Chapter 4

Advising and selling standards
## 4.1 Application

### Who?

This chapter applies to a firm in a category listed in column (1) of the table in \( \text{MCOB 4.1.2 R} \) in accordance with column (2) of that table.

#### 4.1.1 [R]

This table belongs to \( \text{MCOB 4.1.1 R} \)

<table>
<thead>
<tr>
<th>(1) Category of firm</th>
<th>(2) Applicable section</th>
</tr>
</thead>
<tbody>
<tr>
<td>mortgage lender</td>
<td>except in relation to lifetime mortgages: MCOB 4.1 to MCOB 4.4A, 4.6A, 4.8A in accordance with MCOB 4.1.2A R and MCOB 4.9</td>
</tr>
<tr>
<td>mortgage adviser</td>
<td>except in relation to lifetime mortgages: whole chapter except MCOB 4.10</td>
</tr>
<tr>
<td>mortgage arranger</td>
<td>except in relation to lifetime mortgages: whole chapter except MCOB 4.7A and MCOB 4.10</td>
</tr>
<tr>
<td>home purchase provider</td>
<td>MCOB 4.1, MCOB 4.2 and MCOB 4.10 (except MCOB 4.10.5 G to MCOB 4.10.7 G). MCOB 4.4A and MCOB 4.8A in accordance with MCOB 4.1.2B R and MCOB 4.10.</td>
</tr>
<tr>
<td>home purchase adviser</td>
<td>MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.10.</td>
</tr>
<tr>
<td>home purchase arranger</td>
<td>As for a home purchase adviser except MCOB 4.10.5A R to MCOB 4.10.9A R, MCOB 4.10.13 R and MCOB 4.7A do not apply</td>
</tr>
<tr>
<td>equity release provider</td>
<td>see MCOB 8.3 for the application of this chapter</td>
</tr>
<tr>
<td>equity release adviser</td>
<td></td>
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<tr>
<td>equity release arranger</td>
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</tr>
<tr>
<td>SRB adviser</td>
<td>MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.11</td>
</tr>
<tr>
<td>SRB arranger</td>
<td>MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.11</td>
</tr>
<tr>
<td>SRB agreement provider</td>
<td>MCOB 4.1, MCOB 4.2 and MCOB 4.11</td>
</tr>
</tbody>
</table>
4.1.2A  ■ MCOB 4.8A only applies to a mortgage lender in relation to entering into a regulated mortgage contract where there is no firm which is arranging (bringing about) the regulated mortgage contract to which ■ MCOB 4.8A applies.

4.1.2B  ■ MCOB 4.8A only applies to a home purchase provider (as provided in ■ MCOB 4.10.9B R) in relation to entering into a home purchase plan where there is no firm which is arranging (bringing about) the home purchase plan to which ■ MCOB 4.8A applies (as provided in ■ MCOB 4.10.9B R).

4.1.2C  ■ MCOB 4.1.2A R and ■ MCOB 4.1.2B R mean that the provisions in ■ MCOB 4.8A on execution-only sales, including the prohibition on entering into them in the circumstances specified in that section, only apply to sales by mortgage lenders or home purchase providers where there is no intermediary firm to which that section applies.

4.1.2D  ■ MCOB 4.1.2A R and ■ MCOB 4.1.2B R mean that the situations where ■ MCOB 4.8A applies to a mortgage lender or home purchase provider include where a mortgage intermediary or home purchase intermediary has been involved in arranging a regulated mortgage contract or home purchaser plan but is no longer involved in the transaction.

What?

4.1.3  ■ This chapter applies if a firm in the course of carrying on a home finance activity: enters into, advises on or arranges a home finance transaction or a variation of the terms of a home finance transaction.

4.1.4  (1) ■ MCOB 4.4 (Initial disclosure requirements) applies only in relation to varying the terms of a regulated mortgage contract entered into by the customer in any of the following ways:

(a) adding or removing a party;

(b) taking out a further advance; or

(c) switching all or part of the regulated mortgage contract from one interest rate to another.

(2) Otherwise, this chapter, ■ MCOB 4, applies in relation to any form of variation of a regulated mortgage contract.

4.1.5  ■ In relation to an equity release transaction, this chapter is modified by ■ MCOB 8 (Equity release: advising and selling standards).

4.1.6  ■ [deleted]

4.1.7  ■ If a firm is an authorised professional firm, when the firm conducts non-mainstream regulated activities with a customer, the only initial disclosure requirements that apply are those relating to the Financial Ombudsman Service and the FSCS (see ■ MCOB 1.2.10 R (3)).
The FCA would not view the removal of a party to the *regulated mortgage contract* following the death of that party (and where no other variation is proposed) as a variation for the purposes of MCOB 4.1.4 R(1).
4.2 Purpose

4.2.1 (1) This chapter amplifies Principle 6 (Customers' interests), Principle 7 (Communications with clients) and Principle 9 (Customers: relationships of trust).

(2) The purpose of this chapter is to ensure that:

(a) customers are adequately informed about the range of home finance transactions available from firms and the basis of their remuneration;

(b) where advice is given, it is suitable for the customer.

(c) the firm provides advice whenever it makes a sale during which there is spoken or other interactive dialogue between the firm and the customer (with exceptions for high net worth mortgage customers and professional customers, and for loans which are solely for a business purpose);

(d) when there is no spoken or other interactive dialogue between the firm and the customer during the sale, the firm is able to provide an execution-only service except for certain vulnerable customers (customers for regulated sale and rent back and equity release transactions; customers whose main purpose is debt consolidation; and customers who are using the transaction in order to exercise a statutory “right to buy”) who are given advice in every case;

(e) execution-only sales are only provided where the customer has been warned about the implications of proceeding without advice, or where the customer has rejected advice which has been given, and has specifically instructed the firm that he wishes to do so; and

(f) except in the case of regulated sale and rent back transactions, customers have the right to reject advice and proceed on an execution-only basis.

(3) This chapter also implements certain requirements of the Distance Marketing Directive in relation to distance mortgage mediation contracts and distance home purchase mediation contracts.
4.4A Initial disclosure requirements

Description of a firm’s services in all cases

4.4A.1 Using the methods and at the times specified in this section, a firm must provide the customer with the following information:

(1) whether there are any limitations in the range of products that it will offer to the customer, and if so what those are;

(2) the basis on which the firm will be remunerated; and

(3) the availability of alternative finance options.

Range of products

4.4A.2 (1) The limitations in §MCOB 4.4A.1 R include any limitations on the regulated mortgage contracts the firm will consider from within the relevant market. A firm which is offering services to a customer in respect of more than one type of relevant market must describe its services in relation to each such relevant market.

(2) For these purposes, there are two relevant markets for regulated mortgage contracts (apart from lifetime mortgages): one for regulated mortgage contracts that are not for a business purpose; and one for regulated mortgage contracts that are. A firm offering services in relation to loans for a business purpose must make that clear in its disclosure under §MCOB 4.4A.1R (1).

(3) If a firm will not, as part of its services, consider direct deals, it need not treat that as a limitation in its product range, but the firm must tell the customer as part of the disclosure under §MCOB 4.4A.1R (1) that it will not consider direct deals.

4.4A.3 (1) A firm that only offers products from one part of a relevant market (for example, just bridging loans) should not disclose its service as unlimited.

(2) When considering whether there are any limitations in its product range across the relevant market, a firm need not take account of the existence of exclusive deals which a mortgage lender offers to be sold by one or a limited number of mortgage intermediaries only (and not generally by mortgage intermediaries across the relevant market).
In making its disclosure under MCOB 4.4A.1R(1), a firm should indicate, for each relevant market, whether this is across first charge legal mortgages, second charge regulated mortgage contracts or both.

(1) If a firm is not offering to the customer products from an unlimited range from across the relevant market, in its disclosure on product range in MCOB 4.4A.1R, the firm must:

(a) where it is an MCD mortgage credit intermediary, list the names of all the mortgage lenders whose products it is offering; or

(b) where it is not an MCD mortgage credit intermediary, either

(i) comply with (a); or

(ii) inform the customer of the number of mortgage lenders whose products it is offering and that he has the right to request a list of those mortgage lenders.

(2) If a customer requests the list in (1)(b)(ii), the firm must provide it in a durable medium as soon as possible following the request and in any event within five business days. The list must also indicate whether the firm offers all of the products generally available from each mortgage lender on the list.

(3) An MCD mortgage credit intermediary must only disclose that it is independent if its consideration of MCD regulated mortgage contracts across the market is unlimited.

[Note: articles 15(1)(c) and 22(4) of the MCD]

A firm may be able to describe its product range as unlimited even if it offers its customers only a selection of the regulated mortgage contracts available from the relevant market, or uses ‘panels’. The firm would need to ensure that any panel, or selection of products, is sufficiently broad in its composition that it is representative of products from across the market, that it is reviewed regularly, and that its use does not materially disadvantage any customer. In such a case, a firm should ensure that its analysis of the market and of the available regulated mortgage contracts is kept adequately up to date. For example, a firm would need to update its selection of regulated mortgage contracts if it became aware that a regulated mortgage contract had become generally available offering an improved product feature, or a better interest rate, when compared with the regulated mortgage contracts currently in the firm’s selection.

