

## SALE AND RENT BACK INSTRUMENT 2010

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 145 (Financial promotion rules);
    - (c) section 149 (Evidential provisions);
    - (d) section 156 (General supplementary powers);
    - (e) section 157(1) (Guidance); and
    - (f) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. (1) Annex C (FEES) comes into force on 29 January 2010.  
 (2) The remainder of this instrument comes into force on 30 June 2010.

### Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Fees manual (FEES)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex E
Supervision manual (SUP)	Annex F

### Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument.

**Notes**

- F. In this instrument, the “notes” (indicated by “**Note:**”), and the “*Editor’s Note*”, are included for the convenience of readers but do not form part of the legislative text. The *Editor’s Note* will not be reproduced in the Handbook.

**Citation**

- G. This instrument may be cited as the Sale and Rent Back Instrument 2010.

By order of the Board  
28 January 2010

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>distance regulated sale and rent back mediation contract</i>	<p>a <i>distance contract</i>, the making or performance of which constitutes, or is part of:</p> <ul style="list-style-type: none"> <li>(a) <i>advising on a regulated sale and rent back agreement</i>; or</li> <li>(b) <i>arranging (bringing about) a regulated sale and rent back agreement</i>; or</li> <li>(c) <i>making arrangements with a view to a regulated sale and rent back agreement</i>; or</li> <li>(d) <i>agreeing to carry on a regulated sale and rent back mediation activity in (a) to (c).</i></li> </ul>
<i>SRB intermediary</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) to carry on a <i>regulated sale and rent back mediation activity</i> .

Amend the following definitions as shown.

<i>client</i>	<p>...</p> <p>(8) <u>(in relation to a regulated sale and rent back agreement, except in PROF):</u></p> <ul style="list-style-type: none"> <li>(a) <u>the individual or trustee who is the SRB agreement seller or potential SRB agreement seller; or</u></li> <li>(b) <u>an individual who is an unauthorised SRB agreement provider or potential unauthorised SRB agreement provider and who does not have, or would not be required to have, permission to enter into a regulated sale and rent back agreement.</u></li> </ul>
<i>specified investment</i>	<p>...</p> <p>(od) <u>regulated sale and rent back agreement (article 63J(3));</u></p> <p>...</p>

*SRB agreement seller* (in accordance with article 63J(3)(a) of the *Regulated Activities Order*) an individual or trustees, ~~or a related party of his,~~ who sells all or part of the *qualifying interest in land* in the *United Kingdom* to an agreement provider under a *regulated sale and rent back agreement* ~~and who is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so.~~

## Annex B

### Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 4.2 Purpose

...

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

...

- (4) for *electronic commerce activities* carried on from an *establishment* in the *United Kingdom*, in *COBS 5.2*, *ICOBS 3.2* and *MCOB 2.8*; ~~and~~
- (5) for *regulated mortgage contracts* and *home purchase plans*, initial disclosure requirements in *MCOB 4*, pre-application disclosure requirements in *MCOB 5*, and disclosure at the offer stage in *MCOB 6*; ~~and~~
- (6) for *equity release transactions*, initial disclosure requirements in *MCOB 8.4*, pre-application disclosure requirements in *MCOB 9.4* and disclosure at the offer stage in *MCOB 9.5*; and
- (7) for *regulated sale and rent back agreements*, initial disclosure requirements in *MCOB 4.11*, pre-sale disclosure requirements in *MCOB 5.9* and disclosure at the offer stage requirements in *MCOB 6.9*.

## Annex C

## Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

**Comes into force on 29 January 2010**

### 3 Annex 1 R Authorisation fees payable

...

#### Part 2 – Complexity Groupings Straightforward Cases

Straightforward cases	
Activity grouping	Description
...	
A.18	<p><i>Home finance providers, advisers and arrangers (excluding home finance providers).</i></p> <p>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £1,000.</p> <p><del>In the case of applicants for <i>full RSRB permission</i> within this activity group the specified amount payable is £500.</del></p>
...	

#### Moderately Complex Cases

Moderately complex cases	
Activity grouping	Description
...	
A.2	<p><i>Home finance providers and administrators.</i></p> <p>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £3,000.</p> <p><del>In the case of applicants for <i>full RSRB permission</i> within this activity group the specified amount payable is £2,000.</del></p>
...	

...

**TP Transitional Provisions****TP 1.1**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook provision: coming into force
...					
<u>5.</u>	<u>FEES 3 Annex 1R Part 1 and Activity Groups A.2 and A.18</u>	<u>R</u>	<p>The amount payable under <u>FEES 3 Annex 1R Part 1</u> is modified as follows:</p> <p>(a) for an applicant for <u>full RSRB permission within the A.18 activity group who was granted, up until 29 June 2010, an interim RSRB permission within this activity group that was not an interim variation of permission, the specified amount payable is £500;</u></p> <p>(b) for an applicant for <u>full RSRB permission within the A.2 activity group who was granted, up until 29 June 2010, an interim RSRB permission within this activity group that was not an interim variation of permission, the specified amount payable is £2,000.</u></p>	<u>29 January 2010 to 29 June 2010</u>	<u>29 January 2010</u>
<u>6.</u>	<u>FEES 3.2.7R(p)</u>	<u>R</u>	<u>(1) The fee payable under FEES 3.2.7R(p) is modified in relation</u>	<u>29 January 2010 to 29 June 2010</u>	<u>29 January 2010</u>

		<p><u>to a firm applying for any one or more regulated sale and rent back activity as follows.</u></p> <p><u>(2) Unless (3) applies, if the variation involves the firm applying for any one or more regulated sale and rent back activity and that firm was granted, up until 29 June 2010, an interim RSRB permission that was an interim variation of permission, the fee is 50% of the highest of the tariffs set out in FEES 3 Annex 1R which apply to that application net of any interim RSRB permission application fee paid to the FSA.</u></p> <p><u>(3) If the activity groups applicable to a firm, as specified at Part 1 of FEES 4 Annex 1R, were not altered when it was granted an interim RSRB permission that was an interim variation of permission and will not alter if it is granted a full RSRB permission, no fee is payable.</u></p>		
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## Annex D

**Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and  
Insurance Intermediaries (MIPRU)**

In this Annex, underlining indicates new text.

Regulated sale and rent back agreements: additional requirement

4.4.12     R     If a *SRB agreement provider* agrees, under the terms of a *regulated sale and rent back agreement*, to account to the *SRB agreement seller* for any monetary sum, whether after a qualifying period, over a period of time, on the occurrence of a contingent event or otherwise, the provider must:

(1) take out and maintain adequate insurance from an *insurance undertaking* authorised in the *EEA* or a *person* of equivalent status in:

(a) a *Zone A country*; or

(b) the Channel Islands, Gibraltar, Bermuda, or the Isle of Man; or

(2) enter into a written agreement with a *credit institution*;

to meet these obligations in the event that the *SRB agreement provider* is unable to do so.

4.4.13     G     An example of where this additional requirement would apply would be a term of a *regulated sale and rent back agreement* under which the *SRB agreement seller* was to receive from the *SRB agreement provider* a refund of an agreed percentage of the discount on the sale price of the property to which the agreement relates after an agreed qualifying period.

## Annex E

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

### 1.2 General application: who? what?

1.2.1 R (1) This sourcebook applies to every *firm* that:

...

- (b) *communicates or approves a financial promotion of qualifying credit, of a home purchase plan, ~~or~~ of a home reversion plan or of a regulated sale and rent back agreement.*

...

...

Firm types and the home finance activities

1.2.2 G ...

- (3) ... and PERG 14 contains detailed *guidance on home purchase activities, ~~and reversion activities~~ and regulated sale and rent back activities.*

...

2.1.2 R This table belongs to MCOB 2.1.1R [*Editor's Note: In the following table the order in which some of the categories of firm are listed has been changed. The changes of order are not marked.*]

(1) Category of firm	(2) Applicable section
...	
<i>reversion adviser</i>	...
<u><i>SRB administrator</i></u>	<u><i>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.2G, MCOB 2.2.3R, MCOB 2.2.6R, MCOB 2.2.7G, MCOB 2.2.8G, MCOB 2.5, MCOB 2.6, MCOB 2.6A.5BR(5), MCOB 2.6A.8R to MCOB 2.6A.11G, MCOB 2.6A.17AR, MCOB 2.6A.18G, MCOB 2.7.1G to MCOB 2.7.5R, MCOB 2.7A, MCOB 2.8.1G to MCOB 2.8.5G.</i></u>

<i>SRB adviser</i>	As for a <i>SRB agreement provider</i> but <i>MCOB 2.6A</i> does not apply  <u>Whole chapter except <i>MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R</i> and <i>MCOB 2.8.6G</i>.</u>
<i>SRB agreement provider</i>	<del><i>MCOB 2.1, MCOB 2.2.6R to 2.2.7G, MCOB 2.4.1G to MCOB 2.4.3G, MCOB 2.6A.1R to 2.6A.4G, MCOB 2.6A.5AR, MCOB 2.6A.8R to 2.6A.12R, MCOB 2.6A.13E (1) and (4) and MCOB 2.6A.15R to 2.6A.16G.</i></del>  <u>Whole chapter except <i>MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R, MCOB 2.6A.17AR, MCOB 2.6A.18G</i> and <i>MCOB 2.8.6G</i>.</u>
<del><i>SRB administrator</i> <i>SRB arranger</i></del>	As for a <del><i>SRB agreement provider</i></del> together with <del><i>MCOB 2.6A.17AR</i> and <i>MCOB 2.6A.18G</i></del> (which do apply) but the relevant provisions of <del><i>MCOB 2.6A</i></del> only apply when making arrangements for a <del><i>regulated sale and rent back agreement</i></del> to be entered into by a <del><i>SRB agreement seller</i></del> with, or administering a <del><i>regulated sale and rent back agreement</i></del> provided by, an <del><i>unauthorised SRB agreement provider</i></del> .  <u>Whole chapter except <i>MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R</i> and <i>MCOB 2.8.6G</i>.</u>
...	

What?

2.1.3 R This chapter applies in relation to:

...

(1A) to the extent specified in *MCOB 2.1.2R Table*, *regulated sale and rent back activity*;

...

(3) the *communication* or *approval* of a *financial promotion of qualifying credit*, of a *home purchase plan*, ~~or~~ of a *home reversion plan* or of a *regulated sale and rent back agreement*.

...

Prescribed terms for regulated mortgage contracts, ~~and~~ home reversion plans and regulated sale and rent back agreements

2.2.3 R In any communication to a *customer*, a *firm* must:

...

(3) describe any *lifetime mortgage* as a ‘lifetime mortgage’; ~~and~~

(4) describe any *home reversion plan* as a ‘home reversion plan’; and

(5) describe any regulated sale and rent back agreement as a ‘sale and rent back agreement’;

...

...

2.2.6A R A *firm* which approves a *financial promotion* of a *home purchase plan* ~~or regulated sale and rent back agreement~~ must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.

...

2.2.8 G ... In respect of *financial promotions* of *qualifying credit*, ~~or~~ of *home reversion plans* or of regulated sale and rent back agreements, *firms* should note the separate requirements of *MCOB 3*.

...

**2.3 Inducements: regulated mortgage contracts, ~~and~~ home reversion plans and regulated sale and rent back agreements**

...

Prohibition of inducements

2.3.2 R A *firm* must take reasonable steps to ensure that it, and any *person* acting on its behalf, does not:

...

(2) direct or refer any actual or potential business in relation to a *regulated mortgage contract*, ~~or~~ *home reversion plan* or regulated sale and rent back agreement to another *person* on its own initiative or on the instructions of an *associate*;

...

...

- 2.3.6 R (1) A *firm* must not operate a system of giving or offering inducements to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or any other third party whereby the value of the inducement increases if the intermediary or third party, such as a packager, exceeds a target set for the amount of business referred (for example, a volume override).

...

#### Quantification of inducements

- 2.3.7 R (1) A *mortgage lender*, ~~or reversion provider~~ or *SRB agreement provider* must quantify, in cash terms, any material inducement it offers to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or a third party.

...

- 2.3.8 R (1) ...

(1A) Quantification of any material inducement offered by a *SRB agreement provider* in connection with the conclusion of a *regulated sale and rent back agreement* must be included in the disclosures made to the potential *SRB agreement seller* under *MCOB 5.9.1R(1A)(c)*.

...

...

#### Fair treatment

- 2.4.2 G ...

(2) For *regulated sale and rent back agreements*, the *firm* should avoid practices that commit *customers* (or lead *customers* to believe they are committed) to any such agreement before they have been able to consider the information that is required by *MCOB 5.9.1R (Pre-sale disclosure)* and before the expiry of the 14 day cooling-off period as required by *MCOB 6.9.4R (Written pre-offer document: Stage One)*.

...

- 2.6A.4 G (1) In the FSA's *FSA's* view, a *customer's* interests will include:

...

(b) protection of any interest (legal or beneficial) that the *customer* retains, acquires or is intended to acquire in the property, including the expectation that such interests will be unencumbered by third party interests; ~~and~~

- (c) ... Or in circumstances where that is not practicable (for example, on *repossession*), that an appropriate amount will be returned to the *customer*; and
- (d) a customer's contractual entitlement to receive certain sums back after a qualifying period, such as where it has been agreed that a certain percentage of discount will be refunded to the customer after a set period of tenancy.

...

