

Chapter 3A

Financial promotions and communications with customers

3A.1 Application and purpose

Who?

3A.1.1

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This chapter applies to a *firm*:

- (1) *communicating* information to a *customer* in relation to a *home finance transaction*; or
- (2) *communicating or approving a financial promotion of qualifying credit, a home reversion plan, a home purchase plan or a regulated sale and rent back agreement.*

3A.1.2

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As a result of this chapter and **CONC 3**:

- (1) a *financial promotion* is not subject to **CONC 3** to the extent that it relates to *qualifying credit*; and
- (2) where a *firm* makes a communication which consists of a *financial promotion of qualifying credit* and a *financial promotion of a different form of lending that is not qualifying credit* (for example, an unsecured personal loan), the content of the latter will need to comply with **CONC 3**.

Authorised professional firms

3A.1.3

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- (1) Except for **MCOB 3A.5**, **MCOB 3A** does not apply to an *authorised professional firm* in relation to the *communication of a financial promotion* if the following conditions are satisfied:
 - (a) the *firm's* main business must be the practice of its profession;
 - (b) the *financial promotion* must be made for the purposes of, and incidental to, the promotion or provision by the *firm* of:
 - (i) its professional services; or
 - (ii) its *non-mainstream regulated activities* (see **PROF 5.2** (Nature of non-mainstream activities)); and
 - (c) the *financial promotion* must not be *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if they were acting in the course of business.
- (2) in (1)(a), a *firm's* professional business practice is not the "main business" of the *firm* unless the proportion of income it derives from professional fees is, during its annual accounting period, at least 50%

of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this purpose).

- (3) in (1)(b)(i), "professional services" means services:
 - (a) which do not constitute a *regulated activity*; and
 - (b) the provision of which is supervised and regulated by a *designated professional body*.

Application for a financial promotion of qualifying credit

3A.1.4

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This chapter applies to the *communication or approval of a financial promotion of qualifying credit* as follows:

Application and purpose	MCOB 3A.1
The fair, clear and not misleading rules	MCOB 3A.2, except MCOB 3A.2.5 R
Other general requirements for financial promotions	MCOB 3A.3
Qualifying credit financial promotions	MCOB 3A.4
MCD financial promotions (note 1)	MCOB 3A.5
Systems and controls	MCOB 3A.9
Note 1: This item does not apply to non-MCD <i>financial promotions of qualifying credit</i> .	

Application for a financial promotion of a home reversion plan

3A.1.5

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This chapter applies to the *communication or approval of a financial promotion of a home reversion plan* as follows:

Application and purpose	MCOB 3A.1
The fair, clear and not misleading rules	MCOB 3A.2, except MCOB 3A.2.5 R
Other general requirements for financial promotions	MCOB 3A.3
Home reversion plan financial promotions	MCOB 3A.7
Systems and controls	MCOB 3A.9

Application for a financial promotion of a regulated sale and rent back agreement

3A.1.6

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This chapter applies to the *communication or approval of a financial promotion of a regulated sale and rent back agreement* as follows:

Application and purpose	MCOB 3A.1
The fair, clear and not misleading rules	MCOB 3A.2, except MCOB 3A.2.5 R
Other general requirements for financial promotions	MCOB 3A.3
Sale and rent back financial promotions	MCOB 3A.8

3A

Systems and controls MCOB 3A.9

Application for a financial promotion of a home purchase plan

3A.1.7 R This chapter applies to the *communication or approval of a financial promotion of a home purchase plan* as follows:

Application and purpose	MCOB 3A.1
Fair, clear and not misleading rule for approval of home purchase plan financial promotions	MCOB 3A.2.5 R
Home purchase plan financial promotions	MCOB 3A.6

Exemptions

3A.1.8 R Except for ■ MCOB 3A.2.4R (2) and ■ MCOB 3A.5, this chapter does not apply to a *firm* in relation to a *financial promotion of qualifying credit* that is of a kind listed in ■ MCOB 3A.1.9 R, except if the *firm* approves the *financial promotion*, then the following apply:

- (1) ■ MCOB 3A.1 (Application and purpose);
- (2) ■ MCOB 3A.2.4 R (Fair, clear and not misleading financial promotions);
- (3) ■ MCOB 3A.4.4 G to ■ MCOB 3A.4.7 G (Approval of qualifying credit promotions; No approval of real time qualifying credit promotions; Approval of qualifying credit promotions when not all the rules apply); and
- (4) if the *firm* approves a non-real time *financial promotion of qualifying credit* by an *overseas person* ■ MCOB 3A.4.8 R (Non-real time qualifying credit promotions for overseas persons) applies.