The disclosure required by MCOB 4.4A.1R (1), MCOB 4.4A.2R and MCOB 4.4A.4R(1) about limitations in product range and direct deals should be expressed in simple, clear terms. A firm may wish to consider using a sentence appropriate to the circumstances, along the following lines:

• “We are not limited in the range of mortgages we will consider for you.”

• “We offer a comprehensive range of mortgages from across the market, but not deals that you can only obtain by going direct to a lender.”

• “We only offer mortgages from [number] lender(s). We can provide you with a list of these.”

• “We only offer mortgages from [name of lender(s)].”
• “We only offer some, but not all, of the mortgages from [number] lender(s). We can provide you with a list of these.”

• “We only offer some, but not all, of the mortgages from [name of lender(s)].”

• “We only sell bridging finance products from [name of lender(s)]. We do not offer products from across the mortgage market.”

(1) Firms are reminded that, in the light of the rules and guidance in SYSC, they should have adequate systems and controls in place to ensure that the disclosure they make to a customer about their service reflects the service the customer is actually offered.

(2) Firms are also reminded that Principle 7 (Communications with clients) and MCOB 3A.2.1R (Fair, clear and not misleading communications) are also relevant to how they describe their services, including in any business name they adopt. For example, a firm should not call itself an “independent mortgage adviser” unless its product range across the relevant market is unlimited.

(3) A firm that offers a different service for different product types should not disclose that it offers one type of service for its business as a whole. For example, a firm that provides independent advice on retail investment products but only offers a limited range of regulated mortgage contracts should ensure it discloses to the customer that the service is different for the different products.

(4) There are additional rules about complying with MCOB 4.4A.1R (1) in relation to home purchase plans and equity release transactions at MCOB 4.10.3B R and MCOB 8.3.2B R.

Basis of remuneration

(1) The information about the basis of remuneration required by MCOB 4.4A.1R (2) must include all relevant information, including the following details:

(a) any fees which the firm will charge to the customer;

(b) when any such fees will be payable and, if applicable, reimbursable; and

(c) whether the firm will receive commission from the mortgage lender or another third party and, if applicable, whether any commission will be offset against any fees charged and the arrangements for doing so; and

[Note: article 15(3) of the MCD]

(d) for an MCD regulated mortgage contract, the amount of commissions or other inducements, or where the amount is not known at the time of disclosure, notification that the actual amount will be disclosed at a later stage in the ESIS.

[Note: article 15(1)(g) of the MCD]

(2) The details in (1)(a) must be expressed, where possible, as a specific cash sum, but the following rules apply where this is not possible:
(a) If the firm will charge a fee that is a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the firm must provide details of the percentage and a representative illustrative example which gives an amount as a cash sum.

(b) If the firm will charge one of a range of possible cash fees, the firm must provide a description of the fee in terms which include the maximum and minimum possible fees as cash sums, and what factors will determine where in the range the fee will be.

(c) If the firm will charge one of a range of fees that are a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the firm must provide details of the minimum and maximum percentages and a representative illustrative example which gives an amount as a cash sum, and set out what factors will determine where in the range the fee will be.

(d) If the firm will charge an amount based on an hourly rate, but the number of hours to be spent on the customer's transaction is unknown, the firm must state the hourly rate in cash terms and set out what factors will determine how many hours it takes to provide the firm's services.

(e) for an MCD regulated mortgage contract, if the firm will charge a fee calculated other than in line with 2(a) to (d), the firm must provide details of the method for calculating the fee.

[Note: article 15(1)(e) of the MCD]

### Alternative finance options

Where a customer is looking to increase the borrowing secured on a property which is the subject of an existing regulated mortgage contract, the firm must first inform the customer, either orally or in writing, that the following alternative finance options may be available and more appropriate for the customer:

1. a further advance from the existing lender, unless the firm knows that the existing lender will not make a further advance to the customer;

2. (a) a second charge regulated mortgage contract, where the firm would offer services in relation to a new first charge regulated mortgage contract;

   (b) a new first charge regulated mortgage contract, where the firm would offer services in relation to a second charge regulated mortgage contract; or

3. unsecured lending.

Where a customer is looking to take out a retirement interest-only mortgage, the firm must inform the customer, either orally or in writing, that a lifetime mortgage may be available and more appropriate for the customer.
Firms are not obliged to explore whether one of the alternative finance options mentioned in MCOB 4.4A.8AR or MCOB 4.4A.8AR is more appropriate for the customer where that is not the service offered to the customer.

**Method of providing initial disclosure in all cases**

The information required by MCOB 4.4A.1 R, MCOB 4.4A.2 R, MCOB 4.4A.4 R (1), MCOB 4.4A.8 R and MCOB 4.4A.8AR must be communicated clearly and prominently, and in doing so:

1. an MCD mortgage adviser, or any other firm that is an MCD mortgage lender or an MCD mortgage arranger that provides advisory services within the meaning of article 4(21) of the MCD, must provide the information in MCOB 4.4A.1R (1) and (2) and MCOB 4.4A.8R (1)(a) and (2)(e) in a durable medium;
   - (a) [deleted]
   - (b) [deleted]

2. an MCD mortgage arranger (unless it is also acting as an MCD mortgage lender and carrying out a direct sale of the proposed regulated mortgage contract) must provide the information in MCOB 4.4A.1R (1) and (2), MCOB 4.4A.4R(1)(a) and (3), and MCOB 4.4A.8R(1)(a), (c), (d) and (2) in a durable medium; and

(1A) in all other cases:
   - (a) if the initial contact includes spoken interaction, the information must be communicated orally; and
   - (b) if the initial contact does not include spoken interaction, the messages must appear separately from other messages in the communication.

If the initial contact is made by electronic means, the firm must ensure that the customer cannot progress to the next stage of the sale unless the information has been communicated to the customer.

[Note: article 15(1) and article 22(2) of the MCD]

(1) In order to comply with MCOB 4.4A.9R(1) and (1A), the required information must be provided in a durable medium for all sales.

(1A) In order to comply with MCOB 4.4A.9R(2):
   - (a) for an internet sale, a firm should display the required information on a screen which the customer must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the customer the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the customer accesses;
   - (b) in a postal sale, a firm may comply by setting out the information in a clear covering letter;
   - (c) where the initial contact is by email, SMS or instant messaging, the information could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging; and
   - (d) for face-to-face and telephone contact, a firm should comply by building the information into the initial oral discussion with the customer.

(2) [deleted]
A firm may demonstrate compliance with MCOB 4.4A.9R(2) by, for example, undertaking one or more of the following: building a requirement for oral communication of the relevant information into its training of staff as evidenced by its training and compliance manuals; inserting appropriate prompts into paper-based or automated sales systems; and having procedures in place to monitor compliance by staff with that rule. What is required in each case will depend on all the circumstances.

Timing of initial disclosure in all cases

The information required by MCOB 4.4A.1 R, MCOB 4.4A.2 R, MCOB 4.4A.4R(1) and (3), MCOB 4.4A.8 R and MCOB 4.4A.8A R must be provided:

1. In the case of information required by MCOB 4.4A.1R (1) and MCOB 4.4A.1R (2), MCOB 4.4A.4R (1)(a) and (3), and MCOB 4.4A.8R (1)(a), (c), (d) and (2), where the firm is an MCD credit intermediary, in good time before carrying out any MCD credit intermediation activity;

1A. In the case of information required by MCOB 4.4A.1R(1) and (2) and MCOB 4.4A.8R(1)(a) and (2)(e), where the firm is an MCD mortgage adviser, or any other firm that is an MCD mortgage lender or an MCD mortgage arranger that provides advisory services within the meaning of article 4(21) of the MCD, before the provision of such advisory services or, where applicable, the conclusion of a contract for the provision of such advisory services; and

2. In all other cases, during the course of the initial contact.

[Note: article 15(1) and article 22(2) of the MCD]

In many cases, MCOB 4.4A.12 R means that information will be given at the time of the first contact between the firm and the customer. However, there may be circumstances, for example in relation to a loan for a business purpose, where the possibility of the customer entering into, or varying the terms of, a regulated mortgage contract is only identified after preliminary discussions. The relevant disclosure is only required once this possibility is identified.

