

Chapter 3

Financial Promotion of
qualifying credit, home
reversion plans and regulated
sale and rent back agreements

3.6 Form and content of non-real time qualifying credit promotions

Name and contact point

3.6.1 **R** A *non-real time financial promotion* must contain the name of the *firm* or its *appointed representative* and either an address or a contact point from which an address is available.

- 3.6.2** **G**
- (1) For the purposes of **MCOB 3.6.1 R**, the name may be a trading name or shortened version of the legal name of the *firm* (although other legislation, for example, the Companies Act 2006, may require a *firm* to include information not required by this *rule*).
 - (2) The type of contact point envisaged for a *firm* by **MCOB 3.6.1 R** is an e-mail address or telephone or facsimile number, where a *customer* can contact the *firm* for its address.
 - (3) A *firm* is not required in a *financial promotion* which it *communicates* or *approves* to name the *FCA* as its regulator. However, to ensure the *financial promotion* is clear, fair and not misleading, if the *firm* chooses to name the *FCA* as its regulator and the *financial promotion* refers to matters not regulated by the *FCA*, it should also make clear that those matters are not regulated by the *FCA*. This might arise, for example, where the communication included both a *financial promotion of qualifying credit* and a promotion for *unsecured lending*.

Clear, fair and not misleading

- 3.6.3** **R**
- (1) A *firm* must be able to show that it has taken reasonable steps to ensure that a *non-real time financial promotion* is clear, fair and not misleading.
 - (2) A *non-real time financial promotion* which includes a comparison or contrast must:
 - (a) compare credit meeting the same needs or which is intended for the same purpose;
 - (b) objectively compare one or more material, relevant, verifiable and representative features of that credit, which may include price;
 - (c) not create confusion in the market place between the *firm* itself (or the *person* whose *financial promotion of qualifying credit* it *approves*) and a competitor or between the *firm's* trademarks,

trade names, other distinguishing marks, *qualifying credit* (or those of the *person* whose *financial promotion of qualifying credit* it *approves*) and those of a competitor;

- (d) not discredit or denigrate the trademarks, trade names, other distinguishing marks, *qualifying credit*, services, activities or circumstances of a competitor;
- (e) not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor;
- (f) not present *qualifying credit* as an imitation or replica of *qualifying credit* bearing a protected trademark or trade name; and
- (g) indicate in a clear and unequivocal way in any comparison referring to a special offer the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the *qualifying credit*, and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions will apply.

3.6.4

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- (1) A *firm* should take reasonable steps to ensure that, for a *non-real time financial promotion*:
 - (a) it does not omit any matters the omission of which causes the *financial promotion of qualifying credit* not to be clear, fair and not misleading;
 - (b) if it describes a feature of any *qualifying credit*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;
 - (c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);
 - (d) the accuracy of all statements of fact in it can be substantiated;
 - (e) its promotional purpose is not in any way disguised or misrepresented;
 - (f) any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed (but a *firm* is not required to explain, on the face of the *financial promotion of qualifying credit*, the basis on which a stated *APR* is calculated: see ■ MCOB 3.6.18 G);
 - (g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;
 - (h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;
 - (i) it does not contain any false indications, in particular as to:
 - (i) the *firm's* independence;
 - (ii) the *firm's* resources and scale of activities; or
 - (iii) the scarcity of any *qualifying credit*;

- (j) the design, content or format does not in any way disguise, obscure or diminish the significance of any statement, warning or other matter which the *financial promotion of qualifying credit* is required by this chapter to contain;
- (k) it does not include any reference to approval by the *FCA* or any government body, unless such approval has been obtained in writing from the *FCA* or that body (see also ■ GEN 1.2(Referring to approval by the *FCA*));
- (l) where it contains information required as a consequence of the following provisions, the items of information provided in relation to each provision appear in proximity to each other:
 - (i) ■ MCOB 3.6.11 R;
 - (ii) ■ MCOB 3.6.13 R(Required risk statements), unless ■ MCOB 3.6.15 R(transient advertising) applies;
 - (iii) ■ MCOB 3.6.17 R(Annual percentage rate (*APR*));
 - (iv) ■ MCOB 3.6.25 R;
 - (v) ■ MCOB 3.6.26 R(Multi-rate mortgages); and
 - (vi) ■ MCOB 3.6.27 R(Fees for advice or arranging).

- (2) (a) Contravention of ■ MCOB 3.6.4 E(1) may be relied on as tending to show contravention of ■ MCOB 3.6.3 R(1).
- (b) Compliance with ■ MCOB 3.6.4 E(1) may be relied on as tending to show compliance with ■ MCOB 3.6.3 R(1).

