to know whether the firm will continue to satisfy the threshold conditions as a result of the change in its permission.

The threshold conditions are the minimum conditions a firm is required to satisfy, and continue to satisfy, to be given and retain Part 4A permission. The firm must satisfy us these conditions will continue to be met if we grant the application.

You may be asked to provide documentary evidence to support of your answers, either during the application process or at a later point.

The document '**Consumer Credit Business– Notes**' gives details on what we may ask you to provide to support your application.

5.1 Have you reviewed 'Consumer Credit Business– Notes', and submitted the supporting information as indicated by your type of application?

- Yes ▶ Continue to Question 5.2.
- No ▶ Submitting the information now will significantly speed up the application process.

Location of Offices

5.2 Confirm the following:

- if you are a body corporate, that your firm's registered Office (or if you have no registered office, your head office) is located within the United Kingdom; or
- if you are a natural person, that your head office is in, or you are resident in, the United Kingdom.

- Yes ▶ Continue to Question 5.3
- No ▶ Give details below.

Effective Supervision

5.3 As a result of this application, will there be any impact on the appropriate regulator's ability to effectively supervise the firm?

- Yes ▶ Continue to Question 5.4.
- No ▶ Give details below.

Appropriate resources

Prudential category

5.4 What is your firm's current prudential category?

5.5 Will the firm's prudential category change as a result of this application?

- Yes ▶ What prudential category will your firm be in?
 No ▶ Continue to Question 5.8

5.6 What will be the firm's new capital resource requirement?

5.7 Is the firm currently able to meet this new capital requirement?

- Yes ▶ Continue to Question 5.8
 No ▶ Explain why below

Professional Indemnity Insurance

5.8 Are you required to have in place professional indemnity insurance (PII)?

- No ▶ Continue to Question 5.9
 Yes ▶ Do you hold a valid quote or policy for PII that covers the current business of the firm, and the proposed change in business, if applicable, for which the firm is applying?
 Yes ▶ Continue to Question 5.9
 No ▶ Explain why below

Suitability

Compliance

A firm must establish, maintain and carry out a Compliance Monitoring Programme of actions to check it complies, and continues to comply, with regulations.

5.9 Do you have in place a Compliance Manual and a Compliance Monitoring Programme that reflects the firm's current business and the proposed change in business, if applicable, for which you are applying?

- Yes ▶ Continue to Question 5.10
 No ▶ Explain why below

Conduct of Business requirements – Consumer Credit sourcebook

5.10 Is the firm ready, willing and organised to comply with the relevant provisions in the Consumer Credit sourcebook?

- Yes ▶ Continue to Question 5.11
 No ▶ Explain why below

Systems and Controls (SYSC) requirements

5.11 Does the firm continue to meet the SYSC requirements?

- Yes ▶ Continue to Section 6.
 No ▶ Explain why below.

We may contact you for more detailed information to support your application, especially if you are applying to significantly change your firm's current business.

6 Approved Persons

If a firm changes its permission it may need new controlled functions and approved persons or it may no longer require certain controlled functions.

You should consider the effect of this change on approved persons before submitting your application. If you require help, please from the FCA please call the FCA Approved Persons Helpline on+ 44 (0) 845 606 9966 or email iva@fca.org.uk. If you are a dual regulated firm and require help from the PRA, please call PRA Firm Enquiries on +44 (0) 203 461 7000 or email PRA.firmenquiries@bankofengland.co.uk

6.1 Have any individual(s) proposed to perform a new role, for the firm's consumer credit business, been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the activities without supervision? And do they have the necessary qualifications (where relevant) and experience?

Yes ▶ Continue to Section 6.2

No ▶ Explain why below

6.2 The changes you have requested may result in current controlled functions no longer being required. We will remove the specific functions from the profiles of the relevant approved persons. If this applies to your application, do you accept this?