Protecting customers' interests under regulated sale and rent back agreements:  
security of tenure

- 2.6A.5B R (1) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement:
- (a) the entitlement of the SRB agreement seller (or trust beneficiary or related person) to occupy the property is governed by a tenancy, which is structured:
    - (i) if the property is in England and Wales, as an assured tenancy (including an assured shorthold tenancy) under the Housing Act 1988 (as amended);
    - (ii) if the property is in Scotland, as an assured tenancy (including a short assured tenancy) under the Housing (Scotland) Act 1988, (as amended); and
    - (iii) if the property is in Northern Ireland, as a private tenancy under the Private Tenancies (Northern Ireland) Order 2006;
  - (b) the tenancy is for a fixed term of no less than five years;
  - (c) the terms of the tenancy provide for the tenant to terminate the tenancy during the fixed term on no more than three months' notice (and with no other conditions attached); and
  - (d) each of the terms of the tenancy is fair.
- (2) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in England and Wales, the terms of the tenancy do not:
- (a) give the landlord power to determine the tenancy in certain circumstances as referred to in section 5(1) of the Housing Act 1988, as amended; or

- (b) otherwise make provision for the tenancy to be brought to an end by the landlord save on a ground or grounds for possession applicable for an assured tenancy under the Housing Act 1988, as amended; or
- (c) make provision for the tenancy to be brought to an end on any of Grounds 2, 6, 8 or 9 under the Housing Act 1988, as amended.

A firm may not rely during the fixed term of the tenancy on any ground for possession of the property other than a ground for possession on which the terms of the tenancy may under this paragraph (2) make provision for the tenancy to be brought to an end by the landlord, and a firm may only rely on any ground for possession if it is fair for the firm to do so.

- (3) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in Scotland, the terms of the tenancy do not include:

- (a) any provision for it to be brought to an end by the landlord during the fixed term other than a ground for possession applicable for an assured tenancy under the Housing (Scotland) Act 1988, as amended; or
- (b) Grounds 2, 6, 8 or 9 under the Housing (Scotland) Act 1988, (as amended).

A firm may not rely during the fixed term of the tenancy on any ground for possession of the property other than the grounds permitted under this paragraph (3) to be included in the terms of the tenancy, and a firm may only rely on any ground for possession if it is fair for the firm to do so.

- (4) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in Northern Ireland, the terms of the tenancy do not include:

- (a) any provision which would permit the landlord to forfeit the lease and obtain possession of the property during the fixed term unless the provision is equivalent to a ground for possession applicable for an assured tenancy under Schedule 2 to the Housing Act 1988, as amended, in England; or
- (b) any provision which would permit the landlord to forfeit the lease and obtain possession of the property on the basis that:
  - (i) a mortgagee (or chargee) under a mortgage (or charge) entered into by the landlord requires vacant possession

for the purposes of exercising a power of sale of the property; or

- (ii) the landlord intends to demolish or reconstruct, or carry out substantial works on, the property or any part of the property; or
- (iii) there are arrears of rent, unless the conditions applicable to either Ground 9 or Ground 10 under the Housing Act 1988, as amended, in England, are satisfied; or
- (iv) alternative accommodation is available for the tenant.

A firm may not rely during the fixed term of the tenancy on any circumstance to forfeit the lease and obtain possession of the property other than the circumstances permitted under this paragraph (4) to be included in the tenancy agreement, and a firm may only rely on any circumstance if it is fair for the firm to do so.

- (5) A firm must not take, or propose or threaten to take, any steps to evict the SRB agreement seller (or trust beneficiary or related person) other than by applying to the court for a possession order based on the grounds or circumstances, reliance on which is not prohibited by this rule, and enforcing that order in a lawful manner.
- (6) Where a SRB agreement provider enters into or proposes to enter into (whether before or after the commencement of the tenancy) a mortgage (or charge or standard security) over the interest it obtains under a regulated sale and rent back agreement, the firm must ensure that the mortgagee (or chargee or security holder) has agreed in writing to the proposed letting under the agreement, and to the terms of the agreement. The firm must provide to the SRB agreement seller a copy of the agreement in writing of the mortgagee (or chargee or security holder).

[Note: In England, Wales and Scotland a landlord, such as a SRB agreement provider, can only seek possession of a property during the fixed term of an assured tenancy if one or more of a limited number of grounds for possession set out in (in England and Wales) the Housing Act 1988, as amended, or (in Scotland) the Housing (Scotland) Act 1988, as amended, applies and the terms of the tenancy make provision for it to be ended on any of these grounds. Once the fixed term of the assured tenancy has ended, the landlord has the right to seek possession on broader grounds. Where the tenancy is (in England) an assured shorthold tenancy or (in Scotland) a short assured tenancy, the landlord has an additional right to seek possession from the end of the fixed term.

In Northern Ireland, the position is governed by the Private Tenancies (Northern Ireland) Order 2006 and the parties are free to agree the terms of a tenancy including its duration and the grounds on which the landlord may



seek possession, including during any fixed term.

In any event it is for the court to decide whether one or more of the grounds for possession actually applies in the particular circumstances of any case.

In Northern Ireland, a tenant must give at least four weeks' notice to quit. Northern Ireland law implies a fixed term of six months in a private tenancy unless the parties agree an alternative fixed term, so a notice to quit expiring before the first six months of the tenancy may not be effective.]

2.6A.5C G In the light of MCOB 2.6A.5B(1)(c), and in accordance with Principle 6, a firm should not seek to prevent a tenant in Northern Ireland from ending the tenancy on less than the agreed notice period (not exceeding three months in accordance with MCOB 2.6A.5B(1) (c)), where the notice is given in the first six months of the tenancy.

...

2.6A.12A R A firm must ensure that any valuation for the purposes of a regulated sale and rent back agreement is carried out by a valuer who owes a duty of care to the customer in valuing the property.

2.6A.13 E ...

(3) ~~For a home reversion plan, compliance~~ Compliance with (1) and (2) (except, in the case of a regulated sale and rent back agreement, (2)(b)) may be relied on as tending to establish compliance with MCOB 2.6A.12R.

(4) ~~For a regulated sale and rent back agreement, compliance with (1) may be relied upon as tending to establish compliance with the competence requirement of MCOB 2.6A.12R. [deleted]~~

(5) For a regulated sale and rent back agreement, contravention of (1) or (2) (except (2)(b)) may be relied on as tending to show contravention of MCOB 2.6A.12R.

2.6A.13A G A firm may wish to use the form of joint instruction letter set out in MCOB 2 Annex 1G with a view to establishing that a valuer owes a duty of care to the customer (see MCOB 2.6A.12AR). That form incorporates the definition of "market value" required by MCOB 6.9.2R(1)(b).

...

#### General provisions related to distance contracts

2.7.4 R During the course of a *distance contract* with a *consumer*, the making or performance of which constitutes or is part of a *regulated mortgage contract*, ~~or home purchase plan~~ or regulated sale and rent back agreement:

(1) the *firm* must, at the *consumer's* request, provide a paper copy of the contractual terms and conditions of the *regulated mortgage contract*, *home purchase plan*, *regulated sale and rent back agreement* or

services being provided by the *firm*; and

- (2) the *firm* must comply with the *customer's* request to change the means of distance communication used, unless this is incompatible with the *regulated mortgage contract, home purchase plan, regulated sale and rent back agreement* or service being provided by the *firm*.

...

After MCOB 2, insert the following new Annex. The text is not underlined.

## **2 Annex 1G Form of joint instruction letter**

This Annex belongs to *MCOB 2.6A.13AG*.

Re: AA property

We the undersigned jointly instruct you to prepare a valuation of the above property at your earliest convenience.

The Firm and the Property Owner will rely on this valuation in deciding whether to enter into a sale and rent back agreement in respect of the above property and in agreeing the terms of that agreement (including the consideration to be provided for the sale of the above property).

The valuation should be produced in accordance with RICS Valuation Standards. The basis of valuation is the Market Value of the property, using the internationally agreed definition, as set out in RICS Valuation Standards, which is:

"The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

By accepting this instruction you acknowledge that you owe a duty at common law to exercise reasonable skill and care to both XX firm and YY the property owner and in addition you agree with each of XX firm and YY the property owner that you will carry out this instruction with reasonable skill and care.

We confirm that your fees will be met by XX firm.

Please contact YY the property owner to arrange access to the property. We look forward to receiving your valuation in due course.

Signed

XX Firm

YY property owner

Amend the following as shown.

**3 Financial Promotion of qualifying credit, ~~and of home reversion plans~~ and regulated sale and rent back agreements**

**3.1 Application: Who?**

3.1.1 R This chapter applies to every *firm* which *communicates* or *approves* a *financial promotion of qualifying credit, ~~or of a home reversion plan~~ or a regulated sale and rent back agreement.*

3.1.2 G This chapter applies generally to *firms* in relation to all *financial promotions of qualifying credit, ~~or of a home reversion plan~~ or a regulated sale and rent back agreement.* ...

...

3.1.7 G A *financial promotion* may relate to other *controlled investments* in addition to *qualifying credit, ~~and home reversion plans~~ and regulated sale and rent back agreements*, for example a building society leaflet which describes the range of mortgage, savings and insurance products it provides. In such cases, the *financial promotion rules* in this and other sourcebooks will each apply as relevant.

...

Nationals of other EEA States

3.1.11 G A national of an *EEA State* (other than the *United Kingdom*) wishing to take advantage of the exemption in article 36 of the *Financial Promotion Order* in respect of a *financial promotion of qualifying credit, ~~or of a home reversion plan~~ or a regulated sale and rent back agreement* should act in conformity with the *rules* in this chapter.

...

**3.2 Application: what?**

...

Application for a financial promotion of a regulated sale and rent back agreement

3.2.-2A R This chapter applies to the *communication or approval of a financial promotion of a regulated sale and rent back agreement* as follows:

<u>Application, purpose and general</u>	<u>MCOB 3.1 to MCOB 3.5</u>
<u>Form and content of non-real time qualifying credit promotions</u>	<u>MCOB 3.6 in accordance with</u>

	<u>MCOB 3.8B</u>
<u>Unsolicited real time financial promotions of qualifying credit or regulated sale and rent back agreements</u>	<u>MCOB 3.7</u>
<u>Form and content of financial promotions of regulated sale and rent back agreements</u>	<u>MCOB 3.8B</u>
<u>Confirmation of compliance: financial promotions of qualifying credit or regulated sale and rent back agreements</u>	<u>MCOB 3.9</u>
<u>Records: non-real time financial promotions of qualifying credit or regulated sale and rent back agreements</u>	<u>MCOB 3.10</u>
<u>The Internet and other electronic media.</u>	<u>MCOB 3.12</u>

...

- 3.2.4A R This chapter does not apply to a *firm* in relation to a *financial promotion* of a *home reversion plan* or a *regulated sale and rent back agreement* of a kind listed in *MCOB 3.2.5R*, unless the *firm* approves the *financial promotion*. However, for non-real time *financial promotions* of the kind listed in *MCOB 3.2.5R*, the requirements in *MCOB 3.8B.5R* apply in relation to how a *regulated sale and rent back agreement* can be described. Advertisements for other products that could result in the conclusion of *regulated sale and rent back agreements* must carry the sale and rent back risk warning (*MCOB 3.8B.4R*).

...

- 3.2.6 G *MCOB 3.2.5R(2)* exempts a *financial promotion* made by a *firm* or an *appointed representative* which refers to its activities only in general terms in image or brand advertising. The items identified in *MCOB 3.2.5R(2)* do not enable detailed information to be given about the *qualifying credit*, ~~or~~ *home reversion plan* or *regulated sale and rent back agreement* available from the *firm*. Thus *firms* should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

...

### 3.3 Application: where?

#### Territorial Scope

- 3.3.1 R This chapter applies to a *firm* in relation to:

- (1) the *communication* of a *financial promotion* to a person in the *United Kingdom*;
- (2) the *communication* of an *unsolicited real time financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*, unless it is made from a place, and for the purposes of a business which is only carried on, outside the *United Kingdom*;
- (3) the approval of a *non-real time financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement* for *communication* to a person in the *United Kingdom*; and

...

...

Exceptions to territorial scope: rules without territorial limitation for approval of financial promotions

- 3.3.3 R Subject to *MCOB* 3.3.5R the following parts of this chapter apply without any territorial limitation if a *firm* approves a *financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*:

...

- (2) *rules* requiring a *financial promotion* to be clear, fair and not misleading (see *MCOB* 3.6.3R(1) in relation to *qualifying credit*, ~~and~~ *MCOB* 3.8A.1R in relation to a *home reversion plan* and *MCOB* 3.8B.1R in relation to a *regulated sale and rent back agreement*); and

...

...

### 3.4 Purpose

...

- 3.4.2 G (1) The purpose of this chapter is to provide *rules* and *guidance* for a *firm* which wishes to *communicate* or *approve* a *financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*.

...

...

### 3.7 Unsolicited real time financial promotions of qualifying credit, ~~or~~ a home reversion plan or a regulated sale and rent back agreement

...

3.7.1 R ...

- (4) If a *financial promotion* is solicited by a *person* (“R”) it is treated as also having been solicited by any other *person* to whom it is made at the same time as R if that other *person* is a *close relative* of R or is expected to enter into a *home reversion plan*, a regulated sale and rent back agreement or any contract for *qualifying credit* jointly with R.

...

#### Prohibition on unsolicited real time financial promotions to customers

- 3.7.3 R A *firm* must not make an *unsolicited real time financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a regulated sale and rent back agreement unless the *customer* has an established existing *customer relationship* with the *firm* and the relationship is such that the *customer* envisages receiving such *financial promotions*.

...

After MCOB 3.8A insert the following new section. The text is not underlined.

### **3.8B Form and content of financial promotions of regulated sale and rent back agreements**

Clear, fair and not misleading

- 3.8B.1 R A *firm* which *communicates* or *approves* a *financial promotion* of a *regulated sale and rent back agreement* must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.
- 3.8B.2 G The guidance on the clear, fair and not misleading standard at *MCOB 3.6.5G*, *MCOB 3.6.10G* and *MCOB 3.6.14G* may be relevant.

[**Note:** A comparative financial promotion will need to comply with regulation 4A of the Business Protection from Misleading Marketing Regulations 2008.]

Ban on SRB leaflet dropping

- 3.8B.3 R A *regulated sale and rent back firm* must not *communicate* an *unsolicited non-real time financial promotion* that relates to a *regulated sale and rent back agreement* to a potential *SRB agreement seller* in the form of a leaflet or brochure.