3.6.5

G In relation to ■ MCOB 3.6.3 R:

- (1) *firms* should avoid the use of small print to qualify prominent claims;
- (2) if a *non-real time financial promotion* includes information on the performance of the *firm*, on conditions in the market, interest rates, *APRs* or other *price information* this information should be relevant and recent. *Firms* should therefore avoid including this information in *financial promotions* which have a long shelf-life without a clear and prominent warning that the information can become outdated; and
- (3) *firms* must ensure that an adequate description of mortgage products is given. For example, *firms* should take care to ensure that where a rate is variable at any time during the term of the mortgage, the content of the *financial promotion* does not imply the rate may be fixed.

3.6.6

G The effect of ■ MCOB 3.6.4 E(1)(b) will depend upon the content of the promotion. A non-exhaustive list of examples satisfying ■ MCOB 3.6.4 E(1)(b) follows:

- (1) a promotion which, when describing any *cashback* offered to the *customer*, also clearly refers to any relevant conditions, such as a requirement to pay back some or all of the *cashback* on early repayment of the mortgage;

- (2) a promotion which, when describing any fixed or discount rate, also clearly states the duration of any *early repayment charges*;
- (3) a promotion which, when describing any reduction in regular payments following from the re-arrangement of existing loans, also clearly indicates any increase in the total cost and any extension to the repayment period for the *customer*;
- (4) a promotion which, when describing any possible monetary saving, also clearly states how this could be achieved;
- (5) a promotion which, when including references to non-standard services or facilities, also clearly states that an additional fee may be payable for these; and
- (6) a promotion which, when it includes an indication of an initial payment holiday (for example, 'pay nothing for 3 months'), also makes clear whether or not interest will be charged during this period.

3.6.7 **G** The requirement in **MCOB 3.6.4 E(1)(l)** that certain information must be given in proximity means, for example, in relation to printed *financial promotions of qualifying credit*, that this information is all visible at the same time.

3.6.8 **R** In ensuring a *financial promotion* is clear fair and not misleading, a *firm* must ensure that the *financial promotion* does not contain any of the following words or expressions, unless the relevant condition applies:

- (1) the word 'overdraft' or any similar expression as describing any agreement for running-account credit except an agreement enabling the *customer* to overdraw on a current account;
- (2) the expression 'interest free' or any similar expression (such as '0% Finance' or 'Interest Free Option') indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by credit than the *customer* would be liable to pay as a cash purchaser in relation to the same transaction, except where:
 - (a) the *total amount payable* by the *customer* does not exceed the cash price; or
 - (b) **MCOB 3.6.26 R**(Multi-rate mortgages) applies, in which case the expression may be used in respect of any rate of charge of 0% provided that during the period in which the rate applies there is no interest charged and no increase in the amount of the mortgage loan.
- (3) the expression 'no deposit' or any similar expression, except where no advance payments are required to be made on the loan;
- (4) the expression 'mortgage guaranteed', 'pre-cleared' or any similar expression, unless the *financial promotion* invites entry into a contract that is free of any conditions regarding the credit status of the *customer*; and

- (5) the expression 'gift', 'present' or any similar expressions, unless there are no conditions which would require the *customer* to return the money or items that are the subject of the claim.

3.6.9

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A *non-real time financial promotion* must:

- (1) describe any *early repayment charge* as an 'early repayment charge' and not use any other expression to describe such charges;
- (2) describe any *higher lending charge* as a 'higher lending charge' and not use any other expression to describe such charges;
- (3) not contain the 'key facts' logo unless it is required by a *rule*; and
- (4) describe any *lifetime mortgage* as a 'lifetime mortgage' and not use any other expression to describe such a mortgage.

3.6.10

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- (1) It cannot be assumed that *customers* necessarily have an understanding of the *qualifying credit* being promoted. If a *non-real time financial promotion* is specially designed for a targeted collection of *customers* who are reasonably believed to have particular knowledge of the *qualifying credit* being promoted, this fact should be made clear.
- (2) In relation to quotations of opinion:
 - (a) where only part of an opinion is quoted, it should nevertheless be a fair representation; and
 - (b) any connection between the holder of the opinion and the *firm* should be made clear.

3.6.11

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A *non-real time financial promotion* that features *qualifying credit* which is conditional upon the *customer* obtaining one or more further products from a specific *firm* (or its agents or *associates*) must prominently state the compulsory nature of these purchases.

