

MORTGAGE MARKET REVIEW (CONDUCT OF BUSINESS) INSTRUMENT 2012**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Part 2 of Annex D to this instrument comes into force on 26 October 2012.
- (2) The remainder of this instrument comes into force on 26 April 2014.

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
Training and Competence sourcebook (TC)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D
Supervision manual (SUP)	Annex E
Professional Firms sourcebook (PROF)	Annex F

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

- F. This instrument may be cited as the Mortgage Market Review (Conduct of Business) Instrument 2012.

By order of the Board
27 September 2012

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 new text is not underlined.

<i>bridging loan</i>	a <i>regulated mortgage contract</i> which has a term of twelve <i>months</i> or less.
<i>credit-impaired customer</i>	<p>a <i>customer</i> who:</p> <ul style="list-style-type: none"> (a) within the last two years has owed overdue payments, in an amount equivalent to three <i>months</i>' payments, on a mortgage or other loan (whether secured or unsecured), except where the amount overdue reached that level because of late payment caused by errors by a bank or other third party; or (b) has been the subject of one or more county court judgments, with a total value greater than £500, within the last three years; or (c) has been subject to an individual voluntary arrangement or bankruptcy order which was in force at any time within the last three years.
<i>direct deal</i>	a <i>home finance transaction</i> that can only be obtained direct from a <i>home finance provider</i> , and where that <i>home finance provider</i> is not the selling <i>firm</i> .
<i>execution-only sale</i>	<ul style="list-style-type: none"> (a) a <i>home finance transaction entered into</i> by a <i>firm</i> with, or <i>arranged</i> by a <i>firm</i> for, a <i>customer</i>; or (b) a variation of an existing <i>home finance transaction</i> entered into by a <i>firm</i> with, or <i>arranged</i> by a <i>firm</i> for, a <i>customer</i>; <p>where the <i>firm</i> does not give <i>advice on home finance transactions</i> to that particular <i>customer</i>, or where the <i>customer</i> has rejected such <i>advice</i> given by the <i>firm</i>.</p>
<i>high net worth mortgage customer</i>	a <i>customer</i> with an annual net income of no less than £300,000 or net assets of no less than £3,000,000, or whose obligations are guaranteed by a person with an income or assets of such amount.
<i>high net worth illustration</i>	an <i>illustration</i> for a <i>regulated mortgage contract</i> to a <i>high net</i>

	<i>worth mortgage customer.</i>
<i>high net worth offer document</i>	an <i>offer document</i> for a <i>regulated mortgage contract</i> to a <i>high net worth mortgage customer</i> .
<i>initial contact</i>	the first occasion when a <i>firm</i> is in contact with the <i>customer</i> and may perform any of the following in relation to a <i>home finance transaction</i> : <ul style="list-style-type: none"> (a) <i>advising</i> on the transaction; (b) <i>arranging (bringing about)</i> the transaction; or (c) <i>entering into</i> the transaction, when there is no <i>firm arranging (bringing about)</i> the transaction.
<i>interest roll-up mortgage</i>	an <i>interest-only mortgage</i> under which neither capital repayments, nor payment of any of the interest accruing under its terms, are required or anticipated until it comes to an end, whether on expiry of the term (if any), discharge of the mortgage or the happening of some other event.
<i>payment shortfall</i>	the outstanding amount to be paid measured against the amount of payments which have become due during the term of a <i>regulated mortgage contract</i> or <i>home purchase plan</i> , including any <i>arrears</i> amount due.
<i>professional customer</i>	a <i>customer</i> who works or has recently worked in the home finance sector for at least one year in a professional position, which requires knowledge of the <i>home finance transactions</i> or home finance services envisaged, and who the <i>firm</i> reasonably believes to be capable of understanding the risks involved in the transaction or transactions contemplated.

Amend the following definitions as shown.

<i>combined initial disclosure document</i>	information about the breadth of advice, <i>scope of advice</i> or <i>scope of basic advice</i> and the nature and costs of the services offered by a <i>firm</i> in relation to <u>either</u> : <ul style="list-style-type: none"> (a) two or more of the following: <ul style="list-style-type: none"> (a i) <i>packaged products</i> or, for <i>basic advice</i>, <i>stakeholder products</i> that are not a <i>group personal pension scheme</i> or a <i>group stakeholder pension scheme</i> (but only if a <i>consultancy charge</i> will be made); (b ii) <i>non-investment insurance contracts</i>; (c iii) <i>regulated mortgage contracts</i> <u><i>home finance</i></u>
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transactions (other than ~~lifetime mortgages~~ regulated sale and rent back agreements); or

- ~~(d) home purchase plans;~~
- ~~(e) equity release transactions;~~
- (b) home finance transactions (other than regulated sale and rent back agreements) only;

which contains the keyfacts logo, headings and text in the order shown in, and in accordance with the notes in, COBS 6 Annex 2.

early repayment charge (in MCOB and BSOCS) a charge levied by the mortgage lender on the customer in the event that the amount of the loan is repaid in full or in part before a date or event specified in the contract.

initial disclosure document information about the *scope of advice* and the nature of the services offered by a firm in relation to:

- ~~(a) a regulated mortgage contract other than a lifetime mortgage as required by MCOB 4.4.1R(1) and set out in MCOB 4 Annex 1R;~~
- ~~(b) an equity release transaction as required by MCOB 4.4.1R(1) and set out in MCOB 8 Annex 1R;~~
- ~~(e) a home purchase plan as required by MCOB 4.4.1R(1) and set out in MCOB 4 Annex 1R; or~~
- ~~(d) a non-investment insurance contract in accordance with ICOBS 4.5.1G and set out in ICOBS 4 Annex 1G.~~

repayment mortgage a regulated mortgage contract under which the customer is obliged to make payments of interest and capital which are designed to repay the mortgage in full over the stated term.

repayment vehicle strategy the means by which the customer ~~will~~ intends to repay the outstanding capital due and, where applicable, pay the interest accrued under the regulated mortgage contract, where all or part of that contract is an *interest-only mortgage*.

Annex B

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

Appendix 1

App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

App 1.1.1 R

Activity		Products/Sectors	Is there an appropriate examination requirement?
...			
<i>Regulated mortgage activity and reversion activity carried on for a customer</i>			
Advising; <u>arranging (bringing about) or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A Regulated Activities Order (Arranging contracts to which the arranger is a party)</u>	20	<i>Regulated mortgage contracts for a non-business purpose</i>	Yes
	<u>20 A</u>	<i><u>Regulated mortgage contracts for a business purpose</u></i>	<u>No</u>
	21	<i>Equity release transactions</i>	Yes

Designing scripted questions for <u>non-advised execution-only sales</u>	<u>21 A</u>	<u>Regulated mortgage contracts for a non-business purpose</u>	<u>Yes</u>
	<u>21 B</u>	<u>Regulated mortgage contracts for a business purpose</u>	<u>No</u>
	22	<i>Equity release transactions</i>	Yes
Overseeing non-advised <u>execution-only sales on a day-to-day basis</u>	23	<i>Equity release transactions</i>	Yes
...			

...

Appendix 4E – Appropriate Qualification tables

...

<p>Qualification table for: Advising a customer on <u>or arranging (bringing about)</u> a <i>regulated mortgage contract</i> (for a non-business purpose) - Activity number 20 in TC Appendix 1.1.1R; and <u>Designing scripted questions for use in execution-only sales to customers of regulated mortgage contracts</u> for a non-business purpose - Activity number 21A in TC Appendix 1.1.1R</p>
...

<p>Qualification table for: Advising a customer on <u>or arranging (bringing about)</u> <i>Equity release transactions</i> - Activity number 21 in TC Appendix 1.1.1R</p>
...

...

<p>Qualification table for : Overseeing non-advised <u>execution-only</u> sales on a day-to-day basis on <i>Equity release transactions</i> – Activity number 23 in TC Appendix 1.1.1R</p>
...

TP 8 Transitional provisions relating to time limits for attaining qualifications

...		
8.2	R	<p><u>An <i>employee</i> who is carrying on the activities specified in TC Appendix 1 of:</u></p> <p>(1) <u>arranging (bringing about) regulated mortgage contracts or home reversion plans or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A Regulated Activities Order (Arranging contracts to which the arranger is a party) for a non-business purpose; or</u></p> <p>(2) <u>designing scripted questions for execution-only sales of regulated mortgage contracts for a non-business purpose;</u></p> <p><u>as at 26 April 2014 will, for the purposes of TC 2.2A.1R, be regarded as carrying on such activities only with effect from that date; and, in relation to such an <i>employee</i>, a <i>firm</i> need not (in relation to such activities only) comply with TC 2.1.6R until 26 October 2016. TP 8.1 does not apply in respect of such an <i>employee</i>.</u></p>

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

6.2A Describing advice services

...

6.2A.4 G (1) A *firm* that provides both *independent advice* and *restricted advice* should not hold itself out as acting independently for its business as a whole. ~~However, a *firm* may hold itself out as acting independently in respect of its services for which it provides *independent advice* or *advice which meets other independence requirements for particular investments*. For example, a *firm* that provides *independent advice* on *regulated mortgage contracts* in accordance with *MCOB* but *restricted advice* on *retail investment products* will not be able to hold itself out as an independent financial adviser. However, it would be able to hold itself out as an adviser providing *independent advice* for *regulated mortgage contracts* provided it was made clear in accordance with the *fair, clear and not misleading rule* that it provided *restricted advice* for *retail investment products*.~~

(1A) A *firm* that offers an unlimited range of *regulated mortgage contracts*, or gives *advice* in relation to *contracts of insurance* on the basis of a fair analysis, but offers *restricted advice* on *retail investment products* should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it offers an unlimited range for *regulated mortgage contracts* or gives *advice* in relation to *contracts of insurance* on the basis of a fair analysis provided it makes clear in accordance with the *fair, clear and not misleading rule* that it provides *restricted advice* for *retail investment products*.

...

6 Annex 2 Combined initial disclosure document described in COBS 6.3, ICOBS 4.5, ~~MCOB 4.4.1R(1)~~ and MCOB 4.10.2R(1) 4.4A.20G

....

2 Whose products do we offer? [Note 4] [Note 4A] [Note 6]

Home Finance Products [Note 13]

~~[Compliance with Islamic law [Note 18]~~

~~Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).]~~

[1] ~~[Lifetime] [Mortgages] [Equity Release Products] [and Islamic] [home reversion schemes purchase plans] [Note 13]~~

We offer ~~[lifetime] [mortgages] [home reversion plans] [equity release products]~~ from the whole market.

We ~~[can] [Note 7] only offer [lifetime] [mortgages] [home reversion plans] [equity release products]~~ from a limited number of ~~[lenders / companies]~~.
Ask us for a list of the ~~[lenders / companies]~~ we offer ~~[lifetime] [mortgages] [home reversion plans] [equity release products]~~ from. [Note 14]

We ~~[can] [Note 7] only offer [a limited range of the] [a] [lifetime] [mortgage] [s] [home reversion plan] [s] [equity release products]~~ from ~~[a single lender / company] [name of single lender / company]. [Note 11(1) and (3)] [Note 16]~~

~~{or}~~

~~We only offer our own [lifetime] [mortgages] [home reversion plan] [equity release products]. [Note 11(2)]~~

We do not offer ~~[lifetime mortgages] [home reversion plans]~~. [Note 12]

[2] [Islamic Home Purchase Plans] [Note 19] [Note 13]

We offer ~~Islamic home purchase plans~~ from the whole market.

We ~~[can] [Note 7] only offer Islamic home purchase plans~~ from a limited number of providers.
Ask us for a list of the ~~providers~~ we offer ~~Islamic home purchase plans~~ from. [Note 14]

We ~~[can] [Note 7] only offer [a limited range of the] [a] Islamic home purchase plan [s] from [a single provider] [name of single provider]. [Note 11(1) and (3)][Note 16]~~

~~[or]~~

~~We only offer our own Islamic home purchase plans. [Note 11(2)]~~

Equity release products are either lifetime mortgages or home reversion plans. [Note 5]

We are not limited in the range of [mortgages] [equity release products] [Islamic] [home purchase plans] we will consider for you [Note 7A]

[Compliance with Islamic law [Note 18]

Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).]

3 Which service will we provide you with? **[Note 4] [Note 4A] [Note 6] [Note 6A]**

...

[Home Finance Products] [Note 13]

~~—— [1] [Mortgages] [Equity Release Products] [Note 13]~~

~~We will advise and make a recommendation for you on [lifetime mortgages] [home reversions] [equity release products] after we have assessed your needs.~~

~~You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of [lifetime mortgages] [home reversions] [equity release products] that we will provide details on. You will then need to make your own choice about how to proceed.~~

[2] [Islamic Home Purchase Plans] [Note 13]

~~We will advise and make a recommendation for you after we have assessed your needs.~~

~~You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.~~

4	What will you have to pay us for our services? [Note 4A] [Note 20A]
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...

[Home Finance Products] [Note 13]**[1] [Mortgages] [Equity Release Products] [Islamic] [Home Purchase Plans] [Note 13]**

- No fee. [We will be paid by commission from the [lender/~~company that buys your home~~provider].] [Note 33]
A fee of £[] payable at the outset and £[] payable when you apply for a [lifetime] [mortgage] [home reversion plan] [equity release product] [Islamic] [home purchase plan]. [We will also be paid commission from the [lender/~~company that buys your home~~ provider.]]. [Note 33] [Note 34]
-

You will receive a ~~key facts illustration~~ keyfacts illustration when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. [Note 13] [Note 13A]

Refund of fees [Note 32] [Note 13]

If we charge you a fee, and your [lifetime] [mortgage] [home reversion plan] [Islamic] [home purchase plan] does not go ahead, you will receive: [Note 35]

- A full refund [if the [lender/~~company~~provider] rejects your application]. [Note 36]
- A refund of £ [] [if your application falls through]. [Note 36] [Note 37] [Note 38]
- No refund [if you decide not to proceed]. [Note 36]

[2] [Islamic Home Purchase Plans] [Note 13]

- No fee. [We will be paid by commission from the provider.] [Note 33]
A fee of £[] payable at the outset and £[] payable when you apply for an Islamic home purchase plan. [We will also be paid commission from the provider]. [Note 18]
-

Refund of fees [Note 35]

If we charge you a fee, and your Islamic home purchase plan does not go ahead, you will receive: [Note 32]

- A full refund [if the provider] rejects your application]. [Note 36]
- A refund of £ [] [if your application falls through]. [Note 36] [Note 37] [Note 38]
- No refund [if you decide not to proceed]. [Note 36]

...

8 Are we covered by the Financial Services Compensation Scheme (FSCS)?
[Note 4A] [Note 39] [Note 55] [Note 56]

...

[Note 59] Message from the Financial Services Authority

Think carefully about this information before deciding whether you want to go ahead.

If you are at all unsure about which equity release product is right for you, you should ask your adviser to make a recommendation.

...

Note 4 – a *firm* should describe the services that it expects to provide to the particular *client*. For services in relation to:

...

- ~~equity release transactions~~ – the *firm* should select a maximum of two boxes within this section. *Firms* should not omit the boxes not selected.
- home finance transactions (other than regulated sale and rent back agreements) – where the *firm* will be providing services to a *consumer* by way of a *distance contract*, it should include in Section 3 a statement that explains whether or not the *consumer* will receive *advice* as part of the services. It should insert the appropriate heading above the statement in accordance with Note 13 (1).

Note 4A - If a *firm* is not offering all product types it should omit the headings and text relating to the product types it is not offering. For example, if it is completing the relevant sections of this template in relation to insurance and home finance products but not investment products, it should omit the heading “Investment” and the corresponding text.

Note 5 – a *firm* should include this sentence if, and only if, it offers *equity release transactions*.

...

Note 6A – If the combined initial disclosure document is used only in relation to home finance transactions (except where Section 3 is required to be used for home finance transactions as the firm is providing services by way of a distance contract: see Note 4), the firm should delete this heading and re-number the later sections accordingly.

Note 7 – insert “can” if the firm’s range of products is determined by any contractual obligation. This does not apply where a *product provider*; ~~or insurer; lender; home purchase provider or home reversion provider~~ is selling its own products.

Note 7A - This sentence must only be used where there are no limitations in the product range that a firm will be providing to the customer. Otherwise, the firm must insert alternative text that describes in simple, clear terms the limits on its product range for the relevant market. If the firm is not considering products from a comprehensive range across the market and has not listed here the name of every lender/provider it offers products from, the text used must offer a list of these lenders/providers. Where the firm offers equity release products, it must state if it offers home reversion plans but not lifetime mortgages, or vice versa. The firm must also state that it will not consider direct deals, where that is the case. Depending on the firm’s precise circumstances, the following examples may be appropriate:

- “We offer a comprehensive range of [mortgages] [equity release products] [Islamic] [home purchase plans] from across the market, but not deals that you can only obtain by going direct to a [lender/provider].”
- “We only offer products from [number] [lenders/providers]. We can provide you with a list of these.”
- “We only offer some, but not all, of the [mortgages] [equity release products] [Islamic] [home purchase plans] from [number] [lenders/providers]. We can provide you with a list of these.”
- “We only offer the [mortgages] [equity release products] [Islamic] [home purchase plans] from [name of lender(s)/provider(s)].”
- “We only offer some, but not all, of the [mortgages] [equity release products] [Islamic] [home purchase plans] from [name of lender(s)/provider(s)].”
- “We only offer lifetime mortgages from [name of lender(s)] and home reversion plans from [name of provider(s)].”
- “We only offer [lifetime mortgages/home reversion plans] but not [lifetime mortgages/home reversion plans]. We only offer [lifetime mortgages/home reversion plans] from [name of provider] and we only offer some, but not all, of their products.”
- “We only sell bridging finance products from [name of lender(s)]. We do not offer products from across the mortgage market.”

...

Note 11 – if the *firm* selects this box, it will be offering the products of one provider for a particular product type. It should therefore follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. In the case of *non-investment insurance contracts*, where the *firm* is providing a service in relation to different types of insurance, this box covers the situation where it is offering a particular type of insurance from a single *insurance undertaking*.

- (1) Insert the name of the provider, namely the *product provider* for *packaged products*; and the *insurance undertaking(s)* for *non-investment insurance contracts*; ~~the *lender* for *regulated mortgage contracts* and *regulated lifetime mortgage contracts* and the *home reversion provider* for *home reversion plans*~~. For example: “We can only offer products from [name of *product provider*]”. For *non-investment insurance contracts* the type of insurance offered should also be included. For example: “We only offer ABC’s household insurance and ABC’s motor insurance.” If the provider has only one product, the *firm* should amend the text to the singular – for example: “We can only offer a mortgage policy from [name of ~~*lender*~~ *insurance undertaking*]”. ~~If the *firm* does not offer all of the *home finance transactions* generally available from that provider, it should insert the words “a limited range of” as shown in the specimen.~~
- (2) If the *firm* is a *product provider* offering only its own products, or is part of a *product provider* offering only the products sold under that part’s trading name, it should use this alternative text.
- ~~(3) If the *firm* offers *home reversion plans* from only one *reversion provider*, and *lifetime mortgages* from only one *lender*, which is different from the *reversion provider*, then the *firm* should identify the *lender* and the *reversion provider* and specify the type of *equity release transaction* to which they relate. For example, “We can only offer lifetime mortgages from ABC Mortgages Ltd and home reversion plans from ABC Reversions Ltd.”~~

Note 12 – ~~if the *firm* does not give *personal recommendations* advise or give personalised information on, both types of *equity release transactions*, then it should indicate to the *client* the sector that the *firm* does not cover. However, if the *firm’s* scope of service does not include *equity release transactions*, the last box (“We do not offer [lifetime mortgages] [home reversion plans]”), should be omitted.~~

Note 13 – in describing the services and products provided, *firms* should omit the text in brackets that do not apply and ensure that they describe accurately their activities with respect of the services and products that they offer, as follows:

- (1) Headings and sub-headings:
 - a. If the *firm* offers ~~both~~ a combination of *regulated mortgage contracts* and *home purchase plans* and *equity release products*, it should include the heading “Home Finance Products” in the *combined initial disclosure document* and describe the *regulated mortgage contracts*, ~~and~~ *home purchase plans* and *equity release transactions* (as applicable) that it offers under ~~two~~ separate sub-headings. The sub-headings (“Mortgages”, ~~and~~ “Home Purchase Plans” and “Equity Release Products”) should be numbered accordingly. If the *firm* only

offers one of these ~~two~~ three products, then the heading “Home Finance Products” should be omitted and the heading will read “Mortgages”, or “Home Purchase Plans” or “Equity Release Products”, as appropriate.

- b. If the *firm* offers *equity release transactions*, then the appropriate heading “Home Finance Products” ~~should be omitted and the~~ or sub-heading will read is “Equity Release Products” (even if the *firm* offers ~~*equity release transactions from only one sector*~~) only lifetime mortgages or only home reversion plans.

...

(2) Describing the products:

- a. If a *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, lifetime mortgages, it should change “mortgage” to “lifetime mortgage”
- b. If a *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, home reversion plans, it should use the text in brackets relating to home reversion plans.
- c. If the *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, products from both equity release market sectors, then it should use the term ‘equity release products’ when referring to them collectively.

(3) Describing the provider: If a *firm* gives ~~*personal recommendations*~~ or gives personalised information advice on, or arranges execution-only sales in, *home purchase plans* or *home reversion plans*, it should change “mortgage” to “product” and “lender” to “company” or “provider”, as appropriate.

(4) Home purchase plans: A *firm* that carries on *home purchase activities* may add the word “Islamic” to “home purchase plan(s)” if it holds out one or more *home purchase plans* within its product range as compliant with Islamic law. If “Islamic” is included, it should be included consistently throughout the document. However, a *firm* may omit the word “Islamic” in sections 5 and 8 even if it uses it elsewhere throughout the document. A *firm* that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law may include an appropriate description in place of the references to “Islamic” and “Islamic law”.

(5) A *firm* offering services in relation to loans for business purposes must use a description of its services which make that clear.

Note 13A – A *firm* must not include this paragraph if the only services to which the combined initial disclosure document relates are activities relating to *home purchase plans*. A *firm* may include a similar explanation regarding the financial information statement if the services they offer include activities relating to *home purchase plans*.

Note 14 – for services provided in relation to *home finance transactions*, this sentence is required only where a *firm* selects this service option. It may also be omitted if a *firm* chooses to list all of the *lenders*, *home purchase providers* and *home reversion providers* it offers *home finance transactions* from in the previous line, so long as the *firm* offers all of the products generally available from each.

...

Note 16 – if the *firm* does not select this box, it should alter the wording to say “a single group of companies” for *packaged products*; and “a single insurer” for *non-investment insurance contracts*; “a single lender” for *regulated mortgage contracts* or *lifetime mortgages* and “a single company” (or “a single provider”) for *home purchase plans* and *home reversion plans*. For example: “We only offer the products from a single group of companies” should replace the text in the specimen *combined initial disclosure document*.

...

Note 18 – This subsection is ~~optional unless~~ may (at the *firm*'s option) be used if, and only if, the *firm* holds itself, its ~~*regulated mortgage contract* or *home purchase plan*~~ products or services out as compliant with Islamic law ~~in the *combined initial disclosure document*~~. If a *firm* includes this section it should describe it as Section 2 and renumber subsequent sections accordingly.

A *firm* that wishes to hold itself, its ~~*regulated mortgage contract* or *home purchase plan*~~ products or services out as compliant with religious or philosophical beliefs other than Islamic law ~~in the *combined initial disclosure document*~~ may also use the subsection in accordance with this note and modify the wording in the section to the extent appropriate.

Note 19 – A *firm* that carries on ~~*home purchase activities*~~ may omit the word “Islamic” from “Islamic home purchase plan(s)” if one or more *home purchase plans* within its scope of service is not held out as compliant with Islamic law. If “Islamic” is omitted, it should be omitted consistently throughout the document. However, a *firm* may omit the word “Islamic” in sections 5 and 8 without having to omit it throughout the document. A *firm* that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law ~~in the *combined disclosure document*~~ may make appropriate amendments to references to “Islamic” and “Islamic law”.

...

Note 34 – insert a plain language description of when any *fees* are payable for services relating to *home finance transactions*, and the amount. This description could include, for example, a cash amount, a percentage of the loan or reversion amount or the amount per hour, as appropriate. However, where a cash amount is not disclosed, one or more examples of the cash amount should be included. If a *firm* offers more than one pricing option in relation to *equity release transactions*, it should specify the pricing policy for each of them. For example, “A fee of £[XX] payable at the outset and £[YY] when you apply for a lifetime mortgage and £[ZZ] when you apply for a home reversion plan”. If a *firm* does not charge a *fee*, the text for the second box should be abbreviated to ‘A fee’. The fee must be described, where possible, as a cash sum, but where this is not possible:

- If the fee is a percentage of another sum which is not yet known (such as the amount to be borrowed), give the percentage and a representative illustrative example which gives an amount as a cash sum.
- If the fee will be one of a range of possible cash fees, provide a description of the fee in terms which include the maximum and minimum possible fees as cash sums, and what factors will determine where in the range the fee will be.
- If the fee will be one of a range of fees that are a percentage of another sum which is not yet known (such as the amount to be borrowed), give the minimum and maximum percentages and a representative illustrative example which gives an amount as a cash sum, and set out what factors will determine where in the range the fee will be.
- If the fee will be based on an hourly rate, but the number of hours to be spent on the *customer's* transaction is unknown, state the hourly rate in cash terms and set out what factors will determine how many hours it takes to provide the *firm's* services.

...

Note 39 – the *firm* may omit this section for services relating to *packaged products* if the *firm* has, on first contact with the *client*, provided the *client* with its *client agreement* which contains that information. This section may be omitted for services relating to *non-investment insurance contracts* if the information covered by this section is not required by *ICOBS* or is required by *ICOBS* but is provided to the *customer* by some other means. ~~This section may be omitted for services relating to *home finance transactions* in accordance with *MCOB 4.4.1R(3)*.~~ If this section is omitted, the other sections of the *combined initial disclosure document* should be renumbered accordingly.

...

~~**Note 59** – this warning box should be added when the *firm* sells *lifetime mortgages* or *home reversion plans* or both.~~

Annex D

**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.

Part 1: Comes into force on 26 April 2014

1.2 General application: who? what?

- 1.2.1 R (1) This sourcebook applies to every *firm* that:
- (a) carries on a *home finance activity* (subject to the business loan and loans to high net worth mortgage customers application provisions); or

...

Firm types and the home finance activities

- 1.2.2 G (1) This sourcebook applies to activities carried out in respect of ~~four types of product:~~ regulated mortgage contracts (which includes lifetime mortgages), equity release transactions, home purchase plans, home reversion plans and regulated sale and rent back agreements...

...

Business loans and loans to high net worth mortgage customers: application of MCOB

- 1.2.3 R In relation to a *regulated mortgage contract* for a business purpose
- (1) *MCOB* applies if the *customer* is not a *large business customer*; and
- (2) if *MCOB* applies, a *firm* must either:
- (a) comply with *MCOB* in full (disregarding the tailored provisions for *regulated mortgage contracts* for a business purpose in the remainder of *MCOB*); or
- (b) comply with *MCOB* in full, but taking account of all those tailored provisions, including *MCOB* 1.2.7R.

- 1.2.3A R In relation to a regulated mortgage contract with a high net worth mortgage customer, a firm must either:

- (a) comply with MCOB in full (disregarding the tailored provisions for *regulated mortgage contracts with high net worth mortgage customers* in the remainder of MCOB); or
- (b) subject to MCOB 1.2.9CR, comply with MCOB in full, but taking account of all those tailored provisions, including MCOB 1.2.7R.

1.2.3B R Where any provision of MCOB is expressed to apply in respect of a *high net worth mortgage customer*, it applies in respect of joint borrowers (or potential borrowers) if one of them satisfies that definition in his own right.

1.2.4 G ~~For detail of the~~ The tailored provisions applying, see are those in the sections section on ‘business Business loans’ and loans to high net worth mortgage customers: tailored provisions’ set out in each relevant chapter.

1.2.4A G Certain other provisions of MCOB apply in all cases in respect of *high net worth mortgage customers* or of transactions which are solely for a business purpose. The application of the tailored and other provisions for *high net worth mortgage customers* and transactions for a business purpose are summarised in the table at MCOB 1.2.4BG.

