

## MORTGAGE CREDIT DIRECTIVE INSTRUMENT 2015

### Powers exercised by the Financial Conduct Authority

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

### Commencement

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

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

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

(3) the remainder of this instrument comes into force on 21 March 2016.

### **Amendments to the Handbook**

D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

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

### **Amendments to the material outside the Handbook**

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

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

### **Citation**

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

By order of the Board of the Financial Conduct Authority

25 March 2015

## Annex A

### Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. This text is not underlined.

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

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

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

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

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

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

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

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

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

*MCD mortgage arranger* a *mortgage arranger* who:

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

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

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

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

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

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

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

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

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

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

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

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



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

Amend the following definitions as shown.

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

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

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

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

*EEA firm*

...

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

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

...

*financial promotion*

...

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

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

*financial promotion rules*

....

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

...

*group*

(5) ...

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

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

*lifetime mortgage*

(1) an MCD exempt lifetime mortgage; or

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

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

...

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

And

...

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

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

...

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

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

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

*price information* ...

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

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

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

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

(b) ...

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

Single Market Directives

...

(d) ...

(da) MCD:

...

total amount of credit

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

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

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

total amount payable

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

...

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

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

## Annex B

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

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

#### 2.1 Assessing and maintaining competence

...

##### 2.1.5 ...

Knowledge and competence requirements before starting MCD credit agreement activities

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

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

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

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

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



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

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

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

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

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

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

...

Maintaining competence

2.1.12 R ...

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

### 3.1 Record-keeping requirements

3.1.1 R ...

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

<b>App 1.1</b>	<b>Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3</b>		
App 1.1.1	R		
		<b>Activity</b>	<b>Products/Sectors</b>
			<b>Is there an appropriate qualification requirement?</b>

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

			However, where those activities overlap with those specified under the heading “ <i>mortgage activity and reversion activity carried on for a customer</i> ”, qualification requirements may apply.
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<b>App 2.1</b>	<b>Territorial scope subject to the limitation in TC Appendix 3</b>				
App 2.1.1	R				
			<i>UK domestic firm</i>	<i>Incoming EEA firm</i>	<i>Overseas firm (other than an incoming EEA firm)</i>
			...	...	...
		Any other activity in Appendix 1	...	... <u>[Note: article 9(3)(i) of the MCD]</u>	...

...

<b>App 4 Appropriate Qualification tables</b>		
<b>4.1</b>	<b>Appropriate Qualification tables</b>	
App 4.1.1	E	<b>Part 1: Activities</b>
		<b>Note:</b> The activity numbers in this table relate to the activities in <i>TC App 1.1.1R</i> . These tables do not cover activities 1, 5, 13A, 13B, 13C, 20A, 21B, <u>23A, 23B, 23C, 23D, 23E</u> , 24, 25 or 26 as these activities do not have a qualification requirement.

...

**TP 8 Transitional provisions relating to time limits for attaining qualifications**

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

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

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

#### TP 9 – Transitional Provisions relating to MCD credit agreement activities

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

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

## Annex C

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

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

**Part 1: Comes into force on 21 September 2015**

**TP 1 Transitional Provisions**

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
4	<u>MIPRU 1.3.2R and MIPRU 1.3.4R</u>	R	<p><u>A firm to which MIPRU 1.3.2R will apply from 21 March 2016 may elect to comply with MIPRU 1.3.2R from 21 September 2015.</u></p> <p><u>If a firm elects to comply with MIPRU 1.3.2R, it must also comply with MIPRU 1.3.4R.</u></p>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

**Part 2: Comes into force on 21 March 2016**

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

**1.3 Remuneration and property valuation requirements for MCD creditors**

Application

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

Amend the following text as shown.

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

### 2.1 **Application and purpose**

## Application

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

## Purpose

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

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

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

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

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

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

...

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

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



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

...

### 3 Professional indemnity insurance

#### 3.1 Application and purpose

##### Application

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

...

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

as indicated and unless any of the following exemptions apply:

...

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

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

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

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

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

...

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

...

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

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

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

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

...

## 3.2 Professional indemnity insurance requirements

...

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

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

...

Minimum limits of indemnity: MCD credit intermediaries

- 3.2.9A R If the *firm* is:

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

(2) a home finance intermediary that is

(a) an MCD mortgage adviser; or

(b) an MCD mortgage arranger

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

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

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

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

(a) EUR 460 000 for each individual claim;

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

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

...

## **4 Capital resources**

### **4.1 Application and purpose**

...

4.1.13 G ...

Application: MCD firms

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

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

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

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

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

...

### 4.3 Calculation of annual income

...

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

...

#### Annual income for home finance administration

- 4.3.7 R ...

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

...

## Annex D

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

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

**Part 1: Comes into force on 21 September 2015**

**TP1.1 Transitional Provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>20</u>	<u>MCOB TPs 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40</u>	<u>G</u>	<u>The purpose of TPs 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40 is to allow <i>firms</i> to apply certain sets of provisions that implement MCD requirements early. A <i>firm</i> may adopt any set of provisions, it need not adopt all of the sets at the same time.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>21</u>	<u>MCOB TPs 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40</u>	<u>R</u>	<u>An election to apply any of TP 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40 does not imply an election to apply any other of TP 22, 24, 26, 28, 30, 32, 34, 36, 38 and 40.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
<u>22</u>	<u>MCOB 2A.1</u>	<u>R</u>	<u>A <i>firm</i> to which MCOB 2A.1 will apply from 21 March 2016 may elect to comply with MCOB 2A.1 from 21 September 2015. If the <i>firm</i> elects to comply with MCOB 2A.1, it must comply with MCOB 2A.1 and any related provisions in full.</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

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

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

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



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

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

## Part 2: Comes into force on 21 March 2016

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

Amend the following text as shown.

### 1.2 General application: who? what?

...

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

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

...

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

...

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

...

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

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

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

...

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

...

#### MCD application

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

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

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

(2)     This table belongs to (1).

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

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

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

relevant requirements in MCOB, rather than an ESIS.

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

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

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

#### Identifying MCD credit agreements

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

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

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

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

### 1.3 General application: where?

...

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

...

## 2 Conduct of business standards: general

### 2.1 Application

...

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

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

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

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

## **2.5A The customer's best interests**

2.5A.1 R ...

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

....

## **2.8 Record keeping**

...

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

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

## 2A Mortgage Credit Directive

### 2A.1 Remuneration: MCD regulated mortgage contracts

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

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

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

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

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

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

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

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



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

## 2A.2 Tying practices

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

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

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

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

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

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

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

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

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

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

### 2A.3 Foreign currency loans

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

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

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

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

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

- 2A.3.3 G Where:

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

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

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

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

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

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

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

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

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

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

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

## 2A.4 Early repayment

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

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

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

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

## 2A.5 Variable rate credits

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

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

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

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

[**Note:** article 24 of the *MCD*]

## **2A.6 Information free of charge**

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

[**Note:** article 8 of the *MCD*]

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

## **3A Financial promotions and communications with customers**

### **3A.1 Application and purpose**

Who?

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

## Authorised professional firms

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

## Application for a financial promotion of qualifying credit

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

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

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

## Application for a financial promotion of a home reversion plan

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

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

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

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

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

## Application for a financial promotion of a home purchase plan

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

Application and purpose	<i>MCOB 3A.1</i>
-------------------------	------------------

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

## Exemptions

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

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

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

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

#### Other relevant handbook rules

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

#### Territorial scope

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

- 3A.1.14 G The application under *MCOB* 3A.1.13R is relevant both when a *firm* *communicates* a *financial promotion* itself and when a *firm* *approves* a *non-real time financial promotion* for *communication* by others. However, see also *MCOB* 3A.1.15R (Exceptions to territorial scope: rules



without territorial limitation for approval of financial promotions).

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

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

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

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

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

Principles 6 and 7

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

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

Fair, clear and not misleading communications

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

Communications to customers with different addresses

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

Fair, clear and not misleading financial promotions

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

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

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

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

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

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

Restrictions on use of terms

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

### 3A.3 Other general requirements for financial promotions

Financial promotions to be balanced and with appropriate warnings

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

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

#### Name and contact point

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

#### Solicited financial promotions

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

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

#### Prohibition on cold calls

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

### 3A.4 Qualifying credit financial promotions

#### Real time qualifying credit promotions

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

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

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

#### Approval of qualifying credit promotions

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

#### No approval of real time qualifying credit promotions

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

#### Approval of qualifying credit promotions when not all the rules apply

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

#### Financial promotions for the business of overseas persons

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

statement to that effect; and

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

### 3A.5 MCD financial promotions

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

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

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

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

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

would be charged the specified *APRC* or below.

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

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

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

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

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

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

### 3A.6 Home purchase plan financial promotions

APR equivalent for home purchase plan financial promotions



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

### 3A.7 Home reversion plan financial promotions

No approval of real time home reversion plan promotions

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

### 3A.8 Sale and rent back financial promotions

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

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

Ban on SRB leaflet dropping

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

Non-real time financial promotions to customers and advertisements

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

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

Please ask for a key terms statement."

#### Exploitation of customer

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

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

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

### 3A.9 Systems and controls

#### Record keeping

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

### 3B MCD general information

#### 3B.1 Provision of general information

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

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

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

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

Amend the following text as shown.

#### 4.4A Initial disclosure requirements

Description of a firm's services in all cases

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

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

...

4.4A.7 G

...

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

...

4.4A.8 R (1)

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

...

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

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

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

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

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

...

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

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

Alternative finance options

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

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

Method of providing initial disclosure in all cases

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

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

...

...

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

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

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

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

...

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

...

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

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

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

...

...

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

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

Uncertainty whether a mortgage is regulated

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

...

...

**4.7A** **Advised sales**

...

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

...

Shared equity

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



...

## Further advances

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

...

## Other considerations when advising

...

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

...

...

**4.8A Execution-only sales**

...

## Cases where execution-only sales are not permitted

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

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

....

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

#### **4A Additional MCD advising and selling standards**

##### **4A.1 Additional disclosure by MCD mortgage credit intermediaries**

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

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

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

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

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

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

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

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

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

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

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

## 4A.2 Adequate explanations

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

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

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

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

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

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

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

### 4A.3 Record of recommendation

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

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

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

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

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

Amend the following text as shown.

## 5 Pre-application disclosure

### 5.1 Application

Who?

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

...

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

...

5.1.5 G This table belongs to *MCOB* 5.1.4G

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

mortgages		5.6.131 R
...		

....

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

....

#### 5.4 Information on regulated mortgage contracts: general

~~Clear, fair and not misleading~~

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

~~Accuracy~~

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

floor or a ceiling); and

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

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

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

5.4.4 G Given that the *APR* is presented as a percentage, and must be rounded to one decimal place in accordance with *MCOB 10* (Annual Percentage Rate), *firms* should note that the tolerance allowed for the *APR* in *MCOB 5.4.3R(1)(b)* means that, for example, where the actual *APR* is 5.0% the quoted *APR* must be no lower than 4.9%, or where the actual *APR* is 16.0%, the quoted *APR* must be no lower than 15.9%. [deleted]

5.4.5 G There are no restrictions on figures which are quoted as higher than those actually charged by the *mortgage lender* although this should not be purposely done in order to make one *regulated mortgage contract* look more expensive than another. [deleted]

5.4.6 G It is the responsibility of a *mortgage intermediary* to ensure compliance with *MCOB 5.4.3R*. However, where a *firm* can show that it was reasonable for it to rely on information provided to it by another *person*, other than the *mortgage lender*, that an *illustration* was within the tolerances described in *MCOB 5.4.3R*, he accurate, it may be able to rely on *MCOB 2.5.2R*, if this turns out not to be the case.

5.4.7 G An *offer document* may not always exactly match the *illustration* provided before application even when the loan requirements have not changed. For example, where a fixed rate has a defined end date, the *total amount payable* may be different because the number of payments at the fixed rate has reduced assuming a later date at which the *regulated mortgage contract* will start. [deleted]

...

5.4.13A G When providing information on *regulated mortgage contracts*, *firms* should bear in mind that the information must be clear, fair and not misleading in accordance with *Principle 7* and *MCOB 2.2.6R*; and must be given in accordance with *MCOB 2.5A.1R* (The customer's best

interests).

...

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

...

## 5.5 Provision of illustrations

...

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

...

## 5.6 Content of illustrations

...

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



...

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

...

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

~~Shared appreciation mortgages~~

- 5.6.129 R [deleted]

- 5.6.130 G [deleted]

~~Risk warning~~

- 5.6.131 R [deleted]

...

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

...

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

...

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

...

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

- 5.7.3 G ...

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

...

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

...

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

...

**1. About this illustration**

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

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

...

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

**5A MCD Pre-application disclosure**

**5A.1 Application and purpose**

- 5A.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender* or *MCD mortgage credit intermediary*.
- 5A.1.2 G (1) *MCOB 5A* amplifies *Principle 6* and *Principle 7*.
- (2) The purpose of *MCOB 5A* is to ensure that, before a *consumer* submits an application for a particular *MCD regulated mortgage contract*, they are supplied with information that makes clear:
- (a) its features, any *linked deposits*, any *linked borrowing* and any *tied products*; and
- (b) the price that the *consumer* will be required to pay under that contract, to enable the *consumer* to make a well-informed purchasing decision.

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

## **5A.2 Applying for an MCD regulated mortgage contract**

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

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

### Accuracy

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

### ESISs where consumer is ineligible

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

## Explaining the importance of an ESIS

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

## Form of an ESIS

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

## Provision of information

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

## Messages to be given with information on MCD regulated mortgage contracts

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

ten *business days*.

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

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

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

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

Record keeping

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

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

### Timing

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

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

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

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

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

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

#### Uncertainty whether a mortgage is regulated

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

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

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



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

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

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

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

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

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

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

### Content, order, format etc

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

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

Content: required information

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

## 5A.6 Other information

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

*customers to be fair, clear and not misleading.*

**5A European Standardised Information Sheet (ESIS)**

**Annex**

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

**MCOB 5A Annex 1 R**

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

(Introductory text)

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

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

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

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

1. Lender

[Name]

[Telephone number]

[Geographical address]

(Optional) [Email address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

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

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

## 2. (Where applicable) Credit intermediary

[Name]

[Telephone number]

[Geographical address]

(Optional) [Email address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

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

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

[Remuneration]

## 3. Main features of the loan

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

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

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

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

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

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

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Total amount to be reimbursed (repaid):

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

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

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

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

(Where applicable) [Security]

#### 4. Interest rate and other costs

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

The APRC applicable to your loan is [APRC].

It comprises:

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

[Other components of the APRC]

Costs to be paid on a one-off basis

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

Costs to be paid regularly

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

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

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

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

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

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

#### 5. Frequency and number of payments

Repayment frequency: [frequency]

Number of payments: [number]

#### 6. Amount of each instalment

[Amount] [currency]

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

[frequency] repayment instalments if your income falls.

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

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

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

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

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

#### 7. (Where applicable) Illustrative repayment table

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

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

[Table]

#### 8. Additional obligations

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

[Obligations]



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

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

[Consequences]

#### 9. Early repayment

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

(Where applicable) [Conditions]

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

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

#### 10. Flexible features

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

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

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

#### 11. Other rights of the borrower

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

#### 12. Complaints

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

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

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

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

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

[Types of non-compliance]

[Financial and/or legal consequences]

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

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

### (Where applicable) 14. Additional information

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

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

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

### 15. Supervisor

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

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

[Note: Annex II Part B of the MCD]

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

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

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

			must explain when and under which conditions this can occur.
		(3)	Where the <i>MCD regulated mortgage contract</i> is open-ended, for example, for a secured credit card, the <i>firm</i> must clearly state that fact.
		(4)	Where the <i>MCD regulated mortgage contract</i> is an <i>MCD lifetime mortgage</i> , the duration of the mortgage must be estimated in accordance with <i>MCOB 9.4.10R</i> , as if the mortgage is an <i>MCD exempt lifetime mortgage</i> .
5.4	R	(1)	The <i>firm</i> must clearly indicate the type of <i>MCD regulated mortgage contract</i> (eg, mortgage credit, home loan, secured credit card).
		(2)	The description under (1) must clearly indicate how the capital and the interest shall be repaid during the life of the <i>MCD regulated mortgage contract</i> (ie, the amortisation structure), specifying clearly whether the <i>MCD regulated mortgage contract</i> is on a capital repayment or interest-only basis, or a mixture of the two.
5.5	R		Where all or part of the <i>MCD regulated mortgage contract</i> is an interest-only <i>MCD regulated mortgage contract</i> , the <i>firm</i> must insert a statement, clearly indicating that fact, prominently at the end of section 3 using the wording in section 3 of <i>MCOB 5A Annex 1R</i> .
5.6	R	(1)	In section 3, the <i>firm</i> must explain whether the <i>borrowing rate</i> of the <i>MCD regulated mortgage contract</i> is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the <i>borrowing rate</i> variability, such as caps or floors.
		(2)	The <i>firm</i> must explain the formula used to revise the <i>borrowing rate</i> and its different components (eg, reference rate, interest-rate spread).
		(3)	The <i>firm</i> must indicate (eg, by means of a web address) where further information on the indices or rates used in the formula referred to in (2) can be found (eg, Euribor or central bank reference rate).
		(4)	If different borrowing rates apply in different circumstances, the <i>firm</i> must provide the information required by (1), (2) and (3) on all applicable rates.
5.7	R	(1)	The ‘total amount to be repaid’ corresponds to the <i>total amount payable by the consumer</i> . The <i>firm</i> must show this as the sum of the <i>credit</i> amount and the <i>total cost of the credit to the consumer</i> .
		(2)	Where the <i>borrowing rate</i> is not fixed for the duration of the <i>MCD regulated mortgage contract</i> , the <i>firm</i> must highlight that the amount in (1) is illustrative and may vary, in particular in relation with the variation in the <i>borrowing rate</i> .
		(3)	The <i>firm</i> may replace “reimbursed” with “repaid” (shown in round

			brackets), ie, “Total amount to be repaid”.
5.8	R	(1)	Where the <i>credit</i> will be secured by an <i>MCD regulated mortgage contract</i> , another comparable security or by a right related to land, the <i>firm</i> must draw the <i>consumer</i> ’s attention to this.
		(2)	Where applicable, the <i>firm</i> must indicate the assumed value of the land or other security used for the purpose of preparing the <i>ESIS</i> .
5.9	G		In order for the <i>firm</i> to comply with the principle of 'fair, clear and not misleading' in <i>MCOB 3A.2.1R(1)</i> , where the assumed value is not a value provided by the <i>consumer</i> , the valuation must be a reasonable assessment based on all the facts available at the time. For example, an overstated valuation could enable a more attractive <i>MCD regulated mortgage contract</i> to be illustrated on the basis of a lower ratio of the loan amount to the property value - for example, one with a lower rate of interest or without a <i>higher lending charge</i> .
5.10	R		The <i>firm</i> must indicate, where applicable, either:
		(1)	The ‘maximum available loan amount relative to the value of the property’, indicating the loan-to-value ratio. This ratio must be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value; or
		(2)	the ‘minimum value of the property required by the <i>firm</i> to lend the illustrated amount’.
5.11	R		Where an <i>MCD regulated mortgage contract</i> has more than one part (eg, concurrently part fixed rate, part variable rate), the <i>firm</i> must indicate this and must provide the information required by section 3 for each part.
5.12	R		The amount of the loan to be granted is:
		(1)	in cases where, on the basis of the information obtained from the <i>consumer</i> , before providing the <i>ESIS</i> it is clear that the <i>consumer</i> would not be eligible to borrow the amount he requested, an estimate of the amount that the <i>consumer</i> could borrow based on the information obtained from the <i>consumer</i> . This does not require information to be obtained from the <i>consumer</i> before providing an <i>ESIS</i> to ascertain the amount the <i>consumer</i> is eligible to borrow, instead, this means that the <i>firm</i> does not have to provide a consumer with an <i>ESIS</i> for an amount it knows the <i>consumer</i> would not be eligible for, based on whatever information it has obtained from the <i>consumer</i> before providing the <i>ESIS</i> ; or
		(2)	where the <i>MCD regulated mortgage contract</i> is a revolving credit agreement, such as a secured overdraft or <i>mortgage credit card</i> , the total borrowing that the <i>firm</i> is willing to provide under the <i>MCD regulated mortgage contract</i> ; or

		(3)	where it is known that the loan will be released in instalments, for example, in the case of a self-build mortgage:
		(a)	where the lender has made a binding offer for the full amount, the total amount of the loan required and not the amount of the initial instalment;
		(b)	where the lender has made a binding offer for an initial amount, the initial amount; and
		(c)	where the lender's binding offer for an initial amount has been replaced by a binding offer for a larger amount, the larger amount.
6			Section '4. Interest rate' and other costs
6.1	R		The reference to 'interest rate' corresponds to the <i>borrowing rate</i> or <i>borrowing rates</i> .
6.2	R		The <i>firm</i> must state the <i>borrowing rate</i> as a percentage value.
6.3	R	(1)	Where the <i>borrowing rate</i> is variable and based on a reference rate, the <i>firm</i> may indicate the <i>borrowing rate</i> by stating a reference rate and a percentage value of the <i>MCD mortgage lender's</i> spread.
		(2)	The <i>firm</i> must state the value of the reference rate in (1) as at the day it issues the <i>ESIS</i> .
6.4	R		Where the <i>borrowing rate</i> is variable, the <i>firm</i> must include:
		(1)	the assumptions used to calculate the <i>APRC</i> ;
		(2)	where relevant, the applicable caps and floors; and
		(3)	a warning that the variability could affect the actual level of the <i>APRC</i> .
6.5	R		In order to attract the <i>consumer's</i> attention the <i>firm</i> must:
		(1)	use a font size for the warning required by <i>MCOB 5A Annex 2, 6.4R(3)</i> that is bigger than the font size it uses for the rest of the <i>ESIS</i> ;
		(2)	ensure that warning required by <i>MCOB 5A Annex 2, 6.4R(3)</i> figures prominently in the main body of the <i>ESIS</i> .
6.6	R	(1)	The <i>firm</i> must accompany the warning required by <i>MCOB 5A Annex 2, 6.4R(3)</i> with an illustrative example of the <i>APRC</i> .
		(2)	Where there is a cap on the <i>borrowing rate</i> , the example required by (1) must assume that the <i>borrowing rate</i> rises at the earliest possible opportunity to the highest level foreseen in the <i>MCD regulated</i>



			<i>mortgage contract.</i>
		(3)	Where there is no cap, the example required by (1) must illustrate the <i>APRC</i> at the highest <i>borrowing rate</i> in at least the last 20 years. Or, where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the <i>borrowing rate</i> , where applicable, or the highest value of a benchmark rate specified by the <i>FCA</i> or another competent authority or the European Banking Authority where the <i>MCD mortgage lender</i> does not use an external reference rate.
		(4)	The requirement under (1) does not apply to an <i>MCD regulated mortgage contract</i> where the <i>borrowing rate</i> is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the <i>MCD mortgage lender</i> and the <i>consumer</i> .
		(5)	For an <i>MCD regulated mortgage contract</i> within (4), the <i>firm</i> must include a warning that the <i>APRC</i> is calculated on the basis of the <i>borrowing rate</i> for the initial period.
		(6)	The <i>firm</i> must accompany the warning required by (5) with by an additional, illustrative <i>APRC</i> calculated in accordance with <i>MCOB 10A.1.4R</i> .
6.7	R	(1)	Where the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> is a multi-part <i>credit</i> (eg, concurrently part fixed rate, part variable rate), the <i>firm</i> must provide the information about the <i>borrowing rate</i> required by <i>MCOB 5A Annex 2, 6</i> for each part of the <i>credit</i> .
		(2)	Where the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> is a multi-part <i>credit</i> , the <i>firm</i> must calculate and provide the additional illustrative <i>APRC</i> required by <i>MCOB 5A Annex 2, 6</i> once in respect of the entire <i>MCD regulated mortgage contract</i> .
6.8	R		The <i>FCA</i> 's benchmark rate is the difference in percentage points between the Bank of England's base rate on the date the <i>ESIS</i> is issued and the highest value of the Bank of England's base rate over at least the last 20 years, added to the <i>borrowing rate</i> shown in the <i>ESIS</i> .
6.9	R		When more than one interest rate applies during the term of the <i>MCD regulated mortgage contract</i> , for example, because there is an initial fixed or discounted interest rate period, the <i>firm</i> must calculate the <i>FCA</i> 's benchmark rate by reference to the reversionary <i>borrowing rate</i> shown in the <i>ESIS</i> .
6.10	G		When calculating the <i>FCA</i> 's benchmark rate, the <i>firm</i> may:
		(1)	calculate the last 20 years from up to three <i>months</i> prior to the date the

			<i>ESIS</i> is issued; and
		(2)	extend the period for calculating the <i>FCA</i> 's benchmark rate beyond the last 20 years to any period longer than 20 years.
6.11	R	In the event of a scenario in column (1) in the table at <i>MCOB 5A Annex 2, 6.12R</i> , the <i>firm</i> must calculate the illustrative example of the <i>APRC</i> (the additional <i>APRC</i> ) in accordance with column (2) of that table.	
6.12	R	This table belongs to <i>MCOB 5A Annex 2, 6.11R</i>	
		<b>(1) Scenario</b>	<b>(2) Calculation of additional <i>APRC</i></b>  <b>NB: A <i>MCD mortgage lender</i>'s standard variable rate is not to be used as an external reference rate (ERR)</b>
		Mortgage with an interest-rate cap	Calculate the <i>APRC</i> based on the <i>borrowing rate</i> rising at the earliest possible opportunity to the level of the cap.
		Where the product is not linked to an ERR	Use the <i>FCA</i> 's benchmark rate.
		<i>MCD mortgage lender</i> uses an ERR and has 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i>	Use the highest ERR in the previous 20 years, and apply the highest margin over that or lowest margin under it, to produce the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> uses an ERR and has less than 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i>	Use the highest ERR in the previous 20 years, and apply the highest margin over that or lowest margin under it, used in the period of data available, to produce the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> comprises a group which contains separate legal entities or comprises distinct product brands and has 20 years of data relating to the margin applied by that legal entity or product brand. It may have similar products across entities or brands within the same group or company with different margins above or below the ERR	Use the highest ERR in the previous 20 years with respect to the pricing approach for the specific legal entity or product brand and apply the highest margin over that or lowest margin under it to produce the highest additional <i>APRC</i> .

