

Loan-based ('peer-to-peer') and investment-based crowdfunding platforms: Feedback to CP18/20 and final rules

Policy Statement

PS19/14

June 2019

This relates to

Consultation Paper 18/20
which is available on our website at
www.fca.org.uk/publications

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1 Summary

- 1.1** In July 2018, we consulted on changes to the rules and guidance that apply to loan-based crowdfunding platforms (P2P platforms). We also discussed existing rules that apply to investment-based crowdfunding platforms (IB platforms).
- 1.2** This Policy Statement (PS) summarises the feedback we received to our consultation (CP18/20) and sets out the final policy positions we have reached, taking into account the feedback we have received. It also contains the final rules, which implement the policy decisions that have been made.
- 1.3** Having considered the feedback we received, we have decided to implement most of our original proposals, but have made modifications in some areas to provide more clarity and regulatory certainty. We think the changes confirmed in this PS will be effective in addressing the potential harms identified in [CP18/20](#).
- 1.4** We explain the changes in Chapters 2 and 4.

Who this affects

- 1.5** This PS will be of interest to the following groups:
- P2P platforms (and firms providing services to P2P platforms)
 - IB platforms, and other firms offering non-readily realisable securities ([NRRS](#))
 - trade bodies for these sectors
 - consumers and businesses investing or considering investing through an online crowdfunding platform or in non-readily realisable securities
 - consumers and businesses that have entered, or plan to enter, into loan agreements as borrowers via P2P platforms
 - intermediaries who might refer home finance customers to P2P platforms
 - consumer organisations

The wider context of this policy statement

Our consultation

- 1.6** The term crowdfunding is used to describe ways in which people and businesses (including start-ups) raise money, typically through an internet-based platform. The platform matches those raising money with those seeking to invest. There are different types of crowdfunding platforms, that are regulated in different ways. We regulate 2 types of crowdfunding platforms¹:

¹ We do not regulate other forms of crowdfunding, such as reward or donations based crowdfunding, unless they involve regulated activities such as payment services.

- Loan-based crowdfunding platforms – usually called peer-to-peer or P2P lending platforms. People and institutions use these types of platforms to lend money directly to consumers or businesses, to make a financial return from interest payments and the repayment of capital over time.
- Investment-based crowdfunding platforms – these are platforms where investors can invest directly in businesses by buying investments such as shares, debentures or other debt securities.

1.7 In 2016, the FCA launched a post-implementation review of our regulation of the crowdfunding sector. CP18/20 summarised our findings and consulted on proposed new rules and guidance for P2P platforms.

1.8 We found that the P2P sector had developed a wider, more complex, range of business models. Many platforms in the sector are now taking a much more active role, by taking decisions on behalf of the investor. In addition, we explained that we had also seen some poor business practices, for example, in disclosure of information to clients, charging structures, wind-down arrangements and record keeping.

1.9 Our review of the sector identified a number of potential and actual harms that may affect investors, including:

- confidence and participation threatened by unacceptable conduct such as unreliable performance or by disorderly failure
- buying unsuitable products
- poor customer treatment
- price too high or quality too low

1.10 In practice, this means investors may not:

- be given clear or accurate information, leading to the purchase of unsuitable financial products
- understand or be aware of the true investment risk to which they are exposed
- be remunerated fairly for the risks they are taking
- understand what may happen if the platform administering their loan fails
- understand the costs they are paying for the services the platform provides
- pay fair prices for a platform's services

1.11 The proposals in CP18/20 sought to prevent harm to investors, by providing for a proportionate regulatory framework that would not stifle innovation in the P2P sector. We continue to believe that the P2P sector offers valuable choices, particularly for SME lending and investors. Our proposals were designed to help platforms, fundraisers and investors to enjoy the full benefits of a well-run P2P sector in the long term.

How it links to our objectives

1.12 The potential harms identified in CP18/20 are particularly relevant to the FCA's operational objective of securing an appropriate degree of protection for consumers.

What we are changing

- 1.13** We are introducing a package of rules and guidance to improve standards in the sector. We have sought to find an appropriate balance between advancing our policy objectives and enabling future innovation in products and services.
- 1.14** In summary, this PS confirms that we are:
- Introducing more explicit requirements to clarify what governance arrangements, systems and controls platforms need to have in place to support the outcomes they advertise. These new rules focus particularly on credit risk assessment, risk management and fair valuation practices, especially for platforms with more complex business models.
 - Strengthening rules on plans for the wind-down of P2P platforms.
 - Applying marketing restrictions to P2P platforms, designed to protect new or less-experienced investors. We have also clarified the practical implication of these new rules as they apply to P2P agreements.
 - Introducing a requirement that an appropriateness assessment (to assess an investor's knowledge and experience of P2P investments) be undertaken, where no advice has been given to the investor. We have also provided guidance on what the assessment should include.
 - Setting out the minimum information that P2P platforms need to provide to investors.
 - Requiring P2P platforms to implement these changes by 9 December 2019.
 - From 4 June 2019, applying the Mortgage and Home Finance Conduct of Business sourcebook (MCOB) and other Handbook requirements to P2P platforms that offer home finance products, where at least one of the investors is not an authorised home finance provider.
- 1.15** In our opinion, the changes that have been made to our proposals, and reflected in the final rules, do not require a further CBA (FSMA 138I(5)(a)). The changes to our proposals do not affect the Compatibility Statement.

Outcome we are seeking

- 1.16** Our new rules aim to create an environment where:
- Investors:
 - have the necessary information about a platform's services and charges to help them make informed decisions
 - have clear and accurate information about the investment risk of a product to make suitable investment choices in line with their risk tolerance
 - are appropriately rewarded for the risks they are taking
 - understand that their capital is at risk and they may suffer losses
 - Home finance customers:
 - have a similar level of protection to that they would have if the provider were authorised
 - Platforms:
 - are well-governed and compete effectively for business

- structure their business in a way that aligns their fees, charges and profits with the principle of treating customers fairly
- carry out risk assessment and pricing of underlying assets to a high standard
- have appropriate arrangements to ensure that P2P agreements continue to be administered if the platform ceases to operate for any reason

Measuring success

1.17 Through our supervision work we will monitor developments in P2P lending and other related sectors, and keep under review the effectiveness of the rules framework. In particular we will look for:

- visible improvements to financial promotions and marketing materials relating to P2P agreements
- clearer and more meaningful data for investors on the range and performance of investments offered
- better quality of governance and oversight of both the platform and the system for risk rating and managing a portfolio(s) of P2P agreements (P2P loans)
- platforms' systems and controls to manage conflicts of interest
- platforms to demonstrate that they are pricing P2P loans fairly
- consumers receiving a fairer risk/reward trade-off
- improvements in platforms' wind-down arrangements

Summary of feedback and our response

1.18 There was widespread support for the majority of our proposals across respondents. Respondents largely agreed with our categorisation of the various P2P business models, and with our proposed approach to impose more stringent risk management requirements on those operating more complex business models.

1.19 The proposals that generated the most feedback were those relating to the application of marketing restrictions to the P2P sector. Most of the P2P platforms responding to this proposal felt that this approach was disproportionate and a 'blunt tool' to achieve the FCA's stated consumer protection objective.

1.20 Many argued that asking prospective investors to classify themselves and reveal information about their wealth was intrusive and off-putting in an online context. In particular, they felt that the investment cap of 10% of investible assets for restricted investors (eg, retail investors who are new to the asset class) was arbitrary. They considered this approach would:

- make it difficult for potential investors, for whom P2P could be a suitable investment, to access sufficient information to familiarise themselves with the P2P asset class
- prevent access to P2P loans by certain groups of investors, constraining the development of the sector
- give a misleading impression of the riskiness of P2P investments
- impact negatively on competition.

- 1.21** However, there was support from other respondents for this specific proposal, including from individuals, consumer representatives and various types of firm. A small number suggested that we should go further. For example, by introducing a 10% of net assets cap on investments for all retail clients.
- 1.22** Across the questions, a minority of respondents consistently queried the rationale for taking a different regulatory approach to P2P relative to other sectors (such as investment-based crowdfunding platforms). They considered that this could create an unlevel playing field. However, others took the view that P2P loans generally had a lower risk profile than investments made via IB platforms. These respondents considered that a different regulatory approach was justified.
- 1.23** We have considered the feedback we received and have decided to finalise most of the rules as consulted on. However, in seeking to balance our policy objectives and incorporate some of the feedback received, we have made some modifications to our proposals. We have also sought to further clarify our expectations and policy intent. In particular, we have:
- Provided guidance on the application of the restriction on information that can be made available to prospective investors in P2P agreements. This clarifies that retail investors can be provided with information on specific investments before they have to complete a client classification process.
 - Clarified that the appropriateness assessment needs to be undertaken before an investor can submit an application to invest. We have also provided more information about what the assessment should include.
 - Added clarification that those P2P platforms offering a target rate of return, should be able to demonstrate they have appropriate access to data, and the modelling capability and governance arrangements to do so effectively.
 - Added guidance on the inputs that might be needed to calculate credit risk at portfolio level, by also referencing the variability of losses through the cycle.
 - Required P2P platforms to assess and determine, depending on their business model, when they will be revaluing P2P loans.
 - Required P2P platforms to disclose if they consider a borrower is unlikely to meet their obligations, even if there has not yet been a default.
- 1.24** Taken as a whole, we consider that these proposals strike an appropriate balance. They allow the P2P sector to continue to market to new investors and to differentiate themselves, while also protecting restricted investors (mainly new investors with under a year's experience).
- 1.25** We also received feedback in a number of other areas. In particular in relation to financial promotions for non-mainstream pooled investments and NRRS (Chapter 3 refers), and the potential need for additional prudential requirements for P2P platforms (paragraph 2.35 refers).
- 1.26** We think the marketing restriction we are finalising in this PS is an important part of our package of measures to address harm in the P2P sector. But risks in the investment landscape are evolving and it is important that our rules keep pace with this. Any work that looks across the different marketing restrictions that we have in place in different sectors would encompass P2P, and the feedback we have had to this CP, and could in time lead to an evolution in these rules.

Equality and diversity considerations

- 1.27** We have considered the equality and diversity issues that may arise from the changes in this Policy Statement. The young and the elderly were identified in our CP as potentially being disproportionately vulnerable to the risks associated with investment on crowdfunding platforms.
- 1.28** About 27 respondents commented on our equality impact assessment, two thirds either confirmed they had no comments or agreed with the assessment. The remainder were broadly split into two groups, those that thought:
- our analysis was not consistent with the demographic of their client base
 - we should not restrict access to these groups through imposing marketing restrictions
- 1.29** We do not consider this information changes our assessment. First, while an individual platform's client demographic may not focus on either the young or the elderly, these groups may nevertheless be disproportionately vulnerable to the risks. Second, these restrictions are designed to protect all retail investors, particularly those who are new to or inexperienced in P2P investments. Furthermore, the change is not designed to prohibit access to these investments. Rather, it aims to limit the amount retail investors can initially invest, until such time as they gain more experience. We discuss our final rules and modifications in Chapter 2.

Next steps

- 1.30** The new rules and guidance will come into force on 9 December 2019, with the exception of applying MCOB to P2P platforms that offer home finance products, which comes into force on 4 June 2019.
- 1.31** If your firm is affected by the final rules and guidance detailed in this PS, you must consider what changes you need to make to ensure you have implemented necessary changes by these commencement dates.

2 Changes for P2P platforms

- 2.1** In this chapter, we summarise the feedback we received to our proposed changes to the regulatory framework for P2P platforms, and our response.

Risk Management Framework

- 2.2** In [CP18/20](#) we said that platforms need to be able to meet the expectations they create in respect of their offering to investors. We also said that to do this, P2P platforms must understand and be able to price the credit risk of the P2P loans they facilitate, at origination and over time. This requires them to have an appropriate risk management system in place.

Risk management in relation to the basic pricing of a loan

- 2.3** For those platforms that set the price of the P2P agreement, we proposed prescriptive rules for a risk management framework (RMF), to require that, as a minimum, a platform:
- a.** gathers sufficient information about the borrower to be able to competently assess the borrower's credit risk
 - b.** categorises borrowers by their credit risk in a systematic and structured way (taking into account the probability of default and the loss given default)
 - c.** sets the price of the agreement so it is fair and appropriate, and reflects the risk profile of the borrower
- 2.4** We received around 40 responses to this proposal. A clear majority of these agreed with it. Some respondents suggested that we should require platforms to provide prescribed information to enable investors to make this assessment themselves, rather than require P2P platforms to assess the risk.
- 2.5** This was consistent with the view expressed by some respondents that our rules should focus on transparency, disclosure and consistency, rather than direct regulation of the RMF. One respondent also flagged that credit assessment should be a competitive advantage, not an industry norm.
- 2.6** In the CP, we asked what other measures might be needed to ensure an appropriate RMF for a P2P platform that sets the price of a loan. A few respondents suggested implementing specific requirements that platforms perform scenario analysis or stress-testing.

Our response:

Following the positive feedback received, we have decided to finalise the policy as reflected in our CP proposals.

In our view transparency and disclosure on their own are not enough to ensure that platforms price loans fairly and adequately. If a P2P platform decides to take on the responsibility of determining the price of loans on behalf of investors, we consider it important that it has appropriate arrangements to do so effectively.

In cases where a platform decides not to price loans on behalf of investors (ie operate a conduit-type business model) the platform will not be required to conduct a credit risk assessment of the borrower.

We generally agree that a platform's capabilities in credit risk assessment can be a source of competitive advantage. Platforms should have an incentive to innovate in credit risk analysis and build a demonstrable record of high quality risk management. However, our rules aim to set a minimum common standard in credit risk analysis. Such a standard should be regarded as a prerequisite for a platform that holds itself out as offering a service in pricing P2P loans. We consider this is important in minimising the risk that investors are exposed to bad loans simply because the platform has not assessed them properly.

In relation to the suggestion of requiring platforms to conduct prescribed scenario analysis or stress-testing, we will consider this further. If we conclude new rules or guidance are appropriate, we will consult on proposals in due course. However, depending on the business model of a platform, we expect that some will nevertheless consider that conducting scenario analysis or stress-testing is appropriate, notwithstanding the absence of a specific rule. Such techniques can support a platform's wider risk management framework and its compliance with the rules around portfolio composition.

Additional risk management for more complex models

- 2.7** We proposed rules for platforms that set the price of P2P loans and also choose the investor's portfolio of loans to generate a given target rate of return. Our proposal was that platforms should have a risk management framework that allows them to conclude with reasonable certainty that investors can achieve the advertised return within the advertised risk parameters.
- 2.8** We also proposed that those platforms should only expose investors to P2P loans that, at the point in time they are allocated to an investor, meet the risk parameters advertised at the time of investment. To achieve this, we proposed that platforms must have and use a RMF which is adequate at all times. In practice, this means that the platform should be able to achieve the stated target rate of return with a reasonable degree of confidence.
- 2.9** Finally, we proposed that any RMF should be adequate to assess price and value over time. We said that, as a minimum, platforms must re-value P2P loans that have defaulted and at the point an investor enters into, or exits, a loan. This is because such a transaction needs to take place at a fair valuation.
- 2.10** We received around 35 responses to these proposals. Most agreed with our proposals.
- 2.11** However, some refinements were suggested and we were asked to clarify a few matters regarding the adequacy of the RMF to assess price and value over time. Suggestions included:
- prohibiting the transfer of P2P loans that have gone into default
 - additional clarity about when and how often re-pricing is required, and whether every loan that is part of a P2P portfolio will always need to fall within the advertised target rate

- prohibiting platforms from offering target rates of return, as these can be misleading and are very difficult to model effectively (as they need to take into account expected losses and the variability of losses through the cycle)
- requiring that P2P platforms provide historic reporting of actual performance against target rates, so that deviations from the target rate can easily be identified
- providing additional guidance on what 'good' standards look like (for example, on matters such as how to treat loans in default), to ensure minimum standards across the industry

Our response:

We respond to each of the points above in order.

We have considered whether to ban the transfer of defaulted P2P loans. Weighing against the suggestion to ban the transfer of defaulted P2P loans is the fact that for some P2P platforms' business models, transferring loans between investors is integral to achieving the advertised target rate of return. Therefore, we have not prohibited the transfer of defaulted P2P loans. However, where this happens, platforms will be required to re-price P2P loans that have defaulted to ensure they are transferred at a fair price. Platforms should take great care when assessing whether transferring a defaulted loan is appropriate and whether the investor understands that this is happening.

To provide some clarity around when and how often platforms should re-price loans, we have included a new rule (COBS 18.12.16) requiring that a platform must review the valuation of each P2P agreement at least in the following circumstances:

- when a P2P agreement is originated
- where the platform considers that the borrower is unlikely to pay its obligations under the P2P agreement without recourse by the platform to actions such as realising security
- following a default
- where the platform is facilitating an exit for a lender before the maturity date of a P2P agreement

However, this is a non-exhaustive list as the frequency of re-pricing will depend on a platform's business model. It is therefore for each individual platform to determine in light of its business model and the offer it is making to investors.

In [CP18/20](#) we flagged our concern that some investors perceive the offering of discretionary platforms as similar to savings products, especially those that have contingency funds.

We considered the feedback that target rates of return may be misleading. However, rather than prohibiting platforms from offering target rates of return, we think a more proportionate way of dealing with the risk is to ensure that the advertised target rate of return is based on a reasonable calculation/assessment process. To help platforms

understand what a reasonable calculation/assessment process might look like, we have offered some guidance in COBS 18.12.15 G.

In particular, a platform should be able to demonstrate that it uses appropriate data and has robust modelling capability to calculate target rates effectively. Where a P2P platform cannot demonstrate with reasonable certainty that the P2P portfolio will achieve the target rate advertised, it should not be offering a target rate.

The data might be the platform's own, or a platform might source relevant data from a third party. Such modelling could include the platform's assessment of the credit risk of all borrowers included in the P2P portfolio, taking into account expected losses and the variability of losses through the cycle, and the pricing of such agreements.

We clarify that these platforms should be required to provide historic reporting of actual performance against target rates. In CP18/20 we consulted on rules that require this disclosure to be made as part of the outcomes statement that platforms should publish every year.

Platforms will only be required to publish an outcomes statement for financial years starting on or after 9 December 2019. However, it will be good practice for platforms to include data from previous years if they have it as it will be useful information for investors to have prior to making investment decisions.

