

Chapter 3

Financial promotions and communications with customers

3.1 Application

[Note: Until 31 March 2015, transitional provisions apply to ■ CONC 3: see ■ CONC TP 6.1]

Who? What?

- 3.1.1 **R** This chapter, unless a *rule* in ■ CONC 3 specifies differently, applies to a *firm*.
- 3.1.2 **G** Under section 39(3) of the *Act*, a *firm* is responsible for *financial promotions communicated* by its *appointed representatives* when acting as such.
- 3.1.3 **R** This chapter, unless a *rule* in ■ CONC 3 specifies differently, applies to:
- (1) a communication with a *customer* in relation to a *credit agreement*;
 - (2) the *communication* or *approval* for *communication* of a *financial promotion* in relation to a *credit agreement*;
 - (3) a communication with a *customer* in relation to *credit broking*;
 - (4) the *communication* or *approval* for *communication* of a *financial promotion* in relation to *credit broking*;
 - (5) a communication with a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*; and
 - (6) the *communication* or *approval* for *communication* of a *financial promotion* to a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*.
- 3.1.4 **R** The clear fair and not misleading *rule* in ■ CONC 3.3.1 R and the general requirements *rule* in ■ CONC 3.3.2 R and the *guidance* in ■ CONC 3.3.5 G to ■ CONC 3.3.11 G also, unless a *rule* or *guidance* in those paragraphs specifies differently, apply to:
- (1) a communication with a *customer* in relation to *debt counselling* or *debt adjusting*; and
 - (2) the *communication* or *approval* for *communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting*.

3.1.4A **G** *Firms are reminded that the rules and guidance in ■ CONC 3.9 also apply to financial promotions and communications with a customer in relation to debt counselling and debt adjusting.*

3.1.5 **R** ■ CONC 3.3.1 R also applies to:

- (1) a communication with a customer in relation to a consumer hire agreement;
- (2) the communication or approval for communication of a financial promotion in relation to a consumer hire agreement; and
- (3) a communication with a customer in relation to providing credit information services.

3.1.6 **R** ■ CONC 3 does not apply to:

- (1) a financial promotion or a communication which expressly or by implication indicates clearly that it is solely promoting credit agreements or consumer hire agreements or P2P agreements for the purposes in each case of a customer's business;
- (2) a financial promotion or a communication to the extent that it relates to qualifying credit; or
- (3) an excluded communication.

3.1.7 **R**

- (1) ■ CONC 3 does not apply (apart from the provisions in (2)) to a financial promotion or communication that consists of only one or more of the following:
 - (a) the name or a trading name of the firm (or its appointed representative);
 - (b) a logo;
 - (c) a contact point (address (including e-mail address), telephone, facsimile number and website address);
 - (d) a brief, factual description of the type of product or service provided by the firm.
- (2) The provisions in ■ CONC 3 which apply to a financial promotion or communication which falls within (1) are:
 - (a) ■ CONC 3.1, ■ CONC 3.5.1 R and ■ CONC 3.6.1 R (application);
 - (b) ■ CONC 3.3.1 R (clear, fair and not misleading);
 - (c) ■ CONC 3.3.3 R (credit regardless of status);
 - (d) ■ CONC 3.5.3 R, ■ CONC 3.5.5 R, ■ CONC 3.6.6 R (requirement for representative example or typical APR etc);
 - (e) ■ CONC 3.5.7 R (other financial promotions requiring a representative APR);
 - (f) ■ CONC 3.5.12 R (restricted expressions) and ■ CONC 3.6.8 R (restricted expressions); and

(g) any other *rules* in *CONC* which are necessary or expedient to apply the rules in (a) to (f).

3.1.8

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■ CONC 3.1.7R (1) does not enable detailed information to be given about *credit* available from the *firm*. *Firms* should note that the image advertising exclusion in ■ CONC 3.1.7R (1) is subject to compliance with the *rules* specified in (2), including the *rules* which require the inclusion of a *representative APR* in specified circumstances (although the *rules* in ■ CONC 3.5.9R about the wording that must accompany a *representative APR* do not apply to image advertising). A name or logo may trigger the requirement to include a *representative APR*. *Firms* should not include any information not referred to in ■ CONC 3.1.7R (1) and should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

Where?

3.1.9

R

This chapter applies to a *firm* in relation to:

- (1) a communication with, or the *communication* or *approval* for *communication* of a *financial promotion* to, a person in the UK; and
- (2) the *communication* of an *unsolicited real time financial promotion*, unless it is made from a place, and for the purposes of a business which is only carried on, outside the UK;
- (3) [deleted]

and for the purposes of the application of this chapter, it is immaterial whether the *credit agreement* or the *consumer hire agreement* to which the *financial promotion* or communication relates is subject to the law of a country outside the UK.



3.2 Financial promotion general guidance

3.2.1 **G** The *rules* in this chapter adopt various concepts from the restriction on financial promotions by *unauthorised persons* in section 21(1) of the Act (Restrictions on financial promotion). *Guidance* on that restriction and the communications which are exempt from it is contained in ■ PERG 8 (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:

- (1) 'communicate' is in ■ PERG 8.6 (Communicate); and
- (2) 'invitation or inducement' and 'engage in investment activity' (two elements which, with 'communicate', make up the definition of 'financial promotion') is in ■ PERG 8.4 (Invitation or inducement).

3.2.2 **G** The Privacy and Electronic Communications (EC Directive) Regulations 2003 apply to unsolicited telephone calls, fax messages and electronic mail messages for direct marketing purposes. The Information Commissioner's Office has produced guidance on the Regulations.

Meaning of "prominent"

3.2.3 **G** For the purposes of this chapter, information or a statement included in a *financial promotion* or communication will not be treated as prominent unless it is presented, in relation to the other content of the *financial promotion* or communication, in such a way that it is likely that the attention of the average *customer* to whom the *financial promotion* or communication is directed would be drawn to it.

Approving financial promotions: permission

3.2.4 **G**

- (1) The effect of section 55NA of the Act is that a *firm* is unable to approve a *financial promotion* unless:
 - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
- (2) ■ SUP 6A contains *guidance* on applying for *approver permission*.

3.3 The clear fair and not misleading rule and general requirements

3.3.1

R

(1) A *firm* must ensure that a communication or a *financial promotion* is clear, fair, and not misleading.

[Note: paragraphs 2.2 of *ILG*, 3.16 of *DMG* and 3.1 of *CBG*]

(1A) A *firm* must ensure that each communication and each *financial promotion*:

- (a) is clearly identifiable as such;
- (b) is accurate;
- (c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
- (d) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received; and
- (e) does not disguise, omit, diminish or obscure important information, statements or warnings.

(1B) A *firm* must ensure that, where a communication or *financial promotion* contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful.

(2) If, for a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with (1), (1A) and (1B), a contravention does not give rise to a right of action under section 138D of the *Act*.

General requirements

3.3.2

R

A *firm* must ensure that a communication or a *financial promotion*:

- (1) uses plain and intelligible language;
- (2) is easily legible (or, in the case of any information given orally, clearly audible);
- (3) specifies the name of the *person* making the communication or *communicating* the *financial promotion* or the *person* on whose behalf the *financial promotion* is made; and

(4) in the case of a communication or *financial promotion* in relation to *credit broking*, specifies the name of the *lender* (where it is known).

[Note: paragraph 4.8a of CBG]

[Note: regulation 3 of CCAR 2004 and regulation 3 of CCAR 2010]

3.3.3

R

(1) A *firm* must not in a *financial promotion* or a communication to a *customer* state or imply that *credit* is available regardless of the *customer's* financial circumstances or status.

[Note: paragraphs 3.7o of CBG and 5.2 of ILG]

(2) This *rule* does not apply to a *financial promotion* or communication relating to a *credit agreement* under which a *person* takes an article in *pawn* and the *customer's* total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of section 121 of the CCA) of the article or articles *pawned* by the *customer*.