Yes ▶ Continue to Section 7

N/A, as no change to controlled functions ▶ Continue to Section 7

No ▶ Explain why below

7

EEA Notifications and Third-Country Banking and Investment Groups

We need to know about any connected firms outside the UK but within the EEA (European Economic Area). We also need to know whether the firm is a member of a third-country banking and investment group.

EEA Notifications

7.1 Is the firm connected with a firm outside the UK but within the EEA?

- No ▶ Continue to Question 7.2
 Yes ▶ Give details of each connection below

Name of EEA Regulated Firm	Name of EEA Regulator	Firm's Contact at EEA Regulator (include email address)

Third-Country Banking and Investment Groups

7.2 Is the firm a BIPRU firm?

- No ▶ Continue to Section 8
 Yes ▶ Continue to Question 7.3

7.3 Is the firm a member of a third-country (ie outside of the EEA) banking and investment group?

- No ▶ Continue to Section 8
 Yes ▶ We will ask you to give further details once we have received this application.

8

Fees

Changing your firm's permission can generate an application fee and vary your periodic fee.

If an application fee is due, you must be ready to pay it in full at the same time as submitting your application, by credit/debit card (you may pay by bankers draft, cheque or other payable order by prior arrangement only if it is not possible to pay by credit or debit card). If the fee is not paid in full within five working days of the date that we contact you after you submit this form, your application will be returned to you. This fee is non-refundable; and we do not issue invoices for it.

If the proposed application will add credit activities, a fee will apply as listed below. If the firm is adding more than one credit activity, you should pay the highest fee.

8.1 Please state the estimated consumer credit income for the applicant

8.2 Indicate which of the following applies to your application.

Category of change applied for	Estimated Regulated Consumer Credit Income	Fee
<input type="checkbox"/> Limited permission only firm applying for further limited permission activities <input type="checkbox"/> Reduction in scope of permission, eg only removing an activity, removing a customer or investment type from an activity or adding a requirement or a limitation	Not applicable	No Fee
<input type="checkbox"/> Adding straightforward credit activities and the firm is currently approved for credit business other than limited permission: <ul style="list-style-type: none"> • Credit broking • Providing credit information services 	Not applicable	£250
<input type="checkbox"/> Adding straightforward credit activities and the firm is not currently approved for credit business: <ul style="list-style-type: none"> • Credit broking • Providing credit information services 	Up to £50k Over £50k to £100k Over £100k to £250k Over £250k to £1m Over £1m The firm is currently a limited permission credit firm only	<input type="checkbox"/> £300 <input type="checkbox"/> £375 <input type="checkbox"/> £500 <input type="checkbox"/> £750 <input type="checkbox"/> £2,500 <input type="checkbox"/> Twice the above fee is payable
<input type="checkbox"/> Adding moderately complex credit activities <ul style="list-style-type: none"> • Entering into regulated credit agreement as lender (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement) • Exercising or having the right to exercise lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement) • Entering into a regulated consumer hire agreement as owner • Exercising, or having the rights to exercise, rights and duties under a regulated consumer hire agreement • Operating an electronic system in relation to lending • Debt collecting • Debt administration 	Up to £50k Over £50k to £100k Over £100k to £250k Over £250k to £1m Over £1m The firm is currently a limited permission credit firm only	<input type="checkbox"/> £400 <input type="checkbox"/> £500 <input type="checkbox"/> £750 <input type="checkbox"/> £2,500 <input type="checkbox"/> £5,000 <input type="checkbox"/> Twice the above fee is payable