In relation to the proposal that platforms should only expose investors to P2P loans that meet the risk parameters advertised at the time of investment, we want to clarify that this is just at the point the loans are allocated to the investor. We acknowledge that the risk of P2P loans varies over time, and this is acceptable.

Finally, we agree that a convergence in standards across the industry would be beneficial. Most respondents agreed that the high-level approach proposed in the consultation is the right one to promote good standards while allowing industry the flexibility in how to achieve these. We are therefore not proposing to provide additional guidance at this stage. We consider that there may be a role for industry participants to discuss best practice and promote consistency of interpretation in some key areas, perhaps via relevant trade associations.

Governance

Independent risk, compliance and internal audit functions

2.12

In CP18/20 we said we wanted to make risk management in P2P platforms effective, by underpinning it with the right governance structures. We said that P2P platforms should be held to comparable standards to firms conducting certain types of investment business (for example, arranging deals in investments or dealing as agent)

and to investment managers. Therefore, we proposed to bring P2P platforms more into line with the systems and controls requirements that apply to these types of firms. In summary, we proposed that a P2P platform should:

- have an independent risk management function and an independent internal audit function, depending on the nature, scale and complexity of its business and the nature and range of the services undertaken
- maintain a permanent and effective compliance function which operates independently

2.13 We received 38 responses to these proposals. Almost all of these respondents agreed with our proposals, with some requesting clarification or suggesting minor changes. In particular, some said:

- the need for an independent compliance function should be dependent on the nature, scale and complexity of the business, to avoid acting as a barrier to new entrants to the industry
- the proposed rules were very subjective and risk inconsistent implementation

2.14 A few said we should go further by requiring:

- independent trustees for discretionary models to represent investors' best interests
- the operation of a contingency fund to be an independent function and/or be externally audited

Our response:

Having considered whether our proposals should be modified to take into account the suggestions received, we have decided to implement the CP proposals. Accordingly, the finalised rules on governance are as consulted on.

We agree that not all P2P platforms will be large or complex enough to require an independent compliance function. We would therefore like to clarify that our rules are intended to apply on a proportionate basis. That is, a platform need only have an independent compliance function if it is proportionate for it to do so.

Therefore, if a platform can demonstrate that it would be disproportionate to have a compliance function independent from other functions, it does not have to be independent (SYSC 6.1.5 R). A platform that considers itself to be in this position must be able to explain why, in its case, the requirement to have an independent compliance function is disproportionate.

We understand concerns about the subjectivity of the threshold for applying the requirement for an independent risk and internal audit function. We have considered the issues raised and maintain that, given the diversity within the sector, it is not appropriate to set a fixed threshold as to when these requirements become applicable. This

is consistent with our approach more broadly, for firms where these governance requirements already apply.

In practice, this means each platform will need to consider if it meets the nature, scale and complexity threshold. However, we do think that discretionary platforms that set the price and choose the investor's portfolio to generate a target rate of return are likely to meet this threshold. Independent risk and internal audit functions are therefore likely to be proportionate for these platforms.

We do not agree that these requirements present a barrier to entry, given the proportional approach that we have proposed and are implementing.

In relation to requiring independent trustees for platforms operating a discretionary model, and independent function and/or external auditing of contingency funds, we will consider these suggestions further. If we conclude new rules or guidance are appropriate, we will consult on proposals in due course.

However, we take this opportunity to highlight that under current rules (SYSC 10.1.3 R) a P2P platform must take all appropriate steps to identify and to prevent or manage conflicts of interest between:

- a. itself (or any person directly or indirectly linked to it by control) and a client of the platform
- b. one client of the platform and another client

These existing requirements recognise that most platforms do more than simply facilitate P2P loans. Platforms should not create a financial incentive to act in a way that favours the platform or a certain cohort of investors/borrowers and is not transparent to all investors.

Responsibility for the development and oversight of the risk management framework

2.15 In [CP18/20](#), we proposed that the person(s) with overall responsibility within the platform for the establishment and maintenance of a platform's risk management framework must be a person approved for a significant influence controlled function and, under the Senior Managers and Certification Regime (SM&CR), a person approved for a senior manager function (SMF), such as a director.

2.16 We received around 40 responses to this proposal. Most agreed, while a few agreed in principle, but had concerns about proportionality. Suggestions included that we:

- mandate that the Finance Director be responsible for the RMF
- require independence between the RMF and audit function, particularly for larger platforms
- do not require the individual allocated this responsibility to be a senior approved person, and instead allow each platform to decide how this role fits within its organisational structure

- 2.17** It was also noted that the person in this role may get involved with very serious complaints, and should not feel encumbered when dealing with those.

Our response:

We have finalised the policy on this issue in accordance with the proposals consulted on. Although the finalised rules are largely as consulted on we have made a few minor changes for clarification purposes. The SM&CR will commence on 9 December 2019 for FCA solo regulated firms (including for P2P platforms). From that date, this responsibility can be allocated to individuals performing any of the following roles:

- SMF1: Chief Executive
- SMF3: Executive Director
- SMF27: Partner
- SMF9: Chair
- SMF16: Compliance Oversight
- SMF17: Money Laundering Reporting Officer

We have aligned the commencement date of our new rules and guidance with the commencement date of the SM&CR, so that platforms can consider the allocation of this responsibility alongside their preparation for implementing the SM&CR.

We would not normally expect the RMF responsibility to be allocated to the person performing the Compliance Oversight role, given that the compliance function is required to be independent.

This responsibility is designed to be allocated at a senior level within a platform. This will be someone sufficiently senior to influence strategic decisions (for example, budget for and resourcing of the RMF). This might not be the same person that has day to day operational responsibility for the RMF. We have added guidance to make this clear.

We agree with comments that this is an important role and that conflicts of interest, for example, with complaints and other functions (such as internal audit), need to be effectively managed. We are not implementing new rules to manage conflicts of interest because we consider that our existing rules are clear and should already be integrated into overall systems, controls, and governance processes.

Marketing restrictions and appropriateness assessment

- 2.18** In CP18/20 we said we wanted to ensure that only consumers capable of understanding the risks and of bearing the consequences invest in P2P agreements.
- 2.19** Accordingly, we sought to develop a regulatory framework that balanced the need to secure an appropriate degree of protection for consumers with a desire to ensure

that the market could continue to develop and support competition through, for example, innovation. In particular, we wanted to ensure that investors continued to have access to a wide range of investment opportunities and that P2P platforms continued to provide an alternative source of finance for borrowers.

2.20 To achieve our objective, we proposed applying to P2P platforms the marketing restriction (in COBS 4.7.7R) which currently applies to IB platforms in relation to NRRS.

2.21 This marketing restriction – when applied to P2P platforms – would require P2P platforms that communicate direct offer financial promotions (DOFPs) to ensure that they only communicate these promotions to retail clients who:

- are certified or self-certified as 'sophisticated investors' or are certified as 'high net worth investors'
- confirm before a promotion is made that, in relation to the investment promoted, they will receive regulated investment advice or investment management services from an authorised person, or
- will be certified as a 'restricted investor'; that is, they will not invest more than 10% of their net investible assets in P2P agreements in the 12 months following certification

2.22 We also proposed that, consistent with the existing non-readily realisable securities marketing restriction, where no advice is given to a retail client, the firm operating the P2P platform must comply with the rules on appropriateness (COBS 10) before the client can invest.

2.23 These proposals generated the most feedback. Around 30 respondents (mostly P2P platforms) felt that imposing a marketing restriction was a disproportionate and 'blunt tool' to achieve the FCA's stated consumer protection objective.

2.24 Most argued that an appropriateness assessment, improved risk management, disclosure and governance, would be sufficient to address the potential harms identified, rendering a marketing restriction unnecessary.

2.25 Some questioned the rationale for carrying across a marketing restriction from IB platforms to the P2P sector. These respondents generally stated that the risk of capital loss in P2P investments was often lower. They therefore argued for a more targeted and differentiated approach to applying marketing restrictions, suggesting that the P2P industry be divided up into riskier and less riskier investment strategies with requirements imposed on that basis.

2.26 It was also argued by some that asking prospective investors to classify themselves and reveal information about their wealth was intrusive and off-putting, particularly in an online context. Many considered that, alongside what they felt was an arbitrary investment cap of 10% of investible assets for restricted investors, this approach would:

- make it difficult for potential investors, for whom P2P could be a suitable investment, to access sufficient information to familiarise themselves with the P2P asset class
- prevent access to P2P loans by certain groups of investors, constraining the development of the sector
- give a misleading impression of the riskiness of P2P investments
- impact negatively on competition

2.27 Around a third of respondents on this topic supported our proposals, including individuals, consumer representatives and various types of firms. Some suggested strengthening our

approach, for instances by introducing a blanket 10% of net assets cap on investments for all retail client categories.

- 2.28** Most respondents, including P2P platforms, agreed with the proposal that P2P platforms should implement an appropriateness assessment, to check an investor's knowledge and experience of the asset class prior to investment (where the investor has not received advice). A few called for additional clarity as to what a 'good' appropriateness assessment would look like. They highlighted that a 'tick box' approach to assessing a client's understanding of risk should not be regarded as being compliant.

Our response:

We maintain that limiting how much a restricted investor can invest in P2P agreements is an important means of ensuring that retail investors who are new to the asset class do not over-expose themselves to risk. We consider it an important part of the wider package of changes that we are making.

We acknowledge that some P2P platforms will have a lower risk profile than many IB platforms. Others will not. P2P platforms are very diverse in the type of lending they facilitate, the level of diversification they achieve, the complexity of the model and the services they offer. However, depending on the design of the platform and the underlying P2P agreement (or portfolio of loans), investors could lose some or all of their investment.

We explored whether it would be possible to apply the proposed marketing restriction in a targeted way, to those platforms with the most risky investment strategies, as suggested by some respondents. We think there are significant practical challenges with implementing a targeted approach. Each platform's risk profile would need to be assessed across many relevant dimensions, beyond mere diversification – for example, underlying asset class; business model; sophistication of the platform and its risk management, controls, and governance arrangement. This approach could also have unintended consequences. For example, encouraging platforms to move away from certain business models and toward others, potentially without having appropriate expertise or resources in place.

Criteria would also need to be established for such an assessment. These would need to be kept under review to avoid their becoming out of date or having arbitrary effects. And consideration of individual platforms against these criteria would also need to be dynamic and kept under review. This would be a complex and resource intensive exercise. It would also create significant regulatory uncertainty, increasing compliance costs, to the detriment of the market and consumers.

In addition, once authorised, P2P firms have a wide ability to flex their business models, and innovate in terms of the products and services they provide. Designating platforms as higher or lower risk by business

model, for example, would be a rigid system, and open to the constant need to re-evaluate permissions. It may also provide false comfort to investors.

Effective diversification clearly helps manage the risks in P2P investments, but it does not remove them. The fact that these investments are not covered by the Financial Services Compensation Scheme (FSCS) is also an important consideration. As a result, we consider it important that investors are warned that their capital is at risk, and that investors should be prepared to lose all of their investment.

With regard to the challenge that the 10% investment cap is an arbitrary figure, we do not agree. The figure is based on what currently applies in the NRRS context and is a means of finding a balance between protecting customers from bigger losses and allowing customers the freedom to make their own investment decisions. It is important to clarify that the 10% limit on P2P investments is designed to ensure that less experienced customers are appropriately protected. Investors can re-classify as sophisticated investors (thereby removing the 10% investment limit) when they have more experience.²

However, the feedback also included comments about practical concerns in relation to the application of the marketing restriction for P2P investments. Accordingly, we have developed additional guidance to give platforms certainty, to ensure a proportionate approach and to promote consistent implementation (COBS 4.7.13 G). In particular, we have clarified in the guidance that a platform can provide details of specific P2P loans or P2P portfolios on offer, such as:

- the identity of borrower(s)
- the price or target rate
- the term
- the risk categorisation
- a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the platform

This will allow P2P platforms to include key information about their specific risk characteristics and the investments they offer. However, this is only permissible if the communication does not include the defining elements of a DOFP. For example, the communication should not contain details of how to apply or to make an offer, or an application form.

Having access to this information will help consumers to distinguish between the diverse range of offerings available, as well the risk profiles of platforms. The industry may wish to develop some standard metrics or characteristics to further help consumers to compare the different platforms and investments.

Retail clients will have to be identified by platforms as the sort of client to whom they can communicate promotions containing full information about the investment, including details of how to apply.

² Our rules allow for such investors to re-classify as sophisticated investors (removing the 10% investment limit) if they have made two or more P2P investments in the past two years.

Platforms will also need to carry out an appropriateness assessment that considers a client's knowledge and experience of the P2P investment before the platform can accept a subsequent instruction to invest from that client.

To ensure the appropriateness assessment is tailored to the specific characteristics of the P2P sector, we have provided specific P2P guidance setting out certain risk factors to be covered by the assessment (COBS 10.2.9 G).

Platforms should consider using a range of questions, for example, provided in a multiple-choice format, for the assessment. Prospective investors must demonstrate their knowledge through their responses. We agree with respondents that a 'tick box' approach would not be adequate and have clarified this in our final Handbook text.

In addition, while it is for P2P platforms to devise an appropriate method of assessment suitable for the product being sold and their own processes, a platform should assess the investor's understanding of:

- the nature of the client's contractual relationship with the borrower, and with the platform
- the client's exposure to the credit risk of the borrower
- that all capital is at risk
- the fact that investments on the platform are not covered by FSCS
- returns may vary over time
- that entering into P2P agreements or investing in a P2P portfolio is not comparable to depositing money in a savings account
- the characteristics of any:
 - security interest, insurance or guarantee taken in relation to the P2P agreements or P2P portfolio
 - risk diversification facilitated by the platform
 - contingency fund offered by the platforms
 - any other risk mitigation measure adopted by the platform.
- that any of these characteristics cannot guarantee that the client will not suffer a loss in relation to the capital invested
- that where a platform has not adopted any risk mitigation measures, the extent of any capital losses is likely to be greater than if risk mitigation measures were adopted by the platform
- illiquidity, including the risk that the lender may be unable to exit a P2P agreement before maturity even where the platform operates a secondary market
- the role of the platform and the scope of its services, including what the platform does and does not do on behalf of lenders, and
- the risks to the management and administration of a P2P agreement or P2P portfolio in the event of the platform's becoming insolvent or otherwise failing.

P2P platforms should also read Chapter 3. In this chapter, we discuss respondents' comments on the existing marketing restriction rules

applicable to non-readily realisable securities and non-mainstream pooled investments.

Wind-down arrangements and the resolution manual

- 2.29** In CP18/20, we proposed to strengthen and clarify the existing rules applicable to P2P platforms on wind-down arrangements. This was to make it clear that platforms must have arrangements to ensure that the P2P agreements they facilitate would have a reasonable likelihood of being managed and administered, on an ongoing basis and in accordance with the contract terms, even if the platform ceased to carry out those functions itself. We also proposed further guidance explaining what platforms' may need to consider, to ensure their arrangements are adequate.
- 2.30** In addition, we proposed to require platforms to produce and keep up-to-date a 'P2P resolution manual' containing information about their operations that would assist in resolving the platform in the event of its insolvency.
- 2.31** All respondents to these proposals supported them, with some making suggestions for minor changes or seeking clarification.

Wind-down arrangements

- 2.32** In relation to wind-down arrangements a small number:
- thought that it would not be appropriate to disclose wind-down arrangements to investors
 - asked us to clarify the intention of requiring a platform's wind-down arrangement not to prefer any particular customers or class of customers for whom it provides the service of managing and administering P2P agreements or non-P2P agreements (SYSC 4.1.8A R (3)).
 - if the guidance setting out what a platform's wind-down arrangements may include is non-exhaustive (SYSC 4.1.8C G)
 - said the changes proposed in relation to obtaining prior consent from investors (SYSC 4.1.8C G (1)(b)) for transfers would be practically impossible to achieve due to volume of lenders and borrowers involved
 - said it would be difficult to retain staff in a disorderly wind-down scenario, and the cost of winding down should be considered

Our response:

We have finalised the rules we consulted on with minor changes to address some of the above feedback.

In relation to the concerns expressed about disclosing wind-down arrangements to investors, there is an existing requirement for platforms to notify their wind-down arrangements to investors (SYSC 4.1.8B R). Our final rules make it clear that this disclosure is required to be made 'pre-sale', before a platform carries on the relevant business for an

investor. We cover this further in the section on disclosure later in this document (paragraphs 2.41 to 2.43 refer).

In relation to SYSC 4.1.8A R (3), the terms 'P2P agreements' and 'non-P2P agreements' are as defined in the Handbook Glossary. Some P2P platforms facilitate lending for a wide range of investors, including both individual investors (or retail clients) and corporate investors. Furthermore, in some cases the loans facilitated by platforms may not meet the definition of an 'article 36H agreement'³ (for example, certain types of business-to-business loans). The purpose of the rule is to require that a platform's wind-down arrangements are not biased towards protecting any particular type of customer or loan.

Our guidance in SYSC 4.1.8 C, is designed to provide examples of the type of arrangements that platforms may put in place. It is not meant to be a prescriptive or exhaustive list, but we consider these to be the most likely types of arrangements based on our supervisory experience.

Our guidance in SYSC 4.1.8C G (1)(b) in relation to obtaining prior informed consent from lenders and borrowers, is guidance as to what may need to be included in platform's wind-down arrangements. Where a platform's arrangements involve the transfer of the servicing of the administration and management of P2P agreements to another firm, our guidance makes it clear that an effective plan should include obtaining prior consent, to ensure it can be implemented in practice.

We agree that any platform in wind-down will face challenges, such as retention of staff. Wind-down plans should consider how such challenges will be overcome. An effective plan should also consider the cost of winding down a platform's business and how these costs will be covered. We have added guidance to make this clear.

Some of these matters are referenced in our Dear CEO letter, published on 7 March 2019. This provides some clarifications within the framework of the existing rules that apply to P2P platforms.

Resolution manual

2.33 In relation to our proposals to require platforms to produce and keep up-to-date a resolution manual, a few respondents suggested that the manual:

- be combined with the CASS resolution pack or business continuity plans to avoid duplication
- be added to annual filing requirements
- cover critical process flows, calculations, operational procedures, hosting arrangements, connections with payment and bank systems, and details of data back-ups (process, frequency, storage location)
- include details of Security Trustees, where used to hold security on behalf of lenders, and details about how any security is held

- 2.34** It was also suggested that the contents of the P2P resolution manual could be included within the Wind-Down Planning Guidance (WDPG) but made compulsory for P2P firms.

