

MOTOR FINANCE INSTRUMENT 2020

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 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 28 January 2021.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex B to this instrument.

Citation

- F. This instrument may be cited as the Motor Finance Instrument 2020.

By order of the Board
23 July 2020

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

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

*discretionary
commission
arrangement*

any arrangement under which:

- (a) a *lender* permits a *credit broker* to decide or negotiate (whether or not within specified limits or subject to conditions or restrictions) the amount of any item included in the *total charge for credit* provided for in a *regulated credit agreement* in respect of which the *credit broker* carries on activity of the kind specified in article 36A of the *Regulated Activities Order*; and
- (b) the amount of any commission, fee or other financial consideration payable to the *credit broker* (directly or indirectly) in connection with that *regulated credit agreement* is affected (in whole or part) by the amount referred to in (a).

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

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

3 Financial promotions and communications with customers

...

3.7 Financial promotions and communications: credit brokers

...

3.7.4 G A *firm* should in a *financial promotion* or in a communication with a *customer*:

...

- (2) indicate to the *customer* in a prominent way the existence and nature of any financial arrangements with a *lender* that might impact upon the *firm's* impartiality in promoting or recommending a *credit* product to ~~a~~ the *customer* or which might, if disclosed by the *firm* to the *customer*, affect the *customer's* transactional decision in relation to the *credit* product;

...

3.7.4A G (1) Where the amount of any commission, fee or other remuneration payable under a financial arrangement in relation to the *credit* product in CONC 3.7.4G(2) that the *firm* is promoting or recommending varies due to a factor specified in the arrangement, for example a specific feature of the *credit* product or the level of work undertaken by the *firm*, the *firm* should make disclosure under CONC 3.7.4G in relation to the arrangement.

(2) Where:

- (a) the *firm* has entered into arrangements (irrespective of how many other *persons* those arrangements are with) under which it may earn commission, fees or other remuneration in relation to two or more different *credit* products;
- (b) the *customer* could be eligible for two or more of those *credit* products;
- (c) the *credit* product that the *firm* is promoting or recommending is one of those *credit* products; and

(d) the commission, fees or other remuneration payable to the firm varies depending on which of the credit products the customer takes out,

the firm should make disclosure to the customer under CONC 3.7.4G in relation to the arrangements.

(3) The disclosure in (2) may be in general terms, but it should enable the customer reasonably to appreciate the effect of the arrangements.

...

4 Pre-contractual requirements

...

4.5 Commissions

Application

4.5.1 R ...

(2) ~~CONC 4.5.3R and to~~ CONC 4.5.4R apply to a *firm* with respect to *credit broking* in relation to:

...

(3) ~~CONC 4.5.3R and to~~ CONC 4.5.4R also apply to a *firm* carrying on the activities specified in article 36A(1)(a) or ~~(e)~~ (b) of the *Regulated Activities Order* in relation to:

...

(4) CONC 4.5.5G to CONC 4.5.8G apply to a *firm* with respect to consumer credit lending and credit broking in relation to a regulated credit agreement the purpose of which (in whole or in part) is to finance the purchase of a motor vehicle or under which a motor vehicle is bailed or hired.

...

Commissions: credit brokers

4.5.3 R A *credit broker* must prominently disclose to a *customer* in good time before a *credit agreement* or a *consumer hire agreement* is entered into, the existence and nature of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party ~~in relation to a credit agreement or a consumer hire agreement~~, where knowledge of the existence or amount of the commission, fee or other remuneration could actually or potentially:

- (1) affect the impartiality of the *credit broker* in recommending a ~~particular product~~ the *credit agreement* or the *consumer hire agreement*; or
- (2) if made known to the *customer*, have a material impact on the *customer's* transactional decision to enter into the *credit agreement* or the *consumer hire agreement*.