3A.1.9 R This table belongs to ■ MCOB 3A.1.8 R.

Exemptions	
This chapter does not apply to the following:	
(1)	a <i>financial promotion</i> which contains only one or more of the following
(a)	the name of the <i>firm</i> (or its <i>appointed representative</i>);
(b)	a logo;
(c)	a contact point (address (including an email address), telephone or facsimile number);
(d)	a brief, factual statement of the <i>firm's</i> (or its <i>appointed representative's</i>) main occupation;
(2)	a <i>financial promotion</i> which can lawfully be <i>communicated</i> by an <i>unauthorised person</i> without <i>approval</i> ;
(3)	a <i>financial promotion</i> communicated from outside the <i>United Kingdom</i> which would be exempt under articles 30, 31, 32 or 33 of the <i>Financial Promotion Order</i> (Overseas communicators) if the office from which the <i>financial promotion</i> is <i>communicated</i> were a separate <i>unauthorised person</i> (but see GEN 4.4.1 R (Business for private customers from non-UK offices)).

Combination of exemptions

3A.1.10 **R** A firm may rely on more than one exemption in relation to the same financial promotion.

3A.1.11 **G** Firms are reminded that financial promotions (including those which are exempt) may be subject to more general rules, including Principle 7 (Communications with clients), ■ SYSC 3 to ■ SYSC 10 (Systems and controls), and ■ MCOB 3A.2.4 R (Fair, clear and not misleading communications).

3A.1.11A **G**

- (1) Firms are also reminded that 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.

Territorial scope

3A.1.12 **G** The territorial scope for rules relating to communicating information to a customer is set out in ■ MCOB 1.3.1 R.

3A.1.13 **R** This chapter applies to a firm in relation to:

- (1) the communication of a financial promotion to a person in the United Kingdom;
- (2) the communication of a cold call of qualifying credit, a home reversion plan or a regulated sale and rent back agreement, unless it is made from a place, and for the purposes of a business which is only carried on, outside the United Kingdom;
- (3) the approval of a non-real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement for communication to a person in the United Kingdom.
- (4) [deleted]
- (5) [deleted]

3A.1.14 **G** The application under ■ MCOB 3A.1.13 R is relevant both when a firm communicates a financial promotion itself and when a firm approves a non-real time financial promotion for communication by others. However, see also ■ MCOB 3A.1.15 R (Exceptions to territorial scope: rules without territorial limitation for approval of financial promotions).

Exceptions to territorial scope: rules without territorial limitation for approval of financial promotions

3A.1.15 **R** Subject to ■ MCOB 3A.1.16 R, the following parts of this chapter apply without any territorial limitation if a firm approves a financial promotion of

qualifying credit, a home reversion plan or a regulated sale and rent back agreement:

- (1) ■ MCOB 3A.1 (Application and purpose);
- (2) *rules requiring a financial promotion to be fair, clear and not misleading (see ■ MCOB 3A.2.4 R); and*
- (3) *provisions regarding the approval of financial promotions (except those relating to approval of financial promotions of qualifying credit provided by an overseas person) (see ■ MCOB 3A.4.4 G to ■ MCOB 3A.4.7 G, ■ MCOB 3A.7.1 R and ■ MCOB 3A.8.5 R).*

Exceptions to territorial scope: financial promotions of qualifying credit relating to distance contracts

3A.1.16

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[deleted]

Principles 6 and 7

3A.1.17

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This chapter amplifies, for activities within its scope, *Principle 6* (Customers' interests) and *Principle 7* (Communications with clients).



3A.2 The fair, clear and not misleading rules

Fair, clear and not misleading communications

- 3A.2.1 **R** (1) When a *firm* communicates information to a *customer*, it must take reasonable steps to do so in a way that is fair, clear and not misleading.
- (2) A *firm* must be able to show that it has taken reasonable steps to ensure that any *illustration* or *ESIS* is fair, clear and not misleading.

3A.2.2 **G** The purpose of **MCOB 3A.2.1R** is to restate, in a slightly amended form and as a separate *rule*, the part of *Principle 7* (Communications with clients) that relates to communication of information.