Our response:

We have finalised the rules we consulted on with minor changes to address some of the above feedback.

On the requirement to prepare and keep up-to-date a resolution manual, we agree with some of the suggestions to expand on the information that must be included in the manual. We have made some modifications in the final rules to reflect these. It is not feasible to include an exhaustive list of contents in our rules, as each platform will be different and will need to consider what information should be covered to meet the overarching requirement.

We do not consider it appropriate to combine the P2P resolution manual with other rules and guidance, such as those for the CASS Resolution Pack or business continuity plans. Each of these documents is designed to serve a different purpose and we want to maintain that differentiation. Given their different purposes, the level of duplication across these documents should in general be low.

We have not added the P2P resolution manual to the list of documents to be included in a platform's annual return to the FCA. However, these documents must be made available to the FCA on request.

We have added a cross-reference to the WDPG to highlight that platforms may also find this guidance helpful when assessing the adequacy of their arrangements more generally. However, platforms should be aware that this is generic guidance and not specific to any particular sector or firm type.

Prudential requirements

- 2.35** CP18/20 included a discussion point question about the potential need for additional prudential requirements for P2P platforms. We invited views on whether this was something that we should consider in future, to protect investors in the event of platform failure. Most of the responses we received to this question said it would be overly burdensome to impose additional capital requirements on P2P platforms.

Our response:

We will consider if further action is appropriate.

Disclosure requirements

2.36 In CP18/20 we explained that the investment opportunities offered by different P2P platforms vary enormously. Particularly in light of this diversity, we considered it important that investors had sufficient information about the risks they were exposed to, the nature of the investment opportunity, and the role of the platform. To clarify our expectations of the minimum information that should be made available to investors, we proposed several detailed disclosure requirements:

- The role of the platform - the investor must be able to understand not only the nature of the investment and the risks involved, but also the service that is being provided by the platform.
- The practical impact of providing a direct loan(s) to a borrower(s) under a P2P agreement - to ensure investors understand what could happen to the ongoing servicing of P2P agreements and P2P portfolios in the event that a platform ceases to operate.
- The investment - to ensure that investors are provided with relevant information about an investment, to improve transparency of the fees and platform charges for the services provided, and to help prospective investors compare investment opportunities across different platforms. This included:
 - ongoing disclosures – to ensure that, at any point, customers can access details of each P2P agreement they have entered into
 - outcomes - where a platform sets the price (pricing platforms and discretionary platforms), it must publish an 'outcomes statement', which includes:
 - the expected and actual default rate of all P2P agreements by risk category
 - a summary of the assumptions used in determining expected future default rates
 - the actual return achieved (where a platform offered a target rate)
- We also proposed to define what constitutes default for the purposes of producing the outcomes statement.

Information about the role of the platform

2.37 We received around 40 responses on this topic, most of which agreed with our proposals. Some provided comments. The main concerns expressed appeared to be about the nature of the information to be disclosed and the lack of a prescribed format. Respondents considered that a lack of prescription could potentially make it difficult for consumers to compare information across platforms.

2.38 In addition, a few respondents noted a difference in the disclosure requirements that would be applicable to firms advising on P2P investments and those applicable to P2P platforms. Clarification of the rationale for this difference was requested.

2.39 A few respondents also queried the length of the disclosure document. There was some concern that investors could be overwhelmed with information. It was noted that the disclosure document could also potentially duplicate information already included in the Terms and Conditions. For example, these respondents said it would not be appropriate to include a detailed description of how loan risk is assessed. Instead, they favoured providing only high-level information, such as the general borrower criteria and security details.

- 2.40** Concerns about the disclosure of tax liability for investors were also raised, as this may be perceived as client-specific advice.

Our response:

We have finalised our policy on this aspect in a way that is consistent with our consultation proposals. However, we have incorporated into the finalised policy and rules some of the feedback received.

We agree that it may be difficult for consumers to compare information across platforms. However, this is primarily due to the diverse nature of the sector. Our focus has been on ensuring each platform describes its role clearly. We are not setting a prescribed or standard format for this information (paragraphs 2.50 to 2.53 also refer), as we want to ensure that disclosures are appropriately tailored to the specific characteristics of a platform's business model and service offering. We also want to ensure sufficient flexibility to accommodate the continued evolution of the sector.

The different disclosure requirements applicable to advisors and P2P platforms reflect the different business undertaken by each. However, we have added guidance to say that firms advising on P2P agreements may also wish to consider providing to retail clients any other information that a P2P platform is required to disclose.

In response to the query about disclosing tax information, we can clarify that we do not intend this disclosure to be provision of personal advice. We consider that platforms should provide investors with sufficient information to help them understand their tax obligations, and the potential impact on their investment returns. The explanations should enable the investor to perform their own calculations and compare net returns with those of other investments. This was previously guidance in the Handbook, which we have now made into a rule.

Wind-down arrangements

- 2.41** Again, we had in the region of 40 responses to these proposals. Most were supportive, but around 10 respondents said they did not agree that it was appropriate to disclose wind-down arrangements to investors. Several reasons were given, for example:

- other financial institutions are not required to share their wind-down plans
- investors may misinterpret an update to the wind-down policy as a signal that a platform is facing difficulties
- it would be a threat to intellectual property
- it may give investors a false sense of security
- investors would not read it.

- 2.42** A few said that summary information only should be disclosed. Some also commented that the circumstances around the failure of a platform can be considerable and varied. This made it more likely that the actions taken in response to platform distress would differ from what was contemplated in its published plan.

2.43 Other suggestions included:

- publication of a communications strategy that details the information to be disclosed in different scenarios (for example, when a platform is operating healthily and when in distress)
- adding context for wind-down disclosures to make them meaningful (adding for example, probabilities, degrees of failure, likely mitigation)

Our response:

We have finalised the changes as consulted on.

There is an existing requirement for P2P platforms to have wind-down plans (SYSC 4.1.8AR), which includes a requirement for platforms to notify investors of their wind-down arrangements, or when changes to the arrangements are made (SYSC 4.1.8BR).

If the plans involve another firm stepping in to wind down the management and administration of P2P agreements, the lenders must be informed of the identity of that firm and how that firm will hold the lenders' money.

This means platforms should be providing much of this information already. Our changes strengthen the current rules to make it clearer that relevant information should be provided to customers, at a point in the customer journey that allows customers to understand a platform's wind-down arrangements and consider the risks before they decide to invest.

This does not necessarily mean that full plans need to be disclosed. Summary information is acceptable, as long as it includes relevant information to ensure investors understand what would happen to their investment if the platform triggered their wind-down arrangements. It is also understood that unforeseen circumstances may arise that cause a platform to deviate from its plans.

We agree that consideration of client communications is important. Chapter 4.2 of the WDPG covers this subject. We have added a cross reference to the WDPG to address this point.

Investment information

2.44 As with the previous disclosure proposals, we received around 40 responses on this topic, with most saying they agreed. However, just over half requested clarification in a few areas.

2.45 Some of the comments on this topic related to matters considered in the context of our RMF proposals, for example, matters relating to target rates of return and pricing (see paragraphs 2.2–2.11). Other points raised included those set out below.

- 2.46** Some thought that asset-backed loans and others supported by security needed to be reflected better in disclosures. For example, disclosure of actual losses in addition to defaults was suggested. This would reveal circumstances in which losses in the event of a default were materially covered by proceeds from the enforcement of security.
- 2.47** In relation to target rates of return, some thought it was not appropriate for investors to be shown minimum and maximum interest rates for individual loan agreements in a P2P portfolio where the platform selects agreements on behalf of the investor. They argued that this could be misleading where investors choose to invest based on a target rate of return. Also, some said that disclosure of pricing and fee data at individual loan level, rather than at an aggregate level by P2P portfolio, would be confusing to investors. As an additional matter, some thought the disclosure of annual percentage rate (APR) and borrower fees were not relevant to the investment or the credit risk taken by investors.
- 2.48** We were also asked to consider the impact of disclosures on borrowers, including their other financial interests and relationships.
- 2.49** Finally, a small number said that platforms operating an auction process would find it difficult to provide information on monthly repayments, total amount borrowed and actual return.

Our response:

Overall, we have largely finalised the investment disclosure rules as consulted on, but with some amendments. We have also added a rule to clarify that those platforms operating an auction business model need to provide a summary description of how the final price will be set.

We have considered the feedback suggesting the disclosure of loss data. We acknowledge that there may be merit in this, particularly since not all defaults may result in losses. Furthermore, platforms' service offerings will differ by the nature of any security held against the P2P loans that they facilitate.

However, losses should anyway be reflected in the performance data that platforms are required to provide under the new rules. We are also mindful of the need to take a proportionate approach and of the feedback that we should be careful not to overwhelm investors with information. We will nevertheless keep this under review.

We note that our rules do not prevent platforms publishing loss data, where they consider this to be appropriate. Such data may be disclosed both before and after the realisation of security held against P2P loans. Where loss data are provided, however, we note that it would be misleading to include payments from any contingency fund.

On a related point, we have finalised our rules on disclosure of data on past performance. We have added guidance to make it clear that it should not include payments made to lenders from a contingency fund. We have also said that platforms should take into account the effect of commissions, fees and other charges (COBS 18.12.40 G).

Our changes do not prohibit platforms from disclosing aggregate information. However, pricing and fee data should also be made available to investors at an

individual loan level at any point in time. Similarly, investors should be able to access information on an individual loan interest rate at any point in time, even if the decision to invest was made on the basis of an aggregate target rate of return.

We consider it important that investors are able to access data on APR and borrower fees for individual P2P loans, as this gives more granular information than a risk grading, for example. This information will help investors to understand the nature of their investment risk, and help them to make comparisons between platforms and investments.

The implications of disclosing a borrower's default for that borrower's other financial investments are mitigated by the fact that disclosure is to be made to relevant investors only. Furthermore, platforms are not required to disclose situations where the borrower is only in technical default under the relevant finance documents. Disclosure will only be required (under COBS 18.12.31 R (11)) where:

- The platform considers that the borrower is unlikely to meet its obligations under the P2P agreement without the platform enforcing any relevant security interest. The section on 'Standardising the definition of default' below, also refers to this.
- The circumstances of the borrower fall within the definition of default set out in the Handbook Glossary

Standard format for P2P disclosures about the services provided and investment opportunities

2.50 We asked a question for discussion purposes, on whether it would be helpful to consumers and industry to have a standard format for P2P disclosures. Around 40 responses were received to this question. Most agreed in principle that this would be useful, but there was considerable recognition of the difficulty in achieving this. There was also some concern that a standardised format would be too inflexible.

2.51 This was primarily due to the diversity of business models and asset types, meaning comparisons would unlikely be like for like.

Our response:

In conclusion, due to the range of views and clear difficulty in standardising information in a meaningful way for a diverse sector, we are not proposing to develop a standard template. However, we will keep this under review. (Section entitled 'Information on the role of the platform' also refers to this).

Standardising the definition of default

2.52 One respondent suggested that the proposed definition of default should be broadened to include circumstances in which a borrower was likely to default, even if the technical conditions for default had not yet been met. That is, a loan could be considered to be in default before the borrower has exceeded the contractual payment due date by more than 90 days, or 180 days for property P2P loans. A similar concept of default is found in the definition of default in the Capital Requirements Regulation (Article 178 of Regulation (EU) No 575/2013).

2.53 Some respondents also:

- said there may be merit in requiring P2P lenders in the property market to also report non-performing loans after 90 days, provided that the definition of default stands at 180 days, to enable investors to make comparisons with other P2P investment propositions
- asked if this definition would be applied to regulatory reporting (eg FIN070 Report, Question 6 'Average actual default rate over the reporting period').

Our response:

We have finalised the definition of default as consulted on.

We agree that there is value in early disclosure of P2P loans that, while not contractually in default, are either non-performing or unlikely to be repaid without recourse by the firm to actions such as realising security. If a loan is likely to default, a platform should not wait 90 days (or 180 days for property P2P loans) before revaluing it and disclosing details of that loan in its ongoing disclosures to investors.

However, since there is an element of judgement in the determination of whether a loan is likely to default, we consider that changing the definition of default could make it difficult to compare the default ratios of different platforms. It could also create confusion in relation to other actions that flow from the definition of default.

Instead, we have amended the rule that requires platforms to give investors information on defaults to require additional disclosure of P2P loans that are likely to default (COBS 18.12.31 R (11)). Providing this disclosure alongside information on defaults will give investors a clear picture of likely additional defaults, which could lead to losses. Our response to 'Investment information' disclosures, also refers to this.

We have also added a requirement for platforms that set the price of a P2P agreement, to carry out a valuation of a P2P agreement where the platform considers the borrower is unlikely to pay its obligations under the P2P agreement (COBS 18.12.16 R). This is explained in our response following paragraph 2.11 in relation to the RMF.

In relation to property loans, we have not at this time added a further disclosure requirement in relation to non-performing P2P loans after 90 days, as suggested in feedback. We consider that the additional requirements regarding disclosure of likely defaults, as explained above, go some way to addressing this point. We also note that our rules do not prevent platforms from publishing such data where they consider it appropriate to do so.

We confirm that the definition of default should also be applied when P2P platforms report information about their defaults under regulatory reporting requirements.

Contingency funds

- 2.54** Most of the respondents to this question agreed with the proposals.
- 2.55** The few that disagreed, mainly did so because they did not agree that contingency funds should be permitted at all.
- 2.56** Other comments included:
- It should not be necessary to notify investors every time a loan defaults where the contingency fund pays the investor immediately (rather than waiting for a lengthy delinquency period before paying out).
 - Disclosure requirements should only apply to advertised (and committed) contingency funds, and not to payments a platform decides to cover from its own capital on behalf of a borrower, on an occasional basis.
 - Disclosures should preclude cases where the fund covers short-term imbalances, such as if it pays sums that the borrower subsequently repays within a short period of time.

Our response:

We consider no changes to our proposed policy is necessary and accordingly the finalised rules are as consulted on.

Disclosure of default information per agreement is important to ensure lenders are aware of the investment risks, whether or not the payment is covered by a contingency fund.

Our rules will not prevent factual information being disclosed about the amount of losses paid out by a contingency fund, but past performance information should only reflect payments made by borrowers.

Platforms can make discretionary payments to cover a client's losses out of their own capital/balance sheet, and we do not expect platforms to disclose this up front. However, contingency funds are set up by platforms for a specific purpose, at a cost to investors and/or lenders and marketed as a benefit. Therefore, full transparency is appropriate.

We do not consider changes are needed to address sums paid late by borrowers. Past performance (when quoted) must be based on actual amounts repaid by borrowers at that time. The rule does not exclude late payments.

Commencement arrangements

- 2.57** In CP18/20 we proposed the new rules should come into force 6 months after the date of publication of the PS. There was generally a mixed response among the 36 respondents as to whether 6 months would be sufficient time for platforms to prepare.

- 2.58** Most (around 20) said they agreed or thought 6-months would likely be sufficient. Around 10 suggested that more time would be appropriate (for example, up to 12 months), with some of these saying smaller platforms may need more time. A few expressed concerns about any delay in implementation, given the potential harms identified.

Our response:

We think these are important changes that will reduce harm to investors, and taking into account feedback consider that a 6-month commencement period is a reasonable period within which platforms will be able to make the changes they need to, in order to comply with the new rules applicable to them.

Feedback to our cost benefit analysis

- 2.59** We received 15 responses to our CBA question. Of these, a small number agreed with our CBA, while most said we had under-estimated costs to platforms. Two platforms said we had underestimated the costs (for discretionary platforms) by 3 to 5 factors. Taking this into account, the impact on total cost estimates is an increase from £24,485 to an upper bound of £122,425
- 2.60** One platform said the retention costs for a back-up service provider had not been included and will be in the region of £6k to £30k per annum. One said the governance proposals did not allow for the salary of independent Heads of risk, compliance and audit.
- 2.61** A small number of respondents raised concerns about the impact of our proposals to introduce marketing restrictions on competition.

Our response:

We do not consider that the increase to estimated costs that results from taking account of the feedback on the CBA is material.

In relation to the costs of having a back-up service provider in place, we have not costed this in our CBA as we are not prescribing this approach. Having a back-up service provider is one of several ways that a platform may choose to meet the existing requirement to have wind-down arrangements in place.

In relation to the governance proposals, not all platforms will need to have independent heads of risk, compliance and audit. For those that do, not all will need to recruit new staff (for example, they may already have suitably qualified staff within the work place), but some may. We did not quantify this cost in our CBA as it was not reasonably practicable to do so. The limited response on this point would suggest that the impact is unlikely to significantly exceed the total cost estimates in CP18/20.

Finally, we consider that requirements on marketing restrictions are proportionate to the need to provide an appropriate degree of protection for consumers and are unlikely to impose any significant competitive disadvantage to platforms in the sector.

3 Investment-based crowdfunding platforms

- 3.1** In CP18/20, we discussed rules relevant to investment-based crowdfunding platforms. In particular, we discussed the rules relevant to the promotion of non-mainstream pooled investments (NMPI) and NRRS. In this chapter, we summarise the comments we received, and our planned next steps.

Identifying investors who can receive promotions for NMPIs or NRRSs

- 3.2** Our CP discussed our expectations in relation to the restrictions applying to firms when they communicate financial promotions for NMPI and NRRS. These restrictions mean that only certain types of promotions can be communicated to certain types of retail client.
- 3.3** Respondents to this section said that our rules set different expectations under the NMPI and NRRS regimes as to the checks or evidence-gathering that firms must undertake to satisfy themselves of a client's classification (ie 'high net worth' (HNW), 'sophisticated' or (for NRRS only) 'restricted investor' status).
- 3.4** It was noted that the NMPI rules explicitly require firms to take 'reasonable steps' to establish that a person falls within a particular category (ie is a HNW or sophisticated investor etc.). If a firm meets these requirements, its subsequent financial promotion is exempt from the marketing restrictions set out in the Handbook and can be sent to those recipients (COBS 4.12.4 R (3)(a)).
- 3.5** In contrast, it was noted that the rule relevant to the promotion of NRRS (COBS 4.7.7 R) did not explicitly set out such a requirement to take 'reasonable steps'.
- 3.6** In addition to noting this difference, firms requested more clarity on what constituted 'reasonable steps' for this purpose.