Non-real time financial promotions to customers and advertisements

- 3.8B.4 R A *non-real time financial promotion* relating to a *regulated sale and rent back agreement* and any other advertisement which is issued by a *regulated sale and rent back firm* that could lead to the conclusion of a *regulated sale*

*and rent back agreement*, must (unless it is of a kind listed in *MCOB 3.2.5R(2)*) contain a risk warning that uses the following wording:

*“If you enter into a sale and rent back agreement you are unlikely to get the market value of your home and, as a tenant, may only be able to remain there for a limited period. There may be other options available. Please ask for a key terms statement.”*

- 3.8B.5 R A *non-real time financial promotion* relating to a *regulated sale and rent back agreement* and any other advertisement which is issued by a *regulated sale and rent back firm* that could lead to the conclusion of a *regulated sale and rent back agreement*, must describe any *regulated sale and rent back agreement* as a “sale and rent back agreement” and not use any other expression such as “equity release” to describe it.
- 3.8B.6 E (1) A *firm* should take reasonable steps to ensure that, for a *non-real time financial promotion*:
- (a) it includes any matters the omission of which causes the *financial promotion* not to be clear, fair and not misleading;
  - (b) if it describes a feature of any *regulated sale and rent back agreement*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;
  - (c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);
  - (d) the accuracy of all statements of fact in it can be substantiated;
  - (e) its promotional purpose is not in any way disguised or misrepresented;
  - (f) any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed;
  - (g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;
  - (h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;
  - (i) it does not contain any false indications, in particular as to the *firm*’s resources and scale of activities;
  - (j) the design, content or format does not in any way disguise,

obscure or diminish the significance of any statement, warning or other matter which the *regulated sale and rent back agreement* is required by this chapter to contain; and

- (k) it does not include any reference to approval by the *FSA* or any government body, unless that approval has been obtained in writing from the *FSA* or that body (see also *GEN* 1.2 (Referring to approval by the *FSA*)).
  - (2) (a) Contravention of (1) may be relied on as tending to show contravention of *MCOB* 3.8B.1R.
  - (b) Compliance with (1) may be relied on as tending to show compliance with *MCOB* 3.8B.1R.
- 3.8B.7 G The effect of giving no less prominence to the possible disadvantages than to the benefits associated with a feature will depend on the context of the promotion. The costs, restrictions or conditions relating to a feature such as any option available should be detailed for the following non-exhaustive examples:
- (1) where any part of the discount on the market value of the property is to be repaid to the *consumer* after a qualifying period; and
  - (2) where a *consumer* is to benefit from shared appreciation in the value of the property.

#### Exploitation of customer

- 3.8B.8 R A *firm* must not in any *financial promotion* of a *regulated sale and rent back agreement* exploit the vulnerable nature or circumstances of any *customer* who may be in financial difficulties and at risk of losing his or her home and must accordingly avoid using in the promotion phrases or terms such as “fast sales”, “rescue” or “cash quickly” or any other similar expression.

#### No approval of real time financial promotions of a regulated sale and rent back agreement

- 3.8B.9 R A *firm* must not approve a *real time financial promotion* of a *regulated sale and rent back agreement*.

#### Referring to the FSA

- 3.8B.10 G The guidance on referring to the *FSA* in a *financial promotion* may be relevant (see *MCOB* 3.6.2G(3)).

Amend the following as shown.

### **3.9 Confirmation of compliance: financial promotions of qualifying credit, ~~or~~**



### **home reversion plans or regulated sale and rent back agreements**

- 3.9.1 R (1) Before a *firm communicates* or *approves* a *non-real time financial promotion of qualifying credit, ~~or~~ of a home reversion plan or a regulated sale and rent back agreement* it must confirm that the *financial promotion* complies with the *rules* in this chapter.

...

- 3.9.2 G (1) ‘Appropriate expertise’ will vary depending on the complexity of the *financial promotion* and the *qualifying credit, ~~or~~ home reversion plan or regulated sale and rent back agreement* to which it relates. The individuals engaged by a *firm* to confirm the compliance of its *financial promotions* with this chapter may themselves have different levels of expertise and therefore a different level of authority for confirmation depending on the type of promotion and the *qualifying credit, ~~or~~ home reversion plan or regulated sale and rent back agreement* involved.

...

### **3.10 Records: non-real time financial promotions of qualifying credit, ~~or~~ of a home reversion plan or a regulated sale and rent back agreement**

Requirement to make and retain records

- 3.10.1 R A *firm* must make an adequate record of each *non-real time financial promotion of qualifying credit, ~~or~~ of a home reversion plan or a regulated sale and rent back agreement* which it has confirmed as complying with the *rules* in this chapter. The record must be retained for a year from the date at which the *financial promotion* was last *communicated*.

Content of records

- 3.10.2 G In deciding what is an adequate record, a *firm* should consider including, or providing reference to, where appropriate, such matters as:

...

- (4) the evidence supporting any material factual statement about *qualifying credit, ~~or~~ a home reversion plan or a regulated sale and rent back agreement* in the *financial promotion*. ...

...

...

### **3.12 The Internet and other electronic media**

...

Approach and general guidance

- 3.12.2 G Any material which meets the definition of a *financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a regulated sale and rent back agreement, including any video or moving image material incorporated in any website containing such a *financial promotion* should comply with the *rules* in this chapter. ...
- 3.12.3 G As indicated in *MCOB* 3.3 (Application: where?), for the purposes of the *financial promotion rules* there are two types of approach to *financial promotion communicated* via the Internet and other electronic media:
- ...
- (2) *non-real time financial promotions* where the *customer* may, for example, choose from reading a description of the *qualifying credit*, ~~or~~ *home reversion plan* or regulated sale and rent back agreement, through to the completion of a contract in a similar way to browsing through a leaflet rack. ...
- 3.12.4 G ...
- (3) When designing websites and other electronic media, *firms* should be aware of the difficulties that can arise when reproducing certain colours and printing certain types of text. These difficulties could cause problems with the presentation and retrieval of required information. Any *financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a regulated sale and rent back agreement communicated by the Internet, digital or other forms of interactive television is subject to the requirements on form and content in this chapter.

...

## 4.1 Application

...

- 4.1.2 R This Table belongs to *MCOB* 4.1.1R

(1) Category of firm	(2) Applicable section
...	
<i>reversion provider</i> ...	...
<u><i>SRB adviser</i></u>	<u><i>MCOB</i> 4.1, <i>MCOB</i> 4.2, <i>MCOB</i> 4.5, <i>MCOB</i> 4.6 and <i>MCOB</i> 4.11</u>
<u><i>SRB arranger</i></u>	<u><i>MCOB</i> 4.1, <i>MCOB</i> 4.2, <i>MCOB</i> 4.5, <i>MCOB</i> 4.6 and <i>MCOB</i> 4.11</u>

<u>SRB agreement provider</u>	<u>MCOB 4.1, MCOB 4.2 and MCOB 4.11</u>
-------------------------------	---

...

- 4.1.6 G *MCOB 4.1.5R means that this chapter, MCOB 4, deals with standard regulated mortgage contracts, ~~and~~ home purchase plans and regulated sale and rent back agreements only and therefore firms should note that the scope of service rules in this chapter do not apply in respect of equity release transactions.*

...

**4.5 Additional disclosure for distance mortgage mediation contracts, ~~and~~ 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, ~~and~~ a home purchase intermediary and a SRB intermediary to a consumer prior to the conclusion of a distance mortgage mediation contract, ~~or~~ a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract. ...*
- (2) *... MCOB 4.5 and MCOB 4.6 will only be relevant if a mortgage intermediary, ~~or~~ a home purchase intermediary or a SRB intermediary enters into a distance contract in respect of its mortgage mediation activities, ~~or~~ 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, ~~or~~ home purchase plan or regulated sale and rent back agreement. ...*
- 4.5.2 R *If the initial contact of a kind in MCOB 4.4.1R(1) is with a consumer with a view to concluding a distance mortgage mediation contract, ~~or~~ 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 3R in a durable medium in good time before the conclusion of the distance mortgage mediation contract, ~~or~~ 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.*

...

- 4.5.3 G ...

- (2) ... However, if a service of a different nature is proposed, the *firm* is expected to provide a fresh initial disclosure ~~document~~ documentation and, in respect of *distance mortgage mediation contracts*, ~~and~~ *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 3R*.

#### **4.6 Cancellation of distance mortgage mediation contracts, ~~and~~ 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*, ~~or~~ a *home purchase intermediary* or a *SRB intermediary* for the provision of his services. Whether a *mortgage intermediary*, ~~or~~ a *home purchase intermediary* or a *SRB intermediary* concludes a *distance mortgage mediation contract*, ~~or~~ 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~~ a *regulated mortgage contract*, ~~or~~ *home purchase plan* or *regulated sale and rent back agreement*, act contractually on behalf of, or for, the *customer*. ...

...

##### Cancellation period

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

...

##### Exercising the right to cancel

- 4.6.5 R A *consumer* who has a right to cancel a *distance mortgage mediation contract*, ~~or~~ 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 4.6.4R* either:

...

...

After *MCOB 4.10* insert the following new section. The text is not underlined.

#### **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, on first making contact with a potential SRB agreement seller for whom it might reasonably be expected to carry on any regulated sale and rent back activity, must make the following disclosures to him, both orally and in writing:*
- (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 IV 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.*

## FSA 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 FSA consumer factsheet on sale and rent back in a durable medium which may be accessed through [www.fsa.gov.uk](http://www.fsa.gov.uk).*
- (2) *The firm on providing the FSA 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.*

## Affordability and appropriateness

- 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:*
- (1) *the customer can afford the payments he will be liable to make under the agreement; and*
  - (2) *the proposed regulated sale and rent back agreement is appropriate to*

the needs, objectives and circumstances of the *customer*.

- 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 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* 4.11.3R(1).
- 4.11.5 E (1) In assessing whether a particular *regulated sale and rent back agreement* is appropriate to the needs, objectives and circumstances of a potential *SRB agreement seller*, a *firm* should have due regard to the following:

- (a) 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; and
    - (b) the feasibility of the *customer* raising funds by alternative methods other than by a sale of his property.
  - (2) Contravention of (1) may be relied upon as tending to show contravention of *MCOB 4.11.3R(2)*.
- 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* in *arrears* 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 *FSA* consumer factsheet on sale and rent back and give him an oral explanation of its contents. The *FSA* 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 *customer* could afford, and why it was appropriate for him, to enter into the proposed *regulated sale and rent back agreement*.
- (2) The record in (1) must be retained for a minimum of five years from the date on which the assessment of affordability and appropriateness 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* has already done so.
- 4.11.10 G The effect of *MCOB 4.11.9R* is that a *SRB agreement provider* is expected to carry out its own assessments of affordability and appropriateness in relation to a particular *regulated sale and rent back agreement*, unless it is reasonable for it to rely on another *firm* to have done so in relation to a particular transaction.

Amend the following as shown.

**4 Annex 3R Additional information requirements in respect of distance mortgage mediation contracts, ~~and~~ distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers**

This table belongs to *MCOB 4.5.2R*

<b>Additional information for distance contracts with retail customers consumers</b>
All the contractual terms and conditions on which the service will be



provided including, in particular, the following information:	
...	
(6)	<p>details of:</p> <p>(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</i>, <del>or home purchase plan or regulated sale and rent back agreement</del>;</p> <p>(b) any contractual clause on law applicable to the <i>regulated mortgage contract</i>, <del>or home purchase plan or regulated sale and rent back agreement</del> or on competent court, or both; and</p> <p>(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</i>, <del>or home purchase plan or regulated sale and rent back agreement</del>.</p>

...

## 5.1 Application

...

5.1.2 R This Table belongs to MCOB 5.1.1R

(1) Category of firm	(2) Applicable section
...	
<i>SRB adviser</i>	<p><del><i>MCOB 5.1.1R, MCOB 5.1.2R, MCOB 5.9.4R and MCOB 5.9.5G</i></del></p> <p><u><i>MCOB 5.1.1R to MCOB 5.1.3R, MCOB 5.2 and MCOB 5.9</i></u></p>
<i>SRB agreement provider</i>	<p><i>MCOB 5.1.1R to 5.1.3R, <u>MCOB 5.2</u>, MCOB 5.9.1R and to MCOB 5.9.2R (including <u>MCOB 5.9.1AR to MCOB 5.9.1FG</u>), MCOB 5.9.6R and MCOB 5.9.7G</i></p>
<i>SRB arranger</i>	<p><del><i>MCOB 5.1.1R, MCOB 5.1.2R, MCOB 5.9.3R to MCOB 5.9.5G</i></del></p> <p><u><i>MCOB 5.1.1R to MCOB 5.1.3R, MCOB 5.2 and MCOB 5.9</i></u></p>

...

