

Chapter 5A

Cost cap for high-cost short-term credit



5A.1 Application, purpose and guidance

Application

5A.1.1

R

This chapter applies to:

- (1) a *firm* with respect to an agreement for *high-cost short-term credit* entered into on or after 2 January 2015; or
- (2) a *firm* with respect to an agreement entered into on or after 2 January 2015 which varies or supplements an agreement for *high-cost short-term credit* which imposes one or more charges; or
- (3) a *firm* with respect to the exercise of a contractual power on or after 2 January 2015 to vary or supplement an agreement for *high-cost short-term credit* which imposes one or more charges.

5A.1.2

G

- (1) A variation or supplement of, or an exercise of a contractual power to vary or supplement, an agreement for *high-cost short-term credit* made before 2 January 2015 will be covered by this chapter if it has the result that a new charge, or an increase in an existing charge, is payable.
- (2) An example of where a charge results from a variation or supplement is where the duration of an agreement made before 2 January 2015 is extended and a further charge by way of interest or otherwise is calculated by reference to the period of the extension. A variation or supplement which alters the address of the borrower stated in the agreement or which is followed by the *firm* permanently waiving any right to interest or charges which would otherwise be imposed or result does not fall within ■ CONC 5A.1.1 R (2) or ■ CONC 5A.1.1 R (3).
- (3) If this chapter applies to an agreement for *high-cost short-term credit* as a result of ■ CONC 5A.1.1 R (2) or ■ CONC 5A.1.1 R (3), charges imposed under the agreement before 2 January 2015 are to be included in the calculation of the total cost cap, the initial cost cap and the default cap. If charges imposed before 2 January 2015 exceed the total cost cap, the initial cost cap or the default cap, a variation or supplement of that credit agreement on or after 2 January 2015 that results in any additional charge is not permitted.

5A.1.3

G

Firms are reminded that, as a result of ■ GEN 2.2.1 R, the provisions of this chapter have to be interpreted in the light of their purpose.

Statutory context and purpose

5A.1.4 **G** Section 137C of the *Act* (FCA general rules: cost of credit and duration of credit agreements) as amended by the Financial Services (Banking Reform) Act 2013, places a duty on the *FCA* to make general rules with a view to securing an appropriate degree of protection for borrowers against excessive charges.

5A.1.5 **G** In accordance with that duty, the purpose of this chapter is:

- (1) to specify the descriptions of *regulated credit agreement* appearing to the *FCA* to involve the provision of high-cost short-term credit to which this chapter applies by using the definition of high-cost short-term credit set out in the *Glossary*;
- (2) to secure an appropriate degree of protection for borrowers against excessive charges; and
- (3) as a result, to restrict the charges for such high-cost short-term credit.

Guidance on application and interpretation

5A.1.6 **G** Examples of the sorts of charge (which expression is defined in **■ CONC 5A.6**) applied in connection with the provision of *credit* covered by this chapter include, but are not limited to:

- (1) interest on the *credit* provided;
- (2) a charge related to late payment by, or default of, the borrower;
- (3) a charge related to the transmission of *credit* or for using a means of payment to or from the borrower;
- (4) a charge related to early repayment, or refinancing or changing the payment date or termination of the agreement;
- (5) a charge related to the application for, or drawing down of, *credit*;
- (6) a charge imposed by a *credit broker* in the same *group* or with whom the *lender* has arrangements to share the charge;
- (7) a charge for ancillary services related to the provision of *credit*; and
- (8) interest on any of the charges referred to in (1) to (7).

5A.1.7 **G** Certain other terms used in this chapter are defined in **■ CONC 5A.6**.



5A.2 Prohibition from entering into agreements for high-cost short-term credit

Application

5A.2.1 **R** This section applies to:

- (1) a *firm* with respect to *consumer credit lending*; or
- (2) a *firm* with respect to *credit broking*.

Cost caps: entering into agreements: Total cost cap

5A.2.2 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of *credit* provided under the agreement.

Cost caps: entering into agreements: Initial cost cap

5A.2.3 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of *credit* provided under the agreement calculated per *day* from the date on which the borrower draws down the *credit* until the date on which repayment of the *credit* is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, the date to which it is postponed.

5A.2.4 **R** A reference to a charge in **■ CONC 5A.2.3 R** (Initial cost cap) excludes a charge to which **■ CONC 5A.2.14 R** (Default cap) applies.