3.3.4

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(1) A *firm's* trading name, internet address or logo, in particular, could fall within ■ CONC 3.3.3 R.

[Note: paragraph 5.2 (box) of ILG]

(2) A statement or an implication that *credit* is guaranteed or pre-approved, or is not subject to any *credit* checks or other assessment of creditworthiness, may contravene ■ CONC 3.3.3R. *Firms* are reminded of the requirements of ■ CONC 5 (Responsible lending).

Guidance on clear, fair and not misleading

3.3.5

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[deleted]

3.3.6

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If a communication or a *financial promotion* names the *FCA*, *PRA* or both as the regulator of a *firm* and refers to matters not regulated by the *FCA*, *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, *PRA* or both.

3.3.7

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When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *customer* being insufficient, unclear, unfair or misleading.

3.3.8

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A comparison or contrast to which ■ CONC 3.3.1R(1B) applies may be a comparison or contrast with another *person*, or with another product or service, whether offered by the *firm* or by another *person*.

3.3.9 G A *firm* should in a *financial promotion* or other communication which includes a premium rate telephone number indicate in a prominent way the likely total cost of a premium rate call including the price per minute of a call, the likely duration of calls and the total cost a *customer* would incur if the *customer* calls for the full estimated duration. *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

[Note: paragraphs 3.9h of *CBG* and 3.18x (box) of *DMG*]

3.3.9A G A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves a financial promotion* that references the *sustainability characteristics* of a product or service.

Unfair business practices: financial promotions and communications

3.3.10 G Examples of practices that are likely to contravene the clear, fair and not misleading *rule* in ■ CONC 3.3.1 R include:

(1) stating or implying that a *firm* is a *lender* (where this is not the case);

[Note: paragraph 3.7e (box) of *CBG*]

(2) misleading a *customer* as to the availability of a particular *credit* product;

[Note: paragraph 3.9p of *CBG*]

(3) concealing or misrepresenting the identity or name of the *firm*;

[Note: paragraph 3.7g (box) of *CBG*]

(4) using false testimonials, endorsements or case studies;

[Note: paragraph 3.18s of *DMG*]

(5) using false or unsubstantiated claims as to the *firm's* size or experience or pre-eminence;

[Note: paragraph 3.18t of *DMG*]

(6) in relation to *debt solutions*, claiming or implying that a *customer* will be free of debt in a specified period of time or making statements emphasising a debt-free life or that a *debt solution* is a stress free or immediate solution;

[Note: paragraphs 3.18u and 3.18v of *DMG*]

(7) providing online tools, which recommend a particular *debt solution* as suitable for a *customer*, such as, budget calculators or advice websites:

(a) which do not carry out a sufficiently full assessment of a *customer's* financial position; or

(b) which fail to provide clear warnings to a *customer* that financial data entered into a tool has to be accurate;

[Note: paragraph 3.20c of *DMG*]

(8) emphasising any savings available to a *customer* by proposing to reschedule a *customer's* debts, without explaining that a *lender* is not obliged to accept less in settlement of the *customer's* debts than it is

entitled to, nor to freeze interest and charges and that the result may be to increase the *total amount payable* or the period over which it is to be paid and to impair the *customer's credit rating*;

[Note: paragraph 3.18l of *DMG*]

- (9) suggesting that a *customer's repayments* will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the *total amount payable* will be higher.

[Note: paragraph 5.13 of *ILG*]

Guidance on misleading introductions

3.3.11

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Misleading a *customer* as to the availability of a particular *credit* product is likely to include stating or implying that the *firm* will introduce the *customer* to a provider of a standard personal loan based on repayment by instalments or of an overdraft facility on a current account (for example, a bank or building society) or of a credit card, but instead introducing the *customer* to a provider of *high-cost short-term credit*.

[Note: paragraph 3.9p (box) of *CBG*]

“Buy now pay later” or similar offers

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- (1) *Firms* are reminded that the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), as well as *Principle 7* and ■ CONC 3.3.1R, apply to communications and *financial promotions* in relation to *BNPL agreements*, including communications with *borrowers* under existing agreements.
- (2) A communication or *financial promotion* in relation to a *BNPL agreement* is likely to be misleading by omission if it:
 - (a) refers to a zero percentage or low interest, introductory or other promotional offer available under a *BNPL agreement*;
 - (b) does so in a way that is likely to influence a *customer's* decision about whether to enter into a *BNPL agreement* or whether and how to make use of *credit* available under an existing *BNPL agreement*; and
 - (c) does not also include in a fair and prominent manner material information about relevant risks.
- (3) A *firm* should also consider whether other communications or *financial promotions* in connection with *BNPL agreements* could be misleading by omission if those communications or *financial promotions* do not also include in a fair and prominent manner material information about relevant risks.
- (4) Relevant risks relating to *BNPL credit* include the limitations that apply to any zero percentage or low interest, introductory or other FCA 2019/72 Page 4 of 6 promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of

that interest or those charges and the amount of principal on which the interest would be charged. The average *consumer* is likely to need information about these matters to make an informed decision about whether to enter into a *BNPL agreement*, or whether and how to make use of *credit* available under an existing *BNPL agreement*.

- (5) The information that a communication or *financial promotion* about a *BNPL agreement* is required to include to avoid a misleading effect, and how that information should be presented, will depend on the context of the communication or *financial promotion*, including its medium and any other information that the *firm* has provided to the recipient.

Non-business overdraft agreements

3.3.12

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A communication or a *financial promotion* that refers to sums available by way of an *authorised non-business overdraft agreement* should make clear that such sums constitute borrowing or credit.



3.4 Risk warning for high-cost short-term credit

[Note: Until the end of 30 June 2014, transitional provisions apply to
■ CONC 3.4: see ■ CONC TP 31]

Risk warnings

3.4.1

R

(1) A firm must not communicate or approve for communication a financial promotion in relation to high-cost short-term credit, unless it contains the following risk warning:

“Warning: Late repayment can cause you serious money problems. For help, go to moneyhelper.org.uk”.

(2) [deleted]

(3) Instead of the website address in paragraph (1), a firm may include the MoneyHelper logo registered UK trade mark number UK00003476779.

(4) The risk warning must be included in a financial promotion in a prominent way.

3.4.2

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MoneyHelper has granted a licence to use the logo referred to in ■ CONC 3.4.1R (3) for the purposes of that rule. The terms of the licence are available from MoneyHelper.

3.5 Financial promotions about credit agreements not secured on land

Application

3.5.1 **R** This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending*;
- (2) to a *financial promotion* in relation to *credit broking* in relation to *regulated credit agreements*;
- (3) to a *financial promotion* in relation to activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to what would be *regulated credit agreements* but for a relevant provision, but only where the *firm* also carries on such activities in relation to *regulated credit agreements*;

and in each case, other than to *financial promotions* to the extent that they relate to agreements secured on *land*.

Prohibition on financial promotion where goods etc. not sold for cash

3.5.2 **R** A *financial promotion* must not be *communicated* where it indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* relating to *goods* or services to be supplied by any *person*, when at the time the *financial promotion* is *communicated*, the *firm* or any *supplier* under such an agreement does not hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

3.5.3 **R** (1) Where a *financial promotion* indicates a rate of interest or an amount relating to the *cost of credit* whether expressed as a sum of money or a proportion of a specified amount, the *financial promotion* must also:

- (a) include a representative example in accordance with
■ CONC 3.5.5 R, and
- (b) specify a postal address at which the *person* making the *financial promotion* may be contacted.

[Note: regulation 4(1) of CCAR 2010]

- (2) Paragraph (1)(a) does not apply where the *financial promotion*:
 - (a) falls within ■ CONC 3.5.7 R; and
 - (b) does not indicate a rate of interest or an amount relating to the *cost of credit* other than the *representative APR*.

[Note: regulation 4(2) of CCAR 2010]

Paragraph (1)(a) also does not apply where the *financial promotion* relates only to *credit agreements* in respect of which the *APR* is 0%.