Response and next steps

- 3.7** The issues raised in the above feedback do not solely impact investment-based crowdfunding firms, but a range of sectors. As a result, we are considering these comments in a broader context. This will include, where appropriate, consideration of the approach to be expected of P2P platforms which may update further the revised rules set out in this PS.
- 3.8** We expect to be able to comment further in due course. If we conclude that additional rules and guidance are needed, we will consult on our proposals.

4 P2P platforms: mortgages and home finance

Background

- 4.1** There is currently no UK P2P market for regulated home finance. We are aware that some P2P platforms are considering moving into residential secured lending. If they did this, we think that they would be likely to be carrying on the regulated home finance arranging activity. They would, therefore, be subject to parts of our Mortgage and Home Finance: Conduct of Business sourcebook (MCOB) rules and other FCA Handbook rules.
- 4.2** However, the business models of these P2P platforms might mean that nobody has responsibility for the regulated home finance lending or providing activity. This is because it would be possible for a P2P platform to facilitate a home finance product where some or all of the investors are not required to be authorised as home finance providers.
- 4.3** This means that a home finance consumer using a P2P platform may not receive the same level of consumer protection that it would if the provider were authorised.
- 4.4** In Chapter 7 of the consultation paper, we proposed that where a P2P platform facilitates home finance products and at least one of the investors is not required to be authorised as a home finance provider, the platform must comply with our MCOB rules as if it were the provider.

Specific Proposals

- 4.5** We proposed to apply the following MCOB rules to P2P platforms when facilitating home finance products and at least one of the investors is not required to be authorised as a home finance provider:
- MCOB 11 which requires a home finance provider to assess whether a consumer can afford the sums due prior to entering into the home finance contract or making a variation to the terms of the contract.
 - MCOB 13 on arrears, payment shortfalls and repossessions.
 - MCOB 6 and 7 relating to offer stage and post-contractual disclosure rules.
 - Relevant rules in MCOB 4 and 5 relating to pre-contractual disclosure.
 - MCOB 12 on fees and charges, including early repayment and payment shortfall charges.
 - Relevant rules in MCOB 10 or 10A which set out the method for calculating the APR, or if the platform chooses, the APRC associated with the product.
 - MCOB 2 general conduct of business rules.
 - MCOB 3A governing how a firm communicates financial promotions to home finance consumers.

- Our data reporting rules in chapter 16 of the Supervision manual (SUP), including transaction level sales data, data on the performance of the back book, aggregated data returns covering a firm's home finance administration and providing activities, and data on the provision of intermediary services.

Feedback and our response

- 4.6** We received 19 responses to our proposals from P2P platforms, industry bodies representing P2P platforms and more traditional home finance lenders, an academic, and the FCA's Consumer Panel. The feedback was broadly supportive of our aim to provide a similar level of consumer protection to consumers using a P2P platform. The responses highlighted only a small number of concerns. We will not be making any changes to the proposed home finance rules.
- 4.7** Several respondents thought that platforms should be able to rely on the affordability assessment carried out by any regulated firm offering finance alongside the unregulated providers. This suggests some misunderstanding of our consultation proposal. The effect of our proposal is that the regulated provider(s) and the platform are expected to assess the separate portions of the overall funding that they are providing or facilitating.
- 4.8** One P2P platform believed that we should hold platforms solely responsible for any home finance or consumer credit made available through them, even where the providers are regulated firms. This is a broader point than the one on which we consulted, and would be inconsistent with the Mortgage Credit Directive (MCD) and the Consumer Credit Directive which require obligations to be placed on creditors (for example, to undertake an assessment of the borrower's creditworthiness).
- 4.9** Two trade bodies objected to the flexibility we proposed to give P2P platforms to use either EU or national disclosure documents. However, this flexibility is already available to established providers when a product disclosure is not required by the MCD.
- 4.10** Two trade bodies considered that P2P platforms should not have lower capital requirements than non-bank lenders. We do not believe that the prudential requirements for P2P platforms facilitating home finance gives P2P platforms a competitive advantage given the differences in the risks of the respective business models.

Cost benefit analysis

- 4.11** Only one comment was received that was critical of the cost benefit analysis (CBA), the respondent believing that we had underestimated the level of potential harm.
- 4.12** As we are not making any changes to the consultation proposals, we have not updated the CBA.

Annex 1

List of non-confidential respondents

A Dunsmore

Abundance Investment Ltd

Andrew Wallace

Assetz Capital

Building Societies Association

Business Agent Ltd

Bates Wells & Braithwaite London LLP

CapitalStakers Ltd

CBI

Compete to Win

Consumer Panel

Crowd for Angels Ltd

CrowdProperty Ltd

Downing LLP

Edinburgh Alternative Finance Ltd

e-Money Capital Ltd

eMoneyHub Ltd

Financial Services Consumer Panel

Folk2Folk Ltd

Funding Circle

Gjjsbert Koren

Graham Hewson

John Harrison

Landbay

Lend & Borrow Trust Company Ltd

Lending Works

Medici Legal Advisors Ltd

MoneyThing Capital Ltd

Octopus Co-Lend Ltd

Peer 2 Peer Finance Association

Patrick Heaton

Professor Alistair Milne

Property Wires Crowdfunding

Ratesetter

Rebuilding Society Ltd

Seedrs Ltd

Simple Crowdfunding

The House Crowd Ltd

TISA

Triodos Bank

UK Finance

The UK Crowdfunding Association

Wealth Harbour Services Ltd

Zopa Ltd

Annex 2

Abbreviations used in this paper

| | |
|----------------------|--|
| APR | Annual percentage rate |
| CASS | Client Assets sourcebook |
| CBA | Cost benefit analysis |
| CEO | Chief executive officer |
| COBS | Conduct of Business sourcebook |
| CP | Consultation Paper |
| CP18/20 | Loan-based ('peer-to-peer') and investment-based crowdfunding platforms: Feedback on our post-implementation review and proposed changes to the regulatory framework |
| DOFP | Direct offer financial promotion |
| EU | European Union |
| FSCS | Financial Services Compensation Scheme |
| FSMA | Financial Services and Markets Act 2000 |
| HNW | High-net worth |
| IB platforms | Investment-based crowdfunding platforms |
| MCD | Mortgage Credit Directive |
| MCOB | Mortgage and Home Finance Conduct of Business sourcebook |
| NMPI | Non-mainstream pooled investments |
| NRRS | Non-readily realisable securities |
| P2P | Peer-to-peer |
| P2P loan | P2P agreement |
| P2P Platforms | Loan-based crowdfunding platforms |
| PS | Policy Statement |

| | |
|------------------|---|
| RMF | Risk Management Framework |
| SM&CR | Senior Managers and Certification Regime |
| SME | Small and medium-sized enterprises |
| SMF | Senior manager function |
| SYSC | Senior Management Arrangements, Systems and Controls sourcebook |
| WDPG | The Wind-down Planning Guide |

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

Appendix 1

Made rules (legal instrument)

OPERATING AN ELECTRONIC SYSTEM IN RELATION TO LENDING (PEER-TO-PEER LENDING) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (General rule-making power);
 - (2) section 137R (Financial promotion);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 9 December 2019.

Amendments to the Handbook

- D. The modules of the Financial Conduct Authority’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

| (1) | (2) |
|--|---------|
| Glossary of definitions | Annex A |
| Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex B |
| Conduct of Business sourcebook (COBS) | Annex C |

Citation

- E. This instrument may be cited as the Operating an Electronic System in Relation to Lending (Peer-to-Peer Lending) Instrument 2019.

By order of the Board
30 May 2019

Annex A

Amendments to the Glossary of definitions

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

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

| | |
|----------------------------------|---|
| <i>credit risk assessment</i> | the assessment required by <i>COBS</i> 18.12.5R. |
| <i>contingency fund</i> | (in relation to an <i>operator of an electronic system in relation to lending</i>) a fund, trust, <i>body corporate</i> , segregated account or any other arrangement used for the purpose of making payments to a lender when a borrower does not meet its obligations under a <i>P2P agreement</i> . |
| <i>contingency fund policy</i> | the policy required by <i>COBS</i> 18.12.35R. |
| <i>outcomes statement</i> | the statement required by <i>COBS</i> 18.12.21R. |
| <i>P2P portfolio</i> | a collection of agreements that consist wholly of <i>P2P agreements</i> or a combination of <i>P2P agreements</i> and <i>non-P2P agreements</i> facilitated by an <i>operator of an electronic system in relation to lending</i> with the aim of achieving a <i>target rate</i> for a lender. |
| <i>P2P resolution manual</i> | the manual required by <i>SYSC</i> 4.1.8DBR. |
| <i>risk management framework</i> | the framework required by <i>COBS</i> 18.12.18R. |
| <i>target rate</i> | the overall rate of return, however expressed, that an <i>operator of an electronic system in relation to lending</i> offers, in whatever manner, to aim to achieve for a lender using a <i>P2P portfolio</i> . |

Amend the following definitions as shown.

| | |
|----------------|--|
| <i>default</i> | <ol style="list-style-type: none"> (1) (in relation to the <i>IRB approach</i> and for the purposes of <i>BIPRU</i>) has the meaning in <i>BIPRU</i> 4.3 (The <i>IRB approach</i>: Provisions common to different exposure classes). (2) (in <i>MIPRU</i>) for any credit obligation a borrower has with a <i>firm</i>, an event where: <ol style="list-style-type: none"> (a) the borrower is past the contractual payment due date by more than 90 days; and |
|----------------|--|

- (b) the *firm* reasonably considers that the borrower is unlikely to pay or otherwise fulfil its credit obligations to the *firm*.
- (3) (in relation to an operator of an electronic system in relation to lending) an event where:
- (a) in respect of a P2P agreement that is not secured on property, the borrower is past the contractual payment due date by more than 90 days; or
- (b) in respect of a P2P agreement that is secured on property, the borrower is past the contractual payment due date by more than 180 days.
- management body*
- (1) (other than in (2) or (3)) (in accordance with article 3(7) of CRD and article 4.1(36) of MiFID) the *governing body* and *senior personnel* who are empowered to set the *person's* strategy, objectives and overall direction, and which oversee and monitor management decision-making in the following:
- (a) a *common platform firm* (in relation to the requirements imposed by or under MiFID or MiFIR); or
- (b) a *recognised investment exchange*; or
- (c) a *data reporting services provider*.
- (2) (in COLL and in SYSC 19E and in accordance with article 2(1)(s) of the UCITS Directive), the *governing body* of a *management company* or *depository* of a *UCITS scheme* or an *EEA UCITS scheme*, as applicable, with ultimate decision-making authority comprising the supervisory and the managerial function or only the managerial function, if the two functions are separated.
- (3) (in relation to an operator of an electronic system in relation to lending) the governing body with ultimate decision-making authority comprising the supervisory and the managerial function or, if the two functions are separated, only the managerial function.
- price*
- (1) (in COLL) (in relation to a *unit* in an *authorised fund*) the price of the *unit* calculated in accordance with COLL 6.3 (Valuation and pricing).
- (2) (in COBS) (in relation to an operator of an electronic system in relation to lending):

- (a) at origination of a loan in relation to which a P2P agreement is made, the interest rate to be paid by the borrower to the lender in respect of that P2P agreement;
- (b) in relation to any transaction after the origination of a loan in relation to which a P2P agreement is made, the amount to be paid (or, where the context requires, that was paid), for the present value of the principal and the interest rate to be paid by the borrower, in respect of that P2P agreement.

supervisory function

- (1) any function within a *common platform firm* that is responsible for the supervision of its *senior personnel*.
- (2) (in relation to a *management company* and in accordance with article 3(6) of the *UCITS implementing Directive*) the *relevant persons* or body or bodies responsible for the supervision of its *senior personnel* and for the assessment and periodic review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with its obligations under the *UCITS Directive*.
- (3) (in relation to an operator of an electronic system in relation to lending) any function within the firm that is responsible for the supervision of its senior personnel.

Annex B

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

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

1 Annex 1 Detailed application of SYSC

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Part 3

...

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

| Provision | COLUMN A | COLUMN A+ | COLUMN A++ | COLUMN B |
|---------------------|---|---|--|---|
| SYSC 4 | Application to a common platform firm other than to a UCITS investment firm | Application to a UCITS management company | Application to a full-scope UK AIFM of an authorised AIF | Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms, and third country firms |
| ... | ... | ... | ... | ... |
| SYSC 4.1.8G | ... | ... | ... | ... |
| <u>SYSC 4.1.8AR</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> |
| <u>SYSC 4.1.8CG</u> | <u>Applies as guidance only to an operator of</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Applies as guidance only to an operator of an</u> |

| | | | | |
|----------------------|---|-----------------------|-----------------------|---|
| | <i>an electronic system in relation to lending</i> | | | <i>electronic system in relation to lending</i> |
| <u>SYSC 4.1.8DG</u> | <u>Applies as guidance only to an operator of an electronic system in relation to lending</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Applies as guidance only to an operator of an electronic system in relation to lending</u> |
| <u>SYSC 4.1.8DAG</u> | <u>Applies as guidance only to an operator of an electronic system in relation to lending</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Applies as guidance only to an operator of an electronic system in relation to lending</u> |
| <u>SYSC 4.1.8DBR</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> |
| <u>SYSC 4.1.8DCR</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> |
| <u>SYSC 4.1.8DDR</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> | <u>Not applicable</u> | <u>Not applicable</u> | <u>Applies as a rule only to an operator of an electronic system in relation to lending</u> |
| ... | ... | ... | ... | ... |
| <u>SYSC 4.3.1R</u> | ... | ... | ... | ... |
| <u>SYSC 4.3.2R</u> | Not applicable | Rule | Not applicable | Guidance – (but: (a) applies as a |

| | | | | |
|--------------|----------------|----------------|----------------|---|
| | | | | <i>rule to an operator of an electronic system in relation to lending; and (b) not applicable to incoming EEA firms, incoming Treaty firms or UCITS qualifiers}</i> |
| SYSC 4.3.2AG | Not applicable | Not applicable | Not applicable | Guidance (but not applicable to incoming EEA firms, incoming Treaty firms, or UCITS qualifiers, or an operator of an electronic system in relation to lending) |
| ... | ... | ... | ... | ... |

[Editor’s note: the text in this table takes no account of the amendments in PS19/5 ‘Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2’ (February 2019).]

...

| Provision | COLUMN A | COLUMN A+ | COLUMN A++ | COLUMN B |
|-----------|---|---|--|---|
| SYSC 6 | Application to a common platform firm other than to a UCITS investment firm | Application to a UCITS management company | Application to a full-scope UK AIFM of an authorised AIF | Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms, and third country firms |
| ... | .. | ... | ... | ... |

| | | | | |
|--------------|----------------|----------------|----------------|--|
| SYSC 6.1.1AG | ... | ... | ... | ... |
| SYSC 6.1.2R | Not applicable | Rule | Not applicable | Guidance, <u>but applies as a rule to an operator of an electronic system in relation to lending</u> |
| SYSC 6.1.2AG | Not applicable | Not applicable | Not applicable | Guidance, <u>but does not apply to an operator of an electronic system in relation to lending</u> |
| SYSC 6.1.3R | Not applicable | Rule | Not applicable | <p>Guidance, <u>but applies as a rule to an operator of an electronic system in relation to lending.</u></p> <p><u>For firms other than an operator of an electronic system in relation to lending, this</u> This provision shall be read with the following additional sentence at the start. “Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function. Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account SYSC 6.1.3R and SYSC 6.1.4R as</p> |

| | | | | |
|---------------|----------------|----------------|----------------|---|
| | | | | guidance.” |
| SYSC 6.1.3AG | Not applicable | Not applicable | Not applicable | Guidance, <u>but does not apply to an operator of an electronic system in relation to lending</u> |
| SYSC 6.1.4R | Not applicable | Rule | Not applicable | (1), (3) and (4): Guidance; (2): - Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> or <i>professional clients</i> . - Guidance for all other <i>firms</i> . <u>Applies as a rule to an operator of an electronic system in relation to lending.</u> |
| SYSC 6.1.4-AG | ... | ... | ... | ... |
| ... | ... | ... | ... | ... |
| SYSC 6.1.5R | Not applicable | Rule | Not applicable | - Guidance, <u>but applies as a rule to an operator of an electronic system in relation to lending</u> - “ <i>investment services and activities</i> ” shall be read as “ <i>financial services and activities</i> ” |
| SYSC 6.1.6G | Not applicable | Not applicable | Not applicable | Guidance, <u>but</u> |

| | | | | |
|--------------|----------------|----------------|----------------|--|
| | | | | <u>does not apply to an operator of an electronic system in relation to lending</u> |
| SYSC 6.1.7R | ... | ... | ... | ... |
| SYSC 6.1.8G | Not applicable | Not applicable | Not applicable | Only applies to an operator of an electronic system in relation to lending |
| SYSC 6.2.1R | Not applicable | Rule | Not applicable | <u>Guidance, but applies as a rule to an operator of an electronic system in relation to lending</u> |
| SYSC 6.2.1AG | Not applicable | Not applicable | Not applicable | <u>Guidance, but does not apply to an operator of an electronic system in relation to lending</u> |
| ... | ... | ... | ... | ... |

| Provision | COLUMN A | COLUMN A+ | COLUMN A++ | COLUMN B |
|-------------|---|---|--|--|
| SYSC 7 | Application to a common platform firm other than to a UCITS investment firm | Application to a UCITS management company | Application to a full-scope UK AIFM of an authorised AIF | Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms, ² and third country firms |
| ... | ... | ... | ... | ... |
| SYSC 7.1.1G | ... | ... | ... | ... |

| | | | | |
|--------------|----------------|--|----------------|---|
| SYSC 7.1.2R | Not applicable | Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance | Not applicable | Guidance, <u>but applies as a rule to an operator of an electronic system in relation to lending</u> |
| SYSC 7.1.2AG | Not applicable | Not applicable to a <i>UCITS investment firm</i> ; otherwise guidance | Not applicable | Guidance, <u>but does not apply to an operator of an electronic system in relation to lending</u> |
| SYSC 7.1.2BG | ... | ... | ... | ... |
| SYSC 7.1.3R | Not applicable | Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance | Not applicable | Guidance, <u>but applies as a rule for an operator of an electronic system in relation to lending</u> |
| SYSC 7.1.4R | Rule | Rule for a <i>UCITS investment firm</i> ; otherwise guidance | Not applicable | Guidance, <u>but applies as a rule to an operator of an electronic system in relation to lending</u> |
| SYSC 7.1.4AG | ... | ... | ... | ... |
| ... | ... | ... | ... | ... |
| SYSC 7.1.5R | Not applicable | Rule for a <i>UCITS investment firm</i> in relation to its non- <i>MiFID business</i> ; otherwise guidance | Not applicable | Guidance, <u>but applies as a rule to an operator of an electronic system in relation to lending</u> |
| SYSC 7.1.6R | Not applicable | Rule for a <i>UCITS investment firm</i> | Not applicable | Guidance, <u>but applies as a rule to an operator of an</u> |

| | | | | |
|--------------|----------------|--|----------------|--|
| | | in relation to its non-MiFID business; otherwise guidance | | <i>electronic system in relation to lending</i> |
| SYSC 7.1.7R | Not applicable | Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance | Not applicable | Guidance, but applies as a rule to an operator of an <i>electronic system in relation to lending</i> |
| SYSC 7.1.7AG | Not applicable | Rule for a UCITS investment firm; otherwise guidance | Not applicable | Guidance, but does not apply to an operator of an <i>electronic system in relation to lending</i> |
| ... | ... | ... | ... | ... |

...