- 5A.2.5 **G**
- (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be provided for in an agreement in compliance with this cap can amount to 0.8% of the credit provided (determined in accordance with **■ CONC 5A.2.7 R**) multiplied by the number of days from the date on which the borrower draws down the *credit* until the date indicated in **■ CONC 5A.2.3 R**.
 - (2) Where *credit* is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different

amounts of *credit* outstanding and the different durations for which the *credit* is provided.

Determining the amount of credit provided

5A.2.6 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.2.2 R** (Total cost cap) is the lesser of:

- (1) the amount of credit that the lender actually advances under the agreement; or
- (2) the *credit limit*.

5A.2.7 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.2.3 R** (Initial cost cap) is the amount of *credit* outstanding on the *day* in question under the agreement, disregarding for the purposes of that *rule* the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of *credit* before the date provided for in the agreement.

5A.2.8 **G** For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of *credit* repayable under an agreement for *high-cost short-term credit* (including where that early repayment is financed by a replacement agreement), the amount of *credit* outstanding on the *days* that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.2.9 **G** For the purposes of this chapter, where a *lender* allows a borrower to make a number of drawdowns of *credit* (which may be expressed to be possible up to a specified amount of *credit*) but only with the *lender's* consent to each respective drawdown, each drawdown is a separate agreement for *high-cost short-term credit* and each agreement needs to be documented as a separate *regulated credit agreement* in accordance with the CCA and with the rest of *CONC*. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

5A.2.10 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the replacement agreement provides for the payment by the borrower of one or more charges that, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with **■ CONC 5A.2.6 R**) under the combined effect of the replacement agreement and the earlier agreement.

5A.2.11 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the

replacement agreement provides for the payment by the borrower of one or more charges in connection with a breach of the agreement by the borrower that, taken together with such charges provided for by the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.2.12 **R** If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for *high-cost short-term credit* before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of **CONC 5A.2.10 R**.

5A.2.13 **R** A *firm* must not count any amount provided to the borrower to repay any amount of *credit* outstanding under an earlier agreement for *high-cost short-term credit* or any amount provided to pay any charge outstanding under the earlier agreement:

- (1) in calculating the amount of *credit* provided for the purposes of **CONC 5A.2.10 R**; or
- (2) where the *firm* replaces an earlier agreement for *high-cost short-term credit*, in calculating the amount of *credit* provided for the purposes of **CONC 5A.2.3 R** (Initial cost cap).

Default cap

5A.2.14 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* if:

- (1) it provides for one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which alone or in combination (and whether in relation to one breach or cumulatively in relation to multiple breaches of the agreement) exceed or are capable of exceeding £15; or
- (2) it provides for the payment by the borrower of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per *day* from the date the charge is payable until the date the charge is paid; or
- (3) it provides for the payment by the borrower of one or more charges (except for a charge to which (1) or (2) applies), on any amount of *credit* provided which in breach of the agreement has not been repaid, that alone or in combination exceed or are capable of exceeding 0.8% of that amount calculated per *day* from the date of the breach until the date that the amount has been repaid.

5A.2.15 **G** *Firms* are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Connected agreements

5A.2.16 **R** Where a borrower or a prospective borrower pays a charge:

- (1) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which is in the same *group* as the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*; or
- (2) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which shares some or all of that charge with the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*;

the reference to a charge in **CONC 5A.2.2 R** (Total cost cap) and **CONC 5A.2.3 R** (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.2.17 **R** Where a *person* imposes, on a borrower or a prospective borrower under an agreement for *high-cost short-term credit*, a charge for an ancillary service to the agreement, the reference to a charge in **CONC 5A.2.2 R** (Total cost cap), **CONC 5A.2.3 R** (Initial cost cap) and **CONC 5A.2.14 R** (Default cap) includes this charge and, if the charge is not provided for under the agreement for *high-cost short-term credit*, the agreement providing for the charge is a connected agreement.

5A.2.18 **G** Examples of the types of ancillary service to an agreement for *high-cost short-term credit* referred to in **CONC 5A.2.17 R** include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

Prohibition on compound interest

5A.2.19 **R** A *firm* must not enter into an agreement for *high-cost short-term credit*, which provides for a charge, by way of interest, other than a charge by way of simple interest.



5A.3 Prohibition from imposing charges under agreements for high-cost short-term credit

Application

- 5A.3.1 **R** This section applies to:
- (1) a *firm* with respect to *consumer credit lending*;
 - (2) a *firm* with respect to *debt administration*;
 - (3) a *firm* with respect to *debt collecting*; or
 - (4) a *firm* with respect to *operating an electronic system in relation to lending*.