<input type="checkbox"/> Adding complex credit activities <ul style="list-style-type: none"> • Entering into a regulated credit agreement as a lender, in relation to high-cost short-term credit, bill of sale loan agreements and home-credit loan agreements • Exercising, or having the right to exercise, the lender's rights or duties under a regulated credit agreement in relation to high-cost short-term credit, bill of sale loan agreements and home-credit loan agreements • Debt adjusting • Debt counselling • Providing credit references 	<p style="text-align: center;">Up to £50k</p> <p style="text-align: center;">Over £50k to £100k</p> <p style="text-align: center;">Over £100k to £250k</p> <p style="text-align: center;">Over £250k to £1m</p> <p style="text-align: center;">Over £1m</p> <p style="text-align: center;">The firm is currently a limited permission credit firm only</p>	<p style="text-align: center;"><input type="checkbox"/> £500</p> <p style="text-align: center;"><input type="checkbox"/> £625</p> <p style="text-align: center;"><input type="checkbox"/> £1,000</p> <p style="text-align: center;"><input type="checkbox"/> £3,500</p> <p style="text-align: center;"><input type="checkbox"/> £7,500</p> <p style="text-align: center;"><input type="checkbox"/> Twice the above fee is payable</p>
--	--	---

8.3 Please confirm that the contact person for the application is ready to pay by credit or debit card.

- Yes. To make a payment using a credit card, please do not enter the details on this form. We will contact you to ask for the details.
- No, I have made prior arrangements to pay by bankers draft, cheque or other payable order.

9 Declaration and Signature

Warning

Knowingly or recklessly giving us information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). Our rules (SUP 15.6.4R) require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to us and to tell us immediately if materially inaccurate information has been provided. Contravening these requirements may lead to disciplinary sanctions or other enforcement action by us. It should not be assumed that information is known to us just because it is in the public domain or has previously been disclosed to us or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Data Protection

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the FCA and/or PRA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the applicant.

Declaration

By submitting this application form

- ✓ I confirm that the information in this application is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
- ✓ I am aware that it is a criminal offence knowingly or recklessly to give the FCA and/or PRA information that is false or misleading in a material particular.
- ✓ Some questions do not require supporting evidence. However, the records, which demonstrate the applicant firm's compliance with the rules in relation to the questions, must be available to the FCA and/or PRA on request.
- ✓ I will notify the FCA and/or PRA immediately if there is a significant change to the information given in the application pack. If I fail to do so, this may result in a delay in the application process or enforcement action.
- ✓ If this application was submitted by email I confirm that a signed copy has been retained and is available for inspection.

Date	<input type="text"/>
Name of signatory¹	<input type="text"/>
Position² of signatory	<input type="text"/>
Individual Registration Number (if applicable)	<input type="text"/>
Signature	<input type="text"/>

¹ The signatory must be a suitable person of a Senior Management level at the firm.

² eg, director, sole trader, compliance officer, etc.



Variation of Permission (VOP) Application

Purpose of these Notes

These notes will help you fill in the **Consumer Credit** form correctly.

If after reading these notes you need more help, you can:

- visit our website: www.fca.org.uk/your-fca
- consult the Handbook: www.fshandbook.info/FS/index.jsp;
- email consumercreditVOP@fca.org.uk

These notes, while aiming to help you, do not replace the rules and guidance in the Handbook.

Terms in the Form

The form uses the following terms:

'**FCA/PRA**, '**we**', '**our**', or '**us**' refers to the Financial Conduct Authority and the Prudential Regulation Authority.

'**The firm**' refers to the firm applying for the variation of permission.

'**You**' refers to the person(s) signing the form on behalf of the applicant firm.

Contents of this form

Page

1 Contact details and timings for this application	2
2 Variation of Permission – Consumer Credit activities	2
3 Variation of Permission – Client Money	3
4 Reason for Variation	3
5 Threshold Conditions	
6 Approved Persons	6
7 EEA Notifications & Third-Country Banking/Investment Groups	7
8 Fees	7
9 Declaration and Signatures	7

1 Contact details and timings for this application

Contact for this application

1.3 Details of the person we should contact about this application.

This should be an individual in the UK.

Timings for this application

1.4 Does the applicant firm have any timing factors that it would like us to consider?

If you wish your application to be granted by a specific date, for example in time for a product launch, we will try to do so. However, the time taken to determine each application is significantly affected by the quality of the application submitted and whether it is complete. If you leave a question blank, do not sign the declaration or do not attach the required supporting information, we will have to treat the application as incomplete. This will increase the time taken for us to assess your application.