		<i>MCD mortgage lender</i> comprises a group which contains separate legal entities or comprises distinct product brands and has less than 20 years of data relating to the margin applied by that legal entity or product brand. It may have similar products across entities or brands within the same group or company with different margins above or below the ERR.	Use the highest ERR in the previous 20 years with respect to the pricing approach for the specific legal entity or product brand and apply the highest margin over that or lowest margin under it used in the period of data available to produce the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> has previously purchased a brand that uses an ERR and has 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i> for the same product	Where the purchaser is carrying on new lending under the purchased brand - same as above, using previous <i>firm's</i> data where relevant and where it may be reasonably obtained.
		<i>MCD mortgage lender</i> has previously purchased a brand that uses an ERR and has less than 20 years of data relating to the margin applied by the <i>MCD mortgage lender</i> for the same product	Where the purchaser is carrying on new lending under the purchased brand - same as above, using previous <i>firm's</i> data, where relevant and where it may be reasonably obtained. Otherwise, use the <i>FCA's</i> benchmark rate.
		<i>MCD mortgage lender</i> has different ERR calculation methods that apply over time (eg, 0.5% over Bank of England rate for the first two years and then 2% over Bank of England rate for the rest of the mortgage lifetime).	Calculate using the method which produces the highest additional <i>APRC</i> .
		<i>MCD mortgage lender</i> has different methods that apply to different proportions of the principal (eg, ERR + x% applies to 50% principal and SVR applies to the other 50%)	Calculate using the ERR where applicable and the <i>FCA's</i> benchmark rate, where applicable, and use both to calculate the additional <i>APRC</i> .
		<i>MCD mortgage lender</i> uses an ERR where its basis has	Consider whether there was an equivalent predecessor ERR and use the ERR (and its

		changed in the past 20 years	equivalent predecessor(s), if any) provided that it (or they) have existed at least 20 years, otherwise use the <i>FCA</i> 's benchmark rate.
		<i>MCD mortgage lender</i> has an ERR calculation method that applies for a fixed period of time after which the lender's standard variable rate applies (eg, 0.5% over Bank of England rate for the first two years and then the lender's standard variable rate applies for the rest of the mortgage lifetime).	Calculate using the method which produces the highest additional <i>APRC</i> .
6.13	R	(1)	The <i>firm</i> must list all the costs other than the <i>borrowing rate</i> in the section on 'other components of the <i>APRC</i> ', including one-off costs, such as administration fees, and regular costs, such as annual administration fees.
		(2)	the <i>firm</i> must list each of the costs referred to in (1) by the categories set out in in (3) and indicate for each cost:
		(a)	the amount;
		(b)	to whom the cost is to be paid; and
		(c)	when the cost is to be paid.
		(3)	The categories referred to in (1) are:
		(a)	costs to be paid on a one-off basis;
		(b)	costs to be paid regularly and included in the instalments; and
		(c)	costs to be paid regularly but not included in the instalments.
		(4)	Where the amount in (2)(a) is not known, the <i>firm</i> must provide an indication of the amount if possible or, if not possible, how the amount will be calculated and specify that the amount provided is indicative only.
		(5)	The <i>firm</i> must highlight where certain costs are not included in the <i>APRC</i> because they are unknown to the <i>firm</i> .
6.14	G	The costs in <i>MCOB 5A Annex 2, 6.13R(1)</i> need not include costs incurred for breaches of contractual obligations.	
6.15	R	Where a <i>consumer</i> has informed the <i>firm</i> of one or more components of his	

		preferred <i>MCD regulated mortgage contract</i> , such as the duration of the <i>MCD regulated mortgage contract</i> and the total amount of <i>credit</i> , the <i>firm</i> must, where possible, use those components.
6.16	R	If an <i>MCD regulated mortgage contract</i> provides for different ways of drawdown with different charges or borrowing rates and the <i>MCD mortgage lender</i> uses the assumptions set out in <i>MCOB 10A.3.1R</i> , the <i>firm</i> must indicate that other drawdown mechanisms for this type of <i>MCD mortgage lender</i> may result in a higher <i>APRC</i> .
6.17	R	Where the <i>firm</i> uses the conditions for drawdown for calculating the <i>APRC</i> , the <i>firm</i> must highlight the charges associated with other drawdown mechanisms that are not necessarily the ones used in calculating the <i>APRC</i> .
6.18	R	(1) Where a fee is payable for registration of the <i>MCD regulated mortgage contract</i> or comparable security, the <i>firm</i> must disclose that in section 3 with the amount, where known, or where this is not possible the basis for determining the amount.
		(2) Where the fees in (1) are known and included in the <i>APRC</i> , the <i>firm</i> must list the existence and amount of the fee under 'Costs to be paid on a one-off basis'.
		(3) Where the fees in (1) are not known to the <i>firm</i> and, therefore, not included in the <i>APRC</i> , the <i>firm</i> must clearly indicate the existence of the fee in the list of costs which are not known to the lender.
		(4) The <i>firm</i> must use the standardised wording in section 4 of <i>MCOB 5A Annex 1R</i> under the appropriate heading.
7	Section '5. Frequency and number of payments'	
7.1	R	Where a <i>consumer</i> will be required to make payments under an <i>MCD regulated mortgage contract</i> on a regular basis, the <i>firm</i> must indicate the frequency of those payments (eg, monthly).
7.2	R	Where a <i>consumer</i> will be required to make payments under an <i>MCD regulated mortgage contract</i> on an irregular basis, the <i>firm</i> must clearly explain this to the <i>consumer</i> .
7.3	R	The <i>firm</i> must indicate the number of payments under the <i>MCD regulated mortgage contract</i> that the <i>consumer</i> will be required to make over the entire duration of the <i>MCD regulated mortgage contract</i> .
8	Section '6. Amount of each instalment'	
8.1	R	The <i>firm</i> must clearly indicate the currency of the <i>MCD regulated mortgage contract</i> and the currency and amount of the instalments.
8.2	R	Where the amount of the instalments may change during the life of the <i>MCD regulated mortgage contract</i> , the <i>firm</i> must specify the period during

		which that initial instalment amount will remain unchanged and when and how frequently afterwards it will change.	
8.3	R	Where all or part of the <i>MCD regulated mortgage contract</i> is an interest-only <i>MCD regulated mortgage contract</i> , the <i>firm</i> must insert a statement clearly indicating that fact, prominently at the end of section 6 using the wording in section 6 of <i>MCOB 5A Annex 1R</i> .	
8.4	R	If there is a requirement for the <i>consumer</i> to take out a tied savings product as a condition for being granted an interest-only <i>MCD regulated mortgage contract</i> , the <i>firm</i> must provide the amount and frequency of any payments for this product.	
8.5	R	(1)	Where the <i>borrowing rate</i> is variable, the <i>firm</i> must include a statement indicating that fact, using the wording in section 6 of <i>MCOB 5A Annex 1R</i> and an illustration of a maximum instalment amount.
		(2)	Where there is a cap, the illustration under (1) must show the amount of the instalments if the <i>borrowing rate</i> rises to the level of the cap.
		(3)	Where there is no cap, the illustration under (1) must illustrate the level of instalments at the highest <i>borrowing rate</i> in the last 20 years, or where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on:
		(a)	the highest value of any external reference rate used in calculating the <i>borrowing rate</i> , where applicable,
		(b)	or the highest value of a benchmark rate specified by:
		(i)	the <i>FCA</i> in <i>MCOB 5A Annex 2, 6.8R to 6.10G</i> ;
		(ii)	another competent authority; or
		(iii)	the European Banking Authority
			where the <i>MCD mortgage lender</i> does not use an external reference rate.
		(4)	The requirement under (1) does not apply to an <i>MCD regulated mortgage contract</i> where the <i>borrowing rate</i> is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the <i>MCD mortgage lender</i> and the <i>consumer</i> .
		(5)	Where the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> is a multi-part <i>credit</i> (eg, concurrently part fixed rate, part variable rate), the <i>firm</i> must provide the information about the <i>borrowing rate</i>

			required by <i>MCOB 5A Annex 2, 8</i> for each part of the <i>credit</i> and for the overall <i>credit</i> .
8.6	R	(1)	Where the currency of the <i>MCD regulated mortgage contract</i> is different from the <i>consumer's</i> national currency or where the <i>MCD regulated mortgage contract</i> is indexed to a currency which is different from the <i>consumer's</i> national currency, the <i>firm</i> must include a numerical example clearly showing how changes to the relevant exchange rate may affect the amount of the instalments using the wording in section 6 of <i>MCOB 5A Annex 1R</i> .
		(2)	The <i>firm</i> must base the example under (1) on a 20 % reduction in the value of the <i>consumer's</i> national currency.
		(3)	The <i>firm</i> must accompany the example under (1) with a prominent statement that the instalments could increase by more than the amount assumed in that example.
		(4)	Where there is a cap which limits the increase in (1) to less than 20 %, the <i>firm</i> must state the maximum value of the payments in the <i>consumer's</i> currency instead and omit the statement in (3) on the possibility of further increases.
8.7	R		Where the <i>MCD regulated mortgage contract</i> is fully or partly a variable rate <i>MCD regulated mortgage contract</i> and <i>MCOB 5A Annex 2, 8.3R</i> applies, the <i>firm</i> must give the <i>illustration</i> under <i>MCOB 5A Annex 2, 8.6R(1)</i> on the basis of the instalment amount indicated under <i>MCOB 5A Annex 2, 8.1R</i> .
8.8	R	(1)	Where the currency used for the payment of instalments is different from the currency of the <i>MCD regulated mortgage contract</i> or where the amount of each instalment expressed in the <i>consumer's</i> national currency depends on the corresponding amount in a different currency, the <i>firm</i> must in section 6 indicate the date at which the applicable exchange rate is calculated and either the exchange rate or the basis on which it will be calculated and the frequency of their adjustment.
		(2)	Where applicable, the <i>firm</i> must include in its indication under (1) the name of the institution publishing the exchange rate.
8.9	R		Where the <i>MCD regulated mortgage contract</i> is a deferred-interest <i>MCD regulated mortgage contract</i> under which interest due is not fully repaid by the instalments and is added to the total amount of the <i>MCD regulated mortgage contract</i> outstanding, the <i>firm</i> must include an explanation of how and when deferred interest is added to the <i>MCD regulated mortgage contract</i> as a cash amount, and what the implications are for the <i>consumer</i> in terms of his remaining debt.
9			Section '7. Illustrative repayment table'

9.1	R	(1)	The <i>firm</i> must include section 7 where the <i>MCD regulated mortgage contract</i> is a deferred-interest <i>MCD regulated mortgage contract</i> under which interest due is not fully repaid by the instalments and is added to the total amount of <i>MCD regulated mortgage contract</i> outstanding, or where the <i>borrowing rate</i> is fixed for the duration of the <i>MCD regulated mortgage contract</i> .
		(2)	The <i>firm</i> may replace the word “reimbursed” with “repaid” (shown in round brackets), ie “...the amount of the loan that remains to be repaid after each instalment”.
9.2	R		Where the <i>consumer</i> has the right to receive a revised amortisation table, the <i>firm</i> must indicate this along with the conditions under which the <i>consumer</i> has that right.
9.3	R		The <i>firm</i> must include in section 7 an illustrative amortisation table including the following columns:
		(1)	‘repayment schedule’ (eg, month 1, month 2, month 3);
		(2)	‘amount of the instalment’;
		(3)	‘interest to be paid per instalment’;
		(4)	‘other costs included in the instalment’ (where relevant);
		(5)	‘capital repaid per instalment’; and
		(6)	‘outstanding capital after each instalment’.
9.4	R		The <i>firm</i> must:
		(1)	for the first repayment year, provide an illustrative amortisation table in accordance with <i>MCOB 5A Annex 2, 9.3R</i> for each instalment and include a subtotal for each of the columns at the end of that first year;
		(2)	for the following years, provide an illustrative amortisation table in accordance with <i>MCOB 5A Annex 2, 9.3R</i> on an annual basis;
		(3)	add an overall total at the end of the table and provide the total amounts for each column; and
		(4)	clearly highlight the total cost of the <i>MCD regulated mortgage contract</i> paid by the <i>consumer</i> (ie, the overall sum of the ‘amount of the instalment’ column) and present it as such.
9.5	G		Where the <i>borrowing rate</i> is subject to revision and the amount of the instalment after each revision is unknown, the <i>firm</i> may indicate in the illustrative amortisation table required by <i>MCOB 5A Annex 2, 9.3R</i> the same instalment amount for the whole credit duration.



9.6	R	If the <i>firm</i> acts in accordance with <i>MCOB 5A Annex 2, 9.5G</i> , the <i>firm</i> must:	
		(1)	draw the fact that the <i>borrowing rate</i> is subject to revision and the amount of the instalment after each revision is unknown to the attention of the <i>consumer</i> by visually differentiating the amounts which are known from the hypothetical ones (eg, using a different font, borders or shading); and
		(2)	in a clearly legible text explain for which periods the amounts represented in the table may vary and why.
10	Section '8. Additional obligations'		
10.1	R	(1)	The <i>firm</i> must specify in section 8 any obligations imposed on the <i>consumer</i> in order to benefit from the <i>MCD regulated mortgage contract</i> , such as the obligation to insure the property, to purchase life insurance, to have a salary paid into an account with the <i>MCD mortgage lender</i> or to buy any other product or service.
		(2)	For each obligation specified under (1), the <i>firm</i> must specify:
		(a)	towards whom and by when the obligation needs to be fulfilled;
		(b)	the duration of the obligation, eg, until the end of the <i>MCD regulated mortgage contract</i> ;
		(c)	any costs to be paid by the <i>consumer</i> which are not included in the <i>APRC</i> .
10.2	R	(1)	The <i>firm</i> must state whether it is compulsory for the <i>consumer</i> to purchase any ancillary services to obtain the <i>MCD regulated mortgage contract</i> on the stated terms and, if so, whether the <i>consumer</i> is obliged to purchase them from the <i>MCD mortgage lender's</i> preferred supplier or whether they may be purchased from a provider chosen by the <i>consumer</i> .
		(2)	Where the possibility referred to in (1) is conditional on the ancillary services meeting certain minimum characteristics, the <i>firm</i> must describe those characteristics in section 8.
		(3)	Where applicable, the <i>firm</i> must state the possible consequences of terminating the ancillary services.
10.3	R	Where the <i>MCD regulated mortgage contract</i> is bundled with other products the <i>firm</i> must clearly state:	
		(1)	the key features of those other products; and
		(2)	whether the <i>consumer</i> has a right to terminate the <i>MCD regulated mortgage contract</i> or the bundled products separately and the

			conditions for and implications of doing so.
11	Section '9. Early repayment'		
11.1	R	The <i>firm</i> must indicate under what conditions the <i>consumer</i> can repay the <i>MCD regulated mortgage contract</i> early, either fully or partially.	
11.2	R	(1)	In the section on early repayment charges, the <i>firm</i> must draw the <i>consumer's</i> attention to any early repayment charge or other costs payable on early repayment in order to compensate the <i>MCD mortgage lender</i> and, where possible, indicate their amount.
		(2)	In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the <i>firm</i> must indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the <i>consumer</i> the level of compensation under different possible scenarios.
		(3)	The <i>firm</i> may make the following changes to the wording in this section:
		(a)	replace the word "possibility" with "right" (shown in round brackets) ie, "You have the right to repay this loan early, either fully or partially";
		(b)	replace the words "Exit charge" and "exit charge" with "Early repayment charge" or "early repayment charge" (shown in round brackets).
12	Section '10. Flexible features'		
12.1	R	(1)	Where applicable, the <i>firm</i> must explain the right to, and conditions for, transferring the <i>MCD regulated mortgage contract</i> to another <i>MCD mortgage lender</i> or property.
		(2)	The <i>firm</i> may replace "possibility to" with the "the right to" (shown in round brackets).
12.2	R	Where the product contains any of the features listed in <i>MCOB 5A Annex 2, 12.6R</i> , the <i>firm</i> must list those features as additional features in section 10 and provide a brief explanation of:	
		(1)	the circumstances in which the <i>consumer</i> can use the feature;
		(2)	any conditions attached to the feature;
		(3)	if the feature being part of the <i>credit</i> secured by an <i>MCD regulated mortgage contract</i> or comparable security means that the <i>consumer</i> loses any statutory or other protections usually associated with the

			feature; and
		(4)	the <i>firm</i> providing the feature (if not the <i>MCD mortgage lender</i> ).
12.3	R	If the feature listed in accordance with <i>MCOB 5A Annex 2, 12.2R</i> contains any additional <i>credit</i> , then the <i>firm</i> must, in section 10, state:	
		(1)	the <i>total amount of credit</i> (including the <i>credit</i> secured by the <i>MCD regulated mortgage contract</i> or comparable security);
		(2)	whether the additional <i>credit</i> is secured or not;
		(3)	the relevant <i>borrowing rates</i> ; and
		(4)	whether the additional <i>credit</i> is regulated or not.
12.4	R	The <i>firm</i> must either include any additional <i>credit</i> amount in the original creditworthiness assessment or, if it is not, the <i>firm</i> must, in section 10, make clear that the availability of the additional amount is dependent on a further assessment of the <i>consumer's</i> ability to repay.	
12.5	R	If the feature listed in accordance with <i>MCOB 5A Annex 2, 12.2R</i> involves a savings vehicle, the <i>firm</i> must explain the relevant interest rate.	
12.6	R	The possible additional features are:	
		(1)	'Overpayments/Underpayments' (paying more or less than the instalment ordinarily required by the amortisation structure);
		(2)	'Payment holidays' (periods where the consumer is not required to make payments);
		(3)	'Borrow back' (ability for the <i>consumer</i> to borrow again funds already drawn down and repaid);
		(4)	'Additional borrowing available without further approval';
		(5)	'Additional secured or unsecured borrowing' (completed in accordance with <i>MCOB 5A Annex 2, 12.3R</i> );
		(6)	'Credit card';
		(7)	'Linked current account'; and
		(8)	'Linked savings account'.
12.7	G	The <i>firm</i> may include any other features offered by the <i>MCD mortgage lender</i> as part of the <i>MCD regulated mortgage contract</i> not mentioned in previous sections.	
13	Section '11. Other rights of the borrower'		

13.1	R	The <i>firm</i> must clearly specify the <i>consumer</i> 's reflection period.	
13.2	R	Where applicable, the <i>firm</i> must clearly state any other rights of the <i>consumer</i> (other than the reflection period), such as portability (including subrogation) that exist and for each right specify:	
		(1)	the conditions to which that right is subject;
		(2)	the procedure that the <i>consumer</i> will need to follow in order to exercise that right, including payment of any fees;
13.3	R	Where the <i>firm</i> offers the <i>MCD regulated mortgage contract</i> at a distance, the <i>firm</i> must inform the <i>consumer</i> of the absence of a right of withdrawal.	
14	Section '12. Complaints'		
14.1	R	(1)	The <i>firm</i> must, in section 12, indicate to whom within the <i>firm</i> , the <i>consumer</i> can make a complaint and provide:
		(a)	the name of the relevant department;
		(b)	contact details, such as a geographical address, telephone number or contact person (including in the case of the contact person, their contact details); and
		(c)	a link to the complaints procedure on the relevant page of the <i>firm</i> 's website or similar information source.
		(2)	The information required by (1) is in respect of the <i>firm</i> providing the <i>ESIS</i> .
14.2	R	The <i>firm</i> must, in section 12, indicate:	
		(1)	the name of the <i>Financial Ombudsman Service</i> ; and
		(2)	that using the <i>firm</i> 's internal complaint procedure is a precondition for access to the <i>Financial Ombudsman Service</i> , using the wording in section 12 of <i>MCOB 5A Annex 1R</i> .
14.3	R	In the case of an <i>MCD regulated mortgage contract</i> with a <i>consumer</i> who is resident in another <i>EEA State</i> , the <i>firm</i> must refer to the existence of FIN-NET ( <a href="http://ec.europa.eu/internal_market/fin-net/">http://ec.europa.eu/internal_market/fin-net/</a> ).	
15	Section '13. Non-compliance with the commitments linked to the MCD regulated mortgage contract: consequences for the borrower'		
15.1	R	(1)	The <i>firm</i> must in section 13, describe the different main cases (eg, late payments/ default, failure to respect the obligations set out in Section 8 'Additional obligations') where non-observance of any of the <i>consumer</i> 's obligations linked to the <i>MCD regulated mortgage contract</i> may have financial or legal consequences for the <i>consumer</i>

		and indicate where the <i>consumer</i> can obtain further information.
	(2)	The description required by (1) must be a summary which can be read and understood on its own.
	(3)	For each of the cases described under (1), the <i>firm</i> shall specify, in clear, easy comprehensible terms, the sanctions or consequences to which they may give rise and highlight any serious consequences.
15.2	G	The disclosure required by <i>MCOB 5A Annex 2, 15.1R(1)</i> relates to “main cases”, rather than every case.
15.3	G	The <i>firm</i> may provide the detail relating to the summary provided under <i>MCOB 5A Annex 2, 15.1R(2)</i> separately in the terms and conditions of the <i>MCD regulated mortgage contract</i> .
15.4	R	Where the land used to secure the <i>MCD regulated mortgage contract</i> may be returned or transferred to the <i>MCD mortgage lender</i> , if the <i>consumer</i> does not comply with the obligations, the <i>firm</i> must, in section 13, include a statement indicating that fact, using the wording in section 13 of <i>MCOB 5A Annex 1R</i> .
16	Section ‘14. Additional information’	
16.1	R	If the <i>firm</i> is carrying on distance marketing, it must, in section 14 of <i>MCOB 5A Annex 1R</i> , state the law applicable to the <i>MCD regulated mortgage contract</i> or the competent court.
16.2	R	Where the <i>MCD mortgage lender</i> intends to communicate with the <i>consumer</i> during the life of the <i>MCD regulated mortgage contract</i> in a language different from the language of the <i>ESIS</i> , the <i>firm</i> must include that fact and state the language that will be used.
16.3	R	The <i>firm</i> must state the <i>consumer’s</i> right to be provided with a copy of the draft <i>MCD regulated mortgage contract</i> when the <i>MCD mortgage lender</i> provides the <i>consumer</i> with a binding offer.
17	Section ‘15. Supervisor’	
17.1	R	The <i>firm</i> must state the relevant authority or authorities for the supervision of the pre-contractual stage of the <i>MCD regulated mortgage contract</i> .

Amend the following text as shown.

## 6 Disclosure at the offer stage

### 6.1 Application

Who?

- 6.1.1 R ~~This~~ Subject to MCOB 6.1.2AR, this chapter applies to a *firm* in a category listed in column (1) of the table in MCOB 6.1.2R in accordance with column (2) of that table.
- 6.1.2 R ...
- 6.1.2A R This chapter does not apply to a *firm* that is an *MCD mortgage lender*.

...

### 6.3 General

- 6.3.1 G ~~MCOB 2.2.6R (Clear, fair and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.~~ [deleted]

...

### ~~Accuracy of the offer document~~

- 6.4.2 G ~~MCOB 5.4.7G acknowledges that the *offer document* and *illustration* provided before an application may not always be the same, even where the *customer's* requirements have not changed. However, the *FCA* expects the *offer document* to be an accurate reflection of the actual costs of the *regulated mortgage contract*.~~ [deleted]

...

Insert the following new chapter, MCOB 6A, after MCOB 6. The text in MCOB 6A is new and is not underlined.

## 6A MCD disclosure at the offer stage

### 6A.1 Application and purpose

- 6A.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender*.
- 6A.1.2 R This chapter applies to an offer made by a *firm* to a *consumer* with a view to the *firm*:
- (1) entering into an *MCD mortgage contract*;
  - (2) varying the terms of an *MCD mortgage contract* entered into by the *consumer* in any of the following ways:

- (a) adding or removing a party;
- (b) making a further advance; or
- (c) switching all or part of the *MCD regulated mortgage contract* from one interest rate to another;

(whether or not the *consumer* agrees to enter into the *MCD regulated mortgage contract* or variation).

- (3) In *MCOB 6A*, a reference to varying an *MCD regulated mortgage contract* is to be read as including a reference to an offer to vary an existing *MCD regulated mortgage* in a manner specified in this section.

6A.1.3 G *MCOB 6A* amplifies *Principle 6* and *Principle 7*. The purpose of *MCOB 6A* is to ensure that a *customer* receives a clear *offer document* to enable them to check the features and price of the *MCD regulated mortgage contract* before they enter into it

## 6A.2 General

6A.2.1 R Any *communication* required by *MCOB 6A* to be given to a *consumer* by a *firm* must be in a *durable medium*.

[Note: article 14(3) of the *MCD*]

## 6A.3 MCD mortgages: binding offer, content of the offer document and reflection period

- 6A.3.1 R
- (1) If a *firm* offers to enter into an *MCD regulated mortgage contract* with a *consumer*, it must provide the *consumer* with a binding offer set out in an *offer document*.
  - (2) The *firm* may also provide an *ESIS*.
  - (3) The *firm's* offer in the *offer document* must be on the basis of the information in the *ESIS* relevant to that offer.
  - (4) When an *MCD mortgage lender* provides the *consumer* with a binding offer, that offer must be accompanied by an *ESIS* where the characteristics of the offer are different from the information contained in the *ESIS* previously provided.