Cost caps: imposition of charges etc.: Total cost cap

- 5A.3.2 **R** A *firm* must not:
- (1) impose one or more charges, on a borrower under an agreement for *high-cost short-term credit*, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of *credit* provided under the agreement;
 - (2) arrange for or instruct another *person* to take the step described in (1).

Cost caps: imposition of charges etc.: Initial cost cap

- 5A.3.3 **R** A *firm* must not impose one or more charges, on a borrower under an agreement for *high-cost short-term credit*, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of *credit* provided under the agreement calculated per *day* from the date on which the borrower draws down the *credit* until the date on which repayment of the *credit* is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, the date to which it is postponed.

- 5A.3.4 **R** A reference to a charge in **■ CONC 5A.3.3 R** (Initial cost cap) excludes a charge to which **■ CONC 5A.3.18 R** (Default cap) applies.

- 5A.3.5** **G** (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be imposed in compliance with this cap can amount to 0.8% of the *credit* provided (determined in accordance with **■ CONC 5A.3.7 R**) multiplied by the number of days from the date on which the borrower draws down the *credit* until the date indicated in **■ CONC 5A.3.3 R**.
- (2) Where *credit* is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different amounts of *credit* outstanding and the different durations for which the *credit* is provided.

Determining the amount of credit provided

- 5A.3.6** **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.3.2 R** (Total cost cap) is the lesser of:
- (1) the amount of *credit* that the *lender* actually advances under the agreement; or
- (2) the *credit limit*.

- 5A.3.7** **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.3.3 R** (Initial cost cap) is the amount of *credit* outstanding on the *day* in question under the agreement, disregarding for the purposes of that *rule* the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of *credit* before the date provided for in the agreement.

- 5A.3.8** **G** For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of *credit* repayable under an agreement for *high-cost short-term credit* (including where that early repayment is financed by a replacement agreement), the amount of *credit* outstanding on the *days* that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

- 5A.3.9** **G** For the purposes of this chapter, where a *lender* allows a borrower to make a number of drawdowns of *credit* (which may be expressed to be possible up to a specified amount of *credit*) but only with the *lender's* consent to each respective drawdown, each drawdown is a separate agreement for *high-cost short-term credit* and each agreement needs to be documented as a separate *regulated credit agreement* in accordance with the CCA and with the rest of *CONC*. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

- 5A.3.10** **R** A *firm* must not impose one or more charges by way of an agreement that varies or supplements an earlier agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower taken

together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the combined effect of the varying or supplemental agreement and the earlier agreement.

5A.3.11 **R** A *firm* must not impose one or more charges by exercising a contractual power to vary or supplement an agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower taken together with such charges imposed under the agreement or in a connected agreement to that agreement, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the agreement as varied or supplemented.

5A.3.12 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower by way of an agreement that varies or supplements an earlier agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.13 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower by exercising a contractual power to vary or supplement an agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.14 **R** A *firm* must not impose one or more charges under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the charge or charges under the replacement agreement, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.3.15 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the charge or charges under the replacement agreement payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.16 **R** If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for *high-cost short-term credit* before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of ■ CONC 5A.3.14 R.

5A.3.17 **R** A *firm* must not count any amount provided to the borrower to repay any amount of *credit* outstanding under an earlier agreement for *high-cost short-term credit* or any amount provided to pay any charge outstanding under the earlier agreement:

- (1) in calculating the amount of *credit* provided for the purposes of ■ CONC 5A.3.10 R, ■ CONC 5A.3.11 R or ■ CONC 5A.3.14 R; or
- (2) where the *firm* replaces an earlier agreement for *high-cost short-term credit*, in calculating the amount of *credit* provided for the purposes of ■ CONC 5A.3.3 R (Initial cost cap).

Default cap

5A.3.18 **R** A *firm* must not impose, on a borrower under an agreement for *high-cost short-term credit*:

- (1) one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which charges alone or in combination (and whether in relation to one breach or in combination relate to multiple breaches of the agreement) exceed or are capable of exceeding £15;
- (2) a charge by way of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per *day* from the date the charge is payable until the date the charge is paid;
- (3) one or more charges (except for a charge to which (1) or (2) applies), on any amount of *credit* provided which in breach of the agreement has not been repaid, that alone or in combination, exceed or are capable of exceeding 0.8% of that amount calculated per *day* from the date of the breach until that amount has been repaid.