- (3) Paragraph (1)(b) does not apply to *financial promotions*:
 - (a) communicated by means of television or radio broadcast; or
 - (b) in any form on the premises of a *dealer* or *lender*, other than *financial promotions* in writing which *customers* are intended to take away; or
 - (c) which include the name and address of a *dealer*; or
 - (d) which include the name and postal address of a *credit broker*.

[Note: regulation 4(1)b of CCAR 2010]

Guidance on showing interest rates and cost of credit

3.5.4

G

- (1) A rate of interest for the purpose of ■ CONC 3.5.3R (1) is not limited to an annual rate of interest but would include a *monthly* or daily rate or an *APR*. It would also include reference to 0% credit (but where the *APR* is 0% and ■ CONC 3.5.3R(2A) applies, a representative example is not required). An amount relating to the *cost of credit* would include the amount of any fee or charge, or any *repayment of credit* (where it includes interest or other charges).

[Note: paragraph 6.7 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (2) If a *rule* in ■ CONC 3.5 applies to a rate of interest or a charge, and the rate or charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

Representative example

3.5.5

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- (1) The representative example in ■ CONC 3.5.3R (1) must comprise the following items of information:
 - (a) the rate of interest, and whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of *credit* drawn down;
 - (b) the nature and amount of any other charge included in the *total charge for credit*;
 - (c) the *total amount of credit*;
 - (d) the *representative APR*;

- (e) in the case of *credit* in the form of a deferred payment for specific *goods, services, land* or other things, the *cash price* and the amount of any *advance payment*;
- (f) the duration of the agreement;
- (g) the *total amount payable*; and
- (h) the amount of each *repayment of credit*.

[Note: regulation 5(1) of CCAR 2010]

[Note: article 4 of the *Consumer Credit Directive*]

- (2) The items of information required by (1)(a), (b), (c), (e), (f) and (g) must be those which the *firm communicating or approving the financial promotion* reasonably expects at the date on which the *financial promotion* is made to be representative of *credit agreements* to which the *representative APR* applies and which are expected to be entered into as a result of the promotion.

[Note: regulation 5(2) of CCAR 2010]

- (3) For (1)(e), the reference in (2) to "*credit agreements to which the representative APR applies*" is to agreements providing *credit* for the purchase of specific *goods, services, land* or other things, to which the *representative APR* applies.

[Note: regulation 5(3) of CCAR 2010]

- (4) For the purposes of (1)(a), where the *credit agreement* provides for different ways of drawdown with different rates of interest, the rate of interest shall be assumed to be the highest rate applied to the most common drawdown mechanism for the product to which the agreement relates.

[Note: regulation 5(4) of CCAR 2010]

- (5) The information required by (1) must be:
- (a) specified in a clear, concise and prominent way;
 - (b) accompanied by the words "*representative example*";
 - (c) presented together with each item of information being given equal prominence; and
 - (d) given no less prominence than:
 - (i) any other information relating to the *cost of credit* in the *financial promotion*, except for any statement relating to an obligation to enter into a contract for an *ancillary service* referred to in ■ CONC 3.5.10 R; and
 - (ii) any indication or incentive of a kind referred to in ■ CONC 3.5.7 R.

[Note: regulation 5(6) of CCAR 2010]

- (6) A *financial promotion* for a *credit agreement* with no fixed duration is not required to include the duration of the agreement or the *total amount payable* or the amount of each *repayment of credit*.

[Note: regulation 5(1)f of CCAR 2010]

- (7) A financial promotion for an authorised non-business overdraft agreement provided by a firm of a type listed in ■ CONC 5C.1.2R(2) is not required to include a representative APR.

[Note: regulation 5(5) of CCAR 2010]

Guidance on the representative example

3.5.6

G

- (1) The representative example in ■ CONC 3.5.5 R should not be limited to being representative of agreements featured in the financial promotion if the firm communicating or approving the financial promotion expects other agreements to be entered into as a result of the financial promotion, whether with the firm or with a third party.

[Note: paragraph 6.8 of BIS Guidance on regulations implementing the Consumer Credit Directive]

- (1A) Firms are referred to the Glossary definition of representative APR and reminded that they should consider the agreements which they reasonably expect to be entered into (whether by the firm or by another person) as a result of the financial promotion, and ensure that the 51% test in that definition takes account of the APR of each of those agreements. The representative example in ■ CONC 3.5.5R should be representative of agreements to which the representative APR applies.
- (1B) The example referred to in (1) is unlikely to be representative if, for example, most customers entering into agreements as a result of the financial promotion are likely to do so for a lower amount of credit than that indicated in the example, or with higher rates of interest or other charges than those indicated in the example.
- (1C)
 - (a) The guidance in this provision is relevant to the calculation of an APR for an authorised non-business overdraft agreement which is a necessary first step when calculating the representative APR in a financial promotion for the authorised non-business overdraft agreement. It is, therefore, also relevant to the calculation of the representative APR in a financial promotion for an authorised non-business overdraft agreement.
 - (b) This guidance relates to a situation where the terms and conditions that apply to an authorised non-business overdraft agreement provide that no interest or other charges are payable in relation to a drawing (authorised in advance) up to a specified amount (including in circumstances where the drawdown exceeds the specified amount). This is sometimes referred to as a “fee-free amount”.
 - (c) Firms are reminded that ■ CONC 5C.2.1R(7) prohibits certain types of fee-free amounts in relation to overdrafts where the benefit of the fee-free amount is liable to be lost in certain circumstances.
 - (d)
 - (i) For the purposes of calculating the total charge for credit and the APR, ■ CONC App 1.2.5R (Assumptions for calculation) sets out various assumptions. A number of these assumptions

apply “where necessary” to deal in a consistent and comparable way with factors that are not certain at the time the *total charge for credit* or *APR* is calculated.

- (ii) Where, however, the terms of a permissible fee-free amount that apply to an *authorised non-business overdraft agreement* are known at the time the *APR* is calculated (and the incidence of the benefit of the fee-free amount is certain if the overdraft is used), the *APR* calculation should reflect those terms. In that situation, it is unlikely to be necessary to make the assumption that the fee-free amount does not exist under ■ CONC App 1.2.5R.

- (1D) (a) (i) This *guidance* is relevant to whether to include account fees in the calculation of the *APR* for an *authorised non-business overdraft agreement*. The type of account fee this *guidance* is intended to address is a periodic charge a *customer* is required to pay in order to obtain and maintain access to a personal current account that has an overdraft facility.
 - (ii) ■ CONC App 1.2.3R (Total charge for credit) provides that the costs of maintaining an account recording both payment transactions and drawdowns are included in the *total cost of credit to the borrower*. There is an exception to this rule (see ■ CONC App 1.2.3R(3)) where: “(a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the *regulated credit agreement* or in any other agreement with the *borrower*; (b) in the case of an *overdraft facility* the costs do not relate to that facility.”
 - (iii) Whether an account fee is required to be included in the calculation of an *APR* depends on whether the *credit* under the associated *authorised non-business overdraft agreement* can be obtained on the same terms without incurring the account fee. If an *authorised non-business overdraft agreement* is not available on the same equally favourable terms without the imposition of the fee, that fee is likely to be considered to “relate” to the overdraft facility.
- (b) The following are examples of situations where it is likely that an account fee should be included in the calculation of the *total charge for credit* and the *APR* for an *authorised non-business overdraft agreement*.
 - (i) A personal current account that is subject to an account fee, one of the features of which is an arranged overdraft facility with more favourable terms (for example, a lower interest rate) than those offered on accounts that do not require the payment of an account fee.
 - (ii) A *firm* that offers personal current accounts with associated arranged overdraft facilities in respect of all of which there is an account fee.
 - (c) A *firm* may offer a “packaged bank account” that is a composite product with a number of constituent elements, one of which is an overdraft facility, but others of which are different services. If there is a fee for an optional non-overdraft element of the package that the *customer* can avoid by choosing not to have that element of the package, and the *customer* can still have the

overdraft element of the package on the same terms, that avoidable fee should not be included in the *APR* calculation.