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

| Provision | COLUMN A MiFID optional exemption firms | COLUMN B Third country firms |
|----------------------|--|---------------------------------|
| SYSC 4 (Note 1) | | |
| ... | ... | ... |
| SYSC 4.1.8G | ... | ... |
| <u>SYSC 4.1.8AR</u> | <u>Rule</u> | <u>Rule</u> |
| <u>SYSC 4.1.8CG</u> | <u>Guidance</u> | <u>Guidance</u> |
| <u>SYSC 4.1.8DG</u> | <u>Guidance</u> | <u>Guidance</u> |
| <u>SYSC 4.1.8DAG</u> | <u>Guidance</u> | <u>Guidance</u> |
| <u>SYSC 4.1.8DBR</u> | <u>Rule</u> | <u>Rule</u> |

| | | |
|---|-------------|-------------|
| <u>SYSC 4.1.8DCR</u> | <u>Rule</u> | <u>Rule</u> |
| <u>SYSC 4.1.8DDR</u> | <u>Rule</u> | <u>Rule</u> |
| ... | ... | ... |
| <p>Note = SYSC 4.1.8AR to SYSC 4.1.8DDR apply as a <i>rule</i> or <i>guidance</i>, as indicated above, <u>only to an operator of an electronic system in relation to lending.</u></p> | | |

...

4 General organisational requirements

...

4.1 General requirements

...

4.1.8 G ...

Operators of electronic systems in relation to lending: arrangements to administer loans in the event of platform failure

4.1.8A R (1) ~~An operator of an electronic system in relation to lending must take reasonable steps to ensure that~~ have arrangements are in place to ensure that *P2P agreements* facilitated by it will ~~continue to be~~ have a reasonable likelihood of being managed and administered, in accordance with the contract terms between the firm and its relevant borrower and lender customers, if at any time it ceases to ~~carry on the activity of operating an electronic system in relation to lending~~ manage and administer those P2P agreements.

(2) Under (1), and wherever the requirement in (1) is referenced in the FCA’s rules and guidance, the reference to P2P agreements includes any non-P2P agreement included in a P2P portfolio.

(3) The arrangements under (1) must not be designed to prefer any particular customers or class of customers for whom it manages and administers P2P agreements or non-P2P agreements.

4.1.8B R ~~Any arrangements made under SYSC 4.1.8AR must be notified to lenders under P2P agreements: [deleted]~~

(1) ~~when such arrangements are made; or~~

(2) ~~if later, when the lender first becomes a lender under a P2P agreement with that operator; or~~

- (3) ~~if the arrangements are changed, when that change is made; and~~
- (4) ~~if the arrangement involves another *firm* taking over the management and administration of *P2P agreements* if the operator ceases to *operate the electronic system in relation to lending*, the notification to lenders must inform lenders of the identity of the *firm* with which the arrangements have been made and how that *firm* will hold the lenders' money.~~

4.1.8C G Arrangements to ensure *P2P agreements* facilitated by the *firm* continue to be managed and administered that are required to be put in place under SYSC 4.1.8AR may include any one or more of the following:

- (1) entering into an arrangement with another *firm* that has the appropriate *permissions* to take over the management and administration of *P2P agreements* if the operator ceases to *operate the electronic system in relation to lending* and, where appropriate;
 - or
 - (a) obtaining prior and informed consent from *lender clients* to fund the continued cost of management and administration of their respective loans, for example through increased commissions; and/or
 - (b) obtaining prior and informed consent from *lender clients* and *borrower clients* for the transfer of the service of managing and administration of *P2P agreements* from the *firm* to that other *firm*; or
- (2) holding sufficient collateral ~~in a segregated account~~ to cover the cost of management and administration while the loan book is wound down, ensuring that the collateral is held through a structure that is ring-fenced in the event of the *firm's* insolvency; or
- (3) ~~entering into an arrangement for another *firm* to act as guarantor for the *P2P agreements* which includes a legally enforceable arrangement to meet the costs of the guarantee in full; or [deleted]~~
- (4) managing the loan book in a way that ensures that income from *P2P agreements* facilitated by the *firm* is sufficient to cover the costs of managing and administering those agreements during the winding down process, taking into account the reduction of the loan pool and fee income from it.

4.1.8D G (1) When designing its arrangements, a *firm* should take into account insolvency the general law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place.

(2) A *firm* should consider the need to obtain professional advice on the adequacy of its arrangements. For example, a *firm* may benefit from

obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the required outcome for continuity of management and administration of P2P agreements.

- (3) In assessing the adequacy of its arrangements, a firm should consider, in particular:
- (a) whether any terms included in relevant contracts as part of its arrangements are enforceable, for example terms in customer, service and supplier contracts;
 - (b) the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome, including whether the firm will be likely to have sufficient financial resources to fund the implementation of the arrangements at the relevant time;
 - (c) whether the arrangements make adequate provision for any activities that are ancillary to the management and administration of P2P agreements upon which the required outcome is, or could be, dependent;
 - (d) whether, having regard to SYSC 4.1.8AR(3), its arrangements are designed so as not to produce a better outcome for its customers who are party to non-P2P agreements than for customers who are party to P2P agreements;
 - (e) whether its arrangements take into account any relevant security arrangements in relation to loans; and
 - (f) whether its arrangements take into account any relevant tax arrangements for lender clients.
- (4) Firms are reminded of the disclosure requirements in COBS 18.12.28R (Information concerning platform failure).
- (5) Firms may find it useful to refer to the FCA's Wind-down Planning Guide (WDPG) when designing their arrangements.

4.1.8DA G In line with Principle 11 and SUP 15.3.8G (Communication with the appropriate regulator in accordance with Principle 11), a firm should notify the FCA in writing if it is contemplating:

- (1) ceasing to manage and administer P2P agreements facilitated by it;
- (2) implementing its arrangements under SYSC 4.1.8AR; or
- (3) implementing any other arrangements that have a similar purpose.

4.1.8DB R An operator of an electronic system in relation to lending must produce and keep up to date a P2P resolution manual which contains information

about the *firm* that, in the event of the *firm's* insolvency, would assist in resolving the *firm's* business of management and administration of *P2P agreements* that it has facilitated. For these purposes, the reference to *P2P agreements* includes any *non-P2P agreement* included in a *P2P portfolio*. It must, as a minimum, include a written explanation of each of the following:

- (1) how the *firm* conducts the business of management and administration of *P2P agreements* that it has facilitated, what the day-to-day operation of that business entails and what resources would be needed to continue that business if the *firm* ceased to carry it on, including a specification of:
 - (a) critical staff and their respective roles;
 - (b) critical premises;
 - (c) the *firm's* IT systems, including details of data storage and data recovery arrangements;
 - (d) the *firm's* record-keeping systems, including how records are organised;
 - (e) all relevant bank accounts and payment facilities;
 - (f) all relevant *persons* outside of the *firm*, and their respective roles, including any outsourced service providers;
 - (g) all relevant legal documentation, including customer, service and supplier contracts;
 - (h) the *firm's* group, using a structure chart showing:
 - (i) the legal entities in the group;
 - (ii) the ownership structure of those entities; and
 - (iii) the jurisdiction of those entities; and
 - (i) how the *firm* holds and manages any security for loans;
- (2) the steps that would need to be implemented under the arrangements in place under SYSC 4.1.8AR in order for *P2P agreements* facilitated by the *firm* to continue to be managed and administered;
- (3) any terms in contracts that may need to be relied on to ensure *P2P agreements* facilitated by it will continue to be managed and administered under those arrangements; and
- (4) how the *firm's* systems can produce the detail specified in COBS 18.12.31R (Ongoing disclosures) for each *P2P agreement* facilitated by it.

4.1.8DC R An operator of an electronic system in relation to lending must put in place arrangements to ensure that its P2P resolution manual would be immediately available to:

- (1) an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property; and
- (2) the FCA, on request.

4.1.8DD R A operator of an electronic system in relation to lending must store its P2P resolution manual in the same place as its CASS resolution pack, if CASS 10 (CASS resolution pack) applies to it.

...

4.3 Responsibility of senior personnel

...

4.3.2 R A firm that is a management company or an operator of an electronic system in relation to lending, must ensure that:

- (1) its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2R to ~~SYSC~~ 6.1.5R, SYSC 6.2.1R, SYSC 7.1.2R, SYSC 7.1.3R and SYSC 7.1.5R to ~~SYSC~~ 7.1.7R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and
- (2) the *supervisory function*, if any, receives on a regular basis written reports on the same matters.

...

...

6 Compliance, internal audit and financial crime

6.1 Compliance

...

6.1.2 R A firm that is a management company or an operator of an electronic system in relation to lending must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the regulatory system, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the FCA to exercise its powers effectively under the regulatory system and, in respect of a management company, to enable any other

competent authority to exercise its powers effectively under the *UCITS Directive*.

...

...

Compliance function

- 6.1.3 R A firm that is a management company or an operator of an electronic system in relation to lending must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2R, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
 - (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

...

...

- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a firm that is a management company or an operator of an electronic system in relation to lending must ensure that the following conditions are satisfied:
- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
 - (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2R;
 - (3) the *relevant persons* involved in the compliance functions must not be involved in the performance of the services or activities they monitor;
 - (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

...

...

- 6.1.5 R A firm that is a management company or an operator of an electronic

system in relation to lending need not comply with SYSC 6.1.4R(3) or SYSC 6.1.4R(4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those *rules* are not proportionate and that its compliance function continues to be effective.

...

...

6.1.8 **G** The exemptions in SYSC 6.1.5R are unlikely to apply to a firm that is an operator of an electronic system in relation to lending where that firm offers lenders a P2P portfolio with a target rate.

6.2 Internal audit

6.2.1 **R** A firm that is a management company or an operator of an electronic system in relation to lending must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:

- (1) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the *firm's* systems, internal control mechanisms and arrangements;
- (2) to issue recommendations based on the result of work carried out in accordance with (1);
- (3) to verify compliance with those recommendations;
- (4) to report in relation to internal audit matters in accordance with SYSC 4.3.2R.

...

...

7 Risk control

7.1 Risk control

...

7.1.2 **R** A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the *firm's* activities, processes and systems, and where appropriate, set the level of risk tolerated by the *firm*.

...

Risk management

7.1.3 R A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must adopt effective arrangements, processes and mechanisms to manage the risk relating to the *firm's* activities, processes and systems, in light of that level of risk tolerance.

7.1.4 R The *management body* of a common platform firm or of an operator of an electronic system in relation to lending must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the *firm* is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

...

...

7.1.5 R A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must monitor the following:

- (1) the adequacy and effectiveness of the *firm's* risk management policies and procedures;
- (2) the level of compliance by the *firm* and its *relevant persons* with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3R;
- (3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the *relevant persons* to comply with such arrangements or processes and mechanisms or follow such policies and procedures.

7.1.6 R A firm that is a UCITS investment firm or an operator of an electronic system in relation to lending must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the *investment services and activities* undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

- (1) implementation of the policies and procedures referred to in SYSC 7.1.2R to SYSC 7.1.5R; and
- (2) provision of reports and advice to *senior personnel* in accordance with SYSC 4.3.2R.

7.1.7 R Where a firm that is a UCITS investment firm or an operator of an electronic system in relation to lending is not required under SYSC 7.1.6R

to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with SYSC 7.1.2R to SYSC 7.1.5R satisfy the requirements of those *rules* and are consistently effective.

...

Sch 1 Record keeping requirements

...

Sch 1.2

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|----------------------|---|--------------------------|--|---|
| ... | | | | |
| SYSC 3.2.20R | ... | ... | ... | ... |
| <u>SYSC 4.1.8DBR</u> | <u>The firm's most recent P2P resolution manual</u> | <u>As stated in rule</u> | <u>When the P2P resolution manual is made or updated</u> | <u>None specified (but see SYSC 4.1.8DCR)</u> |
| ... | | | | |

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

4 Communicating with clients, including financial promotions

...

4.7 Direct offer financial promotions

...

Non-readily realisable securities and P2P agreements

- 4.7.7 R (1) Unless permitted by *COBS* 4.7.8R, a *firm* must not *communicate* or *approve a direct-offer financial promotion* relating to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio* to or for *communication* to a *retail client* without the conditions in (2) and (3) being satisfied.
- (2) The first condition is that the *retail client* recipient of the *direct offer financial promotion* is one of the following:
- (a) certified as a ‘high net worth investor’ in accordance with *COBS* 4.7.9R;
 - (b) certified as a ‘sophisticated investor’ in accordance with *COBS* 4.7.9R;
 - (c) self-certified as a ‘sophisticated investor’ in accordance with *COBS* 4.7.9R; or
 - (d) certified as a ‘restricted investor’ in accordance with *COBS* 4.7.10R.
- (3) The second condition is that the *firm* itself or:
- (a) the *person* who will *arrange* or *deal* in relation to the *non-readily realisable security*; or
 - (b) the *person* who will facilitate the *retail client* becoming a *lender* under a *P2P agreement* or a *P2P portfolio*,
- will comply with the *rules* on appropriateness (see *COBS* 10 and 10A) or equivalent requirements for any application or order that the *firm* or *person* is aware, or ought reasonably to be aware, is in

response to the *direct offer financial promotion*.

- 4.7.8 R A firm may communicate or approve a *direct-offer financial promotion* relating to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio* to or for *communication* to a *retail client* if:
- (1) the firm itself will comply with the suitability rules (COBS 9 and 9A) in relation to the *investment* promoted; or
 - (2) the *retail client* has confirmed before the promotion is made that they are a *retail client* of another firm that will comply with the suitability rules (COBS 9 and 9A) in relation to the *investment* promoted; or
 - (3) the *retail client* is a *corporate finance contact* or a *venture capital contact*.
- 4.7.9 R (1) A certified high net worth investor, a certified sophisticated investor or a self-certified sophisticated investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the terms set out in the applicable *rule* listed below; and as modified by (2); ~~substituting “non-readily realisable securities” for “non-mainstream pooled investments”~~:
- (1 a) certified high net worth investor: COBS 4.12.6R;
 - (2 b) certified sophisticated investor: COBS 4.12.7R;
 - (3 c) self-certified sophisticated investor: COBS 4.12.8R.
- (2) Each of the statements in (1), when used in relation to *non-readily realisable securities*, *P2P agreements* or a *P2P portfolio*, must, as appropriate, be modified as follows:
- (a) in all of the statements, any references to “non-mainstream pooled investments” must be replaced with references to “non-readily realisable securities” or “P2P agreements or P2P portfolios”, as applicable;
 - (b) in the statement in COBS 4.12.8R, the reference to “unlisted company” must be replaced with a reference to “P2P agreement or P2P portfolio”; and
 - (c) in the statement in COBS 4.12.8R, the reference to “private equity sector, or in the provision of finance for small and medium enterprises” must be replaced with a reference to “provision of finance, resulting in an understanding of the P2P agreements or P2P portfolios to which the promotions will relate.”

4.7.10 R A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms, substituting “P2P agreements or P2P portfolios” for “non-readily realisable securities”, as appropriate:

...

...

4.7.12 G Where a firm communicates or approves direct offer financial promotions relating to both non-readily realisable securities and P2P agreements or P2P portfolios, the condition in COBS 4.7.7R(2) may be satisfied by the retail client signing a combined statement that meets the requirements in COBS 4.7.9R or COBS 4.7.10R, as applicable, in respect of both non-readily realisable securities and P2P agreements or P2P portfolios.

4.7.13 G In relation to a P2P agreement or a P2P portfolio, a firm may communicate to a retail client information about a P2P agreement or a P2P portfolio before needing to satisfy the conditions in COBS 4.7.7R(2) and (3), provided that the defining elements of a direct offer financial promotion are not present in that communication. This information may comprise, without limitation, mandatory disclosures applicable to that firm, such as those set out in COBS 18.12.24R to 18.12.28R, including information about:

- (1) the identity of the borrower(s);
- (2) the price or target rate, provided they are accompanied by a fair description of the anticipated actual return, taking into account fees, default rates and taxation;
- (3) the term;
- (4) the risk categorisation; and
- (5) a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the firm.

...

10 **Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)**

10.1 **Application**

...

10.1.2 R This chapter applies to a firm which *arranges or deals* in relation to a *non-readily realisable security, derivative* or a *warrant* with or for a *retail client*, other than in the course of *MiFID* or *equivalent third country*

business, or facilitates a retail client becoming a lender under a P2P agreement and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion.

...

10.2 Assessing appropriateness: the obligations

...