3.6.12

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■ MCOB 3.6.11 R is concerned with ensuring that *customers* are adequately informed, at an early stage, as to the existence of any *tied products* or services. However, it does not introduce equivalent disclosure requirements for services or products that must be obtained as a condition for the making of the loan, but where the *customer* has a free choice as to the supplier.

Required risk statements

3.6.13

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A *non-real time financial promotion* must, unless the transient advertising *rule* applies, prominently contain one or more of the following statements in the circumstances described:

- (1) where it relates to a *lifetime mortgage*: 'This is a lifetime mortgage. To understand the features and risks, ask for a personalised illustration.' If the promotion also relates to a *home reversion plan* the statement may be adapted to the extent necessary to comply

with the equivalent requirement for a *home reversion plan* (see ■ MCOB 3.8A.3R (2)(a));

- (2) where it refers to paying off unsecured debts (for example, credit cards, personal loans or overdrafts) by taking out *qualifying credit*: 'Think carefully before securing other debts against your home. Your home may be repossessed if you do not keep up repayments on your mortgage.'
- (3) in all cases except (1) and (2): 'Your home may be repossessed if you do not keep up repayments on your mortgage.'; or if it refers in whole or in part to *qualifying credit* secured on property which is not the *customer's* home the statement may be amended but only to the extent necessary in order to reflect that fact.
- (4) where the mortgage will be denominated in a currency other than sterling: 'Changes in the exchange rate may increase the sterling equivalent of your debt.'
- (5) where more than one of the statements in (1) to (4) applies, each relevant statement should be included. In such cases, the statement set out in (1), (2) or (3) should precede that in (4).
- (6) where a *non-real time financial promotion* relates to both *qualifying credit* and credit which is not *qualifying credit* the statements required by (2) or (3) may be modified by replacing your mortgage with a mortgage or any other debt secured on it.

3.6.14

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- (1) Prominence of relevant information can play a key role in ensuring that a *communication* is clear, fair and not misleading. As a consequence, a number of requirements in *MCOB* relate to prominence. Where this is the case, the *FCA* will assess prominence in the context of the promotion as a whole. Use can be made of the positioning of text, background and text colour and typesize to ensure that prescribed information meets the requirements of *MCOB*. The surrounding of required statements with other information should be avoided where this might detract from the prominence which it is obligatory to afford to the statements.
- (2) *Firms* may if they wish include a foreign language version of any required warning, in addition to the English language version required by these *rules*. If foreign language versions of warnings are included, *firms* are reminded of prominence requirements in ■ MCOB 3.6.13 R and ■ MCOB 3.6.14 G (1). Information should not be included which detracts from the required prominence of warning statements.

Transient advertising

3.6.15

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■ MCOB 3.6.13 R (Required risk statements) does not apply if the *non-real time financial promotion* is communicated:

- (1) by way of sound broadcasting or television where the primary purpose of the programming in which the promotion is contained is not to promote lending; or

- 3.6.16 **G**
- (2) by an exhibition of pictures or photographic or cinematographic films.
 - (1) **■** MCOB 3.6.15 R (1) is intended to distinguish between promotions in breaks between 'normal' commercial broadcast programming (where the text prescribed in **■** MCOB 3.6.13 R(Required risk statements) is not required) and promotions in breaks which are in or around programming intended to promote lending where **■** MCOB 3.6.13 R (Required risk statements) applies.
 - (2) In relation to promotions on dedicated interactive television services, if the promotion is not contained within programming but instead forms a separate feature, the exemption offered by **■** MCOB 3.6.15 R (1) would not be available.

Annual percentage rate (APR)

- 3.6.17 **R**
- (1) A *firm* must ensure that if a *non-real time financial promotion* contains either *price information* for specific *qualifying credit*, or makes reference (either explicitly or implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted, the promotion also:
 - (a) states the *APR*;
 - (b) gives the *APR*, and the accompanying statement in (3), with no less prominence than any *price information* or reference (either explicitly or implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted; and
 - (c) positions the *APR* after any other rate of charge relating to the *qualifying credit*, clearly distinguishing it from any such rate but without interjecting other information in between the *APR* and any other rate of charge.
 - (2) A *firm* must calculate the *APR* in accordance with **■** MCOB 10(Annual percentage rate).
 - (3) The *APR* must be expressed as follows, with X being the *APR* calculated for the particular *qualifying credit*: 'The overall cost for comparison is X% APR'

3.6.18 **G** **■** MCOB 3.6.17 R does not require a *firm* to explain the basis on which the *APR* is calculated, or to provide a figure for the *total charge for credit*, in the *non-real time financial promotion*.