- (2) Where the agreement provides for compounding, the rate of interest in ■ CONC 3.5.5R (1) should generally be the effective annual interest rate and *lenders* should use the same assumptions to calculate this interest rate as they do for the *APR*; the assumptions set out in ■ CONC App 1.2. If a *firm* uses a different rate to calculate the rate of interest in ■ CONC 3.5.5R (1) it must clearly explain this to the *customer*, so that the *customer* is clear whether and to what extent the rate used is comparable with rates shown by other *lenders*.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (3) [deleted]

- (4) For charges other than interest which are included in the *total charge for credit*, the *financial promotion* should in each case make clear the nature of the charge and the amount of the charge if ascertainable or a reasonable estimate of the charge, making clear in that case it is an estimate.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (5) The *total amount of credit* equates to the sum available to the *customer* to use and does not include charges which are financed by the *credit agreement*; those are part of the *total charge for credit*.
- (6) For showing the *cash price*, the total *cash price* of all items should be shown, together with the price of each item individually. For the purposes of the *Glossary* definition of *cash price* in this context, a discount will be treated as generally available if most *customers* paying in cash are likely to be, or would reasonably expect to be, offered or given the discount.
- (7) Other than in the case of an *authorised non-business overdraft agreement* provided by a *firm* of a type listed in ■ CONC 5C.1.2R(2), where a *financial promotion* for an *authorised non-business overdraft agreement* is required to include a representative example, one of the items that must be included in the example is the *representative APR*.

Other financial promotions requiring a representative APR

3.5.7

R

- (1) A *financial promotion* must include the *representative APR* if it:
 - (a) states or implies that *credit* is available to *individuals* who might otherwise consider their access to *credit* restricted; or
 - (b) includes a favourable comparison relating to the *credit*, whether express or implied, with another *person*, product or service; or
 - (c) includes an incentive to apply for *credit* or to enter into an agreement under which *credit* is provided.

[Note: regulation 6 of *CCAR 2010*]

3.5.8

G

- (1A) A *financial promotion* which states that a cash sum is available for opening an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations* and which does not refer to the availability of *credit* under an *authorised non-business overdraft agreement* in connection with that account must not be regarded as including an incentive to apply for *credit* or to enter into an agreement under which *credit* is provided for the purposes of (1)(c).
- (2) The *representative APR* must be given no less prominence than any of the matters in (1).
- (3) This *rule* does not apply to a *financial promotion*:
- (a) for an *authorised non-business overdraft agreement* provided by a *firm* of a type listed in ■ CONC 5C.1.2R(2); or
 - (b) for a *credit agreement* in respect of which the *APR* is 0%; or
 - (c) for a *credit agreement* to be entered into by a *community finance organisation as lender*.
- (1) A *firm's* trading name, website address or logo could trigger the requirements in ■ CONC 3.5.7R(1).
- (2) For the purposes of ■ CONC 3.5.7R(1)(b), a comparison with another *person*, product or service includes a reference (whether stated or implied) to:
- (a) the terms on which, or the way in which, *credit* is offered or made available; or
 - (b) the nature or quality or any other aspect of the service relating to the *credit* that the *person* offers or provides (or does not offer or provide).
- The *financial promotion* does not need to specify a particular *person*, product or service for there to be a comparison.
- (3) A *financial promotion* does not necessarily include a comparison where it merely refers to a *person*, product or service in a factual manner, but there will be an implied comparison for the purposes of ■ CONC 3.5.7R(1)(b) if it may reasonably be inferred that a comparison is being made.
- (4) A statement about matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available, may constitute an incentive for the purposes of ■ CONC 3.5.7R(1)(c). This will depend on the context of the statement and the circumstances in which it is made. A statement will be an incentive where it is likely to persuade or influence a *customer* to apply for *credit* or to enter into an agreement under which *credit* is provided, or is presented in a way which is likely to have that effect.
- (5) Other examples of things which could be incentives are gifts, special offers, discounts and rewards.

- (6) ■ CONC 3.5.7R applies to a *firm* with respect to a *financial promotion* for an *authorised non-business overdraft agreement* except a *firm* of a type listed in ■ CONC 5C.1.2R(2).

Annual percentage rate of charge

3.5.9

R

In a *financial promotion*:

- (1) an *APR* must be shown as “%APR”;
- (2) where an *APR* is subject to change it must be accompanied by the word “variable”;
- (3) the *representative APR* must be accompanied by the word “representative”; and
- (4) where the *financial promotion* is:
 - (a) in writing; and
 - (b) for an *authorised non-business overdraft agreement*, the *representative APR* must be accompanied by the following information:
 - (c) a statement as follows:

“How does our overdraft compare?”; and
 - (d) wording, in plain and intelligible language, that explains to *customers* that the purpose of a *representative APR* is to enable *customers* to compare the costs associated with different *credit* products; and

this information must be given reasonable prominence and be in sufficiently close proximity to the *representative APR* to make it reasonably apparent to *customers* that the relevant wording relates to the *representative APR*.

[Note: regulation 7 of CCAR 2010]

3.5.9A

R

■ CONC 3.5.9R(4) applies only to *financial promotions* that are in writing. In accordance with ■ GEN 2.2.14R, this means *financial promotions* that are in legible form and capable of being reproduced on paper, irrespective of the medium used. The *rule* does not, therefore, apply to a *financial promotion* communicated by means of television or radio broadcast.

Ancillary services

3.5.10

R

- (1) A *financial promotion* must include a clear, concise and prominent statement in respect of any obligation to enter into a contract for an *ancillary service* where:
 - (a) the conclusion of that contract is compulsory in order to obtain the *credit* or to obtain it on the terms and conditions promoted; and
 - (b) the cost of that *ancillary service* cannot be determined in advance.

[Note: regulation 8 of CCAR 2010]

- (2) The statement in (1) must be presented together with any *representative APR* included in the *financial promotion*.
- (3) This rule does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

Security

3.5.11 **R** Where a *financial promotion* concerns a facility for which *security* is or may be required, the promotion must:

- (1) state that *security* is or may be required; and
- (2) specify the nature of the *security*.

[Note: regulation 9 of CCAR 2010]

Restricted expressions

3.5.12 **R** (1) A *financial promotion* must not include:

- (a) the word "overdraft" or any similar expression as describing any agreement for *running-account credit*, except where an agreement enables a *customer* to overdraw on a current account;
- (b) the expression "interest free" or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* does not exceed the *cash price*;
- (c) the expression "no deposit" or any similar expression, except where no *advance payments* are to be; or
- (d) [deleted];
- (e) the expression "gift", "present" or any similar expression, except where there are no conditions which would require the *customer* to repay the *credit* or to return the item that is the subject of the claim.

[Note: regulation 10 of CCAR 2010]

- (2) A *financial promotion* must not include for a *repayment of credit* the expression "weekly equivalent" or any expression to like effect or any expression of any other periodical equivalent, unless weekly *repayments* or the other periodical payments are provided for under the agreement.
- (3) In this rule, "cash purchaser" means a *person* who, for money consideration, acquires *goods, land* or other things or is provided with services under a transaction which is not financed by *credit*.

Total charge for credit and APR

3.5.13

R

(1) Where a *financial promotion* is about *running-account credit* and the *credit limit* applicable is not yet known on the date the *financial promotion* is made, but it is known that it will be less than £1,200, the *credit limit* must be assumed to be an amount equal to that maximum limit.

[Note: paragraph 1 of schedule to CCAR 2010]

(2) The assumption in (1) applies in place of the assumption in ■ CONC App 1.2.5 R for the purpose of calculating the *total charge for credit*.

Total charge for credit and APR: tolerances for APR

(3) For a *financial promotion*, it is sufficient to show an *APR* if there is included in the promotion:

- (a) a rate which exceeds the *APR* by not more than one; or
- (b) a rate which falls short of the *APR* by not more than 0.1; or
- (c) where applicable, a rate determined in accordance with (4) or (5).