1.2.4B G **Table of provisions applicable to business loans and high net worth mortgage customers: this table belongs to MCOB 1.2.4AG**

<u>Provisions</u>	<u>Tailored provisions or applicable in all cases?</u>	<u>For business loans only, are the provisions applicable to all business loans, or only where the loan is solely for a business purpose?</u>
<u>Various of the provisions in MCOB 4.7A and MCOB 4.8A</u>	<u>Applicable in all cases</u>	<u>Applicable only where loan is solely for a business purpose</u>
<u>MCOB 4.9</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 5.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 6.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 7.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>

<u>Various of the provisions in MCOB 11.6</u>	<u>Applicable in all cases</u>	<u>Applicable only where loan is solely for a business purpose</u>
<u>MCOB 12.6</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>
<u>MCOB 13.7</u>	<u>Tailored</u>	<u>Applicable to all business loans</u>

- 1.2.5 G (1) ...
- (2) Whether a *regulated mortgage contract* is, or is solely, for a business purpose will be a matter of fact to be determined by a *firm* (in accordance with *MCOB 1.2.9DR* where applicable) depending on the individual circumstances of each case...
- ...
- Business loans and loans to high net worth mortgage customers: additional requirements if tailored route is used
- 1.2.7 R In relation to a *regulated mortgage contract* for a business purpose or with a high net worth mortgage customer, if a *firm* has opted for the tailored route, it must adopt the following modifications to the sourcebook:
- (1) (except in relation to ~~sections 6 and 8 of any initial disclosure document~~ or sections 5 and 8 of any *combined initial disclosure document*) substitute an alternative description of the facility provided under the *regulated mortgage contract* for 'mortgage' where that term is used in any disclosure;
- (2) substitute the term 'illustration' for ~~key facts~~ 'keyfacts illustration' when opting to use the tailored business loans or loans to high net worth mortgage customers rules in *MCOB 4.9*, *MCOB 5.7*, *MCOB 6.7* or *MCOB 7.7*; and
- ...
- 1.2.8 G (1) *Firms* are reminded of the requirement in *MCOB 2.2.6R* that any communication should be clear, fair and not misleading when substituting an alternative for the term 'mortgage' in accordance with *MCOB 1.2.7R(1)*.
- (2) Possible alternatives to the term 'mortgage' include, for example, 'secured ~~business~~ overdraft', 'secured loan' or 'secured business credit'.
- 1.2.9 G The disclosure *rules* in *MCOB* place particular emphasis on the description of borrowing. Where the *regulated mortgage contract* is for

a business purpose or with a *high net worth mortgage customer*, a firm should reflect this emphasis in any disclosure by first describing any borrowing before addressing the other facilities provided under the regulated mortgage contract.

...

Provisions for professional customers

1.2.9B G Certain provisions of MCOB 4.7A and MCOB 4.8A apply in respect of professional customers. Where they apply, they provide greater flexibility for firms.

Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer

1.2.9C R A firm may not treat a customer as being a high net worth mortgage customer for the purposes of MCOB unless either:

(1) it is aware, from evidence already in its possession as a result of a business relationship between it and the customer, that the customer satisfies the definition of high net worth mortgage customer; or

(2) it has first obtained a written statement which:

(a) confirms that the customer satisfies the definition of high net worth mortgage customer;

(b) specifies the period for which it is valid, which includes the time when the regulated mortgage contract is entered into; and

(c) is signed by a suitably qualified professional adviser of the customer who is not an associate of the firm or of the customer.

1.2.9D R A firm must not treat a loan as being solely for a business purpose for the purposes of MCOB unless it has reviewed a business plan provided by the customer which provides credible evidence that that is the case.

1.2.9E R A firm must not treat a customer as being a professional customer for the purposes of MCOB unless it has credible evidence that the customer satisfies the definition.

1.2.9F R A firm must keep the evidence in MCOB 1.2.9CR(1) and MCOB 1.2.9ER, the business plan in MCOB 1.2.9DR and the written statement in MCOB 1.2.9CR(2) for not less than three years from the date on which it was obtained or, if later, used to satisfy MCOB 1.2.

Authorised professional firms

1.2.10 R *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for:

...

(2) ... ~~and~~.

(3) ~~initial disclosure requirements but only as regards providing the information contained in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme?) of an initial disclosure document or combined initial disclosure document (see *MCOB* 4.4 and *MCOB* 4.10). [deleted]~~

...

1.3 General application: where?

...

Distance contracts entered into from an establishment in another EEA State

1.3.4 R ...

(2) The *rules* which do not apply are:

(a) initial disclosure requirements in *MCOB* 4.4 4.4A (in respect of *regulated mortgage contracts*)...

...

(g) *MCOB* 8.3 (Application of rules in *MCOB* 4) to the extent that it applies *MCOB* 4.4 4.4A to *MCOB* 4.6;

...

...

2.1 Application

Who?

...

2.1.2 R This table belongs to *MCOB* 2.1.1 R

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except <i>MCOB</i> 2.2.6AR, <i>MCOB</i> 2.2.8AR, <i>MCOB</i> 2.2.8BG, <i>MCOB</i> 2.6A.1R to

<i>mortgage administrator</i> <i>mortgage adviser</i> <i>mortgage arranger</i>	<u>2.6A.18G</u> and <i>MCOB 2.8.6G</i>
<i>mortgage administrator</i> <i>mortgage adviser</i> <i>mortgage arranger</i>	As for a <i>mortgage lender</i> , except that <u><i>MCOB 2.6A.-1R</i></u> does not apply.
<i>home purchase provider</i>	<i>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.6R to MCOB 2.2.9G, MCOB 2.5, to MCOB 2.6, MCOB 2.6A.1R to MCOB 2.6A.4G, MCOB 2.6A.7G to MCOB 2.6A.10G, MCOB 2.7.4R to MCOB 2.7.6R, MCOB 2.7A and MCOB 2.8.6G</i>
...	
<i>SRB administrator</i>	<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, to 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>
...	

...

2.2 Communications

...

Related investment advice

- 2.2.5 G *Firms* are reminded that they should follow the relevant *rules* in *COBS 6* and *COBS 13* relating to advice and disclosure on *investments* if they are *advising the customer* on an *investment* such as an annuity associated with an *equity release transaction* or an *ISA* used as a *repayment vehicle strategy*.

...

2.5A The customer's best interests

- 2.5A.1 R A firm must act honestly, fairly and professionally in accordance with the

best interests of its customer.

...

2.6A Protecting customer's interests: regulated mortgage contracts, home purchase plans, home reversion plans and regulated sale and rent back agreements

Protecting customer's interests: regulated mortgage contracts

2.6A-1 R A mortgage lender may only include, or rely on, a term in a regulated mortgage contract which permits it to change the rate of interest from a fixed, discounted or other concessionary rate to the firm's standard variable rate in the event of a breach of contract if each of the following conditions is met:

- (1) the breach of contract is material;
- (2) the breach of contract is unrelated to a payment shortfall; and
- (3) that standard variable rate is not an interest rate created especially for customers who are (either at all, or in particular ways) in breach of contract.

...

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

2.6A.5B R (1) When ~~entering into a~~ 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*:

...

- (2) When ~~entering into a~~ 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:

...

- (3) When ~~entering into a~~ 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:

...

- (4) When ~~entering into a~~ 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:

...

...

3.8 Form and content of real time qualifying credit promotions

...

- 3.8.6 G Firms should note the additional disclosure requirements in ~~MCOB 4.4.7R~~ (~~Disclosure 4.4A.17R~~ (Additional disclosure where initial contact is by telephone), ~~MCOB 4.4A.18R~~ (Additional disclosure requirements where the services are to be provided to a consumer under a distance contract) and ~~MCOB 4.5~~ (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with retail customers) in relation to telephone calls that may fall within the definition of a *financial promotion*.

...

4.1 Application

Who?

...

- 4.1.2 R Table This table belongs to MCOB 4.1.1R

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	<u>except in relation to lifetime mortgages: MCOB 4.1 to MCOB 4.4 4.4A, 4.6A, and MCOB 4.8 4.8A in accordance with MCOB 4.1.2A R, to and MCOB 4.9</u>
<i>mortgage adviser</i>	<u>except in relation to lifetime mortgages: whole chapter except MCOB 4.10</u>
<i>mortgage arranger</i>	<u>except in relation to lifetime mortgages: whole chapter except MCOB 4.7 4.7A and MCOB 4.10</u>
<i>home purchase provider</i>	<u>MCOB 4.1, MCOB 4.2 and MCOB 4.10 (except MCOB 4.10.5G to MCOB 4.10.7G). MCOB 4.3, MCOB 4.4 4.4A and MCOB 4.8 4.8A in accordance with MCOB 4.1.2BR and MCOB 4.10</u>

<i>home purchase adviser</i>	<i>MCOB 4.1, MCOB 4.2, MCOB 4.5, MCOB 4.6 and MCOB 4.10.</i> <i>MCOB 4.3, MCOB 4.4 4.4A, MCOB 4.7 4.7A and MCOB 4.8 4.8A</i> in accordance with <i>MCOB 4.10</i>
<i>home purchase arranger</i>	As for a <i>home purchase adviser</i> except <i>MCOB 4.10.5G to MCOB 4.10.7G MCOB 4.10.5AR to MCOB 4.10.9AR, 4.10.13R and MCOB 4.7 4.7A</i> do not apply
<i>reversion equity release provider</i> <i>reversion equity release adviser</i> <i>reversion equity release arranger</i>	See <i>MCOB 8 8.3</i> for the application of this chapter
...	

4.1.2A R *MCOB 4.8A only applies to a mortgage lender in relation to entering into a regulated mortgage contract where there is no firm which is arranging (bringing about) the regulated mortgage contract to which MCOB 4.8A applies.*

4.1.2B R *MCOB 4.8A only applies to a home purchase provider (as provided in MCOB 4.10.9BR) in relation to entering into a home purchase plan where there is no firm which is arranging (bringing about) the home purchase plan to which MCOB 4.8A applies (as provided in MCOB 4.10.9BR).*

4.1.2C G *MCOB 4.1.2AR and MCOB 4.1.2BR mean that the provisions in MCOB 4.8A on execution-only sales, including the prohibition on entering into them in the circumstances specified in that section, only apply to sales by mortgage lenders or home purchase providers where there is no intermediary firm to which that section applies.*

4.1.2D G *MCOB 4.1.2AR and MCOB 4.1.2BR mean that the situations where MCOB 4.8A applies to a mortgage lender or home purchase provider include where a mortgage intermediary or home purchase intermediary has been involved in arranging a regulated mortgage contract or home purchaser plan but is no longer involved in the transaction.*

What?

4.1.3 R *This chapter applies if a firm in the course of carrying on a home finance activity: enters into, advises on or arranges a home finance transaction or a variation of the terms of a home finance transaction.*

(1) ~~*makes, or anticipates making, a personal recommendation about;*~~
or

- (2) ~~gives, or anticipates giving, personalised information relating to; the customer~~
- (3) ~~entering into a home finance transaction; or~~
- (4) ~~varying the terms of a home finance transaction entered into by the customer.~~

...

4.1.6 G ~~MCOB 4.1.5 R means that this chapter, MCOB 4, deals with standard regulated mortgage contracts, 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. [deleted]~~

...

4.2 Purpose

- 4.2.1 G (1) This chapter amplifies *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and *Principle 9* (Customers: relationships of trust).
- (2) The purpose of this chapter is to ensure that:
- (a) ~~customers~~ are adequately informed about the nature of the service they may receive from a firm in relation to home finance transactions. In particular firms need to make clear to ~~customers~~ the scope range of home finance transactions available from ~~them~~ firms and the basis of their remuneration; and
 - (b) where *advice* is given, it is suitable for the *customer*. ~~The steps firms need to take to ensure that the customer receives suitable advice will vary depending on the demands and needs of the customer and the type of home finance transaction.;~~
 - (c) the firm provides advice whenever it makes a sale during which there is spoken or other interactive dialogue between the firm and the customer (with exceptions for high net worth mortgage customers and professional customers, and for loans which are solely for a business purpose);
 - (d) when there is no spoken or other interactive dialogue between the firm and the customer during the sale, the firm is able to provide an execution-only service except for certain vulnerable customers (customers for regulated sale and rent back and equity release transactions; customers whose main

purpose is debt consolidation; and *customers* who are using the transaction in order to exercise a statutory “right to buy”) who are given advice in every case;

- (e) *execution-only sales* are only provided where the *customer* has been warned about the implications of proceeding without *advice*, or where the *customer* has rejected *advice* which has been given, and has specifically instructed the *firm* that he wishes to do so; and
- (f) except in the case of *regulated sale and rent back transactions*, *customers* have the right to reject *advice* and proceed on an execution-only basis.

- (3) This chapter also implements certain requirements of the *Distance Marketing Directive* in relation to *distance mortgage mediation contracts* and *distance home purchase mediation contracts*.

...

The existing section 4.3 is deleted in its entirety. The existing text is not struck through.

4.3 Scope of service provided [deleted]

MCOB 4.4 is deleted in its entirety and replaced with a new section MCOB 4.4A. The deleted text is not shown and the new text is not underlined.

4.4 Initial disclosure requirements [deleted]

4.4A Initial disclosure requirements

Description of a firm’s services in all cases

- 4.4A.1 R Using the methods and at the times specified in this section, a *firm* must provide the *customer* with the following information:
 - (1) whether there are any limitations in the range of products that it will offer to the *customer*, and if so what those are; and
 - (2) the basis on which the *firm* will be remunerated.

Range of products

- 4.4A.2 R (1) The limitations in MCOB 4.4A.1R include any limitations on the *regulated mortgage contracts* the *firm* will consider from within the relevant market. A *firm* which is offering services to a *customer* in

respect of more than one type of relevant market must describe its services in relation to each such relevant market.

- (2) For these purposes, there are two relevant markets for *regulated mortgage contracts* (apart from *lifetime mortgages*): one for *regulated mortgage contracts* that are not for a business purpose; and one for *regulated mortgage contracts* that are. A *firm* offering services in relation to loans for a business purpose must make that clear in its disclosure under *MCOB 4.4A.1R(1)*.
 - (3) If a *firm* will not, as part of its services, consider *direct deals*, it need not treat that as a limitation in its product range, but the *firm* must tell the *customer* as part of the disclosure under *MCOB 4.4A.1R(1)* that it will not consider *direct deals*.
- 4.4A.3 G (1) A *firm* that only offers products from one part of a relevant market (for example, just *bridging loans*) should not disclose its service as unlimited.
- (2) When considering whether there are any limitations in its product range across the relevant market, a *firm* need not take account of the existence of exclusive deals which a *mortgage lender* offers to be sold by one or a limited number of *mortgage intermediaries* only (and not generally by *mortgage intermediaries* across the relevant market).
- 4.4A.4 R (1) If a *firm* is not offering to the *customer* products from an unlimited range from across the relevant market, its disclosure on product range in *MCOB 4.4A.1R* must either:
- (a) list the names of all the *mortgage lenders* whose products it is offering; or
 - (b) inform the *customer* of the number of *mortgage lenders* whose products it is offering and that he has the right to request a list of those *mortgage lenders*.
- (2) If a *customer* requests the list in (1), the *firm* must provide it in a *durable medium* as soon as possible following the request and in any event within five *business days*. The list must also indicate whether the *firm* offers all of the products generally available from each *mortgage lender* on the list.
- 4.4A.5 G A *firm* may be able to describe its product range as unlimited even if it offers its *customers* only a selection of the *regulated mortgage contracts* available from the relevant market, or uses ‘panels’. The *firm* would need to ensure that any panel, or selection of products, is sufficiently broad in its composition that it is representative of products from across the market, that it is reviewed regularly, and that its use does not materially disadvantage any *customer*. In such a case, a *firm* should ensure that its analysis of the market and of the available *regulated mortgage contracts* is kept adequately up to date. For example, a *firm* would need to update its selection of *regulated mortgage*

contracts if it became aware that a *regulated mortgage contract* had become generally available offering an improved product feature, or a better interest rate, when compared with the *regulated mortgage contracts* currently in the *firm's* selection.

- 4.4A.6 G The disclosure required by *MCOB* 4.4A.1R(1), *MCOB* 4.4A.2R and *MCOB* 4.4A.4R(1) about limitations in product range and *direct deals* should be expressed in simple, clear terms. A *firm* may wish to consider using a sentence appropriate to the circumstances, along the following lines:
- “We are not limited in the range of mortgages we will consider for you.”
 - “We offer a comprehensive range of mortgages from across the market, but not deals that you can only obtain by going direct to a lender.”
 - “We only offer mortgages from [number] lender(s). We can provide you with a list of these.”
 - “We only offer mortgages from [name of lender(s)].”
 - “We only offer some, but not all, of the mortgages from [number] lender(s). We can provide you with a list of these.”
 - “We only offer some, but not all, of the mortgages from [name of lender(s)].”
 - “We only sell bridging finance products from [name of lender(s)]. We do not offer products from across the mortgage market.”
- 4.4A.7 G (1) *Firms* are reminded that, in the light of the *rules* and *guidance* in *SYSC*, they should have adequate systems and controls in place to ensure that the disclosure they make to a *customer* about their service reflects the service the *customer* is actually offered.
- (2) *Firms* are also reminded that *Principle 7* (Communications with clients) and *MCOB* 2.2.6R (Clear, fair and not misleading communications) are also relevant to how they describe their services, including in any business name they adopt. For example, a *firm* should not call itself an “independent mortgage adviser” unless its product range across the relevant market is unlimited.
- (3) A *firm* that offers a different service for different product types should not disclose that it offers one type of service for its business as a whole. For example, a *firm* that provides independent advice on retail investment products but only offers a limited range of *regulated mortgage contracts* should ensure it discloses to the *customer* that the service is different for the different products.
- (4) There are additional *rules* about complying with *MCOB* 4.4A.1R(1) in relation to *home purchase plans* and *equity release transactions* at

MCOB 4.10.3BR and *MCOB* 8.3.2BR.

Basis of remuneration

- 4.4A.8 R (1) The information about the basis of remuneration required by *MCOB* 4.4A.1R(2) must include all relevant information, including the following details:
- (a) any fees which the *firm* will charge to the *customer*;
 - (b) when any such fees will be payable and, if applicable, reimbursable; and
 - (c) whether the *firm* will receive commission from a third party and, if applicable, any arrangements for offsetting this against any fees charged.
- (2) The details in (1)(a) must be expressed, where possible, as a specific cash sum, but the following *rules* apply where this is not possible:
- (a) If the *firm* will charge a fee that is a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the *firm* must provide details of the percentage and a representative illustrative example which gives an amount as a cash sum.
 - (b) If the *firm* will charge one of a range of possible cash fees, the *firm* must provide a description of the fee in terms which include the maximum and minimum possible fees as cash sums, and what factors will determine where in the range the fee will be.
 - (c) If the *firm* will charge one of a range of fees that are a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the *firm* must provide details of the minimum and maximum percentages and a representative illustrative example which gives an amount as a cash sum, and set out what factors will determine where in the range the fee will be.
 - (d) If the *firm* will charge an amount based on an hourly rate, but the number of hours to be spent on the *customer's* transaction is unknown, the *firm* must state the hourly rate in cash terms and set out what factors will determine how many hours it takes to provide the *firm's* services.

Method of providing initial disclosure in all cases

- 4.4A.9 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1) and *MCOB* 4.4A.8R must be communicated clearly and prominently, and in doing so:

- (1) if the *initial contact* includes spoken interaction, the information must be communicated orally; and
- (2) if the *initial contact* does not include spoken interaction, the messages must appear separately from other messages in the communication.

If the *initial contact* is made by electronic means, the *firm* must ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

- 4.4A.10 G (1) In order to comply with *MCOB* 4.4A.9R for an internet sale, a *firm* should display the required information on a screen which the *customer* must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *customer* the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the *customer* accesses.
- (2) In a postal sale, a *firm* may comply by setting out the messages in a clear covering letter.
- (3) Where the *initial contact* is by email, SMS or instant messaging, the messages could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging.
- (4) For face-to-face and telephone contact, a *firm* should comply by building the messages into the initial oral discussion with the *customer*.
- 4.4A.11 G A *firm* may demonstrate compliance with *MCOB* 4.4A.9R(1) by, for example, undertaking one or more of the following: building a requirement for oral communication of the relevant information into its training of staff as evidenced by its training and compliance manuals; inserting appropriate prompts into paper-based or automated sales systems; and having procedures in place to monitor compliance by staff with that *rule*. What is required in each case will depend on all the circumstances.

Timing of initial disclosure in all cases

- 4.4A.12 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1) and *MCOB* 4.4A.8R must be provided during the course of the *initial contact*.
- 4.4A.13 G (1) In many cases, *MCOB* 4.4A.12R means that information will be given at the time of the first contact between the *firm* and the *customer*. However, there may be circumstances, for example in relation to a loan for a business purpose, where the possibility of the *customer* entering into, or varying the terms of, a *regulated mortgage contract* is only identified after preliminary discussions. The relevant disclosure is only required once this possibility is identified.
- (2) *MCOB* 4.4A.12R does not require a *firm* to provide the information

specified in that *rule* when a *customer* contacts a *firm* simply to arrange to receive services in relation to a *regulated mortgage contract* at a later time, such as when a *customer* books an appointment. In those cases, the initial disclosure should be made when the *firm* first makes contact with the *customer* with a view to actually carrying out the services. However, *firms* should note the additional disclosure requirements in *MCOB 4.5* (Additional disclosure for distance mortgage mediation contracts with retail customers), and the need to ensure that the required information is provided in good time (see *MCOB 4.5.3G(1)*).

- 4.4A.14 G *Principle 7* and *MCOB 2.2.6R* also mean that, if initial disclosure has been given but any of the information in it (for example the basis on which the *firm* will be remunerated) subsequently changes, the *firm* should bring this clearly to the *customer's* attention.

Instances where initial disclosure need not be given

- 4.4A.15 R The information requirements in *MCOB 4.4A.1R*, *MCOB 4.4A.2R*, *MCOB 4.4A.4R(1)* and *MCOB 4.4A.8R* do not apply where:
- (1) the information has already been provided by the *firm* and the *firm* has good reason to believe that it is still accurate and appropriate for the *customer*; or
 - (2) the information has already been provided by the *firm* which first made contact with the *customer* in respect of the particular *regulated mortgage contract*, and the *firm* subsequently making contact with the *customer* does not expect to alter or replace the product range or basis of remuneration described in that information.
- 4.4A.16 G A *mortgage lender* should provide the information in the provisions referred to in *MCOB 4.4A.15R* in a direct sale but need not do so where the sale is through a *mortgage intermediary*. If a number of different *firms* are involved in relation to the transaction, having regard to *MCOB 2.5.4R(2)*, those *firms* should take reasonable steps to establish that the *customer* has been provided with the information as required by this section.

Additional disclosure where initial contact is by telephone

- 4.4A.17 R If the *initial contact* is by telephone, then the *firm* must also, before proceeding further, give the name of the *firm* and (if the call is initiated by or on behalf of the *firm*) the commercial purpose of the call.

Additional disclosure where the services are to be provided to a consumer under a distance contract

- 4.4A.18 R Where a *firm* provides services to a *consumer* by way of a *distance contract*, the *firm* must provide the *consumer* with the following information in a *durable medium* in good time before the *distance contract* has been agreed:
- (1) the information which is required by *MCOB 4.4A.1R* to *MCOB*

4.4A.8R;

- (2) whether or not the *firm* will be providing the *consumer* with *advice*;
- (3) the name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*;
- (4) an appropriate statutory status disclosure statement (see *GEN 4*), a statement that the *firm* is on the *FSA Register* and its *FSA* registration number;
- (5) the total price to be paid by the *consumer* to the *firm* for the financial service, including all related *fees*, charges and expenses, and all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it;
- (6) the arrangements for payment and for performance;
- (7) how to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme;
- (8) whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities, and information about any other applicable named compensation scheme; and
- (9) any other contractual terms and conditions of the *distance contract*.

4.4A.19 G (1) *MCOB 4.4A.18R* contains the additional disclosure requirements for *firms* providing *mortgage mediation activities* to a *consumer* by way of a *distance contract*. *MCOB 4.5* and *MCOB 4.6* contain further *rules* and *guidance* applicable where *firms* enter into a *distance contract* in respect of their *home finance mediation activities* independent of any contractual arrangement with a *consumer* relating to a particular *home finance transaction* or *transactions*.

- (2) There is *guidance* on *distance contracts* and *consumers* at *MCOB 1.3.5G* and *MCOB 1.3.6G*.

4.4A.20 G If used in accordance with its notes and provided to the *customer* at the correct time, using a *combined initial disclosure document* in a *durable medium* may satisfy the requirements of *MCOB 4.4A.18R*, though *firms* should consider whether it contains all the contractual terms and conditions of the *distance contract*.

Uncertainty whether a mortgage is regulated

4.4A.21 R (1) If at the point that initial disclosure must be made in accordance with *MCOB 4.4A.1R*, *MCOB 4.4A.2R*, *MCOB 4.4A.4R* and *MCOB 4.4A.8R*

a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:

- (a) make the initial disclosure; or
 - (b) seek to obtain from the *customer* information that will enable the *firm* to ascertain whether the contract will be a *regulated mortgage contract*.
- (2) Where (1)(b) applies, the initial disclosure must be made unless, on the basis of the information provided by the *customer*, the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract*.

Appointed representatives

- 4.4A.22 R A *firm* may restrict the *home finance transactions* it authorises a particular *appointed representative* to sell. If it does so, the *firm* must ensure the *appointed representative* reflects this limited range in any disclosure given to the *customer* under MCOB 4.4A.

Record keeping

- 4.4A.23 G *Firms* are reminded of the general record-keeping requirements in SYSC 9. A *firm* should keep appropriate records of the disclosures required by this section.

Amend the following as shown.

4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers

...

- 4.5.2 R If the ~~initial contact of a kind in MCOB 4.4.1R(1)~~ *initial contact* is with a *consumer* with a view to concluding a *distance mortgage mediation contract*...

After MCOB 4.6 insert the following new section. The text is not underlined.

4.6A Rolling-up of fees or charges into loan

- 4.6A.1 R A *mortgage lender* may not offer a *regulated mortgage contract* to a *customer* on the basis that fees or charges of any kind (receivable either by the *mortgage lender* or another party) are automatically added to the sum advanced.

- 4.6A.2 R A *firm* must not undertake any action that commits a *customer* to an application for a *regulated mortgage contract* where a fee or charge of any kind (receivable either by the *firm* or another party) is to be added to the sum advanced under the *regulated mortgage contract*, unless the *customer* has made a positive choice to add the fee or charge to the sum advanced.

MCOB 4.7 is deleted in its entirety and replaced with a new section MCOB 4.7A. The deleted text is not shown and the new text is not underlined.

4.7A Advised sales

- 4.7A.1 G (1) MCOB 4.7A sets out standards to be observed by *firms* when *advising* a particular *customer* on *regulated mortgage contracts*.
- (2) The *rules* at MCOB 4.8A require *firms* which are selling *regulated mortgage contracts* to, or entering into variations of existing *regulated mortgage contracts* with, certain types of vulnerable *customer*, to provide *advice* to them.
- (3) The *rules* at MCOB 4.8A also provide that *advice* must be given wherever the sales process involves spoken or other interactive dialogue (except for *high net worth mortgage customers*, *professional customers* and loans solely for a business purpose). They do not prohibit the giving of pre-contract or preliminary information which does not amount to *advice* to the particular *customer*, but means that *advice* must be given before a *firm enters into* or *arranges a regulated mortgage contract*, or variation of such contract, unless the requirements there are satisfied. *Firms* may wish to refer to *PERG* (particularly *PERG* 4.6) for guidance on the regulatory perimeter in relation to *advising on home finance transactions*.
- (4) The *rules* at MCOB 4.8A provide for an exception which permits certain *execution-only sales* which do not involve additional borrowing.

Suitability

- 4.7A.2 R If a *firm* gives *advice* to a particular *customer* to enter into a *regulated mortgage contract*, or to vary an existing *regulated mortgage contract*, it must take reasonable steps to ensure that the *regulated mortgage contract* is, or after the variation will be, suitable for that *customer*.
- 4.7A.3 R In MCOB 4.7A, a reference to *advice* to enter into a *regulated mortgage contract* is to be read as including *advice* to vary an existing *regulated mortgage contract*.
- 4.7A.4 G (1) A *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of MCOB 4.7A.