3A.2.2A **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.

Communications to customers with different addresses

- 3A.2.3 **G** Where:
 - (1) there are two or more *customers* or prospective *customers* in relation to the same *home finance transaction*;
 - (2) a rule in *MCOB* requires the provision of information to such *customers*; and
 - (3) the *customers* have different addresses

a *firm* should send the information to each address. If the *customers* share the same address, it will be sufficient to send a single copy of the information addressed to each of the *customers*.

Fair, clear and not misleading financial promotions

- 3A.2.4 **R** (1) A *firm* communicating or approving a *non-real time financial promotion* of *qualifying credit* other than in (2), for a *home reversion plan* or a *regulated sale and rent back agreement* must be able to show that it has taken reasonable steps to ensure that the *non-real time financial promotion* is fair, clear and not misleading.

- (2) A firm communicating a financial promotion, or approving a non-real time financial promotion in relation to an MCD regulated mortgage contract must ensure that it:
 - (a) is fair, clear and not misleading; and
 - (b) in particular, does not contain wording that may create false expectations for a consumer regarding the availability or the cost of a credit.

[Note: article 10 of the MCD]

Fair, clear and not misleading rule: approval of home purchase plan financial promotions

3A.2.5

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A firm which approves a financial promotion of a home purchase plan must take reasonable steps to ensure that the financial promotion is fair, clear and not misleading.

Restrictions on use of terms

3A.2.6

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Any communication, including a non-real time financial promotion, must describe:

- (1) any early repayment charge as an "early repayment charge" and not use any other expression to describe such charges;
- (2) any higher lending charge as a "higher lending charge" and not use any other expression to describe such charges;
- (3) any lifetime mortgage as a "lifetime mortgage" and not use any other expression to describe such a mortgage;
- (4) any home reversion plan as a "home reversion plan" and not use any other expression to describe it; and
- (5) any regulated sale and rent back agreement as a "sale and rent back agreement" and not use any other expression such as "equity release" to describe it.



3A.3 Other general requirements for financial promotions

Financial promotions to be balanced and with appropriate warnings

3A.3.1

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A firm which communicating or approving a financial promotion within ■ MCOB 3A.2.4 R must, in addition, ensure that the financial promotion:

- (1) is accurate;
- (2) is balanced and, in particular, does not emphasise any potential benefits of the *MCD regulated mortgage contract*, other *qualifying credit*, *home reversion plan* or *regulated sale and rent back agreement* without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
- (4) makes it clear, where applicable, that the credit is secured on the *customer's home*;
- (5) does not disguise, omit, diminish or obscure important items, statements or warnings; and
- (6) where it contains a comparison or contrast, presents the comparison or contrast in a fair and balanced way and ensures that is meaningful.

Name and contact point

3A.3.2

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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.

Solicited financial promotions

3A.3.3

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A *financial promotion* is not a solicited financial promotion unless a *firm* ensures that:

- (1) it is clear from all the circumstances when the call, visit or dialogue is initiated or requested that, during the course of the visit, call or dialogue, a *financial promotion* would be made; and

- (2) a *person* is not to be treated as expressly requesting a call, visit or dialogue:
 - (a) because they omit to indicate that they do not wish to receive any or any further visits or calls or to engage in any or any further dialogue;
 - (b) because they agree to standard terms that state that such visits, calls or dialogues will take place, unless they have signified clearly that, in addition to agreeing to the terms, they are willing for them to take place.

3A.3.4 **R** If a *financial promotion* is solicited by a *person* ("R"), it is treated as also having been solicited by any other *person* to whom it is made at the same time as R if that other *person* is a close relative of R or is expected to enter into a *home reversion plan*, a *regulated sale and rent back agreement* or any contract for *qualifying credit* jointly with R.

Prohibition on cold calls
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3A.3.5 **R** A *firm* must not make a *cold call* of *qualifying credit*, a *home reversion plan* or a *regulated sale and rent back agreement* unless the *customer* has an established existing *customer* relationship with the *firm* and the relationship is such that the *customer* envisages receiving such *financial promotions*.