[Note: paragraph 2 of schedule to CCAR 2010]

Total charge for credit and APR: tolerance where repayments are nearly equal

(4) Where an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments of credit*, there may be included in a *financial promotion* about the agreement a rate found under ■ CONC App 1.2.4 R as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[Note: paragraph 3 of schedule to CCAR 2010]

Total charge for credit and APR: tolerance regarding interval between relevant date and first repayment

(5) Where a *credit agreement* provides that:

- (a) three or more *repayments* are to be made at equal intervals; and
- (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;

a *financial promotion* about the agreement may include a rate found under ■ CONC App 1.2.4 R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between the *repayments*.

[Note: paragraph 4 of schedule to CCAR 2010]

(6) The relevant date in (5) is:

3.5.14

G

Promotions relating to non-business overdraft agreements

A *direct offer financial promotion* made in writing and relating to a *non-business overdraft agreement* will also need to comply with the *rules* in ■ **BCOBS 2.2B** (General information about overdrafts for personal current accounts) where those *rules* apply.

- (a) where a date on which the *customer* is entitled to require provision of the subject of a *credit agreement* is specified in or can be determined from the agreement, the earliest such date;
- (b) in any other case, the date of making the agreement.



3.6 Financial promotions about credit agreements secured on land

Application

3.6.1

R

This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending* in relation to *regulated credit agreements secured on land*; and
- (2) to a *financial promotion* in relation to *credit broking* in relation to *regulated credit agreements secured on land*;

and in both cases other than *financial promotions* to the extent that they relate to *qualifying credit*.

Definitions

3.6.2

R

In this section, for a *financial promotion* relating to *credit* to be provided under a *credit agreement* "relevant date" means:

- (1) in a case where a date is specified in or determinable under the agreement at the date of its making as that on which the *customer* is entitled to require provision of anything the subject of the agreement, the earliest such date; and
- (2) in any other case, the date of the making of the agreement.

Prohibition on financial promotion where goods etc not sold for cash

3.6.3

R

A *financial promotion* must not be *communicated* where it indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* secured on *land* relating to *goods* or services to be supplied by any *person*, when at the time the *financial promotion* is *communicated*, the *firm* or any *supplier* under such an agreement does not hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

3.6.4

R

- (1) Where a *financial promotion* includes any of the amounts referred to in (5) to (7) of ■ CONC 3.6.10 R the promotion must:

- (a) include all the other items of information (other than any item inapplicable to the particular case) listed in ■ CONC 3.6.10 R; and
- (b) specify a postal address at which the *person* making the promotion may be contacted, except in the case of a *financial promotion*:
 - (i) *communicated* by means of television or radio broadcast;
 - (ii) in any form on the premises of a *lender* or *dealer* (other than a *financial promotion* in writing which *customers* are intended to take away);
 - (iii) which includes the name and address of a *dealer*; or
 - (iv) which includes the name and a postal address of a *credit broker*.

[Note: regulation 4(1) of CCAR 2004]

- (2) The items of information listed in ■ CONC 3.6.10 R must be given equal prominence and must be shown together as a whole.

[Note: regulation 4(2) of CCAR 2004]

- (3) Any information in any book, catalogue, leaflet or other document which is likely to vary from time to time must be taken for the purpose of (2) to be shown together as a whole if:
 - (a) it is set out together as a whole in a separate document issued with the book, catalogue, leaflet or other document;
 - (b) the other information in the *financial promotion* is shown together as a whole in the book, catalogue, leaflet or other document; and
 - (c) the book, catalogue, leaflet or other document identifies the separate document in which the information likely to vary is set out.

[Note: regulation 4(3) of CCAR 2004]

Statements in relation to security

3.6.5

R

- (1) Where a *financial promotion* concerns a facility for which *security* is or may be required, the promotion must:
 - (a) state that *security* is or may be required; and
 - (b) specify the nature of the *security*.

[Note: regulation 7(1) of CCAR 2004]

- (2) Where, in the case of a *financial promotion*, the *security* comprises or may comprise a mortgage or charge on a property used by the *customer* as a dwelling (whether or not the *customer's* primary residence):
 - (a) except where (c) applies, the *financial promotion* must contain a warning in the form:

"YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT";

- (b) where the *financial promotion* indicates that *credit* is available for the payment of debts due to other *lenders*, the warning in (a) must be preceded by the words:

“THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME.”

- (c) where the *credit agreement* is or would be an agreement of a kind described in (3), the *financial promotion* must contain a warning in the form:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN ANY DOUBT, SEEK INDEPENDENT ADVICE”.

[Note: regulation 7(2) of CCAR 2004]

- (3) The kinds of agreement in (2)(c) are:

- (a) any *credit agreement* under which no instalment *repayments* secured by the mortgage on the *customer's* home, and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by the *customer*), are due or capable of becoming due while the *customer* continues to occupy the mortgaged *land* as the *customer's* main residence; and
- (b) any *credit agreement*:
- (i) which is secured by a mortgage which the *lender* cannot enforce by taking possession of or selling (or concurring with any other *person* in selling) the mortgaged *land* or any part of it while the *customer* continues to occupy it as the *customer's* main residence; and
- (ii) under which, although interest payments may become due, no full or partial repayment of the *credit* secured by the mortgage is due or capable of becoming due while the *customer* continues to occupy the mortgaged *land* as the *customer's* main residence.

[Note: regulation 7(3) of CCAR 2004]

- (4) Where a *financial promotion* is for a mortgage or other loan secured on property and *repayments* are to be made in a currency other than sterling, the *financial promotion* must contain a warning in the form:

“CHANGES IN THE EXCHANGE RATE MAY INCREASE THE STERLING EQUIVALENT OF YOUR DEBT”.

[Note: regulation 7(4) of CCAR 2004]

- (5) The warnings provided for in (2) and (4):

- (a) must be given greater prominence in a *financial promotion* than is given to:
- (i) any rate of charge other than the *typical APR*; and
- (ii) any indication or incentive of a kind referred to in
■ CONC 3.6.6R (1); and

- (b) must be given no less prominence in a *financial promotion* than is given to any of the items listed in ■ CONC 3.6.10 R that appear in the *financial promotion*.

[Note: regulation 7(6) of CCAR 2004]

- (6) Paragraphs (2), (3), (4) and (5) do not apply in the case of a *financial promotion* which:
 - (a) is communicated by means of television or radio broadcast in the course of programming the primary purpose of which is not financial promotion; or
 - (b) is communicated by exhibition of a film (other than exhibition by television broadcast); or
 - (c) contains only the name of the *firm communicating* the *financial promotion*.

[Note: regulation 7(8) of CCAR 2004]

Annual percentage rate of charge

3.6.6

R

- (1) A *financial promotion* must specify the *typical APR* if the promotion:
 - (a) specifies any other rate of charge;
 - (b) includes any of the items of information listed in ■ CONC 3.6.10R (5) to (7);
 - (c) indicates in any way, whether expressly or by implication, including by means of the name given to a business or of an address used by a business for the purposes of *electronic communication*, that:
 - (i) *credit* is available to *persons* who might otherwise consider their access to *credit* restricted; or
 - (ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lender*; or
 - (iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lender*; or
 - (d) includes any incentive (including but not limited to, gifts, special offers, discounts and rewards) to apply for *credit* or to enter into an agreement under which *credit* is provided;
- [Note: regulation 8(1) of CCAR 2004]
- (e) includes an incentive (in the form of a statement about the speed or ease of, processing, considering or granting an application or of making funds available) to apply for *credit* or to enter into an agreement under which *credit* is provided.
- (2) A *financial promotion* may not indicate the range of *APRs* charged where *credit* is provided otherwise than by specifying, with equal prominence, both:

- (a) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at the date on which the promotion is *communicated or approved*, would be the lowest *APR* at which *credit* would be provided under not less than 10% of the agreements which will be entered into as a result of that promotion; and
- (b) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at that date, would be the highest *APR* at which *credit* would be provided under any of the agreements which will be entered into as a result of that promotion.