- 3.6.19 **G** For the purposes of **■** MCOB 3.6.17 R(1), references to the availability of credit for *customers* who might otherwise consider their access restricted include references to:
- (1) credit history; or
 - (2) credit rating; or
 - (3) county court judgments; or

- (4) employment; or
- (5) housing circumstances (for example, council tenants).
- 3.6.20** **G** (1) In relation to **MCOB 3.6.17 R(1)(c)**, the intention is that the *APR* should follow on, but be readily identifiable as different, from the indicated rate or rates of charge.
- (2) For multi-rate products this should mean that the *APR* is presented, in sequence, after the different rates of charge that apply.
- (3) The *APR* may be distinguished from other rates of charge by techniques such as using a contrasting (and legible) colour for text. However, the requirement of **MCOB 3.6.17 R(1)(c)** will not be satisfied by text devices such as the use of brackets which tend to diminish the impact of the *APR*.
- 3.6.21** **G** If a *financial promotion* contains *price information* for more than one *qualifying credit product*, **MCOB 3.6.17 R** requires an *APR* to be provided for each product. Where more than one *APR* is required to be given, each *APR* will need to be no less prominent than:
- (1) any *price information* relating to the particular product;
- (2) any reference (either explicitly or implicitly) to the availability of credit for *customers* who might otherwise consider their access to credit restricted; and
- (3) any other *APR* in the *financial promotion*.
- 3.6.22** **R** If the *non-real time financial promotion* concerns a contract under which the *APR* varies (for example, depending upon the circumstances of the *customer*), the *APR* required by **MCOB 3.6.17 R**(Annual percentage rate (*APR*)) is that which is representative of the business expected to arise from the promotion.
- 3.6.23** **R** For the purposes of **MCOB 3.6.22 R**, an *APR* is not representative of business unless it is an *APR* at or below which at least 66% of *customers* responding to the promotion and who enter into a *qualifying credit* agreement which is the subject of the promotion would be charged.
- 3.6.24** **G** (1) The *FCA* would not regard an *APR* described as 'from X%' as satisfying **MCOB 3.6.22 R**.
- (2) In **MCOB 3.6.22 R**, when determining the representative *APR*, account should be taken of the business that has arisen from a similar *financial promotion of qualifying credit* in the previous 12 months. Where the *financial promotion* is for a new product or business, reference should instead be had to the relevant business plans.
- 3.6.25** **R** If the *non-real time financial promotion of qualifying credit* concerns a contract where the *APR* varies depending upon the circumstances of the

customer, the following further statement must be included with due prominence: 'The actual rate available will depend upon your circumstances. Ask for a personalised illustration.'

Multi-rate mortgages

3.6.26 **R** If the *non-real time financial promotion of qualifying credit* is for a product where more than one rate of charge will or may apply during the course of the contract, and the *non-real time financial promotion of qualifying credit* contains information about any of these rates then:

- (1) the *non-real time financial promotion of qualifying credit* must contain a clear and no less prominent description of all of the rates of charge that will apply;
- (2) where any rate to be charged in the future is variable (such as the *mortgage lender's* standard variable rate), the rate indicated must be the level of that rate current at the time of the promotion; and
- (3) the rates must be stated in sequence from the rate initially applying through to the rate assumed to apply at the end of the mortgage, and after each rate must be given a statement:
 - (a) of its period of application; and
 - (b) that the rate then changes.

Fees for advice or arranging

3.6.27 **R** If a *non-real time financial promotion of qualifying credit* relates to the *controlled activities* of advising on or *arranging qualifying credit* and a fee may be charged for these activities, a *firm* must ensure that a prominent indication is given of:

- (1) the amount of the fee (if known); or
- (2) a representative fee based upon the business expected to arise from the promotion.

3.6.28 **G** ■ MCOB 3.6.27 R seeks to ensure that *customers* are given early notice of the existence of any fees charged by intermediaries in connection with the provision of *qualifying credit*. Where the fee is known at the outset, this must be indicated. The indication could be either as a cash value or as a percentage. If the charging of a fee, and the level of this, are dependent upon the circumstances of the *customer*, the indication must be based upon the business that is expected to result from the promotion.

3.6.29 **G** ■ MCOB 3.6.14 G(1) provides further guidance in relation to prominence.

3.6.30 **G** ■ MCOB 3.6.27 R(2) does not require the promotion to set out the characteristics of the representative business (loan amount etc) on which the indicated fee is based. For example, where the fee charged by a *firm* relates

to circumstances of the *customer* such as their previous credit history, it would be sufficient to state that 'There will be a fee for mortgage advice. The precise amount will depend upon your circumstances but we estimate that it will be X'.