

Chapter 4

Advising and selling standards

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
 - (2A) if there is spoken or other interactive dialogue between the *firm* and the *customer* during the sale, the *firm's* contribution to the dialogue is limited to:
 - (c) factual information about a *regulated mortgage contract* (provided that it is not personalised to the *customer*), the process of applying for one, or the processing of an application; the making of arrangements related to such matters;
 - (b) the provision of an *European Standardised Information Sheet (ESIS)* or an *illustration*; or

- (c) an explanation of the information provided under ■ MCOB 4.8A.14R(4) (that the *firm* has not assessed the suitability of the *regulated mortgage contract*); 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* they wish to purchase, or the variation they wish to enter into, would not be engaging in interactive dialogue.

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*.

- 4.8A.6A G *Firms* will not be treated as having breached ■ MCOB 2.5A.1R or ■ MCOB 4.8A.5R merely because they market *execution-only sales* or apply different pricing to *execution-only sales* from that applied to advised sales, provided that they act in a manner consistent with their obligations under the *regulatory system*, including the requirements of this section.

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

4.8A.7A

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The *firm* may carry on a spoken or other interactive dialogue with the *customer*, provided that the content of the *firm's* contribution to the dialogue is limited to:

- (3) there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale, except as described by ■ MCOB 4.8A.7AR; or
- (4) the *regulated mortgage contract* is a *shared equity credit agreement*.

4.8A.7B

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- (1) If the interaction with the *customer* constitutes or includes advice or a recommendation (see ■ PERG 4.6), the sale cannot be an *execution-only sale* and the *firm* would need to comply with ■ MCOB 4.7A (Advised sales).
- (2) ■ MCOB 4.8A.7AR allows some interaction with a *customer* without the dialogue triggering the need for the *firm* to give advice in compliance with ■ MCOB 4.7A.
- (3) ■ MCOB 4.8A.7AR would, for example, permit a *firm* to provide generic information to a *customer* in response to a telephone query about the *firm's* products, fees and charges, about processes and timescales, about how to complete an application, or about the progress of the application. But information about a *regulated mortgage contract* which is personalised to the *customer* is not permitted, for example giving an estimate of the monthly payment due in respect of the amount that the *customer* wishes to borrow under the product they wish to take: giving such information would mean the *firm* would need to comply with ■ MCOB 4.7A. The *firm* may, however, issue an *illustration* or an *European Standardised Information Sheet (ESIS)* which contains information personalised to the *customer* without that action triggering the need for advice. The *firm* may also explain to the *customer* the information which the *firm* provides in accordance with ■ MCOB 4.8A.14R(4) (in relation to the *firm* not assessing the suitability of the *regulated mortgage contract*).
- (4) Examples of spoken or other interactive dialogue which are or are not permitted under ■ MCOB 4.8A.7AR include:

Providing the *customer* This would be permitted, if the provision

with copies of product literature, or weblinks to such literature	is in response to a request from a <i>customer</i> who has identified the main features of the mortgage they want and is accompanied by an indication that the products described in the literature all have those features (see PERG 4.6.15G(6)).
Listing the current fixed and variable rates on offer	This would be permitted.
Explaining the advantages and disadvantages of fixed rate and variable rate mortgages	This would be permitted if done in purely generic terms, provided that the explanation does not itself constitute advice (see PERG 4.6.15G(2) and 4.6.16G) which would prevent the sale from proceeding as an <i>execution-only sale</i> . Where the explanation is couched in the terms of the <i>customer's</i> circumstances, it is personalised to the <i>customer</i> . As such, the interaction is not of a sort permitted by MCOB 4.8A.7AR , the sale cannot be an <i>execution-only sale</i> and the <i>firm</i> would need to comply with MCOB 4.7A .
Giving the <i>customer</i> an indication of the monthly cost of a <i>regulated mortgage contract</i>	This would be permitted, if it were in the form of a generic example, including by way of comparison of two mortgages. But this would not be permitted if it were an indication personalised to the <i>customer</i> , for example where the indication is of the monthly cost in respect of the amount which the <i>customer</i> wishes to borrow over the term for which the <i>customer</i> wishes to borrow it; such an interaction will trigger the need for advice and the <i>firm</i> would need to comply with MCOB 4.7A .
Talking the <i>customer</i> through a decision tree	This would not be permitted. Although the question of whether decision trees constitute advice is discussed at PERG 4.6.15G , the act of talking the <i>customer</i> through such a decision-making process is likely to involve doing more than merely providing the <i>customer</i> with factual information; as that interaction is not of a sort permitted by MCOB 4.8A.7AR , the sale cannot be an <i>execution-only sale</i> and the <i>firm</i> would need to comply with MCOB 4.7A .
Responding to a query about how to fill out an application form (for example: telling a <i>customer</i> what supporting documents are acceptable as proof of address or identity and how to supply them, or how to calculate and report their income or expenditure)	This would be permitted, as it is information about the process of applying for a mortgage and the making of arrangements (how to supply supporting evidence) related to that process.