5A.3.19 **G** *Firms* are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Connected agreements and guidance on charges before assignment

5A.3.20 **R** Where a borrower or a prospective borrower pays a charge:

- (1) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which is in the same *group* as the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*; or
- (2) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which shares some or all of that charge with the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*;

the reference to a charge in ■ CONC 5A.3.2 R (Total cost cap) and ■ CONC 5A.3.3 R (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.3.21 **R** Where a *person* imposes on a borrower or a prospective borrower, under an agreement for *high-cost short-term credit*, a charge for an ancillary service to the agreement, the reference to a charge in ■ CONC 5A.3.2 R (Total cost cap), ■ CONC 5A.3.3 R (Initial cost cap) and ■ CONC 5A.3.18 R (Default cap) includes this charge and, if the charge is not provided for under the agreement for *high-cost short-term credit*, the agreement providing for the charge is a connected agreement.

5A.3.22 **G** Examples of the types of ancillary service to an agreement for *high-cost short-term credit* referred to in ■ CONC 5A.3.21 R include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

5A.3.23 **G** Where an agreement passes to another *firm* by assignment or by operation of law, any charges imposed in connection with the provision of *credit* under the agreement for *high-cost short-term credit* before the agreement passed to the *firm* are included within the charges referred to in ■ CONC 5A.3.

Prohibition on compound interest

5A.3.24 **R** A *firm* must not impose a charge under an agreement for *high-cost short-term credit*, which provides for a charge by way of interest, unless the *charge* is by way of simple interest.



5A.4 Cost cap for operating an electronic system in relation to lending

Application

5A.4.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a borrower or a prospective borrower under an agreement for *high-cost short-term credit*.

Cost cap rules for operating electronic systems in relation to lending: Total cost cap

5A.4.2 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of *credit* provided under the agreement.

Cost cap rules for operating electronic systems in relation to lending: Initial cost cap

5A.4.3 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of *credit* provided under the agreement calculated per *day* from the date on which the borrower draws down the *credit* until the date on which repayment of the *credit* is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, it is the date to which it is postponed.

5A.4.4 **R** A reference to a charge in **■ CONC 5A.4.3 R** excludes a charge to which **■ CONC 5A.4.14 R** (Default cap) applies.

5A.4.5 **G**

- (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be provided for in an agreement in compliance with this cap can amount to 0.8% of the credit provided (determined in accordance with **■ CONC 5A.4.7 R**) multiplied by the number of days from the date on which the borrower draws down the *credit* until the date indicated in **■ CONC 5A.4.3 R**.
- (2) Where *credit* is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different

amounts of *credit* outstanding and the different durations for which the *credit* is provided.

Determining the amount of credit provided

5A.4.6 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of ■ CONC 5A.4.2 R (Total cost cap) is the lesser of:

- (1) the amount of *credit* that the *lender* actually advances under the agreement; or
- (2) the *credit limit*.

5A.4.7 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of ■ CONC 5A.4.3 R (Initial cost cap) is the amount of *credit* outstanding on the *day* in question under the agreement, disregarding for the purposes of that rule the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of *credit* before the date provided for in the agreement.

5A.4.8 **G** For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of *credit* repayable under an agreement for *high-cost short-term credit* (including where that early repayment is financed by a replacement agreement), the amount of *credit* outstanding on the *days* that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.4.9 **G** For the purposes of this chapter, where a *lender* allows a borrower to make a number of drawdowns of *credit* (which may be expressed to be possible up to a specified amount of *credit*) but only with the *lender's* consent to each respective drawdown, each drawdown is a separate agreement for *high-cost short-term credit* and, where applicable, each agreement needs to be documented as a separate *regulated credit agreement* in accordance with the CCA and with the rest of CONC. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

5A.4.10 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the replacement agreement provides for the payment by the borrower of one or more charges that, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.4.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.4.11 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that replaces an earlier agreement

for *high-cost short-term credit* if the replacement agreement provides for the payment by the borrower of one or more charges in connection with a breach of the agreement by the borrower that, taken together with such charges provided for by the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.4.12 **R** If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for *high-cost short-term credit* before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of **■ CONC 5A.4.10 R**.

5A.4.13 **R** No amount is to be counted which is provided to the borrower to repay any amount of *credit* outstanding under an earlier agreement for *high-cost short-term credit* or any amount provided to pay any charge outstanding under the earlier agreement:

- (1) in calculating the amount of *credit* provided for the purposes of **■ CONC 5A.4.10 R**; or
- (2) where an earlier agreement for *high-cost short-term credit* is replaced, in calculating the amount of *credit* provided for the purposes of **■ CONC 5A.4.3 R** (Initial cost cap).