MCOB 4.4A.12 R does not require a firm to provide the information specified in that rule when a customer contacts a firm simply to arrange to receive services in relation to a regulated mortgage contract at a later time, such as when a customer books an appointment. In those cases, the initial disclosure should be made when the firm first makes contact with the customer with a view to actually carrying out the services. However, firms should note the additional disclosure requirements in MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts with retail customers), and the need to ensure that the required information is provided in good time (see MCOB 4.5.3 G (1)).
4.4A.14 Principle 7 and MCOB 3A.2.1R also mean that, if initial disclosure has been given but any of the information in it (for example the basis on which the firm will be remunerated) subsequently changes, the firm should bring this clearly to the customer's attention.

Instances where initial disclosure need not be given

4.4A.15 The information requirements in ■ MCOB 4.4A.1 R, ■ MCOB 4.4A.2 R, ■ MCOB 4.4A.4R (1) and ■ MCOB 4.4A.8 R do not apply where:

1. the information has already been provided by the firm and the firm has good reason to believe that it is still accurate and appropriate for the customer; or

2. the information has already been provided by the firm which first made contact with the customer in respect of the particular regulated mortgage contract, and the firm subsequently making contact with the customer does not expect to alter or replace the product range or basis of remuneration described in that information.

4.4A.16 A mortgage lender should provide the information in the provisions referred to in ■ MCOB 4.4A.15 R in a direct sale but need not do so where the sale is through a mortgage intermediary. If a number of different firms are involved in relation to the transaction, having regard to ■ MCOB 2.5.4 R (2), those firms should take reasonable steps to establish that the customer has been provided with the information as required by this section.

Additional disclosure where initial contact is by telephone

4.4A.17 If the initial contact is by telephone, then the firm must also, before proceeding further, give the name of the firm and (if the call is initiated by or on behalf of the firm) the commercial purpose of the call.

Additional disclosure where the services are to be provided to a consumer under a distance contract

4.4A.18 Where a firm provides services to a consumer by way of a distance contract, the firm must provide the consumer with the following information in a durable medium in good time before the distance contract has been agreed:

1. the information which is required by ■ MCOB 4.4A.1 R to ■ MCOB 4.4A.8A R;

2. whether or not the firm will be providing the consumer with advice;

3. the name and the main business of the firm, the geographical address at which it is established and any other geographical address relevant for the consumer's relations with the firm;

4. an appropriate statutory status disclosure statement (see ■ GEN 4), a statement that the firm is on the Financial Services Register and its FCA registration number;

5. the total price to be paid by the consumer to the firm for the financial service, including all related fees, charges and expenses, and
all taxes paid through the firm or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;

(6) the arrangements for payment and for performance;

(7) how to complain to the firm, whether complaints may subsequently be referred to the Financial Ombudsman Service and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme;

(8) whether compensation may be available from the compensation scheme, or any other named compensation scheme, if the firm is unable to meet its liabilities, and information about any other applicable named compensation scheme; and

(9) any other contractual terms and conditions of the distance contract.

4.4A.19  
(1) MCOB 4.4A.18 R contains the additional disclosure requirements for firms providing mortgage mediation activities to a consumer by way of a distance contract. MCOB 4.5 and MCOB 4.6 contain further rules and guidance applicable where firms enter into a distance contract in respect of their home finance mediation activities independent of any contractual arrangement with a consumer relating to a particular home finance transaction or transactions.

(2) There is guidance on distance contracts and consumers at MCOB 1.3.5 G and MCOB 1.3.6 G.

4.4A.20  
[deleted]

4.4A.20A  
(1) An MCD mortgage lender or an MCD credit intermediary may comply with MCOB 4.4A.18R (3) and (5) to MCOB 4.4A.18R (9) by providing an ESIS to the consumer prior to the conclusion of the MCD regulated mortgage contract.

(2) Provided that the provisions of MCOB 4.4A on the methods and timing of disclosure are complied with, an MCD mortgage lender or an MCD credit intermediary may comply with MCOB 4.4A.18R (1), (2) and MCOB 4.4A.18R (4) by providing the necessary information in a separate document, which may be annexed to the ESIS (MCOB 5A.6.1 R).

Uncertainty whether a mortgage is regulated

4.4A.21  
(1) If at the point that initial disclosure must be made in accordance with MCOB 4.4A.1 R, MCOB 4.4A.2 R, MCOB 4.4A.4 R, MCOB 4.4A.8 R and MCOB 4.4A.8A R a firm is uncertain whether the contract will be a regulated mortgage contract, the firm must:

(a) make the initial disclosure; or

(b) seek to obtain from the customer information that will enable the firm to ascertain whether the contract will be a regulated mortgage contract.
(2) Where (1)(b) applies, the initial disclosure must be made unless, on the basis of the information provided by the customer, the firm has reasonable evidence that the contract is not a regulated mortgage contract.

Appointed representatives

A firm may restrict the home finance transactions it authorises a particular appointed representative to sell. If it does so, the firm must ensure the appointed representative reflects this limited range in any disclosure given to the customer under MCOB 4.4A.

Record keeping

Firms are reminded of the general record-keeping requirements in SYSC 9. A firm should keep appropriate records of the disclosures required by this section.
4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers

4.5.1 (1) There are certain additional disclosure requirements laid down by the Distance Marketing Directive that will have to be provided by a mortgage intermediary, a home purchase intermediary and a SRB intermediary to a consumer prior to the conclusion of a distance mortgage mediation contract, a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract. The purpose of this section, MCOB 4.5, is to set out those additional requirements. MCOB 4.6 sets out the cancellation rights that apply in relation to such contracts.

(2) The FCA expects the requirements in MCOB 4.5 and MCOB 4.6 to be relevant only in a small minority of cases. Mediation at a distance (see MCOB 1.3.5 G and MCOB 1.3.6 G) is unlikely in the home finance market. MCOB 4.5 and MCOB 4.6 will only be relevant if a mortgage intermediary, a home purchase intermediary or a SRB intermediary enters into a distance contract in respect of its mortgage mediation activities, home purchase mediation activities or regulated sale and rent back mediation activities quite independent of any contractual arrangement with a consumer relating to a particular regulated mortgage contract, home purchase plan or regulated sale and rent back agreement. An example of a distance mortgage mediation contract would be a distance contract under which a mortgage intermediary agreed to review and provide advice on a consumer’s mortgage needs from time to time.

4.5.2 If the initial contact is with a consumer with a view to concluding a distance mortgage mediation contract, a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract, a firm must:

(1) in addition to initial disclosure information and any other required information, provide the consumer with the information in MCOB 4 Annex 3 in a durable medium in good time before the conclusion of the distance mortgage mediation contract, distance home purchase mediation contract or distance regulated sale and rent back mediation contract with that customer unless an exemption in (2), (3), (4) or (5) applies.
(2) Exemption: telephone sales

(a) This exemption applies if the service is being provided on the telephone and the customer wishes to enter into a contract with the firm. Provided the customer gives his explicit consent to receiving only limited information, the firm may proceed on the basis of at least the following information:

(i) the name of the person in contact with the customer and his link with the firm;

(ii) the total price to be paid by the customer to the firm for the services, including all related fees, charges and expenses, and all taxes paid through the firm or, where an exact price cannot be indicated, the basis for the calculation of the price, enabling the customer to verify it;

(iii) notice of the possibility that other taxes or costs may exist that are not paid through the firm or imposed by it;

(iv) the information about cancellation rights set out in MCOB 4 Annex 3(5); and

(v) that other information is available on request, and the nature of that information.

(aa) If the customer does not give his explicit consent to receiving limited information, and the parties wish to proceed by telephone, the firm must, prior to the conclusion of the contract, provide orally to the customer all of the information required by (1).

(b) Where (a) or (aa) applies, the firm must send the consumer without delay and, at the latest immediately after a contract is concluded, the information required by (1), in a durable medium.

(3) Exemption: certain other means of distance communication. This exemption applies if the contract is concluded at the consumer’s request using a means of distance communication (other than telephone) which does not enable provision of the information referred to in MCOB 4 Annex 3 in a durable medium before the conclusion of the contract. In that case, the firm must provide the consumer with the information in a durable medium immediately after its conclusion.

(4) Exemption: successive operations or separate operations under an initial service agreement. This exemption applies if the firm has an initial service agreement with the consumer and the contract is in relation to a successive operation or a separate operation of the same nature under that agreement.

(5) Exemption: other successive or separate operations This exemption applies if:

(a) the firm has no initial service agreement with the consumer; and

(b) the firm has performed an operation with the consumer within the last year; and

(c) the contract is in relation to a successive operation or separate operation of the same nature.
4.5.3 G  (1) The information in MCOB 4 Annex 3 will be provided in 'good time' for the purposes of MCOB 4.5.2 R (1), if provided in sufficient time to enable the customer to consider properly the services on offer.

(2) An example of the circumstances in which MCOB 4.5.2 R (4) or (5) may apply is given in MCOB 4.4.4 G. If the initial disclosure document and accompanying information (including that in MCOB 4 Annex 3) was previously provided to a customer and continues to be appropriate, there is no need to provide the information again. If additional information is required, this may be provided by a supplementary document. However, if a service of a different nature is proposed, the firm is expected to provide fresh initial disclosure documentation and, in respect of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with a consumer, this will need to be accompanied by the information in MCOB 4 Annex 3.

