

Chapter 15

P2P home finance activities

15.2 Guidance on the application of MCOB where agreements are facilitated by a P2P platform

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- (1) Where a *home finance transaction* is entered into with the facilitation of a *firm* which is a *P2P platform operator*, the *firm* is likely to carry on an activity of the kind specified by article 25A, 25B, 25C or 25E of the *Regulated Activities Order* (arranging) and if so *MCOB* provisions applying to that activity will apply to the *firm*. In addition, a *firm* which is a *P2P platform operator* may carry on an activity of the kind specified by article 53A, 53B, 53C or 53D of the *Regulated Activities Order* (advising) and, if so, *MCOB* provisions applying to that activity will apply to the *firm*.
- (2) Where a lender requires permission under article 61(1) of the *Regulated Activities Order* to enter into a *regulated mortgage contract* (that is, where it carries on that activity by way of business and is not excluded or exempt) it will require that permission notwithstanding the fact that it does so with the facilitation of a *P2P platform operator*, and will be responsible for complying with relevant *MCOB* rules. Similarly, where a *person* requires permission under article 63B or 63F of the *Regulated Activities Order* to enter into a *home reversion plan* or a *home purchase plan*, it will require that permission notwithstanding the fact that it does so with the facilitation of a *P2P platform operator*, and will be responsible for complying with relevant *MCOB* rules. It would be open to such a lender or provider to outsource the performance of those obligations to the platform, having regard to the *guidance* on outsourcing in ■ MCOB 1.2.1AG.
- (3) Under current legislation, any *person* who enters into a *regulated sale and rent back agreement* requires permission, unless they are a related *person* in relation to the agreement seller within the meaning of article 63J(4)(c) of the *Regulated Activities Order*, or excluded or exempt. However, it should be noted that the relevant legislative provision will cease to have effect on 1 January 2022.
- (4) To secure an appropriate degree of protection for *consumers*, where a *home finance transaction* is facilitated by a *P2P platform operator* and the lender or provider under that transaction does not fall within the definition of a *mortgage lender*, *home purchase provider*, *reversion provider* or *SRB agreement provider*, ■ MCOB 1.2.22R(1) applies to the *P2P platform operator* those provisions of *MCOB* that would apply to the lender or provider if it were a *mortgage lender*, *home purchase provider*, *reversion provider* or *SRB agreement provider*.

- (5) For the same reason, where a *regulated mortgage contract* or *home purchase plan* is administered by a *P2P platform operator* on behalf of a lender or provider who did not enter into the transaction by way of business, ■ MCOB 1.2.22R(2) applies to the *P2P platform operator* those provisions of *MCOB* that would apply to the administrator if the transaction had been entered into by way of business.
- (6) This chapter applies ■ MCOB 3A (financial promotions etc) to a *firm* which is a *P2P platform operator* in relation to a *home finance transaction*.
- (7) As set out in ■ MCOB 4.6.1G, a *consumer* may have a right to cancel a *distance contract* for services provided by a *P2P platform operator*.
- (8) ■ MCOB 5.6.113R to ■ 5.6.119G (payments made to a mortgage intermediary) are not relevant to a *mortgage intermediary* which is a *P2P platform operator* where the lender does not require permission for entering into a *regulated mortgage contract*. However, if there is a *mortgage intermediary* other than the *P2P platform operator* involved in the transaction, those provisions may apply to that intermediary, with the modifications set out in ■ MCOB 15.4.14R. The same applies in relation to similar provisions in ■ MCOB 9.4.119R to ■ 9.4.125G (payments to a lifetime mortgage intermediary), with the modifications set out in ■ MCOB 15.4.16R, and in ■ MCOB 9.4.168R to ■ MCOB 9.4.174G (payments to a reversion intermediary), with the modifications set out in ■ MCOB 15.4.17R.
- (9) The specified activities of administering a *home reversion plan* in article 63B of the *Regulated Activities Order* and administering a *regulated sale and rent back agreement* in article 63J of that Order apply whether or not the plan or agreement is entered into by way of business and so will be relevant to a *P2P platform operator* carrying on those activities in relation to those products.