## 5.9 Pre-sale disclosure for regulated ~~Regulated~~ sale and rent back agreements

## Pre-sale disclosure

- 5.9.1 R (1) ~~A *SRB agreement provider* must not enter into a regulated sale and rent back agreement with a *SRB agreement seller* unless the following *firm* must, as soon as a *customer* expresses an interest in becoming a *SRB agreement seller*, ensure that the disclosures and warnings set out in (1A) are ~~have been~~ made to the *SRB agreement seller customer*, both orally and confirmed in writing, and he is given an adequate opportunity to consider them. The *firm* must not demand or accept any fees, charges or other sums from the *customer*, or undertake any action that commits the *customer* in any way to entering into a specific agreement, until:~~
- (a) the written pre-offer document that is required by *MCOB* 6.9.3R has been provided to the *customer*; and
  - (b) the written offer document for signing (Stage Two) that is required by *MCOB* 6.9.10R(1) has been returned to the *firm* duly signed by the *customer*.
- (1A) The disclosures and warnings referred to in (1) are the following:
- (a) where a valuation of the property that is the subject matter of the regulated sale and rent back agreement has already been carried out in accordance with *MCOB* 2.6A.12R, a statement of its the market value of the property that is the subject matter of the regulated sale and rent back agreement, as determined by any independent valuation under *MCOB* 2.6A.12R or, if a valuation of the property has not yet been carried out, the price or value of the property on which the proposed regulated sale and rent back agreement would be based (estimated if necessary);
  - (b) if the valuer that has produced the independent valuation in (a) was not acting for the *SRB agreement seller* in doing so, a prominent warning that this is the case and as such that it is advisable for the *SRB agreement seller* specifically to consider whether he is content with the market valuation in (a); [deleted]
  - (c) any fees, charges or retentions that the *firm* will deduct from the purchase price for the property, and net of any fees or charges otherwise payable, and whether there are any fees, charges or other sums that are payable to any *SRB intermediary* that is involved in the proposed transaction or to a third party;
  - (d) the purchase price that the *firm* ~~will~~ is prepared to pay the *SRB agreement seller* for the property, net of any fees, charges or retentions;

- (e) ...
- (ea) that the *SRB agreement seller* should in his own best interests independently seek whatever information he can on the market value of his property, as explained in the *FSA consumer factsheet* provided to the *customer*, before proceeding with the proposed transaction and how and from where information on its value may be available;
- (f) brief details of the ~~type and period~~ main terms of the tenancy under the proposed *regulated sale and rent back agreement*, including its type, the letting period including the fixed term and the security of tenure the *SRB agreement seller* (or trust beneficiary or related person) will be given under it, an explanation that the seller (or trust beneficiary or related person) cannot be evicted unless the *SRB agreement provider* obtains a possession order from the court and an explanation of the seller's (or trust beneficiary's or related person's) ability to terminate the tenancy;
- (g) ~~the minimum period that the *SRB agreement seller* and his family have a contractual right to remain in the property under the terms of the proposed agreement; [deleted]~~
- (h) ~~if the terms of the tenancy provide for a period of occupancy that is shorter than the minimum contractual period under (g), details of how the *firm* intends to meet the contractual period under (g); [deleted]~~
- (i) a prominent warning that once the ~~minimum contractual period~~ fixed term under ~~(g)~~ (f) expires, the *SRB agreement seller* and his family may be required to leave the property;
- (ia) where the *SRB agreement seller* is to be given an option under the proposed agreement to buy back the property at some future date from the *SRB agreement provider*, a statement confirming that this is the case, together with details of the option, including how it may be exercised and any restrictions such as time limits that will apply to it, and a clear explanation as to how the repurchase price is to be determined;
- ...
- (k) the circumstances in which the rent in (j) can be increased or changed in any way under the terms of the tenancy agreement; ~~and~~
- (l) the risks associated with the transaction from the *SRB agreement seller's* perspective, including in particular:

...

- (ii) that failure to obtain legal or professional advice may mean his interests are not fully protected;
- (m) whether there are any other features or restrictions in the regulated sale and rent back agreement which the SRB agreement seller would reasonably need to know about for the purpose of making an informed judgment about the merits of entering into the proposed agreement;
- (n) information on what the SRB agreement seller should do if he wishes to make a complaint against the firm arising out of or in connection with the proposed regulated sale and rent back agreement, including provision of an address and phone number at which the firm may be contacted should the customer wish to pursue a complaint and that if he cannot settle his complaint with the firm, that he may be entitled to refer it to the Financial Ombudsman Service; and
- (o) information on the circumstances in which the SRB agreement seller might be entitled to compensation under the Financial Services Compensation Scheme, depending on the type of business and the circumstances of the claim, and, if so, details of the relevant coverage.

...

- (3) In making the disclosures in writing to the SRB agreement seller that are required by (1) and (1A), the firm must make prominent use of the key facts logo in accordance with GEN 5.1 (Application and purpose), followed by the text “about this sale and rent back agreement”.

#### Compliance with the pre-sale disclosure requirement

- 5.9.1A    G    A firm may comply with the requirement in MCOB 5.9.1R (Pre-sale disclosure) for disclosures and warnings to be confirmed in writing by providing the potential SRB agreement seller with the written pre-offer document that is required by MCOB 6.9.3R (Written pre-offer document: Stage One) if this can be done as quickly as providing the pre-sale disclosures, provided that (in accordance with MCOB 5.9.1) the firm does not demand or accept any fees, charges or other sums from the customer or undertake any action that commits the customer to the proposed regulated sale and rent back agreement until:
- (1) the written pre-offer document that is required by MCOB 6.9.3R has been provided to the customer; and
  - (2) the written offer document for signing (Stage Two) that is required by MCOB 6.9.10R(1) has been returned to the firm duly signed by

the customer.

Information on valuations and rental values

- 5.9.1B    R    Where the potential *SRB agreement seller* has not commissioned his own valuation of the property, a *firm* must ensure that he realises that there are other possible sources of information on the property's value that are available to him, including local estate agents, local newspapers which carry advertisements for the sale of residential property in the *customer's* locality and on-line sites where details of recent property sales in the locality may be accessed.
- 5.9.1C    R    A *firm* must ensure that the *SRB agreement seller* realises that there are other possible sources of information on the appropriate rental value for the property available to him, including local estate agents, local newspapers and on-line sites which carry advertisements for the rental of residential property in the *customer's* locality.
- 5.9.1D    G    There is no requirement for the property to be valued before making the pre-sale disclosures. However, *MCOB* 6.9.2R requires that an independent valuation of the property be carried out before the provider supplies the *customer* with the written pre-offer document at Stage One (see *MCOB* 6.9.3R).

Disclosure of relevant features or restrictions

- 5.9.1E    G    Examples of features of a *regulated sale and rent agreement* that a *SRB agreement seller* would reasonably need to know about (see *MCOB* 5.9.1R(1A)(m)) would include an arrangement under which the seller is to receive from the *SRB agreement provider* a refund of some agreed percentage of the discount (on the market value of the property) that was reflected in the sale price under the *regulated sale and rent back agreement* after the end of the agreed letting term. Should any restrictions or the payment of any costs or fees be attached to the seller's entitlement to exercise such an option, these should be explained clearly.

Revised pre-sale disclosures

- 5.9.1F    R    Where a *firm* has already provided the required pre-sale disclosures and the terms for the proposed *regulated sale and rent back agreement* are subsequently materially altered, the *firm* must ensure that, at the *firm's* option, either:
- (1)    the pre-sale disclosures are re-issued to the *customer*, incorporating the agreed amendment; or
  - (2)    the agreed amendment is incorporated in the written pre-offer document at Stage One (see *MCOB* 6.9.3R).
- 5.9.1G    G    What constitutes "materially altered" requires consideration of the facts of each individual case. For example, a change in the proposed purchase or valuation price of the property should normally be regarded as material, as

would the introduction of an additional charge applying to the regulated sale and rent back agreement when it did not previously.

#### Records of pre-sale disclosure

- 5.9.2 R A ~~SRB agreement provider~~ firm must keep a record of the disclosures and warnings made to the *SRB agreement seller* under MCOB 5.9.1R for a period of:
- (1) ~~12 months~~ one year after the end of the ~~minimum period that the SRB agreement seller and his family have a contractual right to remain in the property~~ fixed term of the tenancy under the regulated sale and rent back agreement; or
  - (2) five years from the date of the disclosures and warnings;
- whichever is the longer.

#### Initial disclosure information to SRB agreement sellers: unauthorised SRB agreement providers

- 5.9.3 R (1) A ~~firm~~ SRB intermediary must ensure that, on first making contact with a prospective *SRB agreement seller*, whether or not he is the *firm's customer*, who is proposing to enter into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider*, it provides him with the written warning in (2) before he enters into any such agreement.

...

#### Initial disclosure information: to unauthorised SRB agreement providers

- 5.9.4 R (1) A ~~firm~~ SRB intermediary must ensure that, on first making contact with a *customer* who is both an individual and an *unauthorised SRB agreement provider*, when it anticipates giving personalised information or advice on a *regulated sale and rent back agreement*, it must provide him with the written warning in (2).

...

- 5.9.5 G A *person* may enter into a *regulated sale and rent back agreement* as agreement provider without being regulated by the *FSA* (or an *exempt person*) if the *person* does not do so by way of business. However, a *SRB intermediary* should at all times be conscious of its obligations under Principle 6 (Customers' interests). Should the *firm* have any reason to believe or entertain any suspicions that the *SRB agreement seller* may be proposing to enter into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider* notwithstanding that the provider appears to be doing so by way of business and therefore appears to require authorisation under the *Act*, the *firm* should warn the seller that he should not be proceeding with the transaction.

Uncertainty whether the arrangements constitute a sale and rent back agreement

- 5.9.6 R (1) If, at the point that the required pre-sale disclosures must be provided to a potential *SRB agreement seller*, a *firm* is uncertain whether the arrangement will qualify as a *regulated sale and rent back agreement*, the *firm* must:
- (a) provide the required pre-sale disclosures on the basis that the arrangement might constitute a *regulated sale and rent back agreement*; or
  - (b) seek to obtain from the potential seller information that will enable the *firm* to ascertain whether the contract will qualify as a *regulated sale and rent back agreement*.
- (2) Where (1)(b) applies, pre-sale disclosures must be provided, unless, on the basis of information the potential seller provides, the *firm* has reasonable evidence that the contract would not qualify as a *regulated sale and rent back agreement*.
- 5.9.7 G If the *firm* has reasonable evidence that the contract is not a *regulated sale and rent back agreement*, for example where at least 40% of the property is not going to be occupied as a dwelling by the seller or his family, and has not provided the required pre-sale disclosures and the *firm* subsequently concludes that the contract does qualify as a *regulated sale and rent back agreement*, there is no requirement to provide separate pre-sale disclosures at the time the *firm* reaches that conclusion. However, the requirement to integrate the pre-sale disclosures into the written pre-offer document at Stage One that is required by *MCOB 6.9.3R* will apply.

Record of sale and rent back providers

- 5.9.8 R (1) A *SRB intermediary* must for each *regulated sale and rent back agreement* in relation to which it carries on *regulated sale and rent back mediation activity* keep a record of the contact details of the provider that enters into or is proposed to enter into the agreement, making it clear whether the provider is a *SRB agreement provider* or an *unauthorised SRB agreement provider*.
- (2) The record in (1) must be retained for a period of one year, or one year from the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*, whichever is the longer.

...

## 6.1 Application

...

6.1.2 R This Table belongs to *MCOB 6.1.1R*

(1) Category of firm	(2) Applicable section
...	
<i>reversion provider</i>	...
<u><i>SRB agreement provider</i></u>	<u><i>MCOB 6.1.1R to 6.1.3R, MCOB 6.1.5R, MCOB 6.2, MCOB 6.3 and MCOB 6.9</i></u>

...

After MCOB 6.8 insert the following new section. The text is not underlined.

## 6.9 Regulated sale and rent back agreements

Process for concluding regulated sale and rent back agreements

6.9.1 R A *SRB agreement provider* must not enter into a *regulated sale and rent back agreement* unless it follows the process outlined in this section.

Valuation of the property

- 6.9.2 R (1) A *SRB agreement provider* intending to enter into a specific *regulated sale and rent back agreement* with a *SRB agreement seller* and before it complies with the other requirements in this section, must ensure that the property is properly valued by a valuer:
- (a) that meets the competence and independence requirements (see *MCOB 2.6A.12R, MCOB 2.6A.12AR* and *MCOB 2.6A.13E*); and
  - (b) using the definition of “market value” set out in the Valuation Standard of the Royal Institution of Chartered Surveyors from time to time.
- (2) Where the *SRB agreement provider* has applied to a *mortgage lender* for financing for a proposed *regulated sale and rent back agreement* and the relevant lender in accordance with its standard lending practices requires its own valuation of the property to be carried out, the valuation will only satisfy the requirements of (1) if the property is properly valued by a valuer that meets the competence and independence requirements (see *MCOB 2.6A.12R* and *MCOB*



2.6A.13E).

- (3) The *firm* must ensure that a copy of the valuation report accompanies the written pre-offer document at Stage One (see *MCOB* 6.9.3R).
- (4) This *rule* does not apply if the *SRB agreement seller* has already obtained his own recent valuation of the property from a valuer that meets the competence and independence requirements (see *MCOB* 2.6A.12R and *MCOB* 2.6A.13E).

Written pre-offer document: Stage One

- 6.9.3 R (1) As soon as a *SRB agreement provider* agrees the key terms of a proposed *regulated sale and rent back agreement* with a *SRB agreement seller* and before he becomes contractually committed to enter into the agreement, the *SRB agreement provider* must provide the seller with a written pre-offer document summarising its key terms (Stage One).
- (2) The written pre-offer document must be in the form prescribed by *MCOB* 6 Annex 2R and must be adapted by the *firm*, as appropriate, to the extent specified.
- (3) The written pre-offer document must be accompanied by the *FSA* consumer factsheet on sale and rent back (even if the *firm* has already provided this) which the *firm* must provide to the *customer* in a *durable medium* and which may be accessed through [www.fsa.gov.uk](http://www.fsa.gov.uk).
- (4) On providing the *FSA* consumer factsheet to the *SRB agreement seller*, the *firm* must give him an oral explanation of what it contains, so as to ensure that he understands its contents, unless the *firm* has already done so.
- (5) The *firm* must ensure that the written pre-offer document is accompanied by all associated legal documents in draft form that the seller will need to sign at Stage Two (*MCOB* 6.9.10R) to give effect to the proposed *regulated sale and rent back agreement*.

Cooling-off: No contact between *SRB agreement provider* and *SRB agreement seller*

- 6.9.4 R The *SRB agreement provider* must not instigate any contact or otherwise seek to communicate with the *SRB agreement seller* or a member of his family for a period of 14 *days* from the time that he has been supplied with the written pre-offer document at Stage One, together with the associated legal documentation in draft form.
- 6.9.5 R If the *SRB agreement seller* or a member of his family makes contact with the *SRB agreement provider* during the 14 *day* cooling-off period, for example because he wants to query a term of the written pre-offer document, the provider must endeavour to answer the query in as factual a manner as the circumstances permit but avoid any language or conduct

which could be interpreted as amounting to an attempt to exert pressure on the *SRB agreement seller* to enter into the proposed agreement.