[Note: regulation 8(2) of *CCAR 2004*]

- (3) An *APR* must be shown as “%APR”.

[Note: regulation 8(3) of *CCAR 2004*]

- (4) Where an *APR* is subject to change it must be accompanied by the word “variable”.

[Note: regulation 8(4) of *CCAR 2004*]

- (5) The *typical APR* in a *financial promotion* must be:

- (a) accompanied by the word “typical”;
- (b) presented together with any of the items listed in ■ CONC 3.6.10 R that are included in the promotion;
- (c) given greater prominence in the promotion than:
 - (i) any other rate of charge;
 - (ii) any items listed in ■ CONC 3.6.10 R; and
 - (iii) any indication or incentive of a kind referred to in (1); and
- (d) in the case of a promotion in printed or electronic form which includes any of the items listed in ■ CONC 3.6.10 R, shown in characters at least one and a half times the size of the characters in which those items appear.

[Note: regulation 8(5) of *CCAR 2004*]

- (6) In the case of a *financial promotion* relating to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account under which the *lender* is the Bank of England or an *authorised person with permission* to accept deposits, there may be substituted for the *typical APR* a reference to the statement of:

- (a) a rate, expressed to be a rate of interest, being a rate determined as the rate of the *total charge for credit* calculated on the assumption that only interest is included in the *total charge for credit*, and
- (b) the nature and amount of any other charge included in the *total charge for credit*.

[Note: regulation 8(6) of *CCAR 2004*]

3.6.7 **G** Whether or not a reference to speed or ease in **■ CONC 3.6.6R (1)(e)** constitutes an incentive to apply for *credit* or enter into an agreement under which *credit* is provided would depend upon the circumstances, including whether it is likely to persuade or influence a *customer* to take those steps or is merely a factual statement about the product or service.

Restricted expressions

3.6.8 **R**

(1) A *financial promotion* must not include:

- (a) the word “overdraft” or any similar expression as describing any agreement for *running-account credit*, except where the agreement enables a *customer* to overdraw on a current account;
- (b) the expression “interest free” or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* by the *customer* does not exceed the *cash price*;
- (c) the expression “no deposit” or any similar expression, except where no *advance payments* are to be made;
- (d) the expression “loan guaranteed” or “pre-approved” or “no credit checks” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the *customer*;
- (e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the *customer* to repay the *credit* or return the item that is the subject of the claim.

[Note: regulation 9 of CCAR 2004]

(2) A *financial promotion* must not include for a *repayment of credit* the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly repayments or the other periodical payments are provided for under the agreement.

(3) In this *rule* “cash purchaser” means a *person* who for money consideration acquires *goods, land* or other things or is provided with services, under a transaction which is not financed by *credit*.

Total charge for credit and any APR: assumptions about running account credit

3.6.9 **R**

(1) In the case of a *financial promotion* about *running-account credit*, the following assumptions have effect for the purpose of calculating the *total charge for credit* and any *APR*, notwithstanding the terms of the transaction advertised and in place of any assumptions in **■ CONC App 1.1.11 R** to **■ CONC App 1.1.18 R** that might otherwise apply:

- (a) the amount of the *credit* to be provided must be taken to be £1,500 or, in a case where *credit* is to be provided subject to a *credit limit* of less than £1,500, an amount equal to that limit;
- (b) it must be assumed that the *credit* is provided for a period of one year beginning with the relevant date;

- (c) it must be assumed that the *credit* is provided in full on the relevant date;
- (d) where the rate of interest will change at a time provided in the transaction within a period of three years beginning with the relevant date, the rate must be taken to be the highest rate at any time obtaining under the transaction in that period;
- (e) where the agreement provides *credit* to finance the purchase of *goods, services, land* or other things and also provides one or more of:
 - (i) cash loans;
 - (ii) *credit* to refinance existing indebtedness of the *customer*, whether to the *lender* or another *person*; and
 - (iii) *credit* for any other purpose;and either or both different rates of interest and different charges are payable for the *credit* provided for all or some of these purposes, it must be assumed that the rate of interest and charges payable for the whole of the *credit* are those applicable to the provision of *credit* for the purchase of *goods, services, land* or other things; and
- (f) it must be assumed that the *credit* is repaid:
 - (i) in twelve equal instalments; and
 - (ii) at *monthly* intervals, beginning one *month* after the relevant date.

[Note: paragraph 1 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerances in disclosure of an APR

- (2) For the purposes of ■ CONC 3.6, it is sufficient compliance with the requirement to show an *APR* if there is included in the *financial promotion*:
 - (a) a rate which exceeds the *APR* by not more than one; or
 - (b) a rate which falls short of the *APR* by not more than 0.1;or in a case to which (3) or (4) applies, a rate determined in accordance with those sub-paragraphs or whichever of them applies to that case.

[Note: paragraph 2 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerance where repayments are nearly equal

- (3) In the case of an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments* of *credit*, there may be included in a *financial promotion* about the agreement a rate found under ■ CONC App 1.1.9 R as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[Note: paragraph 3 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerance of interval between relevant date and first repayment

- (4) In the case of an agreement under which:
- (a) three or more *repayments* are to be made at equal intervals; and
 - (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;

a *financial promotion* about the agreement may include a rate found under ■ CONC App 1.1.9 R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between *repayments*.

[Note: paragraph 4 of schedule 1 to CCAR 2004]

**Information that CONC 3.6.4R(1) may require to be included
in a financial promotion**

3.6.10

R

- (1) The amount of *credit* which may be provided under a *credit agreement* or an indication of one or both of the maximum amount and the minimum amount of *credit* which may be provided.

[Note: paragraph 1 of schedule 2 to CCAR 2004]

Deposit of money in an account

- (2) A statement of any requirement to place on deposit any sum of money in any account with any *person*.

[Note: paragraph 2 of schedule 2 to CCAR 2004]

Cash price

- (3) In the case of a *financial promotion* about *credit* to be provided under a *borrower-lender-supplier agreement*, where the *financial promotion* specifies *goods, services, land* or other things having a particular *cash price*, the acquisition of which from an identified *dealer* may be financed by the *credit*, the *cash price* of such *goods, services, land* or other things.

[Note: paragraph 3 of schedule 2 to CCAR 2004]

Advance payment

- (4) A statement as to whether an *advance payment* is required and, if so, the amount or minimum amount of the payment expressed as a sum of money or a percentage.

[Note: paragraph 4 of schedule 2 to CCAR 2004]

Frequency, number and amount of repayments of credit

- (5) (a) In the case of a *financial promotion* about *running-account credit*, a statement of the frequency of the *repayments* of *credit* under the transaction and of the amount of each *repayment* stating whether it is a fixed or minimum amount, or a statement indicating the manner in which the amount will be determined.

- (b) In the case of other *financial promotions*, a statement of the frequency, number and amounts of *repayments of credit*.
- (c) The amount of any *repayment* under this sub-paragraph may be expressed as a sum of money or as a specified proportion of a specified amount (including the amount outstanding from time to time).

[Note: paragraph 5 of schedule 2 to *CCAR 2004*]

Other payments and charges

- (6) (a) Subject to (b) and (c), a statement indicating the description and amount of any other payments and charges which may be payable under the agreement promoted in the *financial promotion*.
- (b) Where the liability of the *customer* to make any payment cannot be ascertained at the date the *financial promotion* is *communicated*, a statement indicating the description of the payment in question and the circumstances in which the liability to make it will arise.
- (c) Paragraphs (a) and (b) do not apply to any charge payable under the transaction to the *lender* or any other *person* on behalf of the *lender* upon failure by the *customer* or a relative of the *customer* to do or refrain from doing anything which the *customer* is required to do or refrain from doing, as the case may be.

