Chapter 4

Advising and selling standards

MCOB 4 : Advising and selling standards

Section 4.5 : Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation...

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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.

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(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.

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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]

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