#### Exercise of cooling-off rights: costs and expenses

- 6.9.6 R The *SRB agreement provider* must not charge or seek to charge a potential *SRB agreement seller* for any fee, cost, or expense unless and until the seller has entered into the *regulated sale and rent back agreement* following the 14 day cooling-off period.

#### Responsibility of SRB agreement provider during cooling-off period

- 6.9.7 R The *SRB agreement provider* must not offer to or *enter into a regulated sale and rent back agreement* with the seller until the 14 day cooling off period has elapsed and must not allow the seller to become contractually committed to enter into any such agreement by signing any associated legal documentation to give effect to it within that period.

#### Requirement to notify the mortgage lender or home purchase provider where the seller is in arrears

- 6.9.8 R As soon as a *SRB agreement provider* has provided the written pre-offer document at Stage One to a *SRB agreement seller* who is *in arrears* under his *regulated mortgage contract* or *home purchase plan* on the property to which the proposed *regulated sale and rent back agreement* relates, it must, in a *durable medium*, immediately notify the *mortgage lender*, *home purchase provider* or the providers of other loans that may be secured on the property:
- (1) explaining that the *firm* is proposing to enter into a *regulated sale and rent back agreement* with the seller and that, as required by the *FSA*, he will be given a cooling-off period of 14 days before deciding whether he wishes to enter into the proposed agreement;
  - (2) summarising the key terms of the proposed agreement;
  - (3) advising the lender or provider that the proposed agreement is likely to be relevant to any repossession action or other forbearance option the lender or provider may already be, or may be contemplating, taking with respect to the property; and
  - (4) giving the *firm's* contact details should the lender or provider wish for any further information.

#### Data protection

- 6.9.9 G *Firms* will need to consider the implications of the Data Protection Act 1998 under which personal data that a *firm*, as data controller, holds about its *customer* cannot be disclosed to a third party without his consent. In practice the *firm* is likely to need the *SRB agreement seller's* consent to disclosing the matters covered by *MCOB 6.9.8R* to the relevant *mortgage*

*lender or home purchase provider.*

Written offer document for signing: Stage Two

- 6.9.10 R (1) No sooner than 14 *days* after the *SRB agreement provider* has supplied the *SRB agreement seller* with the written pre-offer at Stage One, the provider must provide him with a written offer document for signing (Stage Two), accompanied by any formal legal documentation that the parties will need to sign to give effect to the proposed *regulated sale and rent back agreement*.
- (2) The written offer document for signing (Stage Two) must be in the form prescribed by *MCOB 6 Annex 3R* and must be adapted by the *firm*, as appropriate, to the extent specified.

Records of written pre-offer documents and written offer documents for signing

- 6.9.11 R The *SRB agreement provider* must keep a record of the written pre-offer document at Stage One and the written offer document for signing at Stage Two for a period of:
- (1) one year after the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*; or
- (2) five years from the date of the disclosures and warnings, written offer documents and cooling-off period notices;
- whichever is the longer.

...

After MCOB 6 Annex 1, insert the following new Annexes. The text is not underlined.

## 6 Annex 2R – Written Pre-offer Document of a regulated sale and rent back agreement.

1. This annex belongs to *MCOB* 6.9.3R.
2. The text in square brackets marked with an asterisk indicates instructions to the firm that must not be included in the Stage One pre-offer document provided to customers.



### About this sale and rent back agreement

Date: [date produced by firm]

## STAGE ONE – PRE-OFFER DOCUMENT

Please take time to consider the details of this sale and rent back pre-offer document and any associated documents such as the draft sale and rent back contract and draft tenancy agreement.

### Is this agreement right for me?

Please consider whether this sale and rent back agreement is the best option for you. You should consider taking independent advice. Please read the enclosed consumer factsheet “Just the facts about sale and rent back schemes” which gives impartial information, including contact details for free advice agencies.

You do not have to agree to the proposed agreement.

### How long do I have to consider this agreement?

You have at least fourteen days from the date of this document to consider the information before [name of firm] can give you the Stage Two documents to sign.

**[name of firm(s)] must not contact you throughout this fourteen day period. This is to give you time to consider whether you wish to go ahead.**

### Should I contact my lender?

If you have arrears on your mortgage or other loan secured on your property, [name of firm] will write to your lender(s) to let them know that you are considering a sale and rent back agreement. However you should also contact your lender(s) to let them know what is happening.

### \*Details of the proposed sale and rent back agreement

**[The text in this section ‘details of the proposed sale and rent back agreement’ is not prescribed – however it must be set out in accordance with MCOB 5.9.1R, but adapted to include the market valuation of the property rather than an estimate] \***

**6 Annex 3R – Cooling-Off Document of a regulated sale and rent back agreement.**

1. This annex belongs to *MCOB* 6.9.10R.
2. The text in square brackets marked with an asterisk indicates instructions to the firm that must not be included in the Stage Two offer document provided to customers.

**About this sale and rent back agreement****STAGE TWO – OFFER DOCUMENT**

Date: [date produced by firm – must be at least fourteen days after the date of the Stage One document ]

Please take time to consider the details of this sale and rent back offer and any associated documents such as the sale and rent back contract and tenancy agreement before signing.

**Is the agreement right for me?**

Please consider whether this sale and rent back agreement is the best option for you. You should consider taking independent advice. The consumer factsheet “Just the facts about sale and rent back schemes” which was enclosed in the stage one pre-offer document, gives impartial information and contact details for free advice agencies.

You do not have to agree to this offer.

**Should I contact my lender?**

If you have arrears on your mortgage or other loan secured on your property, [name of firm] will write to your lender(s) to let them know that you are considering a sale and rent back agreement. However you should also contact your lender(s) to let them know what is happening.

**\*Details of your offer**

**[The text in this section ‘details of your offer’ is not prescribed – however it must be set out in accordance with MCOB 5.9.1R, but adapted to include the market valuation of the property rather than an estimate] \***

I/we wish to accept this offer

Signatures of customer(s):	Date signed:

Amend the following as shown.

7.1.2 R This table belongs to *MCOB 7.1.1R*

(1) Category of firm	(2) Applicable section
...	
<i>reversion provider</i> ...	...
<u><i>SRB administrator</i></u>	<u><i>MCOB 7.9</i></u>
<u><i>SRB agreement provider</i></u>	<u><i>MCOB 7.1 to MCOB 7.3 and MCOB 7.9</i></u>

...

After MCOB 7.8 insert the following new section. The text is not underlined.

## 7.9 Post-sale disclosure for regulated sale and rent back agreements

7.9.1 R Where the terms of a *regulated sale and rent back agreement* include a provision conferring upon the *SRB agreement seller* a right to receive any sum, or exercise any option, in relation to the transaction after it has been concluded, the *SRB agreement provider* must take reasonable steps to inform the *SRB agreement seller* in good time of any steps which the *SRB agreement seller* must take if he wishes to receive the sum or exercise the option.

Amend the following as shown.

12.1.6 R This chapter does not apply to a *firm* carrying on *reversion activities* or *regulated sale and rent back activities* in respect of a *customer* acting in his capacity as an *unauthorised reversion provider* or as an *unauthorised SRB agreement provider*.

After MCOB TP 2 insert the following new Transitional Provisions. The text is not underlined.

### MCOB TP 3 Transitional Provisions

#### 3.1 Transitional Provisions for sale and rent back agreements

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	Every <i>rule</i> in <i>MCOB</i> unless the context otherwise requires and subject to any more specific transitional provision relating to the matter.	R	<p>(1) If, in relation to <i>regulated sale and rent back activities</i>, or the communication of a <i>financial promotion</i> relating to a <i>regulated sale and rent back agreement</i>, provisions in <i>MCOB</i> are dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 30 June 2010.</p> <p>(2) Paragraph (1) is without prejudice to provisions in <i>MCOB</i> that applied before 30 June 2010 to <i>regulated sale and rent back firms</i> that held an interim authorisation or an interim variation of permission to conduct <i>regulated sale and rent back activity</i> in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) that had been granted by the <i>FSA</i>.</p>	From 30 June 2010 for 4 weeks.	30 June 2010
2	-	G	For example if a <i>customer</i> has not entered into a <i>regulated sale and rent back agreement</i> before 30		

			June 2010, a regulated sale and rent back firm will have to comply with the requirements in <i>MCOB</i> when taking any further action (such as issuing a written pre-offer document (Stage One) with cooling-off period ( <i>MCOB</i> 6.9)).		
3	-	G	<i>MCOB</i> applies to regulated sale and rent back agreements entered into on or after 1 July 2009. <i>PERG</i> 14.4A contains guidance on the variation of plans entered into before 1 July 2009).		
4	<i>MCOB</i> 3.8B.4R; <i>MCOB</i> 3.8B.5R	R	(1) A non-real time financial promotion of a regulated sale and rent back agreement communicated:  (a) in a directory (or similar publication) that is updated annually;  (b) otherwise than in (a); on or after 30 June 2010 where the deadline for submission for communication was before that date.	(1)(a) from the later of 30 June 2010 or the date of first communication, for one year;  (1)(b) from 30 June 2010 for three months.	30 June 2010

...

### Schedule 1 Record keeping requirements

...

#### 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u><i>MCOB</i> 4.11.8R</u>	<u>Customer information on which an</u>	<u>Customer information on his income,</u>	<u>The date on which the firm reached a</u>	<u>Five years, or one year after the end of the</u>



	<u>assessment of the affordability and appropriateness for a <i>regulated sale and rent back agreement</i> was based</u>	<u>expenditure, resources, needs, objectives and individual circumstances</u>	<u>conclusion on affordability and appropriateness</u>	<u>fixed term of the tenancy agreement, if later</u>
...				
<i>MCOB 5.9.2R</i>	Each pre-sale disclosure	A record of the main terms of the <i>regulated sale and rent back agreement</i>	The date on which the disclosure is made	The longer of a period of <del>12 months</del> <u>one year</u> from the end of the <del>minimum period that the <i>SRB agreement seller and his family have the contractual right to remain in the property</i></del> <u>fixed term of the tenancy</u> or five years from the date of the disclosure
...				
<i>MCOB 5.9.8R</i>	<u>Provider information</u>	<u>A record of the contact details of the provider, making it clear whether it is a <i>SRB agreement provider</i> or an <i>unauthorised SRB agreement provider</i></u>	<u>The date on which the <i>regulated sale and rent back mediation activity</i> is carried on</u>	<u>The longer of one year, or one year from the end of the fixed term of the tenancy under the <i>regulated sale and rent back agreement</i></u>
...				
<i>MCOB 6.9.11R</i>	<u>Each written pre-offer document (Stage One) required under <i>MCOB 6.9.3R</i></u>	<u>A record of the main terms of the proposed <i>regulated sale and rent back agreement</i></u>	<u>The date on which the document is produced</u>	<u>The longer of a period of one year from the end of the fixed term of the tenancy under the <i>regulated</i></u>

				<u>sale and rent back agreement</u> or <u>five years</u> <u>from the date of</u> <u>the written pre-</u> <u>offer document</u>
<u>MCOB 6.9.11R</u>	<u>Each written offer document for signing (Stage Two) required under MCOB 6.9.10R (1)</u>	<u>A record of the contents of the documents and the cooling-off period</u>	<u>The date on which the document is produced</u>	<u>The longer of a period of one year from the end of the fixed term of the tenancy under the regulated sale and rent back agreement</u> or <u>five years</u> <u>from the date of</u> <u>the written offer</u> <u>document</u>
...				

## Annex F

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

## TP 1 Transitional provisions

## TP 1.1 Transitional provisions applying to the Supervision manual only

...

## TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>15D</u>	<u>SUP 16</u>	<u>R</u>	<p><u>A regulated sale and rent back firm need not comply with the rules in SUP 16 to the extent that they carry on regulated sale and rent back activity. A regulated sale and rent back firm must instead:</u></p> <p><u>(a) within a period of 3 months from becoming authorised (for previously unauthorised persons); or</u></p> <p><u>(b) according to their existing reporting schedules (for firms that previously held an interim authorisation or interim variation of permission in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) or hold a Part IV permission to carry on regulated sale and rent back activity as a result of having made a variation of permission application that has been approved by the FSA);</u></p> <p><u>and every 6 months after such date until 30 June 2011 (unless otherwise advised by the FSA), provide to the</u></p>	<u>30 June 2010 to 29 June 2011</u>	<u>30 June 2010</u>

		<p><u>FSA for the relevant period the following information:</u></p> <p><u>(i) management accounts for the firm, including a balance sheet, profit/loss statement and management report;</u></p> <p><u>(ii) details of the firm's funding arrangements; and</u></p> <p><u>(iii) where the firm is a SRB agreement provider, the number of regulated sale and rent back agreements it has entered into in that period, distinguishing between direct and indirect sales.</u></p> <p><u>If a firm does not submit a complete report by the date on which it is due in accordance with this transitional provision, the firm must pay an administrative fee of £250.</u></p>		
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## Annex G

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

...

1.4.2 G Table: list of general guidance to be found in *PERG*

Chapter:	Applicable to:	About:
...		
<p><i>PERG</i> 14: Home reversion, <del>and</del> home finance <u>and regulated sale and rent back activities</u></p>	<p>Any <i>person</i> who needs to know whether his activities in relation to <i>home reversion plans</i>, <del>or</del> <u><i>home purchase plans or regulated sale and rent back agreements</i></u> will amount to <i>regulated activities</i> or whether the restriction in section 21 of the <i>Act</i> will apply to any <i>financial promotions</i> he may make.</p>	<ul style="list-style-type: none"> <li>• the <i>regulated activities</i> that arise in connection with <i>home reversion plans</i>, <del>and</del> <u><i>home purchase plans and regulated sale and rent back agreements</i></u> and any exclusions that may be relevant</li> <li>• the circumstances in which <i>financial promotions</i> about <i>home reversion plans</i>, <del>and</del> <u><i>home purchase plans and regulated sale and rent back agreements</i></u> may be made without breaching the restriction in section 21 of the <i>Act</i></li> </ul>
...		