4.5.4 R [deleted]

4.5.5 R [deleted]
4.6 Cancellation of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts

4.6.1 A consumer has no right to cancel a home finance transaction concluded with a firm but may have a right to cancel a distance contract concluded with a mortgage intermediary, a home purchase intermediary or a SRB intermediary for the provision of his services. Whether a mortgage intermediary, a home purchase intermediary or a SRB intermediary concludes a distance mortgage mediation contract, a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract with a consumer will depend on the circumstances. For example, an intermediary may not, in advising on or arranging a regulated mortgage contract, home purchase plan or regulated sale and rent back agreement, act contractually on behalf of, or for, the customer. In such circumstances, no distance mediation contract will arise for the firm’s services, and therefore no right to cancel. If there is a contract between the customer and the firm, however, and therefore there is a right to cancel, the firm is required by MCOB 4.5.2 R(1) to provide the information in MCOB 4 Annex 3(5).

4.6.2 The information provided in accordance with MCOB 4 Annex 3(5) should be sufficiently clear, prominent and informative to enable the consumer to understand the right to cancel.

4.6.3 Where the notice of the right to cancel forms part of another document, or is one of a number of documents sent to the consumer at the same time, a firm should ensure that the presence of the notice of the right to cancel is drawn to the consumer’s attention.

Cancellation period

4.6.4 (1) A consumer has a right to cancel a distance mortgage mediation contract, a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract in accordance with this section.

(2) The right to cancel must be exercised within 14 days beginning on the later of:

(a) the day of the conclusion of the contract; or
Section 4.6 : Cancellation of distance mortgage mediation contracts, distance home purchase mediation contracts and…

Exercising the right to cancel

4.6.5 A consumer who has a right to cancel a distance mortgage mediation contract, a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract may, without giving any reason, cancel the contract by serving notice on the firm, before the expiry of the cancellation period in MCOB 4.6.4 R either:

1. by serving on, or otherwise sending by post, notice to the firm’s last known address, addressed to the firm, its appointed representative or on any agent of the firm with authority to accept notice on the firm’s behalf; or

2. in accordance with any other practical instructions for exercising that right provided to the consumer in accordance with MCOB 4 Annex 3(5).

4.6.6 Where the notice of cancellation is in a durable medium and is served in accordance with MCOB 4.6.5 R, it must be treated as being served on the firm on the date it is despatched by the consumer.

4.6.7 In the event of any dispute, unless there is clear written evidence to the contrary, the firm should treat the date cited by the consumer as being the date when notice was given, posted or otherwise sent.

Effects of cancellation

4.6.8 By exercising a right to cancel under MCOB 4.6.4 R the consumer withdraws from the contract and the entire contract is terminated.

4.6.9 Regulation 11 (Automatic cancellation of an attached distance contract) of the Distance Marketing Regulations, has the effect that when notice of cancellation is given in relation to a contract, that notice also operates to cancel any attached contract, which is also a distance financial services contract. An example of such an attached contract might be a distance non-investment insurance contract.

4.6.10 When a consumer exercises a right to cancel under MCOB 4.6.4 R:

1. the firm must:

   a. pay to the consumer without delay, and no later than 30 days after the date on which the firm received notice of cancellation from him, any sums which he has paid to or for the benefit of the firm in connection with the contract (including sums paid by the consumer to agents of the firm) except for the amount referred to in (b); and

   b. subject to (c), the firm is permitted to require the consumer to pay for the services it has actually provided in connection with...
the contract; the amount payable, however, must be in accordance with the sums which the consumer agreed to pay and must not:

(i) exceed an amount which is in proportion to the extent of the service already provided to the consumer by the firm; and

(ii) be such that it could be construed as a penalty;

(c) sub-paragraph (b) applies only if:

(i) where performance of the contract has commenced before expiry of the cancellation period, this was requested by the consumer; and

(ii) the firm can demonstrate that the consumer was provided with details of the amount which he may be required to pay if exercising his right to cancel in accordance with MCOB 4 Annex 3(5).

(2) The firm is entitled to receive without delay, and no later than 30 days after the date on which the consumer posted or otherwise sent notice of cancellation to the firm any property that became the consumer’s under the contract and any sums payable to the firm under (1)(b).

Record keeping

Where notice of cancellation has been served on a firm (or its appointed representative or agent), the firm must make and retain a record (which includes a copy of any receipt of notice issued to the consumer and the consumer’s original notice instructions) for three years from the date when the firm first became aware that notice of cancellation had been served.
4.6A Rolling-up of fees or charges into loan

4.6A.1 A mortgage lender may not offer a regulated mortgage contract to a customer on the basis that fees or charges of any kind (receivable either by the mortgage lender or another party) are automatically added to the sum advanced.

4.6A.2 A firm must not undertake any action that commits a customer to an application for a regulated mortgage contract where a fee or charge of any kind (receivable either by the firm or another party) is to be added to the sum advanced under the regulated mortgage contract, unless the customer has made a positive choice to add the fee or charge to the sum advanced.
4.7A Advised sales

4.7A.1 G

(1) MCOB 4.7A sets out standards to be observed by firms when advising a particular customer on regulated mortgage contracts.

(2) The rules at MCOB 4.8A require firms which are selling regulated mortgage contracts to, or entering into variations of existing regulated mortgage contracts with, certain types of vulnerable customer, to provide advice to them.

(3) The rules at MCOB 4.8A also provide that advice must be given wherever the sales process involves spoken or other interactive dialogue (except for high net worth mortgage customers, professional customers and loans solely for a business purpose). They do not prohibit the giving of pre-contract or preliminary information which does not amount to advice to the particular customer, but means that advice must be given before a firm enters into or arranges a regulated mortgage contract, or variation of such contract, unless the requirements there are satisfied. Firms may wish to refer to PERG (particularly PERG 4.6) for guidance on the regulatory perimeter in relation to advising on home finance transactions.

(4) The rules at MCOB 4.8A provide for an exception which permits certain execution-only sales which do not involve additional borrowing.

Suitability

4.7A.2 R

If a firm gives advice to a particular customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, it must take reasonable steps to ensure that the regulated mortgage contract is, or after the variation will be, suitable for that customer.

4.7A.3 R

In MCOB 4.7A, a reference to advice to enter into a regulated mortgage contract is to be read as including advice to vary an existing regulated mortgage contract.

4.7A.4 G

(1) A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.7A.

(2) For the purposes of MCOB 4.7A.2 R, if for any reason a customer rejects (in whole or in part) advice given by a firm, the firm is not precluded from advising him to enter into a different regulated mortgage contract (in accordance with the requirements of
MCOB 4: Advising and selling standards

Section 4.7A: Advised sales

4.7A.4A  
**Firms** are only obliged to assess the suitability of a **regulated mortgage contract** or a **shared equity credit agreement** where this forms part of the transaction between the **consumer** and the **firm**.

4.7A.5  
For the purposes of **MCOB 4.7A.2 R**:

1. a **regulated mortgage contract** will not be suitable for a **customer** unless the **regulated mortgage contract** is appropriate to the needs and circumstances of the **customer**;

2. a **firm** must base its determination of whether a **regulated mortgage contract** is appropriate to a **customer's** needs and circumstances on the facts disclosed by the **customer** and other relevant facts about the **customer** of which the **firm** is or should reasonably be aware;

3. no advice must be given to a **customer** to enter into a **regulated mortgage contract** if there is no **regulated mortgage contract** which is suitable from the product range offered by the **firm**; and

4. if a **mortgage lender** is dealing with an existing **customer** with a **payment shortfall** and has concluded that there is no suitable replacement **regulated mortgage contract**, the **firm** must nonetheless have regard to **MCOB 13.3**.

4.7A.6  
When a **firm** assesses whether the **regulated mortgage contract** is appropriate to the needs and circumstances of the **customer** for the purposes of **MCOB 4.7A.5R (1)**, the factors it must consider include the following, insofar as relevant:

1. whether the **customer's** requirements appear to be within the **mortgage lender's** known eligibility criteria for the **regulated mortgage contract**;

2. whether it is appropriate for the **customer** to have an **interest-only mortgage**, a **repayment mortgage**, or a combination of the two;

3. whether it is appropriate for the **customer** to take out a **regulated mortgage contract** for a particular term;

4. whether it is appropriate for the **customer** to have stability in the amount of required payments, especially having regard to the impact on the **customer** of significant interest rate changes in the future;

5. whether it is appropriate for the **customer** to have their payments minimised at the outset;

6. whether it is appropriate for the **customer** to make early repayments;

7. whether it is appropriate for the **customer** to have any other features of a **regulated mortgage contract**;
(8) whether the regulated mortgage contract is appropriate, based on the information provided by the customer as to his credit history; and

(9) whether it is appropriate for the customer to pay any fees or charges in relation to the regulated mortgage contract up front, rather than adding them to the sum advanced (see also MCOB 4.6A.2 R).