We are required by law to determine applications within the earlier of (a) 6 months of receiving a complete application or (b) 12 months of receiving an incomplete application. However, we aim to make a decision about the application as soon as possible.

2 Variation of Permission – Consumer Credit activities

It is your responsibility to make sure the regulated activities you request adequately cover the activities the applicant firm intends to carry on. Use this section to request any changes you wish to make to the firm's permission.

You need a Permission Notice that matches the applicant firm's needs and covers every aspect of regulated business it wants to carry on. The Permission Notice shows the range of regulated activities the applicant firm will be authorised to carry on. It will also contain what we refer to as 'requirements' and 'limitations'.

Broadly speaking, a limitation is included in the description of a specific regulated activity and will limit how it is carried on, in some way.

A requirement is on the firm to take, or not to take, a specified action (eg, not to hold client money). A requirement may extend to activities of the firm which are not regulated activities.

If the applicant firm carries on a regulated activity that is not set out in its permission notice it could be in breach of FSMA and subject to enforcement action.

3 Variation of Permission – Client Money

The rules and guidance about how applicant firms hold client money are designed to provide an adequate level of protection for consumers.

4 Reason for Variation

No additional notes.

5 Threshold Conditions

Threshold Conditions are the minimum requirements a firm must satisfy to be, and to continue to be, authorised. When we consider the applicant firm's application, we will assess whether you will satisfy, and continue to satisfy, the threshold conditions which are set out in full in Chapter 2 of the Threshold Conditions sourcebook (COND 2) of the Handbook at: www.fshandbook.info/FS/html/handbook/COND/2.

Location of Offices

This is a requirement of Threshold Condition 2.2.

Effective Supervision

The appropriate regulator must be capable of effectively supervising the firm. This is a requirement of Threshold Condition 2.3.

Appropriate resources

We must be satisfied the applicant firm has adequate resources. We assess the quality and quantity of the applicant firm's resources for its:

- financial resources;
- management;
- staff; and
- systems and controls.

This is a requirement of Threshold Condition 2.4.

Prudential category

We differentiate between our financial requirements by putting applicant firms in different prudential categories. The firm will fall into at least one prudential category (including if there is no specific prudential requirement); and it may fall into more than one prudential category, depending on its regulated activities.

The prudential categories relevant to consumer credit activities are set out in the following table:

Table A

PRUDENTIAL CATEGORIES FOR CONSUMER CREDIT FIRMS	
IPRU(INV) sourcebook	Chapter
Firms operating an electronic system in relation to lending	12
CONC sourcebook	Chapter
Debt management firms and not-for-profit debt advisers holding £1 million or more in client money.	10

For other consumer credit activities, there is no specific prudential requirement and you should answer question 5.5 "no".

Compliance

A firm must establish, maintain and carry out a Compliance Monitoring Programme of actions to check it complies, and continues to comply, with regulations. When assessing this application, we need to be satisfied the applicant firm has the appropriate compliance arrangements in place to meet its regulatory obligations. The

applicant firm will need, as a **minimum**, to have in place procedures to meet our rules for the subject areas in the table below. These procedures must be ready for inspection at any time.

5 Threshold Conditions (cont'd)

Supporting Information to Submit With Your Application

For applications to add permission to do the following **for the first time**, the information below **must** be supplied with the application. Failure to do so will lengthen the application process.

As a guide, your VOP application should include the following information:

All firms

- The background to the business;
- Why you are applying to change your firm's permission
- What experience/qualifications you have in this new activity
- Will your staff numbers be increased (if so, by how much)
- How will they be trained and monitored
- Are they incentivised to sell – what products or services and how?
- Details of your systems and controls incorporating the new activity – including IT systems, compliance staff and the governance of the firm.
- Where customers will be sourced from (eg, existing client base or purchase of client bank), including the use of any lead generators or brokers (and how they will be remunerated) and a summary of the financial promotions to take place.
- How will this activity be sold (face-to-face, telephone, through a website?)
- Details of all fees that could be payable by the customer and how they are explained to the customer.
- Details of all charges (for example, for late or early repayment) and how these are communicated to customers
- Details of arrears and default procedures (including how the firm will assess whether the customer is in financial difficulty and any forbearance).
- Details of the procedures in place to mitigate the risk of fraud/crime.
- Details of the procedures in place to mitigate the higher risks of lending to vulnerable customers.
- Business forecast – not just sales, to also include what income is made by fees and charges.