Discussing the use of panel solicitors

This would be permitted, provided such discussions are limited to factual information about, for example, whether or not a particular firm of solicitors is on the lender's panel and what legal fees are or are not included in the mortgage offer.

Taking credit card details by phone to cover payment of a required valuation

This would be permitted, as it is about the making of practical arrangements related to the processing of an application for a *regulated mortgage contract*.

Rescheduling a property valuation

This would be permitted because the interaction is about the making of arrangements related to the processing of the application.

Calling the *customer* to tell them that an application for a *regulated mortgage contract* needs to be submitted in the next two days if a new (higher) interest rate is not to apply

This would be permitted, if it were in the form of a generic communication about the *firm* planning to change its product offering or interest rates in the near future, and indicating the deadline for applying for the current product.

However, a communication about a particular *regulated mortgage contract* that the *firm* knows or reasonably suspects the *customer* may wish to apply for, and the product it will be replaced with or the rate that will apply if an application for such a product is received after a particular date, would not be permitted as this is information which is personalised to the *customer*.

4.8A.8

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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

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- (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

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- (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;

- (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; and
- (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).
- (3) Where a *customer* informs their existing *mortgage lender* that they are considering redeeming their *regulated mortgage contract* by refinancing it with a *regulated mortgage contract* through another *mortgage lender*, ■ MCOB 4.8A.7R(3) does not apply to the existing *mortgage lender* provided that:
- (a) the *customer* specifies to the existing *mortgage lender* at least the following information in relation to the replacement *regulated mortgage contract*:
 - (i) the rate of interest;
 - (ii) the interest rate type (that is, whether fixed, variable or some other type);
 - (iii) the length of the term required by the *customer*;
 - (iv) the sum the *customer* wishes to borrow; and
 - (v) whether the customer wants an *interest-only mortgage* or a *repayment mortgage*; and
 - (b) the existing *mortgage lender* presents to the *customer*, in a *durable medium*, those of its products for which the *customer* is eligible and which match the features the *customer* specifies.

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) [deleted]
- (4) Where a *firm's* range of *regulated mortgage contracts* has changed, for example where a new *regulated mortgage contract* has been added since the *firm* presented its list of *regulated mortgage contracts* to the *customer*, the sale may proceed as an *execution-only sale* only if the *firm* re-presents the new list. For example, if the *firm* now offers a 3 year fixed deal where previously they only offered 2 year or 5 year fixed deals, the *firm* would need to re-present the new list. But where the *firm* no longer offers a particular *regulated*

mortgage contract, the *firm* does not need to re-present the list for the purposes of ■ MCOB 4.8A.10R(1).

- (5) *Firms* are reminded of *Principles* 6 and 7: that is, that they must pay due regard to the best interests of their *customers* and treat them fairly; and that they must pay due regard to the information needs of their *clients*, and communicate information to them in a way which is clear, fair and not misleading. Where features of a product have changed in such a way that the product is in effect no longer recognisable as the same product, *firms* should re-present the new list of products. Similarly, *firms* should re-present the new list of products where there is any change to interest rates, fees or other charges which is likely to be material to the *customer's* decision as to whether or how to vary a *regulated mortgage contract*.

Exception: rejected advice

4.8A.12

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■ 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

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- (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

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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, either clearly and prominently and in a *durable medium* or in an oral statement that is audio or video recorded (after providing the information in (1), (2), or (3), where that is required), and with the information required by this paragraph being separate from any other information or contractual documentation):
- (a) in any case falling within ■ MCOB 4.7A.24 R (Rejected advice) where the *firm* has advised the *customer* that the *regulated mortgage contract* (or variation) is unsuitable for the *customer*, that that is the case; or
 - (b) in any other case, that in the provision of its services for the *execution-only sale* the *firm* is not required to assess the suitability of that *regulated mortgage contract* (or variation);
- and in either case that the *customer* will not benefit from the protection of the rules (in ■ MCOB 4.7A) on assessing suitability. In any case where there is spoken dialogue between the *firm* and the *customer* at any point during the sale, other than dialogue of a sort permitted by ■ MCOB 4.8A.7AR, the *firm* must provide this information orally (even if it also provides it in a *durable medium*); 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, the *customer* has confirmed in writing to the *firm*, or has confirmed orally to the *firm* (and that confirmation is audio or video recorded), that they are aware of the consequences of losing the protections of the *rules* on assessing suitability and are making a positive election to proceed with an *execution-only sale*.

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*.

4.8A.16A **G** The confirmation required by ■ MCOB 4.8A.14R(5) need not be in the same document or recording as the information required by ■ MCOB 4.8A.14R(4).

Managing execution-only sales

4.8A.17 **R** [deleted]

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 provision of the information 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) [deleted]

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*.