4.7A.7 Firms are reminded that the list in MCOB 4.7A.6 R is not exhaustive. For certain customers there may be additional considerations to explore beyond those described in that rule; for example, in the case of a business loan or a regulated mortgage contract for a high net worth mortgage customer.

4.7A.8 Examples of criteria in MCOB 4.7A.6R (1) are: the expected affordability criteria of the mortgage lender; and whether the mortgage lender will lend in respect of properties of a non-standard construction.

**Interest-only**

4.7A.9 In relation to MCOB 4.7A.6R (2), where a firm has identified an interest-only mortgage as appropriate for a customer, the firm must ensure that the customer is aware that he will have to demonstrate to the mortgage lender that he will have in place a clearly understood and credible repayment strategy, in order for the mortgage lender to be able to satisfy MCOB 11.6.41R (1).

4.7A.10 MCOB 4.7A.9 R does not require a firm to advise the customer on a credible repayment strategy or assess the adequacy of a customer's existing repayment strategy.

**Retirement interest-only mortgages**

4.7A.10A (1) In considering whether a retirement interest-only mortgage that will be used to release capital is appropriate to the needs and circumstances of the customer for the purposes of MCOB 4.7A.2R, a firm must consider, in addition to the factors set out in MCOB 4.7A.6R, whether the benefits to the customer outweigh any adverse effect on:

(a) the customer's entitlement (if any) to means-tested benefits; and

(b) the customer's tax position.

(2) In considering the factors set out in MCOB 4.7A.10AR(1), where a firm has insufficient knowledge of the customer's means-tested benefits or tax allowances to reach a conclusion, the firm must refer the customer to an appropriate source or sources such as the Pension Service, HM Revenue and Customs or a Citizens Advice Bureau (or other similar agency) to establish the required information.

(3) If a customer declines to seek further information on means-tested benefits, tax allowances or the scope for local authority (or other) grants, a firm can advise the customer (in accordance with the remaining requirements of this chapter) to enter into a retirement interest-only mortgage where there is a retirement interest-only mortgage that is appropriate to the needs and circumstances of the
customer; but must confirm to the customer, in a durable medium, the basis on which the advice has been given.

Bridging loans

When a firm assesses whether a bridging loan is appropriate to the needs and circumstances of the customer for the purposes of MCOB 4.7A.5R (1), the factors it must consider include, in addition to the factors listed at MCOB 4.7A.6 R:

1. whether it is appropriate for the customer to make regular payments; and
2. whether it is appropriate for the customer to access finance quickly.

Where a firm has identified a bridging loan as appropriate for a customer, the firm must ensure that the customer is aware that he will have to demonstrate to the mortgage lender that he has a clearly understood and credible repayment strategy in place.

Where a firm is considering giving advice to a customer to enter into a bridging loan, the reasonable steps in MCOB 4.7A.2 R include considering why it is not appropriate for the customer to take out a regulated mortgage contract which is not a bridging loan.

If a firm advises a customer to enter into a regulated mortgage contract with a term of a particular length so that MCOB 4.7A.11 R to MCOB 4.7A.13 R do not apply because the regulated mortgage contract does not fall within the definition of a bridging loan, that advice may be relied on as tending to show contravention of MCOB 2.5A.1 R (The customer’s best interests).

Shared equity

When a firm assesses whether a shared equity credit agreement is appropriate to the needs and circumstances of the customer for the purposes of MCOB 4.7A.5R (1) it must consider, in addition to the factors listed in MCOB 4.7A.6 R, whether it is appropriate for the customer to:

1. take out the shared equity credit agreement for a particular term, taking into account the customer’s intentions about the repayment of that shared equity credit agreement and the term of the customer’s associated first charge regulated mortgage contract;
2. have flexibility over the payment of interest;
3. have flexibility over the repayment of capital; and
4. purchase a property by using his own resources, rather than by borrowing under the shared equity credit agreement.
Debt consolidation

4.7A.15 When a firm advises a customer in relation to entering into a regulated mortgage contract where the main purpose for doing so is the consolidation of existing debts by the customer, in addition to the factors at MCOB 4.7A.6 R, it must also take account of the following, where relevant, in assessing whether the regulated mortgage contract is suitable for the customer:

1. the costs associated with increasing the period over which a debt is to be repaid;
2. whether it is appropriate for the customer to secure a previously unsecured loan; and
3. where the customer is known to have payment difficulties, whether it would be appropriate for the customer to negotiate an arrangement with his creditors rather than to take out a regulated mortgage contract.

4.7A.16 An attempt by the firm to misdescribe the customer's purpose or to encourage the customer to tailor the amount he wishes to borrow so that MCOB 4.7A.15 R does not apply may be relied on as tending to show contravention of MCOB 2.5A.1 R (The customer's best interests).

Further advances

4.7A.17

4.7A.18

Other considerations when advising

4.7A.19 When advising a customer on the suitability of a regulated mortgage contract, a firm must explain to the customer that the assessment of whether the regulated mortgage contract is appropriate to his needs and circumstances is based only on the customer's current circumstances and any reasonably foreseeable changes to those.

4.7A.20 Different considerations apply when giving advice to a customer with a payment shortfall. For example, the circumstances of the customer may mean that, viewed as a new transaction, a customer should not be advised to enter into a regulated mortgage contract. In those cases, a firm may still be able to give advice to that customer where the regulated mortgage contract concerned is, in the circumstances, a more suitable one than the customer's existing regulated mortgage contract.

4.7A.21 In complying with MCOB 4.7A.5R (1) a firm is not required to consider whether it would be preferable for the customer to:

1. purchase a property by using his own resources, rather than by borrowing under a regulated mortgage contract (save for where the
customer is seeking to enter into a shared equity credit agreement (see MCOB 4.7A.14AR (4); or

(2) rent a property, rather than purchase one; or

(3) delay entering into a regulated mortgage contract until a later date (on the grounds that property prices would have fallen in the intervening period, or that the interest rate in relation to the regulated mortgage contract may be lower, or both).

4.7A.22 G

■ MCOB 4.7A.5R (3) means that where the advice is not provided on an unlimited range of products from across the relevant market, the assessment of suitability should not be limited to the types of regulated mortgage contracts which the firm offers. A firm cannot recommend the 'least worst' regulated mortgage contract where the firm does not have access to products appropriate to the customer's needs and circumstances. This means, for example, that a firm dealing solely in the credit-impaired market should not recommend one of these regulated mortgage contracts if approached for advice by a customer who is not a credit-impaired customer.

4.7A.23 G

A firm may generally rely on any information provided by the customer for the purposes of ■ MCOB 4.7A.5R (1) unless, taking a common sense view of this information, it has reason to doubt it.

Rejected advice

4.7A.24 R

If a customer has rejected the advice given by a firm and instead wishes to enter into a different regulated mortgage contract as an execution-only sale, the firm may enter into or arrange that contract as an execution-only sale provided the requirements in ■ MCOB 4.8A.14 R are satisfied.

Record keeping

4.7A.25 R

(1) A firm must make and retain a record:

(a) of the customer information, including that relating to the customer's needs and circumstances, that it has obtained for the purposes of ■ MCOB 4.7A;

(b) that explains why the firm has concluded that any advice given to a customer complies with ■ MCOB 4.7A.2 R and satisfies the suitability requirement in ■ MCOB 4.7A.5R (1); and

(c) of the customer's positive choice in ■ MCOB 4.6A.2 R (Rolling up of fees or charges into loan) where applicable.

(2) The records in (1) must be retained for a minimum of three years from the date on which the advice was given or, in the case of (1) (c), the making of the choice.
4.8A Execution-only sales

Scope and application of this section

4.8A.1 This section sets out the conditions which must be satisfied for a firm to enter into or vary a regulated mortgage contract with a customer, or arrange such a transaction for a customer, without giving advice, or where the advice given by the firm has been rejected. As explained in MCOB 4.7A.1 G, it does not prohibit the giving of pre-contract or preliminary information which does not amount to advice to the particular customer. If a firm intends (where permitted under this section) to operate a business model under which it will not give advice to particular customers, it may wish to refer to PERG (particularly PERG 4.6) for guidance on the regulatory perimeter in relation to the regulated activities which constitute advising on home finance transactions.

4.8A.2 Subject to certain limited exceptions, where the rules in MCOB 4.8A apply to a firm they restrict execution-only sales (which term is defined to include variations of existing contracts) to cases where:

1. there is no spoken or other interactive dialogue between the firm and the customer during the sale; or

2. if there is spoken or other interactive dialogue between the firm and the customer during the sale:
   a. the customer is a high net worth mortgage customer; or
   b. the customer is a professional customer; or
   c. the loan is solely for a business purpose;

   and in each case the customer has positively elected to proceed with an execution-only sale and (in the case of a professional customer) identified the product he wishes to purchase; or

3. the customer has rejected advice, identified the product he wishes to purchase and positively elected to proceed with an execution-only sale.