Lenders

Details of how your affordability assessments are carried out

Pawnbrokers

Details of how you will value items

Details of the circumstances in which you will allow a customer to redeem an item and any charges made when this occurs.

Firms applying for high-cost short-term lending

Your forecast should include what percentage of loans you expect to be in arrears and default and what percentage of loans you expect to be refinanced.

Details of how the firm will use continuous payment authorities.

5 Threshold Conditions (cont'd)

Debt Management firms

What are the firms systems and controls to ensure that it provides accurate payments/data/information to creditors?

What are the firms systems and controls regarding its handling of client money?

What information is provided to the customer about the options available to them and the implications and consequences?

What proportion of debtor payments are passed on to creditors?

Debt collection firms

What are the firms systems and controls to ensure the quality of information it receives from creditors?

What are the firms systems and controls to ensure that it provides accurate payments/data/information to creditors?

Firms applying for log book lending

What is the firm's approach to seizing assets?

Details of how any depreciation of asset is calculated

Firms applying as home collected credit providers

The number of employees, agents or brokers who will be selling the products of the firm, how they will be overseen and remunerated and the geographical area of the firms for home-collected credit business.

Credit Brokers

What level of service you provide and whether this is exclusively with one lender or a panel of lenders – how is this communicated with the customer

What is your procedure of refunding any upfront fees?

6 Approved Persons

You must ensure that no individual performs a controlled function until the application has been granted and we have approved the individual to perform the controlled function(s).

What is an approved person?

An approved person is an individual who is approved by us to perform a controlled function for an authorised firm or an appointed representative. To be approved and continue to be approved to perform a controlled function, an individual must:

- meet, and maintain, our criteria for approval (the 'fit and proper test'); and then
- perform their controlled function(s) in line with the Statement of Principles and Code of Practice for Approved Persons (APER) sourcebook of the Handbook.

What is a controlled function?

A controlled function is a function for a regulated business that has particular regulatory significance.

For example, overseeing the firm's systems and controls and being responsible for compliance with our rules. There are different controlled functions relevant to the different types of businesses we regulate. Some controlled functions are required for every firm, others will depend on the nature of your business.

Each controlled function has a 'CF' number. You can find a full list of all the controlled functions and an explanation of each one at: www.fshandbook.info/FS/html/handbook/SUP/10.

The Approved Person 'Form A' application form is found at: www.fca.org.uk/your-fca

7 EEA Notifications and Third-Country Banking and Investment Groups

EEA Notifications

We need to know about any connected firms outside the UK but within the EEA because we may contact the relevant EEA Home State Regulators of these connected firms, as part of the application process.

Third-Country Banking and Investment Groups

Definition of BIPRU firm

BIPRU firm has the meaning set out in the FCA or PRA handbook as appropriate.

Definition of third-country banking and investment group

A third-country banking and investment group is a banking and investment group that is:

- (a) headed by:
 - (i) a credit institution;
 - (ii) an asset management company;
 - (iii) an investment firm; or
 - (iv) a financial holding company;that has its head office outside the EEA; and
- (b) not part of a wider EEA banking and investment group.

8 Fees

The application fee is an integral part of your application. If you do not pay the appropriate fee in full with the completed application pack or when we contact you, we will not process your application.

For further information on fees, see FEES 3 Annex 1.

You should note the firm's periodic fee may change as a result of this application. See www.fca.org.uk/your-fca for further details.

9 Declaration and Signature

This must be the person who is responsible for making the application. This should be a suitable person of appropriate seniority at the firm.