3A.4 Qualifying credit financial promotions

Real time qualifying credit promotions

3A.4.1

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A *firm* must ensure that an individual who makes a real time financial promotion of *qualifying credit* on the *firm's* behalf:

- (1) makes the purpose(s) of the *financial promotion* clear at the initial point of communication, and identifies themselves and the *firm* which they represent;
- (2) if the time and method of *communication* were not previously agreed by the recipient:
 - (a) checks that the recipient wishes them to proceed;
 - (b) terminates the *communication* if the recipient does not wish them to proceed (but may ask for another appointment);
 - (c) recognises and respects, promptly, the right of the recipient to:
 - (i) end the *communication* at any time;
 - (ii) refuse any request for another appointment;
- (3) gives any *person* with whom they arrange an appointment a contact point;
- (4) does not *communicate* with a *person*:
 - (a) at an unsocial hour, unless the *person* has previously agreed to such a *communication*;
 - (b) on an unlisted telephone number, unless the *person* has previously agreed to such calls on that number.

3A.4.2

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In **MCOB 3A.4.1R** (4)(a) an unsocial hour usually means on a Sunday or before 9am or after 9pm on any other *day*. It could also mean other *days* of the week or other times if the *firm* knows that a particular *customer* would not wish to be called on that *day* or at that time for reasons of, for example, religious faith or night shift working.

3A.4.3

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The requirements of **MCOB 3A.4.1 R** and **MCOB 3A.4.2 G** do not prevent, for example, a telephone call centre which has received a call from a *customer* at an hour generally regarded as unsocial, either responding to that call or asking during the call if the *customer* would like details of other *qualifying credit*.

Approval of qualifying credit promotions

3A.4.4 **G** Most of the *rules* in this chapter apply when a *firm* approves a *financial promotion of qualifying credit* in the same way as when a *firm* communicates a *financial promotion of qualifying credit* itself. Therefore, a *firm* has a similar responsibility for a *financial promotion of qualifying credit* that it approves, as for one that it communicates.

No approval of real time qualifying credit promotions

3A.4.5 **R** A *firm* must not approve a *financial promotion of qualifying credit* made in the course of a personal visit, telephone conversation or other interactive dialogue.

Approval of qualifying credit promotions when not all the rules apply

3A.4.6 **R** If a *firm* approves a *financial promotion of qualifying credit* in circumstances in which one or more of the *rules* in this chapter are expressly disapplied, the approval must be given on terms that it is limited to those circumstances.

3A.4.7 **G** If an approval is limited under **■ MCOB 3A.4.6 R**, and an *unauthorised person* communicates the *financial promotion* to persons not covered by the approval, the *unauthorised person* may commit an offence under section 21(1) of the Act (Restrictions on financial promotion). A *firm* giving a limited approval may wish to advise the *unauthorised person* accordingly.

Financial promotions for the business of overseas persons

3A.4.8 **R** A *firm* must not communicate or approve a *financial promotion* which relates to *qualifying credit* provided by an *overseas person*, unless:

- (1) the *financial promotion of qualifying credit* makes clear which *firm* has approved or communicated it and, where relevant, explains:
 - (a) that the *rules* made under the Act for the protection of customers do not apply;
 - (b) the extent and level to which the *compensation scheme* will be available or, if the scheme will not be available, a statement to that effect; and
 - (c) if the communicator wishes, the protection or compensation available under another system of regulation; and
- (2) the *firm* has taken reasonable steps to satisfy itself that the *overseas person* will deal with customers in the *United Kingdom* in an honest and reliable way.

3A.5 MCD financial promotions

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3A.5.1

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- (1) When *communicating or approving a financial promotion concerning an MCD regulated mortgage contract* which indicates an interest rate or any figures relating to the cost of the *credit to the consumer*, a *firm* must ensure that the *financial promotion* includes standard information which specifies in a clear, concise and prominent way:
 - (a) the identity of the *MCD creditor* or, where applicable, the *MCD mortgage credit intermediary or appointed representative*;
 - (b) where applicable, that the *MCD regulated mortgage contract* will be secured by a mortgage or another comparable security or by a right related to residential immovable property;
 - (c) the *borrowing rate*, indicating whether this is fixed or variable or a combination of both, together with particulars of any charges included in the *total cost of the credit to the consumer*;
 - (d) the *total amount of the credit*;
 - (e) the *APRC* which must be included at least as prominently as any interest rate;
 - (f) where applicable, the duration of the *MCD regulated mortgage contract*;
 - (g) where applicable, the amount of the instalments;
 - (h) where applicable, the *total amount payable* by the *consumer*;
 - (i) where applicable, the number of instalments; and,
 - (j) where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the *consumer*.