- (2) For the purposes of *MCOB 4.7A.2R*, if for any reason a *customer* rejects (in whole or in part) *advice* given by a *firm*, the *firm* is not precluded from advising him to enter into a different *regulated mortgage contract* (in accordance with the requirements of *MCOB 4.7A*) provided the *firm* has taken reasonable steps to ensure that that different contract is suitable for the *customer*.

4.7A.5 R For the purposes of *MCOB 4.7A.2R*:

- (1) a *regulated mortgage contract* will not be suitable for a *customer* unless the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer*;
- (2) a *firm* must base its determination of whether a *regulated mortgage contract* is appropriate to a *customer's* needs and circumstances on the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware;
- (3) no *advice* must be given to a *customer* to enter into a *regulated mortgage contract* if there is no *regulated mortgage contract* which is suitable from the product range offered by the *firm*; and
- (4) if a *mortgage lender* is dealing with an existing *customer* with a *payment shortfall* and has concluded that there is no suitable replacement *regulated mortgage contract*, the *firm* must nonetheless have regard to *MCOB 13.3*.

4.7A.6 R When a *firm* assesses whether the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.7A.5R(1)*, the factors it must consider include the following, insofar as relevant:

- (1) whether the *customer's* requirements appear to be within the *mortgage lender's* known eligibility criteria for the *regulated mortgage contract*;
- (2) whether it is appropriate for the *customer* to have an *interest-only mortgage*, a *repayment mortgage*, or a combination of the two;
- (3) whether it is appropriate for the *customer* to take out a *regulated mortgage contract* for a particular term;
- (4) whether it is appropriate for the *customer* to have stability in the amount of required payments, especially having regard to the impact on the *customer* of significant interest rate changes in the future;
- (5) whether it is appropriate for the *customer* to have their payments minimised at the outset;
- (6) whether it is appropriate for the *customer* to make early

repayments;

- (7) whether it is appropriate for the *customer* to have any other features of a *regulated mortgage contract*;
- (8) whether the *regulated mortgage contract* is appropriate, based on the information provided by the *customer* as to his credit history; and
- (9) whether it is appropriate for the *customer* to pay any fees or charges in relation to the *regulated mortgage contract* up front, rather than adding them to the sum advanced (see also *MCOB 4.6A.2R*).

- 4.7A.7 G *Firms* are reminded that the list in *MCOB 4.7A.6R* is not exhaustive. For certain *customers* there may be additional considerations to explore beyond those described in that rule; for example, in the case of a business loan or a *regulated mortgage contract* for a *high net worth mortgage customer*.
- 4.7A.8 G Examples of criteria in *MCOB 4.7A.6R(1)* are: the expected affordability criteria of the *mortgage lender*; and whether the *mortgage lender* will lend in respect of properties of a non-standard construction.

Interest-only

- 4.7A.9 R In relation to *MCOB 4.7A.6R(2)*, where a *firm* has identified an *interest-only mortgage* as appropriate for a *customer*, the *firm* must ensure that the *customer* is aware that he will have to demonstrate to the *mortgage lender* that he will have in place a clearly understood and credible *repayment strategy*, in order for the *mortgage lender* to be able to satisfy *MCOB 11.6.41R(1)*.
- 4.7A.10 G *MCOB 4.7A.9R* does not require a *firm* to *advise* the *customer* on a credible *repayment strategy* or assess the adequacy of a *customer's* existing *repayment strategy*.

Bridging loans

- 4.7A.11 R When a *firm* assesses whether a *bridging loan* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.7A.5R(1)*, the factors it must consider include, in addition to the factors listed at *MCOB 4.7A.6R*:
- (1) whether it is appropriate for the *customer* to make regular payments; and
 - (2) whether it is appropriate for the *customer* to access finance quickly.
- 4.7A.12 R Where a *firm* has identified a *bridging loan* as appropriate for a *customer*, the *firm* must ensure that the *customer* is aware that he will have to demonstrate to the *mortgage lender* that he has a clearly understood and credible *repayment strategy* in place.

- 4.7A.13 R Where a *firm* is considering giving *advice* to a *customer* to enter into a *bridging loan*, the reasonable steps in *MCOB* 4.7A.2R include considering why it is not appropriate for the *customer* to take out a *regulated mortgage contract* which is not a *bridging loan*.
- 4.7A.14 E If a *firm* advises a *customer* to enter into a *regulated mortgage contract* with a term of a particular length so that *MCOB* 4.7A.11R to *MCOB* 4.7A.13R do not apply because the *regulated mortgage contract* does not fall within the definition of a *bridging loan*, that advice may be relied on as tending to show contravention of *MCOB* 2.5A.1R (The customer's best interests).

Debt consolidation

- 4.7A.15 R When a *firm* advises a *customer* in relation to entering into a *regulated mortgage contract* where the main purpose for doing so is the consolidation of existing debts by the *customer*, in addition to the factors at *MCOB* 4.7A.6R, it must also take account of the following, where relevant, in assessing whether the *regulated mortgage contract* is suitable for the *customer*:
- (1) the costs associated with increasing the period over which a debt is to be repaid;
 - (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
 - (3) where the *customer* is known to have payment difficulties, whether it would be appropriate for the *customer* to negotiate an arrangement with his creditors rather than to take out a *regulated mortgage contract*.
- 4.7A.16 E An attempt by the *firm* to misdescribe the *customer's* purpose or to encourage the *customer* to tailor the amount he wishes to borrow so that *MCOB* 4.7A.15R does not apply may be relied on as tending to show contravention of *MCOB* 2.5A.1R (The customer's best interests).

Further advances

- 4.7A.17 R Where the *customer* is looking to increase the borrowing secured on the property which is the subject of an existing *regulated mortgage contract*, unless the *firm* knows that the existing lender will not make a further advance to the *customer*, the *firm* must inform the *customer*, either orally or in writing, that it may be possible, and more appropriate, to do so rather than to enter into a *regulated mortgage contract* with another lender.
- 4.7A.18 G *Firms* are not under any obligation to explore whether a further advance with the existing lender is, in fact, more appropriate for the *customer*.

Other considerations when advising

- 4.7A.19 R When *advising a customer* on the suitability of a *regulated mortgage contract*, a *firm* must explain to the *customer* that the assessment of whether the *regulated mortgage contract* is appropriate to his needs and circumstances is based only on the *customer's* current circumstances and any reasonably foreseeable changes to those.
- 4.7A.20 G Different considerations apply when giving *advice* to a *customer* with a *payment shortfall*. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* should not be advised to enter into a *regulated mortgage contract*. In those cases, a *firm* may still be able to give *advice* to that *customer* where the *regulated mortgage contract* concerned is, in the circumstances, a more suitable one than the *customer's* existing *regulated mortgage contract*.
- 4.7A.21 G In complying with *MCOB 4.7A.5R(1)* a *firm* is not required to consider whether it would be preferable for the *customer* to:
- (1) purchase a property by using his own resources, rather than by borrowing under a *regulated mortgage contract*; or
 - (2) rent a property, rather than purchase one; or
 - (3) delay entering into a *regulated mortgage contract* until a later date (on the grounds that property prices would have fallen in the intervening period, or that the interest rate in relation to the *regulated mortgage contract* may be lower, or both).
- 4.7A.22 G *MCOB 4.7A.5R(3)* means that where the *advice* is not provided on an unlimited range of products from across the relevant market, the assessment of suitability should not be limited to the types of *regulated mortgage contracts* which the *firm* offers. A *firm* cannot recommend the 'least worst' *regulated mortgage contract* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. This means, for example, that a *firm* dealing solely in the credit-impaired market should not recommend one of these *regulated mortgage contracts* if approached for *advice* by a *customer* who is not a *credit-impaired customer*.
- 4.7A.23 G A *firm* may generally rely on any information provided by the *customer* for the purposes of *MCOB 4.7A.5R(1)* unless, taking a common sense view of this information, it has reason to doubt it.

Rejected advice

- 4.7A.24 R If a *customer* has rejected the *advice* given by a *firm* and instead wishes to enter into a different *regulated mortgage contract* as an *execution-only sale*, the *firm* may *enter into* or *arrange* that contract as an *execution-only sale* provided the requirements in *MCOB 4.8A.14R* are satisfied.

Record keeping

- 4.7A.25 R (1) A *firm* must make and retain a record:
- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances, that it has obtained for the purposes of *MCOB 4.7A*;
 - (b) that explains why the *firm* has concluded that any *advice* given to a *customer* complies with *MCOB 4.7A.2R* and satisfies the suitability requirement in *MCOB 4.7A.5(1)R*; and
 - (c) of the *customer's* positive choice in *MCOB 4.6A.2R* (Rolling up of fees or charges into loan) where applicable.
- (2) The records in (1) must be retained for a minimum of three years from the date on which the *advice* was given or, in the case of (1) (d), the making of the choice.

MCOB 4.8 is deleted in its entirety and replaced with a new section *MCOB 4.8A*. The deleted text is not shown and the new text is not underlined.

4.8A Execution-only sales

Scope and application of this section

- 4.8A.1 G This section sets out the conditions which must be satisfied for a *firm* to enter into or vary a *regulated mortgage contract* with a *customer*, or arrange such a transaction for a *customer*, without giving *advice*, or where the *advice* given by the *firm* has been rejected. As explained in *MCOB 4.7A.1G*, it does not prohibit the giving of pre-contract or preliminary information which does not amount to *advice* to the particular *customer*. If a *firm* intends (where permitted under this section) to operate a business model under which it will not give *advice* to particular *customers*, it may wish to refer to *PERG* (particularly *PERG 4.6*) for guidance on the regulatory perimeter in relation to the *regulated activities* which constitute *advising on home finance transactions*.
- 4.8A.2 G Subject to certain limited exceptions, where the *rules* in *MCOB 4.8A* apply to a *firm* they restrict *execution-only sales* (which term is defined to include variations of existing contracts) to cases where:
- (1) there is no spoken or other interactive dialogue between the *firm* and the *customer* during the sale; or
 - (2) if there is spoken or other interactive dialogue between the *firm* and the *customer* during the sale:
 - (a) the *customer* is a *high net worth mortgage customer*; or

(b) the *customer* is a *professional customer*; or

(c) the loan is solely for a business purpose;

and in each case the *customer* has positively elected to proceed with an *execution-only sale* and (in the case of a *professional customer*) identified the product he wishes to purchase; or

(3) the *customer* has rejected *advice*, identified the product he wishes to purchase and positively elected to proceed with an *execution-only sale*.

In each case certain requirements must be satisfied.

- 4.8A.3 G Interactive dialogue includes SMS, mobile instant messaging, email and communication via social media sites; this list is not exhaustive. Where a sale is carried out entirely on the internet, a *firm* merely permitting the *customer* to input details about the matters specified in *MCOB* 4.8A.14R(1), (2) or (3) in order to select from the *firm's* product range the *regulated mortgage contract* he wishes to purchase, or the variation he wishes to enter into, would not be engaging in interactive dialogue. *Firms* are reminded that, if this process steers the *customer* towards any one or more of the products offered by it, so as to constitute *advice*, the requirements of *MCOB* 4.7A will apply.

The customer's best interests

- 4.8A.4 G *Firms* are reminded that *MCOB* 2.5A.1R (The customer's best interests) applies in all cases, including in relation to *execution-only sales*.
- 4.8A.5 R A *firm* must not encourage a *customer* to opt out of receiving *advice* on *regulated mortgage contracts* from, or reject *advice* given by, it or any *associate*.
- 4.8A.6 G *Firms* are not prohibited from *entering into* or *arranging execution-only sales* for *regulated mortgage contracts* for *customers* to whom they have provided product information (where otherwise permitted under this section), but *MCOB* 2.5A.1R and *MCOB* 4.8A.5R (The customer's best interests) mean the information they provide should not steer the *customer* to elect to enter into an *execution-only sale*.

Cases where execution-only sales are not permitted

- 4.8A.7 R A *firm* must not enter into or arrange an *execution-only sale* for a *regulated mortgage contract* if:
- (1) the *customer* is intending to use it to exercise a statutory "right to buy" the *customer's* home; or
 - (2) the main purpose of the *customer's* entering into it is to raise funds for debt consolidation; or

- (3) there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale.

4.8A.8 E An attempt by the *firm* either to:

- (1) misdescribe the *customer's* purpose or characteristics; or
- (2) encourage the *customer* to tailor the amount he wishes to borrow;

so that *MCOB* 4.8A.7R does not apply may be relied on as tending to show contravention of *MCOB* 2.5A.1R (The customer's best interests).

Exceptions: high net worth mortgage customers, professional customers and loans solely for a business purpose.

4.8A.9 R (1) *MCOB* 4.8A.7R does not apply where the *customer* is a *high net worth mortgage customer*.

- (2) *MCOB* 4.8A.7R(3) does not apply where the *customer* is a *professional customer* or the loan is solely for a business purpose.

Exception: rate switches and other variations

4.8A.10 R (1) *MCOB* 4.8A.7R does not apply in the case of a variation of a *regulated mortgage contract*, provided that:

- (a) the variation would not involve the *customer* taking on additional borrowing beyond the amount currently outstanding under the existing *regulated mortgage contract*, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
- (b) where the variation will (in whole or part) change from one interest rate to another, the *firm* has presented to the *customer*, using only a non-interactive channel, all products offered by it for which the *customer* is eligible, whether or not the *customer* then selects from those products using an interactive channel.

- (2) The reference to a variation in (1) (and in all other provisions which cross-refer to this *rule*) must be read as including any new *regulated mortgage contract* which would replace an existing *regulated mortgage contract* between the *customer* (or, where there are joint borrowers, at least one of them) and the *firm* (either as the original *mortgage lender* or as the transferee of the existing contract).

4.8A.11 G (1) The variation in *MCOB* 4.8A.10R might involve: a transfer to a different property ("porting"); the addition or removal of a borrower for joint mortgages; an extension of the term; a change in payment method; or consent to let the property. This list is not exhaustive.

- (2) Examples of rate changes in *MCOB* 4.8A.10R(1)(b) are: a transfer

from a variable rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.

- (3) *Firms* are reminded that, if their presentation in *MCOB* 4.8A.10R(1)(b) has (either explicitly or implicitly) steered the *customer* towards any one or more of the products offered by them such as to constitute *advice*, the requirements of *MCOB* 4.7A will apply.

Exception: rejected advice

- 4.8A.12 R *MCOB* 4.8A.7R does not apply where the *customer* has rejected *advice* given by a *firm* and instead wishes to enter into a different *regulated mortgage contract* as an *execution-only sale* (see *MCOB* 4.8A.14R).

Execution-only sales: guidance

- 4.8A.13 G (1) If a *firm* wishes to be able to apply the exception in *MCOB* 4.8A.9R for a *high net worth mortgage customer*, it should first consider the provision in *MCOB* 1.2.9CR (Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer).
- (2) Where a *firm's* business model is such that it does not offer *advice on regulated mortgage contracts* to particular *customers*, it should ensure that it does not *enter into* or *arrange regulated mortgage contracts* for *customers* in breach of *MCOB* 4.8A.7R. Such a *firm* may wish to use filtering questions which the *customer* is required to answer before he is able to proceed, in order to establish whether any of the exceptions to *MCOB* 4.8A.7R apply.

Requirements for execution-only sales

- 4.8A.14 R A *firm* must not *enter into* or *arrange* an *execution-only sale* for a *regulated mortgage contract* unless, except as provided in *MCOB* 4.8A.15R:
- (1) for a new *regulated mortgage contract* not falling within *MCOB* 4.8A.10R, the *customer* has identified the *regulated mortgage contract* he wishes to purchase, specifying to the *firm* at least the following information:
- (a) the name of the *mortgage lender*;
- (b) the rate of interest;
- (c) the interest rate type (that is, whether fixed, variable or some other type);
- (d) the price or value of the property on which the *regulated mortgage contract* would be secured (estimated where

- necessary);
- (e) the length of the term required by the *customer*;
 - (f) the sum the *customer* wishes to borrow; and
 - (g) whether the *customer* wants an *interest-only mortgage* or a *repayment mortgage*;
- (2) for a contract variation not falling within *MCOB 4.8A.10R* (but permitted by *MCOB 4.8A.7R*), the *customer* has specified at least the following information, where applicable to the variation he wishes to enter into:
- (a) the price or value of the property;
 - (b) the length of term required (or confirmation that this should remain unchanged); and
 - (c) the amount the *customer* wishes to borrow;
- (3) for a contract variation falling within *MCOB 4.8A.10R*, the *customer* has specified the variation he wishes to enter into;
- (4) the *customer* has been informed, clearly and prominently and in a *durable medium* (after providing the information in (1), (2), or (3), where that is required):
- (a) in any case falling within *MCOB 4A.7A.24 R* (Rejected advice) where the *firm* has advised the *customer* that the *regulated mortgage contract* (or variation) is unsuitable for the *customer*, that that is the case; or
 - (b) in any other case, that in the provision of its services for the *execution-only sale* the *firm* is not required to assess the suitability of that *regulated mortgage contract* (or variation);

and in either case that the *customer* will not benefit from the protection of the rules (in *MCOB 4.7A*) on assessing suitability. In any case where there is spoken dialogue between the *firm* and the *customer* at any point during the sale, the *firm* must also provide this information orally; and

- (5) once the *customer* has been provided with the information in (4), in any case where there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale, he has confirmed, in writing, to the *firm* that he is aware of the consequences of losing the protections of the *rules* on assessing suitability and is making a positive election to proceed with an *execution-only sale*. The written confirmation must be in the same document as the information in *durable medium* in (4), which must be separate from any other information or contractual

documentation.

- 4.8A.15 R The requirements in *MCOB* 4.8A.14R(1) to (3) do not apply if the *customer* is a *high net worth mortgage customer* or entering into the *regulated mortgage contract* solely for a business purpose.
- 4.8A.16 G Where the information in *MCOB* 4.8A.14R(4) is given by electronic means, the *firm* should ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

Managing execution-only sales

- 4.8A.17 R A *firm* which intends to transact *execution-only sales* in *regulated mortgage contracts* must have in place and operate in accordance with a clearly defined policy which:
- (1) sets out the amount of business the *firm* reasonably expects to transact by way of *execution-only sales* and the steps to be taken by the *firm* if that business exceeds the expected levels; and
 - (2) sets out its processes and procedures for ensuring compliance with the *rules* in *MCOB* 4.8A; in particular:
 - (a) how it will ensure in every case that, before proceeding with an *execution-only sale* it has obtained (where required) a voluntary and informed positive election from the *customer* in order to comply with *MCOB* 4.8A.14R(5);
 - (b) how it will ensure in every case that it acts in compliance with *MCOB* 2.5A.1R and *MCOB* 4.8A.5R (The customer's best interests), including not encouraging a *customer* to enter into a *regulated mortgage contract* (or variation) as an *execution-only sale*; and
 - (c) how it will identify whether a *customer* meets the definition of *high net worth mortgage customer* or *professional customer*, if it will offer *execution-only sales* to those *customers*; and
 - (3) includes the arrangements for monitoring and auditing compliance with the policy, processes and procedures.

Record keeping

- 4.8A.18 R (1) Whenever a *firm* enters into or arranges an *execution-only sale* for a *regulated mortgage contract*, it must make and maintain a record of:
- (a) the information provided by the *customer* which satisfies *MCOB* 4.8A.14R(1), (2) or (3);

- (b) the information in *durable medium* in MCOB 4.8A.14R(4);
 - (c) (where applicable) the confirmation by the *customer* in MCOB 4.8A.14R(5); and
 - (d) any *advice* from the *firm* which the *customer* rejected, including the reasons why it was rejected, before deciding to enter into an *execution-only sale*.
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *regulated mortgage contract* was *entered into* or *arranged* (or the variation was entered into or arranged).
 - (3) A *firm* must keep an adequate and up-to-date record of the policy in MCOB 4.8A.17R, where such policy is required by that *rule*. When the policy is changed, a record of the previous policy must be retained for one year from the date of change.

Forbearance

- 4.8A.19 R MCOB 4.8A does not apply to any variation which is made solely for the purposes of forbearance where the *customer* has a *payment shortfall*, or in order to avoid a *payment shortfall*.

Amend the following as shown.

4.9 Business loans and loans to high net worth mortgage customers: tailored provisions

- 4.9.1 R ~~For the purposes of the rules in MCOB there is one market in regulated mortgage contracts for a business purpose. Within this market, a firm should describe its scope of service in accordance with MCOB 4.3.1R. [deleted]~~
- 4.9.1A G Firms are reminded that in accordance with MCOB 1.2.3R and MCOB 1.2.3AR, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers, as the case may be. Therefore, a firm may only follow the tailored provisions in MCOB 4.9 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.
- 4.9.2 G ~~Where a personal recommendation or personalised information is provided in connection with a regulated mortgage contract for a business purpose it is recognised that there may be additional considerations beyond those described in MCOB 4.7.11E as part of the assessment of whether the regulated mortgage contract is appropriate to the needs and circumstances~~

of the *customer*. [deleted]

Initial disclosure

- 4.9.3 G ~~As explained in *MCOB 4.4.3G(1)* the requirement to provide an initial disclosure document is only triggered where the *firm* has identified the possibility that it will be giving personalised information or *advice* to a *customer* on a *regulated mortgage contract* for a business purpose. [deleted]~~
- 4.9.4 G (1) *Firms* are reminded that *MCOB 1.2.7R* enables them to substitute an alternative for 'mortgage' in the initial disclosure document in relation to a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer* (except in relation to sections 6 and 8 of any *initial disclosure document* or sections 5 and 8 of any *combined initial disclosure document*).
- (2) *MCOB 1.2.7R* also means that a *firm* ~~must~~ should amend any *combined initial disclosure document* in relation to a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer* so that the final sentence of prescribed text in section 4 states: 'You will receive an illustration which will tell you about any fees relating to a particular [term used by the firm to describe the borrowing, for example "*mortgage secured overdraft*"]'.
- (3) Where the initial disclosure ~~document~~ in relation to a *regulated mortgage contract* for a business purpose or a *high net worth mortgage customer* makes reference to the permitted business of a *firm* (for example, sections 6 5 and 8 of the ~~initial disclosure document~~ *combined initial disclosure document* may refer to a *firm* *advising on or arranging regulated mortgage contracts*) a *firm* can add text explaining the relevance of these descriptions. One approach may be to add an additional sentence such as: 'Secured overdrafts are referred to here as "*mortgages*" because they involve a charge being taken over your property'.

Non-advised sales

- 4.9.5 R ~~*MCOB 4.8.1R* does not apply in relation to a *regulated mortgage contract* for a business purpose. [deleted]~~

...

4.10 Home purchase plans: sales standards

Scope of service provided

- 4.10.1 R ~~A *firm* must comply with the scope of service requirements at *MCOB 4.3.1R* and *MCOB 4.3.2R* (Providing services within and beyond scope), *MCOB 4.3.4A R* and *4.3.4AR* (Whole of market and *MCOB 4.3.10R* (Appointed representatives)). [deleted]~~

Initial disclosure requirements

- 4.10.2 R (1) ~~A firm must, on first making contact with a customer when it anticipates giving personalised information or advice on entering into a new home purchase plan, ensure that the customer is, or has been, provided with an appropriate initial disclosure document or combined initial disclosure document in a durable medium.~~
- (2) ~~If the initial contact in (1) is by telephone, a firm must:~~
- (a) ~~(if the call is with a view to concluding a distance home purchase mediation contract) give the following information before proceeding further:~~
- (i) ~~the name of the firm and (if initiated by the firm) the commercial purpose of the call;~~
- (ii) ~~the scope of the service provided by the firm; and~~
- (iii) ~~whether or not the firm will provide the customer with advice on those home purchase plans within its scope; and~~
- (b) ~~Ensure that the customer is, or has been, provided with such a document in a durable medium as soon as is practicable.~~
- (3) ~~A firm must not use a combined initial disclosure document in relation to a combination of home purchase plans and equity release transactions. [deleted]~~
- 4.10.3 G ~~In accordance with Principle 7, where a firm is likely to provide services in relation to both regulated mortgage contracts and home purchase plans, it should provide a combined initial disclosure document rather than two separate initial disclosure documents. [deleted]~~
- 4.10.3A R A firm must comply with the rules in MCOB 4.4A as if the references in those rules to regulated mortgage contracts and mortgage lenders were to, respectively, home purchase plans and home purchase providers.
- 4.10.3B R For the purposes of MCOB 4.4A.2R(1) there is one relevant market for home purchase plans.
- 4.10.4 G ~~The guidance on initial disclosure requirements at MCOB 4.4.2G to MCOB 4.4.4G in MCOB 4.4A may be relevant; in this context, that guidance should be read using home purchase plan terminology instead of the equivalent regulated mortgage contract terminology, where appropriate.~~

Additional requirements for distance home purchase mediation contracts with retail customers

[Note: The rules regarding additional disclosure requirements for, and

cancellation of, *distance home purchase mediation contracts* are set out in *MCOB 4.5* and *MCOB 4.6* respectively.]

Advised sales: suitability

- 4.10.5 G ~~In accordance with *Principle 9*, a firm should take reasonable steps to obtain from a *customer* all information likely to be relevant to ensuring the suitability of its advice. [deleted]~~
- 4.10.5A R If a firm gives advice to a particular customer to enter into a home purchase plan, or to vary an existing home purchase plan, it must take reasonable steps to ensure that the home purchase plan is, or after the variation will be, suitable for that customer.
- 4.10.5B R In MCOB 4.10, a reference to advice to enter into a home purchase plan is to be read as including advice to vary an existing home purchase plan.
- 4.10.5C G A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.10.5AR to MCOB 4.10.9AR.
- 4.10.5D R For the purposes of MCOB 4.10.5AR:
- (1) a home purchase plan will not be suitable for a customer unless the home purchase plan is appropriate to the needs and circumstances of the customer;
 - (2) a firm must base its determination of whether a home purchase plan is appropriate to a customer's needs and circumstances on the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware;
 - (3) no advice must be given to a customer to enter into a home purchase plan if there is no home purchase plan which is suitable from the product range offered by the firm;
 - (4) if a home purchase provider is dealing with an existing customer in arrears, with a payment shortfall or otherwise in breach of their home purchase plan and has concluded that there is no suitable replacement home purchase plan, the firm must nonetheless have regard to MCOB 13.3; and
 - (5) the reasonable steps in that rule include considering why it is not appropriate for the customer to take out a regulated mortgage contract.
- 4.10.6 R ~~A firm, before making a personal recommendation on a home purchase plan, must take reasonable steps to ensure that it is:~~
- (1) affordable;

- (2) ~~appropriate to the *customer's* needs and circumstances; and~~
- (3) ~~the most suitable of those *home purchase plans* that the *firm* has available to it within the scope of the service provided to the *customer*.
[deleted]~~

4.10.6A G MCOB 4.10.5DR(3) has the effect that a *firm* cannot recommend the 'least worst' *home purchase plan* where the *firm* does not have access to *home purchase plan* products appropriate to the *customer's* needs and circumstances.

4.10.7 G ~~The guidance on suitability at MCOB 4.7.8G to MCOB 4.7.10G and MCOB 4.7.16G may be relevant~~ Firms may wish to consider the following provisions:

- (1) the rule at MCOB 4.7A.6R on the *customer's* needs and circumstances, as if it were *guidance* and to the extent applicable to *home purchase plans*; and
- (2) the guidance at MCOB 4.7A.1G(2), MCOB 4.7A.21G and MCOB 4.7A.23G (Other considerations when advising);

in each case using *home purchase plan* terminology instead of the equivalent *regulated mortgage contract* terminology, where appropriate.

Non-advised sales

4.10.8 R ~~If a *firm* arranges a *home purchase plan* or a variation to an existing *home purchase plan* without giving a *personal recommendation*, it must ensure that the questions it asks about the *customer's* needs and circumstances are scripted in advance. [deleted]~~

4.10.9 G ~~The guidance on non-advised sales at MCOB 4.8.2G and on scripted questions at MCOB 4.8.5G and MCOB 4.8.6G may be relevant. [deleted]~~

Rejected recommendations

4.10.9A R If a *customer* has rejected the *advice* given by a *firm* and instead requested an *execution-only sale* of a *home purchase plan*, the *firm* may *enter into* or *arrange* that *execution-only sale* provided the requirements in MCOB 4.8A.14R (as applied in relation to *home purchase plans* by MCOB 4.10.9BR and modified for *home purchase plans* by MCOB 4.10.9DR) are satisfied.