[Note: article 14(3)(b) and (4) of the *MCD*]

6A.3.2 R (1) If a *firm* offers to vary an *MCD regulated mortgage contract* with a

*consumer*, it must provide the *consumer* with an *offer document*.

- (2) The *firm* may also provide an *ESIS*.
- (3) The *firm's* offer in the *offer document* must be on the basis of the information in the *ESIS* relevant to that offer.
- (4) When an *MCD mortgage lender* offers to vary an *MCD regulated mortgage contract* with a *consumer*, the *offer document* must be accompanied by an *ESIS* where:
  - (a) the characteristics of the offer are different from the information contained in any *illustration* or *ESIS* previously provided in relation to the offer.
  - (b) no *illustration* or *ESIS* has been previously provided in relation to the offer.

- 6A.3.3      G    (1) *MCOB* 6A.3.1R does not prevent a binding offer from being subject to lawful conditions, including conditions which make the binding offer subject to one or more of the matters listed below:
- (a) there being no material change to the facts and circumstances relating to the binding offer which occurs after the date on which the binding offer is made;
  - (b) the fact that the consumer has not knowingly provided incomplete or inaccurate information for the purpose of the assessment of affordability, and has not knowingly falsified or withheld the information provided for the purpose of that assessment.
- (2) The material changes referred to in (1)(a) include a material change:
- (a) affecting the condition, value or title to the property;
  - (b) in the borrower's circumstances (such as loss of employment or further secured borrowing taken out after the borrower's application for an *MCD regulated mortgage contract*) which is likely to have a material impact upon the borrower's ability to afford the loan.
- (3) However, the lender cannot use conditions in binding offers as a means of avoiding the requirement to undertake a proper affordability assessment under *MCOB* 11 before the binding offer is made.

#### Reflection period

- 6A.3.4      R    (1) Where an *MCD mortgage lender* provides the *consumer* with a binding offer, it must give the *consumer* a reflection period of at least



seven *days*.

- (2) The *MCD mortgage lender* must ensure that, during the reflection period:
- (a) the offer remains binding on the *MCD mortgage lender*;
  - (b) the *consumer* may accept the offer at any time.

[**Note:** article 14(6) of the *MCD*]

- 6A.3.5 G The purpose of the reflection period is to provide the *consumer* with sufficient time to compare offers, assess their implications and make an informed decision.
- 6A.3.6 R A *firm* must provide the *consumer* with a copy of the draft agreement for the *MCD regulated mortgage contract* at the beginning of the reflection period.

[**Note:** article 14(11) of the *MCD*]

#### Self-build mortgages and other tranching forms of lending

- 6A.3.7 G Where it is known that a loan will be released in instalments, for example in the case of a self-build mortgage, the loan can involve a binding offer, *ESIS* and the reflection period either for:
- (1) the full amount; or
  - (2) an initial amount, which would be replaced by a binding offer, an *ESIS* and reflection period for a larger amount and so on.

#### Records

- 6A.3.8 R (1) A *firm* must make an adequate record of each *offer document* which it issues to a *consumer* under *MCOB 6A*.
- (2) The record required by (1) must be retained for one year from the date that the *offer document* is issued to the *consumer*.
- (3) If, in accordance with *MCOB 6A.4* (Information to be provided in the offer document or separately), information is included in a separate document that is sent with the *offer document*, that information must also be retained as part of the record required by (1).

#### Information contained in the offer

- 6A.3.9 R A *firm* must ensure that the *offer document* contains a prominent statement explaining:
- (1) the period for which the offer is valid;

- (2) where the *MCD regulated mortgage contract* contains features, such as additional unsecured borrowing facilities, which could result in the *consumer* borrowing more money than, where such features are used, the amount of the *consumer's* debt will increase;
  - (3) when any interest rate change on the *MCD regulated mortgage contract* takes effect. This statement must be used, for example, to explain cases where an annual review system is used;
  - (4) the consequences that might arise from the *consumer* not entering into the *MCD regulated mortgage contract*, including any fees that the *consumer* has paid which will not be reimbursed;
  - (5) that once the *MCD regulated mortgage contract* is concluded, there will be no right of withdrawal; and
  - (6) that, although no right of withdrawal exists, the *consumer* will have a right to repay the *MCD regulated mortgage contract* in accordance with the terms of the *MCD regulated mortgage contract*.
- 6A.3.10 G When setting the period for which the offer is valid (referred to in *MCOB* 6A.3.9R(1)), a *firm* should bear in mind the requirement under *MCOB* 6A.3.4R for a reflection period.
- 6A.3.11 R The *offer document* must state the *repayment strategy* the *consumer* intends to use.
- 6A.3.12 G The *offer document* may contain information about any retentions or re-inspections that will be required by the *firm*
- 6A.3.14 R A *firm* must ensure that the *offer document* includes information on how to complain to the *firm* about the services provided by the *firm* in relation to the *MCD regulated mortgage contract* and whether or not complaints may subsequently be referred to the *Financial Ombudsman Service*.
- 6A.3.15 G *DISP* 1 requires a *firm* to deal promptly and fairly with *complaints*, including referring to another *firm's* *complaints* about that other *firm's* services.
- 6A.3.16 G In addition to the information required by *MCOB* 6A.3.9R, a *firm* may include information about how to complain to any other *firm* about the services that *firm* provided to the *consumer* in relation to the *MCD regulated mortgage contract*. For example, where the *consumer* received advice from another *firm*, an *MCD mortgage lender* may include contact details for the *firm* that provided the advice.
- 6A.3.17 R If the *firm* knows, at the point that the offer is made to the *consumer*, that its interest in the *MCD regulated mortgage contract* will be assigned (by sale or transfer) and the *firm* will no longer be responsible for setting interest rates and charges, the *offer document* must:
- (1) state this; and

- (2) state, where known, who will be responsible for setting interest rates and charges after the sale or transfer.

- 6A.3.18 R Where *MCOB* 6A.3.17R applies, if the name of the party who will be responsible for setting interest rates and charges after the sale or transfer is not known at the point the offer is made, the *firm* must notify the *consumer* of this as soon as it becomes known.
- 6A.3.19 G *MCOB* 6A.3.17R and *MCOB* 6A.3.18R could apply where the ownership of an *MCD regulated mortgage contract* is transferred to a third party through *securitisation*.

#### 6A.4 MCD mortgages: information to be provided in the offer document or separately

##### Tariff of charges

- 6A.4.1 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract*, it must provide the *consumer*, along with the *offer document*, with a *tariff of charges* that could be incurred on the *regulated mortgage contract*.
- 6A.4.2 R If the *MCD regulated mortgage contract* has any *linked borrowing* or *linked deposits*, details of the charges on these linked facilities (for example, charges payable on a linked current account) must be included in the *firm's tariff of charges*.
- 6A.4.3 G A *firm* may include the *tariff of charges* as an integral part of the *offer document*, or provide it separately along with the *offer document*.

##### Mortgage credit cards

- 6A.4.4 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract* that includes a *mortgage credit card*, it must provide the *customer* with information explaining that the card will not give the *customer* the statutory rights associated with traditional credit cards.
- 6A.4.5 G A *firm* may include the information described in *MCOB* 6A.4.4R as an integral part of the *offer document*, or provide it separately along with the *offer document*.

#### 6A.5 MCD distance contracts with retail customers

- 6A.5.1 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) the *EEA State* or states whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the *MCD regulated mortgage contract*;
- (2) any contractual clause on law applicable to the *MCD regulated mortgage contract* or a competent court, or both;
- (3) the language in which the contract is supplied and in which the *firm* will communicate during the course of the *MCD regulated mortgage contract*; and
- (4) if not provided previously:
  - (a) all of the contractual terms and conditions of the *MCD regulated mortgage contract* to which the *offer document* relates; and
  - (b)
    - (i) an appropriate status disclosure statement (compliant with *GEN 4*) for the *MCD mortgage lender*;
    - (ii) the *MCD mortgage lender's* firm reference number; and
    - (iii) confirmation that the *customer* can check the *Financial Services Register* on the *FCA's* website [www.fca.org.uk/firms/systems-reporting/register](http://www.fca.org.uk/firms/systems-reporting/register) or by contacting the *FCA* on 0800 111 6768.

Amend the following text as shown.

## **7 Disclosure at start of contract and after sale**

### **7.1 Application**

Who?

- 7.1.1 R ~~This~~ Subject to *MCOB 7.1.2AR*, this chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 7.1.2R* in accordance with column (2) of that table.
- 7.1.2 R ...
- 7.1.2A R *MCOB 7.6.7R* to *MCOB 7.6.17R* do not apply to a *firm* that is an *MCD mortgage lender* or *MCD mortgage credit intermediary*.
- 7.1.2B G *MCOB 7B* applies to a *firm* that is an *MCD mortgage lender* or *MCD mortgage credit intermediary*, instead of *MCOB 7.6.7R* to *MCOB 7.6.17R*.

...

### 7.3 General

- 7.3.1 G ~~MCOB 2.2.6~~ 3A.2.1R (Clear, fair Fair, clear and not misleading communication) applies to information provided to a *customer* by a *firm* in accordance with this chapter.

...

### 7.6 Mortgages: event-driven information

...

#### Rate switches

- 7.6.18 R Before a *customer* submits an application to a *firm* to change all or part of a *regulated mortgage contract* from one interest rate to another (for example, a transfer from a variable rate *regulated mortgage contract* to a fixed rate *regulated mortgage contract*, or from one fixed rate *regulated mortgage contract* to another fixed rate *regulated mortgage contract*), the *firm* must provide the *customer* with either:
- (1) an *illustration* for the whole loan that complies with the requirements of *MCOB 5* (Pre-application disclosure); or
  - (2) an *ESIS* for the whole loan that complies with the requirements of *MCOB 5A* (MCD Pre-application disclosure),
- unless such an *illustration* or *ESIS* has already been provided.
- 7.6.19 G If a number of different *firms* are involved in relation to the transaction referred to in *MCOB 7.6.18R*, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* or *ESIS* required by *MCOB 7.6.18R*.
- 7.6.20 R (1) The *illustration* provided in accordance with *MCOB 7.6.18R(1)* may diverge from the requirements of *MCOB 5* where it is necessary to do so ~~in order~~ to reflect the fact that the *illustration* is being provided for a rate switch.
- (2) The *ESIS* provided under *MCOB 7.6.18R(2)* may diverge from the requirements of *MCOB 5A* where it is necessary to do so to reflect that the *ESIS* is being provided for a rate switch.
- 7.6.21 G ~~*MCOB 7.6.20R(1)* and (2)~~ allows allow a *firm* to make changes to wording and to add, remove or alter information that would otherwise be

misleading to the *customer*. For example, a *firm* could replace the statement in Section 3 of the *illustration*, explaining that if information provided by the *customer* changes, the *illustration* may be affected, with a statement explaining that the *illustration* is based on information gathered in the past, which may no longer be accurate.

#### Addition or removal of a party to the contract

- 7.6.22 R Before a *customer* submits an application to add or remove a party to a *regulated mortgage contract*, a *firm* must provide any *customer* who will remain or become a party to the contract with either:
- (1) an *illustration* for the whole loan that complies with the requirements of *MCOB* 5 (Pre-application disclosure); or
  - (2) an *ESIS* for the whole loan which complies with the requirements of *MCOB* 5A (MCD Pre-application disclosure).
- ...
- 7.6.24 G If a number of different *firms* are involved in ~~relation to~~ the transaction referred to in *MCOB* 7.6.22R, having regard to *MCOB* 2.5.4R(2), those *firms* should take reasonable steps to establish which one of them is responsible for providing the *customer* with the *illustration* or *ESIS* required by *MCOB* 7.6.22R.
- 7.6.25 R (1) The *illustration* provided in accordance with *MCOB* 7.6.22R(1) may diverge from the requirements of *MCOB* 5 (Pre-application disclosure) where it is necessary to do so ~~in order~~ to reflect the fact that the *illustration* is being provided in respect of the addition or removal of a party to the contract.
- (2) The *ESIS* provided under *MCOB* 7.6.22R(2) may diverge from the requirements of *MCOB* 5A (MCD Pre-application disclosure) where it is necessary to do so to reflect that the *ESIS* is being provided for the addition or removal of a party to the contract.
- 7.6.26 G *MCOB* 7.6.25R(1) and (2) ~~allows~~ allow the *firm* to make changes to wording and to add, remove or alter information that would otherwise be misleading to the *customer*. For example, a *firm* may choose not to include a property valuation in the 'What you have told us' section of the *illustration* if the property value does not have a bearing on the terms of the *regulated mortgage contract*.

...

#### Use of illustrations or *ESIS*s in place of information under *MCOB* 7.6.28R

- 7.6.31 R Where *MCOB* 7.6.28R applies, a *firm* may issue either:
- (1) an *illustration* in accordance with *MCOB* 5 (Pre-application

disclosure); or

- (2) an ESIS in accordance with MCOB 5A (MCD Pre-application disclosure).

in place of the information set out in MCOB 7.6.28R.

- 7.6.31A     R     (1)     The illustration provided under MCOB 7.6.31R(1) may diverge from the requirements of MCOB 5 (Pre-application disclosure) where it is necessary to do so to reflect the circumstances in which it is being provided.
- (2)     The ESIS provided under MCOB 7.6.31R(2) may diverge from the requirements of MCOB 5A (MCD Pre-application disclosure) where it is necessary to do so to reflect the circumstances in which it is being provided.
- 7.6.31B     G     MCOB 7.6.31AR(1) and (2) allow the firm to make changes to wording and to add, remove or alter information that would otherwise be misleading to the customer.
- 7.6.32     R     Where MCOB 7.6.28R applies and the *customer* simultaneously requests a rate switch or the addition or removal of a party to the contract, a *firm* will not be required to provide the information in accordance with MCOB 7.6.28R where it is provided as part of:
- (1)     an illustration issued in accordance with MCOB 7.6.18R(1) or MCOB 7.6.22R(1); or
- (2)     an ESIS issued under MCOB 7.6.18R(2) or MCOB 7.6.22R(2).

Simultaneous request for a rate switch and addition or removal of a party to a contract

- 7.6.33     G     (1)     Where a *customer* simultaneously requests a rate switch and the addition or removal of a party to the loan, a *firm* will not be required to provide the *customer* with a separate *illustration* for each in accordance with MCOB 7.6.18 R(1) and MCOB 7.6.22R(1). The *firm* may provide the *customer* with a single *illustration* that complies with the requirements of MCOB 5 (Pre-application disclosure) for both.
- (2)     Where a customer simultaneously requests a rate switch and the addition or removal of a party to the loan, a firm will not be required to provide the customer with a separate ESIS for each under MCOB 7.6.18R(2) and MCOB 7.6.22R(2). The firm may provide the customer with a single ESIS that complies with the requirements of MCOB 5A (MCD Pre-application disclosure) for both.

European Standardised Information Sheet (ESIS): additional APRC

- 7.6.34      R      Where a *firm* is required to provide a *customer* with an *ESIS* under *MCOB 7.6.18R(2)* or *MCOB 7.6.22R(2)*, or a *firm* chooses to provide a *customer* with an *ESIS* under *MCOB 7.6.31R(2)*, the *firm* need not include the additional *APRC* required under *MCOB 10A.1.6R*, Section 4 of *MCOB 5A Annex 1R* and *MCOB 5A Annex 2, 6.2R to 6.8R*.
- 7.6.35      R      Where a *firm* provides a *customer* with an *ESIS* under *MCOB 7.6.18R(2)*, *MCOB 7.6.22R(2)* or *MCOB 7.6.31R(2)*, that includes an additional *APRC*, the *firm* must either:
- (1)      base that additional *APRC* on the *APRC* previously provided to the *customer* under *MCOB 5A (MCD Pre-application disclosure)*; or
- (2)      calculate that additional *APRC* in accordance with *MCOB 10A.1.6R*, Section 4 of *MCOB 5A Annex 1R* and *MCOB 5A Annex 2, 6.2R to 6.12R*.
- 7.6.36      G      When considering whether to apply *MCOB 7.6.35R(1)* or *MCOB 7.6.35R(2)*, a *firm* should consider its obligations under *MCOB 3A.2.1R(2)* to communicate in a way that is fair, clear and not misleading.

## **7.7      Business loans and loans to high net worth mortgage customers: tailored provisions**

Further advances

- 7.7.1      R      (1)      Where, in relation to a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer who is not a consumer* under an *MCD regulated mortgage contract*, a *customer* either:

...

...

- 7.7.3      R      Where a *customer* applies for a further advance that is a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer who is not a consumer* under an *MCD regulated mortgage contract* and *MCOB 7.7.1R* does not apply:

...

Insert the following new chapters, MCOB 7A and MCOB 7B, after MCOB 7. The text is new and is not underlined.



**7A Additional MCD disclosure: start of contract and after sale****7A.1 Application and general**

7A.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender* or an *MCD mortgage administrator*.

7A.1.2 R A *firm* must provide the information required by this chapter in a *durable medium*.

**7A.2 Notification of interest-rate changes**

7A.2.1 R When giving notice to a *consumer* of any changes that the *consumer* is required to make resulting from interest-rate changes for an *MCD regulated mortgage contract*, a *firm* must:

- (1) give notice of the amount of the payments to be made after the new interest-rate change takes effect; and
- (2) where the number or frequency of the payments will change, give particulars of these changes.

[**Note:** article 27(1) of the *MCD*]

**7A.3 Early repayment disclosure**

7A.3.1 R (1) If a *consumer* notifies a *firm* that they wish to discharge their obligations under an *MCD regulated mortgage contract* prior to its expiry, the *firm* must provide the *consumer*, without delay, with the information necessary to allow them to consider that option.

- (2) The information under (1) must:
  - (a) quantify the implications for the *consumer* of discharging their obligations prior to the expiry of the *MCD regulated mortgage contract*; and
  - (b) clearly set out any assumptions that have been used.

(3) The assumptions under (2)(b) must be reasonable and justifiable.

[**Note:** article 25(4) of the *MCD*]

**7A.4 Foreign currency loans and significant exchange-rate movement disclosure**

7A.4.1 R (1) A *firm* must warn any *consumer* with a *foreign currency loan*, on a

regular basis, where the value of either:

- (a) the *total amount payable* by the *consumer* which remains outstanding; or
- (b) the regular instalments;

varies by more than 20% from what it would be if the exchange rate between the currency of the *MCD regulated mortgage contract* and the currency of the *EEA State*, applicable at the time of the conclusion of the *MCD regulated mortgage contract*, were applied.

- (2) The warning in (1) must inform the *consumer* of a rise in the *total amount payable* by the *consumer*, setting out the right to convert to an alternative currency, where applicable, and the conditions for doing so. It must also explain any other applicable mechanisms for limiting the exchange-rate risk to which the *consumer* is exposed.

[**Note:** article 23(4) of the *MCD*]

- 7A.4.2 R A *firm* must disclose to the *consumer* its arrangements for complying with the obligations in *MCOB 7A.4.1R* in the *MCD regulated mortgage contract*.

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

## **7A.5 Notification of changes resulting from auctions on the capital market**

- 7A.5.1 R In relation to an *MCD regulated mortgage contract*, where there is an auction on the capital markets which will, or might reasonably be expected to, result in an interest-rate change, the *firm* must give the *consumer*, in good time before the auction, notice in a *durable medium* of:

- (1) the upcoming procedure for the auction; and
- (2) an indication of how the interest rates could be affected.

[**Note:** article 27(4) of the *MCD*]

## **7B MCD: further advances**

### **7B.1 Information to be provided for further advances**

- 7B.1.1 R This chapter applies to a *firm* that is an *MCD mortgage lender* or an *MCD mortgage credit intermediary*.

- 7B.1.2 R Before a *consumer* submits an application to a *firm* for a further advance on an existing or new *MCD regulated mortgage contract* or for a further

advance that is a new *MCD regulated mortgage contract*, if the further advance requires the approval of the *MCD mortgage lender*, the *firm* must provide the *consumer* with an *ESIS* that complies with *MCOB 5A* (MCD pre-application disclosure) and *MCOB 7B.1.4R* for the further advance, unless an *ESIS* has already been provided.

- 7B.1.3 G If a number of different *firms* are involved in relation to the transaction in *MCOB 7B.1.2R*, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish which one of them is responsible for providing the *consumer* with the *ESIS* required by *MCOB 7B.1.2R*.
- 7B.1.4 R The *ESIS* provided under *MCOB 7B.1.2R* must be based on the amount of the further advance only.
- 7B.1.5 G To comply with *MCOB 7B.1.4R*, a *firm* should calculate the *APRC* on the basis of the further advance amount only.

Amend the following text as shown.

## 8.1 Equity release: advising and selling standard

...

- 8.1.6 G *Firms* are reminded that *MCD lifetime mortgages* are also subject to the advising and selling standards in *MCOB 4.4A* and *MCOB 4A* that apply to *MCD regulated mortgage contracts*.

## 9 Equity release: product disclosure

### 9.1 Application

...

#### MCD application

- 9.1.7 G (1) This chapter does not apply to an *MCD lifetime mortgage*, except as set out in (2) to (3), below.
- (2) *MCOB 9.4.33R*, *MCOB 9.4.35R*, *MCOB 9.4.62R* and *MCOB 9.4.63R* apply to the extent specified by *MCOB 5A.6.2R*.
- (3) *MCOB 9.6* to *MCOB 9.8* apply, except for *rules* that modify or replace *MCOB 7.6.7R* to *MCOB 7.6.17R* (because those *rules* do not apply to an *MCD mortgage lender* or an *MCD mortgage credit intermediary*, *MCOB 7B* applies instead: see *MCOB 7.1.2AR* and *MCOB 7.1.2BG*).

**9.4 Content of illustrations**

...

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

...

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

...

9.4.129 R The text at *MCOB 9.4.33R(8)* must be immediately followed by the following additional text, prominently displayed (~~for guidance on prominence see *MCOB 2.2.9G*~~): "Changes in the exchange rate may increase the sterling equivalent of your debt."

...

9.4.132 R The requirements at *MCOB 9.4.130R(1)* must be immediately followed by the following additional text, prominently displayed (~~see *MCOB 2.2.9G*~~): "You will need to pay this share in the value of your home to [name of mortgage lender] [insert time at which share must be paid - for example 'when your lifetime mortgage is repaid']. Think carefully about how this will affect the amount left over for you or your estate."

...

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

...

Insert the following new chapter, *MCOB 10A*, after *MCOB 10*. The text is new and is not underlined.

**10A MCD Annual Percentage Rate of Charge****10A.1 Calculation of the APRC**

10A.1.1 R The *APRC* must be calculated for an *MCD regulated mortgage contract* in accordance with the mathematical formula in *MCOB 10A.2.2R*.

[**Note:** article 17(1) of the *MCD*]

- 10A.1.2 R Whenever the opening or maintaining of an account is obligatory to obtain the *credit*, or to obtain it on the terms and conditions marketed, the *total cost of credit to the consumer* must include the following costs:
- (1) opening and maintaining a specific account;
  - (2) using a means of payment for both transactions and drawdowns on that account;
  - (3) other costs relating to payment transactions;
- [**Note:** article 17(2) of the *MCD*]
- 10A.1.3 R The calculation of the *APRC* must be based on the assumption that the *MCD regulated mortgage contract* is to remain valid for the period agreed and that the *MCD mortgage lender* and the *consumer* will fulfil their obligations under the terms and by the dates specified in the *MCD regulated mortgage contract*.
- [**Note:** article 17(3) of the *MCD*]
- 10A.1.4 R If an *MCD regulated mortgage contract* allows variations in the:
- (1) *borrowing rate*; or
  - (2) charges contained in the *APRC*;
- and they are unquantifiable at the time the *APRC* is calculated, the *APRC* must be calculated on the assumption that the *borrowing rate* and other charges will remain fixed in relation to the level set when the contract is entered into.
- [**Note:** article 17(4) of the *MCD*]
- 10A.1.5 R If an *MCD regulated mortgage contract* contains a fixed *borrowing rate* in relation to the initial period of at least five years, at the end of which a negotiation on the *borrowing rate* must take place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative *APRC* disclosed in the *ESIS* must:
- (1) cover only the initial fixed-rate period; and
  - (2) be based on the assumption that, at the end of the fixed *borrowing rate* period, the capital outstanding is repaid.
- [**Note:** article 17(5) of the *MCD*]
- 10A.1.6 R If an *MCD regulated mortgage contract*:
- (1) allows for variations in the *borrowing rate*; and
  - (2) it does not fall within *MCOB* 10A.1.5R,

the *ESIS* must contain an additional *APRC* which illustrates the possible risks linked to a significant increase in the *borrowing rate*. Where the *borrowing rate* is not capped, this information must be accompanied by a warning highlighting that the *total cost of the credit to the consumer*, shown by the *APRC*, may change.

[**Note:** article 17(6) of the *MCD*]

- 10A.1.7 R The assumptions in *MCOB* 10A.2 and, where applicable, in *MCOB* 10A.3 must be used and applied in calculating the *APRC*.

[**Note:** article 17(7) of the *MCD*]

## 10A.2 **APRC: mathematical formula and assumptions**

- 10A.2.1 G The mathematical formula for calculating the *APRC* in *MCOB* 10A.2.2R is a basic equation for establishing the *APRC*. This equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other.