...

Rights under a regulated sale and rent back agreement

2.6.27C G In accordance with Article 63J(3)(a) of the *Regulated Activities Order*, a regulated sale and rent back agreement is an arrangement under which, at the time it is entered into:

- (1) a person (the “SRB agreement provider”) buys all or part of the qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “agreement seller”); and
- (2) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least

40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

Detailed *guidance* on this is set out in *PERG 14.4A* (Activities relating to regulated sale and rent back agreements).

...

2.7.7A G There are ~~eight~~ ten arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:

...

- (7) *arranging (bringing about) a home purchase plan*, which includes arranging for another *person* to vary the terms of a *home purchase plan* entered into by him as home purchaser on or after 6 April 2007 (article 25C(1)); ~~and~~
- (8) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (9) *arranging (bringing about) a regulated sale and rent back agreement, which includes arranging for another person ("A") to vary the terms of a regulated sale and rent back agreement entered into on or after 1 July 2009 by A as agreement seller or agreement provider, in such a way as to vary A's obligations under that agreement (article 25E(1)); and*
- (10) *making arrangements with a view to a regulated sale and rent back agreement (article 25E(2)).*

...

2.7.7B G The activity of *arranging (bringing about) deals in investments* is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, *arrangements* that bring it about). The activity of *making arrangements with a view to transactions in investments* is concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into of transactions by other parties. This activity has a potentially broad scope and typically applies in one of two scenarios. These are where a person provides ~~facilities~~ arrangements of some kind:

- (1) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or

...

...

Advising on regulated sale and rent back agreements

2.7.16E G Under article 53D of the *Regulated Activities Order* giving advice to a person in his capacity as an *SRB agreement seller* or an *SRB agreement provider* is a *regulated activity* if it is advice on the merits of the person:

- (1) entering into a particular *regulated sale and rent back agreement*; or
- (2) varying the terms of a *regulated sale and rent back agreement*.

Advice on varying terms as referred to in (2) only comes within article 53D where the agreement is entered into by the person on or after 1 July 2009 and the variation varies the person's obligations under the agreement. Further guidance on the scope of the *regulated activity* under article 53D is in PERG 14.4A (Activities relating to regulated sale and rent back agreements).

...

Entering into and administering a regulated sale and rent back agreement

2.7.20BA G Entering into a regulated sale and rent back agreement as an agreement provider and administering a regulated sale and rent back agreement are regulated activities under Article 63J of the *Regulated Activities Order* (Regulated sale and rent back agreements). Guidance on these regulated activities is in PERG 14.4A (Activities relating to regulated sale and rent back agreements).

...

2.8.6 G The various activities that involve *arranging* fall into two general types. These are:

- (1) those relating to arranging a particular transaction or a contract, agreement or plan variation (articles 25(1), 25A(1), 25B(1), ~~and~~ 25C(1), and 25E(1) of the *Regulated Activities Order*); and
- (2) those relating to making arrangements with a view to persons entering into certain transactions (articles 25(2), 25A(2), 25B(2), ~~and~~ 25C(2), and 25E(2) of the *Regulated Activities Order*).

...

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.

...

- (5) Under article 29A, an *unauthorised person* is excluded from the *regulated activity* of arranging for another person to vary the terms of a *regulated mortgage contract* entered into on or after 31 October 2004 (article 25A(1)(b)) or a *home reversion plan* or *home purchase plan* entered into on or after 6 April 2007 (articles 25B(1)(b) and

25C(1)(b)) or a regulated sale and rent back agreement entered into on or after 1 July 2009 (article 25E(1)(b)). This is if the *arranging* is the result of:

(a) anything done in the course of the administration, by an *authorised person*:

...

(iii) of a *home purchase plan* in the way set out in article 63G(a); ~~or~~

(iv) of a regulated sale and rent back agreement in the way set out in article 63K(a); or

(b) anything done by the *unauthorised person* in connection with the administration:

...

(iii) of a *home purchase plan* in the way set out in article 63G(b);

(iv) of a regulated sale and rent back agreement in the way set out in article 63K(b).

...

(9) Under article 33, making arrangements under which *persons* will be introduced to third parties who will provide independent services (consisting of advice or the exercise of discretion in relation to certain investments) is excluded from articles 25(2), 25A(2), 25B(2), ~~and~~ 25C(2) and 25E(2) only. The party to whom the introduction is made must be of a specified standing (including that of an *authorised person*). The exclusion does not apply where the arrangements relate to a *contract of insurance*.

(10) ...

is excluded from articles 25A(2), 25B(2), ~~and~~ 25C(2), and 25E(2) subject to certain conditions related to the receipt of client money and the disclosure of certain information.

...

2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of:

...



- (3) *advising on a home reversion plan; ~~and~~*  
 (4) *advising on a home purchase plan; and*  
 (5) *advising on a regulated sale and rent back agreement.*

...

2.8.12A G ...

More detailed *guidance* on certain of these exclusions is in *PERG 4* (Regulated activities connected with mortgages), *PERG 5* (Insurance mediation activities), ~~and~~ *PERG 14.3*, ~~and~~ *PERG 14.4* and *PERG 14.4A* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

...

2.8.14A G ...

These exclusions are subject to certain conditions and are explained in greater detail in *PERG 4.8* (Administering a regulated mortgage contract), ~~and~~ *PERG 14.3*, ~~and~~ *PERG 14.4* and *PERG 14.4A* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

2.8.14B G The following exclusions apply in specified circumstances where a *person* is *administering a home finance ~~plan~~ transaction*:

...

...

2.9.4 G .... They apply where the activity relates to a *home finance transaction* under which the borrower, *reversion occupier*, ~~or~~ *home purchaser* or *SRB agreement seller* as the case may be is a beneficiary.

...

2.9.17A G The exclusions for *overseas persons* who carry on certain *regulated activities* related to *home finance transactions* work in a different way. They depend on the residency of the borrower or borrowers, the *reversion occupier* or *reversion occupiers*, ~~or~~ the *home purchaser* or *home purchasers* or the *SRB agreement seller* or *SRB agreement sellers* as the case may be. In addition, some of the exclusions also depend on the residency of the reversion provider or *SRB agreement provider*. *Guidance* on these exclusions is in *PERG 4.11* (Link between activities and the United Kingdom) and *PERG 14.6* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

...

## 2 Annex 2G Regulated activities and the permission regime

...

2 Table

...

Table 1 : Regulated Activities [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
(zj)...	
<u>(zk) arranging (bringing about) a regulated sale and rent back agreement (article 25E(1))</u>	<u>rights under a regulated sale and rent back agreement (Article 88C)</u>
<u>(zl) making arrangements with a view to a regulated sale and rent back agreement (article 25E(2))</u>	
<u>(zm) advising on a regulated sale and rent back agreement (article 53D))</u>	
<u>(zn) entering into a regulated sale and rent back agreement (article 63J(1))</u>	
<u>(zo) administering a regulated sale and rent back agreement (Article 63(J)(2))</u>	

...

- 4.1.6 G A person may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or ISA to repay an interest-only mortgage. Such a person should also consult the *guidance* in PERG 2 (Authorisation and regulated activities), PERG 5 (Guidance on insurance mediation activities) and PERG 8 (Financial promotion and related activities). In addition, PERG 14 (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities) has *guidance* on *regulated activities* relating to *home reversion plans*, ~~and~~ *home purchase plans* and regulated sale and rent back agreements.

...

7.3.1D G Under article 53D of the *Regulated Activities Order* (Advising on regulated sale and rent back agreements), advising a *person* is a specified kind of activity if:

- (1) the advice is given to the *person* in his capacity as an *SRB agreement seller* or *SRB agreement provider* or as a potential *SRB agreement seller* or *SRB agreement provider*; and
- (2) it is advice on the merits of his doing any of the following:
  - (a) entering into a particular *regulated sale and rent back agreement*; or
  - (b) varying the terms of a *regulated sale and rent back agreement* entered into by him on or after 1 July 2009 in such a way so as to vary his obligations under that agreement.

7.3.2 G Articles 53 , 53A, 53B~~2~~, ~~and~~ 53C and 53D of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG* 8 (Financial promotion and related activities), *PERG* 4 (Guidance on regulated activities connected with mortgages)~~2~~, ~~and~~ *PERG* 14.3~~2~~, ~~and~~ *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion~~2~~, ~~and~~ home purchase and regulated sale and rent back agreement activities).

...

7.3.3 G ... This has been amended by article 18 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2003 (SI 2003/1476) ~~and~~<sup>2</sup> by article 28 of the Financial Services and Markets Act 2000 (Regulated ~~activities~~ Activities) (Amendment) (No 2 ) Order 2006 (SI 2006/2383) and article 27 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) as explained in *PERG* 7.3.3AG.

...

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:

...

- (2) to lead or enable *persons*:

...

- (c) ... ; ~~or~~

- (d) ... on or after 6 April 2007; or
- (e) to enter as SRB agreement seller or SRB agreement provider into regulated sale and rent back agreements or to vary the terms of regulated sale and rent back agreements entered into by them as SRB agreement seller or SRB agreement provider where the agreement was originally established on or after 1 July 2009.

...

7.4.3 G ...

- (3) ...But, in the FSA's view, a news or information 'service' is not restricted only to the giving of ~~only~~ news or information since this would not generally constitute the *regulated activity* of *advising on investments* (see PERG 8.28 (Advice or information)), *advising on regulated mortgage contracts* (see PERG 4.6.13G to PERG 4.6.16G (Advice or information)), *advising on a home reversion plan*, ~~or~~ *advising on a home purchase plan* or advising on regulated sale and rent back agreements. So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

...

7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:

...

- (2) to lead or enable *persons* to:

...

- (c) ... ; ~~or~~

- (d) ... on or after 6 April 2007; or

- (e) to enter as SRB agreement seller or SRB agreement provider into regulated sale and rent back agreements or to vary the terms of regulated sale and rent back agreements entered into by them as SRB agreement seller or SRB agreement provider where the agreement was originally established on or after 1 July 2009.

...

7.4.8 G ... If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors), as borrowers, as *reversion occupiers* or reversion providers or as *home purchasers* or as SRB

agreement sellers or SRB agreement providers (as the case may be), advice as referred to in *PERG 7.4.5G(1)*, then the publication or service will not be able to benefit from this exclusion.

...

- 8.17.1A G Section 21 also applies to *financial promotions* concerning *home reversion plans*, ~~and~~ *home purchase plans* and regulated sale and rent back agreements. Guidance on these activities and related *financial promotions* is given in *PERG 14* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back activities).

...

- 8.17.12 G Article 28B (Real time communications: introductions ) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about *regulated mortgage contracts*, as well as *home reversion plans*, ~~and~~ *home purchase plans* and regulated sale and rent back agreements. The exemption is subject to the following conditions being satisfied:

...

...

- 8.23.3 G The *regulated activities* which are likely to be conducted in the circumstances referred to in *PERG 8.23.2G* are:
- (1) giving advice on certain investments (articles 53 (Advising on investments), 53A (Advising on regulated mortgage contracts), 53B (Advising on regulated home reversion plans), 53C (Advising on regulated home purchase plans), 53D (Advising on regulated sale and rent back agreements) and 56 (Advice on syndicate participation at Lloyd's) of the *Regulated Activities Order*) - for example, where the *financial promotion* is the advice;
  - ...
  - (2C) *making arrangements with a view to a home purchase plan* (article 25C(2) of the *Regulated Activities Order* (Arranging regulated home purchase plans)); ~~and~~
  - (2D) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2) of the *Regulated Activities Order* (Arranging regulated sale and rent back agreements)); and
  - ...

- 8.23.4 G The *guidance* that follows is concerned with the *regulated activities* of *making arrangements with a view to transactions in investments* and *advising on investments*. Guidance on the *regulated activities* of *making arrangements with a view to regulated mortgage contracts* and *advising on regulated mortgage contracts* is in *PERG 4* (Guidance on regulated

activities connected with mortgages). *Guidance on the regulated activities of making arrangements with a view to a home reversion plan and advising on a home reversion plan, and making arrangements with a view to a home purchase plan and advising on a home purchase plan, and making arrangements with a view to a regulated sale and rent back agreement and advising on a regulated sale and rent back agreement* is in *PERG 14* (Guidance on home reversion, and home purchase and sale and rent back activities).

...

#### 8.36.3 G Table Controlled activities

...	
<u>18A.</u>	<u>Providing a regulated sale and rent back agreement</u>
<u>18B.</u>	<u>Arranging a regulated sale and rent back agreement</u>
<u>18C.</u>	<u>Advising on a regulated sale and rent back agreement</u>
19.	Agreeing to do anything in 3 to 18 <u>18C</u> above

#### 8.36.4 G Table Controlled investments

...	
<u>17A.</u>	<u>Rights under a regulated sale and rent back agreement</u>
...	

...

## 14.1 Background

...

The Q&As that follow are set out in sections:

- general issues (*PERG 14.2*);
- activities relating to home reversion plans (*PERG 14.3*);
- activities relating to home purchase plans (*PERG 14.4*);
- activities relating to regulated sale and rent back agreements (*PERG 14.4A*);
- the ‘by way of business’ test (*PERG 14.5*);
- carrying on a regulated activity in the United Kingdom (*PERG 14.6*);
- exemptions (*PERG 14.7*); and
- financial promotions (*PERG 14.8*).

## 14.2 General issues

### Q2. What is the purpose of the Regulation of Financial Services (Land Transactions) Act 2005?

...This typically includes:

- schemes (often termed ‘equity release schemes’) where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property (‘home reversion plans’); and
- certain types of Islamic financing arrangements designed to enable the purchase of a home in a way that is acceptable under Islamic law, such as Ijara or diminishing Musharaka (‘home purchase plans’);
- schemes where a provider buys an interest in a homeowner’s property and allows the homeowner to continue to reside in the property in return for payment of rent (‘sale and rent back agreement’).