Execution-only sales

4.10.9B R MCOB 4.8A applies to a *firm* as if the references in that section to *regulated mortgage contracts* and *mortgage lenders* were to, respectively, *home purchase plans* and *home purchase providers*, but MCOB 4.8A.14R(1) and (2) are modified in relation to *home purchase plans* as set out in MCOB 4.10.9DR.

4.10.9C G As provided in MCOB 4.1.2BR, MCOB 4.8A only applies to home purchase providers in relation to entering into home purchase plans where there is no firm which is arranging the transaction and to which MCOB 4.8A applies.

4.10.9D R For home purchase plans, the following items of information replace those set out in MCOB 4.8A.14R(1) and (2):

- (1) the name of the home purchase provider;
- (2) the length of the term required by the customer; and
- (3) the sum required from the home purchase provider.

Risks and features statement and tariff of charges

4.10.10 R A firm must, before ~~making a personal recommendation to~~ advising a customer of, or when a customer requests or selects, to enter into, or entering into or arranging a home purchase plan as an execution-only sale, ensure that the customer is, or has been, provided with an appropriate risks and features statement about that plan.

...

Record keeping

4.10.13 R (1) A firm must make and retain a record:

- (a) of the customer information, including that relating to the customer's needs and circumstances that it has obtained for the purposes of MCOB 4.10.5DR;
- (b) that explains why the firm has concluded that any advice given to a customer complies with MCOB 4.10.5AR and satisfies the suitability requirement in MCOB 4.10.5DR(1); and
- (c) of any advice which the customer has rejected, including the reasons why it was rejected and details of the home purchase plan which the customer has proceeded with as an execution-only sale.

(2) The records in (1) must be retained for a minimum of three years from the date on which the advice was given.

4.10.14 G Firms should note the record-keeping requirements in MCOB 4.8A in relation to execution-only sales which are imposed in relation to home purchase plans by MCOB 4.10.9BR.

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 a customer, both orally and in writing, during the initial contact:~~

...

~~Affordability and appropriateness~~ Advised sales

- 4.11.3 R ~~A regulated sale and rent back firm must not permit a potential SRB agreement seller to become contractually committed to enter into a regulated sale and rent back agreement unless it has reasonable grounds to be satisfied that:~~ a firm with permission to advise on regulated sale and rent back agreements has advised the particular customer to enter into it.
- (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.~~

Suitability

- 4.11.3A R A firm must take reasonable steps to ensure that it does not advise a particular customer to enter into a regulated sale and rent back agreement unless the regulated sale and rent back agreement is suitable for that customer.
- 4.11.3B G A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.11.3AR.
- 4.11.3C R For the purposes of MCOB 4.11.3AR:
- (1) a regulated sale and rent back agreement will not be suitable unless, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm concludes on reasonable grounds that:
- (a) the customer can afford the payments he will be liable to make under it; and
- (b) the proposed regulated sale and rent back agreement is appropriate to the needs and circumstances of the customer;
- (2) a firm must base its determination of whether a customer can afford the payments he will be liable to make under a regulated sale and rent back agreement, and whether it is appropriate to his needs and circumstances, on the facts disclosed by the customer and other

relevant facts about the *customer* of which the *firm* is or should reasonably be aware;

- (3) no advice must be given to a *customer* to enter into a *regulated sale and rent back agreement* if there is no *regulated sale and rent back agreement* which is suitable from within the product range offered by the *firm*.

- 4.11.4 E (1) In assessing whether a *customer* can afford to enter into a particular *regulated sale and rent back agreement*, a *firm* should use the following information:
- (a) the rental payments that will be due under the tenancy agreement which confers the right of the *customer* (or trust beneficiary or related party) to continue residing in the property, stress tested to take account of possible future rental increases during the fixed term of the tenancy agreement by reference to the circumstances in which the agreement permits increases or changes to the initial rent;
 - (b) adequate information, obtained from the *customer* to establish his average income and expenditure calculated on a monthly basis, and any other resources that he has available, and verified by the *firm* using evidence provided by the *customer*;
 - (c) the *customer's* net disposable income, which a *firm* should establish using the information referred to in (b);
 - (d) the *customer's* entitlement to means-tested benefits and housing benefits; and
 - (e) the effect of any likely future change to the *customer's* income, expenditure or resources during the period of the *regulated sale and rent back agreement*.
- (2) The *firm* should explain to the *customer* that it will base its assessment on whether he can afford to enter into the particular *regulated sale and rent back agreement* on the information he provides to the *firm* about his income, expenditure and resources.
- (3) In assessing affordability under (1) the *firm*:
- (a) must not rely to a material extent on the capital of, or income from, any lump sum the *customer* receives which represents the net sale proceeds of the property; and
 - (b) must disregard any discount or any future sum that may be payable to the *customer* under the terms of the *regulated sale and rent back agreement*.
- (4) Contravention of (1), (2) or (3) may be relied upon as tending to show

contravention of *MCOB 4.11.3CR(1)(a)*.

4.11.4A R In assessing whether the *regulated sale and rent back agreement* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB 4.11.3C R(1) (b)*, as a minimum requirement a *firm* must consider the following list of factors:

- (1) whether it is appropriate for the *customer* to sell his property for a price less than its value (as determined by the valuation which is required by *MCOB 6.9.2R*, including where applicable a valuation obtained by the *SRB agreement seller* as described in *MCOB 6.9.2R (4)*) (where this is proposed under the *regulated sale and rent back agreement*);
- (2) whether it is appropriate for the *customer* because he is in financial difficulty;
- (3) whether all other options have been explored and eliminated, including the *customer* speaking to his *home finance provider* and other creditors, getting debt advice, releasing the equity by other means and checking whether he is eligible for government or local authority help;
- (4) whether it would be more appropriate for the *customer* to sell his home on the open market;
- (5) whether the benefits to the *customer* in entering into the proposed *regulated sale and rent back agreement* outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits;
- (6) the feasibility of the *customer* raising funds by alternative methods other than by a sale of his property; and
- (7) if the *customer* is not under threat of repossession, why it is appropriate for the *customer* to take out a *regulated sale and rent back agreement* rather than to use an alternative method of finance.

4.11.4B E The following may be relied on as tending to show contravention of *MCOB 2.5A.1R* (The customer's best interests):

- (1) an attempt by the *firm* to misdescribe the *customer's* reasons for considering a *regulated sale and rent back agreement*; or
- (2) an attempt to encourage a *customer* to enter into a *regulated sale and rent back agreement* involving a sale price for his property which is less than its value (as determined by the valuation which is required by *MCOB 6.9.2R*, including where applicable a valuation obtained by the *SRB agreement seller* as described in *MCOB 6.9.2R(4)*) if he is not under threat of repossession.

4.11.4C G Firms are reminded that the list in MCOB 4.11.4AR is not exhaustive. For certain customers there may be additional considerations to explore beyond those described in that rule.

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). [deleted]~~

...

4.11.7 G

...

(2) The firm should consider whether a customer ~~in arrears~~ with a payment shortfall under his regulated mortgage contract or home purchase plan has contacted his mortgage lender or home purchase provider to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that may apply in the customer's circumstances.

...

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 and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and

(c) the customer's entitlement to means-tested benefits and housing benefits, including any evidence provided by the customer, that

it has obtained from him for the affordability and appropriateness assessment;

and which explains why the *firm* concluded that the regulated sale and rent back agreement was suitable for the customer could afford, and why it was appropriate for him, and why it advised him to enter into the proposed ~~regulated sale and rent back agreement~~ it.

- (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 suitability~~ was made, or one year after the end of the fixed term of the tenancy agreement under the *regulated sale and rent back agreement*, if later.

Reliance on another firm

- 4.11.9 R A *firm* need not comply with the requirements imposed on a *regulated sale and rent back firm* in this section to the extent that it is satisfied on reasonable grounds that another *firm*, with the appropriate permission to do so, has already done so.
- 4.11.10 G The effect of *MCOB* 4.11.9R is that a *SRB agreement provider* is expected to ~~carry out its own assessments of affordability and appropriateness~~ advise in relation to a particular *regulated sale and rent back agreement*, unless it is reasonable for it to rely on another *firm* with permission to advise on regulated sale and rent back agreements, to have done so in relation to a particular transaction.

The following Annex is deleted in its entirety. The deleted text is not struck through.

4 Annex 1R Initial disclosure document [deleted]

Amend the following as shown.

5.1 Application

...

What?

- 5.1.3 R (1) This chapter applies if a *firm*:
- (a) ~~makes a personal recommendation to~~ advises a particular customer to enter into, or arranges an execution-only sale in, a home finance transaction; or
 - (b) provides information to a *customer* that is specific to the

amount to be provided on a particular *home finance transaction*, including information provided in response to a request from a *customer*; or

- (c) provides the means for a *customer* to make an application to it;

in connection with entering into, or agreeing to enter into, a *home finance transaction* provided by a *home finance provider*, other than an *equity release transaction* or a variation to an existing *home finance transaction*.

...

5.2 Purpose

5.2.1 G ...

- (2) The purpose of *MCOB 5* is to ensure that, before a *customer* submits an application for a particular *home finance transaction*, he is supplied with information that makes clear:
- (a) (in relation to a *regulated mortgage contract*) its features, any *linked deposits*, any *linked borrowing* and any *tied products*; and
- (b) the price that the *customer* will be required to pay under that *home finance transaction*, to enable the *customer* to assess whether it is affordable to him make a well-informed purchasing decision.

...

5.4 ~~Mortgage illustrations:~~ Information on regulated mortgage contracts: general

...

~~Restriction on provision~~ Provision of information

- 5.4.13 R ~~A firm must not provide a customer with information that is specific to the amount that the customer wants to borrow on a particular regulated mortgage contract except in the following circumstances:~~
- (1) ~~when it is in the form of an illustration;~~
- (2) ~~when it is provided on screen, for example a computer screen;~~
- (3) ~~when supplementary information which is not contained within an illustration is provided after or at the same time as an illustration; or~~
- (4) ~~when it is provided orally, for example by telephone. [deleted]~~

- 5.4.13A G When providing information on regulated mortgage contracts, firms should bear in mind that the information must be clear, fair and not misleading in accordance with Principle 7 and MCOB 2.2.6R; and must be given in accordance with MCOB 2.5A.1R (The customer's best interests).
- 5.4.14 R ~~Where MCOB 5.4.13R(2) applies:~~
- (1) ~~if the customer initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed prominently on each page on screen: "This information does not contain all of the details you need to choose a mortgage. Make sure that you read the separate key facts illustration before you make a decision."; and~~
 - (2) ~~a firm must not provide a customised print function where the information on the screen would not be in the form of an illustration if the information were printed in hard copy. [deleted]~~
- 5.4.15 R ~~Where MCOB 5.4.13R(3) applies, supplementary information must only be provided when it does not significantly duplicate information provided in the illustration. [deleted]~~
- 5.4.16 G MCOB 5.4.13R 5 places no restrictions on the provision of information that is not specific to the amount the customer wants to borrow, for example, marketing literature including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. Such literature may, however, constitute a *financial promotion* and be subject to the provisions of MCOB 3 (Financial promotion).
- 5.4.17 G ~~Where MCOB 5.4.13R(2) and MCOB 5.4.13R(4) apply, firms should encourage the customer to obtain a copy of an illustration in a durable medium. This could be done, for example, if the information was contained on the firm's website, by a prompt which asked the customer whether he wished to print off an illustration. [deleted]~~
- 5.4.18 R (1) ~~Unless (2) applies, where MCOB 5.4.13R(2) or MCOB 5.4.13R(4) apply, a firm must provide the means for the customer to obtain an illustration as soon as practicable, through a delivery channel acceptable to the customer.~~
- (2) ~~A firm does not need to provide an illustration if the customer refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the provision of an illustration is not appropriate, for example, because on the basis of discussions undertaken the customer is ineligible given the mortgage lender's lending criteria, or is not interested in pursuing the enquiry. [deleted]~~

Messages to be given when providing information on regulated mortgage contracts

- 5.4.18A R (1) Whenever a *firm* provides a *customer* with information specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract* following an assessment of the *customer's* needs and circumstances in order to comply with *MCOB 4.7A.2R*, it must give, clearly and prominently, the following information:
- (a) the same information on the *firm's* product range as is required by *MCOB 4.4A.1R(1)*, *MCOB 4.4A.2R* and *MCOB 4.4A.4R(1)*; and
- (b) that the *customer* has the right to request an *illustration* for any *regulated mortgage contract* which the *firm* is able to offer the *customer*.
- (2) A *firm* need not give the information in (1) if it has previously given that information in compliance with this *rule* within the last ten *business days*.

Message to be given when customer requests an execution-only sale

- 5.4.18B R (1) Whenever, as part of an *execution-only sale* (or potential *execution-only sale*), a *customer* provides a *firm* with the information in *MCOB 4.8A.14R(1)*, (2) or (3) the *firm* must inform the *customer*, clearly and prominently, that the *customer* has the right to request an *illustration* for any *regulated mortgage contract* which the *firm* is able to offer the *customer*.
- (2) Whenever, as part of an *execution-only sale* (or potential *execution-only sale*), a *high net worth mortgage customer* or *customer* who would be entering into a *regulated mortgage contract* solely for a business purpose is provided with information specific to the amount that the *customer* wants to borrow on a particular *regulated mortgage contract*, the *firm* must inform the *customer*, clearly and prominently, that the *customer* has the right to request an *illustration* for any *regulated mortgage contract* which the *firm* is able to offer the *customer*.
- (3) A *firm* need not give the information in (1) and (2) if it has previously given that information in compliance with this *rule* within the last ten *business days*.

Guidance relevant to messages given to customer

- 5.4.18C G (1) In order to demonstrate compliance with *MCOB 5.4.18AR(1)*, a *firm* may wish to consider, for example, doing one or more of the following: give the messages to the *customer* in a durable medium; build the requirements into the *firm's* training of staff, as evidenced by its training and compliance manuals; insert appropriate prompts into paper-based or automated sales systems; have procedures in place to monitor compliance by its staff with that *rule*. What is required in

each case will depend on all the circumstances.

- (2) The reference in the template *illustration* at MCOB 5 Annex 1R to the possibility of obtaining other *illustrations* is not sufficient to comply with the obligations in MCOB 5.4.18AR(1)(b) and MCOB 5.4.18BR. A firm may, however, satisfy those obligations in a number of ways; for example, by drawing the *customer's* attention to the right to request an *illustration* orally in a face-to-face meeting, or by referring to it in a letter or electronic communication or other written information.

...

Tied products

...

- 5.4.24 G The rules on the content of an *illustration* at MCOB 5.6 (Content of illustrations) mean that if the *regulated mortgage contract* requires the *customer* to take out a *tied product*, the *illustration* must include an accurate quotation or a reasonable estimate of the payments the *customer* would need to make for the *tied product* (see MCOB 5.6.52R(2) ~~on where the *tied product* is a repayment vehicle strategy that is a *tied product* and MCOB 5.6.74R ~~on insurance that is a~~ where the *tied product* is insurance)...~~

...

5.5 Provision of illustrations

Timing

- 5.5.1 R (1) A firm must provide the *customer* with an *illustration* for a *regulated mortgage contract* before the *customer* submits an application for that particular *regulated mortgage contract* to a *mortgage lender*, unless an *illustration* for that particular *regulated mortgage contract* has already been provided.
- (2) ~~A~~ Except in the circumstances in MCOB 5.5.1AR, a firm must provide the *customer* with an *illustration* for a *regulated mortgage contract* when any of the following occurs, unless an *illustration* for that *regulated mortgage contract* has already been provided:
- (a) ~~the firm makes a personal recommendation to~~ advises the particular *customer* in relation to enter into one or more that regulated mortgage contracts, in which case an *illustration* must be provided at the point the recommendation advice is made given (and *illustrations* for all recommended *regulated mortgage contracts* must be provided), unless the advice is given by telephone, in which case the firm must provide an *illustration* within 5 business days; or

- (b) ~~the *firm* provides written information that is specific to the amount that the *customer* wants to borrow on a particular regulated mortgage contract; or [deleted]~~
 - (c) ~~the *customer* requests written information from the *firm* that is specific to the amount that the *customer* wants to borrow on a particular regulated mortgage contract, unless the *firm* does not wish to do business with the *customer*. [deleted]~~
 - (d) the *customer* requests an *illustration* for that regulated mortgage contract, unless the *firm* is aware that it is unable to offer that regulated mortgage contract to him; or
 - (e) as part of an *execution-only sale* (or potential *execution-only sale*) the *customer* has provided the *firm* with the information in MCOB 4.8A.14R(1) to (3) to indicate which regulated mortgage contract or variation he wishes to enter into; or
 - (f) as part of an *execution-only sale* (or potential *execution-only sale*), a high net worth mortgage customer or a customer who is entering into the regulated mortgage contract solely for a business purpose, has indicated his intention to submit an application for that regulated mortgage contract.
- (3) Subject to MCOB 5.5.4R, the *firm* may comply with (1) and (2) by providing an *offer document* containing an *illustration*, if this can be done as quickly as providing an *illustration*.

- 5.5.1A R A *firm* need not provide an *illustration*:
- (1) in relation to a *direct deal*;
 - (2) if the *customer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *customer* is not interested in pursuing the enquiry; or
 - (3) if the *firm* does not wish to do business with the *customer*.
- 5.5.1B R If the *firm* chooses not to give an *illustration* in the circumstances set out in MCOB 5.5.1AR(1), where it has given *advice* on a *direct deal*, the *firm* must give the *customer* a written record of the *advice*.
- 5.5.1C R If, notwithstanding MCOB 5.5.1AR(1), a *firm* chooses to give an *illustration* in relation to a *direct deal*, it need not comply with MCOB 5.4.2R or MCOB 5.4.3R (Accuracy).
- 5.5.1D G In the circumstances in MCOB 5.5.1CR, a *firm* remains subject to MCOB 5.4.1R (Clear, fair and not misleading).
- 5.5.1E G In the circumstances in MCOB 5.5.1AR(2), the rule in MCOB 5.5.1R(1) will mean that the *customer* may not make an application for a regulated

mortgage contract as an illustration has not been provided.

...

- 5.5.4 R A *firm* must not ~~accept fees, commission a valuation, or undertake any other~~ action that commits the *customer* to an application (including accepting product-related fees in relation to the regulated mortgage contract concerned) until the *customer* has had the opportunity to consider an *illustration*.

...

- 5.5.6 G Subject to *MCOB 5.5.1R* and *MCOB 5.5.15R* when an *illustration* is requested without delay, a *firm* may perform an internal credit score and obtain information on the *customer's* credit record from a credit reference agency (subject to the consent of the *customer*), in order to provide a *customer* with an approval in principle for a *regulated mortgage contract*, without having to provide an *illustration*. [deleted]

...

~~No preference between repayment and interest only~~

- 5.5.13 R If the *customer* expresses no preference between a *repayment mortgage* and an *interest only mortgage*, the *firm* must:
- (1) ~~provide an illustration for a repayment mortgage (except where the firm does not provide repayment mortgages, in which case it must provide only an illustration for an interest only mortgage); and~~
 - (2) ~~make the customer aware that it has provided the illustration on this basis. [deleted]~~

Providing an illustration without delay in response to a customer request

- 5.5.14 G Where the *customer* requests ~~written information from the firm that is specific to the amount that the customer wants to borrow on an illustration for~~ a particular *regulated mortgage contract* ~~under (see MCOB 5.5.1R(2)(e)(d))~~, the purpose of *MCOB 5.5.15R*, *MCOB 5.5.16R* and *MCOB 5.5.17G* is to ensure that the *customer* receives an *illustration* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *customer* after it has provided the *customer* with an *illustration*.
- 5.5.15 R In meeting a request for an illustration under in accordance with MCOB 5.5.1R(2)(e) (d), the *firm* must not delay the provision of the *illustration* by requesting information other than:

...

- (7) any of the following information where it affects the availability of the *regulated mortgage contract* that the *customer* has requested information on or affects the information to be included in the *illustration*:

...

- (c) ~~whether the *customer* needs to self-certify his income; [deleted]~~

...

5.6 Content of illustrations

...

Content: required information

...

- 5.6.6 R As a minimum the *illustration* must be personalised to reflect the following requirements of the *customer*:

...

- (4) the term of the *regulated mortgage contract* (where the *customer* is unable to suggest a date at which he expects to repay the loan, for example in the case of an open-ended ~~secured bridging loan~~ *bridging loan*, secured overdraft or *mortgage credit card*, then a term of 12 months must be assumed and this assumption stated); and

...

Section 5: "Overall cost of this mortgage"

- 5.6.31 R Under the section heading 'Overall cost of this mortgage' where the *regulated mortgage contract* has an agreed term for repayment and a regular payment plan (that is, it is not a revolving credit agreement such as a secured overdraft or *mortgage credit card*, or a *regulated mortgage contract* where all of the interest rolls up, such as an open-ended ~~bridging loan~~ *bridging loan*):

...

- 5.6.32 R Under the section heading 'Overall cost of this mortgage' where the *regulated mortgage contract* has no agreed term for repayment, (and a 12 month term has been assumed), or no regular payment plan, or both (for example, a revolving credit agreement such as a secured overdraft or *mortgage credit card* or a *regulated mortgage contract* where all the interest rolls up such as an open-ended ~~bridging loan~~ *bridging loan*):

...

- (2) where all the interest on the *regulated mortgage contract* rolls up and is repaid as a lump sum at the end of the *regulated mortgage contract*, for example a ~~secured bridging loan~~ *bridging loan*, then the following text must follow the text in (1): 'It assumes that you pay back the total amount owing as a lump sum at the end of the mortgage term.';

...

...

Section 6: 'What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]'

5.6.39 R MCOB 5.6.40R to MCOB 5.6.57G do not apply to loans without a term or regular payment plan where some or all of the interest rolls up, for example ~~secured bridging loans~~ *bridging loans*, secured overdrafts or *mortgage credit cards*. In these cases, MCOB 5.6.134R to MCOB 5.6.138G apply.

...

5.6.52 R Where all or part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*:

...

(2) if the *regulated mortgage contract* requires the *customer* to take out a ~~repayment vehicle that is a tied product~~ as a repayment strategy either through the *mortgage lender* or *mortgage intermediary* then:

...

(b) include an accurate quotation or a reasonable estimate of the payments the *customer* will need to make for ~~the repayment vehicle~~ that tied product; and

...

(3) if the *illustration* includes a quotation for the payments that would need to be made ~~into the repayment vehicle~~ by the *customer* for the repayment strategy:

...

(b) the *illustration* must provide a brief description only of the type of *repayment vehicle strategy* illustrated (full details of the *repayment vehicle strategy* may be provided separately);

...

(4) if a quotation for the *repayment vehicle strategy* is not provided in the *illustration*, the *illustration* must include a '?' sign in the column for payments alongside the following text...

(5) unless MCOB 5.6.55R applies, if a quotation for the *repayment vehicle strategy* has been included in the *illustration*, Section 6 must be extended to illustrate the monthly cost inclusive of the savings plan and must have the sub-heading 'What you will need to pay each [insert frequency of payments from MCOB 5.6.40R] including the cost of a savings plan to

repay the capital' and must include:

...

- (b) the sum of what the *customer* would need to pay in each instalment for the *regulated mortgage contract* and for the *repayment ~~vehicle~~ strategy* in the payments column. For example if payments are made monthly, this would be the amount that the *customer* would need to pay each month for the *regulated mortgage contract* and the *repayment ~~vehicle~~ strategy*...

...

Multi-part mortgages

...

- 5.6.56 R Where *MCOB* 5.6.55R applies and part of the *regulated mortgage contract* is an *interest-only mortgage*:
- (1) if a quotation for the *repayment ~~vehicle~~ strategy* has been included in the *illustration* in accordance with *MCOB* 5.6.52R(3) then *MCOB* 5.6.52R(5) does not apply.

...

...

Section 7: 'Are you comfortable with the risks'?

- 5.6.58 R *MCOB* 5.6.59R to *MCOB* 5.6.65R do not apply to loans without a term or regular repayment plan where some or all of the interest rolls up, for example, ~~secured bridging loans~~ *bridging loans*, secured overdrafts or *mortgage credit cards*. In these cases *MCOB* 5.6.140R to *MCOB* 5.6.145R apply.
- 5.6.59 R Under the section heading 'Are you comfortable with the risks?':
- (1) under the sub-heading 'What if interest rates go up?' the *illustration* must include the following:

...

- (e)

...

- (ii) where a *repayment ~~vehicle~~ strategy* has been included in the *illustration* in accordance with *MCOB* 5.6.52R(3), the payments quoted in (i) must include the cost of the *repayment ~~vehicle~~ strategy* and state that this is the case;

...

...

Alternative requirements for loans without a term or a regular repayment plan
Section 6: “ What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]”

- 5.6.133 R *MCOB 5.6.134R to MCOB 5.6.138G* apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example ~~secured bridging loans~~ *bridging loans*, secured overdrafts or *mortgage credit cards*.
- 5.6.134 R The heading for Section 6 of the *illustration* and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the *customer*. (For example, if payments were to be made on a monthly basis, the heading for this section would be 'What you will need to pay each month' and the column would be headed 'Monthly payments'). Where no regular payments are required on the *regulated mortgage contract*, for example where all interest is rolled-up on a ~~secured bridging loan~~ *bridging loan*, then this section must be retained and the frequency of payments assumed must be 'monthly'.
- 5.6.135 R All the payments in Section 6 of the *illustration* must be calculated based on the frequency used for the purposes of the headings in *MCOB 5.6.40R* and must be shown in the column on the right-hand side of this section. If no payments are required, for example on a ~~secured bridging loan~~ *bridging loan* or secured overdraft, then this column should be marked on the *illustration* as nil.
- 5.6.136 R Section 6 of the *illustration* must contain the following information:

...

- (3) where no payments are required (or no payments are allowed), for example a ~~secured bridging loan~~ *bridging loan* or secured overdraft, then section 6 of the *illustration* should state if no payments are required or no payments can be made; or

...

Section 7: “Are you comfortable with the risks?”

- 5.6.139 R *MCOB 5.6.140R to MCOB 5.6.145R* apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example ~~secured bridging loans~~ *bridging loans*, secured overdrafts or *mortgage credit cards*.

...

5.7 **Business loans and loans to high net worth mortgage customers: tailored provisions**

- 5.7.1 R Where the *regulated mortgage contract* is for a business purpose or a high net

worth mortgage customer, a firm may choose to provide a business illustration or high net worth illustration (as applicable) (in compliance with *MCOB* 5.7.2R) instead of complying with *MCOB* 5.6.

5.7.1A G *Firms* are reminded that, in accordance with *MCOB* 1.2.3R, they should ~~either~~ comply in full with *MCOB*, but in doing so may opt to take account of ~~or~~ ~~comply with~~ all tailored provisions in *MCOB* that relate to business loans or loans to high net worth mortgage customers. Therefore, a firm may only follow the tailored provisions in *MCOB* 5.7 in relation to one of these sectors if it also follows all other tailored provisions in *MCOB* ~~if it also follows all other tailored provisions in *MCOB* that relate to that sector~~. In either case, the rest of *MCOB* applies in full.

5.7.2 R A business illustration or high net worth illustration provided to a customer must:

...

(4) use font sizes and typefaces consistently throughout the business illustration or high net worth illustration which are sufficiently legible so that the business illustration or high net worth illustration can be easily read by a typical customer;

...

5.7.3 G ...

(3) A firm may also choose to include other information beyond that required by *MCOB* 5.6. However, when adding additional material a firm should have regard to:

(a) the intended use of the business illustration or high net worth illustration as an aid to comparison by customers; and

(b) the requirement in *MCOB* 2.2.6R that any communication should be clear, fair and not misleading.

(4) The business illustration or high net worth illustration provided in accordance with *MCOB* 5.7.2R should be based upon the total borrowing that the firm is willing to provide under the regulated mortgage contract. This means that there is no requirement for a firm to provide a further business illustration or high net worth illustration (or business offer document or high net worth offer document) where a customer redraws against payments made under the regulated mortgage contract, providing this redrawing does not exceed the borrowing described in the original business offer document or high net worth offer document.

(5) *MCOB* 5.6.6R(4) requires that where the term of the regulated mortgage contract is open-ended, the business illustration or high net worth illustration must be based on an assumed term of 12 months and

that this assumption must be stated. This does not mean that a *firm* is limited in the actual term of the *regulated mortgage contract*. A *firm* is able to include in the *business illustration or high net worth illustration* an explanation that while a 12-month term has been assumed for the purpose of the *business illustration or high net worth illustration*, the *regulated mortgage contract* itself will be open-ended.