Default cap

5A.4.14 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* if:

- (1) it provides for one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which alone or in combination (and whether in relation to one breach or cumulatively in relation to multiple breaches of the agreement) exceed or are capable of exceeding £15; or
- (2) it provides for the payment by the borrower of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per *day* from the date the charge is payable until the date the charge is paid; or
- (3) it provides for the payment by the borrower of one or more charges (except for a charge to which (1) or (2) applies), on any amount of *credit* provided which in breach of the agreement has not been repaid, that alone or in combination exceed or are capable of exceeding 0.8% of that amount calculated per *day* from the date of the breach until the date that the amount has been repaid.

5A.4.15 **G** *Firms* are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Connected agreements

5A.4.16 **R**

Where a borrower or a prospective borrower pays a charge:

- (1) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which is in the same *group* as the *firm* which is to facilitate, facilitates or has facilitated the provision of *credit* under the agreement for *high-cost short-term credit*; or
- (2) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which shares some or all of that charge with the *firm* which is to facilitate, facilitates or has facilitated the provision of *credit* under the agreement for *high-cost short-term credit*;

the reference to a charge in **■ CONC 5A.4.2 R** (Total cost cap) and **■ CONC 5A.4.3 R** (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.4.17 **R**

Where a *person* imposes, on a borrower or a prospective borrower under an agreement for *high-cost short-term credit*, a charge for an ancillary service to the agreement, the reference to a charge in **■ CONC 5A.4.2 R** (Total cost cap), **■ CONC 5A.4.3 R** (Initial cost cap) and **■ CONC 5A.4.14 R** (Default cap) includes this charge and, if the charge is not provided for under the agreement for *high-cost short-term credit*, the agreement providing for the charge is a connected agreement.

5A.4.18 **G**

Examples of the types of ancillary service to an agreement for *high-cost short-term credit* referred to in **■ CONC 5A.4.17 R** include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

Prohibition on compound interest

5A.4.19 **R**

A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* which provides for a charge by way of interest, unless the charge is by way of simple interest.



5A.5 Consequences of contravention of the cost caps

Application

5A.5.1 **R** This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *debt administration*;
- (3) a *firm* with respect to *debt collecting*; or
- (4) a *firm* with respect to *operating an electronic system in relation to lending*.

Contravention of cost caps and unenforceability of agreements and obligations

5A.5.2 **R** Where:

- (1) a *firm* enters into an agreement for *high-cost short-term credit* in contravention of a rule in ■ CONC 5A.2; or
- (2) a *firm* facilitates an *individual* becoming a borrower under an agreement for *high-cost short-term credit* in contravention of a rule in ■ CONC 5A.4; or
- (3) a *firm* within ■ CONC 5A.5.1 R (1) imposes a charge in contravention of a rule in ■ CONC 5A.3; or
- (4) a *firm* within ■ CONC 5A.5.1 R (4) imposes a charge on behalf of a lender in contravention of a rule in ■ CONC 5A.3; or
- (5) a *firm* within ■ CONC 5A.5.1 R (2) or ■ CONC 5A.5.1 R (3) on behalf of a *firm* within ■ CONC 5A.5.1 R (1) or ■ CONC 5A.5.1 R (4) imposes a charge in contravention of a rule in ■ CONC 5A.3:
 - (a) the agreement is unenforceable against the borrower; and
 - (b) the borrower may choose not to perform the agreement and if that is the case:
 - (i) at the written or oral request of the borrower, the *lender* must, as soon as reasonably practicable following the request and in any case within 7 days of the request, repay to the borrower any charges paid by the borrower under the