P2P agreements

- 10.2.9 G (1) When determining whether a client has the necessary knowledge to understand the risks involved in relation to a P2P agreement or a P2P portfolio, a firm should consider asking the client multiple-choice questions that avoid binary (yes/no) answers and cover, at least, the following matters:
- (a) the nature of the client's contractual relationships with the borrower and the firm;
 - (b) the client's exposure to the credit risk of the borrower;
 - (c) that all capital invested in a P2P agreement or P2P portfolio is at risk;
 - (d) that P2P agreements or P2P portfolios are not covered by FSCS;
 - (e) that returns may vary over time;
 - (f) that entering into a P2P agreement or investing in a P2P portfolio is not comparable to depositing money in a savings account;
 - (g) the characteristics of any:
 - (i) security interest, insurance or guarantee taken in relation to the P2P agreements or P2P portfolio;
or
 - (ii) risk diversification facilitated by the firm; or
 - (iii) contingency fund offered by the firm, or
 - (iv) any other risk mitigation measure adopted by the firm;
 - (h) that any of the measures in (g) adopted by the firm cannot guarantee that the client will not suffer a loss in relation to the capital invested;

- (i) that where a *firm* has not adopted any risk mitigation measures (such as those in (g)), the extent of any capital losses is likely to be greater than if risk mitigation measures were adopted by the *firm*;
- (j) illiquidity in the context of a *P2P agreement* or *P2P portfolio*, including the risk that the lender may be unable to exit a *P2P agreement* before maturity even where the *firm* operates a secondary market;
- (k) the role of the *firm* and the scope of its services, including what the *firm* does and does not do on behalf of lenders; and
- (l) the risks to the management and administration of a *P2P agreement* or *P2P portfolio* in the event of the *firm*'s becoming insolvent or otherwise failing.

...

14 Providing product information to clients

...

14.3 Information about designated investments (non-MiFID provisions)

...

Firms advising on P2P agreements

- 14.3.7A G Examples of information a *firm* *advising on P2P agreements or P2P portfolios* should provide to explain the specific nature and risks of a *P2P agreement* or a *P2P portfolio* include:

...

- 14.3.7B G ~~The *guidance* in COBS 14.3.7AG is relevant both to *firms* which are operators of electronic systems in relation to lending and *firms* advising on *P2P agreements*.~~

When complying with the information requirements set out in this chapter and other parts of the *FCA Handbook*, *firms* advising on a *P2P agreement* or a *P2P portfolio* may also wish to consider providing to *retail clients* any other information that an *operator of an electronic system in relation to lending* must disclose in accordance with COBS 18.12.

...

Insert the following new section, COBS 18.12, after COBS 18.11 (Authorised professional

firms). The text is not underlined.

18.12 Operating an electronic system in relation to lending

Application

- 18.12.1 R This section applies to *an operator of an electronic system in relation to lending*, but only in relation to a *person* becoming a lender under a *P2P agreement*.
- 18.12.2 R This section does not apply in relation to a current account agreement where:
- (1) there is a possibility that the account holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and
 - (2) if the account holder did so, this would be a *P2P agreement* (overrunning).

Purpose

- 18.12.3 G The purpose of this chapter is to ensure that, where applicable, a *firm*:
- (1) prices and values *P2P agreements* fairly and appropriately;
 - (2) will prevent lenders being exposed to risk outside of the parameters advertised at the time of investment;
 - (3) has a reasonable basis to conclude that a *target rate* can be reasonably achieved; and
 - (4) can support the statements made in its disclosures and financial promotions.

Interpretation

- 18.12.4 R In the remainder of this section:
- (1) references to a *P2P agreement* include *non-P2P agreements* included in a *P2P portfolio*;
 - (2) unless the context otherwise requires, references to “lender” also include a prospective lender;
 - (3) a *firm* is treated as having determined the *price* of a *P2P agreement* in cases other than where the lender and the borrower have entered into a genuine negotiation to determine the *price* of that *P2P agreement*; and

- (4) references to repayment refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *P2P agreement*).

Credit risk assessment

- 18.12.5 R Where a *firm* determines the *price* of a *P2P agreement*, it must undertake a reasonable assessment of the credit risk of the borrower before the *P2P agreement* is made.
- 18.12.6 R A *firm* must base its *credit risk assessment* on sufficient information:
- (1) of which it is aware at the time the *credit risk assessment* is carried out;
 - (2) obtained, where appropriate, from the borrower, and, where necessary, any other relevant sources of information.

The subject matter of the credit risk assessment

- 18.12.7 R The *firm* must consider the risk that the borrower will not make one or more repayments under the *P2P agreement* by the due date.

Scope, extent and proportionality of the credit risk assessment

- 18.12.8 R
- (1) The extent and scope of the *credit risk assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one and based on sufficient information, is dependent upon, and proportionate to, the individual circumstances of each case.
 - (2) The *firm* must consider:
 - (a) the types of information to use in the *credit risk assessment*;
 - (b) the content and level of detail of the information to use;
 - (c) whether the information in the *firm's* possession is sufficient;
 - (d) whether and to what extent to obtain additional information from the borrower;
 - (e) whether and to what extent to obtain information from any other sources;
 - (f) whether and to what extent to verify the accuracy of the information that is used; and
 - (g) the degree of evaluation and analysis of the information

that is used,

having regard to the factors listed in (3) where applicable to the agreement.

- (3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *credit risk assessment* a reasonable one include each of the following where applicable to the agreement:
- (a) the type of *credit*;
 - (b) the amount of the *credit* or the *credit limit*;
 - (c) the duration (or likely duration) of the *credit*;
 - (d) the frequency of the repayments;
 - (e) the amount of the repayments;
 - (f) the annual percentage rate of charge; and
 - (g) any other costs, including any charge for non-compliance with the agreement, which will or may be payable by or on behalf of the borrower in connection with the agreement.

- 18.12.9 G The *firm* may have regard, where appropriate, to information obtained:
- (1) in the course of previous dealings with the borrower but should consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it;
 - (2) as part of conducting a *credit-worthiness assessment* in relation to a *P2P agreement* in accordance with *CONC 5.5A*; or
 - (3) as part of assessing affordability in relation to a *P2P agreement* comprising a *home finance transaction*, in accordance with *MCOB 11* as modified by *MCOB 15*.

Policies and procedures for credit risk assessment

- 18.12.10 R A *firm* must:
- (1) establish, implement and maintain clear and effective policies and procedures:
 - (a) to enable it to carry out *credit risk assessments*; and
 - (b) setting out the principal factors it will take into account in carrying out *credit risk assessments*;

- (2) set out in writing the policies and procedures in (1), and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
 - (a) the effectiveness of the policies and procedures in (1); and
 - (b) the *firm's* compliance with those policies and procedures and with its obligations under *COBS* 18.12.5R to 18.12.8R;
- (4) following the review in (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;
- (5) maintain a record of each transaction where a *P2P agreement* is entered into sufficient to demonstrate that:
 - (a) a *credit risk assessment* was carried out where required; and
 - (b) the *credit risk assessment* was reasonable and was undertaken in accordance with *COBS* 18.12.5R to 18.12.8R,

and in each case to enable the *FCA* to monitor the *firm's* compliance with its obligations under *COBS* 18.12.5R to 18.12.8R; and
- (6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

Pricing, allocation and portfolio composition

- 18.12.11 R Where a *firm* determines the *price* of a *P2P agreement* it must ensure that the *price* is fair and appropriate.
- 18.12.12 R To determine a fair and appropriate *price* for a *P2P agreement* the *firm* must at least ensure:
- (1) the *price* is reflective of the risk profile of the loan; and
 - (2) the *firm* has taken into account:
 - (a) the time value of money; and
 - (b) the credit spread of the *P2P agreement*.

- 18.12.13 R Where a *firm* selects which *P2P agreements* to facilitate for a lender, it must facilitate only those *P2P agreements* which are in line with the disclosures made pursuant to *COBS 18.12.27R*.
- 18.12.14 R Where a *firm* is assembling or managing a *P2P portfolio*, it must ensure that it includes in that *P2P portfolio* only those *P2P agreements* it has determined with reasonable certainty will enable the lender to achieve the *target rate*.
- 18.12.15 G To be able to comply with *COBS 18.12.14R*, a *firm* should use appropriate data and robust modelling. The data may be the *firm's* own or may be sourced from third parties. Modelling could include the *firm's credit risk assessment* of all borrowers under *P2P agreements* included in the *P2P portfolio*, taking into account the expected losses and the variability of losses through the cycle, and the *price* of such agreements as calculated in accordance with *COBS 18.12.12R*.
- 18.12.16 R Where a *firm* determines the *price* of a *P2P agreement* it must review the valuation of each *P2P agreement* in at least the following circumstances:
- (1) when the *P2P agreement* is originated;
 - (2) where the *firm* considers that the borrower is unlikely to pay its obligations under the *P2P agreement* in full, without the *firm* enforcing any relevant security interest or taking other steps with analogous effect;
 - (3) following a *default*; and
 - (4) where the *firm* is facilitating an exit for a lender before the maturity date of the *P2P agreement*.
- 18.12.17 R Where a *firm* that determines the *price* of *P2P agreements* is facilitating an exit for a lender before the maturity date of a *P2P agreement*, the *firm* must ensure that the price offered for exiting the *P2P agreement* is fair and appropriate.

Risk management framework

- 18.12.18 R (1) Where any of *COBS 18.12.11R* to *18.12.17R* apply, a *firm* must have and use a *risk management framework* that is designed to achieve compliance with those *rules*.
- (2) The *firm's risk management framework* must at least:
- (a) be appropriate to the nature, scale and complexity of its business;
 - (b) take into account any *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability under *MCOB*;

- (c) categorise *P2P agreements* by their risk, taking into account the probability of default and the loss given default; and
 - (d) set out the circumstances in which the *firm* will review the valuation of each *P2P agreement*.
- (3) The *firm* must set out in writing the *risk management framework*, and have it approved by its *governing body* or *senior personnel*.
- 18.12.19 G Where *COBS* 18.12.11R to 18.12.17R do not apply to a *firm*, it would be good practice for the *firm* to consider whether, depending on its business model, it should apply the requirements in *COBS* 18.12.18R(1) to (3).

Monitoring of the risk management framework

- 18.12.20 R A *firm* with a *risk management framework* must:
- (1) assess, monitor and periodically review the adequacy and effectiveness of the *risk management framework*, including by assessing outcomes against expectations;
 - (2) pursuant to (1), take appropriate measures to address any deficiencies in the *risk management framework*;
 - (3) maintain a record of each transaction where it has used the *risk management framework* to facilitate a *P2P agreement* sufficient to demonstrate that:
 - (a) the *price* of the *P2P agreement* was fair and appropriate in line with the *risk management framework*;
 - (b) where the *firm* selected which *P2P agreements* to facilitate for a lender, that its selection was in line with the *risk management framework*;
 - (c) any inclusion in a *P2P portfolio* was in line with the *risk management framework*,

and in each case to enable the *FCA* to monitor the *firm's* compliance with its obligations regarding the *risk management framework*;
 - (4) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (3); and
 - (5) allocate to an *approved person* overall responsibility within the *firm* for the establishment and maintenance of an effective *risk management framework* and record that allocation.

Publication of an outcomes statement

- 18.12.21 R Where a *firm* determines the *price* of *P2P agreements* in any financial year of the *firm*, it must publish an *outcomes statement* within four *months* of the end of each financial year.
- 18.12.22 R A *firm* must ensure that each *outcomes statement* remains publicly available for at least 10 years from publication.

Content of an outcomes statement

- 18.12.23 R An *outcomes statement* must include, as applicable, for the financial year of the *firm*:
- (1) the expected and actual *default* rate of all *P2P agreements* the *firm* has facilitated by risk category, by reference to the risk categories set out in the *risk management framework*, in line with the requirements in *COBS 4.6* on past and future performance;
 - (2) a summary of the assumptions used in determining expected future *default* rates; and
 - (3) where the *firm* offered a *target rate*, the actual return achieved.

Information: role of an operator of an electronic system in relation to lending

- 18.12.24 R A *firm* must provide to a lender a description of its role in facilitating *P2P agreements*. That description must include:
- (1) the nature and extent of due diligence the *firm* undertakes in respect of borrowers;
 - (2) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *firm* considers the borrower eligible for a *P2P agreement*;
 - (3) whether the *firm* will play a role in determining the *price* of a *P2P agreement* and, if so, what role;
 - (4) where lenders do not have the choice to enter into specific *P2P agreements*, what role the *firm* will play in selecting *P2P agreements* for the lender;
 - (5) where a *firm* offers a *P2P portfolio* to lenders, what role it will play in assembling or managing that *P2P portfolio*;
 - (6) an explanation of the *firm's* procedure for dealing with a loan in late payment or default;
 - (7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* will be calculated;

- (8) whether the *firm* will play a role in facilitating a secondary market in *P2P agreements* and, if so, what role, including:
- (a) the procedure for a lender to access their money before the term of the *P2P agreement* has expired and the risk to their investment of doing so; and
 - (b) whether the *firm* displays *P2P agreements* that lenders wish to exit and that other lenders may choose to enter into; or
 - (c) whether the *firm* decides if the *P2P agreement* should be transferred to another lender without involving either lender in that decision.

Information: Financial Services Compensation Scheme

- 18.12.25 R A *firm* must provide confirmation to a lender that there is no recourse to the Financial Services Compensation Scheme.

Information: P2P agreements where the lender selects the agreements

- 18.12.26 R Where a lender has the choice to enter into specific *P2P agreements*, a *firm* must provide the lender with at least the following information about each *P2P agreement*:
- (1) where the *firm* determines the *price of P2P agreements*, the *price of the P2P agreement*;
 - (2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;
 - (3) when the *P2P agreement* is due to mature;
 - (4) the frequency of the repayments to be made by the borrower;
 - (5) the amounts of the repayments to be made by the borrower;
 - (6) the total amount payable by the borrower;
 - (7) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;
 - (8) where the *firm* determines the *price of P2P agreements*, details of the *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability under *MCOB* carried out;
 - (9) whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;

- (10) fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower;
- (11) where the *firm* determines the *price* of *P2P agreements*, the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*; and
- (12) where any of the terms in respect of which information must be provided under sub-paragraphs (1) to (7) is set by auction, a description of the auction process and of how those terms will be determined.

Information: P2P agreements where the firm selects the agreements

- 18.12.27 R Where a *firm* selects which *P2P agreements* to facilitate for a lender, including where a *firm* offers a *P2P portfolio* to a lender, the *firm* must provide the lender with the following information about the *P2P agreements* it may facilitate for the lender:
- (1) the minimum and maximum interest rate that will be payable under any *P2P agreement* that may be facilitated for the lender;
 - (2) the minimum and maximum maturity date of any *P2P agreement* that may be facilitated for the lender;
 - (3) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;
 - (4) fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower; and
 - (5) the range and distribution of risk categories that the *P2P agreements* may fall into and an explanation of those risk categories by reference to the risk categories set out in the *risk management framework*.

Information concerning platform failure

- 18.12.28 R
- (1) A *firm* must notify each lender of the *firm's* arrangements made under SYSC 4.1.8AR to ensure that *P2P agreements* facilitated by it will continue to be managed and administered in accordance with the contract terms between the *firm* and the lender.
 - (2) Where a *firm's* arrangements made under SYSC 4.1.8AR include particular terms in its contracts with lenders, or include obtaining particular prior consents from lenders, the *firm* must clearly identify these arrangements and explain how they operate.
 - (3) Where a *firm's* arrangements made under SYSC 4.1.8AR involve another *person* taking over the management and administration of

P2P agreements if the *firm* ceases to operate the electronic system in relation to lending, the notification must inform lenders of:

- (a) the identity of the *person* with which the arrangements have been made;
 - (b) how that *person* will hold the lenders' money; and
 - (c) whether that *person* is authorised by the *FCA* and, if it is, which relevant *Part 4A permissions* it holds.
- (4) A *firm* must also explain to each lender the particular risks to the management and administration of *P2P agreements* in the event of its own *failure*, including:
- (a) the possibility that *P2P agreements* may cease to be managed and administered before they mature;
 - (b) the possibility that any *person* involved in the continued management and administration of *P2P agreements* after the *firm* fails may not be subject to the same regulatory regime and requirements as the *firm*, and the resulting possibility that regulatory protections may be reduced or no longer available; and
 - (c) the likelihood that the majority of balances due to the lender are those due from borrowers rather than from the *firm* itself, so if the *firm fails* a lender's entitlement to any *client money* held by the *firm* would not include those balances that the *firm* has not yet received from borrowers.

The timing rules

- 18.12.29 R (1) The information to be provided in accordance with *COBS* 18.12.24R to 18.12.25R and 18.12.27R to 18.12.28R must be provided in good time before a *firm* carries on the relevant business for a lender.
- (2) The information to be provided in accordance with *COBS* 18.12.26R must be provided each time before a *firm* facilitates a person becoming a lender under a *P2P agreement*, and in good time before doing so.
- (3) Where any of the terms in respect of which information must be provided under *COBS* 18.12.26R(1) to (7) are set by auction, that information must be provided as soon as reasonably practicable after those terms have been set as a result of the auction.

Keeping the client up to date

- 18.12.30 R (1) A *firm* must notify a lender in good time about any material change to the information provided under the *rules* in COBS 18.12.24R and 18.12.28R.
- (2) The notification in (1) must be given in a *durable medium* if the information to which it relates was given in a *durable medium*.

Ongoing disclosures

- 18.12.31 R A *firm* must ensure that, at any point in time, a lender is able to access details of each *P2P agreement* they have entered into which was facilitated by that *firm*, including:
- (1) the *price* of the *P2P agreement*;
 - (2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;
 - (3) the outstanding capital and interest payments in respect of that *P2P agreement*;
 - (4) when the *P2P agreement* is due to mature;
 - (5) any fees paid in respect of that *P2P agreement* by the lender or the borrower;
 - (6) if the *firm* has carried out a valuation of the *P2P agreement*:
 - (a) the most recent valuation;
 - (b) the valuation date; and
 - (c) an explanation of why the *firm* conducted the valuation;
 - (7) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;
 - (8) where the *firm* determines the price of *P2P agreements*, details of the *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability carried out under MCOB;
 - (9) whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;
 - (10) where the *firm*:
 - (a) determines the *price* of *P2P agreements*;
 - (b) selects which *P2P agreements* to facilitate for a lender; or

(c) offers a *target rate*,

the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*;

- (11) whether the *firm* considers that the borrower is unlikely to pay its obligations under the *P2P agreement* in full without the *firm* enforcing any relevant security interest or taking other steps with analogous effect and, if so, information to that effect; and
- (12) whether a *default* by the borrower under a *P2P agreement* has occurred and, if so, information to that effect.