- 5.7.4 R Any *business illustration or high net worth illustration* provided by a *firm* must be limited to facilities provided under a *regulated mortgage contract*.
- 5.7.5 R *MCOB 5.6.31R(2)*, *MCOB 5.6.52R(1)* and *MCOB 5.6.52R(4)* prescribe text that should be used to remind a *customer* with an *interest-only mortgage* that there is a need to separately arrange for the repayment of capital. The options for repayment of capital may be different where the *regulated mortgage contract* is for a business purpose or a high net worth mortgage customer, and a *firm* must vary the prescribed wording in the *business illustration or high net worth illustration* to reflect this. One approach may be for the *firm* to revise the wording to reflect how the *customer* has said he will repay the capital.
- 5.7.6 R (1) When providing a *business illustration or high net worth illustration* in accordance with *MCOB 5.7.2R* a *firm* should describe facilities provided under the *regulated mortgage contract* that are not a loan within section 12 (Additional features) of the *business illustration or high net worth illustration*.
- (2) In complying with (1), a *firm* should follow the requirements in *MCOB 5.6.92R - MCOB 5.6.108G* where these are relevant. Where the facility is of a type not considered in *MCOB 5.6.92R - MCOB 5.6.108G* the *firm* should provide in section 12:
- (a) a brief description of the facility involved;
 - (b) the term of the facility if different from the term described elsewhere in the *business illustration or high net worth illustration*; and
 - (c) a summary of any charges, including any *early repayment charges*, which apply to the operation of the facility.
- (3) Full information on any facility described in section 12 must be provided in supplementary materials that accompany the *business illustration or high net worth illustration*.
- 5.7.7 G (1) In accordance with *MCOB 5.7.6R(1)*, where the *regulated mortgage contract* includes a loan, the facilities described in section 12 of the *business illustration or high net worth illustration* should include the existence of, and a simple explanation of, any all monies charge, any contingent liabilities such as guarantees and so on.
- (2) Where the *regulated mortgage contract* includes more than one loan facility (such as a secured loan and a separate secured overdraft

facility) the *business illustration* or *high net worth illustration* should be based upon the primary facility and describe any other loan within section 12.

5.8 Home purchase plans

...

Financial information statement: timing

- 5.8.1 R ~~A~~ Except in the circumstances in MCOB 5.8.1AR, a firm dealing directly with a customer must ensure that the customer is, or has been, provided with an appropriate financial information statement for a home purchase plan in a durable medium:
- (1) before the *customer* submits an application for that particular plan to a *home purchase provider*; and
 - (2) without undue delay when any of the following occurs:
 - (a) ~~the firm makes a personal recommendation to~~ advises the particular *customer* to enter into a one or more home purchase plan plans, in which case a financial information statement must be provided at the point the advice is given (and financial information statements for all recommended home purchase plans must be provided), (unless the personal recommendation advice is made given by telephone, in which case a firm must ensure the financial statement is or has been provided as soon as practicable after the telephone call) the firm must provide a financial information statement within five business days; or
 - (b) ~~the firm provides written information that is specific to the amount of finance to be provided on a particular plan; or [deleted]~~
 - (c) ~~the customer requests written information from the firm that is specific to the amount of finance to be provided on a particular plan, unless the firm does not wish to do business with the customer. [deleted]~~
 - (d) the customer requests a financial information statement, unless the firm is aware that it is unable to offer that home purchase plan to him; or
 - (e) as part of an execution-only sale (or potential execution-only sale) the customer has provided the firm with the information in MCOB 4.10.9DR (Execution-only sales) (see MCOB 4.10.9BR and MCOB 4.10.9CR) to indicate which home purchase plan or variation he wishes to enter into.

- (3) A *firm* may comply with (1) and (2) by providing an *offer document* if this can be done as quickly as providing a financial information statement.

5.8.1A R A *firm* need not provide a financial information statement:

- (1) in relation to a *direct deal*; or
- (2) if the *customer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *customer* is not interested in pursuing the enquiry; or
- (3) if the *firm* does not wish to do business with the *customer*.

5.8.1B R If the *firm* chooses not to give a financial information statement in the circumstances set out in *MCOB 5.8.1AR*, where it has given *advice* on a *direct deal*, the *firm* must give the *customer* a written record of the *advice*.

...

Financial information statement: format

...

- 5.8.5 R A financial information statement, if not set out in a separate document, must be:
- (1) in a prominent place within the ~~other~~ document and clearly identifiable as key information that the *customer* should read; and
- (2) separate from the other content of the document in which it is included.

...

Message to be given when providing information on home purchase plans

- 5.8.12 R (1) Except in the circumstances in (2), whenever a *firm* provides a *customer* with information specific to the amount of finance to be provided on a particular *home purchase plan* following an assessment of the *customer's* needs and circumstances in order to comply with *MCOB 4.10.5DR*, it must give, clearly and prominently, the following information:
- (a) the same information on the *firm's* product range as is required by *MCOB 4.4.A1R(1)*, *MCOB 4.4A.2R* and *MCOB 4.4A.4R (1)* (as applied in relation to *home purchase plans* by *MCOB 4.10.3AR*); and
- (b) that the *customer* has the right to request a financial information statement for any *home purchase plan* which the *firm* is able to

offer the customer.

- (2) A firm need not give the information in (1) if it has previously given that information in compliance with this rule within the last ten business days.

Message to be given when customer requests an execution-only sale

- 5.8.13 R Whenever, as part of an execution-only sale (or potential execution-only sale), a customer provides a firm with the information in MCOB 4.10.9DR (Execution-only sales) (see MCOB 4.10.9BR and MCOB 4.10.9CR) the firm must inform the customer, clearly and prominently, unless the firm has previously given this information in compliance with this rule within the last ten business days, that the customer has the right to request a financial information statement for any home purchase plan which the firm is able to offer the customer.

...

6.4 Mortgages: content of the offer document

...

Modifications to the illustration

- 6.4.4 R The illustration provided as part of the offer document in accordance with MCOB 6.4.1R(1) must meet the requirements of MCOB 5.6 (Content of illustrations) with the following modifications:

...

- (7) MCOB 5.6.52 R to MCOB 5.6.53 G is replaced by the following:
Where all or part of the regulated mortgage contract is an interest-only mortgage, the illustration in the offer document must:
- (a) clearly state that the payments on the regulated mortgage contract cover only interest, and not the capital borrowed; and
 - (b) ~~state the repayment vehicle the customer intends to use where the firm knows details of the specific repayment vehicle from the application by the customer; if the firm does not know how the customer intends to repay the capital borrowed, the firm must clearly state that the repayment vehicle is unknown, and must provide the customer with a clear reminder of the need to put suitable arrangements in place; and [deleted]~~
 - (c) include a statement reminding the customer to check regularly the performance of any investment used as a repayment vehicle strategy, to see whether it is likely to be adequate to repay the capital and, where applicable, pay the interest accrued at the end of the term of the regulated mortgage contract;

(7A) The illustration may state the repayment strategy the customer intends to use.

...

Other information contained in the offer

...

6.4.11A R If the illustration provided by the firm to the customer does not state the repayment strategy the customer intends to use, as permitted by MCOB 6.4.4R(7A), that information must be included in the offer document.

...

6.7 **Business loans and loans to high net worth mortgage customers: tailored provisions**

6.7.1 R (1) Where the *regulated mortgage contract* is for a business purpose or a high net worth mortgage customer, a firm may choose to provide a customer with a *business offer document* or high net worth offer document (as applicable) instead of the *offer document* referred to in MCOB 6.4.1R.

(2) If a firm provides a customer with a *business offer document* or high net worth offer document in accordance with (1), it must ensure that:

(a) an updated *business illustration* or high net worth illustration (as applicable), as required by MCOB 5.7 (~~Pre-application disclosure for business~~ Business loans and loans to high net worth mortgage customers: tailored provisions), forms part of the *business offer document* or high net worth offer document; and

(b) subject to the tailoring required by MCOB 5.7 (~~Pre-application disclosure for business~~ Business loans and loans to high net worth mortgage customers: tailored provisions), the *business offer document* complies with MCOB 6.4 (~~Mortgages: Content~~ content of the offer document).

6.7.1A G *Firms* are reminded that in accordance with MCOB 1.2.3R and MCOB 1.2.3AR, they should ~~either~~ comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers (as applicable). Therefore, a firm may only follow the tailored provisions in MCOB 6.7 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.

6.7.2 G MCOB 6.7.1R(2) means, for example, that the required text in MCOB 6.4.4R(7) should be replaced by text that satisfies the requirements for

business illustrations or high net worth illustrations in MCOB 5.7.5R.

- 6.7.3 G A *firm* may supplement the first paragraph of text prescribed in MCOB 6.4.4R(5)(a) to clarify that, while the *regulated mortgage contract* is not binding until the relevant mortgage document has been signed and funds have been released, the *business offer document or high net worth offer document* may form part of a wider set of negotiated facilities and that the *customer* is separately bound by these.

...

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~~ 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~~ 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: ...

...

...

7.4 Mortgages: disclosure at the start of the contract

Disclosure requirements

- 7.4.1 R (Subject to *MCOB 7.7.5R*) a *firm* that *enters into a regulated mortgage contract* with a *customer* must provide the *customer* with the following information before the *customer* makes the first payment under that *regulated mortgage contract*:

...

- (4) confirmation of whether, in connection with the *regulated mortgage contract*, insurance or *investments* (such as a *repayment ~~vehicle~~ strategy*, term assurance, buildings and contents insurance or payment protection insurance) have been purchased through the *firm*;

...

- (8) if all or part of the *regulated mortgage contract* is an *interest-only mortgage*, a reminder to the *customer* to check that a *repayment ~~vehicle~~ strategy* is in place, if the *repayment ~~vehicle~~ strategy* is not provided by the *firm*;

- (9) what to do if the *customer* falls into ~~arrears~~ a payment shortfall, explaining the benefit of making early contact with the *firm*, providing the address and telephone number of a contact point for the *firm* and drawing the *customer's* attention to the *arrears* charges set out in the *tariff of charges*.

...

7.5 Mortgages: statements

...

Annual statement: content

7.5.3 R The statement required by *MCOB 7.5.1R* must contain the following:

(1) except in the case of *mortgage credit cards*, information on the type of *regulated mortgage contract*, including:

...

(b) a prominent reminder, where all of the *regulated mortgage contract* is an *interest-only mortgage*, that:

(i) the *customer's* payments to the *firm* do not include ~~the~~ any costs of ~~any the repayment vehicle strategy~~ (if that is the case); and...

...

(c) a prominent reminder, where only part of the *regulated mortgage contract* is an *interest-only mortgage*, that:

(i) the *customer's* payments to the *firm* do not include ~~the~~ any costs of ~~any the repayment vehicle strategy~~ (if that is the case); and...

...

(4) information at the date the statement is issued on:

...

(e) the cost of redeeming the *regulated mortgage contract* (this must be shown as the sum of *MCOB 7.5.3R(4)(a)* and *MCOB 7.5.3R(4)(d)* plus any *linked borrowing* that cannot be retained (including the outstanding balances) plus any other charges that can be quantified at the date the statement is issued); if additional charges are payable that cannot be quantified at the point that the statement is issued (for example if the *customer* is in ~~arrears~~ arrears) a warning must be included to that effect; and

...

7.5.4 R ~~In the limited circumstances where it would be unlikely for~~ Where payments are not being made for a repayment vehicle to be set up strategy for an interest-only mortgage (for example, for a short term bridging loan bridging loan) *MCOB 7.5.3R(1)(b)(ii)* or *MCOB 7.5.3R(1)(c)(ii)* is replaced with the following: "As all or part of your mortgage is an interest-only mortgage, it assumes that you pay back the total amount borrowed on an interest-only

basis as a lump sum at the end of the mortgage term."

...

Annual statement: additional content for customers in arrears

- 7.5.8 G If a *firm* chooses to use the annual statement to provide a *customer* with a regular written statement in accordance with *MCOB* 13.5.1R (Statements of charges), as described in *MCOB* 13.5.2G(4), it will need to include the actual ~~payment shortfall~~ payment shortfall in the annual statement.

...

7.6 Mortgages: event-driven information

...

Further advances

- 7.6.7 R Before a *customer* submits an application to a *firm* for a further advance on an existing *regulated mortgage contract* or for a further advance that is a new *regulated mortgage contract*, if the further advance requires the approval of the *mortgage lender*, the *firm* must provide the *customer* with an illustration that complies with the requirements of *MCOB* 5 (Pre-application disclosure) and *MCOB* 7.6.9R to *MCOB* 7.6.17R for the further advance, unless an illustration has already been provided or the *regulated mortgage contract* is for a business purpose and the *firm* has chosen to comply with the tailored provisions for *regulated mortgage contracts* for a business purpose or loans to high net worth mortgage customers (see *MCOB* 7.7 (Business loans and loans to high net worth mortgage customers: tailored provisions)).

...

- 7.6.9 R The *illustration* provided in accordance with *MCOB* 7.6.7R must:

...

- (4) include a clear statement, where all or part of the *regulated mortgage contract* is an *interest-only mortgage* and the amount paid in each instalment does not include the cost of a *repayment vehicle strategy*, to indicate that these payments do not include the cost of any savings plan or other investment.

...

7.7 Business loans and loans to high net worth mortgage customers: tailored provisions

Further advances

- 7.7.1 R (1) Where, in relation to a *regulated mortgage contract* for a business purpose or a high net worth mortgage customer, a *customer* either:

- (a) seeks an immediate increase in the borrowing provided under the *regulated mortgage contract*; or
- (b) overdraws on the borrowing under the *regulated mortgage contract*;

the further advance rules in *MCOB 7.6.7R* to *MCOB 7.6.17R* do not apply.

- (2) Where (1) applies, the *firm* must within five *business days* (for a loan for a business purpose) or in good time before the customer is bound by the regulated mortgage contract (for a high net worth mortgage customer) provide the *customer* with either:
 - (a) a business illustration or high net worth illustration (as applicable) for the new total borrowing; or

...

- 7.7.1A G *Firms* are reminded that in accordance with *MCOB 1.2.3R*, they should ~~either~~ comply in full with *MCOB*, but in doing so may opt to take account of ~~or~~ comply with all tailored provisions in *MCOB* that relate to business loans or loans to high net worth mortgage customers. Therefore, a *firm* may only follow the tailored provisions in *MCOB 7.7* in relation to one of these sectors if it also follows all other tailored provisions in *MCOB* that relate to that sector. In either case, the rest of *MCOB* applies in full.

...

- 7.7.3 R Where a *customer* applies for a further advance that is a *regulated mortgage contract* for a business purpose or a high net worth mortgage customer and *MCOB 7.7.1R* does not apply:
- (1) the business illustration or high net worth illustration must be based upon the total borrowing; and
 - (2) *MCOB 7.6.9R* to *MCOB 7.6.10G* and *MCOB 7.6.12G* do not apply.

Arrangements to repay capital

- 7.7.4 R Where *MCOB 7.6.28R(5)* applies, a *firm* may omit the final sentence of the required text where it is aware, in the context of an *interest-only mortgage*, that the *customer's* intention is not to use a savings plan as a *repayment vehicle strategy*.

Disclosure

- 7.7.5 R *MCOB 7.4* (Disclosure at the start of the contract) does not apply in relation to a *regulated mortgage contract* that is for a business purpose or a high net worth mortgage customer.

...

7.8 Home purchase plans

...

Annual statement – additional content for customers in arrears

- 7.8.4 G If a *firm* uses the annual statement to provide a *customer* with a written statement relating to *arrears*, it will need to include the actual ~~payment shortfall~~ payment shortfall in the annual statement (see *MCOB 13.5.2G(4)*).

...

8.1 Application

Who?

- 8.1.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB 8.1.2 R* in accordance with column (2) of that table.
- 8.1.2 R This table belongs to *MCOB 8.1.1R*

(1) Category of firm	(2) Applicable section
<i>equity release provider</i>	whole chapter except <i>MCOB 8.5A</i> and <i>MCOB 8.7</i> , <i>MCOB 8.6A</i> in accordance with <i>MCOB 8.1.2AR</i>
<i>equity release adviser</i>	whole chapter except <i>MCOB 8.6</i> . <i>MCOB 8.7</i> does not apply in relation to a <i>lifetime mortgage</i>
<i>equity release arranger</i>	whole chapter except <i>MCOB 8.5A</i> . <i>MCOB 8.7</i> does not apply in relation to a <i>lifetime mortgage</i>

- 8.1.2A R *MCOB 8.6A* only applies to an *equity release provider* in relation to entering into an *equity release transaction* where there is no *firm* which is *arranging (bringing about)* the *equity release transaction* to which *MCOB 8.6A* applies.

- 8.1.2B G *MCOB 8.1.2AR* means that the situations where *MCOB 8.6A* applies to an *equity release provider* include where an *equity release intermediary* has been involved in *arranging (bringing about)* an *equity release transaction* but is no longer involved in the transaction.

What?

- 8.1.3 R (1) This chapter applies to a *firm* which in the course of carrying on an *equity release activity*: enters into, advises on or arranges an *equity release transaction* or a variation of the terms of an *equity release*

transaction.

- (a) ~~makes, or anticipates making, a *personal recommendation* about; or~~
- (b) ~~gives, or anticipates giving, personalised information relating to;~~

~~the *customer*:~~

- (c) ~~entering into an *equity release transaction*; or~~
- (d) ~~varying the terms of an *equity release transaction* entered into by the *customer*.~~

- (2) In respect of *arranging or advising on a home reversion plan* for a *customer* who is acting in his capacity as an *unauthorised reversion provider*, only MCOB 8.1, MCOB 8.2 and MCOB 8.7 apply.

...

- 8.1.5 G ~~If a *firm* is an *authorised professional firm*, MCOB 1.2.10R(3) has the effect that when the *firm* conducts *non-mainstream regulated activities* with a *customer*, MCOB 4.4 (Initial disclosure requirements) (as modified by MCOB 8) applies. The *firm* is only required to provide the initial disclosure information in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme (FSCS)?) of the *initial disclosure document* or *combined initial disclosure document*.
[deleted]~~

8.2 Purpose

- 8.2.1 G ~~The purpose of this chapter for *equity release transactions* is the same as that for *regulated mortgage contracts* and *home purchase plans* in MCOB 4.
[deleted]~~

- 8.2.2 G (1) This chapter amplifies *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and *Principle 9* (Customers: relationships of trust).

- (2) The purpose of this chapter is to ensure that:

- (a) *customers* are adequately informed about the nature of the service they may receive from a *firm* in relation to *equity release transactions*. In particular *firms* need to make clear to *customers* the range of *equity release transactions* available from them and the basis of the *firm's* remuneration;
- (b) where *advice* is given, it is suitable for the *customer*;

- (c) customers for equity release transactions receive advice in all cases;
- (d) subject to certain limited exceptions (which are set out in MCOB 8.6A), execution-only sales are only provided where the customer has rejected advice which has been given, has been warned about the implications of proceeding and has specifically instructed the firm that he wishes to do so.
- (3) This chapter also implements certain requirements of the Distance Marketing Directive in relation to distance mortgage mediation contracts.

8.3 Application of rules in MCOB 4

- 8.3.1 R (1) (a) Subject to (c), MCOB 4.1 to MCOB 4.6A and MCOB 4.8 (with the modifications stated in MCOB 8.3.32BR and to MCOB 8.3.4R) apply to a firm where the home finance transaction is a lifetime mortgage.
- (b) MCOB 4.1 to MCOB 4.4A and MCOB 4.8 (with the modifications stated in MCOB 8.3.32BR and to MCOB 8.3.4R) apply to a firm where the home finance transaction is a home reversion plan, except for those provisions that by their nature are only relevant to regulated mortgage contracts.
- (c) MCOB 4.6A applies to a lifetime mortgage only if it is not an interest roll-up mortgage.
- ...
- 8.3.2 R In applying initial disclosure requirements to equity release transactions, the market for equity release transactions should be treated as one single market with two separate sectors. References to the 'whole market' must be read as references to the whole market for equity release transactions. This is unless the firm only gives personalised information or advice to customers on products in one market sector, in which case references to the 'whole market' must be read as references to the whole market for lifetime mortgages or home reversion plans as the case may be. [deleted]
- 8.3.2A G The effect of the rules on independence is that a firm that sells lifetime mortgages and home reversion plans from the whole market and enables the customer to pay a fee for the provision of the service, can hold itself out as being 'independent' for the equity release market (see MCOB 4.3.7 R). If the firm offers a service on this basis for only one of these market sectors, then it can only describe itself as 'independent' for that sector. [deleted]
- 8.3.2B R For the purposes of MCOB 4.4A.2R(1) there is one relevant market for equity release transactions. Accordingly, a firm offering a customer only

lifetime mortgages or only home reversion plans must include in its disclosure under MCOB 4.4A.1R(1) that it is limited in that regard in the range of products that it can offer to the customer.

8.3.2C G In the light of MCOB 8.3.2BR, a firm may wish to consider using a sentence appropriate to the circumstances, along the following lines:

- “We offer a comprehensive range of equity release products from across the market.”
- “We sell home reversion plans only and not lifetime mortgages, though we will consider all home reversion plans available in the market.”

8.3.3 R Table of modified cross-references to other rules: This table belongs to MCOB 8.3.1R.

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
Advice or information from the whole market	MCOB 4.3.4R(2)	MCOB 4.7.2R	MCOB 8.5.2R
Initial disclosure requirement (for equity release transactions only)	MCOB 4.4.1R(1)(e) and (3)	MCOB 4 Ann 1R	MCOB 8 Ann 1R
Initial disclosure requirements	MCOB 4.4.3G	MCOB 4	MCOB 4 as modified by MCOB 8
Initial disclosure requirements where initial contact is by telephone (for equity release transactions only)	MCOB 4.4.7R(2)	MCOB 4 Ann 1R	MCOB 8 Ann 1R
Additional disclosure for distance mortgage mediation contracts	MCOB 4.5	MCOB 4	MCOB 4 as modified by MCOB 8
Non advised sales	MCOB 4.8.6G	MCOB 4.7	MCOB 8.5

8.3.4 R Table of rules in MCOB 4 replaced by rules in MCOB 8: This table belongs to MCOB 8.3.1 R.

Subject	Rule(s)	Rule(s) replaced by
Advised sales	MCOB 4.7 <u>A</u>	MCOB 8.5 <u>A</u>

transaction which satisfies the requirements of *MCOB* 8.5A.2R, the *firm* must nonetheless have regard to *MCOB* 13.3.

- 8.5A.6 R When a *firm* assesses whether the *equity release transaction* is appropriate to the needs and circumstances of the *customer* for the purposes of *MCOB* 8.5A.5R(1), the factors it must consider include the following:
- (1) whether the benefits to the *customer* outweigh any adverse effect on:
 - (a) the *customer's* entitlement (if any) to means-tested benefits; and
 - (b) the *customer's* tax position (for example the loss of an Age Allowance);
 - (2) alternative methods of raising the required funds such as, in particular:
 - (a) (where relevant) a local authority (or other) grant; or
 - (b) taking a further advance under an existing *regulated mortgage contract* (including a *lifetime mortgage*), or a new *regulated mortgage contract* (including a *lifetime mortgage*) to replace an existing one, or an additional release under an existing *home reversion plan*;
 - (3) whether the *customer's* requirements appear to be within the *equity release provider's* known eligibility criteria for the *equity release transaction*;
 - (4) the *customer's* preferences for his estate (for example, whether the *customer* wishes to be certain of leaving a bequest to his family or others);
 - (5) the *customer's* health and life expectancy;
 - (6) the *customer's* future plans and needs (for example, whether the *customer* is likely to need to raise further funds or is likely to move house);
 - (7) whether the *customer* has a preference or need for stability in the amount of payments (where payments are required) especially having regard to the impact on the *customer* of significant interest rate changes in the future;
 - (8) whether the *customer* has a preference or need for any other features of an *equity release transaction*; and
 - (9) for *lifetime mortgages* only, whether it is more appropriate for the *customer* to pay any fees or charges in relation to the *lifetime mortgage* up front, rather than adding them to the sum advanced (see also *MCOB* 4.6A).
- 8.5A.7 G Examples of eligibility criteria in *MCOB* 8.5A.6R(3) are: the amount that

the *customer* wishes to borrow or to release; the loan-to-value ratio; the age of the *customer*; the value of the property which would be the subject of the *equity release transaction*.

The customer's needs and circumstances: means-tested benefits, customer's tax position and alternative methods of finance

8.5A.8 R In considering the factor at *MCOB* 8.5A.6R(1), where a *firm* has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion, the *firm* must refer a *customer* to an appropriate source or sources such as the Pension Service, HM Revenue and Customs or Citizens Advice Bureau (or other similar agency) to establish the required information.

8.5A.9 E (1) In considering the factor at *MCOB* 8.5A.6R(2)(a), a *firm* should:

(a) establish, on the basis of information given by the *customer* about his needs and objectives, whether these appear to be within the general scope of a local authority (or other) grant (for example where the *customer* requires funds for essential repairs to his property); and

(b) refer a *customer* to an appropriate source such as his local authority or Citizens Advice Bureau (or other similar agency) to identify whether such a grant is available to him.

(2) Compliance with (1) may be relied upon as tending to show compliance with *MCOB* 8.5A.6R(2)(a).

8.5A.10 R If for any reason a *customer*:

(1) declines to seek further information on means-tested benefits, tax allowances or the scope for local authority (or other) grants; or

(2) rejects the conclusion of a *firm* that alternative methods of raising the required funds are more suitable;

a *firm* can advise the *customer* (in accordance with the remaining requirements of this chapter) to enter into an *equity release transaction* where there is an *equity release transaction* (or more than one *equity release transaction*) that is appropriate to the needs and circumstances of the *customer*, but must confirm to the *customer*, in a *durable medium*, the basis on which the *advice* has been given.

Debt consolidation

8.5A.11 R In relation to *MCOB* 8.5A.5R(1), when a *firm* advises a *customer* in relation to entering into an *equity release transaction* where the main purpose for doing so is the consolidation of existing debts by the *customer*, it must also take account of the following in assessing whether the *equity release transaction* is suitable for the *customer*:

- (1) the costs associated with increasing the period over which a debt is to be repaid;
- (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
- (3) where the *customer* is known to have payment difficulties, whether it would be more appropriate for the *customer* to negotiate an arrangement with his creditors than to enter into an *equity release transaction*.

8.5A.12 E An attempt by the *firm* to misdescribe the *customer's* purpose or to encourage the *customer* to tailor the amount he wishes to borrow so that *MCOB 8.5A.11R* does not apply may be relied on as tending to show contravention of *MCOB 2.5A.1R* (The customer's best interests).

Further advances

8.5A.13 R Where the *customer* is looking to increase the borrowing secured on the property which is the subject of an existing *regulated mortgage contract*, a *firm* must inform the *customer* (either orally or in writing) that it may be possible, and more appropriate, for the *customer* to take a further advance with the existing lender rather than entering into an *equity release transaction* with another provider.

8.5A.14 G *MCOB 8.5A.13R* does not mean that *firms* are under any obligation to explore whether a further advance with the existing lender is, in fact, more appropriate for the *customer*.

Other considerations when advising

8.5A.15 R When *advising a customer* on the suitability of an *equity release transaction*, a *firm* must explain to the *customer* that the assessment of whether the *equity release transaction* is appropriate to his needs and circumstances is based on the *customer's* current circumstances, which may change in the future.

8.5A.16 G Different considerations apply when dealing with a *customer* with a *payment shortfall*. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* should not be advised to enter into an *equity release transaction*. In such cases, a *firm* may still be able to *advise the customer* to enter into an *equity release transaction* where it is more suitable than the *customer's* existing *home finance transaction*.

8.5A.17 G *MCOB 8.5A.5R(3)* means that where the *advice* provided is based on a selection of *equity release transactions* from a single or limited number of providers, the assessment of suitability should not be limited to the types of *equity release transactions* which the *firm* offers. A *firm* cannot recommend the 'least worst' *equity release transaction* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. This means, for example, that if a *firm* only has access to

lump sum *equity release transactions* it should not recommend or arrange one of these if approached by a *customer* requiring regular payments.

