

Chapter 4

Pre-contractual requirements



4.5 Commissions

Application

4.5.1

R

- (1) ■ CONC 4.5.2 G applies to a *firm* with respect to *consumer credit lending*.
- (2) ■ CONC 4.5.3 R to ■ CONC 4.5.4 R apply to a *firm* with respect to *credit broking* in relation to:
 - (a) *regulated credit agreements*; and
 - (b) *regulated consumer hire agreements*.
- (3) ■ CONC 4.5.3 R to ■ CONC 4.5.4 R also apply to a *firm* carrying on the activities specified in article 36A(1)(a) or (b) of the *Regulated Activities Order* in relation to:
 - (a) *credit agreements* that would be *regulated credit agreements* but for the *relevant provisions*; and
 - (b) *consumer hire agreements* that would be *regulated consumer hire agreements* but for articles 60O and 60Q of the *Regulated Activities Order*.
- (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 lenders to credit brokers

4.5.2

G

A *lender* should only offer to, or enter into with, a *firm* a commission agreement providing for differential commission rates or providing for payments based on the volume and profitability of business where such payments are justified based on the extra work of the *firm* involved in that business.

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

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, where

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 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*.

4.5.4	R	<p>At the request of the <i>customer</i>, a <i>credit broker</i> must disclose to the <i>customer</i>, in good time before a <i>regulated credit agreement</i> or a <i>regulated consumer hire agreement</i> is entered into, the amount (or if the precise amount is not known, the likely amount) of any commission or fee or other remuneration payable to the <i>credit broker</i> by the <i>lender</i> or <i>owner</i> or a third party.</p> <p>[Note: paragraph 3.7i (box) of CBG]</p>
4.5.5	G	<p>Purpose</p> <p>The purpose of ■ CONC 4.5.6R to ■ CONC 4.5.8G is to prohibit <i>credit brokers</i> and <i>lenders</i> to whom they introduce <i>customers</i> wishing to enter into <i>regulated credit agreements</i> to finance the acquisition of motor vehicles from making or relying on arrangements under which <i>credit brokers</i> are given authority to decide or negotiate the prices of those <i>regulated credit agreements</i> on behalf of <i>lenders</i> and the amount of commission the <i>credit brokers</i> earn is affected by those prices.</p>
4.5.6	R	<p>Prohibition</p> <p>A <i>lender</i> or <i>credit broker</i> must not:</p> <p>enter into or have rights or obligations under a <i>discretionary commission arrangement</i>; or</p> <p>seek to exercise, enforce or rely on rights or obligations under a <i>discretionary commission arrangement</i>, including any rights or obligations to receive or tender payment of commission, fee or other financial consideration.</p>
4.5.7	G	<p>Examples of discretionary commission arrangements</p> <p>The following are examples of <i>discretionary commission arrangements</i>:</p> <p>(1) An agreement under which the <i>lender</i> sets a minimum rate of interest and the commission payable by the <i>lender</i> to the <i>credit broker</i> in respect of a <i>regulated credit agreement</i> entered into by the <i>lender</i> is calculated by reference to the difference between the rate of interest negotiated by the <i>credit broker</i> and payable by the <i>customer</i> under the <i>regulated credit agreement</i> 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.</p> <p>(2) An agreement under which the <i>lender</i> sets a maximum rate of interest and the commission payable by the <i>lender</i> to the <i>credit broker</i> in respect of a <i>regulated credit agreement</i> entered into by the <i>lender</i> is calculated by reference to the difference between the rate of interest negotiated by the <i>credit broker</i> and payable by the <i>customer</i> under the <i>regulated credit agreement</i> 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.</p> <p>(3) An arrangement or agreement under which the commission payable by the <i>lender</i> to the <i>credit broker</i> in respect of a <i>regulated credit agreement</i> entered into by the <i>lender</i> varies (within set parameters)</p>

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

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- (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.