[**Note:** Annex I, Part I of the *MCD*]

- 10A.2.2 R The equation referred to in *MCOB* 10A.2.1R is:

$$\sum_{k=1}^m C_k (1+X)^{-t_k} = \sum_{l=1}^{m'} D_l (1+X)^{-s_l}$$

where:

- $X$  is the *APRC*
- $m$  is the number of the last drawdown
- $k$  is the number of a drawdown, thus  $1 \leq k \leq m$
- $C_k$  is the amount of drawdown  $k$
- $t_k$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus  $t_1 = 0$
- $m'$  is the number of the last repayment or payment of charges
- $l$  is the number of a repayment or payment of charges
- $D_l$  is the amount of a repayment or payment of charges
- $s_l$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or

payment of charges.

[**Note:** Annex I, Part I of the *MCD*]

- 10A.2.3 R The following matters must be applied when calculating the *APRC*.
- (1) The amounts paid by both parties at different times must not necessarily be equal and must not necessarily be paid at equal intervals.
  - (2) The starting date must be that of the first drawdown.
  - (3)
    - (a) Intervals between dates used in the calculations must be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (ie, 365/12), regardless of whether or not it is a leap year.
    - (b) Where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals must be expressed as a whole number of one of those periods in combination with a number of days. Where using days:
      - (i) every day must be counted, including weekends and holidays;
      - (ii) equal periods and then days must be counted backwards to the date of the initial drawdown;
      - (iii) the length of the period of days must be obtained excluding the first day and including the last day and must be expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year.
  - (4) The result of the calculation must be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at the preceding decimal place must be increased by one.
  - (5) The equation can be rewritten using a single sum and the concept of flows ( $A_k$ ), which will be positive or negative, in other words either paid or received during periods 1 to n, expressed in years, using the following formula:

$$s = \sum_{k=1}^n A_k (1 + X)^{-t_k}$$

where  $s$  is the present balance of flows. If the aim is to maintain the equivalence of flows, the value of  $s$  will be zero.

[**Note:** Annex I, Part I of the *MCD*]

### 10A.3      **APRC: additional assumptions**

- 10A.3.1      R      (1)      If an *MCD regulated mortgage contract* gives the consumer **freedom of drawdown**, the *total amount of credit* must be deemed to be drawn down immediately and in full.
- (2)      **If an *MCD regulated mortgage contract* provides different ways of drawdown with different charges or borrowing rates**, the *total amount of credit* must be deemed to be drawn down at the highest charge and *borrowing rate* applied to the most common drawdown mechanism for that type of *MCD regulated mortgage contract*.
- (3)      **If an *MCD regulated mortgage contract* gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time**, the amount of *credit* must be deemed to be drawn down on the earliest date provided for in the *MCD regulated mortgage contract* and in accordance with those drawdown limits.
- (4)      **If different borrowing rates and charges are offered for a limited period or amount**, the highest *borrowing rate* and charges must be deemed to be the *borrowing rate* and charges for the whole duration of the *MCD regulated mortgage contract*.
- (5)      **For an *MCD regulated mortgage contract* for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate** the calculation of the *APRC* must be based on the assumption that, at the end of the fixed *borrowing rate* period, the *borrowing rate* is the same as at the time of calculation of the *APRC*, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed *borrowing rate*.
- (6)      **If the ceiling applicable to the credit has not yet been agreed**, that ceiling must be assumed to be EUR 170,000. In the case of an *MCD regulated mortgage contract* (other than an *MCD contingent liability or guarantee*) the purpose of which is not to acquire or retain a right in immovable property or land, an *overdraft facility*, a deferred debit card or a credit card, this ceiling must be assumed to be EUR 1,500.



(7) **In the case of an *MCD regulated mortgage contract* that does not fall within *MCOB 10A.3.1 R(9), (10), (11) or (12)*:**

- (a) if the date or amount of a repayment of capital to be made by the *customer* cannot be ascertained, it must be assumed that the repayment is made at the earliest date provided for in the credit agreement, and is for the lowest amount for which the *MCD regulated mortgage contract* provides;
- (b) if the interval between the date of initial drawdown and the date of the first payment to be made by the *customer* cannot be ascertained, it must be assumed to be the shortest interval.

(8) **Where the date or amount of a payment to be made by the *consumer* cannot be ascertained** on the basis of the *MCD regulated mortgage contract* or the assumptions set out at *MCOB 10A.3.1R(7), (9), (10), (11) or (12)*, it must be assumed that the payment is made in accordance with the dates and conditions required by the *MCD mortgage lender* and, when these are unknown:

- (a) interest charges are paid together with the repayments of the capital;
- (b) non-interest charges expressed as a single sum are paid at the date of entering into the *MCD regulated mortgage contract*;
- (c) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital and, if the amount of such payment is not known, they must be assumed to be equal amounts;
- (d) the final payment clears the balance of capital, interest and other charges, if any.

[**Note:** Annex I, Part II, paragraph (h) of the *MCD*]

(9) **In the case of an *MCD regulated mortgage contract* that is an *overdraft facility***, the *total amount of credit* must be deemed to be drawn down in full and for the whole duration of the *MCD regulated mortgage contract*. If the duration of the *overdraft facility* is not known, the *APRC* must be calculated on the assumption that the duration of the *credit* is three months.

(10) **In the case of an open-ended *MCD regulated mortgage contract*, other than an *overdraft facility* and an *MCD exempt bridging loan***: it must be assumed that:

- (a) the *credit* is provided for a period of time starting from the date of the initial drawdown, and the final payment made by the *consumer* clears the balance of capital, interest and other

charges, if any, where that period of time is:

- (i) 20 years for an *MCD regulated mortgage contract*, the purpose of which is to acquire or retain rights in immovable property;
  - (ii) 1 year for an *MCD regulated mortgage contract* the purpose of which is not to acquire or retain rights in immovable property or which is drawn down by a deferred debit card or a credit card.
- (b) the capital is repaid by the *consumer* in equal monthly payments, commencing one month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the *consumer* must be assumed to occur over the period of one year. Interest and other charges must be applied in accordance with those drawdowns and repayments of capital and as provided for in the *MCD regulated mortgage contract*.

For the purposes of this *rule*, an open-ended *MCD regulated mortgage contract* is an *MCD regulated mortgage contract* without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

- (11) **In the case of an *MCD contingent liability or guarantee***, the *total amount of credit* must be deemed to be drawn down in full as a single amount at the earlier of:
- (a) the latest drawdown date permitted under the *MCD regulated mortgage contract* being the potential source of the *MCD contingent liability or guarantee*; or
  - (b) for a rolling *MCD regulated mortgage contract*, at the end of the initial period prior to the rollover of the agreement.
- (12) **In the case of a *shared equity credit agreement***:
- (a) the payments by a *consumer* must be deemed to occur at the latest date or dates permitted under the *shared equity credit agreement*;
  - (b) percentage increases in value of the immovable property which secures the *shared equity credit agreement*, and the rate of any inflation index referred to in the agreement, must be assumed to be:
    - (i) a percentage equal to the higher of:

- (aa) the current central bank target inflation rate; or
- (bb) the level of inflation in the *EEA State* where the immovable property is located at the time that the *MCD regulated mortgage contract* is entered into; or

(ii) 0% if those percentages are negative.

**[Note:** Annex I, Part II of the *MCD*]

10A.3.2 G Articles 17(1) to (5), (7) and (8) and Annex I of the *MCD*, which *MCOB* 10A transpose, are subject to maximum harmonisation.

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

Amend the following text as shown.

## 11.6 Responsible lending and financing

...

11.6.2 R (1) ...

(a) ...

**[Note:** article 18(1) of the *MCD*]

(b) ...

**[Note:** article 18(5)(a) of the *MCD*]

...

11.6.3 R ...

(2) ...

(a) ...

**[Note:** article 18(6) of the *MCD*]

...

...

- 11.6.5 R (1) ...  
[Note: article 18(3) of the MCD]
- (2) ...  
[Note: article 20(1) of the MCD]
- ...
- (4) ...  
[Note: article 18(1) of the MCD]
- ...
- 11.6.11 G (1) Examples of committed expenditure are: credit commitments such as secured and unsecured loans and credit cards; ...
- ...
- ...
- 11.6.18A R (1) Under MCOB 11.6.5R(4), in taking account of likely future interest rate increases for the purposes of its assessment of whether the customer will be able to pay the sums due, a second charge lender must also consider the likely future interest rates of any regulated mortgage contract in existence at the time of the assessment and remaining in existence after the relevant second charge regulated mortgage contract has been entered into.
- (2) The second charge lender must, at a minimum, base its assessment under (1) on the balance outstanding of any regulated mortgage contract relevant under (1).
- ...
- 11.6.20 R ...  
[Note: article 18(2) of the MCD]
- ...
- 11.6.21A R An MCD mortgage lender must keep a record of the valuation and types of immovable property accepted as a security, as well as the related mortgage underwriting policies used.  
[Note: article 19(2) and second sentence of article 26(1) of the MCD]
- 11.6.21B G When considering the period for which the records kept under MCOB 11.6.21AR are to be retained, MCD mortgage lenders are reminded of the high-level record-keeping provisions in SYSC.

...

11.6.34 R ...

(1) ...

[Note: article 18(3) of the MCD]

(2) ...

[Note: article 20(1) of the MCD]

...

11.6.40A G A shared equity credit agreement may be an interest-only mortgage.

...

11.6.45 G ...

(2) the periodic repayment of capital from irregular sources of income (such as bonuses or some other sources of income from self-employment); ~~and~~(3) the sale of assets such as another property or other land owned by the *customer*; and(4) for a shared equity credit agreement, the sale of the property which is the subject of the agreement.

...

11.6.58 R A mortgage lender may not enter into an *interest roll-up mortgage*, or vary an existing *regulated mortgage contract* so that it becomes an *interest roll-up mortgage*, unless it is:

...

(4) a loan solely for business purposes; or(5) a shared equity credit agreement.

...

11.6.59A G A shared equity credit agreement may be an interest roll-up mortgage.

Record-keeping

11.6.60 R ...

[Note: article 18(2) of the MCD]

...

**11.7 Transitional arrangements**

11.7.1 R When considering *entering into a first charge regulated mortgage contract* or varying a *first charge regulated mortgage contract*...

(1) the *customer has*:

- (a) an existing *first charge regulated mortgage contract* (whether or not entered into on or after 31 October 2004) *with the firm, or home purchase plan* (whether or not entered into on or after 6 April 2007) which was in existence prior to 26 April 2014; or
- (b) an existing *first charge regulated mortgage contract with the firm, or home purchase plan* which was entered into in reliance on, and in compliance with, *MCOB 11.7*;

...

11.7.2 R ...

(5) the proposed transaction is:

- (a) the variation of an existing non-MCD *first charge regulated mortgage contract*,
- (b) the entry into a non-MCD *first charge regulated mortgage contract*, or
- (c) a *home purchase plan* or variation of a *home purchase plan*.

11.7.3 R (1) When considering *entering into a first charge regulated mortgage contract which is an interest-only mortgage* or varying a *first charge regulated mortgage contract which is an interest-only mortgage*...

...

11.7.6 R Where a *firm* has elected to apply any of *MCOB* TPs 22, 24, 26, 28, 30, 32, 34, 36, 38 or 40 in *MCOB* TP1.1, any *first charge regulated mortgage contract* they propose to enter into between 21 September 2015 and 21 March 2016 is not to be regarded as an *MCD regulated mortgage contract* for the purposes of this chapter.

Insert the following new chapter, MCOB 11A, after MCOB 11. The text is not underlined.

**11A Additional MCD responsible lending requirements****11A.1 MCD mortgage credit intermediary: submission of information to MCD mortgage lender**

- 11A.1.1 R An *MCD mortgage credit intermediary* must accurately submit any relevant information obtained from the *consumer* to the *MCD mortgage lender* to enable an assessment of affordability to be carried out.

[**Note:** article 20(2) of the *MCD*]

**11A.2 Prohibition on cancellation or variation of MCD regulated mortgage contract on grounds of creditworthiness**

- 11A.2.1 R An *MCD mortgage lender* must not cancel, or vary the terms of, an *MCD regulated mortgage contract* to the detriment of the *consumer* on the grounds that the assessment of affordability was incorrectly conducted or the information provided by the *consumer* prior to the agreement of the *MCD regulated mortgage contract* was incomplete. However, this does not apply where the *MCD mortgage lender* can demonstrate that the *consumer* knowingly withheld or falsified information relevant to the assessment of affordability of the *MCD regulated mortgage contract*.

[**Note:** articles 18(4) and 20(3) of the *MCD*]

**11A.3 Obtaining information for, and assessment of, affordability from the consumer and rejecting an application**

- 11A.3.1 R (1) An *MCD mortgage lender* must specify in a fair, clear and not misleading way, in good time before assessing affordability of a *MCD regulated mortgage contract*, to a *consumer*:
- (a) all the necessary information and independently verifiable evidence that the *consumer* needs to provide; and
  - (b) the timeframe within which the *consumer* needs to provide the information or evidence.
- (2) A request for information or evidence under (1) must be proportionate and limited to what is necessary to conduct a proper affordability assessment.
- (3) A request for information or evidence under (1) may be made directly or through an *MCD mortgage credit intermediary*. The *MCD mortgage lender* or the *MCD mortgage credit intermediary*, if requesting on behalf of the *MCD mortgage lender*, must:

- (a) ensure the *consumer* is aware of the need to provide correct information in response to the request and that such information is as complete as necessary to conduct a proper assessment of affordability; and
  - (b) warn the *consumer* that, where the *MCD mortgage lender* is unable to carry out an assessment of affordability because the *consumer* chooses not to provide the information or evidence necessary for an assessment of affordability, the credit cannot be granted.
- (4) The *MCD mortgage lender* may seek clarification, directly or through an *MCD mortgage credit intermediary*, of the information or evidence received in response to a request under (1), where necessary, to enable the assessment of affordability of an *MCD regulated mortgage contract*.

[**Note:** article 20(3) and (4) of the *MCD*]

- 11A.3.2 G Under the Data Protection Act 1998, an *MCD mortgage lender* must inform a *consumer* in advance if a database is to be consulted in conducting any assessment of affordability for an *MCD regulated mortgage contract*.

[**Note:** article 18(5)(b) of the *MCD*]

- 11A.3.3 R (1) Where an *MCD mortgage lender* rejects a *consumer's* application for an *MCD regulated mortgage contract*, the *MCD mortgage lender* must inform the *consumer* without delay:
- (a) of the rejection and, where applicable, that the decision is based on automated processing of data; and
  - (b) where the rejection is based on the result of the database consultation, of the result of such consultation and of the particulars of the database consulted.

[**Note:** article 18(5)(c) of the *MCD*]

- (2) No obligation under (1) shall be interpreted in a manner which contravenes the Data Protection Act 1998.

Amend the following text as shown.

## 12 Charges

### 12.1 Application



...

Charges under second charge regulated mortgage contracts

12.1.5A     **R**     The rules in MCOB 12.4 (Payment shortfall charges: regulated mortgage contracts) and MCOB 12.5 (Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements) apply to second charge regulated mortgage contracts entered into before 21 March 2016 in relation to charges imposed on a customer for events occurring from that date onwards.

...

**12.3     Early repayment charges: regulated mortgage contracts**

...

Early settlement charges on second charge regulated mortgage contracts

12.3.5     **G**     The Consumer Credit (Early Settlement) Regulations 2004 continue to apply to a second charge regulated mortgage contract entered into before 21 March 2016.

...

**12.5     Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements**

...

12.5.5     **R**     A second charge lender may only charge interest on charges applied to a customer for breach of a second charge regulated mortgage contract if the interest is simple interest.

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

12.6.1     **G**     Firms are reminded that, in relation to a regulated mortgage contract which is solely for a business purpose or is with a high net worth mortgage customer, who is not a consumer under an MCD regulated mortgage contract, in circumstances where MCOB 7.7.1R applies, if there is a new early repayment charge or a change to the existing early repayment charge, MCOB 7.7.1R(2) requires a firm to notify the customer within five business days of the maximum amount payable as an early repayment charge.

...

### 13.3 Dealing fairly with customers with a payment shortfall: policy and procedures

...

#### Vulnerable customers

13.3.1C R A firm must establish and implement clear, effective and appropriate policies and procedures for the fair and appropriate treatment of customers whom the firm understands, or reasonably suspects, to be particularly vulnerable.

13.3.1D G (1) Customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers.

(2) In developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, a firm may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt".

#### Customers in payment difficulties: procedures

13.3.2A R ...

...

Insert the following new sub-chapter, MCOB 13.4A, after MCOB 13.4. The text is not underlined.

### 13.4A Data sharing with other charge holders

13.4A.1 R (1) If a *firm* commences legal proceedings against a *customer* in respect of a *regulated mortgage contract* or a *home purchase plan*, it must give notice of the commencement of the legal proceedings to all *persons* specified in MCOB 13.4A.2R at the time of their commencement, or as soon as reasonably practicable afterwards.

(2) If a *customer* voluntarily surrenders possession of their property to a *firm*, the *firm* must give all *persons* specified in MCOB 13.4A.2R notice of the surrender at the time it happens, or as soon as reasonably practicable afterwards.

- (3) If a *customer* is placed in an *assisted voluntary sale process*, a *firm* must give all *persons* specified in *MCOB 13.4A.2R*:
- (a) notice that the *customer* has entered an *assisted voluntary sale process* within ten working days from the date the customer entered the *assisted voluntary sale process*;
  - (b) notice of the proposed sale and details of the proposed sale price and method of sale at least ten working days before the date when the property is proposed to be offered for sale; and
  - (c) details of the sale price within no more than ten working days from the acceptance of an offer to purchase the property.

## Relevant other charge holders

- 13.4A.2 R Notices and other details under *MCOB 13.4A.1R* are to be given to each *person* having a *legal or equitable mortgage* in the relevant property over which the *firm* has security under a *regulated mortgage contract* or a *home purchase plan*.
- 13.4A.3 G In complying with *MCOB 13.4A.2R*, a *firm* should make reasonable efforts to discover the existence of other charge holders at the start of the assisted voluntary sale/litigation process.

...

Amend the following text as shown.

**TP1.1**

<b>(1)</b>	<b>(2) Material to which the transitional provision applies</b>	<b>(3)</b>	<b>(4) Transitional provision</b>	<b>(5) Transitional provision: dates in force</b>	<b>(6) Handbook provision: coming into force</b>
...					
45	<u><i>MCOB 5A, MCOB 6A and MCOB 7B</i></u>	R	<u><i>A firm that is an MCD mortgage lender or MCD mortgage credit intermediary may provide an illustration instead of an ESIS for an MCD regulated mortgage contract that is not a second charge</i></u>	<u>From 21 March 2016 until 21 March 2019</u>	<u>21 March 2016</u>

regulated mortgage contract.

**[Note: article 14(5) of the  
MCD]**

46	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<p><u>A firm that applies TP 45 must also provide the information in (1) to (3) below:</u></p> <p><u>(1) for a variable interest-rate loan, the warning and the additional APRC required by section 4 of MCOB 5A Annex 1R and MCOB 5A Annex 2, 6.2R to 6.8R;</u></p> <p><u>(2) for a foreign currency loan, the warning and illustrative example required by section 6 of MCOB 5A Annex 1R and MCOB 5A Annex 2, 8.6R; and</u></p> <p><u>(3) the reflection period required by MCOB 6A.3.4R(1) and (2), section 11 of MCOB 5A Annex 1R and MCOB 5A Annex 2, 13.1R.</u></p>	<p><u>From 21 March 2016 until 21 March 2019</u></p>	<p><u>21 March 2016</u></p>
47	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<p><u>A firm must provide the information required by TP 46 no later than when it provides the illustration.</u></p>	<p><u>From 21 March 2016 until 21 March 2019</u></p>	<p><u>21 March 2016</u></p>
48	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	<p><u>A firm may provide the information required by MCOB TP 46 either within the illustration or separately in a durable medium. Where a firm provides that information within the illustration, it should either add the information within the most relevant section of the illustration or it should add a new section which should be marked “[number of the preceding section]A” to identify the additional information.</u></p>	<p><u>From 21 March 2016 until 21 March 2019</u></p>	<p><u>21 March 2016</u></p>
49	<u>MCOB 5A,</u>	R	<p><u>Where a firm provides an</u></p>	<p><u>From 21</u></p>	<p><u>21 March</u></p>

	<u>MCOB 6A and MCOB 7B</u>		additional <i>APRC</i> in accordance with TP 46R(1) above, the <i>firm</i> is not required to comply with <u>MCOB 5.6.59R(1)(g) and (h)</u> .	<u>March 2016 until 21 March 2019</u>	<u>2016</u>
50	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	Where a <i>firm</i> applies <u>MCOB TP 45, MCOB 5.6.34R(3)</u> has effect with the following amendment: “ ‘The overall cost for comparison is [insert the <i>APR</i> ]% <i>APR</i> ’ or ‘The <i>APRC</i> applicable to your loan is [APRC]’.”	<u>From 21 March 2016 until 21 March 2019</u>	<u>21 March 2016</u>
51	<u>MCOB 5A, MCOB 6A and MCOB 7B</u>	R	A <i>firm</i> may cease to apply <u>MCOB TP 45</u> at any time,	<u>From 21 March 2016 until 21 March 2019</u>	<u>21 March 2016</u>
52	<u>MCOB 2A.6.1R</u>	R	<u>MCOB 2A.6.1R</u> does not apply to information provided for a contract entered into before 21 March 2016 that would be an <i>MCD regulated mortgage contract</i> if it were entered into on, or after, 21 March 2016	<u>From 21 March 2016 indefinitely</u>	<u>21 March 2016</u>

## Sch 1 Record keeping requirements

	...					
Sch 1.3	G	<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
		...				
		<u>MCOB 3.10.1R</u>	Each <i>non-real time financial promotion</i>	Name of individual who confirmed compliance or approved the <i>financial promotion</i> , and the date of confirmation	Date of confirmation or approval	One year from the date on which the <i>financial promotion</i> was last <i>communicated</i>
		<u>MCOB 3.10.2G(2)</u>	Each <i>non-real time</i>	Details of: the medium for which	Date of confirma	One year from the date on

to (5)	<i>financial promotion</i>	the <i>financial promotion</i> was authorised; evidence supporting a material factual statement; evidence to show that any typical <i>APR</i> was representative of business	tion or approval	which the <i>financial promotion</i> was last <i>communicated</i>
<i>MCOB 3.10.3G(1)</i>	Each <i>non-real time financial promotion</i>	A copy of the <i>financial promotion</i> as finally published	Date of confirmation or approval	One year from the date on which the <i>financial promotion</i> was last <i>communicated</i>
...				

## Annex E

## Amendments to the Supervision manual (SUP)

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

**Part 1: Comes into force on 21 December 2015**

**13 Exercise of passport rights by UK firms**

...

**13.2 Introduction**

...

13.2.2 G A *UK firm* should be aware that the *guidance* is the ~~FSA's~~ FCA's interpretation of the *Single Market Directives*, the *Act* and the legislation made under the *Act*. The *guidance* is not exhaustive and is not a substitute for *firms* consulting the legislation or taking their own legal advice in the *United Kingdom* and in the relevant *EEA States*.

...

13.2.6 G As set out in article 32(1) of the MCD, a UK firm will only be able to carry on MCD credit intermediation activity in relation to an MCD credit agreement offered by a non-credit institution in an EEA state if that EEA state permits non-credit institutions to offer MCD credit agreements.

**13.3 Establishing a branch in another EEA State**

...

The conditions for establishing a branch

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the relevant conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

...

- (3) (a) if the *UK firm's EEA right* derives from the *Insurance Mediation Directive* or the MCD, one month has elapsed beginning on the date on which the *UK firm* received notice

that the *appropriate UK regulator* had given a *consent notice* as described in SUP 13.3.6G(1) (see SUP 13.3.2AG);

...

...

Issue of a consent notice to the Host State regulator

13.3.5 G ...

(3) If the UK firm's EEA right derives from the MCD, the FCA will give the Host State regulator a consent notice within one month of the date on which it received the UK firm's notice of intention. The Host State regulator then has a further two months to prepare for the supervision of the UK firm.

...

13.3.6 G ...

(5) Where a consent notice is given under the MCD in relation to a tied MCD credit intermediary, it will include details of:

- (a) any MCD creditor or group to which it is tied; and
- (b) whether the MCD creditor or group take full and unconditional responsibility for the tied MCD credit intermediary's activities.

...

#### 13.4 Providing cross border services into another EEA State

The conditions for providing cross border services into another EEA State

13.4.2 G A UK firm, other than a UK pure reinsurer or an AIFM exercising an EEA right to market an AIF under AIFMD, cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from the Insurance Directives, AIFMD, MiFID or the UCITS Directive, paragraph 20(4B) of Part III of Schedule 3 to the Act. If a UK firm derives its EEA right from the MCD, it cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and paragraph 20(4BB) of Part III of Schedule 3 to the Act. It is an offence for a UK firm which is not an authorised person to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). The conditions are that:



...

- (4) if the *UK firm* is passporting under *AIFMD*, the ~~firm~~ *firm* has received written notice from the *FCA* as described in *SUP 13.4.4-AG(1)(c)*; or
- (5) if the *UK firm* is passporting under the *MCD*, one month has elapsed, beginning with the date on which the *firm* receives the notice, as described in *SUP 13.4.5G*.

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G ...

- (3) If the *UK firm's EEA right* derives from the *MCD*, the *FCA* will give the *Host State regulator* a consent notice within one month of the date on which it received the *UK firm's notice of intention*.
- (4) Where a consent notice is given under the *MCD* in relation to a *tiered MCD credit intermediary*, the consent notice will include details of:
  - (a) any *MCD creditor* or *group* to which the *firm* is tied; and
  - (b) whether the *MCD creditor* or *group* take full and unconditional responsibility for the *tiered MCD credit intermediary's* activities.