### Q3. I propose to carry on activities in relation to home finance arrangements of the kind mentioned in Q2. In what circumstances will I need to be authorised by the FSA or be an exempt person?

You will need to be an authorised or exempt person if you will:

- be carrying in *regulated activities*;
- be doing so by way of business;
- be doing so on or after 6 April 2007 in relation to home purchase plans and home reversion plans or on or after 1 July 2009 in relation to sale and rent back agreements; and
- be doing so in the *United Kingdom*.

### Q4. How will I know if my proposed home finance activities are regulated?

*Regulated activities* are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (‘the *Regulated Activities Order*’). This was amended, following the enactment of the Regulation of Financial Services (Land Transactions) Act 2005, to extend its scope to cover certain home finance activities. These amendments were made in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2006 (SI 2006/2383) which came into effect on 6 April 2007 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) which came into effect on 1 July 2009. Regulated home finance activities are:

- *entering into a home reversion plan*, ~~or entering into a home purchase plan~~ or entering into a regulated sale and rent back agreement as the provider of the plan/agreement or, in the case of *home reversion plans* and regulated sale and rent back agreements only, as a *person* to whom rights or obligations acquired by the provider are transferred or who, during the currency of the plan or agreement, acquires all or part of the interest in land bought by the provider;
- *administering a home reversion plan*, ~~or administering a home purchase plan~~ or administering a regulated sale and rent back agreement;

- *arranging (bringing about) a home reversion plan, ~~or~~ arranging (bringing about) a home purchase plan or arranging (bringing about) a regulated sale and rent back agreement;*
- *making arrangements with a view to home reversion plans, ~~or~~ making arrangements with a view to home purchase plans or making arrangements with a view to regulated sale and rent back agreements;*
- *advising on a home reversion plan, ~~or~~ advising on a home purchase plan or advising on a regulated sale and rent back agreement; and*
- agreeing to do any of the above.

...

### 14.3 Activities relating to home reversion plans

...

#### Q9. What exclusions may be available to me if I am entering into home reversion plans?

The main exclusions are those:

- for trustees who enter into a plan where the reversion occupier is an individual who is a beneficiary under the trust, ~~or a related person~~ (article 66(6B) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

#### Q11. What exclusions may be available to me if I am administering home reversion plans?

The other main exclusions are those:

- for trustees who administer a plan where the reversion occupier is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6B) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

#### Q20. What exclusions may be available to me if I am advising on home reversion plans?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- ~~*overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39).~~

...

### 14.4 Activities relating to home purchase plans



...

**Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?**

The main exclusions are:

- for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6C) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

**Q30. What exclusions may be available to me if I am administering home purchase plans?**

...

The other main exclusions are those:

- for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6C) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

**Q36. What exclusions may be available to me if I am advising on home purchase plans?**

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- ~~*overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39).~~

...

Insert the following new section after PERG 14.4. The text is not underlined.

**14.4A Activities relating to regulated sale and rent back agreements****Q37A. What is a regulated sale and rent back agreement?**

Broadly speaking, this is an arrangement under which, at the time it is entered into, a person (the “agreement provider”) buys all or part of an interest in land (other than time share accommodation) in the *United Kingdom* from a homeowner (being an individual or a trustee whose beneficiary is an individual) (“the agreement seller”) on

the basis that the individual or a related person is entitled under the arrangement, and intends, to use at least 40% of the land as a dwelling. However such an arrangement is not a *regulated sale and rent back agreement* if it is a *home reversion plan*.

This means that an arrangement is not a *regulated sale and rent back agreement* if:

- the agreement seller is not an individual; or
- the land is to be used for the purpose of letting as a dwelling to someone other than a related person of the individual (or beneficiary under the trust) who owns it; or
- the land is used primarily for business purposes; or
- the land is overseas; or
- if it is a *home reversion plan* (see Q5).

A related person, in relation to an individual, means:

- that person's spouse or civil partner;
- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's:
  - parent or grandparent;
  - child or grandchild; or
  - sibling.

As regards the requirement that the conditions need to be met 'at the time the arrangement was entered into', it should be noted that a *regulated sale and rent agreement* is an arrangement that may actually comprise several agreements. For example, a *regulated sale and rent back agreement* may include an agreement for the sale of a freehold interest in land and a subsequent tenancy agreement relating to the occupation of that land. Just because the tenancy agreement was not completed at the same time as the sale of the freehold interest does not mean there is no *regulated sale and rent back agreement*.

**Q37B. Can an arrangement that was established before 1 July 2009 be a regulated sale and rent back agreement?**

Yes it can be. An arrangement may still be a *regulated sale and rent back agreement* even if it was established before 1 July 2009. However, regulated activities carried on in relation to a sale and rent back agreement established before 1 July 2009 will only be subject to regulation:

- when carried on on or after 1 July 2009; and
- in certain circumstances (see Q37Q for a summary).

**Q37C. When will I be carrying on the activity of entering into a regulated sale and rent back agreement?**

This will occur when you enter into the agreement at the outset as the agreement provider. It can also occur at a later stage if all or part of the rights or obligations of the agreement provider are transferred to you or if you acquire all or part of the

interest in land bought by the agreement provider (where you become an 'agreement transferee'). This is so, whether you are acquiring the rights or obligations from the agreement provider or from an existing agreement transferee. This includes acquiring the rights or obligations or the interest in land purely as an investment. However, investors will only be regulated if they satisfy the 'by way of business test' (see 14.5). We refer to agreement providers and agreement transferees collectively in this guidance as 'agreement purchasers'.

So, if you are an agreement transferee under a plan that was established before 1 July 2009, you will only be subject to regulation for carrying on the regulated activity of entering into the plan if you do so on or after 1 July 2009.

**Q37D. What exclusions may be available to me if I am entering into regulated sale and rent back agreements as agreement provider?**

The main exclusions are those:

- for trustees who enter into a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

**Q37E. When will I be carrying on the activity of administering a regulated sale and rent back agreement?**

This will arise if you carry out any one or more of the following functions for an agreement purchaser or an agreement seller in relation to an agreement that was originally entered into on or after 1 July 2009:

- taking necessary steps to make payments to the agreement seller; or
- taking necessary steps to collect or recover payments due from the agreement seller; or
- notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires him to be notified.

One effect of this is that you will not become subject to regulation if you are administering an agreement that was originally established before 1 July 2009 and an agreement transferee enters into the plan after that date. See Q37Q for more detail about when activities are regulated if an agreement was originally entered into before 1 July 2009.

It is irrelevant for the purposes of determining if you are administering a regulated sale and rent back agreement whether or not the agreement was entered into by way of business. In this respect the activity is similar to the regulated activity of *administering a home reversion plan*.

**Q37F. If I collect rent due to an agreement purchaser under a regulated sale and rent back agreement or help the agreement seller set up a direct debit in favour of the agreement purchaser do I need to be regulated?**

Yes, it is likely that you will need to be authorised to carry out the *regulated activity* of *administering a regulated sale and rent back agreement*. However the following exclusions may be available:

- where you arrange for an authorised person with the appropriate *Part IV permission* to administer the agreement – this includes where you administer the agreement for a period of up to one month following the termination of such an arrangement; or
- you administer the plan under an agreement with an authorised person which has a *Part IV permission* to administer such an agreement.

**Q37G. Are there any other exclusions available in relation to administering a regulated sale and rent back agreement?**

The other main exclusions are those:

- for trustees who administer a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

**Q37H. When will I be carrying on the activity of arranging regulated sale and rent back agreements?**

There are three types of arranging activity that are regulated. These are making arrangements:

- (1) for another *person* to enter into a plan as an agreement purchaser or as an agreement seller;
- (2) for another *person*, being an agreement seller or an agreement purchaser, to vary the terms of an agreement that was originally established on or after 1 July 2009, in such a way as to vary his obligations under that agreement; and
- (3) with a view to a *person* who participates in the arrangements entering into an agreement as an agreement seller or as an agreement purchaser.

But none of these arranging activities will apply to you if they relate to an agreement to which, as a result of your arranging activities, you are or will become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the agreement or the variation, as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a person by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of

homeowners to agreement providers or of agreement transferees to agreement providers or vice versa or any of these to a *firm* with *permission* (or which ought to have *permission*) to carry on a *regulated sale and rent back mediation activity*.

**Q37I. I understand that any transaction that I have arranged before 1 July 2009 is not subject to regulation. But do I need permission if I arrange for an agreement transferee to enter into or vary a regulated sale and rent back agreement on or after 1 July 2009?**

This depends on the type of arranging you are carrying on. If you are arranging variations, this will only be regulated if the agreement was originally established on or after 1 July 2009. But, if you are arranging for an agreement transferee to enter into an agreement and the arrangements are being made on or after 1 July 2009, you will be regulated for that arranging activity. See Q39Q for more detail about when activities are regulated if a plan was originally established before 1 July 2009.

**Q37J. Will I need to be regulated for arranging for an agreement provider to dispose of his rights and obligations or his interest in land under a regulated sale and rent back agreement to an agreement transferee?**

It is only arranging for a person to enter into or vary the terms of an agreement that is subject to regulation. So, you will not need to seek authorisation for providing arranging services to the existing provider who wishes to dispose of his rights, obligations or interests but you are likely to be regulated if you are arranging for the transferee to enter into the agreement by acquiring the rights, obligations or interests.

**Q37K. What exclusions may be available to me if I am arranging regulated sale and rent back agreements?**

If you are an *unauthorised person* the following exclusions may be available to you:

- where you are arranging for a transaction to be entered into with or through an *authorised person* (article 29 of the *Regulated Activities Order*) (see Q37L); and
- where you have arranged for an authorised person to administer the agreement or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(4) of the *Regulated Activities Order*).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

- introductions made with a view to the provision of regulated independent advice (article 33 of the *Regulated Activities Order*) (see Q37M);
- introductions made to a regulated person who carries on regulated sale and rent back agreement activities (article 33A of the *Regulated Activities Order*) (see Q37N);

- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); and
- *overseas persons* (article 72 of the Regulated Activities Order) (see Q39).

**Q37L. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

The exclusion will apply to you when, as an *unauthorised person*, you are arranging any of the following:

- for a homeowner (your client) to enter into an agreement with an authorised agreement provider or through an authorised intermediary;
- for an agreement provider (your client) to enter into an agreement with a homeowner or to transfer rights or obligations or an interest in land to an agreement transferee if either the agreement transferee is an authorised person or the transaction is to be effected through an authorised intermediary; or
- for an agreement transferee (your client) to acquire rights or obligations from an authorised agreement provider or through an authorised intermediary;
- for your client to vary the terms of a plan where the agreement purchaser is an authorised person or the variation is arranged through an authorised intermediary.

This is subject to your meeting certain conditions which are, broadly speaking, that:

- you must not advise your client on the merits of his entering into the transaction; and
- you must not be paid by anyone other than your client.

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

**Q37M. When will the exclusion in article 33 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers or agreement purchasers to an *authorised person*, an *exempt person* or an *overseas person*; and
- the introduction is made with a view to the provision of independent advice or the provision of independent discretionary services relating to *regulated sale and rent back agreements*.

**Q37N. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers, agreement purchasers or prospective agreement sellers or agreement purchasers (your client) to an *authorised person* or an *overseas person*;
- you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and
- you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

**Q37O. When will I be carrying on the activity of advising on a regulated sale and rent back agreement ?**

This will arise if:

- you are giving advice to a *person* who is or who is contemplating becoming an agreement seller, an agreement provider or an agreement transferee; and
- the advice relates to the merits of his entering into a regulated sale and rent back agreement in that capacity or varying the terms of an agreement that he has already entered into.

Advice on the merits of varying the terms of an agreement will only be regulated where the agreement was originally established on or after 1 July 2009. However, advice given to an agreement transferee on the merits of his entering into an agreement that was originally established before 1 July 2009 will be subject to regulation. See Q37Q for more detail about when activities are regulated if an agreement was originally established before 1 July 2009.

Advice given to a person on the merits of his transferring rights or obligations or interests in land under an agreement to another person is not regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in *PERG* 4.6 may be applied to the activity on a *regulated sale and rent back agreement*.

**Q37P. What exclusions may be available to me if I am advising on regulated sale and rent back agreements?**

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

**Q37Q. I can see that the fact that the regulated sale and rent back agreement was originally established before 1 July 2009 can affect whether the services that I provide to parties to the agreement after that date are regulated. Can you summarise the position in this respect?**

Yes. This all depends on the combination of the date of entry or variation and the capacity in which your customer enters or entered into the agreement. The following table clarifies when your services will be regulated activities and when they will not.

<b>Potential regulated sale and rent back activity</b>	<b>Whether the activity is regulated if undertaken on or after 1 July 2009 when the agreement was originally established before 1 July 2009</b>
Entering into an agreement as agreement provider (see Q37C)	N/A - this activity will only take place when the plan is first established
Entering into an agreement as agreement transferee (see Q37C)	Yes, any transfer of the agreement provider's interest in land will be caught
Administering an agreement (see Q37E)	No
Arranging (see Q37H) for a person to enter into an agreement as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Arranging variations (see Q37H) of an agreement	No
Advising (see Q37O) a person on entering into an agreement in his capacity as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Advising (see Q37O) a person on varying the terms of an agreement	No



**Q37R. Will changes involving the circumstances of the agreement seller that may take place after the agreement has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?**

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a regulated sale and rent back agreement. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new agreement to be entered into ; and
- does the change involve a variation of the terms of the agreement (if it was originally entered into on or after 1 July 2009) such as to vary the obligations of the provider or the seller?

Broadly speaking, it would seem likely that if the occupier were to move house, the *regulated sale and rent back agreement* would cease as the tenancy agreement would come to an end and the agreement seller would no longer have the right of occupation.