[Note: article 11(1) and (2) of the *MCD*]

- (2) The information listed in (1), other than that listed in (a), (b) or (j) thereof, must be specified by means of a representative example.

[Note: article 11(3) of the *MCD*]

- (3) For the purposes of the requirement in (2), to specify the information in (1), including the *APRC*, by means of a representative example, an example is not representative unless the *firm* reasonably expects that at least 51% of *consumers*:
 - (a) responding to the *financial promotion*; and
 - (b) who enter into a *MCD regulated mortgage contract* which is the subject of the *financial promotion*;

would be charged the specified *APRC* or below.

[**Note:** article 11(3) of the *MCD*]

- (4) Where the conclusion of a contract regarding an ancillary service, in particular insurance, is compulsory in order to obtain the *MCD regulated mortgage contract* or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract must be stated in a clear, concise and prominent way, together with the *APRC*.

[**Note:** article 11(4) of the *MCD*]

- (5) The information referred to in (1) and (4) must be easily legible or clearly audible as appropriate, depending on the medium used for advertising.

[**Note:** article 11(5) of the *MCD*]

3A.5.2

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Inclusion of a representative example, where required, does not preclude the inclusion of additional cost information, relating to individual products or types of product, subject to this being fair, clear and not misleading. For example, a *firm* may wish to include a table setting out details of a number of products, for comparative purposes, with the required overall representative example stated (being representative of all agreements expected to result from the *financial promotion*, and shown with sufficient prominence).



3A.6 Home purchase plan financial promotions

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3A.6.1

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APR equivalent for home purchase plan financial promotions

If a *firm* uses a figure equivalent to an *APR* in a communication of a *financial promotion* of a *home purchase plan*, when calculating that figure it must use an approach equivalent to the *APR rules*.

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3A.7 Home reversion plan financial promotions

3A.7.1

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No approval of real time home reversion plan promotions.....

A firm must not approve a financial promotion of a home reversion plan made in the course of a personal visit, telephone conversation or other interactive dialogue.



3A.8 Sale and rent back financial promotions

Guidance on fair, clear and not misleading: sale and rent back financial promotions

3A.8.1 **G** The effect of giving no less prominence to the possible disadvantages than to the benefits associated with a feature will depend on the context of the promotion. The costs, restrictions or conditions relating to a feature, such as any option available, should be detailed for the following non-exhaustive examples:

- (1) where any part of the discount on the market value of the property is to be repaid to the *consumer* after a qualifying period; and
- (2) where a *consumer* is to benefit from shared appreciation in the value of the property.

Ban on SRB leaflet dropping

3A.8.2 **R** A regulated sale and rent back firm must not communicate an unsolicited financial promotion that relates to a regulated sale and rent back agreement to a potential SRB agreement seller in the form of a leaflet or brochure or similar.

Non-real time financial promotions to customers and advertisements

3A.8.3 **R** A non-real time financial promotion relating to a regulated sale and rent back agreement and any other advertisement which is issued by a regulated sale and rent back firm that could lead to the conclusion of a regulated sale and rent back agreement, must (unless it is of a kind listed in MCOB 3A.1.9R(1)) contain a risk warning that uses the following wording:

"If you enter into a sale and rent back agreement you are unlikely to get the market value of your home and, as a tenant, may only be able to remain there for a limited period. There may be other options available. Please ask for a key terms statement."

Exploitation of customer

3A.8.4 **R** A firm must not in any financial promotion of a regulated sale and rent back agreement exploit the vulnerable nature or circumstances of any customer who may be in financial difficulties and at risk of losing his or her home. As such, the firm must avoid using phrases or terms such as "fast sales", "rescue" or "cash quickly" or any other similar expression.

**No approval of real time financial promotions of a regulated
sale and rent back agreement**

3A.8.5

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A *firm* must not approve a *financial promotion* of a *regulated sale and rent back agreement* made in the course of a personal visit, telephone conversation or other interactive dialogue.



3A.9 Systems and controls

Record keeping

3A.9.1

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A firm must make an adequate record of each *non-real time financial promotion of qualifying credit, home reversion plan or regulated sale and rent back agreement* which it has confirmed as complying with the *rules* in this chapter. The record must be retained for a year from the date at which the *financial promotion* was last communicated.

3A.9.2

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■ MCOB 2.8 (Record keeping) applies to the form in which records required in accordance with this chapter must be kept.