[Note: paragraph 6 of schedule 2 to *CCAR 2004*]

Total amount payable by the customer

- (7) In the case of a *financial promotion* about *fixed-sum credit* to be provided under a *credit agreement* which is repayable at specified intervals or in specified amounts and other than cases under which the sum of the payments within (a) to (c) is not greater than the *cash price* referred to in (3), the *total amount payable*, being the total of:
 - (a) *advance payments*;
 - (b) the amount of *credit* repayable by the *customer*, and
 - (c) the amount of the *total charge for credit*.

[Note: paragraph 7 of schedule 2 to *CCAR 2004*]

3.7 Financial promotions and communications: credit brokers

Application

- 3.7.1 **R** This section applies to a *financial promotion* or a communication with a *customer* in relation to *credit broking* in relation to a *regulated credit agreement*.
- 3.7.2 **R** ■ CONC 3.7.4 G also applies to a *financial promotion* or a communication with a *customer* in relation to the activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to a *credit agreement* that would be a *regulated credit agreement* but for the *relevant provisions*.
- 3.7.2A **R** ■ CONC 3.7.5 R to ■ CONC 3.7.8 G:
- (1) apply to a *financial promotion* or a communication with a *customer* in relation to *credit broking* whether or not it is in relation to a *regulated credit agreement*; but
 - (2) do not apply to a *financial promotion* or a communication with a *customer* which clearly indicates that it is made solely in respect of *credit broking* in relation to a *credit agreement* secured by a *legal or equitable mortgage on land*.

Credit brokers' registered name, and status

- 3.7.3 **R** A *firm* must, in a *financial promotion* or a document which is intended for *individuals* which relates to its *credit broking*, indicate the extent of its powers and in particular whether it works exclusively with one or more *lenders* or works independently.

[Note: section 160A(3) of CCA]

[Note: article 21(a) of the *Consumer Credit Directive*]

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

- (1) make clear, to the extent an average *customer* of the *firm* would understand, the nature of the service that the *firm* provides;

[Note: paragraphs 3.7e and 4.8b of CBG]

- (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 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;

[Note: paragraphs 2.2, 6th bullet and 4.6 of *CBG*]

- (3) only describe itself as independent if it is able to provide access to a representative range of *credit* products from the relevant product market on competitive terms and is not constrained in providing such access, for example, because of one or more agreements with *lenders*; and

[Note: paragraph 4.5 of *CBG*]

- (4) ensure that any disclosure about the extent of its independence is prominent and in accordance with the clear, fair not misleading *rule* in ■ CONC 3.3.1 R, clear and easily comprehensible.

[Note: paragraph 4.6 of *CBG*]

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.

3.7.5

R

A *firm* must ensure that a *financial promotion* or a communication with a *customer* specifies the legal name of the *firm* as it appears in the *Financial Services Register* and not merely a trading name.

- 3.7.6** **G** ■ CONC 3.7.5 R requires all *financial promotions* and communications with *customers* to specify the legal name of the *firm*: the *rule* does not prohibit the use of trading names, but does require the legal name to be given in addition to any trading name used. If the *firm* is a company registered under the Companies Act 2006, the *firm's* legal name will be the name by which it is registered.
- 3.7.7** **R**
- (1) A *firm* which is a *credit broker* and not a *lender* must ensure that any *financial promotion* states prominently that the *firm* is a *credit broker* and that it is not a *lender*.
 - (2) A *firm* which is both a *credit broker* and a *lender* must ensure that any *financial promotion* that solely promotes its services as a *credit broker* states prominently that the *financial promotion* is promoting the *firm's* services as a *credit broker* and not its services as a *lender*.
- 3.7.8** **G** For the purposes of ■ CONC 3.7.7 R, a statement will not be treated as prominent unless it is presented, in relation to other content of the *financial promotion*, in such a way that it is likely that the attention of the average *person* to whom the *financial promotion* is directed would be drawn to it.



3.7A Financial promotions and communications: P2P agreements

Application

3.7A.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending*.

Status

3.7A.2 **R**

- (1) A *firm* must, in any relevant communication, indicate the extent of its powers, in particular whether it works exclusively with one or more *lenders* (including, for example, if it works exclusively with *lenders* who are participants in the electronic system that the *firm* operates) or whether it works as an independent broker.
[Note: article 21(a) of the *Consumer Credit Directive*]
- (2) In this *rule*, a “relevant communication” means a *financial promotion* or a document which:
 - (a) is intended for *borrowers* or prospective *borrowers*; and
 - (b) relates to a *P2P agreement*:
 - (i) that is, or would be, a *regulated credit agreement*; and
 - (ii) in respect of which the *lender* is, or would be, acting by way of business.

3.8 Financial promotions and communications: lenders

Application

- 3.8.1 **R** This section applies to a *financial promotion* or a communication with a *customer* in relation to *consumer credit lending*.

Unfair business practices

- 3.8.2 **R** A *firm* must not in a *financial promotion* or a communication with a *customer*:
- (1) provide an application for *credit* with a pre-completed amount of credit which is not based on having carried out a *creditworthiness assessment* (see ■ CONC 5.2A); or

[Note: paragraph 5.3 of *ILG*]
 - (2) state or imply that providing *credit* is dependent solely upon the value of the equity in property on which the agreement is to be secured; or

[Note: paragraph 5.4 of *ILG*]
 - (3) promote *credit* where the *firm* knows, or has reason to believe, that the agreement would be unsuitable for that *customer* in the light of the *customer's* financial circumstances or, if known, intended use of the *credit*.

[Note: paragraph 5.5 of *ILG*]
- 3.8.3 **G** An agreement is likely to be unsuitable for the purposes of ■ CONC 3.8.2R (3) including in the following situations where a *firm*:
- (1) promotes, suggests or advises taking out a secured loan or to take out a secured loan to replace or convert an unsecured loan when it is clearly not in that *person's* best interests to do so at that time; or
 - (2) promotes, suggests or advises taking out *high-cost short-term credit* which would be expensive as a means of longer term borrowing, as being suitable for sustained borrowing over a longer period.

[Note: paragraph 5.5 (box) of *ILG*]

3.8.4

G For the purposes of **■ CONC 3.8.2R (3)** the unsuitability of an agreement does not apply to the question of whether a *customer* should enter into a *regulated credit agreement* at all.

[**Note:** paragraph 5.5 (box) of *ILG*]

3.9 Financial promotions and communications: debt counsellors and debt adjusters

Application

- 3.9.1 **R** This section applies to a *financial promotion* or a communication with a *customer* in relation to *debt counselling* and to *debt adjusting*.

Financial promotions and communications

- 3.9.2 **G**
- (1) The clear, fair and not misleading *rule* in **CONC 3.3.1 R** applies to a communication with a *customer* or the *communication* or *approval* for *communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting* and in relation to a communication with a *customer* in relation to *providing credit information services*.
 - (2) In the light of the complexity of *debt counselling*, it is unlikely that media which provide restricted space for messages would be a suitable means of making *financial promotions* about *debt solutions*.

Contents of financial promotions and communications

- 3.9.3 **R** A *firm* must ensure that a *financial promotion* or a communication with a *customer* (to the extent a previous communication to the same *customer* has not included the following information) includes:

- (1) a statement of the services the *firm* offers;
- (2) a statement of any relationship with a business associate which is relevant to the services offered in the promotion;

[Note: paragraph 2.5a of *DMG*]

- (3) a statement setting out the level of fees charged for the *firm's* services, how they are calculated, what service they cover and where it is not possible to state an exact amount, a reasonable estimate of the anticipated fees, or the average level of its fees, for the service in question;

[Note: paragraphs 2.5c and 3.18f of *DMG*]

- (4) a statement of whether any aspect of the services is provided by a third party or at extra cost;

[Note: paragraphs 2.5a and 3.18f of *DMG*]

- (5) a statement that a *customer* may be eligible under the *Financial Ombudsman Service* and referring by a link or otherwise to the information the *firm* is required to publish under ■ DISP 1.2.1R (1);

[Note: paragraph 2.5b of *DMG*]

- (6) where this is the case, a statement that the *firm's* service is profit-seeking;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (7) where this is the case, a statement that the *firm's* service is offered in return for payment from the *customer*;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (8) other than for a *not-for-profit debt advice body*, a reference to impartial information and to sources of assistance from *not-for-profit debt advice bodies*;