In each case certain requirements must be satisfied.

4.8A.3 Interactive dialogue includes SMS, mobile instant messaging, email and communication via social media sites; this list is not exhaustive. Where a sale is carried out entirely on the internet, a firm merely permitting the customer to input details about the matters specified in MCOB 4.8A.14R (1), (2) or (3) in order to select from the firm’s product range the regulated mortgage
contract he wishes to purchase, or the variation he wishes to enter into, would not be engaging in interactive dialogue. Firms are reminded that, if this process steers the customer towards any one or more of the products offered by it, so as to constitute advice, the requirements of MCOB 4.7A will apply.

The customer’s best interests

4.8A.4  
Firms are reminded that MCOB 2.5A.1 R (The customer’s best interests) applies in all cases, including in relation to execution-only sales.

4.8A.5  
A firm must not encourage a customer to opt out of receiving advice on regulated mortgage contracts from, or reject advice given by, it or any associate.

4.8A.6  
Firms are not prohibited from entering into or arranging execution-only sales for regulated mortgage contracts for customers to whom they have provided product information (where otherwise permitted under this section), but MCOB 2.5A.1 R and MCOB 4.8A.5 R (The customer’s best interests) mean the information they provide should not steer the customer to elect to enter into an execution-only sale.

Cases where execution-only sales are not permitted

4.8A.7  
A firm must not enter into or arrange an execution-only sale for a regulated mortgage contract if:

(1) the customer is intending to use it to exercise a statutory “right to buy” the customer’s home; or

(2) the main purpose of the customer’s entering into it is to raise funds for debt consolidation; or

(3) there is spoken or other interactive dialogue between the firm and the customer at any point during the sale; or

(4) the regulated mortgage contract is a shared equity credit agreement.

4.8A.8  
An attempt by the firm either to:

(1) misdescribe the customer’s purpose or characteristics; or

(2) encourage the customer to tailor the amount he wishes to borrow;

so that MCOB 4.8A.7 R does not apply may be relied on as tending to show contravention of MCOB 2.5A.1 R (The customer’s best interests).

Exceptions: high net worth mortgage customers, professional customers and loans solely for a business purpose

4.8A.9  
(1) MCOB 4.8A.7 R does not apply where the customer is a high net worth mortgage customer.
(2) MCOB 4.8A.7R (3) does not apply where the customer is a professional customer or the loan is solely for a business purpose.

**Exception: rate switches and other variations**

4.8A.10 R

(1) MCOB 4.8A.7 R does not apply in the case of a variation of a regulated mortgage contract, provided that:

(a) the variation would not involve the customer taking on additional borrowing beyond the amount currently outstanding under the existing regulated mortgage contract, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and

(b) where the variation will (in whole or part) change from one interest rate to another, the firm has presented to the customer, using only a non-interactive channel, all products offered by it for which the customer is eligible, whether or not the customer then selects from those products using an interactive channel.

(2) The reference to a variation in (1) (and in all other provisions which cross-refer to this rule) must be read as including any new regulated mortgage contract which would replace an existing regulated mortgage contract between the customer (or, where there are joint borrowers, at least one of them) and the firm (either as the original mortgage lender or as the transferee of the existing contract).

4.8A.11 G

(1) The variation in MCOB 4.8A.10 R might involve: a transfer to a different property (“porting”); the addition or removal of a borrower for joint mortgages; an extension of the term; a change in payment method; or consent to let the property. This list is not exhaustive.

(2) Examples of rate changes in MCOB 4.8A.10R (1)(b) are: a transfer from a variable rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.

(3) Firms are reminded that, if their presentation in MCOB 4.8A.10R (1)(b) has (either explicitly or implicitly) steered the customer towards any one or more of the products offered by them such as to constitute advice, the requirements of MCOB 4.7A will apply.

**Exception: rejected advice**

4.8A.12 R

MCOB 4.8A.7 R does not apply where the customer has rejected advice given by a firm and instead wishes to enter into a different regulated mortgage contract as an execution-only sale (see MCOB 4.8A.14 R).

**Execution-only sales: guidance**

4.8A.13 G

(1) If a firm wishes to be able to apply the exception in MCOB 4.8A.9 R for a high net worth mortgage customer, it should first consider the provision in MCOB 1.2.9CR (Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer).
(2) Where a firm’s business model is such that it does not offer advice on regulated mortgage contracts to particular customers, it should ensure that it does not enter into or arrange regulated mortgage contracts for customers in breach of MCOB 4.8A.7 R. Such a firm may wish to use filtering questions which the customer is required to answer before he is able to proceed, in order to establish whether any of the exceptions to MCOB 4.8A.7 R apply.

Requirements for execution-only sales

A firm must not enter into or arrange an execution-only sale for a regulated mortgage contract unless, except as provided in MCOB 4.8A.15 R:

(1) for a new regulated mortgage contract not falling within MCOB 4.8A.10 R, the customer has identified the regulated mortgage contract he wishes to purchase, specifying to the firm at least the following information:
   (a) the name of the mortgage lender;
   (b) the rate of interest;
   (c) the interest rate type (that is, whether fixed, variable or some other type);
   (d) the price or value of the property on which the regulated mortgage contract would be secured (estimated where necessary);
   (e) the length of the term required by the customer;
   (f) the sum the customer wishes to borrow; and
   (g) whether the customer wants an interest-only mortgage or a repayment mortgage;

(2) for a contract variation not falling within MCOB 4.8A.10 R (but permitted by MCOB 4.8A.7 R), the customer has specified at least the following information, where applicable to the variation he wishes to enter into:
   (a) the price or value of the property;
   (b) the length of term required (or confirmation that this should remain unchanged); and
   (c) the amount the customer wishes to borrow;

(3) for a contract variation falling within MCOB 4.8A.10 R, the customer has specified the variation he wishes to enter into;

(4) the customer has been informed, clearly and prominently and in a durable medium (after providing the information in (1), (2), or (3), where that is required):
   (a) in any case falling within MCOB 4.7A.24 R (Rejected advice) where the firm has advised the customer that the regulated mortgage contract (or variation) is unsuitable for the customer, that that is the case; or
   (b) in any other case, that in the provision of its services for the execution-only sale the firm is not required to assess the suitability of that regulated mortgage contract (or variation);
and in either case that the customer will not benefit from the protection of the rules (in MCOB 4.7A) on assessing suitability. In any case where there is spoken dialogue between the firm and the customer at any point during the sale, the firm must also provide this information orally; and

(5) once the customer has been provided with the information in (4), in any case where there is spoken or other interactive dialogue between the firm and the customer at any point during the sale, he has confirmed, in writing, to the firm that he is aware of the consequences of losing the protections of the rules on assessing suitability and is making a positive election to proceed with an execution-only sale. The written confirmation must be in the same document as the information in durable medium in (4), which must be separate from any other information or contractual documentation.

4.8A.15  The requirements in MCOB 4.8A.14R (1) to (3) do not apply if the customer is a high net worth mortgage customer or entering into the regulated mortgage contract solely for a business purpose.

4.8A.16  Where the information in MCOB 4.8A.14R (4) is given by electronic means, the firm should ensure that the customer cannot progress to the next stage of the sale unless the information has been communicated to the customer.

Managing execution-only sales

4.8A.17  A firm which intends to transact execution-only sales in regulated mortgage contracts must have in place and operate in accordance with a clearly defined policy which:

(1) sets out the amount of business the firm reasonably expects to transact by way of execution-only sales and the steps to be taken by the firm if that business exceeds the expected levels; and

(2) sets out its processes and procedures for ensuring compliance with the rules in MCOB 4.8A; in particular:

(a) how it will ensure in every case that, before proceeding with an execution-only sale it has obtained (where required) a voluntary and informed positive election from the customer in order to comply with MCOB 4.8A.14R (5);

(b) how it will ensure in every case that it acts in compliance with MCOB 2.5A.1 R and MCOB 4.8A.5 R (The customer’s best interests), including not encouraging a customer to enter into a regulated mortgage contract (or variation) as an execution-only sale; and

(c) how it will identify whether a customer meets the definition of high net worth mortgage customer or professional customer, if it will offer execution-only sales to those customers; and

(3) includes the arrangements for monitoring and auditing compliance with the policy, processes and procedures.
Record keeping

(1) Whenever a firm enters into or arranges an execution-only sale for a regulated mortgage contract, it must make and maintain a record of:

(a) the information provided by the customer which satisfies
   MCOB 4.8A.14R (1), (2) or (3);

(b) the information in durable medium in MCOB 4.8A.14R (4);

(c) (where applicable) the confirmation by the customer in
   MCOB 4.8A.14R (5); and

(d) any advice from the firm which the customer rejected, including
   the reasons why it was rejected, before deciding to enter into an execution-only sale.

