

Chapter 5A

MCD Pre-application disclosure



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

Accuracy

5A.3.1 **R** A *firm* that is an *MCD mortgage credit intermediary* must take reasonable steps to ensure that an *ESIS* which it issues, or which is issued on its behalf, other than that provided by an *MCD mortgage lender* is accurate.

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

ESISs where consumer is ineligible

5A.3.3 **R** A *firm* must not issue an *ESIS* to a *consumer* for an *MCD regulated mortgage contract* for which the *consumer* is clearly ineligible on the basis of the information that the *firm* has obtained from the *consumer* or the *MCD mortgage lender's* lending criteria.

5A.3.4 **G** The purpose of **■** MCOB 5A.3.3 R is not to require a *firm* to ascertain whether a *consumer* is eligible for a particular *MCD regulated mortgage contract* before providing an *ESIS*. Instead, the purpose is to ensure that the *firm* takes into account the information it has obtained from the *consumer* before providing an *ESIS* to the *consumer*.

Explaining the importance of an ESIS

5A.3.5 **R** In providing an *ESIS* to a *consumer*, a *firm* must explain to the *consumer* the importance of reading the *ESIS* and understanding it.

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

Form of an ESIS

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

Provision of information

5A.3.8 **G** When providing information on an *MCD regulated mortgage contract*, a *firm* should bear in mind that the information must be given in accordance with **■ MCOB 2.5A.1 R** (The customer's best interests).

5A.3.9 **G** **■ MCOB 5A** places no restrictions on the provision of information that is not specific to the amount the *consumer* wants to borrow. For example, marketing literature, including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. However, such literature may constitute a *financial promotion* and be subject to **■ MCOB 3A** (Financial promotions and communications with customers).

Messages to be given with information on MCD regulated mortgage contracts

5A.3.10 **R**

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

5A.3.11 **G** To demonstrate compliance with **■ MCOB 5A.3.10R (1)**, a *firm* may wish to consider, for example, doing one or more of the following actions:

- (1) giving the messages to the *consumer* in a *durable medium*;
- (2) building the requirements into the *firm's* training of staff, as evidenced by its training and compliance manuals;
- (3) insert appropriate prompts into paper-based or automated sales systems;
- (4) having procedures to monitor compliance by its staff with that *rule*.

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

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

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

Record keeping

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