- 8.5A.18 G *MCOB 8.5A.5R(1)* does not require a *firm* to provide *advice on investments*. Whether such *advice* should be given will depend upon the individual needs and circumstances of the *customer*. *MCOB 8* does not restrict the ability of an adviser to refer the *customer* to another source of *investment advice* (for example, where the adviser is not qualified to provide *advice on investments*).

Record keeping

- 8.5A.19 R (1) A *firm* must make and retain a record:
- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances and the *customer's* apparent satisfaction of the *equity release provider's* known eligibility criteria, that it has obtained for the purposes of *MCOB 8.5A*;
 - (b) that explains why the *firm* has concluded that any *advice* given to a *customer* complies with *MCOB 8.5A.2R* and satisfies the suitability requirement in *MCOB 8.5A.5R(1)*;
 - (c) of any *advice* which the *customer* has rejected, including the reasons why they were rejected and details of the *equity release transaction* which the *customer* has proceeded with as an *execution-only sale*; and
 - (d) where applicable, of the *customer's* positive choice in *MCOB 4.6A.2R* (Rolling up of fees or charges into loan).
- (2) The records in (1) must be retained for a minimum of three years from the date on which the *advice* was given or, in the case of (1)(d), the making of the choice.

MCOB 8.6 is deleted in its entirety and replaced with a new section *MCOB 8.6A*. The deleted text is not shown and the new text is not underlined.

8.6A Execution-only sales

Scope and application of this section

- 8.6A.1 G (1) *MCOB 8.6A* provides that a *firm* may only *enter into an equity release transaction* with a *customer*, or *arrange* such a transaction for a *customer*, as an *execution-only sale* if the *customer* has rejected *advice*, identified the product he wishes to purchase and positively elected to proceed with an *execution-only sale*.
- (2) The aim of *MCOB 8.6A* is to ensure that, in all sales of *equity release transactions*, there is one *firm* which *advises* the *customer*

on the *equity release transaction* and, where applicable, is responsible for ensuring that the conditions for an *execution-only sale* are satisfied. So, as provided in *MCOB 8.1.2AR*, *MCOB 8.6A* only applies to *equity release providers* in relation to *entering into equity release transactions* where there is no *firm* which is *arranging* the transaction and to which *MCOB 8.6A* applies.

The customer's best interests

- 8.6A.2 G *Firms* are reminded that *MCOB 2.5A.1R* (The customer's best interests) applies in all cases, including in relation to *execution-only sales*.
- 8.6A.3 R A *firm* must not encourage a *customer* to reject *advice* received by him on *equity release transactions*.

The conditions for execution-only sales

- 8.6A.4 R A *firm* must not *enter into* or *arrange* an *execution-only sale* for a *equity release transaction* unless:

- (1) the *customer* has rejected the *advice* given by the *firm* and instead requested an *execution-only sale* of an *equity release transaction*;
- (2) the *customer* has identified which particular *equity release transaction* he wishes to purchase, and specified to the *firm* at least the required additional information (where applicable);
- (3) after providing the required information in (2), the *customer* has been informed, clearly and prominently and in a *durable medium*, and that the *customer* will not benefit from the protection of the rules (in *MCOB 8.5A*) on assessing suitability.
 - (a) in any case where the *firm* has advised the *customer* that the *equity release transaction* is unsuitable for the *customer*, that that is the case; and
 - (b) in any other case, that in the provision of its services for the *execution-only sale* the *firm* is not required to assess the suitability of that *equity release transaction*;

and in either case that the *customer* will not benefit from the protection of the rules (in *MCOB 8.5A*) on assessing suitability. In any case where there is spoken dialogue between the *firm* and the *customer* at any point, the *firm* must also provide this information orally; and

- (4) after the *customer* has been provided with the information in (3), in any case where there is spoken or other interactive dialogue between the *firm* and the *customer* at any point, the *customer* has confirmed in writing to the *firm* that he is aware of the consequences of losing the protections of the rules on assessing suitability and is making a positive election to proceed with an *execution-only sale*. The written

confirmation must be in the same document as the information in *durable medium* in (3), which must be separate from any other information and contractual documentation.

Exception: rate switches and other variations to lifetime mortgages

- 8.6A.5 R (1) The condition in *MCOB* 8.6A.4R(1) does not apply in the case of a variation of a *lifetime mortgage*, provided that:
- (a) the variation would not involve the *customer* taking on additional borrowing beyond the amount currently outstanding under the existing *lifetime mortgage*, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
 - (b) where the variation will (in whole or part) change from one interest rate to another, the *firm* has presented to the *customer*, using a non-interactive channel, all products offered by it for which the *customer* is eligible, whether or not the *customer* then selects from those products using an interactive channel.
- (2) The reference to a variation in (1) (and in all other provisions which cross-refer to this *rule*) must be read as including any new *lifetime mortgage* which would replace an existing *lifetime mortgage* between the *customer* (or, where there are joint borrowers, at least one of them) and the *firm* (either as the original *equity release provider* or as the transferee of the existing contract).
- 8.6A.6 G (1) The variation in *MCOB* 8.6A.5R might involve the addition or removal of a borrower for joint mortgages or a change in payment method. This list is not exhaustive.
- (2) Examples of rate changes in *MCOB* 8.6A.5R(2) are: a transfer from a variable rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.
- (3) *Firms* are reminded that, if their presentation in *MCOB* 8.6A.5R(1)(b) has (either explicitly or implicitly) steered the *customer* towards any one or more of the products offered by them such as to constitute *advice*, the requirements of *MCOB* 8.5A will apply.
- 8.6A.7 R The required additional information in *MCOB* 8.6A.4R(2) is:
- (1) for a *lifetime mortgage* other than one falling within *MCOB* 8.6A.5R:
 - (a) the name of the *mortgage lender*;
 - (b) the rate of interest;
 - (c) the interest rate type;

- (d) the price or value of the property on which the *lifetime mortgage* would be secured (estimated where necessary); and
 - (e) the sum the *customer* wishes to borrow under it, either immediately or in the future (including the amount of any lump sum, any regular drawdown or flexible facility or any combination of amounts the *customer* wishes to apply for);
- (2) for a *home reversion plan*:
- (a) the name of the *equity release provider*;
 - (b) any initial lump sum required and any lump sum required in the future;
 - (c) the price or value of the property to which the *home reversion plan* would relate (estimated where necessary); and
 - (d) in the case of a *home reversion plan* which is not a full reversion, the amount or percentage of the value of the property that the *customer* wishes to retain.

8.6A.8 G Where the information in *MCOB 8.6A.4R(3)* is given by electronic means, the *firm* should ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

Record keeping

- 8.6A.9 R (1) Whenever a *firm enters into* or *arranges an execution-only sale* for an *equity release transaction*, it must make and maintain a record of:
- (a) the required information provided by the *customer* which satisfies *MCOB 8.6A.4R(2)*;
 - (b) the information in *durable medium* in *MCOB 8.6A.4R(3)*;
 - (c) the confirmation by the *customer* in *MCOB 8.6A.4R(4)* (where applicable); and
 - (d) any *advice* from the *firm* which the *customer* rejected, including the reasons why it was rejected, before deciding to enter into an *execution-only sale*.
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *equity release transactions* was *entered into* or *arranged*.

Forbearance

8.6A.10 R The restrictions in *MCOB 8.6A* on entering into *execution-only sales* do not apply to any variation which is made solely for the purposes of forbearance

where the *customer* has a *payment shortfall*, or in order to avoid a *payment shortfall*.

The following Annex is deleted in its entirety. The deleted text is not shown struck through.

8 Annex 1R: Initial Disclosure Document [deleted]

Amend the following as shown.

9.3 Pre-application disclosure

...

9.3.1 R ...

- (2) The table in *MCOB 9.3.2R* shows how the relevant *rules* and *guidance* in *MCOB 5* must be modified by replacing the cross-references with the relevant cross-references to *rules* and *guidance* in *MCOB 9.3* and *MCOB 9.4* applicable to *equity release transactions*.

...

...

9.3.2 R **Table of modified cross-references to other rules.**

This table belongs to *MCOB 9.3.1R*.

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
...			
Applying for a <i>lifetime mortgage</i>	<i>MCOB 5.3.2G</i>	<i>MCOB 5.6.26R</i> and <i>MCOB 5.6.27R</i>	<i>MCOB 9.4.26R</i> and <i>MCOB 9.4.27R</i>
<u>Messages to be given when providing information on <i>equity release transactions</i></u>	<u><i>MCOB 5.4.18AR(1)</i></u> <u><i>MCOB 5.4.18AR(1)(a)</i></u>	<u><i>MCOB 4.7A.2R</i></u> <u><i>MCOB 4.4A.1R(1)</i></u> , <u><i>MCOB 4.4A.2R</i></u> and	<u><i>MCOB 8.5A.2R</i></u> <u><i>MCOB 4.4A.1R(1)</i></u> , <u><i>MCOB 4.4A.2R</i></u> and

		<u>MCOB 4.4A.4R(1)</u>	<u>MCOB 4.4A.4R(1)</u> , each as applied by <u>MCOB 8.3.1R</u> in modified form
<u>Messages to be given when customer requests an execution-only sale</u>	<u>MCOB 5.4.18BR(1)</u>	<u>MCOB 4.8A.14R(1) to (3)</u>	<u>MCOB 8.6A.4R(2)</u>
<u>Guidance relevant to messages given to customer</u>	<u>MCOB 5.4.18CG</u>	<u>MCOB 5 Annex 1R</u>	<u>MCOB 9 Annex 1R</u> for a lifetime mortgage; <u>MCOB 9 Annex 2R</u> for a home reversion plan.
<i>Tied products</i>	<i>MCOB 5.4.24G</i>	<i>MCOB 5.6.74R</i>	<i>MCOB 9.4.73R</i> or <i>MCOB 9.4.160R</i>
<u>Provision of illustrations: timing</u>	<u>MCOB 5.5.1R(2)(e)</u>	<u>MCOB 4.8A.14R(1), (2) or (3)</u>	<u>MCOB 8.6A.4R(2)</u>
...			

9.3.3 R **Table of rules in *MCOB 5* replaced by rules in *MCOB 9*: This table belongs to *MCOB 9.3.1R***

Subject	Rule(s) or guidance	Rule(s) or guidance replaced by:
...		
Information that is not an illustration	<i>MCOB 5.4.14R</i>	<i>MCOB 9.3.11R</i>
...		

9.3.4 R **Table of rules in *MCOB 5* which do not apply to *MCOB 9*: This table**

belongs to *MCOB 9.3.1R*.

Subject	Rule(s)
Illustrations for repayment mortgages and interest only mortgages	<i>MCOB 5.5.13R</i>
Business loans <u>and loans to high net worth mortgage customers: tailored provisions</u>	<i>MCOB 5.7</i>
...	

...

9.3.11 R ~~Where a *firm* provides a *customer* with information specific to an *equity release transaction* on a screen:~~

- (1) ~~if the *customer* initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed equally prominently on each page on screen: This information does not contain all of the details you need to choose an equity release product . Make sure that you read the separate key facts illustration before you make a decision.~~
- (2) ~~a *firm* must not provide a customised print function where the information on the screen would not be in the form of an *illustration* if the information were printed in hard copy. [deleted]~~

9.3.12 R In meeting a request for ~~written information specific to the *customer's* requirements on an *illustration*~~ in relation to a particular *equity release transaction* (see *MCOB 5.5.1R(2)(e)(d)*), the *firm* must not delay the provision of the *illustration* by requesting information other than:

...

...

9.7 Disclosure at the start of the contract: lifetime mortgages

...

Disclosure requirements where interest payments are required

9.7.2 R A *firm* that enters into a *lifetime mortgage* with a *customer* where interest payments are required (whether or not they will be collected by deduction from the income from an annuity or other linked *investment* product) must provide the *customer* with the following information before the *customer* makes the first payment under the contract:

...

- (9) if it is possible for ~~arrears~~ a payment shortfall to occur, what to do if the *customer* ~~falls into arrears~~ has a payment shortfall, explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the tariff of charges;

...

Disclosure requirements where a lump sum payment is made to the customer and interest is rolled up

- 9.7.8 R Where the *lifetime mortgage* provides for a lump sum payment to be made to the *customer*, and all or part of the interest will be rolled up during the life of the mortgage, the *firm* must provide the *customer* with the following information before the *customer* makes the first payment under the contract, or if no payment are required from the *customer*, within seven days of completion of the mortgage:

...

- (2) If payments are required from the customer:

...

(d) what to do if the *customer* ~~falls into arrears~~ has a payment shortfall, explaining the benefit of making early contact with the *firm*, providing the name, address and telephone of a contact point with the *firm*, and drawing the *customer's* attention to the *arrears* charges set out in the tariff of charges;

...

MCOB 11.1, 11.2 and 11.3 are deleted in their entirety and replaced with new sections MCOB 11.4 et seq. The deleted text is not shown and the new text is not underlined.

11 Responsible lending, and responsible financing of home purchase plans

11.1 Application [deleted]

11.2 Purpose [deleted]

11.3 Responsible lending, and responsible financing of home purchase plans [deleted]

11.4 Application

Who?

11.4.1 R This chapter applies to a *firm* in a category listed in column (1) of the table in *MCOB* 11.4.2R in accordance with column (2) of that table.

11.4.2 R This table belongs to *MCOB* 11.4.1R

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	Whole chapter
<i>home purchase provider</i>	Whole chapter except <i>MCOB</i> 11.6.1G (2), <i>MCOB</i> 11.6.5R (3) and (4), <i>MCOB</i> 11.6.18R, <i>MCOB</i> 11.6.19G, <i>MCOB</i> 11.6.20R (2) and (9), <i>MCOB</i> 11.6.40G to <i>MCOB</i> 11.6.59G, <i>MCOB</i> 11.6.60R(2)(e), (3) and (4) and <i>MCOB</i> 11.7.3 R

What?

11.4.3 R This chapter applies:

- (1) if a *firm* enters into a regulated mortgage contract or home purchase plan with a customer; or
- (2) if a *firm* varies an existing regulated mortgage contract or home purchase plan; and

throughout the term of any regulated mortgage contract or home purchase plan which a *firm* has entered into.

11.5 Purpose

11.5.1 G (1) This chapter requires a *firm* to treat customers fairly by assessing, before deciding to:

- (a) enter into a regulated mortgage contract or home purchase plan; or
- (b) vary a regulated mortgage contract or home purchase plan;

whether the customer will be able to repay the sums borrowed and interest (in the case of a regulated mortgage contract) or pay the sums due (in the case of a home purchase plan).

(2) This chapter aims to ensure that customers are not exploited by firms that provide finance in circumstances where the customers are self-evidently unable to repay (or pay) through income and have no alternative means of repayment (or payment).

(3) This chapter sets out some limited exceptions to the requirement to assess the customer's ability to repay (or pay), including

transitional arrangements in relation to *customers* with existing *regulated mortgage contracts* or *home purchase plans* which satisfy certain conditions.

- (4) This chapter also applies in relation to extending the term of a *bridging loan*.

11.6 Responsible lending and financing

Contents of this section

- 11.6.1 G (1) This section sets out *rules* and *guidance* for lenders and providers under *regulated mortgage contracts* and *home purchase plans*, in relation to the assessment of affordability for the *customer* of these contracts. *Firms* have the option of applying certain of the *rules* and *guidance* on a modified basis in relation to *regulated mortgage contracts* and *home purchase plans* which are solely for a business purpose or are with *high net worth mortgage customers*. This section also contains (at *MCOB* 11.6.41R to *MCOB* 11.6.52G) additional *rules*, with accompanying *guidance*, in relation to *regulated mortgage contracts* which are *interest-only mortgages*. These *rules*:
- (a) restrict the circumstances in which *interest-only mortgages* may be entered into, and impose additional requirements on *mortgage lenders* in those limited cases where they are permitted; and
 - (b) provide for an exception to the requirement to assess affordability in relation to those *interest-only mortgages* which are *interest roll-up mortgages*, and restrict the circumstances in which *interest roll-up mortgages* may be used (see *MCOB* 11.6.57R to *MCOB* 11.6.59G).
- (2) This section also contains (at *MCOB* 11.6.53E to *MCOB* 11.6.54G) special provisions for *mortgage lenders* in relation to *bridging loans*, including some which apply only where the *bridging loan* is an *interest-only mortgage*.

The assessment of affordability

- 11.6.2 R (1) Except as provided in *MCOB* 11.6.3R, *MCOB* 11.6.57R (Interest roll-up mortgages) and *MCOB* 11.7 (Transitional arrangements):
- (a) before *entering into*, or agreeing to vary, a *regulated mortgage contract* or *home purchase plan*, a *firm* must assess whether the *customer* (and any guarantor of the *customer's* obligations under the *regulated mortgage contract* or *home purchase plan*) will be able to pay the

sums due; and

- (b) the *firm* must not enter into the transaction in (a) unless it can demonstrate that the new or varied *regulated mortgage contract* or *home purchase plan* is affordable for the *customer* (and any guarantor).

(2) In *MCOB* 11.6, references to payment of sums due means:

- (a) in the case of a *regulated mortgage contract*, the making of the payments to repay the sums advanced and interest reasonably expected to be accrued under the *regulated mortgage contract*; and
- (b) in the case of a *home purchase plan*, the payment of sums due under the *home purchase plan*;

in each case as they fall due.

(3) In *MCOB* 11.6, references to the *customer* must be read as referring also to any guarantor of the *customer's* obligations under the *regulated mortgage contract*, where the context permits.

11.6.3 R (1) *MCOB* 11.6.2R does not apply to:

- (a) *entering into* a new *regulated mortgage contract* or *home purchase plan* as a replacement for an existing *regulated mortgage contract* or *home purchase plan* between the *customer* and the *firm* (either as the original *mortgage lender* or *home purchase provider* or as the transferee of the existing contract), whether or not the new contract relates to the same property; or
- (b) a variation of an existing *regulated mortgage contract* or *home purchase plan*;

provided the conditions in (2) are satisfied.

(2) The conditions referred to in (1) are that:

- (a) the proposed new or varied *regulated mortgage contract* or *home purchase plan* would not involve the *customer* taking on additional borrowing or (for a *home purchase plan*, increasing the amount of finance provided under the plan) beyond the amount currently outstanding under the existing *regulated mortgage contract* or *home purchase plan*, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and
- (b) there is no change to the terms of the *regulated mortgage contract* or *home purchase plan* which is likely to be

material to affordability.

- (3) *MCOB 11.6.2R* does not apply to a variation to the terms of a *regulated mortgage contract* or *home purchase plan* which is made solely for the purposes of forbearance where the *customer* has a *payment shortfall*, or in order to avoid a *payment shortfall*.
- 11.6.4 E (1) If a *firm* treats any of the following changes as not likely to be material to affordability, this may be relied upon as tending to show contravention of *MCOB 11.6.2R*:
- (a) an extension of the term of the *regulated mortgage contract* or *home purchase plan* which it is reasonable to expect will extend into the *customer's* retirement; or
 - (b) changing from a *repayment mortgage* to an *interest-only mortgage*, or vice versa; or
 - (c) the addition or removal of a *customer*.
- (2) The list in (1) is not exhaustive.
- 11.6.5 R When assessing for the purposes of *MCOB 11.6.2R* whether a *customer* will be able to pay the sums due, a *firm*:
- (1) must not base its assessment of affordability on the equity in the property which is used as security under the *regulated mortgage contract* or is subject to the *home purchase plan*, or take account of an expected increase in property prices;
 - (2) must take full account of:
 - (a) the income of the *customer*, net of income tax and national insurance; and, as a minimum
 - (b) (i) the *customer's* committed expenditure; and
 - (ii) the basic essential expenditure and basic quality-of-living costs of the *customer's* household;
 - (3) (if it is a *mortgage lender*) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an *interest-only mortgage* in accordance with *MCOB 11.6.41R(1)*; and
 - (4) (if it is a *mortgage lender*) must take account of the impact of likely future interest rate increases on affordability, as set out in *MCOB 11.6.18R*.
- 11.6.6 R For the purposes of *MCOB 11.6.2R*, a *firm* must not rely on a general declaration of affordability by the *customer* or his representative.

Income multiples

- 11.6.7 G A *firm* may wish to impose a limit, expressed as a multiple of the *customer's* income, on the amount it is prepared to advance under a *regulated mortgage contract* or *home purchase plan*. Such an approach is not, of itself, inconsistent with *MCOB* 11.6.2R but, in accordance with the *rules* in this section, the *firm* must be able to demonstrate that the loan is affordable, having taken full account of the *customer's* income and expenditure, and (for a *mortgage lender*) the impact of future likely interest rate increases on affordability.

Income

- 11.6.8 R In taking account of the *customer's* income (in accordance with *MCOB* 11.6.5R(2)(a)) for the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) a *firm* must obtain evidence of the income declared by the *customer* for the purposes of the *customer's* application for the *regulated mortgage contract* or *home purchase plan* (or variation). The evidence, whether document-based or derived through the use of automated systems, must be of a type and for a period which is adequate to support each element of income that the *firm* is taking into account, and subject to appropriate anti-fraud controls; and
 - (2) a *firm* must not accept self-certification of income by the *customer*, and the source of the evidence in (1) must be independent of the *customer*.
- 11.6.9 G In relation to taking account of the *customer's* income for the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) income may be derived from sources other than employment (such as pensions or investments), or from more than one job;
 - (2) the evidence necessary to comply with *MCOB* 11.6.8R will vary according to factors such as the employment status and the nature of the employment of the *customer* (for example, whether he is employed, self-employed, a contractor or retired), his length of employment and, in particular, any elements of income that are not contractually guaranteed. For example: income from overtime working may be evidenced by payslips over a period of time or by checking the level of income regularly paid into a bank account;
 - (3) for a self-employed *customer*, a *firm* may wish to consider using projections of future income, where these form part of a credible business plan;

- (4) a *firm* may use information it already holds about a *customer's* income, for example where the *customer* holds a current account with the *mortgage lender*;
- (5) the source of evidence may be independent of the *customer* even where it is supplied by the *customer*; for example, in the form of payslips, bank statements or tax returns;
- (6) a *firm* may use information provided to it by a *home finance intermediary* or other third party, including electronic sources of information, but the *firm* will retain responsibility for compliance with this chapter; and
- (7) *mortgage lenders* and *home purchase providers* are reminded of their obligations under SYSC 8 in respect of outsourcing where they choose to use a third party to verify income information.

Expenditure

- 11.6.10 R For the purposes of a *mortgage lender's* or *home purchase provider's* assessment of whether the *customer* will be able to pay the sums due:
- (1) the committed expenditure of a *customer* in MCOB 11.6.5R(2)(b)(i) is his credit and other contractual commitments which will continue after the *regulated mortgage contract* or *home purchase plan* (or variation) is entered into;
 - (2) the basic essential expenditure of a *customer's* household in MCOB 11.6.5R(2)(b)(ii) comprises expenditure for: housekeeping (food and washing); gas, electricity and other heating; water; telephone; council tax; buildings insurance; ground rent and service charge for leasehold properties; and essential travel (including to work or school); and
 - (3) the basic quality-of-living costs of a *customer's* household in MCOB 11.6.5R(2)(b)(ii) are its expenditure which is hard to reduce and gives a basic quality of life (beyond the absolute essential expenditure in (2)).
- 11.6.11 G (1) Examples of committed expenditure are: credit commitments such as loans and credit cards; hire purchase agreements; child maintenance; alimony; and the cost of a *repayment strategy* where the *customer* has an *interest-only mortgage* (where affordability has not been assessed on a capital and interest basis: see MCOB 11.6.48R (Assessing affordability under an interest-only mortgage)).
- (2) Examples of basic quality-of-living costs (which can be reduced, but only with difficulty) are: clothing; household goods (such as furniture and appliances) and repairs; personal goods (such as toiletries); basic recreation (television, some allowance for basic

recreational activities, some non-essential transport); and childcare.

- 11.6.12 R For the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) a *firm* may generally rely on any evidence of income or information on expenditure provided by the *customer* unless, taking a common sense view, it has reason to doubt the evidence or information;
 - (2) in taking account of the *customer's* committed expenditure, a *firm* must take reasonable steps to obtain details of the *customer's* actual outstanding commitments; and
 - (3) in taking account of the basic essential expenditure and basic quality-of-living costs of a *customer's* household, a *firm* may obtain details of the actual expenditure. Alternatively, it may use statistical data or other modelled data appropriate to the composition of the *customer's* household, including the *customer*, dependent children and other dependents living in the household. If it uses statistical or other modelled data a *firm* must apply realistic assumptions to determine the level of expenditure of the *customer's* household.
- 11.6.13 G (1) Examples of evidence of income in *MCOB* 11.6.12R(1) are payslips and bank statements.
- (2) If a *firm* obtains details of the *customer's* credit commitments from the *customer*, it should corroborate the information, for example by making a credit reference agency search or checking credit card or bank statements.
 - (3) Where the *customer's* credit or contractual commitments are due to end shortly after the *regulated mortgage contract* or *home purchase plan* (or variation) has been entered into, a *firm* should take a common sense approach to deciding whether to include those commitments in its assessment of whether the *customer* will be able to pay the sums due, according to such factors as the remaining term of the commitment and the magnitude of payments required under it.

Future changes to income and expenditure

- 11.6.14 R If a *firm* is, or should reasonably be aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the *customer* during the term of the *regulated mortgage contract* or *home purchase plan*, the *firm* must take them into account when assessing whether the *customer* will be able to pay the sums due for the purposes of *MCOB* 11.6.2R.

- 11.6.15 G (1) Examples of future changes to income and expenditure in *MCOB 11.6.14R* are: reductions in income that may come about following the *customer's* retirement; where it is known that the *customer* is being made redundant; or where the *firm* is aware of another loan commitment that will become due during the term of the *regulated mortgage contract* or *home purchase plan*, such as an equity loan to assist in property purchase.
- (2) If the term of a *regulated mortgage contract* or *home purchase plan* would extend beyond the date on which the *customer* expects to retire (or, where that date is not known, the state pension age), a *firm* should take a prudent and proportionate approach to assessing the *customer's* income beyond that date. The degree of scrutiny to be adopted may vary according to the period of time remaining to retirement when the assessment is made. The closer the *customer* is to retiring, the more robust the evidence of the level of income in retirement should be. For example, where retirement is many years in the future, it may be sufficient merely to confirm the existence of some pension provision for the *customer* by requesting evidence such as a pension statement; where the *customer* is close to retirement, the more robust steps may involve considering expected pension income from a pension statement. In accordance with *MCOB 11.6.12R(1)*, a *firm* should take a common sense view when assessing any information provided by the *customer* on his expected retirement date.
- (3) Where an additional loan commitment is expected to become due during the term of the *regulated mortgage contract* or *home purchase plan*, the *mortgage lender* should assess whether the *regulated mortgage contract* or *home purchase plan* will remain affordable when the loan commitment becomes due, unless there is an appropriate repayment strategy in place to repay that loan, such as through the sale of the property which is the subject of the *regulated mortgage contract* or *home purchase plan*.

Debt consolidation and credit-impaired customers

- 11.6.16 R (1) This *rule* applies where:
- (a) a purpose of a *regulated mortgage contract* or *home purchase plan* (or variation) is debt consolidation; and
- (b) the *customer* is a *credit-impaired customer*.
- (2) Subject to (3), where each of the conditions in (1) is satisfied and, if the debts which are to be repaid using the sums raised by the *regulated mortgage contract* or *home purchase plan* (or variation) were not repaid, the transaction would not be affordable for the *customer*, the *firm* must take reasonable steps to ensure that, on completion of the transaction, those debts are actually repaid.

- (3) The requirement in (2) does not apply if the *firm* has assumed that the *customer's* existing debts which are to be repaid using the sums raised by the *regulated mortgage contract* or *home purchase plan* (or variation) will not in fact be repaid and, accordingly, include them as committed expenditure in the affordability assessment for the *customer*.

- 11.6.17 G The requirement in *MCOB* 11.6.16R(2) for reasonable steps may be satisfied by the *mortgage lender's*, or *home purchase provider's*, repaying the committed expenditure directly to the creditors concerned as a condition of granting the *regulated mortgage contract* or *home purchase plan*.