- agreement or confirm by notice in writing to the borrower that there are no charges to pay;
- (ii) where the *lender* complies with (i), the borrower must repay any *credit* received by the borrower under the agreement to the *lender* within a reasonable period from the day on which the charges in (i) are received by the borrower or the day on which the notice of confirmation in (i) is received; and
 - (iii) in any case, the *lender* must not demand payment of the sum in (ii) in less than 30 days from the day in (ii).
- 5A.5.3 R** Where an agreement for *high-cost short-term credit* provides for or imposes one or more charges that alone or in combination exceed or are capable of exceeding an amount set out in ■ CONC 5A.2 or ■ CONC 5A.3:
- (1) the agreement is unenforceable against the borrower to the extent that such a charge or such charges exceed or are capable of exceeding that amount; and
 - (2) the borrower may choose not to perform the agreement to that extent and if that is the case at the written or oral request of the borrower, the *lender* must, as soon as reasonably practicable following the request and in any case within 7 days of the request, repay to the borrower any charges to the extent in (1) paid by the borrower under the agreement or confirm by notice in writing to the borrower that there are no charges to that extent to pay.
- 5A.5.4 G** Once the *lender* has repaid the charges to the borrower or has confirmed there are no charges to repay the borrower is then under a statutory obligation to repay any *credit* received under the agreement.
- 5A.5.5 G** What is a reasonable period for the borrower to repay the *credit* depends on the circumstances of the case, including the terms for repayment under the agreement. Where the agreement provided for repayment in instalments, the *firm* should consider issuing the borrower with a schedule for repayment under which the *firm* would collect the *credit* in instalments at the same periodic intervals as under the agreement.
- 5A.5.6 G** *Firms* are reminded that Principle 6 applies to how they deal with borrowers in relation to repayment of the *credit* required by ■ CONC 5A.5.2 R. The *FCA* would expect firms to take into account the financial situation of the borrower in considering what is a reasonable period for repayment.
- 5A.5.7 G** ■ CONC 5A.5.3 R is a residual provision that applies to a *firm* established in the *UK* which carries on *debt administration* or *debt collection*, but where the *rules* in ■ CONC 5A do not apply to a *lender* because the *lender* is established outside the *UK* and provides *electronic commerce activities* into the *UK*. Where a borrower gives notice to the *lender* referred to in ■ CONC 5A.5.3 R, only charges which exceed the amounts set out in ■ CONC 5A.2 or ■ CONC 5A.3 are void. The borrower remains under a contractual obligation to repay the *credit* received under the agreement and any charges under the agreement permitted by those provisions.

5A.6 Interpretation

5A.6.1

R

In this chapter:

- (1) "ancillary service" is a service in connection with the provision of *credit* under the agreement for *high-cost short-term credit* and includes, but not limited to, an insurance or payment protection policy;
- (2) "borrower" is an *individual* and includes:
 - (a) any person providing a guarantee or indemnity under the *regulated credit agreement*; and
 - (b) a person to whom the rights and duties of the borrower under the *regulated credit agreement* or of a person falling within (a) have passed by assignment or operation of law;
- (3) "charge" is a charge payable, by way of interest or otherwise, in connection with the provision of *credit* under the *regulated credit agreement*, whether or not the agreement itself makes provision for it and whether or not the *person* to whom it is payable is a party to the *regulated credit agreement* or an *authorised person*;
- (4) "connected agreement" is an agreement which provides for a charge within ■ CONC 5A.2.16 R, ■ CONC 5A.2.17 R, ■ CONC 5A.3.20 R, ■ CONC 5A.3.21 R, ■ CONC 5A.4.16 R and ■ CONC 5A.4.17 R;
- (5) "impose one or more charges on a borrower under an agreement for *high-cost short-term credit*" includes taking the following actions under the agreement:
 - (a) taking steps to perform duties, or exercise or enforce rights, on behalf of a *lender* in relation to a charge; or in relation to a *firm* with respect to *operating an electronic system in relation to lending*, exercise or enforce rights, on behalf of a *lender* in relation to one or more charges;
 - (b) taking steps to procure the payment of a debt due in relation to one or more charges;
 - (c) undertaking to receive payments in respect of interest due under an agreement for *high-cost short-term credit* and make payments in respect of interest due under the agreement to the *lender*;
 - (d) arranging for or instructing another *person* to take any of the steps described in (a), (b) or (c); or
 - (e) exercising the rights of the *lender* in a way that enables the imposition on the borrower of one or more charges.

5A

5A.6.2

G

The meaning of the expression "impose one or more charges on a borrower under an agreement for *high-cost short-term credit*" is set out in ■ CONC 5A.6.1 R (5). The meaning of "impose" in relation to a charge in this chapter is broad and includes, but is not limited to, situations including where a *firm*:

- (1) enters into an agreement containing a clause obliging the borrower to pay a charge;
- (2) varies or supplements an agreement and this has the result that there is:
 - (a) an increase in the amount of a charge; or
 - (b) where the amount of a charge is determined by reference to a period of time, an increase in the period of time to which a charge applies;
- (3) adds a charge to a borrower's account;
- (4) communicates with a borrower demanding payment of a charge or indicating that the borrower is, will be or may be obliged to pay the charge; and
- (5) is *operating an electronic system in relation to lending*, and it does any of activities in (1) to (4) for a *lender*.