(2) The record in (1) must be retained for a minimum of three years from the date on which the regulated mortgage contract was entered into or arranged (or the variation was entered into or arranged).

(3) A firm must keep an adequate and up-to-date record of the policy in MCOB 4.8A.17 R, where such policy is required by that rule. When the policy is changed, a record of the previous policy must be retained for one year from the date of change.

Forbearance

MCOB 4.8A does not apply to any variation which is made solely for the purposes of forbearance where the customer has a payment shortfall, or in order to avoid a payment shortfall.
4.9 Business loans and loans to high net worth mortgage customers: tailored provisions

4.9.1 [deleted]

4.9.1A Firms are reminded that in accordance with MCOB 1.2.3 R and MCOB 1.2.3A R, they should comply in full with MCOB, but in doing so may opt to take account of all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgages customers, as the case may be. Therefore, a firm may only follow the tailored provisions in MCOB 4.9 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.

4.9.2 [deleted]

Initial disclosure document

4.9.3 [deleted]

4.9.4 (1) Firms are reminded that MCOB 1.2.7 R enables them to substitute an alternative for 'mortgage' in the initial disclosure in relation to a regulated mortgage contract for a business purpose or a high net worth mortgage customer.

(2) [deleted]

(3) Where the initial disclosure in relation to a regulated mortgage contract for a business purpose or a high net worth mortgage customer makes reference to the permitted business of a firm, a firm can add text explaining the relevance of these descriptions. One approach may be to add an additional sentence
such as: 'Secured overdrafts are referred to here as "mortgages" because they involve a charge being taken over your property'.

4.9.5 [deleted]
4.10 Home purchase plans: sales standards

Scope of service provided

4.10.1 [deleted]

Initial disclosure requirements

4.10.2 [deleted]

4.10.3 [deleted]

4.10.3A A firm must comply with the rules in MCOB 4.4A as if the references in those rules to regulated mortgage contracts and mortgage lenders were to, respectively, home purchase plans and home purchase providers.

4.10.3B For the purposes of MCOB 4.4A.2R (1) there is one relevant market for home purchase plans.

4.10.4 The guidance on initial disclosure requirements in MCOB 4.4A may be relevant; in this context, that guidance should be read using home purchase plan terminology instead of the equivalent regulated mortgage contract terminology, where appropriate.

Additional requirements for distance home purchase mediation contracts with retail customers

Note: The rules regarding additional disclosure requirements for, and cancellation of, distance home purchase mediation contracts are set out in MCOB 4.5 and MCOB 4.6 respectively.

Advised sales: suitability

4.10.5 [deleted]

4.10.5A If a firm gives advice to a particular customer to enter into a home purchase plan, or to vary an existing home purchase plan, it must take reasonable steps to ensure that the home purchase plan is, or after the variation will be, suitable for that customer.
In MCOB 4.10, a reference to advice to enter into a home purchase plan is to be read as including advice to vary an existing home purchase plan.

A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.10.5A R to MCOB 4.10.9A R.

For the purposes of MCOB 4.10.5A R:

1. A home purchase plan will not be suitable for a customer unless the home purchase plan is appropriate to the needs and circumstances of the customer;

2. A firm must base its determination of whether a home purchase plan is appropriate to a customer’s needs and circumstances on the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware;

3. No advice must be given to a customer to enter into a home purchase plan if there is no home purchase plan which is suitable from the product range offered by the firm;

4. If a home purchase provider is dealing with an existing customer in arrears, with a payment shortfall or otherwise in breach of their home purchase plan and has concluded that there is no suitable replacement home purchase plan, the firm must nonetheless have regard to MCOB 13.3; and

5. The reasonable steps in that rule include considering why it is not appropriate for the customer to take out a regulated mortgage contract.

Firms may wish to consider the following provisions:

1. The rule at MCOB 4.7A.6 R on the customer’s needs and circumstances, as if it were guidance and to the extent applicable to home purchase plans; and

2. The guidance at MCOB 4.7A.1G (2), MCOB 4.7A.21 G and MCOB 4.7A.23 G (Other considerations when advising);

in each case using home purchase plan terminology instead of the equivalent regulated mortgage contract terminology, where appropriate.
Rejected recommendations

4.10.9A R
If a customer has rejected the advice given by a firm and instead requested an execution-only sale of a home purchase plan, the firm may enter into or arrange that execution-only sale provided the requirements in MCOB 4.8A.14 R (as applied in relation to home purchase plans by MCOB 4.10.9B R and modified for home purchase plans by MCOB 4.10.9D R) are satisfied.

Execution-only sales

4.10.9B R
MCOB 4.8A applies to a firm as if the references in that section to regulated mortgage contracts and mortgage lenders were to, respectively, home purchase plans and home purchase providers, but MCOB 4.8A.14R (1) and (2) are modified in relation to home purchase plans as set out in MCOB 4.10.9D R.

4.10.9C G
As provided in MCOB 4.1.2B R, MCOB 4.8A only applies to home purchase providers in relation to entering into home purchase plans where there is no firm which is arranging the transaction and to which MCOB 4.8A applies.

4.10.9D R
For home purchase plans, the following items of information replace those set out in MCOB 4.8A.14R (1) and (2):

1. the name of the home purchase provider;
2. the length of the term required by the customer; and
3. the sum required from the home purchase provider.

Risks and features statement and tariff of charges

4.10.10 R
A firm must, before advising a customer to enter into, or entering into or arranging a home purchase plan as an execution-only sale, ensure that the customer is, or has been, provided with an appropriate risks and features statement about that plan.

4.10.11 R
A risks and features statement need not be personalised to the customer’s circumstances but must:

1. include the Key facts logo in a prominent position at the top of the statement;
2. state that the FCA requires a firm to provide the statement;
3. state that mortgages are available and that the customer should think carefully about the product appropriate to his needs;
(4) describe the significant features of the plan, including:
   (a) how the home purchase plan works;
   (b) the nature of the customer’s commitment;
   (c) when and how a customer’s commitment is reviewed;
   (d) any significant restrictions of the plan; and
   (e) the charges that a customer may incur under the plan, including
       the reason for, and amount of, each charge, when they are
       payable, whether they will be reimbursed and, if so, when;

(5) describe the risks associated with the plan, including:
   (a) the risks to the customer if he fails to keep up repayments and
       the circumstances in which this might occur; and
   (b) risks to the customer of the home purchase provider failing or
       disposing of any of its obligations or rights (including its interest
       in the property) to a third party (taking into account steps that
       will be taken by the home purchase provider to mitigate such
       risks); and

(6) state the importance of obtaining independent legal advice.

A firm may omit details of the charges that a customer may incur under a
home purchase plan from the risks and features statement if they are
included in a separate tariff of charges provided to the customer at the same
time.

Record keeping

(1) A firm must make and retain a record:
   (a) of the customer information, including that relating to the
       customer’s needs and circumstances that it has obtained for the
       purposes of MCOB 4.10.5D R;
   (b) that explains why the firm has concluded that any advice given to
       a customer complies with MCOB 4.10.5A R and satisfies the
       suitability requirement in MCOB 4.10.5DR (1); and
   (c) of any advice which the customer has rejected, including the
       reasons why it was rejected and details of the home purchase
       plan which the customer has proceeded with as an execution-only
       sale.

   (2) The records in (1) must be retained for a minimum of three years
       from the date on which the advice was given.

Firms should note the record-keeping requirements in MCOB 4.8A in
relation to execution-only sales which are imposed in relation to home
purchase plans by MCOB 4.10.9B R.
4.11 Sale and rent back: advising and selling standards

Initial disclosure requirements

4.11.1 R

(1) A regulated sale and rent back firm, must make the following disclosures to a customer; both orally and in writing; during the initial contact:

(a) the service the firm is offering the customer, making it clear whether the firm will be acting as a SRB agreement provider, a SRB adviser or a SRB arranger and the particular regulated sale and rent back activities for which the firm has a Part 4A permission;

(b) if the firm is acting as an intermediary, whether it deals with a single or a range of SRB agreement providers and whether or not those providers are authorised under the Act; and

(c) how much the firm will receive in connection with the transaction, whether by way of fees, commissions, charges, retentions or otherwise and whether any such sum will be payable out of the sale proceeds of the property, paid directly by the customer or provider or otherwise and whether or not any of these will be payable if the customer decides not to enter into a regulated sale and rent back agreement.

(2) If the precise fees, commissions, charges, retentions or other sums in (1)(c) are not known in advance, the firm should estimate the amount likely to apply in respect of the transaction.

