

Chapter 5A

MCD Pre-application disclosure



5A.4 Provision of a European Standardised Information Sheet (ESIS)

Timing

5A.4.1

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- (1) A firm must provide the consumer with an ESIS for an MCD regulated mortgage contract before the consumer submits an application for that MCD regulated mortgage contract to an MCD mortgage lender, unless an ESIS for that MCD regulated mortgage contract has already been provided.
- (2) Except in the circumstances in ■ MCOB 5A.4.2 R, a firm must provide the consumer with an ESIS for an MCD regulated mortgage contract when any of the following occurs, unless an ESIS for that MCD regulated mortgage contract has already been provided:
 - (a) the firm advises the particular consumer to enter into that MCD regulated mortgage contract, then an ESIS must be provided at the point the advice is given, unless the advice is given by telephone, in which case the firm must provide an ESIS within five business days; or
 - (b) the consumer requests an ESIS for that MCD regulated mortgage contract, unless the firm is aware that it is unable to offer that regulated mortgage contract to them; or
 - (c) as part of an execution-only sale (or potential execution-only sale) the consumer has provided the firm with the information in ■ MCOB 4.8A.14R (1) to ■ MCOB 4.8A.14R (3) to indicate which MCD regulated mortgage contract they wish to enter into.
- (3) Except in the circumstances in ■ MCOB 5A.4.2 R, and unless an ESIS for that MCD regulated mortgage contract has already been provided, a firm must provide the consumer with an ESIS for an MCD regulated mortgage contract:
 - (a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences under ■ MCOB 11.6.5R (2) (assessment of affordability) and ■ MCOB 11.6.34R (2) (alternative provisions for loans with high net worth mortgage customers); and
 - (b) in good time before the consumer is bound by any MCD regulated mortgage contract or offer.

[Note: article 14(1) of the MCD]

- 5A.4.2** **R** A *firm* need not provide an *ESIS*:
- (1) in relation to a *direct deal*;
 - (2) if the *consumer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *consumer* is not interested in pursuing the enquiry; or
 - (3) if the *firm* does not wish to do business with the *consumer*.
- 5A.4.3** **R** If the *firm* chooses not to give an *ESIS* in the circumstances in **■** MCOB 5A.4.2R (1), where it has given advice on a *direct deal*, the *firm* must give the *consumer* a written record of the advice.
- 5A.4.4** **G** In the circumstances in **■** MCOB 5A.4.2R (2), the *rule* in **■** MCOB 5A.4.1R (1) will mean that the *consumer* may not make an application for an *MCD regulated mortgage contract*, as an *ESIS* has not been provided.
- 5A.4.5** **G** The effect of **■** MCOB 5A.2.1 R and **■** MCOB 5A.4.1R (1) is that, if a *consumer's* application to enter into an *MCD regulated mortgage contract* with a *MCD mortgage lender*, made through an *MCD credit intermediary*, is subsequently passed by that *firm* to another *MCD mortgage lender*, then the *firm* must ensure that the application is amended and the *consumer* is provided with an *ESIS* for the other *MCD mortgage lender's MCD regulated mortgage contract* before the application is passed to the other *MCD mortgage lender*.
- 5A.4.6** **G** If a *firm* chooses to issue an *offer document* in addition to an *ESIS*, it will need to comply with MCOB 6A.3.1R (MCD Mortgages: content of the offer document).
- 5A.4.7** **R** A *firm* must not undertake any action that commits the *consumer* to an application (including accepting product-related fees for the *MCD regulated mortgage contract* concerned) until the *consumer* has had the opportunity to consider an *ESIS*.
- 5A.4.8** **G** The effect of **■** MCOB 5A.4.1R (1) and **■** MCOB 5A.4.7 R is that a *consumer* will be deemed to be committed to an application if, for example, they pay a product-related fee (including a valuation fee) or provides electronic or verbal authority to process an application. It is not necessary for a *consumer* to provide an *MCD mortgage lender* with a completed application form to submit an application for an *MCD regulated mortgage contract*.
- 5A.4.9** **R** The *firm* dealing directly with the *consumer* is responsible for ensuring compliance with the content and timing requirements, ie, an *MCD mortgage lender* is not responsible for ensuring that a *consumer* has received an *ESIS* before accepting an application from an *MCD mortgage credit intermediary*.
- 5A.4.10** **R** Where a *firm* has already provided an *ESIS* under **■** MCOB 5A.4.1 R and the terms for the proposed *regulated mortgage contract* are subsequently materially altered or different, the *firm* must ensure that the *consumer* is

provided with a revised *ESIS*, before acting on the amendment, when the change occurs at the point that a *consumer* submits an application for the *MCD regulated mortgage contract*.