Information: form

- 18.12.32 R The *documents* and information provided in accordance with *COBS* 18.12.24R to 18.12.28R and *COBS* 18.12.31R must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

Contingency funds: standardised risk warning

- 18.12.33 R (1) In addition to any other risk warnings that must be given by a *firm*, a *firm* must provide the following risk warning to a lender when it offers a *contingency fund*, modified as necessary to reflect the terminology used by the *firm* to refer to a *contingency fund*:

“The contingency fund we offer does not give you a right to a payment so you may not receive a pay-out even if you suffer loss. The fund has absolute discretion as to the amount that may be paid, including making no payment at all. Therefore, investors should not rely on possible pay-outs from the contingency fund when considering whether or how much to invest.”

- (2) The *firm* must provide the risk warning in a prominent place on every page of each website and mobile application of the *firm* available to lenders containing any reference to a *contingency fund*.
- (3) Where the lender has not approached the *firm* through a website or mobile application, the risk warning must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.

- 18.12.34 R The standardised risk warning must be:

- (1) prominent; and
- (2) contained within its own border and with bold text as indicated.

Contingency funds: published policy

- 18.12.35 R (1) A *firm* which offers a *contingency fund* to lenders must have a *contingency fund policy*.
- (2) The *contingency fund policy* must contain the following information:
- (a) an explanation of the source of the money paid into the fund;
 - (b) an explanation of how the fund is governed;
 - (c) an explanation of who the money belongs to;
 - (d) the considerations the fund operator takes into account when deciding whether or how to exercise its discretion to pay out from the fund, including examples. This should include:
 - (i) whether or not the fund has sufficient money to pay; and
 - (ii) that the fund operator has absolute discretion in any event not to pay or to decide the amount of the payment;
 - (e) an explanation of the process for considering whether to make a discretionary payment from the fund; and
 - (f) a description of how that money will be treated in the event of the *firm's* insolvency.
- (3) The *contingency fund policy* must be provided on every page of each website and mobile application of the *firm* available to lenders and must be:
- (a) prominent;
 - (b) in an unrestricted part of the website or mobile application; and
 - (c) accessible via a link contained in the standardised risk warning in *COBS* 18.12.33R.
- (4) Where the lender has not approached the *firm* through a website or mobile application this information must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.
- 18.12.36 G When deciding whether to pay out from the *contingency fund*, a *firm* should take into account fairness to lenders and whether the lender made

an active choice about whether or not to participate in the *contingency fund*.

Contingency funds: information when the fund is used

- 18.12.37 R (1) A *firm* must notify a lender if they receive payment from a *contingency fund*.
- (2) This notification must state the amount paid to the lender from the *contingency fund*.
- (3) This notification must be provided either:
- (a) at the time the payment is made; or
 - (b) on an aggregated basis at least once every three *months*.

Contingency funds: information about how the fund is performing

- 18.12.38 R A *firm* which offers a *contingency fund* must make public on a quarterly basis the following facts about how the fund is performing:
- (1) the size of the fund compared to total amounts outstanding on *P2P agreements* relevant to the *contingency fund*;
 - (2) what proportion of outstanding borrowing under *P2P agreements* has been paid using the *contingency fund*; and
 - (3) a *firm* must:
 - (a) only include the actual amount of money held in the *contingency fund* at the relevant time, net of any liabilities or pay outs agreed but not yet paid; and
 - (b) not include any amounts due to be paid into the *contingency fund* that have not yet been paid into it.

Past performance

- 18.12.39 R A *firm* must ensure that information that contains an indication of past performance only contains information that is reflective of the actual payments received by lenders from borrowers under *P2P agreements*.
- 18.12.40 G One of the consequences of *COBS* 18.12.39R is that payments made to lenders from a *contingency fund* should not be reflected in any information that contains an indication of past performance. Firms should also take into account the effect of commissions, fees and other charges.

MORTGAGES AND HOME FINANCE (PEER TO PEER) INSTRUMENT 2019**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137R (Financial promotion rules);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (The FCA’s power to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 4 June 2019.

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 |
| Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) | Annex B |
| Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) | Annex C |
| Supervision manual (SUP) | Annex D |
| Consumer Credit sourcebook (CONC) | Annex E |

Citation

- E. This instrument may be cited as the Mortgages and Home Finance (Peer to Peer) Instrument 2019.

By order of the Board
30 May 2019

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text.

Amend the following definition as shown.

tiered product (1) (other than where (2) applies) a product, other than *linked borrowing* or a *linked deposit*, that a *customer* is obliged to purchase through a *mortgage lender* or *reversion provider* as a condition of taking out a *regulated mortgage contract* or *home reversion plan* with that *firm*; or
(2) (in relation to a *customer* of a *P2P platform operator*) a product, other than *linked borrowing* or a *linked deposit*, that a *customer* is obliged to purchase through a *P2P platform operator* as a condition of taking out a *regulated mortgage contract* or *home reversion plan* through that *firm*.

Annex B

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

In this Annex, underlining indicates new text.

5 Insurance undertakings and home finance providers using insurance or home finance mediation services

5.1 Application and purpose

...

- 5.1.1A R (1) This chapter also applies to a *firm* which is a *P2P platform operator* facilitating a *regulated mortgage contract, home purchase plan, home reversion plan or regulated sale and rent back agreement* where the lender or provider under that contract does not fall within the definition of a *mortgage lender, home purchase provider, reversion provider or regulated sale and rent back firm*.
- (2) Where (1) applies, references to a *firm* using the services of another *person* consisting of *insurance distribution, insurance distribution activity or home finance mediation activity* are to be read as references to the *P2P platform operator* using those services.

...

Annex C

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

In this Annex, underlining indicates new text, unless where otherwise stated.

1 Application and purpose

...

1.2 General application: who? what?

...

Application of MCOB where agreements are facilitated by a P2P platform

- 1.2.22 R (1) A provision of MCOB that applies to a mortgage lender, a home purchase plan provider, a home reversion provider or a SRB agreement provider also applies to a P2P platform operator facilitating a regulated mortgage contract, home purchase plan, home reversion plan or regulated sale and rent back agreement where the lender, plan provider, reversion provider or agreement provider does not require permission to enter into the transaction. It applies subject to the provisions in MCOB 15.
- (2) A provision of MCOB that applies to a mortgage administrator or a home purchase administrator also applies to a P2P platform operator administering a regulated mortgage contract or home purchase plan on behalf of a lender or plan provider who did not require permission to enter into the transaction. It applies subject to the provisions in MCOB 15.
- (3) Subject to MCOB 1.2.22R(5), MCOB 1.2.22R(4) applies where:
- (a) a P2P platform operator facilitates an arrangement under which a number of persons provide home finance to a single customer, either individually under separate contracts, or jointly and severally under a single contract;
 - (b) by virtue of MCOB 1.2.22R(1), a provision of MCOB (as modified by MCOB 15) applies to the P2P platform operator;
 - (c) the provision as modified requires the P2P platform operator to make a disclosure or notification in respect of the entirety of the arrangement; and
 - (d) the provision requires one or more of the home finance providers under the arrangement to make the same disclosure

or notification in respect of their individual contract, or their share of the joint and several contract.

- (4) The home finance provider is not required to comply with the provision referred to in MCOB 1.2.22R(3)(d).
- (5) MCOB 1.2.22R(4) does not apply where non-compliance with the provision would be incompatible with EU law.

1.2.23 G (1) The purpose of MCOB 1.2.22R(3) to 1.2.22R(5) is to avoid imposing overlapping requirements on the P2P platform operator facilitating a home financing arrangement and any firms who may participate in that arrangement as finance providers, to the extent that is compatible with EU law, in particular the MCD and the Distance Marketing Directive. The table below provides non-exhaustive guidance on MCOB provisions with which a firm may need to comply, notwithstanding MCOB 1.2.22R(3) and MCOB 1.2.22R(4).

(2) This table belongs to (1).

| <u>MCOB provisions</u> | <u>Description</u> |
|---|---|
| <u>MCOB 5A.4.1R</u> | <u>Provision of a European Standardised Information Sheet (ESIS): timing</u> |
| <u>MCOB 6.5.6R</u> | <u>Distance contracts with retail customers</u> |
| <u>MCOB 6.8.5R</u> | <u>Distance contracts with retail customers</u> |
| <u>MCOB 7.6.1R</u> | <u>Notification of payment changes and other material changes to terms and conditions</u> |
| <u>MCOB 7.6.7R</u> <u>MCOB 7.6.17R</u> | <u>Further advances</u> |
| <u>MCOB 7.6.18R</u> | <u>Rate switches</u> |
| <u>MCOB 7.6.22R</u> | <u>Addition or removal of a party to the contract</u> |
| <u>MCOB 7.6.28R</u> | <u>Changes to the amount of each payment due</u> |

1.2.24 R In this section and in MCOB 15:

- (1) a reference to a P2P platform operator facilitating a regulated mortgage contract, home purchase plan, home reversion plan or regulated sale and rent back agreement is a reference to the platform facilitating persons becoming the lender and borrower, home purchase provider and home purchaser, reversion provider and reversion occupier, or agreement provider and agreement seller

under an agreement which comprises that transaction; and

- (2) a reference to a regulated mortgage contract that is facilitated by a P2P platform operator excludes a CBTL credit agreement.

- 1.2.25 G MCOB 15 contains rules and guidance that apply in relation to regulated mortgage contracts and other home finance transactions facilitated by P2P platform operators. It includes rules that disapply other parts of MCOB that would otherwise apply by virtue of MCOB 1.2.22R(1) or 1.2.22R(2), and rules that apply or modify the application of certain other MCOB provisions in such circumstances. MCOB 15 also includes guidance that will be relevant to such a P2P platform operator whether or not a lender or provider falls within the definition of a mortgage lender, home purchase provider, reversion provider or SRB agreement provider.

...

Insert the following new chapter, MCOB 15, after MCOB 14 (MCD article 3(1)(b) credit agreements). The text is not underlined.

15 P2P home finance activities

15.1 Handbook provisions which apply in respect of home finance transactions entered into via a P2P platform

- 15.1.1 G The purpose of *MCOB* 15 is, where a *firm* is a *P2P platform operator* which carries on a *regulated activity* in relation to a *home finance transaction* and where the lender or provider does not require permission to enter into the transaction, to:
- (1) explain the application of *MCOB* provisions to the *firm*;
 - (2) apply to the *firm rules and guidance* in *MCOB* that would not otherwise apply, to ensure the protection provided under *MCOB* to the recipient of home finance is not affected by the status of the provider;
 - (3) make modifications to the way certain provisions of *MCOB* apply to the *firm*; and
 - (4) disapply specified *MCOB* provisions from the *firm*.
- 15.1.2 G The effect of *CONC* 1.2.12R is that a provision of *CONC* that would otherwise apply in relation to a *regulated mortgage contract* or a *home purchase plan* does not apply where the transaction is facilitated by a *P2P platform operator* and the lender or plan provider does not require permission to enter into it.

15.2 Guidance on the application of MCOB where agreements are facilitated by a P2P platform

- 15.2.1 G (1) Where a *home finance transaction* is entered into with the facilitation of a *firm* which is a *P2P platform operator*, the *firm* is likely to carry on an activity of the kind specified by article 25A, 25B, 25C or 25E of the *Regulated Activities Order* (arranging) and if so *MCOB* provisions applying to that activity will apply to the *firm*. In addition, a *firm* which is a *P2P platform operator* may carry on an activity of the kind specified by article 53A, 53B, 53C or 53D of the *Regulated Activities Order* (advising) and, if so, *MCOB* provisions applying to that activity will apply to the *firm*.
- (2) Where a lender requires permission under article 61(1) of the *Regulated Activities Order* to enter into a *regulated mortgage contract* (that is, where it carries on that activity by way of business and is not excluded or exempt) it will require that permission notwithstanding the fact that it does so with the facilitation of a *P2P platform operator*, and will be responsible for complying with relevant *MCOB rules*. Similarly, where a *person* requires permission under article 63B or 63F of the *Regulated Activities Order* to enter into a *home reversion plan* or a *home purchase plan*, it will require that permission notwithstanding the fact that it does so with the facilitation of a *P2P platform operator*, and will be responsible for complying with relevant *MCOB rules*. It would be open to such a lender or provider to outsource the performance of those obligations to the platform, having regard to the *guidance* on outsourcing in *MCOB 1.2.1AG*.
- (3) Under current legislation, any *person* who enters into a *regulated sale and rent back agreement* requires permission, unless they are a related *person* in relation to the agreement seller within the meaning of article 63J(4)(c) of the *Regulated Activities Order*, or excluded or exempt. However, it should be noted that the relevant legislative provision will cease to have effect on 1 January 2022.
- (4) To secure an appropriate degree of protection for *consumers*, where a *home finance transaction* is facilitated by a *P2P platform operator* and the lender or provider under that transaction does not fall within the definition of a *mortgage lender*, *home purchase provider*, *reversion provider* or *SRB agreement provider*, *MCOB 1.2.22R(1)* applies to the *P2P platform operator* those provisions of *MCOB* that would apply to the lender or provider if it were a *mortgage lender*, *home purchase provider*, *reversion provider* or *SRB agreement provider*.
- (5) For the same reason, where a *regulated mortgage contract* or *home purchase plan* is administered by a *P2P platform operator* on behalf of a lender or provider who did not enter into the transaction by way of business, *MCOB 1.2.22R(2)* applies to the *P2P platform operator*

those provisions of *MCOB* that would apply to the administrator if the transaction had been entered into by way of business.

- (6) This chapter applies *MCOB* 3A (financial promotions etc) to a *firm* which is a *P2P platform operator* in relation to a *home finance transaction*.
- (7) As set out in *MCOB* 4.6.1G, a *consumer* may have a right to cancel a *distance contract* for services provided by a *P2P platform operator*.
- (8) *MCOB* 5.6.113R to 5.6.119G (payments made to a mortgage intermediary) are not relevant to a *mortgage intermediary* which is a *P2P platform operator* where the lender does not require permission for entering into a *regulated mortgage contract*. However, if there is a *mortgage intermediary* other than the *P2P platform operator* involved in the transaction, those provisions may apply to that intermediary, with the modifications set out in *MCOB* 15.4.14R. The same applies in relation to similar provisions in *MCOB* 9.4.119R to 9.4.125G (payments to a lifetime mortgage intermediary), with the modifications set out in *MCOB* 15.4.16R, and in *MCOB* 9.4.168R to *MCOB* 9.4.174G (payments to a reversion intermediary), with the modifications set out in *MCOB* 15.4.17R.
- (9) The specified activities of administering a *home reversion plan* in article 63B of the *Regulated Activities Order* and administering a *regulated sale and rent back agreement* in article 63J of that Order apply whether or not the plan or agreement is entered into by way of business and so will be relevant to a *P2P platform operator* carrying on those activities in relation to those products.

15.3 Further provisions about the application of *MCOB* where agreements are facilitated by a *P2P platform*

- 15.3.1 R *MCOB* 3A (financial promotions etc) applies to a *firm* which is a *P2P platform operator* communicating or approving a financial promotion of a *P2P agreement* which is a *home finance transaction* where the lender or provider does not require permission to enter into the transaction. It applies as though references to *qualifying credit* were references to agreements that would be *qualifying credit* but for the lender not carrying on *regulated activity* by entering into or administering a *regulated mortgage contract*.
- 15.3.2 R *MCOB* 13 (arrears, payment shortfalls and repossessions) applies to a *firm* which is a *P2P platform operator* in respect of *regulated mortgage contracts* or *home purchase plans*. It applies as though:
 - (1) references to a *mortgage administrator* or a *home purchase administrator* include a *P2P platform operator*;
 - (2) references to *administering a regulated mortgage contract*,

administering a home purchase plan and *administering a sale shortfall* include a *P2P platform operator* administering such an agreement or shortfall on behalf of a lender or plan provider. References expressing the same concept but using different tenses are similarly included; and

- (3) references to a *firm* taking any action against a *customer* include where the *firm* takes action required by a security trustee holding rights for a lender or provider under a *regulated mortgage contract* or *home purchase plan*.

15.4 Modifications

General modifications

- 15.4.1 R Where a provision of *MCOB* applies to a *firm* which is a *P2P platform operator* and requires the *firm* to refer to the identity of the *mortgage lender, home purchase provider, reversion provider* or *SRB agreement provider*, the provision may be satisfied by a statement that the loan, plan or agreement is provided by investors facilitated by the *P2P platform operator*.
- 15.4.2 R Where a provision of *MCOB* applies to a *firm* which is a *P2P platform operator* and refers to the “lender’s base mortgage rate”, “the lender’s standard variable rate” or a similar phrase, the *firm* must refer to the *firm*’s base mortgage rate or standard variable rate, as the case may be.
- 15.4.3 R Where a provision of *MCOB* applies to a *firm* which is a *P2P platform operator*, that provision applies as if:
- (1) references to a *firm* entering into a *home finance transaction* (or any particular type or types of *home finance transaction*) with a *customer* include the *firm* which is the *P2P platform operator* facilitating a lender or provider entering into such a *home finance transaction* with a *customer*;
- (2) references to a *firm* varying an existing *home finance transaction* (or any particular type or types of *home finance transaction*) include the *firm* which is the *P2P platform operator* varying such an agreement or plan on behalf of a lender or provider; and
- (3) other references to a *mortgage lender, home purchase provider, reversion provider* or *SRB agreement provider* include the *P2P platform operator*.
- 15.4.4 R (1) Where a *P2P platform operator* facilitates an arrangement under which a number of *persons* provide home finance to a single *customer* under separate *P2P agreements* comprising separate *home finance transactions*, the provisions of *MCOB* listed in the table in (2) apply as though a requirement for the *firm* to make a notification or disclosure in respect of a *home finance transaction* is a

requirement for the *firm* to make a single notification or disclosure reflecting the aggregate terms and effects of all the *home finance transactions* taken together.