Considering the effect of future interest rate rises

- 11.6.18 R (1) Under *MCOB* 11.6.5R(4), in taking account of likely future interest rate increases for the purposes of its assessment of whether the *customer* will be able to pay the sums due, a *mortgage lender* must consider the likely future interest rates over a minimum period of five years from the expected start of the term of the *regulated mortgage contract* (or variation), unless the interest rate under the *regulated mortgage contract* is fixed for a period of five years or more from that time, or for the duration of the *regulated mortgage contract* (or variation), if less than five years.
- (2) A *mortgage lender* must be able to justify the basis it uses for determining likely future interest rates for the purposes of this *rule* by reference to market expectations.
- (3) For the purposes of this *rule*, even if the basis used by the *mortgage lender* in (2) indicates that interest rates are likely to fall, or to rise by less than 1%, during the first five years of the *regulated mortgage contract* (or variation), a *mortgage lender* must assume that interest rates will rise by a minimum of 1% over that period.

- 11.6.19 G In relation to *MCOB* 11.6.18R(2):
- (1) an example of market expectations is the forward sterling rate published on the Bank of England website. A *mortgage lender* should not use its own forecast; and
- (2) a *mortgage lender* should not link its determination to market expectations without considering the likely effect of rate changes in accordance with the market expectations on the specific *regulated mortgage contract* in question.

Responsible lending or financing policy

- 11.6.20 R A *firm* must put in place, and operate in accordance with, a written policy (which may be contained in more than one document), approved by its *governing body*, setting out the factors it will take into account in

assessing a *customer's* ability to pay the sums due. The policy must address the following matters:

- (1) how income and expenditure is to be assessed, including (except as provided in *MCOB* 11.6.32R(1) and *MCOB* 11.6.39R(1)):
 - (a) details of the types of income which are acceptable;
 - (b) the proportion of different income streams which is acceptable;
 - (c) how variations in income over time, of which the *firm* is aware, are to be considered;
 - (d) what is acceptable evidence of income (including the time period to be covered by the evidence); and
 - (e) how committed expenditure, basic essential expenditure and basic quality-of-living costs are taken into account when assessing affordability;
- (2) how future interest rates are taken into account when assessing affordability;
- (3) the calculations used to determine whether the *regulated mortgage contract* or *home purchase plan* is affordable;
- (4) how the *mortgage lender's* or *home purchase provider's* anti-fraud controls are incorporated into affordability assessments;
- (5) how the *mortgage lender's* or *home purchase provider's* method of calculating the size of the advance for each *customer*, based on a consideration of the *customer's* income and expenditure, is to be monitored, including the timing of reviews and key performance indicators to be used (see *MCOB* 11.6.22R (Monitoring));
- (6) the actions to be taken if the *mortgage lender's* or *home purchase provider's* calculation method, referred to in (5), does not perform as expected;
- (7) how regular audits of compliance with the *mortgage lender's* or *home purchase provider's* responsible lending or financing policy established in accordance with this *rule* are to be undertaken (as required by *MCOB* 11.6.24R);
- (8) how the record keeping requirements in *MCOB* 11.6.60R are to be met;
- (9) (if applicable) the matters required by *MCOB* 11.6.50R (Interest-only policy); and
- (10) (if applicable) how the *firm* will apply the *rules* in *MCOB* 11.7

(Transitional arrangements) so as to permit exceptions to its procedures for affordability assessments, to include arrangements for use of management information to monitor its application of those exceptions.

- 11.6.21 G Examples of different income streams in *MCOB* 11.6.20R(1)(b) are: income derived from sources other than employment; income from more than one job; and elements of income that are not contractually guaranteed.

Monitoring

- 11.6.22 R A *firm* must put in place, and be able to demonstrate that it has, robust systems and controls (including the use of management information and key performance indicators) to monitor the effectiveness of its affordability assessments, including in preventing payment difficulties.
- 11.6.23 G Except as provided in *MCOB* 11.6.32R(2) and *MCOB* 11.6.39R(2), the monitoring in *MCOB* 11.6.22R should:
- (1) include use of management information, key performance indicators and root cause analysis to review and (where appropriate) adjust and improve the *mortgage lender's* or *home purchase provider's* method of calculating the size of the advance for each *customer*, based on a consideration of the *customer's* income and expenditure; and
 - (2) take place on a regular basis. However, a *firm* should put in place key performance indicators that trigger more frequent reviews; for example, if the incidence of *customers* being in *arrears*, or of early *arrears*, is higher than expected.
- 11.6.24 R A *firm* must ensure that its compliance with the responsible lending or financing policy required by *MCOB* 11.6.20R is reviewed at least once per calendar year:
- (1) in any case where the *firm* has an internal audit function or outsourced equivalent, by that function; and
 - (2) in any other case, by the *firm's* internal compliance function or an outsourced equivalent.

Alternative provisions for loans which are solely for a business purpose

- 11.6.25 R Where a *regulated mortgage contract* is solely for a business purpose, a *firm* may opt to apply *MCOB* 11.6.26R to *MCOB* 11.6.31R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G.
- 11.6.26 R When assessing for the purposes of *MCOB* 11.6.2R whether a *customer* will be able to pay the sums due, a *firm*:

- (1) must not base its assessment of affordability on the equity in the property which is used as security under the *regulated mortgage contract*, or take account of an expected increase in property prices;
- (2) must:
 - (a) where the repayments will be made from the resources of the *customer*:
 - (i) take full account of the income, net of income tax and national insurance, or net assets (or both) of the *customer*; and the *customer's* committed expenditure; and
 - (ii) take account, in general terms as a minimum, of the basic essential expenditure and basic quality-of-living costs of the *customer's* household; and
 - (b) where the repayments will be made from the financial resources of the business, take full account of the strength of those resources;
- (3) in a case falling within (2)(b), if the *customer* is relying on the business for his personal income, must as a minimum consider in general terms whether the business can support the *customer's* basic essential expenditure and basic quality-of-living costs;
- (4) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an *interest-only mortgage* in accordance with *MCOB* 11.6.41R(1); and
- (5) must take account of the impact of likely future interest rate increases on affordability.

11.6.27 R For the purposes of *MCOB* 11.6.2R, a *firm* must not rely on a general declaration of affordability by the *customer* or his representative.

11.6.28 R In taking account (in accordance with *MCOB* 11.6.26R(2)) of the *customer's* income or net assets (or both) and the resources of the business for the purposes of its assessment of whether the *customer* will be able to pay the sums due:

- (1) a *firm* must obtain evidence of the income or net assets (or both) of the *customer* and the resources of the business, as declared by the *customer* for the purpose of the *customer's* application for the *regulated mortgage contract* (or variation); and
- (2) a *firm* must not accept self-certification of income by the *customer*, and the source of the evidence in (1) must be

independent of the *customer*.

- 11.6.29 R In *MCOB* 11.6.26R, for the purposes of taking full account of committed expenditure and taking account in general terms of basic essential expenditure and basic quality-of-living costs, the meaning of those phrases is as set out in *MCOB* 11.6.10R.
- 11.6.30 G The information which a *firm* should consider when taking account, for the purposes of *MCOB* 11.6.26(2)(b), of the strength of the financial resources of the business will vary according to the characteristics of the business, but may include factors such as the cash flow, assets and liabilities of the business.
- 11.6.31 R If a *firm* is, or should reasonably be aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the *customer*, or the resources of the business, during the term of the *regulated mortgage contract*, the *firm* must take them into account when assessing whether the *customer* will be able to pay the sums due for the purposes of *MCOB* 11.6.2R.
- 11.6.32 R Where a *firm* chooses, in accordance with *MCOB* 11.6.25R, to apply the provisions of *MCOB* 11.6.26R to *MCOB* 11.6.31R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G:
- (1) its policy in *MCOB* 11.6.20R(1) need not address each of the matters prescribed in sub-paragraphs (a) to (e) of that *rule*;
 - (2) *MCOB* 11.6.23G does not apply; and
 - (3) in each case the record-keeping requirements in *MCOB* 11.6.60R(2)(a) to (d) apply only to the extent relevant, but the record in *MCOB* 11.6.60R(1) must also include, to the extent relevant:
 - (a) the *customer's* assets and the evidence relied on to assess them; and
 - (b) the details considered in relation to the resources of the business.

Alternative provisions for loans with high net worth mortgage customers

- 11.6.33 R Where a *regulated mortgage contract* is for a *high net worth mortgage customer*, a *firm* may opt to apply *MCOB* 11.6.34R to *MCOB* 11.6.38R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G.
- 11.6.34 R When assessing for the purposes of *MCOB* 11.6.2R whether a *customer* will be able to pay the sums due, a *firm*:
- (1) must not base its assessment of affordability on the equity in the property which is used as security under the *regulated mortgage*

contract, or take account of an expected increase in property prices;

- (2) must:
 - (a) take full account of the income, net of income tax and national insurance, or net assets (or both) of the *customer*; and the *customer's* committed expenditure; and
 - (b) take account, in general terms as a minimum, of the basic essential expenditure and basic quality-of-living costs of the *customer's* household;
- (3) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an *interest-only mortgage* in accordance with *MCOB* 11.6.41R(1); and
- (4) must take account of the impact of likely future interest rate increases on affordability.

- 11.6.35 R For the purposes of *MCOB* 11.6.2R, a *firm* must not rely on a general declaration of affordability by the *customer* or his representative.
- 11.6.36 R In taking account of the *customer's* income or net assets (or both) (in accordance with *MCOB* 11.6.34R(2)(a)) for the purposes of its assessment of whether the *customer* will be able to pay the sums due:
- (1) a *firm* must obtain evidence of the income or net assets (or both) declared by the *customer* for the purpose of the *customer's* application for the *regulated mortgage contract* (or variation); and
 - (2) a *firm* must not accept self-certification of income by the *customer*, and the source of the evidence in (1) must be independent of the *customer*.
- 11.6.37 R In *MCOB* 11.6.34R, for the purposes of taking full account of committed expenditure and taking account in general terms of basic essential expenditure and basic quality-of-living costs, the meaning of those phrases is as set out in *MCOB* 11.6.10R.
- 11.6.38 R If a *firm* is, or should reasonably be, aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the *customer* during the term of the *regulated mortgage contract*, the *firm* must take them into account when assessing whether the *customer* will be able to pay the sums due for the purposes of *MCOB* 11.6.2R.
- 11.6.39 R Where a *firm* chooses, in accordance with *MCOB* 11.6.33R, to apply the provisions of *MCOB* 11.6.34R to *MCOB* 11.6.38R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G:

- (1) its policy in *MCOB* 11.6.20R(1) need not address each of the matters prescribed in sub-paragraphs (a) to (e) of that *rule*;
- (2) *MCOB* 11.6.23G does not apply; and
- (3) in each case the record-keeping requirements in *MCOB* 11.6.60R(2)(a) to (d) apply only to the extent relevant, but the record in *MCOB* 11.6.60R(1) must also include, to the extent relevant, the *customer's* assets and the evidence relied on to assess them.

Interest-only mortgages

- 11.6.40 G The rules in this part (*MCOB* 11.6.41R to *MCOB* 11.6.49R) provide that *interest-only mortgages* may be *entered into* by mortgage lenders in limited circumstances.

Entering into interest-only mortgages

- 11.6.41 R (1) A mortgage lender may only enter into an *interest-only mortgage*, or switch a *repayment mortgage* onto an interest-only basis for all or part of its term, if:
- (a) it has evidence that the *customer* will have in place a clearly understood and credible *repayment strategy*; and
 - (b) as far as it is reasonably able to assess at that time, the *repayment strategy* has the potential to repay the capital borrowed and any interest reasonably expected to be accrued under the *interest-only mortgage*.
- (2) In *MCOB* 11.6, a reference to an *interest-only mortgage* is to be read as including any *regulated mortgage contract* which includes an interest-only period or where part of the sum is advanced on an interest-only basis.
- (3) A mortgage lender must not accept speculative *repayment strategies* for the purposes of (1).
- 11.6.42 G *Firms* are reminded that:
- (1) *interest-only mortgages* include those where some, but not all, interest is payable at the end of the term. Accordingly, the requirement in *MCOB* 11.6.41R(1)(b) applies equally to such *interest-only mortgages* as it does to those where all of the interest is accrued until the end of the term; and
 - (2) a *lifetime mortgage* is a type of *interest-only mortgage*, as full repayment of capital and interest is not required over the term. Accordingly, the requirements in the *Handbook* (including in *MCOB* 11.6 and *MCOB* 11.7) which apply to *interest-only*

mortgages apply to *lifetime mortgages*, unless specifically disapplied. Depending always on its terms, a *lifetime mortgage* may also be an *interest roll-up mortgage*, as noted in *MCOB* 11.6.59G.

- 11.6.43 R *MCOB* 11.6.41R(1) does not prevent a *mortgage lender*, when appropriate, from making a temporary concession, by which he accepts payment of interest only, with a *customer* who is in *arrears* or has a *payment shortfall*, or is at risk of *arrears* or a *payment shortfall*, on a *regulated mortgage contract*.
- 11.6.44 G *Firms* are reminded that whether it is appropriate to take the action contemplated by *MCOB* 11.6.43R will depend on all the circumstances of the particular case and must be considered having regard to, among other things, *Principle 6* and the *rules* in *MCOB* 13.
- 11.6.45 G The following are examples of *repayment strategies* that may, subject to the circumstances of the *customer*, be acceptable for the purposes of *MCOB* 11.6.41R(1):
- (1) regular deposits into a savings or investment product;
 - (2) the periodic repayment of capital from irregular sources of income (such as bonuses or some sources of income from self-employment); and
 - (3) the sale of assets such as another property or other land owned by the *customer*.
- 11.6.46 E Acceptance by a *mortgage lender* of any of the following *repayment strategies* for the purposes of *MCOB* 11.6.41R(1) may be relied upon as tending to show contravention of that *rule*:
- (1) an expectation that the value of the property which is the subject of the *regulated mortgage contract* will increase over its term sufficiently to enable the *customer* to sell the property to repay the capital borrowed and, where applicable, pay the interest accrued under the *interest-only mortgage*;
 - (2) an intention on the part of the *customer* to utilise an expected, but uncertain, inheritance to repay the capital borrowed and, where applicable, pay the interest accrued under the *interest-only mortgage*; and
 - (3) the sale of the property which is the subject of the *regulated mortgage contract*, where that is the *customer's* main residence and the *mortgage lender* does not consider whether the property will have the potential to:
 - (a) provide sufficient funds for the *customer* to repay the capital borrowed and, where applicable, the interest accrued under the *interest-only mortgage*; and

- (b) allow the *customer* to purchase a cheaper property to reside in or execute any other associated strategy.

The above list is not exhaustive.

- 11.6.47 G In complying with *MCOB* 11.6.41R(1), where a *customer's repayment strategy* is the sale of the property which is the subject of the *regulated mortgage contract*, a *mortgage lender* may wish to consider, as part of its assessment of that *repayment strategy*, factors such as the equity in the property when considered in relation to the level of property prices in the relevant area at the time of the consideration or, for a *lifetime mortgage*, the borrower's life expectancy.

Assessing affordability under an interest-only mortgage

- 11.6.48 R For the purposes of *MCOB* 11.6.2R, where a *mortgage lender* is lending under an *interest-only mortgage* in accordance with *MCOB* 11.6.41R(1), it may assess affordability on the basis of payment of interest only over the term (plus repayment of such capital as may be due to be repaid over the term). If it does so, it must consider as part of the *customer's* committed expenditure under *MCOB* 11.6.5R(2)(b)(i) (or the equivalent alternative provision for transactions with *high net worth mortgage customers* or solely for business purposes) the cost to the *customer* of the *repayment strategy*.

Review during the term of interest-only mortgages

- 11.6.49 R (1) This *rule* applies in relation to all *interest-only mortgages* which a *mortgage lender enters into* on or after 26 April 2014 except:
- (a) *lifetime mortgages*;
 - (b) *bridging loans*; and
 - (c) any other case where the repayment of capital borrowed and, if applicable, interest accrued, is certain.
- (2) Except as set out in (3), a *mortgage lender* must carry out a review (as a minimum, once) during the term of the mortgage, in which contact is made with the *customer*, to check that the *customer's repayment strategy* is still in place, and that it is still reasonable to expect that the *repayment strategy* has the potential to repay the capital borrowed and, where applicable, pay the interest reasonably expected to be accrued under the *interest-only mortgage*. The review must be carried out at a stage of the term when, if the *repayment strategy* is not in place, or not adequate, there is likely to be sufficient time prior to the end of the term for the *customer* to take appropriate steps to remedy the situation.
- (3) The review in (2) is not required in any case where, despite reasonable efforts to contact the *customer*, the *mortgage lender* has

been unable to do so.

- (4) Following the review in (1), where appropriate the *mortgage lender* must take reasonable steps to discuss with the *customer* what may be done to address the situation.

Interest-only policy

- 11.6.50 R A *mortgage lender* which enters into *interest-only mortgages* (unless they are only *lifetime mortgages*) must include in the policy which is required by *MCOB* 11.6.20R (Responsible lending and financing policy) a policy on *interest-only mortgages*, setting out its processes and procedures for ensuring compliance with *MCOB* 11.6.41R(1) and for safeguarding the interests of *customers* during the term of *interest-only mortgages*. This policy must include:
- (1) details of the *mortgage lender's* plans for lending by way of *interest-only mortgages*, including its planned volumes of lending on that basis over a specified period, and provision for reviewing the actual volumes of lending on that basis, including the timing and method of review;
 - (2) specification of the types of *repayment strategy* which will be considered acceptable, and the evidential requirements and other controls which will be applied to ensure that only such types will be accepted, including the controls to be applied where the *repayment strategy* is the sale of the property which is the subject of the *regulated mortgage contract*;
 - (3) the procedures for checking the existence and adequacy of the *repayment strategy* in line with the policy, including questions to be asked of the *customer*;
 - (4) the arrangements for monitoring and auditing compliance with the policy, processes and procedures (see *MCOB* 11.6.22R and *MCOB* 11.6.24R (Monitoring)); and
 - (5) the process for the review required by *MCOB* 11.6.49R which, as a minimum:
 - (a) prescribes the timing of the review;
 - (b) prescribes the content of the review, including the questions to be asked of the *customer* and the actions to be taken if the *customer* proves difficult to contact or otherwise does not co-operate with the review;
 - (c) sets out how it is to be decided whether the *customer's repayment strategy* meets the criteria in *MCOB* 11.6.49R(2); and

- (d) sets out the actions which will be appropriate to be considered during the discussions in *MCOB* 11.6.49R(2), depending on the circumstances of the *customer*.
- 11.6.51 G (1) The controls in *MCOB* 11.6.50R(2) may include, where appropriate: maximum loan to value limits; minimum equity requirements; regional factors such as property prices; or other eligibility requirements.
- (2) The policy and procedures for safeguarding the interests of a *customer* under an *interest-only mortgage* should not permit the *mortgage lender* to change the *interest-only mortgage* to a *repayment mortgage*, extend the term or otherwise change the features of the *interest-only mortgage* unless to do so is compatible with the duties of the *mortgage lender* under *Principle 6* and any other applicable *rules* and regulations, including those relating to *arrears* or *payment shortfall*. A *mortgage lender* should also have regard to the *Unfair Terms Regulations* when drafting the provisions of *regulated mortgage contracts* in relation to changes to their features.
- 11.6.52 G *MCOB* 11.6.50R sets out requirements for *mortgage lenders* to have appropriate procedures for managing *interest-only mortgages* in order to safeguard the interests of *customers*. *Firms* are reminded of the *rules* and *guidance* in *SYSC* (notably *SYSC* 7.1) relating to systems and controls for the management of risks to which *firms* themselves are exposed. *Firms* will need to consider whether their systems and controls are adequate in relation to the management of risks arising from *interest-only mortgages*.

Assessing the customer's repayment strategy for bridging loans

- 11.6.53 E For a *bridging loan* which is an *interest-only mortgage*, acceptance by a *mortgage lender* as a *repayment strategy* for the purposes of *MCOB* 11.6.41R(1) of an expectation that, by entering into the *bridging loan*, the *customer's* credit status will be sufficiently improved to enable him to refinance to a longer-term *regulated mortgage contract* (except where the *mortgage lender* has evidence of a guaranteed offer for such a longer-term contract) may be relied upon as tending to show contravention of that *rule*.
- 11.6.54 G For a *bridging loan* which is an *interest-only mortgage*, in complying with *MCOB* 11.6.41R(1):
- (1) where the *customer's repayment strategy* is the sale of his existing home, the *mortgage lender* may wish to consider asking for it to be supported by an independent valuation of that property, as a condition of accepting that *repayment strategy*; and
- (2) where the *customer's repayment strategy* is the replacement of the *bridging loan* with a mainstream *regulated mortgage contract*, the *mortgage lender* should not accept that *repayment strategy* unless

it is reasonably satisfied that a mainstream *mortgage lender* will be willing to enter into a *regulated mortgage contract* with the *customer*. A *firm* may wish to consider requesting evidence of a guaranteed offer or agreement in principle that will be in place once the existing term of the *bridging loan* has expired, or obtain the necessary income and expenditure information, in order to be so satisfied.

Extending the term of a bridging loan

- 11.6.55 R Except in relation to a secured overdraft which is solely for a business purpose or is with a *high net worth mortgage customer*:
- (1) when considering extending the term of a *bridging loan*, a *mortgage lender* must comply with *MCOB* 11.6.2R as if the *bridging loan* were a new loan;
 - (2) where *MCOB* 11.6.2R does not apply in relation to extending the term of a *bridging loan* (because the *bridging loan* is an *interest roll-up mortgage*, and therefore *MCOB* 11.6.57R applies), the *mortgage lender* must consider with the *customer*, before he commits himself to extend the term, the impact of the extension on the *customer's* remaining equity in the property which is the subject of the *bridging loan*; and
 - (3) a *firm* must not agree to extend the term of a *bridging loan* unless the *customer* has made a positive choice to do so.
- 11.6.56 G *Firms* are reminded that, when extending the term of a *bridging loan* to which *MCOB* 11.6.55R does not apply, in accordance with *MCOB* 2.5A.1R, they must act honestly, fairly and professionally in accordance with the best interests of their *customer*.

Interest roll-up mortgages

- 11.6.57 R The requirements in *MCOB* 11.6.2R (and any *Handbook* provisions applicable only to that *rule*) do not apply in relation to an *interest roll-up mortgage*.
- 11.6.58 R A *mortgage lender* may not enter into an *interest roll-up mortgage*, or vary an existing *regulated mortgage contract* so that it becomes an *interest roll-up mortgage*, unless it is:
- (1) a *lifetime mortgage*; or
 - (2) a *bridging loan*; or
 - (3) a loan to a *high net worth mortgage customer*; or
 - (4) a loan solely for business purposes.

- 11.6.59 G *Firms* are reminded that an *interest roll-up mortgage* is a type of *interest-only mortgage*, where no payments of interest or capital are required or anticipated until the mortgage comes to an end. Depending always on their terms, it is possible to structure the types of product set out in *MCOB* 11.6.58R(1) to (4) as an *interest roll-up mortgage*. Where that is the case, *MCOB* 11.6.2R will not apply in relation to them, but *MCOB* 11.6.40G to *MCOB* 11.6.52G will apply to all *interest roll-up mortgages*, to the extent they are permitted by *MCOB* 11.6.58R.

Record-keeping

- 11.6.60 R (1) A *firm* must make, in paper or electronic form, an adequate record of the steps it takes to comply with the *rules* in this chapter in relation to each *customer*.
- (2) The record in (1) must include the information taken into account in each affordability assessment, so that it is possible to understand from the record the basis of the *mortgage lender's* or *home purchase provider's* lending or financing decision, including (except as provided in *MCOB* 11.6.32R(3) and *MCOB* 11.6.39R(3)):
- (a) the *customer's* income, including, where relevant, a breakdown of the different income types;
 - (b) the *customer's* committed expenditure;
 - (c) the basic essential expenditure and basic quality-of-living costs of the *customer's* household (whether actual expenditure for that household or assumed expenditure from statistical or other modelled data, including information to show why the assumed data is appropriate to that *customer's* household);
 - (d) the evidence relied on to assess income and expenditure;
 - (e) the rate or assumptions used to test affordability against likely future interest rate rises;
 - (f) the repayment type and term of the *regulated mortgage contract*, or the term of the *home purchase plan*; and
 - (g) the calculation used to determine whether the *regulated mortgage contract, home purchase plan* is (or, where applicable, following the variation, remains) affordable for the *customer*.
- (3) In relation to *interest-only mortgages*, the record in (1) must include:
- (a) the reasons for each decision to offer an *interest-only*

- mortgage to a customer;*
- (b) the evidence of the *customer's repayment strategy* and, where applicable, its cost;
 - (c) details of the *firm's* attempts to contact the *customer* where required by *MCOB 11.6.49R*; and
 - (d) the outcome of each review required by *MCOB 11.6.49R* (whether conducted once during the term of the *interest-only mortgage* or more frequently).
- (4) In relation to the extension of the term of a *bridging loan* which falls within *MCOB 11.6.55R*, the record in (1) must include:
- (a) the *customer's* positive choice to extend the term;
 - (b) the reasons for the decision to extend the term; and
 - (c) the evidence of the *customer's repayment strategy* and its cost.
- (5) A *firm* must retain the records required by (1) to (4) for the term of the *regulated mortgage contract* or *home purchase plan*.
- (6) Where a *firm* enters into or varies a *regulated mortgage contract* or *home purchase plan* under *MCOB 11.7* (Transitional arrangements), it must keep, for the term of the contract or plan, a record of:
- (a) the outstanding balance on the existing contract or plan;
 - (b) the cost of the repairs or maintenance work to the property, where relevant;
 - (c) any product fee or arrangement fee financed by any additional borrowing taken on under the contract or increase in the amount of finance provided under the plan; and
 - (d) the rationale for each decision made to enter into or vary a *regulated mortgage contract* or *home purchase plan* under *MCOB 11.7* (Transitional arrangements), including why the *firm* considered it to be in the *customer's* best interests.
- (7) A *firm* must make, and keep up to date, an adequate record of the policy required by *MCOB 11.6.20R*. When the policy is changed, a record of the previous policy must be retained for so long as any *regulated mortgage contract* or *home purchase plan* to which it was applicable remains outstanding.

11.6.61 G For the purposes of *MCOB 11.6.60R(2)(c)* and (g), if it is not practicable

for the *firm* to record on the *customer's* file full details of the calculation method applied, it should record clearly which version of that method was applied in order that the file can be reviewed in conjunction with the applicable version of the method, so that it is possible to reconstruct the lending decision.

11.7 Transitional arrangements

- 11.7.1 R When considering *entering into* or varying a *regulated mortgage contract* or *home purchase plan*, a *firm* need not apply the rules in *MCOB* 11.6.2R to *MCOB* 11.6.18R inclusive (as modified by *MCOB* 11.6.25R to *MCOB* 11.6.31R and *MCOB* 11.6.33 to *MCOB* 11.6.38R, where applicable) if it has established, acting reasonably, that the following conditions are satisfied:
- (1) the *customer* has:
 - (a) an existing *regulated mortgage contract* (whether or not *entered into* on or after 31 October 2004) or *home purchase plan* (whether or not *entered into* on or after 6 April 2007) which was in existence prior to 26 April 2014; or
 - (b) an existing *regulated mortgage contract* or *home purchase plan* which was entered into in reliance on, and in compliance with, *MCOB* 11.7;
 - (2) subject to *MCOB* 11.7.2R, the proposed *regulated mortgage contract* or *home purchase plan*, or variation, would not involve the *customer* taking on additional borrowing (or, for a *home purchase plan*, increasing the amount of finance provided under the plan) beyond the amount currently outstanding under the existing *regulated mortgage contract* or *home purchase plan*, other than to finance any product fee or arrangement fee for the proposed new or varied contract;
 - (3) the proposed transaction would be in the *customer's* best interests; and
 - (4) the *customer* has not, after 26 April 2014 increased the size of the advance under the existing *regulated mortgage contract* or *home purchase plan* other than to finance any relevant product fee or arrangement fee in relation to, or the cost of essential repairs or maintenance to the property which is the subject of, that *regulated mortgage contract* or *home purchase plan*.
- 11.7.2 R The condition in *MCOB* 11.7.1R(2) does not apply if each of the following conditions is satisfied:
- (1) the *firm* is the *mortgage lender* or *home purchase provider* under

- the existing *regulated mortgage contract* or *home purchase plan* in *MCOB 11.7.1R(1)*;
- (2) the value of the property which is the subject of the *regulated mortgage contract* or *home purchase plan* is at risk if repairs or maintenance work to the property are not carried out;
 - (3) the funds generated by the additional borrowing or increase in finance provided are to be used to carry out the repairs or maintenance work; and
 - (4) the *firm* has obtained credible evidence which demonstrates that the additional borrowing or increase in finance are no more than the cost of the repairs or maintenance work.
- 11.7.3 R (1) When considering *entering into* or varying an *interest-only mortgage*, a *mortgage lender* need not apply the rules in *MCOB 11.6.41R(1)*, *MCOB 11.6.49R*, *MCOB 11.6.50R* and *MCOB 11.6.60R(3)* if the conditions in *MCOB 11.7.1R* are satisfied, and if it has established, acting reasonably, that the existing *regulated mortgage contract* in *MCOB 11.7.1R(1)* is an *interest-only mortgage*.
- (2) Where only part of the sum advanced under the existing *regulated mortgage contract* is on an interest-only basis, (1) applies, but only to that part.
- 11.7.4 G In accordance with its obligation under *Principle 6* to treat its *customers* fairly, a *firm* should not treat a *customer* with whom it enters into or varies a *regulated mortgage contract* or *home purchase plan* pursuant to this section 11.7 less favourably than it would treat other *customers* with similar characteristics, for example by offering less favourable interest rates or other terms.
- 11.7.5 G *Firms* should note the record-keeping requirements at *MCOB 11.6.60R(6)* which apply when *regulated mortgage contracts* and *home purchase plans* are entered into or varied under this section.