5A.4.11

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What constitutes “materially altered” or “different” requires consideration of the facts of each individual case. For example, a change of product such that the underlying terms and conditions of the *MCD regulated mortgage contract* have changed should normally be regarded as material or different, as would an additional charge, such as a *higher lending charge*, applying to the *MCD regulated mortgage contract* when it did not previously.

Uncertainty whether a mortgage is regulated

5A.4.12

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- (1) If, at the point an *ESIS* must be provided under ■ MCOB 5A.4.1 R, a *firm* is uncertain whether the contract will be an *MCD regulated mortgage contract*, the *firm* must:
 - (a) provide an *ESIS*; or
 - (b) seek to obtain from the *consumer*, information that will enable the *firm* to ascertain whether the contract will be an *MCD regulated mortgage contract*.
- (2) Where (1)(b) applies, an *ESIS* must be provided, unless, on the basis of the information provided by the *consumer*, the *firm* has reasonable evidence that the contract is not an *MCD regulated mortgage contract*.

Providing an ESIS without delay in response to a customer request

5A.4.13

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Where the *consumer* requests an *ESIS* for a particular *MCD regulated mortgage contract* (see ■ MCOB 5A.4.1R (2)(b)), the purpose of ■ MCOB 5A.4.14 R, ■ MCOB 5A.4.15 R and ■ MCOB 5A.4.16 G is to ensure that the *consumer* receives an *ESIS* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *consumer* after it has provided the *consumer* with an *ESIS*.

5A.4.14

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- In meeting a request for an *ESIS* under ■ MCOB 5A.4.1R (2)(b), the *firm* must not delay the provision of the *ESIS* by requesting information other than:
- (1) such information as is necessary to complete the *ESIS* in accordance with ■ MCOB 5A.5.2 R and ■ MCOB 5A.5.3 R, if the *firm* does not already know it;
 - (2) where the *firm* acts in accordance with ■ MCOB 5A.4.12R (2), such information as is necessary to ascertain whether or not the contract will be an *MCD regulated mortgage contract*;
 - (3) where the interest rates, payments or any other terms and conditions to be included in the *ESIS* are dependent on the *consumer's* credit record, such information as is necessary to produce an *ESIS*;
 - (4) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *ESIS*, such information as is necessary to produce those quotations;

- (5) any of the following information where it affects the availability of the *MCD regulated mortgage contract* that the *consumer* has requested information on, or affects the information to be included in, the *ESIS*:
 - (a) whether the *consumer* is a first-time buyer, a subsequent buyer moving home or entering into an *MCD regulated mortgage contract* without moving home;
 - (b) whether the *MCD regulated mortgage contract* is required for a right-to-buy purchase or for a shared ownership purchase;
 - (c) the location of the property to be purchased, where known; and
 - (d) whether the terms are dependent on a third-party guarantee.

5A.4.15 **R** Where **■** MCOB 5A.4.14R (3) applies:

- (1) a *firm* must ask the *consumer* relevant questions about their credit history or obtain information on their credit record from a credit reference agency;
- (2) a credit reference agency must not be used unless:
 - (a) it would be quicker than asking the *consumer* the relevant questions about their credit history; or
 - (b) the *consumer* is not able to provide sufficient information on their credit history.

5A.4.16 **G** A *firm* may use information that it already holds on the *consumer* for the purpose of producing the *ESIS* (for example, if it already holds the *consumer's* credit record), providing the use of this information does not delay the *consumer* receiving the *ESIS* and the *consumer's* consent is obtained, where appropriate.

5A.4.17 **R** If, on the basis of the information obtained from the *consumer* or, on the basis of information that the *firm* already holds on the *consumer*, the *firm* would do business with the *consumer* but not on the terms requested, the *firm* may provide the *consumer* with an *ESIS* for a different *MCD regulated mortgage contract*, if it chooses to do so.