...

Applicable provisions for cross border services

13.4.6A G If a *UK firm* is passporting under the *MCD*, then the *Host State regulator* will notify the *UK firm* if there are any *applicable provisions* within two months of receiving a consent notice.

13.4.7 G ...

## 13.5 Notices of intention

...

Specified contents: notice of intention to provide cross border services

13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* other than under the *auction regulation* must submit a notice in the form set out in:

...

(7) SUP 13 Annex 9R, if the UK firm is passporting under the MCD

...

## 13.6 Changes to branches

...

### Firms passporting under the MCD

- 13.6.9D G (1) A UK firm which has exercised an EEA right deriving from the MCD to establish a branch, must not make any material changes to the requisite details of the branch unless it has complied with the requirements in regulation 17(B)(2).
- (2) The requirements in regulation 17(B)(2) are that
- (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
- (b) the period of one month beginning with the day on which the UK firm gave notice has elapsed.
- (3) Paragraph (1) does not apply to changes occasioned by circumstances beyond the control of the UK firm.

Changes arising from circumstances beyond the control of a UK firm

- 13.6.10 G ...
- (3) This guidance is not applicable to MiFID investment firms, firms passporting under the MCD or AIFMs.

The process

- 13.6.11 G When the *appropriate UK regulator* receives a notice from a *UK firm* other than a *MiFID investment firm* (see SUP 13.6.5G(1) and SUP 13.6.7G(1)) a *pure reinsurer* (see SUP 13.6.9BR), a *UK firm exercising an EEA right under the MCD* (see (SUP 13.6.9DG) or an *AIFM* (see SUP 13.6.9CG), it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from the day on which it received the notice.

...

The process: MCD

- 13.6.19 G When the FCA receives a notice from a UK firm exercising an EEA right under the MCD it will, under regulation 17(B)(3), inform the relevant Host State regulator of the proposed change as soon as reasonably practicable.

The UK firm in question may make the change once a period of one month has elapsed beginning with the day on which it gave notice.

### 13.7 Changes to cross border services

- 13.7.1 G Where a *UK firm* is exercising an *EEA right* under the *UCITS Directive*, *MiFID*, the *Insurance Directives*, the *MCD* or *AIFMD* and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*. References to regulations in this section are to the *EEA Passport Rights Regulations*. A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence. It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

...

#### Firms passporting under the MCD

- 13.7.15 G (1) A UK firm which has exercised an EEA right deriving from the MCD to provide a cross border service, must not make any material changes to the service unless it has complied with the requirements in regulation 17(B)(2).
- (2) The requirements in regulation 17(B)(2) are that:
- (a) the UK firm has given notice to the FCA stating the details of the proposed change; and
- (b) the period of one month has elapsed, beginning with the day on which the UK firm gave notice.
- (3) Paragraph (1) does not apply to a changes occasioned by circumstances beyond the control of the UK firm.

### 13.8 Changes of details: provision of notices to the appropriate UK regulator

- 13.8.1 R (1) Where a *firm* is required to submit a notice of a change to a *branch* referred to in *SUP 13.6.5G(1)*, *SUP 13.6.5BG(1)*, *SUP 13.6.7G(1)*, *SUP 13.6.8G*, *SUP 13.6.9BR*, *SUP 13.6.10G(1)*, and *SUP 13.6.9CG* and *SUP 13.6.9DG* or a notice of a change to *cross border services* referred to in *SUP 13.7.3G(1)*, *SUP 13.7.3AG(1)*, *SUP 13.7.5G(1)*, *SUP 13.7.6G*, *SUP 13.7.13BG*, and *SUP 13.7.14G* and *SUP 13.7.15G*, it must complete and submit that notice in accordance with the procedures set out in *SUP 13.5* for notifying the establishing of a *branch* or the provision of *cross*

*border services.*

...

**13 Annex**    **Passporting: MCD**  
**9R**

This annex consists of one or more forms. Forms can be completed online now by [address to follow]:

Passporting: MCD - SUP 13 Annex 9R

**13A**            **Qualifying for authorisation under the Act**

**13A.1**        **Application and purpose**

...

13A.1.3      G    (1)    Under the *Gibraltar Order* made under section 409 of the *Act* , a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(g)    authorised in Gibraltar under the *MCD*

...

(2)    Gibraltar insurance companies, *credit institutions, insurance intermediaries* , *investment firms, management companies*, ~~and~~ *AIFMs and MCD credit intermediaries* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in this chapter to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

...

...

**13A.4**        **EEA firms establishing a branch in the United Kingdom**

...

The notification procedure

13A.4.4-A G When the FCA receives a consent notice from the EEA firm's Home State regulator in respect of a EEA firm within paragraph 5(i) of Part I of Schedule 3 to the Act, it will, under paragraph 13(3A);

- (1) notify the firm of the applicable provisions (if any); and
- (2) use the information received from the EEA firm's Home State regulator to enter the necessary information into the Financial Services Register.

...

**13A.5 EEA firms providing cross border services into the United Kingdom**

...

13A.5.4 G ...

13A.5.4-A G When the FCA receives a consent notice from the EEA firm's Home State regulator in respect of a firm within paragraph 5(i) of Part I of Schedule 3 to the Act, it will, under paragraph 14(3ZA), use the information received from the EEA firm's Home State regulator to enter the necessary information into the Financial Services Register.

...

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

...		
<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(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</b>
...		
<i>MCOB</i>	Applies where the activity is carried on with or for a	Applies where the activity is carried on with or for a

	<i>customer</i> resident in the <i>United Kingdom</i> or another <i>EEA State</i> at the time that the activity is carried on, but see the territorial scope in <i>MCOB 3.3</i> ( <del>Application: where?</del> ) <u>3.3A</u>	<i>customer</i> resident in the <i>United Kingdom</i> at the time that the activity is carried on but see <i>MCOB 1.3.4R</i> (Distance contracts entered into from an establishment in another <i>EEA State</i> ) and <i>MCOB 3.3</i> ( <del>Application: where?</del> ) <u>3.3A</u>
...		

**13A**  
**Annex 2G**

**Matters reserved to a Home State regulator**

...	
Requirements in the interest of the general good	
2.	The <i>Single Market Directives</i> , and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i> . To summarise, the <i>FCA</i> or <i>PRA</i> , as <i>Host State regulator</i> , is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i> :
(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>CRD credit institution</i> , <i>UCITS management company AIFM</i> or passporting <i>insurance undertaking</i> to the <i>Firm's Home State regulator</i> . The <i>Insurance Mediation Directive reaches</i> and the <i>MCD reach</i> the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> , as <i>Host State regulator</i> , is entitled to regulate only the conduct of the firm's business within the <i>United Kingdom</i> ;
...	
Requirements under <i>MCD</i>	
<u>11L</u>	<u>Under article 34(2) of the <i>MCD</i>, ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the <i>MCD</i> by <i>incoming EEA branches</i> is the responsibility of the</u>

	<u>Host State. Responsibilities for ensuring compliance with all other obligations are the responsibility of the Home State.</u>
11M	<u>Ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the MCD by EEA firms providing cross border services is the responsibility of the Home State.</u>
...	

## 14 Incoming EEA firms changing details, and cancelling qualification for authorisation

### 14.1 Application and purpose

...

- 14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(g) authorised in Gibraltar under the MCD

...

- (2) Gibraltar insurance companies, *credit institutions, insurance intermediaries, investment firms, management companies, and AIFMs and MCD credit intermediaries* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in *SUP 14* to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

...

### 14.2 Changes to branch details

...

#### Firms passporting under the MCD

- 14.2.17 G As required by regulation 7B(1), where an incoming EEA firm passporting under the MCD has established a branch in the UK, it must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or regulation 3(6)(b) to (e), unless it has complied with the relevant requirements.

- 14.2.18 G The relevant requirements are set out in regulation 7B(4) or, where the change arises from circumstances beyond the *incoming EEA firms's* control, regulation 7B(5).
- 14.2.19 G The relevant requirements in regulation 7B(4) are that:
- (1) the *incoming EEA firm* has given a notice to the *FCA* and its *home state regulator* stating the details of the proposed changes; and
- (2) either:
- (a) the *FCA* has informed the *incoming EEA firm* that it may make the change; or
- (b) a period of one *month* has elapsed beginning with the day on which the *incoming EEA firm* gave the notice under (1).
- 14.2.20 G Where the change arises from circumstances beyond the *incoming EEA firm's* control, the *incoming EEA firm* is required by regulation 7B(5) to give notice to the *FCA* and to its *Home State regulator* stating the details of the change, as soon as reasonably practicable.
- 14.2.21 G The *FCA* believes that, for a change to arise from circumstances beyond the control of an *incoming EEA firm*, the circumstances should be outside the control of the *incoming EEA firm* as a whole and not just its *UK branch*. For example, the *FCA* considers that this provision would be unlikely to apply to circumstances in which lack of planning at the *incoming EEA firm's* head office resulted in a problem arising in a *UK branch*. In practice, therefore, use of this provision is likely to be rare.

### **14.3 Changes to cross border services**

- 14.3.1 G Where an *incoming EEA firm* passporting under the *MiFID*, *UCITS Directive*, *Insurance Directives*, *MCD* or *AIFMD* is exercising an *EEA right* and is providing *cross border services* into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. Where an *incoming EEA firm* has complied with the *EEA Passport Rights Regulations*, then the *firm's permission* under Schedule 3 to the *Act* is to be treated as varied.

...

#### Firms passporting under the MCD

- 14.3.11 G As required by regulation 7B(1), where an *incoming EEA firm* is providing *cross border services* under the *MCD* in the *UK*, it must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or regulation 3(6)(b) to (e), unless it has complied with the relevant requirements.



- 14.3.12 G The relevant requirements are set out in regulation 7B(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, regulation 7B(5).
- 14.3.13 G Where the change arises from circumstances within the control of the *incoming EEA firm*, the relevant requirements in regulation 7B(4) are that:
- (1) the *incoming EEA firm* has given a notice to the *FCA* and its *Home State regulator* stating the details of the proposed changes; and
- (2) either:
- (a) the *FCA* has informed the *incoming EEA firm* that it may make the change; or
- (b) a period of one *month* has elapsed beginning with the day on which the *incoming EEA firm* gave the notice under (1).
- 14.3.14 G Where the change arises from circumstances beyond the *incoming EEA firm's* control, the *incoming EEA firm* is required by regulation 7B(5) to give a notice to the *FCA* and to its *Home State regulator* stating the details of the change as soon as reasonably practicable.

...

### App 3 Guidance on passporting issues

...

#### App 3.3 Background

App 3.3.6 G ...

- (2) The European Commission has not produced an interpretative communication on the *Insurance Mediation Directive*, *AIFMD*, the *MCD* or the *UCITS Directive*.

...

App 3.3.13 G The *Single Market Directives* require *credit institutions*, *insurance undertakings* (other than *reinsurance undertakings*, *MiFID investment firms*, *AIFMs*, *UCITS management companies*, ~~and~~ *insurance intermediaries* and *MCD credit intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services* ...

...

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

App 3.9.1 G The following Tables 1, 2, 2ZA 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passport activities* under the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the MCD and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the MCD or the *Insurance Mediation Directive*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passport activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

...

App 3.9.8 G Activities set out in article 4 of the MCD

	<u>Table 3: MCD activities</u>	<u>Part II RAO specified activities</u>	<u>Part III RAO Investments</u>
<u>1</u>	<u>Acting as credit intermediary</u>	<u>Articles 25A(1), 25(2A), 53A, 36A(1)(d), (e), (f) and 53DA</u>	<u>Articles 88 and 88D</u>

**Part 2: Comes into force on 21 March 2016**

**12 Appointed representatives**

...

**12.2 Introduction**

What is an appointed representative?

12.2.1 G ...

- (4) If an appointed representative has entered into a contract with an MCD credit intermediary and is a person to whom section 39(1BA) of the Act applies, they must also satisfy the conditions in section 39(1BB) of the Act to be an exempt person. See SUP 12.4.10CG for guidance on those conditions.

...

Business for which an appointed representative is exempt

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under section 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

...

- (d) *arranging (bringing about) a home finance transaction* (articles 25A(1), 25A(2A), 25B(1) and 25C(1) of the *Regulated Activities Order*);

...

- (jaa) *advising on regulated credit agreements for the acquisition of land* (article 53DA of the *Regulated Activities Order*);

...

What is an introducer appointed representative?

12.2.8 G ...

- (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:

...

- (d) *advising on investments, giving basic advice on a stakeholder product, advising on a home finance transaction, advising on regulated credit agreements for the acquisition of land, or other activity ...*

...

**12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?**

...

Appointed representative carrying on MCD credit intermediation activity

12.4.10A R Before a firm appoints a person as an appointed representative to carry on an MCD credit intermediation activity, it must ensure that the person has, and will maintain on a continuing basis after appointment, professional indemnity insurance in accordance with the rules applicable to MCD credit intermediaries. A firm will satisfy this requirement if:

- (1) the appointed representative has professional indemnity insurance which satisfies the rules in MIPRU 3.2 applicable to the activities of the appointed representative, as if the appointed representative were an MCD credit intermediary;
- (2) professional indemnity insurance which would satisfy the requirements of SUP 12.4.10AR(1) is provided by the firm; or
- (3) the appointed representative holds a comparable guarantee (as understood by reference to MIPRU 3.1.1R(3)(b)) provided by the firm.

[Note: article 31(2) of the MCD]

12.4.10B R (1) Before a firm appoints a person as an appointed representative to carry on MCD credit intermediation activity and on a continuing basis after appointment, it must, in relation to such activities, ensure that:

(a) if the appointed representative is an individual, the individual:

(i) has not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and

(ii) has not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and

(iii) possesses the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative;

- (b) if the appointed representative is a body corporate, the members of the board of the appointed representative, and persons performing equivalent tasks:
- (i) have not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and
  - (ii) have not been adjudged bankrupt (unless the bankruptcy has been discharged);  
  
under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and
  - (iii) possess the appropriate level of knowledge and competence under the rules in TC applicable to the activities of the appointed representative.

[**Note:** article 31(2) of the *MCD*]

- 12.4.10C G (1) If an appointed representative's scope of appointment is to include MCD credit intermediation activity, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see SUP 12.7.1R(1)).
- (2) An appointed representative must not commence an MCD credit intermediation activity until they are included on the Financial Services Register.
- (3) If an appointed representative's scope of appointment is to include MCD credit intermediation activity, the Act provides that that appointed representative's principal may not be a tied MCD credit intermediary.

...

## 12.5 Contracts: required terms

...

Prohibition of multiple principals for certain activities

12.5.6A R ...

- (1B) In relation to any MCD credit intermediation activity, the prohibition must prevent the appointed representative acting as an appointed representative in respect of MCD credit intermediation

activity for any other firm.

...

12.5.6B G ...

- (2) The effect of the *rule* prohibiting multiple *principals* for certain activities is that, in relation to *home finance activities*, *appointed representatives* are restricted to having four *principals*: one for *regulated mortgage contracts* other than *lifetime mortgages*, one for *lifetime mortgages*, one for *home reversion plans* and one for *home purchase plans*. However, if any of the business of the appointed representative involves MCD credit intermediation activity, the appointed representative is restricted to having one principal in relation to that business.

...

Required contract terms for appointed representatives of MCD credit intermediaries

12.5.10 R A firm must ensure that, if appointing an appointed representative to carry on MCD credit intermediation activity, its written contract requires the appointed representative to provide such evidence to the FCA as to the knowledge and competence of the staff of the appointed representative, as the FCA may require from time to time.

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

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

...

12.6.1B R A firm that is a principal of an appointed representative that carries on MCD credit intermediation activity must monitor the activities of that appointed representative to ensure compliance with obligations imposed under the MCD (including those in MCOB and TC).

[Note: article 31(3) of the MCD]

12.6.1C G SUP 12.6.1BR requires a firm to which that rule applies to monitor the knowledge and competence of the appointed representative that carries on MCD credit intermediation activity and its staff.

...

## 12.7 Notification requirements

## Notification of appointment of an appointed representative

- 12.7.1 R (1) This *rule* applies to a *firm* which intends to appoint:
- (a) an *appointed representative* to carry on *insurance mediation activities*; ~~or~~
  - (b) a *tied agent*; or
  - (c) an *appointed representative* to carry on *MCD credit intermediation activity*.

...

## Notification of changes in information given to the FCA

- 12.7.7 R ...
- (1B) If:
- (a) (i) the scope of appointment of an *appointed representative* is extended to cover *MCD credit intermediation activity* for the first time; and
  - (ii) the *appointed representative* is not included on the *Financial Services Register*; or
  - (b) the scope of appointment of an *appointed representative* ceases to include *MCD credit intermediation activity*;

the *appointed representative's principal* must give written notice to the *FCA* of that change before the *appointed representative* begins to carry on *MCD credit intermediation activity* under the contract (see *SUP* 12.4), or as soon as the scope of appointment of the *appointed representative* ceases to include *MCD credit intermediation activity*.

**[Note: article 31(4) of the *MCD*]**

...

## Notification of changes in conditions of appointment

- 12.7.8 R (1) As soon as a *firm* has reasonable grounds to believe that any of the conditions in *SUP* 12.4.2R, *SUP* 12.4.6R, ~~or~~ *SUP* 12.4.8AR, *SUP* 12.4.10AR or *SUP* 12.4.10BR (as applicable) are not satisfied ...

...

...

**15.8 Notification in respect of particular products and services**

...

15.8.9 R ...

MCD credit intermediaries

15.8.10 R A tied MCD credit intermediary must notify the FCA, as soon as reasonably practicable, if it intends to cease acting on behalf of and under the full responsibility of any firm.

15.8.11 R A MCD credit intermediary must notify the FCA, as soon as reasonably practicable, if it intends to start acting on behalf of and under the full responsibility of any firm.

...

**16.11 Product Sales Data Reporting**

...

...

**16.12 Integrated Regulatory Reporting**

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date
...				
RAG 5	home finance administration or home finance providing activity	<u>SUP 16.12.18AR<sub>2</sub> and SUP 16.12.18BR and SUP 16.12.18CR</u>	<u>SUP 16.12.18AR<sub>2</sub> and SUP 16.12.18BR and SUP 16.12.18CR</u>	<u>SUP 16.12.18AR<sub>2</sub> and SUP 16.12.18BR and SUP 16.12.18CR</u>
...				



...

16.12.18A R (1) *SUP 16.12.18BR and SUP 16.12.18CR does do not apply to:*

A

...

...

16.12.18B R The applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP 16.12.4R* are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency	Submission deadline
Capital Adequacy ( <u>note 4</u> )	...	...	...
...			
Credit Risk ( <del>note</del> <u>notes 2 and 4</u> )	...	...	...
Liquidity ( <del>note</del> <u>notes 3 and 4</u> )	...	...	...
...			
...			
<u>Note 4</u>	<u>Not applicable if the firm exclusively carries on home finance administration or home finance providing activities in relation to second charge regulated mortgage contracts.</u>		

16.12.18C R Additional applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP 16.12.4R* are set out in the table below for a *firm carrying on home finance administration or home finance providing activities in relation to second charge regulated mortgage contracts*. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

<u>Description of <i>data item</i></u>	<u><i>Data item</i> (note 1)</u>	<u>Frequency</u>	<u>Submission deadline</u>
<u>Analysis of second charge loans to customers</u>	<u>Section A3(a) MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Second charge business</u>	<u>Sections D1(a) and</u>	<u>Quarterly</u>	<u>20 business days</u>

<u>flow and rates</u>	<u>D2(a) MLAR</u>		
<u>Second charge lending to individuals</u>	<u>Sections E1(a) and E2(a)</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Second charge lending – arrears analysis</u>	<u>Section F(a)</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Second charge mortgage administration – arrears analysis</u>	<u>Sections H1(a) and H2(a)</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Note 1</u>	<u>When submitting the completed data item required, a firm must use the format of the data item set out in SUP 16 Annex 19AAR. Guidance notes for the completion of the data items are set out in SUP 16 Annex 19BG.</u>		

...

16.12.28A R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency		Submission deadline
		Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million	
...				
Capital Adequacy (note 3)	Section D1 RMAR	Half yearly	Quarterly	30 business days
...				
Client money and client assets (note 3)	Section C RMAR	Half yearly	Quarterly	30 business days
...				
Note 3	<u>This item does not apply to firms who only carry on home finance mediation activities exclusively in relation to second charge regulated mortgage contracts and who are not otherwise expected to complete it by virtue of carrying out other regulated activities.</u>			

...

## 16 Annex 18AR

SECTION B: Profit and Loss account

B1: Regulated Business Revenue

	A	B	C	D	E
	Commissions		Fees/Adviser charges/Consultancy charges	Other income (reg activities)	Regulated business revenue
	Gross	Net			
1 Regulated mortgage contracts_of which:					
15 <u>Second (or subsequent) charge</u>					
2 Non-investment insurance					
3 Retail investment products					
4 TOTAL					

<b>B2: Other P&amp;L</b>		
5	Income from other regulated activities	<input type="text"/>
6	Other Revenue (income from non-regulated activities)	<input type="text"/>
7	TOTAL REVENUE	<input type="text"/>
8	TOTAL EXPENDITURE	<input type="text"/>
9	Profit/(Loss) on ordinary activities before taxation	<input type="text"/>
10	Profit/(Loss) on extraordinary activities before taxation	<input type="text"/>
11	Taxation	<input type="text"/>
12	Profit/(Loss) for the period before dividends and appropriations	<input type="text"/>
13	Dividends and other appropriations	<input type="text"/>
14	Retained Profit	<input type="text"/>

SECTION G: Training and Competence

Special Instructions

	A	B	C	E	D
	Advising on mortgages	Advising on non-investment insurance (retail customers)	Advising on retail investment products	Advising on second (and subsequent) charge mortgages	Total
1	Total number of all staff				
	Of which:				
2	Number of staff that give advice				
3	Number of staff that give advice (Full time equivalent)				
4	Number of staff that supervise others to give advice				
5	Number of advisers that have been assessed as competent				
6	Number of advisers that have passed approved examinations				
7	Number of advisers that have left since the last reporting date				

What types of advice were provided?

	Mortgage	Non-Inv Insurance	Retail Investment Products	Second (and subsequent) charge mortgage
15	Independent			
8	Independent (w hole of market plus option of fee-only)			
9	Whole of market (w ithout fee-only option)			
10	On the basis of a fair analysis of the market			
11	Restricted / Multi-tie (the products of a limited number of providers)			
12	Restricted / Single-tie (the products of one provider)			
16	Restricted (limited types of products)			

Clawed back commission (retail investment firms only)

13	Clawed back commission by:	Number	
14		Value	

**16 Annex 18BG Notes for Completion of the Retail Mediation Activities Return ('RMAR')**

...

**Section D: Capital Resources**

...

(i) Section **D1** covers the appropriate capital resources and connected requirements in *MIPRU* chapter 4 for *firms* carrying on *home finance mediation activity* (save for firms carrying on home finance mediation activities exclusively in relation to second charge regulated mortgage contracts), and/or *insurance mediation activity* relating to *non-investment insurance contracts* (the requirements have to be completed for all applicable categories). ...

...

**Section E: guide for completion of individual fields**

...

Part 2

PII basic information

...	
Limit of indemnity	<p>You should record here the indemnity limits on the <i>firm's</i> PII policy or policies, both in relation to single claims and in aggregate.</p> <p>Those firms subject to the <u><i>Mortgage Credit Directive (MCD)</i></u> (see <u><i>MIPRU 3.2.9AR</i></u>) or the <u><i>Insurance Mediation Directive (IMD)</i></u> requirements should state their limit in Euros; those that are not subject to the <u><i>MCD</i></u> or <u><i>IMD</i></u> should select 'Sterling' from the drop-down list.</p> <p><u><i>Insurance intermediaries</i></u>, see <i>MIPRU 3.2.7R</i> and select either 'Euros' or 'Sterling' as applicable. <u><i>Home finance intermediaries that are not MCD credit intermediaries</i></u> should state their limit in Sterling (see <i>MIPRU 3.2.9R</i>).</p>

...