(2) This table belongs to (1).

| MCOB provisions | Description |
|------------------------|---|
| <i>MCOB 2.6A.5AR</i> | Protecting customer's interests: regulated sale and rent back agreements |
| <i>MCOB 5.5.1R</i> | Provision of illustrations: timing |
| <i>MCOB 5.8</i> | Pre-application disclosure: home purchase plans |
| <i>MCOB 5.9</i> | Pre-sale disclosure for regulated sale and rent back agreements |
| <i>MCOB 6.4.1R</i> | Mortgages: content of the offer document |
| <i>MCOB 6.5.1R</i> | Tariff of charges |
| <i>MCOB 6.5.6R</i> | Distance contracts with retail customers |
| <i>MCOB 6.8.1R</i> | Home purchase plans: offer document |
| <i>MCOB 6.8.5R</i> | Home purchase plans: distance contracts with retail customers |
| <i>MCOB 6.9.3R</i> | Regulated sale and rent back agreements: written pre-offer document: Stage One |
| <i>MCOB 6.9.10R</i> | Regulated sale and rent back agreements: written pre-offer document: Stage Two |
| <i>MCOB 7.4.1R</i> | Mortgages: disclosure at the start of the contract: disclosure requirements |
| <i>MCOB 7.5.1R</i> | Annual statement: requirement |
| <i>MCOB 7.5.10R</i> | Annual statement: additional content if tariff of charges has changed |
| <i>MCOB 7.6.1R</i> | Notification of payment changes and other material changes to terms and conditions |
| <i>MCOB 7.6.2R</i> | Notification where the regulated mortgage contract is sold, assigned or transferred |
| <i>MCOB 7.6.5R</i> | Notification where additional borrowing |

| | |
|---|--|
| | taken up |
| <i>MCOB 7.6.7R</i> <i>MCOB 7.6.17R</i> | Further advances |
| <i>MCOB 7.6.18R</i> | Rate switches |
| <i>MCOB 7.6.22R</i> | Addition or removal of a party to the contract |
| <i>MCOB 7.6.28R</i> | Changes to amount of each payment due |
| <i>MCOB 7.8.1R</i> | Home purchase plans: post-sale disclosure |
| <i>MCOB 7.8.3R</i> | Home purchase plans: annual statement |
| <i>MCOB 7.8.6R</i> | Home purchase plans: tariff of charges |
| <i>MCOB 7.9.1R</i> | Post-sale disclosure for regulated sale and rent back agreements |
| <i>MCOB 9.3.1R</i> | Equity release: pre-application disclosure |
| <i>MCOB 9.5.1R</i> | Disclosure at the offer stage for equity release transactions |
| <i>MCOB 9.6.1R</i> | Disclosure at the start of the contract and after sale for equity release transactions |
| <i>MCOB 9.7.2R</i> | Disclosure at the start of the contract: lifetime mortgages: disclosure requirements where interest payments are required |
| <i>MCOB 9.7.4R</i> | Disclosure requirements where the regulated lifetime mortgage contract is a drawdown mortgage with fixed payments to the customer |
| <i>MCOB 9.7.6R</i> | Disclosure requirements where the regulated lifetime mortgage contract is a drawdown mortgage with variable payments to the customer |
| <i>MCOB 9.7.8R</i> | Disclosure requirements where a lump sum payment is made to the customer and interest is rolled up |
| <i>MCOB 9.8.1R</i> | Lifetime mortgages: annual statements: content |
| <i>MCOB 9.8.3R</i> | Lifetime mortgages: event driven |

| | |
|--|---|
| | information |
| <i>MCOB 9.8.5R</i> | Lifetime mortgages: further advances |
| <i>MCOB 9.8.9R</i> <i>MCOB 9.8.10R</i> | Lifetime mortgages: changes to payments, amounts drawn down and amount owed |
| <i>MCOB 9.9.1R</i> | Provision of statements: instalment reversion plans |
| <i>MCOB 9.9.3R</i> | Annual statement for instalment reversion plans: content |
| <i>MCOB 9.9.4R</i> | Annual statement for instalment reversion plans: additional content if tariff of charges has changed |
| <i>MCOB 9.9.5R</i> | Event-driven information for instalment reversion plans: material changes |
| <i>MCOB 13.3.4AR(2)</i> | Information to understand the implications of any proposed arrangement for dealing with payment difficulties |
| <i>MCOB 13.3.4BR</i> | Information about government schemes to assist borrowers in payment difficulties |
| <i>MCOB 13.4.1R</i> | Arrears: provision of information to the customer of a regulated mortgage contract |
| <i>MCOB 13.4.5R</i> | Steps required before action for repossession: provision of updated information |
| <i>MCOB 13.5.1R</i> | Dealing with a customer in arrears or with a sale shortfall on a regulated mortgage contract: statements of charges |
| <i>MCOB 13.6.3R</i> <i>MCOB 13.6.4R</i> | Repossessions: if the proceeds of sale are less than the amount due: notification of intent to pursue shortfall |
| <i>MCOB 13.6.6R</i> | If the proceeds of sale are more than the amount due: informing the customer |
| <i>MCOB 13.8.1R</i> | Home purchase plans: arrears: provision of information to the customer |

- 15.4.5 R Where a provision of *MCOB* applies to a *firm* which is a *P2P platform operator* and requires the *firm* to provide an *illustration*, the *firm* may provide a *European Standardised Information Sheet (ESIS)* instead. The *ESIS* may diverge from the requirements of *MCOB 5A* where it is necessary

to do so to describe the aggregate terms and effects of all the *home finance transactions* comprising the arrangement with the *customer*, taken together.

Protecting customers' interests: home finance transactions

- 15.4.6 R *MCOB 2.6A.-1R* (inclusion and reliance on certain interest terms in agreements) applies to a *firm* which is a *P2P platform operator* as if:
- (1) in place of the *firm* not relying on a term mentioned in that *rule* it referred to the *firm* not taking steps to exercise or enforce rights under such a term; and
 - (2) in place of referring to a term permitting the *firm* to change the rate of interest, it referred to a term permitting that rate to be changed.
- 15.4.7 G A *firm* which is a *P2P platform operator* may comply with *MCOB 4.4A.1R* (1) and *MCOB 4.4A.2R* by providing a *customer* with an explanation in simple, clear terms that the *firm* only offers loans facilitated on its platform.
- 15.4.8 R The “relevant market” referred to in *MCOB 4.4A.2R* in relation to a *firm* which is a *P2P platform operator* is the market for *regulated mortgage contracts* offered by such platforms.
- 15.4.9 R In disclosing remuneration under *MCOB 4.4A.8R*, a *firm* which is a *P2P platform operator* is not required to disclose any fees paid by a lender.
- 15.4.10 R The following *rules* apply subject to the modifications to *MCOB 4.4A* set out elsewhere in *MCOB 15.4*:
- (1) *MCOB 4.4A.9R* (method of providing initial disclosure in all cases);
 - (2) *MCOB 4.4A.12R* (timing of initial disclosure in all cases);
 - (3) *MCOB 4.4A.18R* (additional disclosure under distance contracts); and
 - (4) the *rules* in *MCOB 4.10* (home purchase plans: sales standards).
- 15.4.11 G The *guidance* in *MCOB 4.10* (home purchase plans: sales standards) should be read as modified as necessary to take account of the effect of *MCOB 15.4.10R* on the *rules* in *MCOB 4.10*.
- 15.4.12 R *MCOB 4.6A.1R* (rolling up of fees etc. into loans) applies to a *firm* which is a *P2P platform operator* facilitating a *regulated mortgage contract* with the modification that, in addition to the *firm* not offering a *regulated mortgage contract* to a *customer*, the *firm* must also not facilitate the entry of a *customer* into a such a contract.
- 15.4.13 R *MCOB 5.5.1R* (timing of provision of mortgage illustration) and *MCOB 5.8.1R* (financial information statement: timing) apply to a *firm* which is a *P2P platform operator* on the basis that the application for that particular *regulated mortgage contract* or *home purchase plan* is made to the *firm*.

- 15.4.14 R Where *MCOB* 5.6 applies to a *firm* which is a *P2P operator* facilitating a *regulated mortgage contract*, and the *illustration* is issued to the *customer* by, or on behalf of, a separate *mortgage intermediary*, references in *MCOB* 5.6.113R to 5.6.119G to a *mortgage lender* must be treated as referring to the *P2P platform operator*.
- 15.4.15 R *MCOB* 6.4.5G (information about advice provided by mortgage intermediary) applies to a *firm* which is a *P2P platform operator* as if the references to the *mortgage lender* are references to the *P2P platform operator* and references to a *mortgage intermediary* are references to a *person* other than the *P2P platform operator*.
- 15.4.16 R Where *MCOB* 9.4 applies to a *firm* which is a *P2P operator* facilitating a *lifetime mortgage*, and the *illustration* is issued to the *customer* by, or on behalf of, a separate *mortgage intermediary*, references in *MCOB* 9.4.119R to 9.4.125G to a *mortgage lender* must be treated as referring to the *P2P platform operator*.
- 15.4.17 R Where *MCOB* 9.4 applies to a *firm* which is a *P2P platform operator* facilitating a *home reversion plan*, and the *illustration* is issued to the *customer* by, or on behalf of, a separate *reversion intermediary*, references in *MCOB* 9.4.168R to 9.4.174R to a *reversion provider* must be treated as referring to the *P2P platform operator*.
- 15.4.18 R Where *MCOB* 11.8 (customers unable to change contract, plan or provider) applies in relation to a *regulated mortgage contract* or *home purchase plan* facilitated by a *P2P platform operator*, *MCOB* 11.8.1E applies as if the reference to a *customer* being unable to enter into a new *regulated mortgage contract* or *home purchase plan* or vary the terms of the existing *regulated mortgage contract* or a *home purchase plan*, with the existing or a new *mortgage lender* or *home purchase provider*, is a reference to a *customer* being unable to enter into a new *regulated mortgage contract* or *home purchase plan* or vary the terms of an existing *regulated mortgage contract* or *home purchase plan*, which is facilitated by the platform.

15.5 MCOB provisions disapplied from P2P platform operators

- 15.5.1 R The *rules* in the following provisions of *MCOB* do not apply to an *MCD mortgage credit intermediary*, where that *firm* is a *P2P platform operator* facilitating a *regulated mortgage contract* where the lender does not require permission to enter into the contract:
- (1) *MCOB* 2A (Mortgage Credit Directive);
 - (2) *MCOB* 3A.5 (MCD financial promotions);
 - (3) *MCOB* 3B (MCD general information);
 - (4) *MCOB* 4.4A.4R (range of products);

- (5) *MCOB* 4A (additional MCD advising and selling standards);
 - (6) *MCOB* 5.6.113R to 5.6.117R (payments to mortgage intermediaries) do not apply to a *mortgage intermediary* which is a *P2P platform operator* where the lenders under *regulated mortgage contracts* entered into by a particular borrower do not require permission for entering into *regulated mortgage contracts*. In this case Section 14 of the illustration must be renumbered 13;
 - (7) *MCOB* 5A (MCD pre-application disclosure);
 - (8) *MCOB* 6A (MCD disclosure at the offer stage);
 - (9) *MCOB* 7A (additional MCD disclosure: start of contract and after sale); and
 - (10) *MCOB* 11A (additional MCD responsible lending requirements).
- 15.5.2 G (1) The *guidance* in the provisions of *MCOB* listed in *MCOB* 15.5.1R is not relevant in relation to an *MCD mortgage credit intermediary*, where that *firm* is a *P2P platform operator* facilitating a *regulated mortgage contract* where the lender does not require permission to enter into the contract.
- (2) Similarly, the following *guidance* is not relevant in relation to such an *MCD mortgage credit intermediary*:
- (a) *MCOB* 4.4A.3G, 4.4A.3AG, 4.4A.5G and 4.4A.6G (range of products); and
 - (b) *MCOB* 5.6.118G and 5.6.119G (payments to mortgage intermediaries) (see *MCOB* 15.5.1R(6)).
- 15.5.3 G A *regulated mortgage contract* (including a *MCD regulated mortgage contract*) where the lender does not act by way of business is not within the scope of the *MCD*.

Annex D

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

...

16.11 Product Sales Data Reporting

Application

16.11.1 R This section applies:

(1) in relation to sales data reports, to a *firm*:

(a) ...

(aa) which is a P2P platform operator which facilitates entry into a regulated mortgage contract, home purchase plan, home reversion plan or regulated sale and rent back agreement where the lender or provider does not require permission to enter into the transaction; or

...

(2) in relation to performance data reports, to a *firm*: ~~in which the rights and obligations of the lender under a regulated mortgage contract are vested.~~

(a) in which the rights and obligations of the lender under a regulated mortgage contract are vested; or

(b) which is a P2P platform operator which facilitates entry into a regulated mortgage contract where the lender does not require permission to enter into the transaction.

...

Reporting requirement

16.11.3 R ...

(4) ~~A SRB agreement provider~~ The following types of *firm* must compile, and keep for at least five years from the end of the relevant quarter, a data report containing the information required by SUP 16.11.5R, but ~~is~~ are not subject to the requirement in (1) to submit a data report (or to the requirement in SUP 16.11.9R):

- (a) a SRB agreement provider; and
- (b) a P2P platform operator which facilitates entry into a regulated sale and rent back agreement where the provider does not require permission to enter into the transaction.

...

16.11.8- R Where a P2P platform operator facilitates an arrangement under which a
A number of persons provide home finance to a single customer, either
individually under separate contracts, or jointly and severally under a single
contract:

- (1) the sales data report and performance data report of the P2P platform operator must include data in respect of the arrangement taken as a whole, as though it comprised a single transaction; and
- (2) the sales data report and performance data report of any firm which is the lender or provider under any separate contract forming part of the arrangement must include data in respect of that contract.

...

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 data items | reporting frequency/ period | due date |
| ... | | | | |
| RAG 5 | - home finance administration or home finance providing activity - the activity of a P2P platform operator facilitating a home finance transaction, where the lender or | SUP 16.12.18BR and SUP 16.12.18CR | SUP 16.12.18BR and SUP 16.12.18CR | SUP 16.12.18BR and SUP 16.12.18CR |

| | | | | |
|-----|---|-----|-----|-----|
| | <u>provider does not require permission to enter into the transaction</u> | | | |
| ... | ... | ... | ... | ... |

...

Regulated Activity Group 5

...

16.12.18 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.

B

| Description of <i>data item</i> | <i>Data item</i> (note 1) | Frequency | Submission deadline |
|----------------------------------|---|-----------|-------------------------|
| ... | ... | ... | ... |
| Capital Adequacy (notes 4 and 5) | Section C MLAR | Quarterly | 20 <i>business days</i> |
| ... | ... | ... | ... |
| ... | | | |
| Note 4 | Not applicable if the <i>firm</i> exclusively carries on <i>home finance administration</i> or <i>home finance providing activities</i> in relation to <i>second charge regulated mortgage contracts</i> or <i>legacy CCA mortgage contracts</i> (or both). <u>Also not applicable if the <i>firm</i> is a <i>P2P platform operator</i> facilitating <i>home finance transactions</i>.</u> | | |
| ... | | | |

...

Regulated Activity Group 9

...

16.12.28 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

A

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 data item | Data item (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 <i>business days</i> |
| ... | ... | ... | ... | ... |
| ... | | | | |
| Note 3 | <p>This item does not apply to <i>firms</i> who only carry on <i>home finance mediation activities</i> exclusively in relation to <i>second charge regulated mortgage contracts</i> or <i>legacy CCA mortgage contracts</i> (or both) and who are not otherwise expected to complete it by virtue of carrying out other regulated activities.</p> <p><u>This item also does not apply if the <i>firm</i> is a <i>P2P platform operator</i> facilitating <i>home finance transactions</i> and is not required to submit it by virtue of carrying out other regulated activities.</u></p> | | | |

...

16 Annex 19BG Notes for completion of the Mortgage Lenders & Administrators Return ('MLAR')

...

INTRODUCTION: GENERAL NOTES ON THE RETURN

...

2. Overview of reporting requirements

The data requirements for *firms* carrying on the *regulated activities* of *home*

finance providing activity and administering a home finance transaction consist of quarterly, half yearly and annual information. The same data requirements apply to a P2P platform operator facilitating home finance transactions where a lender or provider does not require permission to enter into the transaction, and references to home finance providers or home finance administrators should be read as including such P2P platform operators, where relevant.

This *guidance* deals only with the quarterly requirements, however, which are referred to as the Mortgage Lenders and Administrators Return (*MLAR*). The remaining data requirements are applied to *firms* through existing rules within the following sections of the *Handbook*:

...

...

16 Reporting Fields

Annex 21R

This is the annex referred to in SUP 16.11.7R.

1 GENERAL REPORTING FIELDS

The following data reporting fields must be completed, where applicable, for all reportable transactions and submitted in a prescribed format.

| Data reporting field | Code (where applicable) | Notes |
|---|-------------------------|---|
| Reference number of product provider | 6 digit number | This field must contain the <i>firm</i> reference number of the <i>firm</i> providing the data report. <u>Where a <i>firm</i> which is a P2P platform operator submits a report in relation to a home finance product in line with SUP 16.11.8-AR, the reference number of the product provider is the reference number of the P2P platform operator.</u> |
| Reference number of <i>firm</i> that sold the product | 6 digit number | This field must contain the <i>firm</i> <i>firm</i> reference number (FRN) of the <i>firm</i> which sold the product. For a <i>firm</i> 's own direct sales, enter the <i>firm</i> 's own FRN. <u>Where a <i>firm</i> which is a P2P platform operator submits a report in relation to a home finance product in line with SUP 16.11.8-AR, the reference number of the <i>firm</i> that sold the product is the reference</u> |

| | | |
|-----|-----|--|
| | | <p><u>number of the <i>P2P platform operator</i>, unless a separate intermediary was also involved.</u></p> <p>For sales via an intermediary (including those facilitated by a <i>P2P platform operator</i> where a separate intermediary is also involved), enter the intermediary's FRN.</p> <p>Where the intermediary is an <i>appointed representative</i>, the FRN of the <i>appointed representative</i> must be reported.</p> |
| ... | ... | ... |

Annex E

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

1 Application and purpose and guidance on financial difficulties

...

1.2 Who? What? Where?

...

Application where home financing agreements are facilitated by a P2P platform

1.2.12 R CONC does not apply to a P2P platform operator in circumstances where MCOB applies by virtue of MCOB 1.2.22R(1).

1.2.13 G MCOB 1.2.22R(1) provides that a rule in MCOB that applies to a mortgage lender, a home purchase plan provider, a home reversion provider or a SRB agreement provider also applies to a P2P platform operator facilitating a regulated mortgage contract, home purchase plan, home reversion plan or regulated sale and rent back agreement where the lender, plan provider, reversion provider or agreement provider does not require permission to enter into the transaction. It applies subject to the provisions in MCOB 15.