[**Note:** paragraph 3.7i (box) and 3.7j of *CBG* and 5.5 (box) of *ILG*]

- 4.5.3A R In circumstances where the *credit broker* is required to disclose the existence and nature of any commission, fee or other remuneration under *CONC 4.5.3R*, it must also disclose to the *customer*, at the same time and with equal prominence, how the existence and nature of this commission, fee or other remuneration may affect the amounts payable by the *customer* under the relevant *credit agreement* or *consumer hire agreement*.
- 4.5.3B G (1) Where the amount of any commission, fee or other remuneration in *CONC 4.5.3R* varies due to a factor specified in the arrangement or agreement under which the commission, fee or other remuneration is payable, for example a specific feature of the *credit agreement* or *consumer hire agreement* or the level of work undertaken by the *credit broker*, the *credit broker* should make disclosure under *CONC 4.5.3R* in relation to the commission, fee or other remuneration.
- (2) Where:
- (a) the *firm* has entered into arrangements (irrespective of how many other *persons* those arrangements are with) under which it may earn commission, fees or other remuneration in relation to two or more different *credit agreements* or *consumer hire agreements*;
 - (b) the *customer* could be eligible for two or more of those agreements;
 - (c) the *credit agreement* or the *consumer hire agreement* the *firm* is recommending is one of those agreements;
 - (d) the commission, fees or other remuneration payable to the *firm* varies depending on which of the *credit agreements* or *consumer hire agreements* the *customer* enters into,

the *firm* should make disclosure to the *customer* under *CONC 4.5.3R* in relation to the arrangements.
- (3) The disclosure in (2) may be in general terms, but it should enable the *customer* reasonably to appreciate the effect of the arrangements.
- (4) The *credit broker* is not, under *CONC 4.5.3AR*, required to provide to the *customer* an individually tailored illustration of how the

commission, fees or other remuneration in CONC 4.5.3R may affect the amounts payable by the customer under the credit agreement or consumer hire agreement.

...

Prohibition on discretionary commission arrangements in the motor finance market

Purpose

- 4.5.5 G The purpose of CONC 4.5.6R to CONC 4.5.8G is to prohibit credit brokers and lenders to whom they introduce customers wishing to enter into regulated credit agreements to finance the acquisition of motor vehicles from making or relying on arrangements under which credit brokers are given authority to decide or negotiate the prices of those regulated credit agreements on behalf of lenders and the amount of commission the credit brokers earn is affected by those prices.

Prohibition

- 4.5.6 R A lender or credit broker must not:
- (1) enter into or have rights or obligations under a discretionary commission arrangement; or
 - (2) seek to exercise, enforce or rely on rights or obligations under a discretionary commission arrangement, including any rights or obligations to receive or tender payment of commission, fee or other financial consideration.

Examples of discretionary commission arrangements

- 4.5.7 G The following are examples of discretionary commission arrangements:
- (1) An agreement under which the lender sets a minimum rate of interest and the commission payable by the lender to the credit broker in respect of a regulated credit agreement entered into by the lender is calculated by reference to the difference between the rate of interest negotiated by the credit broker and payable by the customer under the regulated credit agreement and the minimum rate of interest. These types of arrangements are often referred to as “increasing difference in charges” or “interest rate upward adjustment” arrangements.
 - (2) An agreement under which the lender sets a maximum rate of interest and the commission payable by the lender to the credit broker in respect of a regulated credit agreement entered into by the lender is calculated by reference to the difference between the rate of interest negotiated by the credit broker and payable by the customer under the regulated credit agreement and the maximum rate of interest. These types of arrangements are often referred to as

“decreasing difference in charges” or “interest rate downward adjustment” arrangements.

- (3) An arrangement or agreement under which the commission payable by the lender to the credit broker in respect of a regulated credit agreement entered into by the lender varies (within set parameters) according to the rate of interest negotiated by the credit broker and payable by the customer under the regulated credit agreement. These types of arrangement are often referred to as “scaled models”.

Accrued commissions

- 4.5.8 G (1) CONC 4.5.6R does not affect commissions under discretionary commission arrangements liability for which accrued before the date on which CONC 4.5.6R came into force. CONC 4.5.6R does affect, however, commissions under discretionary commission arrangements that became due on or after the date on which CONC 4.5.6R came into force, irrespective of whether the relevant discretionary commission arrangement was entered into before or after the date on which CONC 4.5.6R came into force.
- (2) Accordingly, commissions under a discretionary commission arrangement relating to regulated credit agreements entered into before the date on which CONC 4.5.6R came into force are not affected by CONC 4.5.6R.
- (3) However, commissions under a discretionary commission arrangement relating to regulated credit agreements entered into after the date on which CONC 4.5.6R came into force (whether or not the discretionary commission arrangement was entered into before that date) are affected by CONC 4.5.6R.