**Insert the following new form, SUP 16 Annex 19AAR, after SUP 16 Annex 19AR. The text is not underlined.**

16 Annex 19AAR

A(3)a BALANCE SHEET (SECOND CHARGE)		(£000s)						
		c1	c2	c3	c4	c5	c6	c7
		<u>a Unsecured balances</u>			<u>b Securitised balances</u>			
		<i>Gross balances</i>	<i>Provisions</i>	<i>Net balances</i>	<i>Gross balances</i>	<i>Provisions</i>	<i>Non recourse finance</i>	<i>Net balances</i>
<b>A3a</b>	<b>Analysis of loans to customers</b>							
<b>A3a.1</b>	Residential loans to individuals, of which							
<b>A3a.2</b>	Second (or subsequent) charge	_____	_____	_____	_____	_____	_____	_____

D(1)a **SECOND CHARGE LENDING : Business flows & rates**

	c1	c2	c3	c4	c5	c6	c7	c8	c9	c10
	Balance at end of previous quarter	Advances made in quarter	Repayment of principal	Write offs in quarter	Other debits/ (credits) and transfers (net)	Balance at end of quarter	Of which: Loans excluding overdrafts	Overdrafts	Overdrafts: Aggregate of credit limits	
D1a <b>Loans: Advances/ Repayments</b>										
D1a.1 Residential loans to individuals, of which Second (or subsequent) charge										
<b>Transactions in quarter included in D1 [col 5]</b>						<b>Balance at end of quarter on loan assets subject to non-recourse funding</b>				
	Loans acquired	Loans sold	Loans securitised	Other	Total					
D2a <b>Loans: Book movements</b>										
D2a.1 Residential loans to individuals, of which Second (or subsequent) charge										
<b>Balances at end of quarter</b>							<b>Interest rates at end of quarter (to 2 decimal places)</b>			
	TOTAL	Of which at:		Of which at:			Weighted average nominal annual rate on:			
		Fixed rates	Variable rates	Less than 2% above BBR	2 < 3% above BBR	3 < 4% above BBR	4% or more above BBR	All balances	Balances at fixed rates	Balances at variable rates
D3a <b>Loans: Interest rates</b>	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	%	%	%
D3a.1 Second (or subsequent) charge Total book										
D3a.2 Advances in quarter										

D(2)a **SECOND CHARGE LENDING: Business flows**

	Commitments outstanding at end of previous quarter	Commitments made since end of previous quarter	Cancellations in quarter	Advances made in quarter	Other debits/ (credits) and transfers (net)	Commitments outstanding at end of quarter
	c1	c2	c3	c4	c5	c6
D4a <b>Loans: commitments</b>						
D4a.1 Residential loans to individuals, of which Second (or subsequent) charge						
a) New loan						
b) Remortgage						
d) Total						

**E(1)a SECOND CHARGE LOANS TO INDIVIDUALS: Income Multiple & LTV**

		<u>Gross advances in quarter : (amount) by LTV</u>			
		<u>&lt; = 75 %</u>	<u>Over 75 &lt; = 90 %</u>	<u>Over 90 &lt; = 95 %</u>	<u>Over 95 %</u>
		c1	c2	c3	c4
<b>E1a SINGLE income multiple</b>					
	Second (or subsequent) charge mortgages				
E1a.1	Less than 2.50	_____	_____	_____	_____
E1a.2	2.50 < 3.00	_____	_____	_____	_____
E1a.3	3.00 < 3.50	_____	_____	_____	_____
E1a.4	3.50 < 4.00	_____	_____	_____	_____
E1a.5	4.00 or over	_____	_____	_____	_____
E1a.6	Other	_____	_____	_____	_____
E1a.7	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
E1a.7a	of which: Not evidenced	_____	_____	_____	_____

		<u>Gross advances in quarter : (amount) by LTV</u>			
		<u>&lt; = 75 %</u>	<u>Over 75 &lt; = 90 %</u>	<u>Over 90 &lt; = 95 %</u>	<u>Over 95 %</u>
		c1	c2	c3	c4
<b>E2a JOINT income multiple</b>					
	Second (or subsequent) charge mortgages				
E2a.1	Less than 2.00	_____	_____	_____	_____
E2a.2	2.00 < 2.50	_____	_____	_____	_____
E2a.3	2.50 < 2.75	_____	_____	_____	_____
E2a.4	2.75 < 3.00	_____	_____	_____	_____
E2a.5	3.00 or over	_____	_____	_____	_____
E2a.6	Other	_____	_____	_____	_____
E2a.7	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
E2a.7a	of which: Not evidenced	_____	_____	_____	_____



**E(2)a SECOND CHARGE LOANS TO INDIVIDUALS: Nature of loan and purpose**

<u>Second (or subsequent) charge mortgages</u>				
<u>Gross advances in quarter</u>		<u>Balances outstanding</u>		
<i>Number</i>	<i>Amount</i>	<i>Number</i>	<i>Amount</i>	
<b>c1</b>	<b>c2</b>	<b>c3</b>	<b>c4</b>	
<b>E3a By credit history</b>				
E3a.1	Impaired credit history	_____	_____	_____
E3a.2	Other	_____	_____	_____
E3a.3	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>E4a By payment type</b>				
E4a.1	Repayment (capital & interest)	_____	_____	_____
E4a.2	Interest only	_____	_____	_____
E4a.3	Combined	_____	_____	_____
E4a.4	Other	_____	_____	_____
E4a.5	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>E5a By drawing facility</b>				
E5a.1 Loans with extra drawing facility :				
	(a) Loans including unused facility	_____	_____	_____
	(b) Unused facility	_____	_____	_____
	(c) Net loans (a - b)	_____	_____	_____
E5a.2	Loans with no extra drawing facility	_____	_____	_____
E5a.3	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>E6a By purpose</b>				
House Purchase:				
E6a.1	Home improvement	_____	_____	_____
E6a.2	Debt consolidation	_____	_____	_____
E6a.3	Home improvement and debt consolidation	_____	_____	_____
E6a.4	Other	_____	_____	_____
E6a.5	TOTAL second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>

**F(1)a SECOND CHARGE LENDING: Arrears analysis**

(£000s)

Arrears categorisation by type of loan	<u>Cases entering higher (ie more serious) arrears band in quarter</u>			<u>Position on all arrears cases at end of quarter</u>			<u>Performance of current arrears cases during the quarter</u>
	<i>Number</i>	<i>Amount of arrears</i>	<i>Balance outstanding</i>	<i>Number</i>	<i>Amount of arrears</i>	<i>Balance outstanding</i>	%
F1a Second (or subsequent) charge mortgages							
F1a.1 1.5 < 2.5 %							
F1a.2 2.5 < 5 %							
F1a.3 5.0 < 7.5 %							
F1a.4 7.5 < 10 %							
F1a.5 10% or more							
F1a.6 In possession							
F1a.7 TOTAL							

**F(2)a LENDING: Arrears analysis**

(£000s)

F5a Arrears management	c1 c2 c3			c4 c5 c6			c7 c8 c9		
	<u>Those cases no longer reported (ie not included in F1a)</u>			<u>Capitalisation of arrears cases in quarter</u>			<u>Arrears cases reported in F1a</u>		
	<u>Possession sales during quarter</u>			<u>Number</u>			<u>Number of cases for which there is in place:</u>		
	<i>Number</i>	<i>Balance outstanding</i>		<i>Number</i>	<i>Amount of arrears</i>	<i>Balance outstanding</i>	<i>A temporary concession</i>	<i>A formal arrangement</i>	<i>No concession arrangement</i>
F5a.1 Residential loans to individuals, of which Second (or subsequent) charge									

H(1)a SECOND CHARGE MORTGAGE ADMINISTRATION: Arrears analysis		(£000s)						
		c1	c2	c3	c4	c5	c6	c7
Arrears categorisation by type of loan		<u>Cases entering higher (ie more serious) arrears band in quarter</u>			<u>Position on all arrears cases at end of quarter</u>			<u>Performance of current arrears cases during the quarter</u>
		<u>Number</u>	<u>Amount of arrears</u>	<u>Balance outstanding</u>	<u>Number</u>	<u>Amount of arrears</u>	<u>Balance outstanding</u>	%
H1a	Second (or subsequent) charge mortgages							
H1a.1	1.5 < 2.5 %							
H1a.2	2.5 < 5 %							
H1a.3	5.0 < 7.5 %							
H1a.4	7.5 < 10 %							
H1a.5	10% or more							
H1a.6	In possession							
H1a.7	TOTAL							

H(2)a MORTGAGE ADMINISTRATION: Arrears analysis		(£000s)								
Arrears categorisation by type of loan		c1	c2	c3	c4	c5	c6	c7	c8	c9
H5a Arrears management		<u>Those cases no longer reported (ie not included in H1 to H3.7)</u>			<u>Capitalisation of arrears cases in quarter</u>			<u>Arrears cases reported in H1 to H3.7 at end quarter</u>		
		<u>Possession sales during quarter</u>			<u>Number</u>			<u>Number of cases for which there is in place:</u>		
		<u>Number</u>	<u>Balance outstanding</u>		<u>Number</u>	<u>Amount of arrears</u>	<u>Balance outstanding</u>	<u>A temporary concession</u>	<u>A formal arrangement</u>	<u>No concession arrangement</u>
H5a.1	Residential loans to individuals, of which Second (or subsequent) charge									

## 16 Annex 19BG Notes for Completion of the Mortgage Lenders & Administrators Return ('MLAR')

...

### 1. Introduction

This section covers a number of points that have relevance across the return generally:

...

- Loans made before 31 October 2004
- Second charge regulated mortgage contracts

...

### 2. Overview of reporting requirements

...

Because the *MLAR* is activity based, not all sections are applicable to all types of *home finance activity firm*. The applicability of each section is explained in the table below:

Section	Applicability
...	
<u>A3(a): Analysis of second charge loans to customers</u>	<u>Applies to all home finance activity firms in respect of second charge regulated mortgage contracts.</u>
...	
C: Capital	Applies to all <i>home finance activity firms</i> except: ... - A firm which is a solo-consolidated <i>subsidiary</i> of an <i>authorised credit institution</i> - <u>A firm which exclusively carries on home finance activities in relation to second charge regulated mortgage contracts, as set out in SUP 16.12.18BR (note 4).</u>
...	
<u>D(a): Second charge business flow and rates</u>	<u>Applies to all home finance providing activity firms in respect of second charge regulated mortgage contracts.</u>

E: Residential lending to individuals: new business profile	...
<u>E1(a) and E2(a): Second charge lending to individuals</u>	<u>Applies to all home finance providing activity firms in respect of second charge regulated mortgage contracts.</u>
F: Lending: Arrears Analysis	...
<u>F(a): Second charge lending – arrears analysis</u>	<u>Applies to all home finance providing activity firms in respect of second charge regulated mortgage contracts.</u>
...	
H: Mortgage Administration: Arrears analysis	
<u>H(a): Second charge mortgage administration – arrears analysis</u>	<u>Applies to all firms with permission to undertake administering a home finance transaction, in respect of second charge regulated mortgage contracts.</u>
...	
L: Credit Risk	Applies to a firm that meets the conditions of SUP 16.12.18BR (note notes 2 and 4).
M: Liquidity	Applies to a firm that meets the conditions of SUP 16.12.18BR (note notes 3 and 4).

...

#### 4. Regulated mortgage contracts and the wider mortgage market

...

##### (ii) Residential loans to individuals

...

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

~~first charge will be a regulated mortgage contract, but that the loan secured by the second charge will invariably not and should be reported as non-regulated.~~

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

~~It is important, therefore, to separate this category from all other forms of secured lending.~~

...

(iv) **Regulated mortgage contract**

This is defined in the *Handbook* as follows:

- (a) (in relation to a contract) (in accordance with article 61(3) of the *Regulated Activities Order*) a contract which, at the time it was entered into, meets the following conditions:

...

- (ii) the obligation of the borrower to repay is secured by a ~~first legal mortgage on land (other than timeshare accommodation) in the United Kingdom~~ EEA, at least 40% of which is used, or is intended to be used, for credit provided to an individual, as or in connection with a dwelling ~~by the borrower or (in the case of credit provided to trustees), as or in connection with a dwelling by a related person by an individual who is a beneficiary of the trust, or by a person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:~~

~~(A) that person's spouse; or~~

~~(B) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or~~

~~(C) that person's parent, brother, sister, child, grandparent or grandchild.~~

...

This means that in relation to a *regulated mortgage contract*, the following conditions must all be satisfied:

- ...
- the lender must take a ~~first legal mortgage over~~ UK EEA property; and

- the property must be at least 40% occupied by the borrower or his immediate family as a dwelling.

The definition of a *regulated mortgage contract* means that many kinds of loan are caught by regulation, not just loans for house purchase. For example, it includes a significant amount of short-term ~~first charge~~ lending. ...

(v) **Second charge regulated mortgage contracts**

A second charge regulated mortgage contract is defined in the Handbook as a regulated mortgage contract which is not a first charge legal mortgage. Therefore, it includes second and subsequent charge mortgages.

Data which is provided in relation to a second charge regulated mortgage contract in A3(a), D (a), E(1)(a), E(2)(a), F(a), or H(a) in SUP 16 Annex 19AAR will also need to be provided as part of the data items in A3, D, E, F or H, as the case may be, in SUP 16 Annex 19AR.

The guidance on how to submit the data items in A3, D, E, F or H of SUP 16 Annex 19AR applies to A3(a), D(a), E(1)(a), E(2)(a), F(a) or H(a) of SUP 16 Annex 19AAR where the same terms are used in the corresponding parts of SUP 16 Annex 19AAR.

...

**8. Loans made before 31 October 2004**

This section does not apply to second charge regulated mortgage contracts.

(i) **Classifying the ‘back book’**

...

(ii) **Specific treatment of residential loans to individuals**

Any loans made before 31 October 2004, that otherwise satisfy the specific requirements of a *regulated mortgage contract*, should be reported as **non-regulated loans** in the various parts of the *MLAR* (~~since only those loans advanced after this date are required to be treated as a regulated mortgage contract for the purposes of MLAR reporting~~).

...

**Section E: Residential Loans to individuals: New business profile**

...

**E1/2 By Income Multiple and LTV (Loan to Valuation ratio)**

The amount to be included in the table is the **gross advance**, but its allocation to a specific cell is determined according to income multiple and LTV which are both

defined using the size of the loan (as defined below)

For second charge regulated mortgage contracts, the calculation of income multiples and LTVs are to also include the outstanding balance of the first charge regulated mortgage contract and any higher priority second charge regulated mortgage contracts.

...

## 16 Annex 21R Reporting Fields

...

### 2 SPECIFIC REPORTING FIELDS

...

#### (c) Mortgages

**The following data reporting fields must be completed, where applicable for all relevant regulated mortgage contracts, except any second charge regulated mortgage contract that is entered into before 1 April 2017:**

...

Data reporting field	Code (where applicable)	Notes
<b>Sales Data (report for all regulated mortgage contracts)</b>		
...		
Type of mortgage	... SE = secured overdraft <u>SC = second charge regulated mortgage contract</u> ...	...
Mortgage characteristics	... OS = offset positive and/or negative balances <u>EL = a second charge regulated</u>	...



	<u>mortgage contract that is a shared equity credit agreement</u> ...	
...		
Type of borrower	...	... Report 'O' for <u>lifetime mortgages, and bridging loans and second charge regulated mortgage contracts that are not for remortgage purposes.</u>
...		
The purpose of a <u>second charge regulated mortgage contract</u> or extra money withdrawn for remortgages	H = home improvements D = debt consolidation O = other	Use codes to indicate the purpose(s) of the <u>second charge regulated mortgage contract</u> or the extra money withdrawn for <u>first or second charge remortgages.</u>  <u>Report all that apply.</u>
...		
<b>Affordability data</b>		
...		
...		
Were the <i>MCOB</i> 11.7 transitional arrangements used?	...	Report where the transitional arrangements were used when entering into the mortgage as set out in <i>MCOB</i> 11.7.  <u>Second charge regulated mortgage contracts must be reported as 'N'.</u>
...		
<b>Data reporting field</b>	<b>Code (where applicable)</b>	<b>Notes</b>
<b>Performance Data (report for all <i>regulated mortgage contracts</i>)</b>		
...		

Sales value achieved (for repossessions)	...	...
Is the transaction a second charge mortgage?	Yes No	Report 'Yes' only where the mortgage is a <i>second charge regulated mortgage contract</i> and 'No' where the mortgage is a <i>first charge regulated mortgage contract</i> .  If the <i>firm</i> does not have second charge mortgages to report, the <i>firm</i> does not need to report against this field.

...

## TP1 Transitional Provisions

...

### TP1.10 Mortgage activities

<b><u>(1)</u></b>	<b><u>(2) Material to which the transitional provision applies</u></b>	<b><u>(3)</u></b>	<b><u>(4) Transitional provision</u></b>	<b><u>(5) Transitional provision: dates in force</u></b>	<b><u>(6) Handbook provision: coming into force</u></b>
<u>1</u>	<u>SUP 16.11.5R(3), SUP 16.11.5AR and SUP 16 Annex 21R, section 2 (c) (sales data report and performance data report for mortgages)</u>	<u>R</u>	<u>When reporting sales data and performance data on <i>regulated mortgage contracts</i>, a <i>firm</i> should not include sales data and performance data on <i>second charge regulated mortgage contracts</i>.</u>	<u>21 March 2016 to 31 March 2017</u>	<u>21 March 2016</u>

...

## Annex F

## Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

## 14 Participation by EEA Firms

### 14.1 Application and Purpose

...

- 14.1.2 R This chapter also applies to an *incoming EEA firm* which is a *credit institution*, or an *MiFID investment firm* (or both), an *IMD insurance intermediary*, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*

Purpose

- 14.1.3 G This chapter provides supplementary rules and guidance for an *incoming EEA firm* which is a *credit institution*, an *IMD insurance intermediary*, an *MiFID investment firm*, *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*....

- 14.1.4 G (1) An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, an *MCD mortgage credit intermediary* or an *MiFID investment firm* is not a participant firm in relation to its passported activities unless it "tops-up" into the compensation scheme ...

...

...

### 14.2 Obtaining top-up cover

...

- 14.2.3 G A notice under *COMP* 14.2.1R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

- (1) the *firm* must be:

...

- (g) an *MCD mortgage credit intermediary*

...

## TP 1 Transitional Provisions

### 1.1 Transitional Provisions Table

(1)	(2) Material to which the transitional applies	(3)	(4) Transitional Provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
35	<u>All the rules and guidance in COMP applicable to protected home finance mediation.</u>	R	<p><u>The compensation scheme does not provide cover for claims in respect of any mortgage mediation activity relating to a second charge regulated mortgage contract if:</u></p> <p><u>(1) the relevant person was in default before 21 March 2016; or</u></p> <p><u>(2) the basis for the claim arose before 21 March 2016.</u></p>	From 21 March 2016 indefinitely	<u>Not applicable</u>

**Annex G****Amendments to the Professional Firms (PROF)**

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

- 5.3.8 G *MCOB* 1.2.10R provides that *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for ~~*MCOB 2.2 (Clear, fair and not misleading communication)*~~ and *MCOB 3A (Financial promotions and communications with customers)*.

...

## Annex H

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

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

#### 2.5 Investments and activities: general

...

Modification of certain exclusions as a result of MiFID, ~~and~~ the Insurance Mediation Directives and the Mortgage Credit Directive

- 2.5.3 G The application of certain of the exclusions considered in *PERG 2.8* (Exclusions applicable to certain regulated activities) and *PERG 2.9* (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who are subject to ~~MiFID or the Insurance Mediation Directive~~ MiFID, the Insurance Mediation Directive and the MCD. The reasons for this and the consequences of it are explained in *PERG 2.5.4G* ~~as respects for MiFID, and PERG 5 (Insurance mediation activities), as respects for the Insurance Mediation Directive and PERG 4.10A for the MCD.~~

...

#### 2.6 Specified investments: a broad outline

...

Rights under a regulated mortgage contract

- 2.6.27 G In accordance with article 61(3)(a) of the *Regulated Activities Order*, a *regulated mortgage contract* is a contract which, at the time it is entered into, satisfies the following conditions:

...

- (2) the obligation of the borrower to repay is secured by a first legal charge mortgage on land ~~(other than timeshare accommodation) in the United Kingdom~~ in the EEA; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling ~~by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related person.~~

Detailed guidance on this is set out in *PERG 4.4* (Guidance on regulated activities connected with mortgages). However, generally, the definition of

regulated mortgage contract does not include certain loans to commercial borrowers, second charge loans by a credit union and second charge bridging loans (see *PERG 4.4.1-AG*).

...

## 2.7 Activities: a broad outline

...

2.7.7A G ...

- (3) *arranging (bringing about) regulated mortgage contracts*, which includes arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into by him as borrower after 31 October 2004 (article 25A(1) and (2A));

...

2.7.16E ...

Advising on regulated credit agreements for the acquisition of land

2.7.16F G Under article 53DA of the *Regulated Activities Order*, advising a person (“P”) is a *regulated activity* if:

- (1) the advice is given to P in P’s capacity as a recipient of credit, or potential recipient of credit, under a *regulated credit agreement*;
- (2) P intends to use the credit to acquire or retain property rights in *land* or in an existing or projected building; and
- (3) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to *regulated credit agreements*.

...

2.7.19FA G The exclusion referred to in *PERG 2.7.19FG* will not be available to a *firm* that is an *MCD firm* (see *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*).

...

2.7.19GA G The exclusion referred to in *PERG 2.7.19GG* will not be available to a *firm* that is an *MCD firm* (see *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*).

...

- 2.7.19J G ...
- (2) the agreement is either: ~~either secured on land or for credit which exceeds £60,260;~~
- (a) secured on land; or
- (b) for credit which exceeds £60,260 and
- (i) for a purpose other than the renovation of residential property; or
- (ii) to acquire or retain property rights in land or in an existing or projected building

2.7.19JA G The exclusion referred to in PERG 2.7.19JG will not be available to a firm that is an MCD firm (see PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

...

## 2.8 Exclusions applicable to particular regulated activities

...

- 2.8.6 G ...
- (1) those relating to arranging a particular transaction or a contract, agreement or plan variation (articles 25(1), 25A(1), 25A(2A) 25B(1), 25C(1) , and 25E(1) of the *Regulated Activities Order*); and

...

...

2.8.6BA G The exclusion referred to in PERG 2.8.6AG(4) will not be available to persons who, when carrying on an arranging activity, are MCD firms (see PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

...

- 2.8.12 G ...
- (4) *advising on a home purchase plan; and*
- (5) *advising on a regulated sale and rent back agreement; and*
- (6) *advising on regulated credit agreements for the acquisition of land.*



...

2.8.12A G Advice given by an *unauthorised person* in relation to a *home finance transaction* or advising on regulated credit agreements for the acquisition of land in the circumstances referred to in *PERG 2.8.6AG(5)(a)* or (b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:

- (1) the following exclusions apply in specified circumstances where a *person* is advising on investments, advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction:

...

## 2.9 Regulated activities: exclusions applicable in certain circumstances

...

2.9.3 G ...

- (7) advising on investments ~~or~~ advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction.

...

The exclusion is, however, disapplied where a *person* is carrying on insurance mediation ~~or reinsurance mediation~~, reinsurance mediation or the person would be an MCD firm. This is due to article 4(4A) and 4(4B) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to insurance mediation activities is in *PERG 5 (Insurance mediation activities)* and guidance on activities and exclusions relevant to the MCD is in *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*.

...

2.9.5 G ...

- (5) advising on investments ~~or~~ advising on regulated credit agreements for the acquisition of land or advising on a home finance transaction.

...

... The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services

and activities)).

The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MCD firms* (see *PERG 4.10A (Activities regulated under the Mortgage Credit Directive)*).

...

2.9.23 G ...

(20A) *advising on regulated credit agreements for the acquisition of land;*

...

2.9.24 G (1) Subject to (2), ~~(3)~~ and ~~(3)~~ (4), the exclusions apply, in relation to any activity carried on by a *local authority*.

...

(3) The exclusion relating to *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* applies only in so far these activities are not carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building and relate to credit agreements of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive. In summary, these include *credit agreements*:

(a) ~~which are secured by a legal or equitable mortgage on land;~~

(b) ~~the purpose of which is to acquire or retain property rights in land or in an existing or prospective building;~~

...

(4) The exclusion relating to *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* for activities that are carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building apply to *local authorities* and (in some cases) their subsidiaries only when the relevant *credit agreement*:

(a) is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive, and

(b) meets one of the following conditions:

(i) it is an agreement listed in *PERG 4.10A.5G*;

- (ii) it is a *bridging loan* described in *PERG* 4.13.6G;  
or
- (iii) it is a *restricted public loan* described in *PERG* 4.13.7G.

...

2 Annex 2 G

...

2 Table

...	
<b>Regulated home finance activity</b>	
(v) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25A(1) and (2A))	<i>regulated mortgage contract</i> (article 88), <u>except for (xa), see note 11 to table 1</u>
...	
(x) <i>advising on regulated mortgage contracts</i> (article 53A)	
<u>(xa) <i>advising on regulated credit agreements for the acquisition of land</i> (article 53DA)</u>	
...	
...	

3Table

...
<b>Note 11:</b> <u>The specified investment in relation to which the regulated activity of <i>advising on regulated credit agreements for the acquisition of land</i> (article 53DA) may be carried on, is a <i>regulated credit agreement</i> which meets the description in <i>PERG</i> 2.7.16FG.</u>

...

**4 Guidance on regulated activities connected with mortgages**

...

4.2.3 G ...

(5) ...

(5A) if so, is the exclusion on which I am relying disapplied because the business is subject to the *Mortgage Credit Directive* (see *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive)?)

...

...

- 4.3.1 G ...
- (1) *arranging (bringing about) regulated mortgage contracts* (article 25A(1) and (2A) (Arranging regulated mortgage contracts));

...

- 4.3.5 G Summary of which variant of the business test applies to the different regulated mortgage activities. This table belongs to *PERG* 4.3.4G.

By way of business	Carrying on the business
...	<i>Arranging (bringing about) regulated mortgage contracts</i> (article 25A(1)) <u>and</u> <i>arranging (bringing about) mortgage contracts behalf of a lender</i> (article 25A(2A))
...	

...

- 4.4.1 G ...
- (1) ...
- (2) the contract provides for the obligation of the borrower to repay to be secured by a ~~first legal mortgage on land (other than timeshare accommodation)~~ in the ~~United Kingdom~~ EEA; and
- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling ~~by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related person.~~

~~PERG 4.4.2G to PERG 4.4.9G set~~ This section sets out the FCA's understanding of some key concepts contained in article 61(3)(a) ...

- 4.4.1-A G A contract is not a regulated mortgage contract if it is:
- (1) a loan to a commercial borrower excluded under PERG 4.4.17G or PERG 4.4.21G; or
- (2) a second charge loan by a credit union excluded under PERG 4.4.24G; or

- (3) a second charge bridging loan excluded under PERG 4.4.27G.

