

Chapter 4

Advising and selling standards

4.1 Application

Who?

4.1.1 **R** This chapter applies to a *firm* in a category listed in column (1) of the table in **■ MCOB 4.1.2 R** in accordance with column (2) of that table.

4.1.2 **R** This table belongs to **■ MCOB 4.1.1 R**

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	except in relation to <i>lifetime mortgages</i> : MCOB 4.1 to MCOB 4.4A, 4.6A, MCOB 4.8A in accordance with MCOB 4.1.2A R and MCOB 4.9
<i>mortgage adviser</i>	except in relation to <i>lifetime mortgages</i> : whole chapter except MCOB 4.10
<i>mortgage arranger</i>	except in relation to <i>lifetime mortgages</i> : whole chapter except MCOB 4.7A and MCOB 4.10
<i>home purchase provider</i>	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.
<i>home purchase adviser</i>	MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.10. MCOB 4.4A, MCOB 4.7A and MCOB 4.8A in accordance with MCOB 4.10
<i>home purchase arranger</i>	As for a <i>home purchase adviser</i> except MCOB 4.10.5A R to MCOB 4.10.9A R, MCOB 4.10.13 R and MCOB 4.7A do not apply
<i>equity release provider</i> <i>equity release adviser</i> <i>equity release arranger</i>	see MCOB 8.3 for the application of this chapter
<i>SRB adviser</i>	MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.11
<i>SRB arranger</i>	MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.11
<i>SRB agreement provider</i>	MCOB 4.1, MCOB 4.2 and MCOB 4.11

- 4.1.2A **R** ■ 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 **R** ■ 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 **G** ■ 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 **G** ■ 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?**
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- 4.1.3 **R** 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 **R** (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 **R** In relation to an *equity release transaction*, this chapter is modified by ■ MCOB 8 (Equity release: advising and selling standards).
- 4.1.6 **G** [deleted]
- 4.1.7 **G** 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)).

4.1.8

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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

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- (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 **R** 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 **R** (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 **G** (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).

4.4A.3A **G** 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.

4.4A.4 **R**

- (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.1 R**, 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*]

4.4A.5 **G** 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.

4.4A.6 **G** 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)]."

4.4A.7

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- “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

4.4A.8

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- (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

4.4A.8A

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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*.

4.4A.8AA

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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*.

4.4A.8B G *Firms are not obliged to explore whether one of the alternative finance options mentioned in ■ MCOB 4.4A.8AR or ■ MCOB 4.4A.8AAR is more appropriate for the customer where that is not the service offered to the customer.*

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

4.4A.9 R The information required by ■ MCOB 4.4A.1 R, ■ MCOB 4.4A.2 R, ■ MCOB 4.4A.4R (1), ■ MCOB 4.4A.8 R and ■ MCOB 4.4A.8A R 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]
- (1A) 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
- (2) 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*]

4.4A.10 G

- (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]

(3) [deleted]

(4) [deleted]

4.4A.11 **G** 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.....

4.4A.12 **R** 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*]

4.4A.13 **G** (1) 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.

(2) ■ 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 **G** *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 **R** 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 **G** 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 **R** 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 **R** 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 G

- (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 G

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4.4A.20A G

- (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 R

- (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

4.4A.22 **R** 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

4.4A.23 **G** *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

G

- (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

R

- 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 **G** 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 **G** 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 **G** 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 **R**

- (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

- (b) the day on which the *consumer* receives the contractual terms and conditions and other information required by ■ MCOB 4.4 and ■ MCOB 4.5.

Exercising the right to cancel

4.6.5 **R** 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 **R** 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 **G** 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 **R** 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 **G** 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 **R** 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);
 - (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

4.6.11

R

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** **R** *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** **R** *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 4.7A) provided the *firm* has taken reasonable steps to ensure that that different contract is suitable for the *customer*.

4.7A.4A **G** *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 **R** 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 **R** 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 **G** *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 **G** 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 **R** 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 **G** ■ 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 **R**
- (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

4.7A.11 **R** 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.

4.7A.12 **R** 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.

4.7A.13 **R** 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*.

4.7A.14 **E** 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

4.7A.14A **R** 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 **R** 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 **E** 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 **R**

4.7A.18 **G**

Other considerations when advising

4.7A.19 **R** 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 **G** 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 **G** 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 G 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 G 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 G 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 **G** *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 **R** 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 **G** *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 **R** 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 **E** 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 **R** (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 1.2.9C R (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

4.8A.14

R

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);

4

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 R 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 G 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 R 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

4.8A.18

R

- (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

4.8A.19

R

■ 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 **R** [deleted]

4.9.1A **G** *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 mortgage 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 **G** [deleted]

Initial disclosure document.....

4.9.3 **G** [deleted]

- 4.9.4** **G**
- (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

R

[deleted]



4.10 Home purchase plans: sales standards

Scope of service provided

4.10.1 **R** [deleted]

Initial disclosure requirements

4.10.2 **R** [deleted]

4.10.3 **G** [deleted]

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

4.10.4 **G** 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 **G** [deleted]

4.10.5A **R** 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.

- 4.10.5B** **R** 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*.
- 4.10.5C** **G** 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**.
- 4.10.5D** **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*.
- 4.10.6** **R** [deleted]
- 4.10.6A** **G** **■ MCOB 4.10.5DR (3)** has the effect that a *firm* cannot recommend the 'least worst' *home purchase plan* where the *firm* does not have access to *home purchase plan* products appropriate to the *customer's* needs and circumstances.
- 4.10.7** **G** *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.

4.10.8 **R** [deleted]

4.10.9 **G** [deleted]

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.

4.10.12 R 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.....

4.10.13 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 4.10.5D 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.

4.10.14 G *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 **R** 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 **G** 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 **R** 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 **E**

- (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).

4.11.4A

R

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

(7) if the *customer* is not under threat of repossession, why it is appropriate for the *customer* to take out a *regulated sale and rent back agreement* rather than to use an alternative method of finance.

4.11.4B **E** 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 **G** *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 **E** [deleted]

4.11.6 **G** 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 **G**

- (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

R

- (1) 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..
- (2) The record in (1) must be retained for a minimum of five years from the date on which the assessment of suitability was made, or one year after the end of the fixed term of the tenancy agreement under the *regulated sale and rent back agreement*, if later.

Reliance on another firm

4.11.9

R

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

G

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 <i>firm</i> has a representative established in the <i>consumer's EEA State</i> or other country of residence, the identity of that representative and the geographical address relevant to the <i>consumer's</i> relations with him;
(2)	where the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant to the <i>consumer's</i> 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 <i>firm</i> or imposed by it; and (b) any specific additional cost to the <i>consumer</i> , 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 <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) 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 <i>consumer's</i> intention to cancel the contract; and
(6)	details of: (a) the <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>customer</i> prior to the conclusion of the <i>regulated mortgage contract, home purchase plan or regulated sale and rent back agreement</i> ; (b) any contractual clause on law applicable to the <i>regulated mortgage contract, home purchase plan or regulated sale and rent back agreement</i> or on competent court, or both; and (c) the language in which the contract is supplied and in which the <i>firm</i> will communicate during the course of the <i>regulated mortgage contract, home purchase plan or regulated sale and rent back agreement</i> .