Amend the following as shown.

12.1 Application

...

What?

...

- 12.1.4 R The ~~arises~~ *payment shortfall* charges and excessive charges requirements in this chapter will continue to apply to a *firm* after a *regulated mortgage contract* has come to an end following the sale of a *repossessed* property.

The excessive charges requirements will continue to apply to a *firm* after a *home reversion plan* has ended. References in this chapter to ‘*customer*’ will include references to a former *customer* as appropriate.

- 12.1.5 G The *FSA* will expect a *firm* to ensure that charges made to a *customer* arising from the sale of a *repossessed* property and charges arising in relation to a *sale shortfall* are not excessive and are subject to the same considerations as apply with respect to ~~arrears~~ payment shortfall charges under this chapter.

...

12.4 **Arrears Payment shortfall charges: regulated mortgage contracts**

- 12.4.1 R (1) A *firm* must ensure that any *regulated mortgage contract* that it enters into does not impose, and cannot be used to impose, a charge or charges for ~~arrears~~ a payment shortfall on a *customer* ~~except where that~~ unless the *firm* is able objectively to justify that the charge is equal to or lower than a reasonable estimate calculation of the cost of the additional administration required as a result of the *customer* being in arrears having a payment shortfall.
- (2) ~~Paragraph (1) does not prevent a *firm* from entering into a regulated mortgage contract with a *customer* under which the *firm* may change the rate of interest charged to the *customer* from a fixed or discounted rate of interest to the *firm*'s standard variable rate if the *customer* goes into arrears, providing that this standard variable rate is not a rate created especially for *customers* in arrears. [deleted]~~
- 12.4.1A E The imposition of a charge for ~~arrears~~ a payment shortfall on a *customer* who is adhering to an arrangement under which the *customer* and the *firm* agree that the *customer* will make payments of a set amount per month (or other agreed period) on agreed dates may be relied upon as tending to show contravention of *MCOB* 12.4.1R(1).
- 12.4.1B R When a *customer* has a ~~payment shortfall~~ payment shortfall in respect of a *regulated mortgage contract*, a *firm* must ensure that any payments received from the *customer* are allocated first towards paying off the balance of the ~~shortfall~~ payment shortfall (excluding any interest or charges on that balance).
- 12.4.2 G For each type of payment shortfall charge (for example, a monthly arrears management charge), ~~A~~ a *firm* may calculate the same level of ~~arrears charges~~ additional administration costs and payment shortfall charges for all *regulated mortgage contracts* where the *customer* is in ~~arrears~~ payment shortfall, rather than performing a calculation on the basis of the individual *regulated mortgage contract* with the particular *customer*.

- 12.4.3 G *Firms* are also subject to requirements on information provision and standards relating to *arrears* and *repossessions* (see *MCOB* 13 (Arrears and repossessions)).
- 12.4.4 R In calculating the cost of the additional administration required as a result of a *customer* having a *payment shortfall*, a *firm* must not take into account:
- (1) the following types of costs:
 - (a) funding or capital;
 - (b) general bank charges that are not incurred as a result of a *customer* having a *payment shortfall*;
 - (c) unrecovered fees;
 - (d) advertising costs; and
 - (e) regulatory fines;
 - (2) the costs of preparing financial reports for the *firm* unless there is an objectively justifiable reason to do so and the costs relate solely to the analysis and management of accounts in *payment shortfall*;
 - (3) executive staff costs unless there is an objectively justifiable reason to do so and the costs relate to the day-to-day management of customers in *payment shortfall*.
- 12.4.5 R In *MCOB* 12.4, ‘executive staff’ means the staff or business owners responsible for the management of the *firm*’s business.
- 12.4.6 G (1) For some *firms*, their executive staff will be the executive board members.
- (2) Executive staff costs relating to company strategy, including *payment shortfall* strategy, should not be included as costs relating to the day-to-day management of *customers* in *payment shortfall*.
- (3) General financial reporting costs, including all legal and regulatory reporting costs, should not be included as costs relating solely to the analysis and management of accounts in *payment shortfall*.
- 12.4.7 G In calculating the cost of the additional administration required as a result of a *customer* having a *payment shortfall*, the *firm*:
- (1) may, where appropriate, take into account the following types of costs:
 - (a) providing information or documents;

- (b) non-executive staff costs;
- (c) premises costs;
- (d) human resources costs; and
- (e) information technology costs;

- (2) should consider the extent to which the cost of the additional administration is shared with the rest of its business; and
- (3) should, where a type of cost is absent from the lists in (1) and at MCOB 12.4.4R(1), before taking it into account, consider whether it is appropriate to do so.

12.4.8 R A firm must not impose a charge for a payment shortfall that is calculated as a proportion of the outstanding loan.

...

12.6 Business loans and loans to high net worth mortgage customers: tailored provisions

12.6.1 G *Firms are reminded that, in relation to a regulated mortgage contract which is solely for a business purpose or is with a high net worth mortgage customer in circumstances where MCOB 7.7.1R applies, if there is a new early repayment charge or a change to the existing early repayment charge, MCOB 7.7.1R(2) requires a firm to notify the customer within five business days of the maximum amount payable as an early repayment charge.*

12.6.2 G *Firms are also reminded that in accordance with MCOB 1.2.3R, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans solely for a business purpose or loans to high net worth mortgage customers.*

...

13 Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans

13.1 Application

...

What?

...

13.1.5 G The FSA expects a firm to treat a sale shortfall in the same way that it

treats a ~~payment shortfall~~ payment shortfall.

...

13.3 Dealing fairly with customers ~~in arrears~~ with a payment shortfall: policy and procedures

...

13.3.1 R (1) A *firm* must deal fairly with any *customer* who:

- (a) ~~is in arrears~~ has a *payment shortfall* on a regulated mortgage contract or home purchase plan;

...

...

13.3.1A R (1) Where a *customer* has a *payment shortfall* in relation to a *regulated mortgage contract* or *home purchase plan*, a *firm* must not attempt to process more than two direct debit requests in any one calendar month.

- (2) Where a *firm's* direct debit request, in respect of a *customer* who has a *payment shortfall* on a *regulated mortgage contract* or *home purchase plan*, has been refused, on at least one occasion in each of two consecutive months, due to insufficient funds, the *firm* must:

- (a) consider whether the method of payment remains suitable for the *customer*;
- (b) make reasonable efforts to contact the *customer* to discuss whether the method of payment remains suitable for the *customer*; and
- (c) not pass on any costs to the *customer* which were incurred as a consequence of presenting direct debit requests during this period of consideration.

13.3.1B G *MCOB* 13.3.1AR(2)(c) does not prevent a *firm* from attempting to process up to two direct debit requests in any one calendar month provided the *firm* has made reasonable efforts to contact the *customer* and the *customer* has failed to respond.

...

13.3.2A R A *firm* must, when dealing with any *customer* in payment difficulties:

- (1) make reasonable efforts to reach an agreement with a *customer* over the method of repaying any ~~payment shortfall~~ *payment shortfall* or *sale shortfall*, in the case of the former having regard to the desirability of agreeing with the *customer* an alternative to taking

possession of the property;

- (2) liaise, if the *customer* makes arrangements for this, with a third party source of advice regarding the ~~payment shortfall~~ payment shortfall or *sale shortfall*;
- (3) allow a reasonable time over which the ~~payment shortfall~~ payment shortfall or *sale shortfall* should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the *customer*;

...

...

13.3.4A R In complying with *MCOB* 13.3.2AR(6):

- (1) a *firm* must consider whether, given the individual circumstances of the *customer*, it is appropriate to do one of more of the following in relation to the *regulated mortgage contract* or *home purchase plan* with the agreement of the *customer*:

...

- (d) treat the ~~payment shortfall~~ payment shortfall as if it was part of the original amount provided (but a *firm* must not automatically capitalise a ~~payment shortfall~~ payment shortfall where the impact would be material); or

...

...

13.3.4AA R In *MCOB* 13.3.4AR, the impact of a capitalisation would be material if, either on its own or taken together with previous automatic capitalisations, it increased:

- (1) the interest payable over the term of the *regulated mortgage contract* by £50 or more; or
- (2) the contractual monthly repayment amount under the *regulated mortgage contract* by £1 or more.

13.3.4B R ...

...

13.3.4D G In the *FSA*'s view, in order to comply with *Principle 6*, *firms* should not agree to capitalise a ~~payment shortfall~~ payment shortfall save where no other option is realistically available to assist the *customer*.

...

- 13.3.6 G In relation to adopting a reasonable approach to the time over which the ~~payment shortfall~~ payment shortfall or sale shortfall should be repaid, the FSA takes the view that the determination of a reasonable payment period will depend upon the individual circumstances. In appropriate cases this will mean that repayments are arranged over the remaining term.

...

Record keeping: ~~arrears~~ payment shortfalls and repossessions

- 13.3.9 R (1) A mortgage lender or administrator must make and retain an adequate record of its dealings with a customer whose account ~~is in arrears~~ has a payment shortfall or ~~who has~~ a sale shortfall, which will enable the firm to show its compliance with this chapter. That record must include a recording of all telephone conversations between the firm and the customer which discuss ~~the sums due~~ any amount in arrears or any amount subject to payment shortfall charges.
- (2) A mortgage lender or administrator must retain the record required by (1) for three years from the date of the dealing.
- 13.3.10 G The record referred to in MCOB 13.3.9R should contain, or provide reference to, matters such as:
- (1) the date of first communication with the customer, after the account was identified as ~~being in arrears~~ having a payment shortfall;
 - (2) in relation to correspondence issued to a customer ~~in arrears~~ with a payment shortfall, the name and contact number of the employee dealing with that correspondence, where known;
 - (3) the basis for issuing tailored information in accordance with MCOB 13.7.1R in relation to a loan solely for a business purpose;
 - (4) information relating to any new payment arrangements proposed;
 - (5) the date of issue of any legal documents;
 - (6) the arrangements made for sale after the repossession (whether legal or voluntary); ~~and~~
 - (7) the date of any communication summarising the customer's outstanding debt after sale of the *repossessed* property; and
 - (8) the date and time of each call for the purposes of MCOB 13.3.9R(1).

...

13.4 Arrears: provision of information to the customer of a regulated mortgage contract

13.4.1 R If a *customer* falls into *arrears* on a *regulated mortgage contract*, a *firm* must as soon as possible, and in any event within 15 *business days* of becoming aware of that fact, provide the *customer* with the following in a *durable medium*:

...

(3) the total sum of the ~~payment shortfall~~ payment shortfall;

(4) the charges incurred as a result of the ~~payment shortfall~~ payment shortfall;

...

(6) an indication of the nature (and where possible the level) of charges the *customer* is likely to incur unless the ~~payment shortfall~~ payment shortfall is cleared.

...

13.4.3 G (1) ...

(2) Where a *firm* provides the information in *MCOB* 13.4.1R when a ~~payment shortfall~~ payment shortfall occurs but before the *customer's* account falls into *arrears*, it need not repeat the provision of the information in *MCOB* 13.4.1R when the *customer's* account falls into *arrears*.

Customer in arrears within the past 12 months

13.4.4 R If a *customer's* account has previously fallen into *arrears* within the past 12 months (and at that time the *customer* received the disclosure required by *MCOB* 13.4.1R), the *arrears* have been cleared and the *customer's* account falls into *arrears* on a subsequent occasion a *firm* must either:

(1) ...

(2) provide, as soon as possible, and in any event within 15 *business days* of becoming aware of the further *arrears*, a statement, in a *durable medium*, of the payments due, the actual ~~payment shortfall~~ payment shortfall, any charges incurred and the total outstanding debt excluding any charges that may be added on redemption, together with information as to the consequences, including *repossession*, if the ~~payment shortfall~~ payment shortfall is not cleared.

...

13.5 Dealing with a customer in arrears or with a sale shortfall on a regulated mortgage contract

Statement of charges

- 13.5.1 R Where an account is in *arrears*, and the ~~payment shortfall~~ payment shortfall or *sale shortfall* is attracting charges, a *firm* must provide the *customer* with a regular written statement (at least once a quarter) of the payments due, the actual ~~payment shortfall~~ payment shortfall, the charges incurred and the debt.
- 13.5.2 G ...
- (3) ~~If an account in *arrears* is subject to a payment plan agreed between a *firm* and a *customer*, and the account is operating in accordance with that plan, the *firm* will still need to send the *customer* a written statement if the payment shortfall or *sale shortfall* is attracting charges.~~ [deleted]
- (4) Information provided should cover the period since the last statement. *Firms* may use the annual statement to comply with *MCOB* 13.5.1R, in which case the annual statement will need to be supplemented to include the actual ~~payment shortfall~~ payment shortfall.

...

13.7 **Business loans and loans to high net worth mortgage customers: tailored provisions**

- 13.7.1 R Where the *regulated mortgage contract* is for a business purpose or is with a high net worth mortgage customer, a *firm* may as an alternative to *MCOB* 13.4.1R(1) provide the following information in a *durable medium* instead of the *Money Advice Service* information sheet "Problems paying your mortgage":
- (1) details of the consequences if the ~~payment shortfall~~ payment shortfall is not cleared;
- (2) a description of the options available to the *customer* for clearing the ~~payment shortfall~~ payment shortfall; and
- (3) (in the case only of loans for a business purpose) details of sources of fee-free advice for business *customers*.
- 13.7.2 G *Firms* are reminded that in accordance with *MCOB* 1.2.3R, they should ~~either~~ comply in full with *MCOB*, but in doing so may opt to take account of or comply with all tailored provisions in *MCOB* that relate to business loans solely for a business purpose or loans to high net worth mortgage customers. Therefore, a *firm* may only follow the relevant tailored provisions in *MCOB* 13.7, if it also follows all other relevant tailored provisions in *MCOB*. In either case, the rest of *MCOB* applies in full.

...

Schedule 1 Record keeping requirements

...

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>MCOB 1.2.9CR(1)</u>	<u>A high net worth mortgage customer</u>	Evidence of satisfaction of definition of <u>high net worth mortgage customer</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
<u>MCOB 1.2.9CR(2)</u>	<u>A high net worth mortgage customer</u>	Written statement confirming the <u>customer is a high net worth mortgage customer</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
<u>MCOB 1.2.9DR</u>	<u>A loan solely for a business purpose</u>	<u>Business plan</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
<u>MCOB 1.2.9ER</u>	<u>A professional customer</u>	Evidence of satisfaction of definition of <u>professional customer</u>	<u>When it is used or obtained</u>	Three years from when obtained or, if later, used
...				
<u>MCOB 4.4A.23G</u>	<u>Disclosures</u>	<u>Appropriate records of disclosures required by section 4.4A</u>	<u>When disclosure made</u>	<u>As required by SYSC 9</u>
<u>MCOB 4.7.17R (1)(a)</u>	<u>Suitability</u>	Details of the customer information obtained, including the <u>customer's</u> needs and circumstances, for the purpose of assessing the suitability of a <u>regulated mortgage contract</u>	When the <u>personal recommendation</u> is made	Three years
<u>MCOB 4.7.17R (1)(b)</u>	<u>Suitability</u>	An explanation of the reasons why the <u>firm</u> believes the <u>personal recommendation</u> complies with the suitability	When the <u>personal recommendation</u> is made	Three years

		requirements in <i>MCOB 4.7.4 R(1)</i>		
<i>MCOB 4.7.17R (1)(b)</i>	Suitability	An explanation of the reasons why a <i>personal recommendation</i> has been made on a basis other than that described in <i>MCOB 4.7.13E(1)</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB 4.8.7R</i>	Scripted questions	A record of the scripted questions used in non-advised sales	The date on which the scripted questions are first used	One year from the date on which the scripted questions are superseded by a more up-to-date record
<i>MCOB 4.6.11R</i>	Notice of cancellation	A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)	When the <i>firm</i> first becomes aware that notice has been served	Three years
<u><i>MCOB 4.7A.25R (1)(a)</i></u>	<u>Suitability of regulated mortgage contracts</u>	<u>Customer information obtained for the purposes of assessing suitability of a regulated mortgage contract</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB 4.7A.25R (1)(b)</i>	<u>Suitability of regulated mortgage contracts</u>	An explanation of why the <i>firm</i> has concluded its <u>advice is suitable</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB 4.7A.25R (1)(c)</i>	<u>Rolling-up of fees or charges into loan</u>	The <i>customer's</i> positive choice to add fees or charges to the sum advanced	<u>When choice made</u>	<u>Three years</u>
<i>MCOB 4.8A.18R (1)(a)</i>	<u>Execution-only sales of regulated mortgage contracts</u>	Information provided by the <i>customer</i> about the <u>regulated mortgage contract</u> he wishes to purchase.	The date a <u>regulated mortgage contract</u> was entered into or arranged	<u>Three years</u>
<i>MCOB 4.8A.18R (1)(b)</i>	<u>Execution-only sales of regulated mortgage</u>	The warning to the <i>customer</i> in a durable medium regarding his lack of protection of	The date a <u>regulated mortgage contract</u> was entered into or	<u>Three years</u>

	<u>contracts</u>	<u>the rules on assessing suitability</u>	<u>arranged</u>	
<u>MCOB 4.8A.18R (1)(c)</u>	<u>Execution-only sales of regulated mortgage contracts</u>	<u>The customer's confirmation of his positive election to proceed with an execution-only sale</u>	<u>The date a regulated mortgage contract was entered into or arranged</u>	<u>Three years</u>
<u>MCOB 4.8A.18R (1)(d)</u>	<u>Execution-only sales of regulated mortgage contracts</u>	<u>Details of advice rejected.</u>	<u>The date a regulated mortgage contract was entered into or arranged</u>	<u>Three years</u>
<u>MCOB 4.8A.18R (3)</u>	<u>Execution-only sales of regulated mortgage contracts</u>	<u>The firm's policy for managing execution-only sales</u>	<u>When the policy is made</u>	<u>One year from when the policy is changed</u>
<u>MCOB 4.10.9BR</u>	<u>Execution-only sales of home purchase plans</u>	<u>Information provided by the customer about the home purchase plan he wishes to purchase; the warning to the customer in a durable medium regarding his lack of protection of the rules on assessing suitability; the customer's confirmation of his positive election to proceed with an execution-only sale.</u> <u>The firm's policy for managing execution-only sales</u>	<u>The date a home purchase plan was entered into or arranged</u> <u>When the policy is made</u>	<u>Three years</u> <u>One year from when the policy is changed</u>
<u>MCOB 4.10.13R(1) (a)</u>	<u>Suitability of home purchase plans</u>	<u>Customer information obtained for the purposes of assessing suitability of a home purchase plan</u>	<u>When advice given</u>	<u>Three years</u>
<u>MCOB 4.10.13R(1) (b)</u>	<u>Suitability of home purchase plans</u>	<u>An explanation of why the firm has concluded its advice is suitable</u>	<u>When advice given</u>	<u>Three years</u>
<u>MCOB 4.10.13R(1) (c)</u>	<u>Advice on home purchase plans</u>	<u>Any advice rejected, including the reasons rejected and details of any home purchase plan the customer has</u>	<u>When advice given</u>	<u>Three years</u>

		<u>proceeded with as an execution-only sale</u>		
...				
<i>MCOB</i> 4.11.8R	<i>Customer</i> information on which an assessment of the <u>affordability and appropriateness suitability and basis of advice</u> for a <i>regulated sale and rent back agreement</i> was based	<i>Customer</i> information on his income, expenditure, resources, needs, objectives and individual circumstances	The date on which the <i>firm</i> reached a conclusion on affordability and appropriateness <u>assessed suitability</u>	Five years, or one year after the end of the fixed term of the tenancy agreement, if later
...				
<i>MCOB</i> 8.5.22R(1) (a)	Suitability	Details of the customer information obtained, including the <i>customer's</i> needs and circumstances, for the purpose of assessing the suitability of a <i>equity release transaction</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB</i> 8.5.22R(1) (b)	Suitability	An explanation of the reasons why the <i>firm</i> believes the <i>personal recommendation</i> complies with suitability requirements in <i>MCOB 8.5.4R(1)</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB</i> 8.5.22R(1) (b)	Suitability	An explanation of the reasons why a <i>personal recommendation</i> has been made on a basis other than that described in <i>MCOB 8.5.17E(1)</i>	When the <i>personal recommendation</i> is made	Three years
<i>MCOB</i> 8.3.1R(1)	Scripted questions	A record of the scripted questions used in non-advised sales	The date on which the scripted questions are first used	One year from the date on which the scripted questions

				are superseded by a more up-to-date record
<i>MCOB</i> 8.3.1R(1)	Notice of cancellation	A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)	When the <i>firm</i> first becomes aware that notice has been served	Three years
<i>MCOB</i> 8.5A.19R (1)(a)	<u>Suitability of equity release transactions</u>	<u>Customer information obtained for the purposes of assessing suitability of an equity release transaction</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB</i> 8.5A.19R (1)(b)	<u>Suitability of equity release transactions</u>	<u>An explanation of why the firm has concluded its advice is suitable</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB</i> 8.5A.19R (1)(c)	<u>Advice on equity release transactions</u>	<u>Any advice rejected, including the reasons rejected and details of any regulated mortgage contract the customer has proceeded with as an execution-only sale</u>	<u>When advice given</u>	<u>Three years</u>
<i>MCOB</i> 8.5A.19R (1)(d)	<u>Rolling-up of fees or charges into loan</u>	<u>The customer's positive choice to add fees or charges to the sum advanced</u>	<u>When choice made</u>	<u>Three years</u>
<i>MCOB</i> 8.6A.9R	<u>Execution-only sales of equity release transactions</u>	<u>Information provided by the customer about the equity release transaction he wishes to purchase; the warning to the customer in a durable medium regarding his lack of protection of the rules on assessing suitability; the customer's confirmation of his positive election to proceed with an execution-only sale; any advice from the firm which the customer rejected,</u>	<u>The date a home purchase plan was entered into or arranged</u>	<u>Three years</u>

		<u>including the reasons why it was rejected.</u>		
...				
<i>MCOB</i> 11.3.1R(2)	Ability of the <i>customer</i> to repay advance	Evidence to demonstrate that the <i>firm</i> has taken into account the <i>customer's</i> ability to repay	When the assessment of the <i>customer's</i> ability to repay is made	One year from the date on which the <i>regulated mortgage contract</i> is entered into, or the further advance provided
<i>MCOB</i> 11.3.4R(2)	Responsible lending policy	A record of the <i>firm's</i> written policy setting out the factors the <i>firm</i> will take into account in assessing the <i>customer's</i> ability to repay	The date on which the policy is set	One year from the date on which the policy is replaced
<i>MCOB</i> <u>11.6.60R(1) to (4)</u>	<u>Responsible lending and financing</u>	<u>Steps taken to comply with rules including: information taken into account in each affordability assessment; in relation to <i>interest-only mortgages</i>, the reasons for the offer decision, evidence relating to the <i>customer's</i> repayment strategy, details of the <i>firm's</i> attempts to contact the <i>customer</i> and the outcome of each mid-term review; information relating to the extension of the term of <i>bridging loans</i> which are neither with a <i>high net worth mortgage customer</i> nor or a secured overdraft solely for a business purpose</u>	<u>When <i>regulated mortgage contract</i> or <i>home purchase plan</i> (or variation) is entered into, or the mid-term review takes place</u>	<u>The term of the contract or plan</u>
<i>MCOB</i> <u>11.6.60R(6) (a)</u>	<u>Transitional arrangements</u>	<u>The outstanding balance on the existing contract</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the <i>regulated</i></u>

				<u>mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(6)(b)</u>	<u>Transitional arrangements</u>	<u>The cost of repairs or maintenance work to the property</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the regulated mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(6)(c)</u>	<u>Transitional arrangements</u>	<u>Any product fee or arrangement fee financed by any additional borrowing or increase in finance</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the regulated mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(6)(d)</u>	<u>Transitional arrangements</u>	<u>The rationale for each decision to enter into or vary a contract under MCOB 11.7</u>	<u>When new contract or variation is entered into</u>	<u>For the term of the regulated mortgage contract or home purchase plan</u>
<u>MCOB 11.6.60R(7)</u>	<u>Responsible lending and financing policy</u>	<u>The firm's policy, setting out the factors it will take into account in assessing a customer's ability to pay the sums due</u>	<u>When the policy is made</u>	<u>For so long as any regulated mortgage contract or home purchase plan to which it was applicable remains outstanding.</u>
<u>MCOB 13.3.9R</u>	<u>Dealings with customers in arrears with a payment shortfall, or with a mortgage sale shortfall debt</u>	<u>Details of all dealings with the customer (including a recording of all telephone conversations which discuss any arrears or any amount subject to payment shortfall charges); information relating to any repayment plan; date of issue of any legal</u>	<u>The date of the dealing</u>	<u>Three years from the date on which the record is made</u>

		proceedings; arrangements made for sale of a <i>repossessed</i> property; and the basis of any tailored information where the loan is for a business purpose.		

Part 2: Comes into force on 26 October 2012

11.8 Customers unable to change regulated mortgage contract, home purchase plan or provider

11.8.1 E Where a *customer* is unable to:

- (1) enter into a new *regulated mortgage contract* or *home purchase plan* or vary the terms of an existing *regulated mortgage contract* or *home purchase plan* with the existing *mortgage lender* or *home purchase provider*; or
- (2) enter into a new *regulated mortgage contract* or *home purchase plan* with a new *mortgage lender* or *home purchase provider*;

the existing *mortgage lender* or *home purchase provider* should not (for example, by offering less favourable interest rates or other terms) take advantage of the *customer's* situation or treat the *customer* any less favourably than it would treat other *customers* with similar characteristics. To do so may be relied on as tending to show contravention of *Principle 6* (Customers' interests).

Annex E

Amendments to the Supervision manual (SUP)

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

16 Annex 18BG

**NOTES FOR COMPLETION OF
THE RETAIL MEDIATION ACTIVITIES RETURN ('RMAR')**

...

Section G: Training & Competence ('T&C')

...

Section G: guide for completion of individual fields

...	
What types of advice were provided?	For each type of advice, the <i>firm</i> should indicate whether or not staff have provided advice on that basis / business type. <u>In relation to their <i>home finance mediation activities</i>, firms are not required by <i>MCOB 4.4A</i> to use a label to describe the service they provide to <i>customers</i>. In filling out this section they should simply answer 'no' for each category relating to their <i>home finance mediation activities</i>.</u>
...	
Independent (whole of market plus option of fee-only)	To hold itself out as acting independently, a <i>firm</i> carrying on <i>home finance mediation activity</i> must consider products from across the whole of the market, and offer its clients the opportunity to pay by fee (<i>MCOB 4.3.7R</i>).
...	

Annex F

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, striking through indicates deleted text.

5.3 Reference to other sourcebooks or manuals

...

Mortgages: Conduct of business sourcebook

...

5.3.8 *MCOB* 1.2.10R provides that *MCOB* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for *MCOB* 2.2 (Clear, fair and not misleading communication); and *MCOB* 3 (Financial promotion) ~~and to a limited extent *MCOB* 4.4 (Initial disclosure requirements).~~

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

4.4 What is a regulated mortgage contract?

...

Type of lending

- 4.4.11 G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a ~~secured bridging loan~~ bridging loan, a secured credit card facility and *regulated lifetime mortgage contracts* under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.