Provision of credit

- 4.4.1A G ...
- (2) In the *FCA's* view, an obligation to repay implies the existence, or the potential for the existence, of a debt owed by the individual to whom the financial accommodation is provided (the 'borrower') to the person who provides it (the 'lender'). Consequently, for any facility under which any form of financial accommodation is being provided, the test is whether it allows for the possibility that the person providing the financial accommodation may be placed in a position where he becomes a creditor of the individual to whom he is providing it. ~~An example of this would be the issue of a guarantee by a bank to a third party for an individual customer (such as a rent guarantee or a performance bond) where the guarantee is secured on a first legal charge over the customer's residential property. In the *FCA's* view, this would amount to a regulated mortgage contract as the customer would owe a debt to the bank in the event that the bank had to pay the third party under the guarantee.~~
- ...
- 4.4.2 G ...
- 4.4.2A G (1) A loan to a trustee is caught, even if the trustee or the beneficiary is not an individual.
- (2) Therefore, it is possible that a loan to a trustee acting for a large commercial company is a regulated mortgage contract.
- (3) In practice, the exclusions for loans to commercial borrowers (in particular, see PERG 4.4.17G and PERG 4.4.21G) are likely to prevent such loans from being regulated mortgage contracts.
- (4) If:
- (a) the loan is made to a trustee;
- (b) the trustee is a bare trustee or nominee; and
- (c) the beneficiary of the trust is acting for commercial purposes;
- it is likely that the trustee will also be acting for commercial purposes.
- 4.4.2B G A loan to a partnership may be a loan to an individual if the partnership is made up of real people (that is natural, as opposed to legal, persons).

...

Land in the ~~United Kingdom~~ EEA

- 4.4.5 G The condition set out in *PERG* 4.4.1G(2) means that a *regulated mortgage contract* must be secured on land in the ~~United Kingdom~~ EEA ...

Occupancy requirement

- 4.4.6 G The condition set out in *PERG* 4.4.1G(3) means that loans secured on property which is entirely used for business purposes (such as an office block) cannot fall within the definition. However, loans secured on 'mixed use' property could be covered, provided that the ~~borrower (or trust beneficiary, where the borrowers are trustees) or a 'related person'~~ occupier uses at least 40% of the total of the land as or in connection with a dwelling. Loans secured on a six-floor property, half of which was occupied by ~~the borrower~~ a family as their home and half let out for business purposes would therefore satisfy the definition. (Article 61(4)(b) makes it clear that 'land', in the context of a multi-storey building, means the aggregate of the floor area of each of the storeys.)

- 4.4.6A G The most obvious example of a *regulated mortgage contract* is a loan made to an individual to enable the individual to buy a home for themselves where the loan is secured on that home. However, there is no requirement that the borrower should occupy the property. There is a requirement that at least 40% of the land should be used as a house, but no requirement that it is the borrower who uses it as a house. So, for example:

- (1) a loan may be a *regulated mortgage contract* if the property on which it is secured is to be occupied by the borrower's relatives as their home; or
- (2) a loan may be a *regulated mortgage contract* if the borrower does not occupy the property on which the loan is secured and instead intends to sell the property to a third party, with the mortgage remaining on the house until then.
- (3) However, if the borrower is acting on a commercial basis, the loan in (2) may be excluded as a loan to a commercial borrower under the exclusions in *PERG* 4.4.17G or *PERG* 4.4.21G.

...

- 4.4.8 G ~~The requirement that at least 40% of the land area be used as or in connection with a dwelling means that 'buy to let' loans secured on the property to be let will usually be excluded. However, such loans will not be excluded if:~~
- ~~(1) the lessee is a 'related person' to the borrower. This will be the case even if the borrower subsequently takes possession of the property, as the conditions set out in *PERG* 4.4.1G(1) to *PERG*~~

~~4.4.1G(3) were not satisfied at the outset of the contract (see PERG 4.4.3G); or~~

- (2) ~~at the time the contract is entered into, the borrower has a real intention to use the land as, or in connection with, a dwelling (for example a member of the British Forces Posted Overseas who buys a property in the *United Kingdom* intending to live there on his return but which he lets out in the meantime). [deleted]~~

- 4.4.9 G ~~'Related person' is defined in article 61(4)(c) of the *Regulated Activities Order* as meaning the borrower's spouse, civil partner, parents, grandparents, siblings, children and grandchildren. An unmarried partner of the borrower whose relationship with the borrower has the characteristics of the relationship between a husband and wife is also included; this can include a *person* of the same sex as the borrower. Stepchildren, however, would seem to be excluded. [deleted]~~

...

- 4.4.11 G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a *bridging loan* (although *bridging loans* described in PERG 4.4.27G are not *regulated mortgage contracts*), a secured credit card facility and *regulated lifetime mortgage contracts* under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.

- 4.4.12 G ~~A number of products, however, are excluded from the definition, such as: Loans secured on commercial premises are not *regulated mortgage contracts* as the property will not be used as or in connection with a dwelling.~~

- (1) ~~loans secured by a second or subsequent charge (as the lender does not have a first charge); and~~
- (2) ~~loans secured on commercial premises (as the borrower will not be using the land as or in connection with a dwelling).~~
- (3) ~~[deleted]~~

#### ~~Regulated mortgage contracts and contract variations~~

- 4.4.13 G ~~The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:~~
- (1) ~~a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in PERG 4.4.1 G(1) to PERG 4.4.1G(3), will not be a *regulated mortgage contract* (because it was not a~~

~~regulated mortgage contract at the time it was entered into);~~

- (2) ~~a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a regulated mortgage contract (provided, of course, that it meets the definition in the Regulated Activities Order); and~~
- (3) ~~a regulated mortgage contract that was originally entered into on or after 31 October 2004, and which is subsequently varied by, for example, making a further advance, will remain a regulated mortgage contract. [deleted]~~

- 4.4.14 G ~~It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and therefore not be a regulated mortgage contract) and a second contract entered into on or after 31 October 2004 (and be a regulated mortgage contract). [deleted]~~

#### Type of security

- 4.4.15 G A loan may be a regulated mortgage contract whether it is secured by a first, second or subsequent mortgage.

- 4.4.16 G A mortgage has a wide meaning for the purpose of the definition of a regulated mortgage contract. It includes:

- (1) a legal mortgage;
- (2) equitable security;
- (3) (in Scotland) a heritable security; and
- (4) security commonly used in another EEA State for loans secured on residential property.

#### Exclusions for lending to commercial borrowers

- 4.4.17 G A contract is excluded from the definition of regulated mortgage contract if, at the time it is entered into, it meets the following conditions:

- (1) it meets the conditions in PERG 4.4.1G(1) to (3); and
- (2) less than 40% of the land secured by the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower or (for credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person; and
- (3) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.



- 4.4.18      G      The *Regulated Activities Order* refers to this as an “investment property loan”.
- 4.4.19      G      Under the *Regulated Activities Order* ‘related person’ means, in relation to the borrower or (for credit provided to trustees) a beneficiary of the trust:
- (1)      that *person’s* spouse or civil partner;
  - (2)      a *person* (whether or not of the opposite sex) whose relationship with that *person* has the characteristics of the relationship between husband and wife; or
  - (3)      that *person’s* parent, brother, sister, child, grandparent or grandchild.
- 4.4.20      G      (1)      If less than 40% of the land secured by the mortgage is used, or intended to be used, as or in connection with a dwelling then the exclusion for loans to commercial borrowers described in *PERG* 4.4.17G is irrelevant, as the loan falls outside *PERG* 4.4.1G and so cannot be a *regulated mortgage contract*.
- (2)      The exclusion becomes relevant (if all the conditions in *PERG* 4.4.17G are met) if at least 40% of the land secured by the mortgage is used, or intended to be used, as or in connection with a dwelling by:
- (a)      someone other than the borrower; or
  - (b)      the borrower and someone else, if the percentage used by the borrower as residential property is less than 40%.
- (3)      Therefore, the exclusion would, for example, cover a loan secured on residential property where a commercial borrower is not going to occupy any of the property but is going to sell it to a third party.
- 4.4.21      G      There is also an exclusion for loans to commercial borrowers secured by a second or subsequent security. A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:
- (1)      it meets the conditions in *PERG* 4.4.1G(1) to (3); and
  - (2)      the lender provides the borrower with credit exceeding £25,000; and
  - (3)      the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
  - (4)      the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or

intended to be carried on, by the borrower.

- 4.4.22 G The Regulated Activities Order refers to this as a “second charge business loan”.
- 4.4.23 G (1) There is no exclusion from the £25,000 floor in PERG 4.4.21G(2) for an item entering into the total charge for credit.
- (2) Giving time for payment of interest if the borrower gets into difficulty, does not affect the calculation of the sum as the definition relates to the time at which the contract is entered into.
- (3) However, for example, if the credit includes a broker fee, that fee may be excluded in the calculation of the floor.

#### Exclusion for lending by credit unions

- 4.4.24 G A contract is excluded from the definition of regulated mortgage contract if, at the time it is entered into, it meets the following conditions:
- (1) it meets the conditions in PERG 4.4.1G(1) to (3); and
- (2) the lender is a credit union; and
- (3) it is a borrower-lender agreement; and
- (4) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (5) the rate of the total charge for credit does not exceed 42.6 per cent.
- 4.4.25 G The Regulated Activities Order refers to this as a “limited interest second charge credit union loan”.
- 4.4.26 G The exclusion in PERG 4.4.24G only applies if the loan meets the following conditions:
- (1) the borrower receives timely information on the main features, risks and costs of the contract at the pre-contractual stage; and
- (2) any advertising of the contract is fair, clear and not misleading.

#### Exclusion for second charge bridging loans

- 4.4.27 G A contract is excluded from the definition of regulated mortgage contract if, at the time it is entered into, it meets the following conditions:
- (1) it meets the conditions in PERG 4.4.1G(1) to (3); and
- (2) it is a borrower-lender-supplier agreement financing the purchase of land; and

- (3) it is used by the borrower as a temporary financing solution while changing to another financial arrangement for the land secured by the mortgage; and
- (4) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (5) the number of payments to be made by the borrower under the contract is not more than four.

4.4.28 G The *Regulated Activities Order* refers to this as a “limited payment second charge bridging loan”.

Certificate that borrower is not a consumer

4.4.29 G The two exclusions for loans to commercial borrowers (*PERG* 4.4.17G and *PERG* 4.4.21G) depend on the borrower not being a consumer. For these purposes, if an agreement includes a declaration which:

- (1) is made by the borrower; and
- (2) includes:
  - (a) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;
  - (b) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under the *Act* if the agreement were a *regulated mortgage contract* under the *Act*; and
  - (c) a statement that the borrower is aware that if the borrower is in any doubts as to the consequences of the agreement not being regulated by the *Act*, then the borrower should seek independent legal advice;

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in (2)(a).

4.4.30 G However, the presumption in *PERG* 4.4.29G does not apply if, when the agreement is entered into:

- (1) the lender (or, if there is more than one lender, any of the lenders); or
- (2) any *person* who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement;

knows, or has reasonable cause to suspect, that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

Insert the following new chapter, PERG 4.4A, after PERG 4.4. The text is not underlined.

#### **4.4A Transitional issues**

Regulated mortgage contracts entered into before 2004: variations

- 4.4A.1 G There are special provisions for mortgages entered into before 31 October 2004.
- 4.4A.2 G The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:
- (1) a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in:
    - (a) *PERG 4.4.1G(1) to PERG 4.4.1G(3)*; or
    - (b) the old versions of those paragraphs as referred to in *PERG 4.4A.5G*;

will not be a *regulated mortgage contract* (because it was not a *regulated mortgage contract* at the time it was entered into);
  - (2) a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a *regulated mortgage contract* (provided that it meets the definition in the *Regulated Activities Order*); and
  - (3) a *regulated mortgage contract* that was originally entered into on or after 31 October 2004 and which is subsequently varied by, for example, making a further advance, will remain a *regulated mortgage contract*.
- 4.4A.3 G It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and, therefore, not be a *regulated mortgage contract*) and a second contract entered into on or after 31 October 2004 (and be a *regulated mortgage contract*).

Regulated mortgage contracts entered into before 2016

- 4.4A.4 G In some cases (described in this section), the definition applicable to a contract that existed before 21 March 2016 is different from the one in *PERG 4.4* (What is a regulated mortgage contract?).
- 4.4A.5 G The definition in *PERG 4.4* applies to a contract which, immediately before 21 March 2016, met the following conditions:
- (1) it was a *regulated credit agreement* (under the definition existing at that time); and
  - (2) it provided for the obligation of the borrower to repay to be secured by a mortgage on land that ranked in priority behind one or more other mortgages affecting the land in question.
- 4.4A.6 G Except for the contracts mentioned in *PERG 4.4A.5G*, the definition applicable to pre-2016 contracts is the version in force on 20 March 2016.
- 4.4A.7 G The old definition referred to in *PERG 4.4A.6G* can be found in historical versions of *PERG*, which can be found on the *FCA*'s website along with the current version.
- 4.4A.8 G In summary, the old definition of a *regulated mortgage contract* was a contract that, at the time it was entered into, met the following conditions:
- (1) the contract was one under which a person ("the lender") provided credit to an individual or to trustees ("the borrower");
  - (2) the contract provided for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*;
  - (3) at least 40% of that land was used, or was intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who was a beneficiary of the trust, or by a *related person*.
- 4.4A.9 G As is still the case, the old definition excluded *regulated home purchase plans*.
- 4.4A.10 G In practice, there may not be many contracts entered into prior to 21 March 2016 that are not *regulated mortgage contracts* but which would be *regulated mortgage contracts* if they had been entered into after 21 March 2016. Examples include:
- (1) a loan secured by a first-ranking mortgage on land elsewhere in the *EEA*;
  - (2) a loan secured by first-ranking equitable security;
  - (3) a loan that was not a *regulated credit agreement* and is secured by second-ranking security.

## 4.5 Arranging regulated mortgage contracts

Definition of the regulated activities involving arranging

- 4.5.1 G ...
- (1) making arrangements ~~for another person to:~~
- (a) for another person to enter into a regulated mortgage contract as borrower; or
- (b) ~~vary the terms of a regulated mortgage contract entered into by him as borrower on or after 31 October 2004 in such a way as to vary his obligations under the contract; and to enter into a regulated mortgage contract with a borrower on behalf of a lender; or~~
- (c) for another person to vary the terms of a regulated mortgage contract entered into by him as borrower on or after 31 October 2004 in such a way as to vary his obligations under the contract; and
- (2) ...
- 4.5.2 G The first activity (article 25A(1) and (2A)) is referred to in this *guidance* as *arranging (bringing about) regulated mortgage contracts*. Various points arise:
- ...
- (2) This activity is carried on only if the arrangements bring about, or would bring about a *regulated mortgage contract*. This is because of the exclusion in article 26 (see *PERG* 4.5.4G). As explained in *PERG* 4.5.4AG, this exclusion does not apply to the activity in *PERG* 4.5.1G(1)(b).
- ...
- 4.5.3 G The second activity (article 25A(2)) is referred to in this *guidance* as making *arrangements with a view to regulated mortgage contracts*. This activity is different from article 25A(1) and (2A) because ....
- Exclusion: article 25A(1) arrangements not causing a deal
- 4.5.4 G ...
- 4.5.4A G (1) Article 26 does not apply to the activity described in *PERG* 4.5.1G(1)(b).

- (2) As the activity in PERG 4.5.1G(1)(b) covers a person that concludes a regulated mortgage contract with a borrower on behalf of a lender, in many cases the activity will only apply if the arrangements bring about, or would bring about, a regulated mortgage contract. Therefore, in many cases the fact that article 26 does not apply will make no difference.
- (3) However, if a person enters into a regulated mortgage contract on behalf of a lender, that person carries out the regulated activity described in PERG 4.5.1G(1)(b). That activity is not excluded just because most of the work is done by another.

...

4.5.7 G

4.5.7A G Article 28A does not apply to the activity described in PERG 4.5.1G(1)(b). This is because the activity described in PERG 4.5.1G(1)(b) is defined so that it cannot apply to an activity carried out by the lender. There is, therefore, no need to apply article 28A.

Exclusion: article 25A(1) and (2) arrangements with or through authorised persons

4.5.8 G An *unauthorised person* who makes arrangements for, or with a view to, a *regulated mortgage contract* between a borrower and an *authorised person*, is excluded from article 25A(1) and (2), 25A(2A) and by article 29 of the *Regulated Activities Order* (Arranging deals with or through authorised persons) if specified conditions as to advice and remuneration are satisfied. ...

4.5.8A G Article 29 does not apply if applying the exclusion would take activities outside article 25A that should be regulated under the MCD. Please see PERG 4.10A (Activities regulated under the Mortgage Credit Directive) for more details.

...

4.6.2 G ...

amounts to *entering into a new regulated mortgage contract* (see PERG 4.4.4G and ~~PERG 4.4.13G(2)~~). ...

...

4.7.2 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal

representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities* and their wholly-owned subsidiaries. ...

...

4.8.2 G ... The definition also does not include administration of a mortgage which was entered into before 31 October 2004. See, however, *PERG* 4.4.4G and ~~*PERG* 4.4.13G~~ for a discussion of ...

...

4.8.8 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities* and their wholly-owned subsidiaries. ...

...

#### **4.10 Exclusions applying to more than one regulated activity**

...

4.10.4 G ...

4.10.4A G (1) The exclusion in article 67 of the Regulated Activities Order (Activities carried on in the course of a profession or non-investment business) does not apply if applying the exclusion would take activities covered by the MCD outside the definition of certain regulated mortgage activities.

(2) Please see *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive) for more details.

...

4.10.8 ...

4.10.8A G (1) The exclusion in article 66 of the Regulated Activities Order (Trustees, nominees and personal representatives) does not apply if applying the exclusion would take activities covered by the MCD outside the definition of certain regulated mortgage activities.

(2) Please see *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive) for more details.



...

- 4.10.10 G There are exclusions that apply, in relation to each of the *regulated mortgage activities* if the *person* carrying on the activity is a *local authority* or a wholly owned subsidiary of a local authority. They can be found in article 72G of the *Regulated Activities Order*.

Insert new the following new chapter, PERG 4.10A, after PERG 4.10. The text is all new and is not underlined.

#### **4.10A Activities regulated under the Mortgage Credit Directive**

General treatment for activities regulated under the Mortgage Credit Directive

- 4.10A.1 G Article 4(4B) of the *Regulated Activities Order* says that certain exclusions in the *Regulated Activities Order* do not apply in cases covered by the *MCD*. This section explains the situations in which this applies.
- 4.10A.2 G Article 4(4B) of the *Regulated Activities Order* says that where:
- (1) a *person* is:
    - (a) a mortgage creditor (see *PERG* 4.10A.6G); or
    - (b) a credit intermediary (see *PERG* 4.10A.12G); or
    - (c) a *person* providing advisory services (see *PERG* 4.10A.20G);

under the *MCD*; and
  - (2) that *person* is (ignoring the exclusions in (3)) carrying on one of the following *regulated activities*:
    - (a) article 25A (*arranging (bringing about) regulated mortgage contracts and making arrangements with a view to regulated mortgage contracts*);
    - (b) article 53A (*advising on regulated mortgage contracts*); or
    - (c) article 61(1) (*entering into a regulated mortgage contract as lender*); and
  - (3) in acting as described in (1), that *person* is relying on one of the following exclusions to take it outside the *regulated activities* in (2):

- (a) article 29 (Arranging deals with or through authorised persons);
- (b) article 66 (Trustees, nominees and personal representatives); or
- (c) article 67 (Activities carried on in the course of a profession or non-investment business);

then the result is that:

- (4) the exclusions in (3) are switched off; and
- (5) that *person* is treated as carrying on the *regulated activity* in (2) in question.

The meaning of mortgage intermediary

- 4.10A.3 G The *Regulated Activities Order* refers to credit intermediaries (*PERG* 4.10A.2G(1)(b)) and providers of advisory services (*PERG* 4.10A.2G(1)(c)) as mortgage intermediaries.

What mortgages are covered by the Mortgage Credit Directive?: General

- 4.10A.4 G Article 4(4B) of the *Regulated Activities Order* only applies if the *regulated mortgage contract* is covered by the *MCD*. A *regulated mortgage contract* is covered if:
- (1) the lender is acting in the course of his trade, business or profession; and
  - (2) the borrower is an individual; and
  - (3) the borrower is acting for purposes which are outside their trade, business or profession; and
  - (4) the *regulated mortgage contract* does not come within one of the exclusions summarised in *PERG* 4.10A.5G.
- 4.10A.5 G (1) This paragraph lists the *regulated mortgage contracts* outside the *MCD*.
- (2) *MCD exempt lifetime mortgages* are excluded from the *Mortgage Credit Directive*. These are *regulated mortgage contracts* or *article 3(1)(b) credit agreements* where the creditor:
- (a) contributes a lump sum, periodic payments or other forms of credit disbursement;
  - (b) contributes the sums in (a) in return for a sum deriving from the future sale of a residential property or a right

relating to residential property; and

- (c) will not seek repayment of the capital until the occurrence of one or more *specified life events* of the consumer.

However, notwithstanding (c), the creditor may seek early repayment if the consumer breaches his contractual obligations and the breach allows the creditor to terminate the credit agreement.

Only *lifetime mortgages* that do not meet these conditions fall within the *Mortgage Credit Directive*. Normally, these will be mortgages where partial repayment of the capital is, or may become, due. These are known as *MCD lifetime mortgages*.

- (3) Agreements where:
- (a) the credit is granted by an employer to his employees;
  - (b) the employer does so as a secondary activity; and
  - (c) such a credit agreement is offered:
    - (i) free of interest; or
    - (ii) at an *APRC* lower than those prevailing on the market and not offered to the public generally;

are excluded from the *MCD*.

- (4) Agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit are excluded from the *MCD*.
- (5) An *MCD exempt overdraft loan* is excluded from the *MCD*.
- (6) Agreements which are the outcome of a settlement reached in court or before another statutory authority are excluded from the *MCD*.
- (7) An *MCD exempt bridging loan* is excluded from the *MCD*.
- (8) An *MCD exempt credit union loan* is excluded from the *MCD*.

What mortgages are covered by the Mortgage Credit Directive?: Borrower as consumer

What effect does article 4(4B) have on lenders?

- 4.10A.6 G To work out the effect of article 4(4B) of the *Regulated Activities Order* (see *PERG* 4.10A.2G) on the *regulated activity* of *entering into a regulated mortgage contract as lender*, it is necessary to look at what a

mortgage creditor means.

- 4.10A.7 G In relation to a *regulated mortgage contract*, mortgage creditor means a *person* who grants or promises to grant credit falling within the scope of the definition of a *regulated mortgage contract* in the course of its trade, business or profession.
- 4.10A.8 G Therefore, article 4(4B) means that the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) do not apply to *entering into a regulated mortgage contract as lender* unless:
- (1) the *regulated mortgage contract* falls outside the *MCD* (see *PERG* 4.10A.5G); or
  - (2) the lender is not acting in the course of his trade, business or profession.

The effect of article 4(4B) on arrangers: The basics

- 4.10A.9 G Article 4(4B) of the *Regulated Activities Order* (see *PERG* 4.10A.2G) does not affect the *regulated activity* of *making arrangements with a view to regulated mortgage contracts*. This is because, in the *FCA's* view, the activities covered by this *regulated activity* are not covered by the *MCD*.
- 4.10A.10 G Article 4(4B) of the *Regulated Activities Order* disapplies the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) for the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*, but only in relation to the credit intermediary activities described in *PERG* 4.10A.12G.
- 4.10A.11 G To work out the effect of article 4(4B) of the *Regulated Activities Order* on the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*, it is necessary to look at what a credit intermediary (as referred to in *PERG* 4.10A.2G(1)(b)) means.

The effect of article 4(4B) on arrangers: What does credit intermediary mean?:  
General

- 4.10A.12 G A credit intermediary means a *person* who:
- (1) is not acting as a creditor or notary; and
  - (2) is not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary; and
  - (3) carries out the following activities:
    - (a) presenting or offering *regulated mortgage contracts* to consumers;
    - (b) assisting consumers by undertaking preparatory work or other pre-contractual administration in respect of

*regulated mortgage contracts*, other than as referred to in (a); or

- (c) concluding *regulated mortgage contracts* with consumers on behalf of the creditor.
  - (4) carries out those activities in the course of his trade, business or profession, for remuneration;
- 4.10A.13 G The remuneration in *PERG* 4.10A.19G may take a pecuniary form or any other agreed form of financial consideration.
- 4.10A.14 G (1) A *person* who merely introduces or refers a consumer to a creditor or credit intermediary does not act as a credit intermediary.
- (2) An example of a *person* who merely introduces is someone who just indicates to a potential borrower:
- (a) the existence of a creditor or credit intermediary; or
  - (b) a type of product provided by a particular creditor or credit intermediary;

without further advertising or engaging in the presentation, offering, preparatory work or conclusion of the *regulated mortgage contract*.

The effect of article 4(4B) on arrangers: Conclusion about the effect on arranging (bringing about) regulated mortgage contracts

- 4.10A.15 G In the *FCA's* view, credit intermediation under the *MCD* covers the same activities as the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*, except that:
- (1) credit intermediation only applies if the intermediary acts for remuneration; and
  - (2) the *MCD* does not cover the *regulated mortgage contracts* listed in *PERG* 4.10A.5G; and
  - (3) the *MCD* only applies to services provided to consumers;
  - (4) if the intermediary only acts for the creditor, the *MCD* intermediation activity is narrower, as described in *PERG* 4.10A.17G.
- 4.10A.16 G Except as described in *PERG* 4.10A.15G, the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) do not apply to the *regulated activity* of *arranging (bringing about) regulated mortgage contracts*.