[Note: paragraph 2.5d of *DMG*]

- (9) where the *financial promotion* or communication sets out detail of how a *customer* might resolve debt problems by explaining options, the most important actual or potential advantages, disadvantages and risk of each option, including those of the *debt solution* offered by the *firm*;

[Note: paragraphs 2.5d and 3.18h of *DMG*]

- (10) a statement setting out the likely adverse effect of entering into the *debt solution* in question on the *customer's* credit rating;

[Note: paragraph 3.18g of *DMG*]

- (11) a statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;

[Note: paragraph 3.18g of *DMG*]

- (12) where applicable, a statement setting out that a *debt solution* is only available in a particular country of the *UK*;

[Note: paragraph 3.18i of *DMG*]

- (13) where entry into a *debt solution* with the *firm* will lead to a period when payments to a *customer's* lenders or owners (in whole or in part) are not made or are retained by the *firm*, a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to *lenders* or *owners*;

[Note: paragraph 3.18n of *DMG*]

- (14) a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:

- (a) if the arrangement or deed fails, the risk of bankruptcy;
- (b) homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
- (c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
- (d) the *customer's lenders or owners* may not approve the individual voluntary arrangement or the protected trust deed; and
- (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding; and

[Note: paragraph 3.18o of *DMG*]

- (15) a statement that where another option for dealing with a *customer's* debts is available, that another option is available and may be suitable for the *customer*.

[Note: paragraph 3.18r of *DMG*]

- (16) an explanation that compensation might be available from the *compensation scheme* if there is a *shortfall* in *client money* held by the *firm* for that *customer*.

3.9.4 G In ■ **CONC 3.9.3R (8)** making reference to impartial sources of information should include making *customers* aware of publications concerning dealing with creditors published by the Insolvency Service (England and Wales), the Department of Enterprise, Trade and Investment (Northern Ireland) or debt advice published by the Scottish Government.

3.9.4A G *Firms* are reminded of:

- (1) the *guidance* in ■ **CONC 3.3.10G(6)** to (8) in relation to *debt solutions*; and
- (2) the *rule* in ■ **CONC 8.2.4R** which requires *firms* to notify the *customer* that free *debt counselling, debt adjusting and providing of credit information services* is available and that the *customer* can find out more by contacting *MoneyHelper*.

3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

- (1) falsely claim or imply that the help and debt advice is provided on a free, impartial or independent basis, where the *firm* has a profit-seeking motive;

[Note: paragraph 3.18b of *DMG*]

(2) falsely claim or imply in any way that the *firm* is, or represents, a charitable or *not-for-profit body* or government or local government organisation;

[Note: paragraph 3.18c of *DMG*]

(3) promote a claims management service (within the meaning of section 419A of the *Act*) as a way of managing a *customer's* debts;

[Note: paragraph 3.18k of *DMG*]

(4) claim or imply that the *firm* can guarantee a favourable outcome in negotiations with a *lender* or *owner* concerning the *customer's* debts;

[Note: paragraph 3.18m of *DMG*]

(5) unfairly request, suggest or direct a *customer* to call the *firm* using a premium rate telephone number.

[Note: paragraph 3.18w of *DMG*]

3.9.6 **G** An example of unfairly directing a *customer* to a premium rate telephone number may be to direct a *person* wishing to complain to such a number.

Contents of financial promotions and communications.....

3.9.6A **G** *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

On-line promotion of debt solutions.....

3.9.7 **R** A *firm* must not:

(1) unless it is a *not-for-profit debt advice body* or a *person* who will provide such services, operate a look alike website designed to attract *customers* seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or

[Note: paragraph 3.20a of *DMG*]

(2) seek to use internet search tools or search engines so as to mislead a *customer* into visiting its website when the *customer* is seeking free, charitable, not-for-profit or governmental or local governmental debt advice.

[Note: paragraph 3.20b of *DMG*]

3.10 Financial promotions not in writing

Application

3.10.1

R

This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending, credit broking, debt counselling, debt adjusting, operating an electronic system in relation to lending* in relation to prospective borrowers or borrowers under P2P agreements;
- (2) in relation to the communication of a *financial promotion* that is not in writing.

Promotions that are not in writing

3.10.2

R

A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *customer* outside the *firm's* premises, unless the *person communicating* it:

- (1) only does so at an appropriate time of the day; and
- (2) identifies that *person* and the *firm* represented at the outset and makes clear the purpose of the communication.

[Note: paragraphs 3.9d of *CBG* and 3.12b of *DMG*]

3.10.3

G

Firms should note that:

- (1) section 49 of the *CCA* makes it a criminal offence to canvass *borrower-lender agreements*, for example cash loans, off trade premises (within the meaning of section 48 of the *CCA*); and
- (2) section 154 of the *CCA* makes it a criminal offence to canvass off trade premises *credit broking* of a kind specified by article 36A(1)(a) to (c) of the *Regulated Activities Order, debt adjusting, debt counselling* or *providing credit information services* (within the meaning of section 153 of the *CCA*).
- (3) The *FCA* takes the view that sections 48 and 49 of the *CCA* mean that any discussions about new borrowing or refinancing with a *customer* that take place in the *borrower's* home must be initiated by the *borrower*, either in the form of a specific written request or, only where the *individual* is in the *borrower's* home other than for the purpose of engaging in such discussion, in the form of an oral invitation.

- (4) The FCA has considered the potential for the use of “umbrella requests to visit”. “Umbrella requests” or “permissions to call” tend to be signed by a *borrower* when entering into a *borrower-lender agreement* (or shortly after) and purport to allow the *lender* to visit the *borrower’s* home to discuss other borrowing at any time, over the duration of the agreement or beyond. The FCA takes the view that such “umbrella requests” do not meet the requirements of the CCA. “Umbrella requests” create open-ended opportunities for *firms* to raise the prospect of additional borrowing, without the *borrower* having specifically requested or even considered it.

- (5) A valid request is one made on the instigation of the *borrower* when the *borrower* wants to discuss a *borrower-lender agreement*. The FCA would expect to see the following for a *firm* to comply with sections 48 and 49 of the CCA:
 - (a) the request should be a positive act by the *borrower* taken specifically for the purpose of discussing other borrowing;
 - (b) the visit should be made in response to that request. Where a request is reasonably specific on timing, the visit should be within that timing. Where the request is not reasonably specific on timing, any visit should take place within a reasonable proximity to that request for it to be clear that the visit is being made in response to that request; and
 - (c) there should be a separate request made for each agreement or contractual variation.

- (6) In the FCA’s view this would not stop an agent or representative of a *firm* who has called on a *borrower* with the sole purpose of collecting on an existing loan from discussing new or additional borrowing if the *borrower* asks them to do so during the collection visit. However, if the agent or representative raised the topic of new or additional finance, we consider it would be very difficult for them to establish that they had not visited with that purpose.

- (7) We expect that *firms* should be able to rely on their existing procedures for receiving written requests from new *customers* in relation to existing *borrowers*.

Failure to comply.....

3.10.4

G

Failure to comply with section 49 of the CCA is a criminal offence. Only a court can determine the meaning of sections 48 and 49 of the CCA.



3.11 Not approving certain financial promotions

3.11.1 **R** This section applies to a *financial promotion* in relation to a *credit agreement*, *credit broking*, *debt counselling*, *debt adjusting* and *operating an electronic system in relation to lending* in relation to prospective *borrowers* or *borrowers* under *P2P agreements*.

Requirement not to approve certain financial promotions

3.11.2 **R** A *firm* must not *approve* a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

3.11.3 **G** ■ CONC 3.11.2 R does not prevent the communication by a *firm* itself (i.e. a *firm* with a permission) of a *financial promotion*. A *firm's* approval of a *financial promotion* concerns approval for the communication of the promotion by an *unauthorised person* which is prevented by ■ CONC 3.11.2 R.