Changes such as may occur due to marriage or change of occupants, change of other relevant details or drawdown of funds under a staggered payment arrangement may necessitate a new agreement or may involve a variation in the existing agreement depending on the extent to which they alter the obligations of the provider or the occupier. Where such changes do involve a variation, anyone arranging or advising on the variation would potentially need to be authorised or exempt. But this applies only where the agreement was originally entered into on or after 1 July 2009.

**Q37S. I am an exempt professional firm. Do I need to be authorised in relation to regulated sale and rent back agreement activities?**

Yes, you may need to be authorised. See Q42 for more detail.

**Q37T. I am an estate agent. Do I need to be authorised where the vendor of a property has approached me to sell their property but has expressed a desire to remain in the property as tenant?**

Yes, it is likely that you will need to be authorised unless you are an exempt person or exclusions apply (see Q37K). This is because it is likely that you will be making arrangements with a view a person who participates in the arrangements entering into an agreement as *SRB agreement provider* and/or *SRB agreement seller*.

**Q37U. I am a receiver appointed under the Law of Property Act 1925. Will my activities need to be regulated by the FSA?**

Your activities in relation to properties subject to regulated sale and rent back agreements could amount to *administering a regulated sale and rent back agreement* where the agreements have been entered into on or after 1 July 2009. Accordingly you may need to be authorised unless you are an exempt person or exclusions apply

(see Q37E for the relevant administering activities and Q37F and Q37G for the available exclusions).

**Q37V What happens when the agreement seller’s right to occupy the land in question under an assured shorthold tenancy (‘AST’) ends?**

A regulated sale and rent back agreement must, at the time it is entered into, give the agreement seller, or related person, an entitlement to occupy at least 40% of the land in question. In the absence of such an entitlement there is no regulated sale and rent back agreement.

As the definition of a regulated sale and rent back agreement refers to ‘an arrangement comprised in one or more instruments or agreements’, in considering the effect of the end of the tenancy you should look at the arrangement as a whole rather than just any tenancy agreement that may comprise the arrangement. So –

- (1) if the arrangement expressly grants the agreement seller an entitlement to occupy the land in question for a specified period of time then the agreement seller retains this entitlement under the regulated sale and rent back agreement even where the AST ends before the specified period ends; and
- (2) if the regulated sale and rent back agreement is expressly stated to end after the termination of the AST then it ceases to be a regulated sale and rent back agreement at that point unless the arrangements are varied by, for example, granting the agreement seller a new AST.

Amend the following as shown.

**14.5 The “by-way-of-business” test**

**Q38. How do I know if I am carrying on regulated activities by way of business?**

A person will only need to be an *authorised* person or exempt if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated activities)). There are, in fact, three different forms of business test applied to the *home finance transactions* (see Q38A).

Whether or not any particular *person* will meet the requirement that he carries on a *regulated activity* by way of business and so needs *authorisation* or exemption will invariably depend on that person's individual circumstances. A number of factors need to be taken into account in determining whether the test is met. These include:

- the degree of continuity;
- the existence of a commercial element;
- the scale of the activity;
- the proportion which the activity bears to other activities carried on by the same person but which are not regulated; and
- the nature of the particular regulated activity that is carried on.

Corporate plan providers and those who provide professional services to them or to home occupiers are likely to be carrying on their activities by way of business. Unpaid individuals who act as trustees for home occupiers are not likely to be.

~~With *home reversion plans*, it is quite possible that the reversion provider may be an individual who is acting purely in the capacity of investor. Such a person may not be acting by way of business when the criteria listed above are applied to his particular circumstances.~~

**Q38A. What are the three different forms of business test referred to in Q38?**

They are:

- (1) the 'by way of business' test in section 22 of the Act applies unchanged in relation to the activity of *entering into a home finance transaction*;
- (2) the 'by way of business' test in section 22 of the Act applies unchanged in relation to the activity of *administering a home finance transaction*, but another 'by way of business' test arises in relation to *administering a home purchase plan* because the plan being administered by way of business must itself have been entered into by way of business (see Q28); and
- (3) in the case of arranging and advising, the effect of articles 3B to 3D of the *Business Order* is that a *person* is not to be regarded as acting 'by way of business' unless he is 'carrying on the business of engaging in one or more of those activities'.

**Q38B. How does the business test in the Business Order differ from the business test in section 22 of the Act?**

The 'carrying on the business' test in the *Business Order* is a narrower test than that of *carrying on regulated activities* 'by way of business' in section 22 of the Act as it requires the *regulated activities* to represent the carrying on of a business in their own right.

**Q38C. Can you give me some examples where the business test is unlikely to be satisfied?**

Examples are:

- (1) when an individual enters into a one-off sale and rent back agreement as *agreement provider for an agreement seller who is a friend or member of his family* whether at market interest rates or not; and
- (2) when a person provides a service without any expectation of reward or payment of any kind (but see *PERG 7.3.4* for examples of when the giving of

‘free’ advice in relation to *home finance transactions* might still amount to a business).

**Q38D. Will I meet the business test if I only enter into one home purchase plan, home reversion plan or regulated sale and rent back agreement a year?**

Yes, you might meet the business test. Whether or not you do will depend largely on the facts. The following issues may be helpful to bear in mind:

- the relevant business test here is not the narrower business test under the *Business Order* but the wider one under section 22 of the *Act*: that is whether the activity is being carried on by way of business (see Q38B);
- the expression “carrying on business” suggests the need for a degree of continuity in the activity. Hence, one-off or extremely infrequent acts would usually not be thought to be enough to satisfy the test. However, it is unlikely that a person could successfully claim that entering into a plan or agreement was a “one-off” or very infrequent act if, in all the circumstances, it cannot be shown that they intended this to be the case. This is because there is always a first time that any regular activity is carried on;
- some individuals are clearly in business as sole traders – they will represent themselves as running a business and be registered for VAT etc. Other individuals may not so clearly be in business. In the latter case, it is necessary to consider the scale of the potential regulated activity. Where a person expects to make a living, or a substantial part of their living, from entering into *home finance transactions* it is likely that they are carrying on such activities by way of business.

With this in mind, if you intend on entering into just one sale and rent back agreement, home reversion plan or home purchase plan each year this may be enough to meet the ‘by way of business’ test if the scale of this activity is likely to be significant in relation to your other activities.

## 14.6 Carrying on a regulated activity in the United Kingdom

**Q39. Does a person who acts as provider, administrator, arranger or adviser in relation to home reversion plans, ~~or~~ home purchase plans or regulated sale and rent back agreements from overseas and without maintaining an office in the UK need to be an authorised or exempt person?**

...In very broad terms, however, as an overseas person, you are more likely than not to be carrying on a home finance activity in the UK if the home occupier, ~~or~~ reversion ~~provider~~ occupier or agreement seller is normally resident in the UK at the time that he enters into the plan. ...

Table indicating whether authorisation or exemption is likely to be needed by a person who is carrying on home finance or sale and rent back activities from overseas.

Activity carried on by overseas person	Where the reversion occupier, or home purchaser or agreement seller is or was normally resident in the UK at the time he enters or entered into the plan			Where the reversion occupier, or home purchaser or agreement seller is or was not normally resident in the UK at the time he enters or entered into the plan		
	Home reversion plan	Home purchase plan	<u>Regulated sale and rent back agreement</u>	Home reversion plan	Home purchase plan	<u>Regulated sale and rent back agreement</u>
Entering into or administering	Yes	Yes	<u>Yes</u>	No	No	<u>No</u>
Arranging for persons to enter into plans.	Yes	Yes	<u>Yes</u>	No, provided the reversion purchaser or the reversion transferee, as the case may be, is or was also not normally resident in the UK.	No	<u>No, provided the agreement provider or agreement transferee, as the case may be, is or was also not normally resident in the UK.</u>
Arranging variations	Yes	Yes	<u>Yes</u>	No	No	<u>No</u>
Advising	Yes	Yes	<u>Yes</u>	No, unless the reversion occupier, reversion provider or reversion transferee is located in the UK at the time the advice is given to him.	No, unless the home purchaser is located in the UK at the time the advice is given.	<u>No, unless the regulated sale and rent back agreement adviser is located in the UK at the time the advice is given.</u>

## 14.7 Exemptions

...

**Q41. What home finance activities can I carry on as an appointed representative?**

...

You will not be able to carry on any of the following ~~regulated activities~~ regulated activities

- ~~entering into a home reversion plan,~~ or entering into a home purchase plan or entering into a regulated sale and rent back agreement; or
- ~~administering a home reversion plan,~~ or administering a home purchase plan or administering a regulated sale and rent back agreement; or
- arranging (bringing about) a regulated sale and rent back agreement; or
- making arrangements with a view to a regulated sale and rent back agreement; or
- advising on a regulated sale and rent back agreement; or
- agreeing to do ~~either~~ any of the above.

**Q42. I am an exempt professional firm. Will I be able to carry on any of the regulated activities relating to home reversion plans, and home purchase plans and regulated sale and rent back agreements without needing FSA authorisation?**

This depends on the activity in question. Subject to your being able to satisfy the general requirements of Part XX of the Financial Services and Markets Act 2000 you will be able:

- to carry on the ~~regulated activities~~ regulated activities of:
  - ~~entering into a home reversion plan;~~ or
  - ~~entering into a home purchase plan;~~ or
  - entering into a regulated sale and rent back agreement; or
  - ~~administering a home reversion plan;~~ or
  - ~~administering a home purchase plan;~~ or
  - administering a regulated sale and rent back agreement; or
  - agreeing to do any of these things,

but only where you are acting as a trustee or personal representative and the *reversion occupier,* ~~or home purchaser~~ or SRB agreement seller is a beneficiary under the trust, will or intestacy;

- to carry on the ~~regulated activities~~ regulated activities of:
  - ~~arranging (bringing about) a home reversion plan;~~ or
  - ~~arranging (bringing about) a home purchase plan;~~ or
  - arranging (bringing about) a regulated sale and rent back agreement; or
  - ~~making arrangements with a view to home reversion plans;~~ or
  - ~~making arrangements with a view to home purchase plans;~~ or
  - making arrangements with a view to regulated sale and rent back agreements; or
  - agreeing to do any of these things,

without any further restriction; and

- to carry on the ~~regulated activities~~ regulated activities of:
  - ~~advising on a home reversion plan;~~ or
  - ~~advising on a home purchase plan;~~ or

- advising on a regulated sale and rent back agreement; or
  - agreeing to do ~~either~~ any of these things,
- but only provided that:
- the advice is given to a trustee or a reversion provider or agreement purchaser who is not an individual; or
  - the advice is given to an individual but does not amount to a recommendation to enter into a plan as reversion provider, *reversion occupier*, ~~or home purchaser~~ or agreement seller; or
  - the advice is given to an individual and does amount to a recommendation to enter into a plan as reversion provider, *reversion occupier*, agreement seller, agreement provider or *home purchaser* with a reversion provider, agreement provider or a *home purchase provider* but only if the advice endorses a corresponding recommendation that has been given to the individual by a suitably authorised or exempt person.

## 14.8 Financial promotions

### Q43. Are there any restrictions if I wish to promote my home finance activities?

Yes. The restriction in section 21 of the Financial Services and Markets Act 2000 will apply, broadly speaking, to any communication which:

- is made in the course of business; and
- invites or induces persons to:
  - become a *reversion occupier*, SRB agreement seller or *home purchaser*; or
  - become a reversion provider or SRB agreement provider; or
  - vary the terms of a *home reversion plan* or a *home purchase plan* that was originally established on or after 6 April 2007 or a regulated sale and rent back agreement that was originally established on or after 1 July 2009; or
  - be provided, as a reversion occupier, SRB agreement seller or home purchaser or as a reversion provider or SRB agreement provider, with arranging or advisory services.

...

The following table summarises when the restriction will apply.

**Table indicating when the financial promotion restriction will apply to communications about home finance plans**

<b>A communication inviting or inducing...</b>	<b>To...</b>	<b>Will be a financial promotion?</b>
...potential reversion occupiers, <u>SRB agreement sellers</u> or home purchasers	...enter into a home reversion plan, <u>regulated sale and rent back agreement</u> , or a home purchase plan	Yes
...potential home reversion purchasers or transferees <u>or SRB agreement providers or transferees</u>	...enter into a home reversion plan <u>or regulated sale and rent back agreement</u>	Yes (in the case of transferees, regardless of whether the plan was originally established before 6 April 2007 <u>in the case of</u>

		<i>home reversion transferees and 1 July 2009 in the case of <u>regulated sale and rent back agreement transferees</u>)</i>
...potential home purchase providers	...enter into a home purchase plan	<del>No</del> <u>Yes</u>
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home purchasers; or</li> <li>• reversion or home purchase providers <u>or SRB agreement providers</u></li> </ul>	...be provided with administration services	No
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home purchasers; or</li> <li>• reversion purchasers or transferees <u>or SRB agreement providers or transferees</u></li> </ul>	...be provided with arranging or advisory services	Yes (but where the promotion relates to such a person varying the terms of a plan <u>or agreement</u> , this is only where the plan <u>or agreement</u> was originally established on or after 6 April 2007 <u>in the case of home reversion plans or home purchase plan and 1 July 2009 in the case of regulated sale and rent back agreements</u> )
...potential or existing home purchase providers	...be provided with arranging or advisory services	No <u>in relation to advisory services</u>  <u>Yes in relation to arranging services</u>
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home purchasers; or</li> <li>• reversion or home purchase providers <u>or SRB agreement providers</u></li> </ul>	...decline from entering into or varying the terms of a plan <u>or agreement</u>	No
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home</li> </ul>	...dispose of rights, obligations or interests in land that they have under a plan <u>or agreement</u>	No



purchasers; or • reversion or home purchase providers <u>or</u> <u>SRB agreement</u> <u>providers</u>		
--	--	--

**Q44. What are the restrictions that apply if I am making a financial promotion about home finance plans or activities?**

...

If you are an authorised person who is communicating or approving the financial promotion and it is not exempt you will need to comply with the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook (*MCOB 3* for financial promotions of home reversion plans and *MCOB 2.2.6AR* for financial promotions of home purchase plans and regulated sale and rent back agreements).