The effect of article 4(4B) on arrangers: Remuneration under the *MCD*

- 4.10A.17 G *PERG* 5.4 (The business test for insurance mediation) has *guidance* on the meaning of remuneration in the *Insurance Mediation Directive*. That *guidance* is also applicable to the meaning of remuneration for the purpose of *PERG* 4.10A.12G.
- 4.10A.18 G Article 4(4B) is not relevant to an intermediary that carries on its activities by way of business (see *PERG* 4.3.3G to *PERG* 4.3.9G) but does not act for remuneration. The *FCA* does not expect this distinction to apply in practice.

The effect of article 4(4B) on arrangers: Acting for the creditor

- 4.10A.19 G
- (1) The *MCD* applies to credit intermediation activities performed for the creditor, as well as for the borrower.
  - (2) However, the activities carried out for the creditor are defined differently from the ones carried out for the borrower. They seem to be narrower. The activities are limited to concluding *regulated mortgage contracts* with consumers on behalf of the creditor.
  - (3) Just assisting the creditor by undertaking preparatory work or other pre-contractual administration is not enough on its own.
  - (4) The activity covers actually entering into the *regulated mortgage contract* on behalf of the creditor.
  - (5) The activity also covers activities that result in the lender entering into the *regulated mortgage contracts* if the role of the creditor and any *person* acting for the creditor is minimal.
  - (6) When deciding whether the intermediary is acting for the creditor alone, the *FCA* will not just look at the contractual position. In particular, the *FCA* will also look at whether a separate intermediary is acting for the borrower.
  - (7) The *guidance* in *PERG* 4.5.4AG (*Guidance* on making arrangements to enter into a *regulated mortgage contract* with a borrower on behalf of a lender) applies here too.

The effect of article 4(4B) on advisers

- 4.10A.20 G To work out the effect of article 4(4B) of the *Regulated Activities Order* (see *PERG* 4.10A.2G) on the *regulated activity* of *advising on regulated mortgage contracts*, it is necessary to look at what advisory services as referred to in *PERG* 4.10A.2G(1)(c) means.
- 4.10A.21 G Advisory services mean the provision of personal recommendations to a consumer in respect of one or more transactions relating to *regulated mortgage contracts* covered by the *MCD*.
- 4.10A.22 G Where *advising on regulated mortgage contracts* falls within the *MCD*,

the *Regulated Activities Order* exclusions in *PERG* 4.10A.2G(3) do not apply to this activity. Advisers should note that:

- (1) if the adviser does not act for remuneration, the *MCD* does not apply;
- (2) the *MCD* does not cover the *regulated mortgage contracts* listed in *PERG* 4.10A.5G;
- (3) the *MCD* only applies to advisory services provided to consumers;
- (4) the *MCD* only applies to personal recommendations.

- 4.10A.23 G Giving personal recommendations is narrower than giving advice. The *guidance* on this point in relation to *MiFID* in Q18 to Q21 in *PERG* 13.3 (Investment Services and Activities) is relevant here.
- 4.10A.24 G A *firm* that does not give personal recommendations is not affected by article 4(4B).
- 4.10A.25 G A *firm* can provide advisory services even though it does not act as a credit intermediary.

The effect of article 4(4B) on professional firms

- 4.10A.26 G Article 4(4B) does not apply to advising or arranging activities if:
- (1) they are carried out on an incidental basis in the course of professional activity;
  - (2) that professional activity is regulated; and
  - (3) the rules governing that professional activity do not prohibit the carrying out, on an incidental basis, of credit intermediation activities.
- 4.10A.27 G Work carried out by a *professional firm* which may reasonably be regarded as a necessary part of legal conveyancing services provided by that *professional firm* can still take advantage of the exclusion in article 67 (Activities carried on in the course of a profession or non-investment business).
- 4.10A.28 G Article 4(4B) does not cut back the *Part XX exemption*.

Amend the following text as shown.

#### **4.11 Link between activities and the United Kingdom**

...

4.11.3 G A contract is only a *regulated mortgage contract* if the land is in the *United Kingdom EEA* (see *PERG 4.4.5G (Land in the United Kingdom EEA)*).

...

4.11.5 G ...  
 (1) Section 418(2) refers to a case where a *UK*-based person carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*. The only *Single Market Directive Directives* which is are relevant to mortgages is are the *CRD* and the *MCD*.

...

4.11.6 G ...  
 (3) ...  
 of the borrower (and each of them, if more than one) is an individual and is normally resident ~~overseas~~ outside the *United Kingdom*. In the case of arranging a variation of, or administration of, an existing *regulated mortgage contract*, each borrower must be an individual who was normally resident ~~overseas~~ outside the *United Kingdom* when he entered into the contract. ...

4.11.6A G The exclusion for overseas persons described in *PERG 4.11.6G* does not apply where the overseas person is a mortgage intermediary whose home Member State is the *United Kingdom*. A mortgage intermediary is defined in *PERG 4.10A.3G*.

...

4.11.9 G Simplified summary of the territorial scope of the regulated mortgage activities, to be read in conjunction with the rest of this section.

This table belongs to *PERG 4.11.8G*

		Individual borrower resident and located	
		in the <i>UK</i>	outside the <i>UK</i>
Service provider carrying on	in the <i>UK</i>	Yes	Yes



<i>regulated activity</i> from establishment:	outside the <i>UK</i>	Yes	No
Yes = <i>authorisation</i> or exemption required			
No = <i>authorisation</i> or exemption not required			

<u>Regulated activities other than advice</u>				
<u>Location of establishment of service provider:</u>	<u>Location of land:</u>	<u>Individual borrower resident and located:</u>		
<u>UK or non-UK person: Establishment in the UK</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
	<u>land in another EEA State</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
	<u>land in another EEA State (Note 1)</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Non-UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
	<u>land in another EEA State</u>	<u>No</u>	<u>No</u>	<u>No</u>
<u>Yes = authorisation or exemption required</u>				
<u>No = authorisation or exemption not required</u>				
<u>Note 1: If the service provider is a UK firm operating from an office in another EEA State in the exercise of rights under a Single Market Directive, the activities will be treated as taking place in the United Kingdom and the firm will need to make sure that its permission covers the regulated mortgage activities it is carrying out. See PERG 4.11.5G(1).</u>				

<u>The regulated activity of advice</u>				
<u>Location of establishment of service provider:</u>	<u>Location of land:</u>	<u>Individual borrower resident and located:</u>		
<u>UK or non-UK person: Establishment in the UK</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
	<u>land in another EEA State</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
<u>UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
	<u>land in another EEA State (Note 1)</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Non-UK person: Establishment in another EEA State or in a country outside the EEA</u>		<u>in the UK</u>	<u>in another EEA State</u>	<u>outside the EEA</u>
	<u>land in the UK</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
	<u>land in another EEA State</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>Yes = authorisation or exemption required</u>				
<u>No = authorisation or exemption not required</u>				
<u>Note 1: If the service provider is a UK firm operating from an office in another EEA State in the exercise of rights under a Single Market Directive, the activities will be treated as taking place in the United Kingdom and the firm will need to make sure that its permission covers the regulated mortgage activities it is carrying out. See PERG 4.11.5G(1).</u>				

...

4.11.12 G ...

4.11.12A G If the service provider is a UK firm exercising its rights under a Single Market Directive by providing services from another EEA State, section

418 of the Act means that the services are treated as being carried on in the United Kingdom. This factor is not covered further in the remainder of this section.

4.11.13 G When a *person* is *arranging (bringing about) regulated mortgage contracts* or *making arrangements with a view to regulated mortgage contracts* from overseas, the question of whether he will be carrying on *regulated activities* in the *United Kingdom* will depend on the relevant circumstances. In the *FCA's* view, factors to consider include:

(1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation only applies if the land is in the *United Kingdom EEA*;

...

4.11.14 G In the *FCA's* view:

(1) if the borrower is *normally resident* in the *United Kingdom* and the land is in the *United Kingdom*, the clear territorial limitation in the definition of *regulated mortgage contract* carries most weight in determining where regulation should apply; it is likely that the arranger will be carrying on *regulated activities* in the *United Kingdom*;

(2) if the borrower is *normally resident* overseas, the arrangements are excluded by the *overseas persons* exclusion if the lender is an *overseas person*.

...

4.11.17 G In the *FCA's* view, in circumstances other than those excluded by article 72(5D) of the *Regulated Activities Order*, the need for an overseas lender is likely to carry on the *regulated activity* of *entering into regulated mortgage contracts* in the *United Kingdom* to be *authorised* or to have an exemption will depend on the location of the land. This is because of:

(1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation applies only if the land is in the *United Kingdom EEA*;

(2) the general principle and practice that contracts relating to land are usually governed by the law of the place where the land is situated; and

(3) practical issues of conveyancing; a lender is likely to use the services of a ~~solicitor~~ lawyer or licensed conveyancer operating from the *United Kingdom* or the other *EEA State* in question, who enters into the *regulated mortgage contract* as agent for the lender in the *United Kingdom* or the other *EEA State* in question; and

...

...

4.11.19 G In the *FCA's* view, in circumstances other than those excluded by article 72(5E) of the *Regulated Activities Order*, the need for an overseas administrator is likely to carry on the regulated activity of administering a regulated mortgage contract in the United Kingdom to be authorised or to have an exemption will depend on the location of the land. This is because:

- (1) the territorial limitation in the definition of *regulated mortgage contract* means that regulation applies only if the land is in the *United Kingdom EEA*;
- (2) when administrators notify borrowers resident in the *United Kingdom or the other EEA State in question* of matters pursuant to a *regulated mortgage contract*, such notification is likely to be carried on in the *United Kingdom or the other EEA State in question*;
- (3) the steps involved in collecting or recovering payments will generally include giving notice to the borrower at his *UK* address in the United Kingdom or the other EEA State in question;
- (4) legal action to recover sums due under *regulated mortgage contracts* will in many cases require proceedings before courts in the *United Kingdom or the other EEA State in question*, either to enforce *regulated mortgage contracts* subject to the jurisdiction of these courts or to register and enforce judgements obtained elsewhere, in the case of contracts subject to non-UK jurisdictions; and

...

...

4.12.5 G ...

The mortgage register

4.12.6 G SUP 12.4.10AR to SUP 12.4.10CR explain some special requirements that apply to an appointed representative for an MCD mortgage lender or MCD mortgage credit intermediary. For example, it may be necessary for the appointed representative to be included in the Financial Services Register.

...

- 4.13.1 G Certain named *persons* are exempted by the *Exemption Order* from the need to obtain *authorisation*. The following bodies ~~are exempt~~ have exemptions (which are explained in more detail in this section) in relation to carrying on by them of ~~any of~~ the *regulated mortgage activities*:
- ...
- (4) ~~The Office of Tenants and Social Landlords (known as the Tenant Services Authority) (paragraph 48(2)(c) of the Schedule to the Exemption Order);~~
  - (5) Scottish Homes (paragraph 48(2)(d) of the Schedule to the *Exemption Order*); ~~and~~
  - (6) The Northern Ireland Housing Executive (paragraph 48(2)(e) of the Schedule to the Exemption Order);
  - (7) Communities Scotland (paragraph 48(2)(f) of the Schedule to the Exemption Order);
  - (8) a housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992 (paragraph 48(2)(g) of the Schedule to the Exemption Order); and
  - (9) a wholly-owned subsidiary of a registered social landlord within the meaning of Part I of the Housing Act 1996 (paragraph 48(3) of the Schedule to the Exemption Order).
- 4.13.2 G The bodies in PERG 4.13.1G are exempt in relation to the regulated activity of arranging the variation of a regulated mortgage contract (article 25A(1)(b) of the Regulated Activities Order).
- 4.13.3 G The bodies in PERG 4.13.1G are exempt in relation to the following regulated activities:
- (1) arranging (bringing about) regulated mortgage contracts (except in relation to variations) (article 25A(1)(a) and (2A));
  - (2) advising on regulated mortgage contracts (article 53A);
  - (3) entering into a regulated mortgage contract (article 61(1)); and
  - (4) administering a regulated mortgage contract (article 61(2)).
- 4.13.4 G The exemption in PERG 4.13.3G only applies in relation to a limited range of regulated mortgage contracts. These are set out in the table in PERG 4.13.5G.
- 4.13.5 G Exempted regulated mortgage contracts

<u>Type of regulated mortgage contract</u>	<u>Explanation</u>
<u>Exempted under article 3(2) of the Mortgage Credit Directive</u>	<u>See PERG 4.10A.5G(1) to (6)</u>
<u>Bridging loan</u>	<u>See PERG 4.13.6G</u>
<u>Restricted public loan</u>	<u>See PERG 4.13.7G</u>

4.13.6      G A bridging loan is exempt if it meets the following conditions:

- (1) it is:
  - (a) either of no fixed duration; or
  - (b) is due to be repaid within 12 months; and
- (2) the borrower is:
  - (a) an individual; and
  - (b) acting for purposes which are outside their trade, business or profession; and
- (3) the loan is used by the borrower as a temporary financing solution while transitioning to another financial arrangement for the land.

4.13.7      G A loan is exempted as a restricted public loan if it meets the following conditions:

- (1) it is granted to a restricted public under a statutory provision with a general interest purpose; and
- (2) it meets the condition in (a) or (b):
  - (a) it is:
    - (i) free of interest; or
    - (ii) at lower borrowing rates than those prevailing on the market; or
  - (b) it meets the condition in (i) and (ii):
    - (i) it is on other terms which are more favourable than those prevailing on the market; and
    - (ii) it is at borrowing rates not higher than those prevailing on the market; and

(3) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and

(4) any advertising of the loan is fair, clear and not misleading.

...

4.14.2 G ...

4.14.2A G PERG 4.10A (Activities regulated under the Mortgage Credit Directive) explains that some of these exclusions do not apply to activities which fall under the MCD.

...

4.16.1 G It is common practice in the mortgage industry for the original lender which makes the loan to pass on ownership of the loan to a third party through *securitisation*. *Securitisation* transactions take different forms, but the essence is that the original lender sells the beneficial interest (with or without the legal interest) in a mortgage portfolio to a special purpose vehicle ('SPV'), which raises finance to pay for the portfolio by selling its own *securities*. The original lender may (or may not) retain the ~~first~~ legal charge on each mortgage in the portfolio. ...

...

4.16.3 G ... a new *regulated mortgage contract* (see *PERG 4.4.4G* and ~~*PERG 4.4.13 G*~~) ...

...

#### **4.17 Interaction with the Consumer Credit Act and consumer credit regulated activities**

...

4.17.2 G Section 126(2) of the CCA (as inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014) provides, however, that for the purposes of section 126(1) of the CCA (a land mortgage securing a regulated credit agreement is enforceable (so far as provided in relation to the agreement) on an order of the court only) and Part 9 of the CCA (judicial control) a regulated mortgage contract which would, but for the exemption in *PERG 2.7.19CG(1)*, be a regulated credit agreement is to be treated as if it were a regulated credit agreement. This is subject to section 140A(5) of the CCA (unfair relationships between creditors and debtors), which provides that an order under section 140B of

the CCA (powers of court in relation to unfair relationships) shall not be made in connection with a credit agreement which is an exempt agreement under *PERG 2.7.19CG*. It therefore follows that, for example, the CCA provisions relating to time orders apply to regulated mortgage contracts.

- 4.17.3 G ... a new *regulated mortgage contract* (see *PERG 4.4.4G* and ~~*PERG 4.4.13G*~~).
- 4.17.4 G Unsecured loans, ~~as well as loans secured on second and subsequent charges on property,~~ are not subject to carve-out described above and may be *regulated credit agreements* for the purposes of the CCA and the *credit-related regulated activities* for which a *person* may need *permission*.

...

- 4.17.16 G ...

Consumer credit regulated activities

- 4.17.17 G Whether a business decides that this chapter does or does not apply to its mortgage activities, it should go on to consider whether the activities are consumer credit regulated activities. *PERG 2* has guidance on consumer credit regulated activities.

- 4.17.18 G A number of *Regulated Activities Order* exclusions from the consumer credit regulated activities are relevant to lenders under loans secured on land. These include:

- (1) article 60C(2) (*regulated mortgage contract is an exempt credit agreement*, as summarised in *PERG 2.7.19CG(1)*);
- (2) article 60C(3) (commercial lending, as summarised in *PERG 2.7.19CG(2)*);
- (3) article 60D (loans secured on non-residential property, as summarised in *PERG 2.7.19EG*);
- (4) article 60F (loans with a limited number of repayments, as summarised in *PERG 2.7.19GG*);
- (5) article 60H (high net worth borrowers, as summarised in *PERG 2.7.19JG*); and
- (6) articles 36E and 39H (exclusions for lenders in relation to *credit broking, debt adjusting, debt counselling, debt collecting and debt administration*, as summarised in *PERG 2.8.6CG* and *PERG 2.8.7CG*).

...



7.1.1 G This chapter applies to anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about *securities, relevant investments* or *home finance transactions* and who wishes to determine whether he will be carrying on the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*.

7.1.2 G ...

(1) when a *person* involved in publishing periodicals, or in providing news services or broadcasts, requires *authorisation* to carry on the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* (see *PERG 7.3* (Does the activity require authorisation));

...

7.2.1 G Advice is excluded by article 54 of the *Regulated Activities Order* from the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* and *advising on a home finance transaction* if:

...

7.2.2 G If a *person* would, but for the exclusion, be carrying on the *regulated activities* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*, or any or each of them, and will be doing so as a business in the *United Kingdom* (see *PERG 7.3*), he may wish to apply to the *FCA* for a certificate that the exclusion applies (see *PERG 7.6*). However, a *person* does not need a certificate to get the benefit of the exclusion. In many cases it will be clear that the exclusion in article 54 applies and a certificate is not called for. A certificate may be appropriate, however, where the exclusion appears to apply but there may be an element of doubt. The granting of a certificate would remove any such doubt.

...

### 7.3 Does that activity require authorisation?

...

7.3.1DA G Under article 53DA of the *Regulated Activities Order* (Advising on regulated credit agreements for the acquisition of land), advising a *person* (“P”) is a specified kind of activity if:

- (1) the advice is given to P in P's capacity as a recipient of credit, or potential recipient of credit, under a regulated credit agreement;
- (2) P intends to use the credit to acquire or retain property rights in land or in an existing or projected building; and
- (3) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to regulated credit agreements.

7.3.2 G Articles 53, 53A, 53B, 53C ~~and 53D~~, 53D and 53DA of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG* 8 (Financial promotion and related activities), *PERG* 4 (Guidance on regulated activities connected with mortgages), *PERG* 14.3, *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion, home purchase and regulated sale and rent back agreement activities). Guidance on the activity in article 53DA (advising on regulated credit agreements for the acquisition of land) of the *Regulated Activities Order* is in *PERG* 2.7.16FG.

...

7.3.4A G For persons carrying on *advising on regulated credit agreements for the acquisition of land* the by the way of business test is set out in *PERG* 2.3.2G(4)

...

7.3.7 G But even if advice is given in the *United Kingdom*, the *general prohibition* will not be contravened if the giving of advice does not amount to the carrying on, in the *United Kingdom*, of the business of *advising on investments*, *advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*. Also, the *general prohibition* will not be contravened if the exclusion for *overseas persons* in article 72 of the *Regulated Activities Order* (*Overseas persons*) applies. That exclusion applies in relation to the giving of advice on *securities* or *relevant investments* by an *overseas person* as a result of a 'legitimate approach' (defined in article 72(7)). In many cases where publications or services are provided from outside the *United Kingdom* it is likely that they will fall within the terms of this exclusion. For example, this will exclude any advice in a publication or service from being a *regulated activity* if it is given in response to an approach that has not been solicited in any way. It should be noted, however, that the exclusions in article 72 do not apply to the regulated activities that involve *advising on a home finance transaction* or *advising on regulated credit agreements for the acquisition of land*. The effect of this is that, where the principal purpose of an overseas periodical publication is to offer advice on *securities* or *relevant investments* and *home finance transactions*, the exclusion for an *overseas person* who provides advice to *persons* in the *United Kingdom* as

a result of a legitimate approach will not apply to the advice concerning *home finance transactions*.

...

7.3.8 G If a *person* is carrying on the business of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* in the *United Kingdom*, he will not require *authorisation* if:

(1) ...

(2) he is an *exempt person* (see *PERG 2.11 (What to do now? )*); since *persons* are exempt only in relation to specified *regulated activities*, his exemption must apply to the *regulated activity* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* as the case may be.

7.3.9 G Many people may be involved in the production of a periodical publication, news service or broadcast. But if the *regulated activity* of *advising on investments, advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* is being carried on so that *authorisation* is required, the *FCA's* view is that the *person* carrying on the activity (and who will require *authorisation*) is the *person* whose business it is to have the editorial control over the content. In the case of a periodical publication, this will often be the proprietor. But particular circumstances may vary so that the responsibility for content and editorial control rests with a freelance journalist rather than with the proprietor. In such cases it may well be that the journalist may properly be viewed as carrying on his own business, using the periodical publication as the vehicle for doing so - in which case it is likely to be the journalist alone who needs the *authorisation*.

...

...

7.4.2 G ...

(2) ...

(f) to enter as a recipient of credit into a *regulated credit agreement* the purpose of which is to acquire or retain property rights in *land* or in an existing or projected building.

7.4.3 G ...

(3) The second is that of a regularly updated news or information service. As with periodical publications, it does not matter how the

service is accessed by, or delivered to, the user as long as it can be read. This will include, for example, a service provided through teletext, a fax retrieval system or a website (including websites that are used through handheld devices). The fact that it must be a 'regularly updated' service means that the provision of up-to-date news or information must be a primary feature of the service (for example, where it is likely to be of commercial value to the recipient). But, in the *FCA's* view, a news or information 'service' is not restricted only to the giving of news or information since this would not generally constitute the *regulated activity* of *advising on investments* (see *PERG* 8.28 (Advice or information)), *advising on regulated mortgage contracts* (see *PERG* 4.6.13G to *PERG* 4.6.16G (Advice or information)), *advising on regulated credit agreements for the acquisition of land* (see *PERG* 4.10A.20G), *advising on a home reversion plan*, *advising on a home purchase plan* or *advising on regulated sale and rent back agreements*. So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

...

7.4.5 G ...  
(2) ...

(f) to enter as a recipient of credit into a *regulated credit agreement* the purpose of which is to acquire or retain property rights in *land* or in an existing or projected building.

...

7.4.8 G Looking at the first disqualifying purpose set out in the exclusion, all the matters relevant to whether the *regulated activities* of *advising on investments*, *advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction* are being carried on must be taken into account (see *PERG* 8.24 (Advising on investments)). If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors), as borrowers, as *reversion occupiers* or reversion providers or as *home purchasers* or as *SRB agreement sellers* or *SRB agreement providers* (as the case may be), advice as referred to in *PERG* 7.4.5G(1), then the publication or service will not be able to benefit from this exclusion.

7.4.9 G ...  
(1) material in a publication or service that invites or seeks to procure *persons* to engage in a relevant transaction can be said to "lead" to those transactions even if it would not constitute the *regulated activities* of *advising on investments*, *advising on regulated credit agreements for the acquisition of land* or *advising on a home finance transaction*; this includes, for example, material that consists of

generic *buy* or *sell* recommendations, corporate brochures or invitations to invest in particular products or with a particular broker or fund manager; and

...

...

...

8.14.18 G ... The terms of the exemption are that the promotion must comply with the *rules* in *COBS* 4, *MCOB* 3 3A or *CONC* 3 ...

...

...

8.17.20 G *CONC* 3 contains *rules* about *financial promotions* relating to *credit-related regulated activity*. *CONC* 3 does not apply, however, to the *communication*, or *approval for communication*, of a *financial promotion* to the extent it concerns *qualifying credit*. *MCOB* 3 3A applies to the *communication* or *approval* of a *financial promotion* of *qualifying credit*. This means that a *financial promotion* about *credit* will not usually be subject to both *MCOB* 3 3A and *CONC* 3 unless it is about secured and unsecured lending. *Guidance* on the potential application of *MCOB* 3 3A and *CONC* 3 ...

8.17.21 G Guide to potential application of *MCOB* 3 3A and *CONC* 3 to *financial promotion of credit*. This table belongs to *PERG* 8.17.20G

	Subject of promotion	<i>MCOB</i> 3 <u>3A</u> may apply	<i>CONC</i> 3 may apply
(1)	<i>regulated mortgage contracts</i>	Yes	No
...			

...

...

## 14.8 Financial promotions

Q44 ...

If you are an authorised person who is communicating or approving the financial

promotion and it is not exempt, you will need to comply with the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB 3.3A for financial promotions of qualifying credit, a home reversion ~~plans~~ plan, and ~~MCOB 2.2.6AR~~ for financial promotions of a home purchase ~~plans and plan~~ or a regulated sale and rent back ~~agreements~~ agreement).

...

## Annex I

### Amendments to the Responsibilities of Providers and Distributors for the Fair Treatments of Customers (RPPD)

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

...

Notes

...

- (12) For example ... ~~MCOB 3.6 (Form and content of non real time qualifying credit promotions); MCOB 3.8A (Form and content of financial promotions of home reversion plans); MCOB 2.2.6AR (Clear, fair and not misleading promotions for home purchase plans). 3A.2 (the fair, clear and not misleading rules) and MCOB 3A.3 (Other general requirements for financial promotions and communications with customers)~~ ...

...

- (14) For example, ... ~~MCOB 2.2.6R~~ 3A.2.1R(1) (Clear, fair and not misleading communication) ...

...

- (16) COBS 4.10.10R, ICOBS 3.7.5R, ~~MCOB 3.9.5R (Communicating a financial promotion where another firm has confirmed compliance)~~...

- (17) For regulated activities ... ~~MCOB 2.2.6R~~ 3A.2.1R(1)). In doing so ...

...