FCA consumer factsheet on sale and rent back

4.11.2 R

(1) As soon as the customer expresses an interest in becoming a SRB agreement seller, a regulated sale and rent back firm must provide him with the Money Advice Service consumer factsheet on sale and rent back in a durable medium which may be accessed through http://www.moneyadviceservice.org.uk

(2) The firm on providing the Money Advice Service consumer factsheet in (1) to the customer must give him an oral explanation of it, so as to ensure that the customer fully understands its contents.

Advised sales

4.11.3 R

A regulated sale and rent back firm must not permit a potential SRB agreement seller to become contractually committed to enter into a regulated sale and rent back agreement unless it has reasonable grounds to
be satisfied that a firm with permission to advise on regulated sale and rent back agreements has advised the particular customer to enter into it.

**Suitability**

4.11.3A  A firm must take reasonable steps to ensure that it does not advise a particular customer to enter into a regulated sale and rent back agreement unless the regulated sale and rent back agreement is suitable for that customer.

4.11.3B  A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.11.3A R.

4.11.3C  For the purposes of MCOB 4.11.3A R:

1. a regulated sale and rent back agreement will not be suitable unless, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm concludes on reasonable grounds that:
   a. the customer can afford the payments he will be liable to make under it; and
   b. the proposed regulated sale and rent back agreement is appropriate to the needs and circumstances of the customer;

2. a firm must base its determination of whether a customer can afford the payments he will be liable to make under a regulated sale and rent back agreement, and whether it is appropriate to his needs and circumstances, on the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware;

3. no advice must be given to a customer to enter into a regulated sale and rent back agreement if there is no regulated sale and rent back agreement which is suitable from within the product range offered by the firm.

4.11.4  (1) In assessing whether a customer can afford to enter into a particular regulated sale and rent back agreement, a firm should use the following information:

   a. the rental payments that will be due under the tenancy agreement which confers the right of the customer (or trust beneficiary or related party) to continue residing in the property, stress tested to take account of possible future rental increases during the fixed term of the tenancy agreement by reference to the circumstances in which the agreement permits increases or changes to the initial rent;

   b. adequate information, obtained from the customer to establish his average income and expenditure calculated on a monthly basis, and any other resources that he has available, and verified by the firm using evidence provided by the customer;

   c. the customer’s net disposable income, which a firm should establish using the information referred to in (b);
(d) the customer’s entitlement to means-tested benefits and housing benefits; and
(e) the effect of any likely future change to the customer’s income, expenditure or resources during the period of the regulated sale and rent back agreement.

(2) The firm should explain to the customer that it will base its assessment on whether he can afford to enter into the particular regulated sale and rent back agreement on the information he provides to the firm about his income, expenditure and resources.

(3) In assessing affordability under (1) the firm:
   (a) must not rely to a material extent on the capital of, or income from, any lump sum the customer receives which represents the net sale proceeds of the property; and
   (b) must disregard any discount or any future sum that may be payable to the customer under the terms of the regulated sale and rent back agreement.

(4) Contravention of (1), (2) or (3) may be relied upon as tending to show contravention of MCOB 4.11.3CR (1)(a).

In assessing whether the regulated sale and rent back agreement is appropriate to the needs and circumstances of the customer for the purposes of MCOB 4.11.3CR (1)(b), as a minimum requirement a firm must consider the following list of factors:

(1) whether it is appropriate for the customer to sell his property for a price less than its value (as determined by the valuation which is required by MCOB 6.9.2 R, including where applicable a valuation obtained by the SRB agreement seller as described in MCOB 6.9.2R (4)) (where this is proposed under the regulated sale and rent back agreement);

(2) whether it is appropriate for the customer because he is in financial difficulty;

(3) whether all other options have been explored and eliminated, including the customer speaking to his home finance provider and other creditors, getting debt advice, releasing the equity by other means and checking whether he is eligible for government or local authority help;

(4) whether it would be more appropriate for the customer to sell his home on the open market;

(5) whether the benefits to the customer in entering into the proposed regulated sale and rent back agreement outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits;

(6) the feasibility of the customer raising funds by alternative methods other than by a sale of his property; and
4.11.4B The following may be relied on as tending to show contravention of MCOB 2.5A.1 R (The customer’s best interests):

(1) an attempt by the firm to misdescribe the customer’s reasons for considering a regulated sale and rent back agreement; or

(2) an attempt to encourage a customer to enter into a regulated sale and rent back agreement involving a sale price for his property which is less than its value (as determined by the valuation which is required by MCOB 6.9.2 R, including where applicable a valuation obtained by the SRB agreement seller as described in MCOB 6.9.2R (4)) if he is not under threat of repossession.

4.11.4C Firms are reminded that the list in MCOB 4.11.4A R is not exhaustive. For certain customers there may be additional considerations to explore beyond those described in that rule.

4.11.5 [deleted]

4.11.6 In considering the customer’s entitlement to the means-tested benefits and housing benefits for the affordability and appropriateness assessment, a firm may rely on information provided to it by the customer, provided it is satisfied on reasonable grounds that the customer has received advice from the appropriate HM Government department or other appropriate source of independent advice as to his position.

4.11.7 (1) A consideration of the customer’s benefits position will need to focus on whether, by entering into the proposed regulated sale and rent back agreement, his entitlement to means-tested benefit will be adversely affected because of his receipt of the net proceeds of sale (if any) of the property. The customer’s possible loss of entitlement to claim housing benefit should also be assessed. Where a firm has insufficient knowledge of means-tested and housing benefits to reach a conclusion on this, it should advise the customer to contact the appropriate HM Government department or other appropriate source of independent advice to establish the position. The firm should then wait for the customer to obtain the relevant information before proceeding with its assessment.

(2) The firm should consider whether a customer with a payment shortfall under his regulated mortgage contract or home purchase plan has contacted his mortgage lender or home purchase provider to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that might apply in the customer’s circumstances.

(3) Firms are reminded that under MCOB 4.11.2R they are required to provide the customer with the FCA consumer factsheet on sale and
rent back and give him an oral explanation of its contents. The FCA expects this to be done in the course of a face-to-face meeting. Firms will be expected in the course of this discussion with the customer to explain alternative options that may be available to him, such as liaising with his mortgage lender or home purchase provider to negotiate a forbearance strategy or approaching his local authority about the availability of mortgage rescue schemes.

Record keeping

4.11.8 A firm must make and retain a record of the customer information that has been provided to it, including that relating to:

(a) the customer’s income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments;

(b) the customer’s needs, objectives and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and

(c) the customer’s entitlement to means-tested benefits and housing benefits, including any evidence provided by the customer, that it has obtained from him for the affordability and appropriateness assessment;

and which explains why the firm concluded that the regulated sale and rent back agreement was suitable for the customer and why it advised him to enter into it.

4.11.9 A firm need not comply with the requirements imposed on a regulated sale and rent back firm in this section to the extent that it is satisfied on reasonable grounds that another firm, with the appropriate permission to do so, has already done so.

4.11.10 The effect of MCOB 4.11.9R is that a SRB agreement provider is expected to advise in relation to a particular regulated sale and rent back agreement, unless it is reasonable for it to rely on another firm with permission to advise on regulated sale and rent back agreements, to have done so in relation to a particular transaction.
Additional information requirements in respect of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers

This table belongs to MCOB 4.5.2 R

### Additional information for distance contracts with retail customers consumers

All the contractual terms and conditions on which the service will be provided including, in particular, the following information:

| (1) | where the *firm* has a representative established in the consumer's EEA State or other country of residence, the identity of that representative and the geographical address relevant to the consumer's relations with him; |
| (2) | where the consumer's dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the consumer, and the geographical address relevant to the consumer's relations with that professional; |
| (3) | in relation to the contract:  
(a) any limitations of the period for which the information provided is valid;  
(b) in relation to services performed permanently or recurrently, the minimum duration of the contract; |
| (4) | in relation to the cost of the service:  
(a) notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it; and  
(b) any specific additional cost to the consumer, if any, for using a means of distance communication; |
| (5) | the existence or absence of a right to cancel. Where there is such a right:  
(a) its duration and the conditions for exercising the right to cancel, including information on the amount which the consumer may be required to pay (or which may not be returned to the consumer) if the contract is terminated early or unilaterally under its terms;  
(b) the consequences of not exercising the right to cancel; and  
(c) practical instructions for exercising the right to cancel, including as a minimum the method in MCOB 4.6.5 R (1), details of the address to which the cancellation notice should be sent and the fact that the notice must clearly indicate, however expressed, the consumer's intention to cancel the contract; and |
| (6) | details of:  
(a) the EEA State or States whose laws are taken by the *firm* as a basis for the establishment of relations with the customer prior to the conclusion of the regulated mortgage contract, home purchase plan or regulated sale and rent back agreement;  
(b) any contractual clause on law applicable to the regulated mortgage contract, home purchase plan or regulated sale and rent back agreement or on competent court, or both; and  
(c) the language in which the contract is supplied and in which the *firm* will communicate during the course of the regulated mortgage contract, home purchase plan or regulated sale and rent back agreement. |