

**CROWDFUNDING AND THE PROMOTION OF NON-READILY REALISABLE
SECURITIES INSTRUMENT 2014**

Powers exercised

- A. The Financial Conduct 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) the following sections of the Act:
- (a) section 137A (FCA’s general rule-making power);
 - (b) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (c) section 137R (Financial promotion);
 - (d) section 137T (General supplementary powers); and
 - (e) section 139A (FCA’s power to give guidance); and
- (2) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook;
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2014.

Amendments to the FCA Handbook

- D. The modules of the FCA’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).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Client Assets sourcebook (CASS)	Annex E
Supervision manual (SUP)	Annex F

Citation

- E. This instrument may be cited as the Crowdfunding and the Promotion of Non-Readily Realisable Securities Instrument 2014.

By order of the Board of the Financial Conduct Authority
27 February 2014

Editor's Note: This instrument takes account of the changes made in the Unregulated Collective Investment Schemes and Close Substitutes Instrument 2013 (FCA 2013/46), and proposed in the Review of the client assets regime for investment businesses (CP13/5) and the Detailed proposals for the FCA regime for consumer credit CP13/10.

Annex A

Amendments to the Glossary of definitions

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

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

*non-readily
realisable
security* a security which is not any of the following:

- (a) a *readily realisable security*;
- (b) a *packaged product*;
- (c) a *non-mainstream pooled investment*.

*loaned
funds* (in *IPRU(INV)*) any funds that have been provided to borrowers under a *P2P agreement* through an *operator of an electronic system in relation to lending*.

Amend the following as shown.

*designated
investment* a security or a contractually-based investment (other than a *funeral plan contract* and a right to or interest in a *funeral plan contract*), that is, any of the following *investments*, specified in Part III of the *Regulated Activities Order* (Specified Investments), a *P2P agreement*, and a *long-term care insurance contract* which is a *pure protection contract*:

...

*designated
investment
business* any of the following activities, specified in Part II of the *Regulated Activities Order* (Specified Activities), which is carried on by way of business:

...

- (db) *operating an electronic system in relation to lending* (article 36H) but only in relation to facilitating a person becoming a lender under a *P2P agreement* and in relation to the supplemental activities in article 36H(3)(a), (b) and (d);

- ...
- P2P agreement*
- (a) (in relation to a borrower) in accordance with article 36H of the *Regulated Activities Order*, an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which the borrower is an *individual* and either:
- (a) the lender provides credit (within that meaning) of less than or
- (i) equal to £25,000; or
- (b) the agreement is not entered into by the borrower wholly or
- (ii) predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.
- (b) (in relation to a lender) in accordance with article 36H of the *Regulated Activities Order*, an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning of article 60L of the *Regulated Activities Order*) and in relation to which either the lender is an *individual*, or if the lender is not an *individual*, the borrower is an *individual* and either:
- (i) the lender provides credit (within that meaning) of less than or equal to £25,000; or
- (ii) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.
- participant firm*
- (1) (except in *FEES 1* and *FEES 6*) a *firm* or a *member* other than:
- ...
- (j) ... ;
- (k) ... ;
- (l) an operator of an electronic system in relation to lending in respect of operating the system.
- ...

Annex B

**Amendments to the Senior Management Arrangements, Systems and Controls
sourcebook (SYSC)**

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

4.1.8 G ...

Operators of electronic systems in relation to lending: arrangements to administer loans in the event of platform failure

4.1.8A R An operator of an electronic system in relation to lending must take reasonable steps to ensure that arrangements are in place to ensure that P2P agreements facilitated by it will continue to be managed and administered, in accordance with the contract terms, if at any time it ceases to carry on the activity of operating an electronic system in relation to lending.

4.1.8B R Any arrangements made under SYSC 4.1.8AR must be notified to lenders under P2P agreements:

- (1) when such arrangements are made; or
- (2) if later, when the lender first becomes a lender under a P2P agreement with that operator; or
- (3) if the arrangements are changed, when that change is made; and
- (4) if the arrangement involves another firm taking over the management and administration of P2P agreements if the operator ceases to operate the electronic system in relation to lending, the notification to lenders must inform lenders of the identity of the firm with which the arrangements have been made and how that firm will hold the lenders' money.

4.1.8C G Arrangements to ensure P2P agreements facilitated by the firm continue to be managed and administered may include:

- (1) entering into an arrangement with another firm to take over the management and administration of P2P agreements if the operator ceases to operate the electronic system in relation to lending; or
- (2) holding sufficient collateral in a segregated account to cover the cost of management and administration while the loan book is wound down; or
- (3) entering into an arrangement for another firm to act as guarantor for the P2P agreements which includes a legally enforceable

arrangement to meet the costs of the guarantee in full; or

- (4) managing the loan book in a way that ensures that income from *P2P agreements* facilitated by the *firm* is sufficient to cover the costs of managing and administering those agreements during the winding down process, taking into account the reduction of the loan pool and fee income from it.

4.1.8D G When designing its arrangements, a *firm* should take into account insolvency law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place.

Operators of electronic systems in relation to lending: title transfer

4.1.8E R An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to *P2P agreements*.

...

TP2: Firms other than common platform firms, insurers, managing agents and the Society

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: Coming into force
...					
<u>2.4 [FCA]</u>	<u>SYSC 4.1.8AR to 4.1.8ER and 4.1.9AR</u>	<u>R</u>	<u>The <i>rules</i> listed in column (2) do not apply to an <i>operator of an electronic system in relation to lending</i> who holds an <i>interim permission</i>.</u>	<u>From 1 April 2014 to 30 September 2014</u>	<u>1 April 2014</u>

Annex C

**Amendments to the Interim Prudential sourcebook for Investment Businesses
(IPRU(INV))**

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

Transitional Provisions

1	Table Transitional provisions applying to IPRU(INV)				
(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
...					
<u>10</u>	<u>IPRU(INV) 12</u>	<u>R</u>	<u>IPRU(INV) 12 does not apply to a firm with an interim permission</u>	<u>Indefinitely</u>	<u>1 April 2014</u>
<u>11</u>	<u>IPRU(INV) 12.2.6R(1)</u>	<u>R</u>	<u>The amount is replaced with £20,000</u>	<u>From 1 April 2014 to 31 March 2017</u>	<u>1 April 2014</u>
<u>12</u>	<u>IPRU(INV) 12.3.5R</u>	<u>R</u>	<u>b = items 1,4 and 5 in the Table of items which must be deducted in arriving at a firm's financial resources (see IPRU(INV) 12.3.3 R)</u>	<u>From 1 April 2014 to 31 March 2017</u>	<u>1 April 2014</u>

Insert the following new chapter after Chapter 11. The text is all new and is not underlined.

12 Financial resources requirements for operators of electronic systems in relation to lending.

12.1 Application and purpose

Application

- 12.1.1 R This chapter applies to an operator of an electronic system in relation to lending.

Purpose

- 12.1.2 G This chapter amplifies the *threshold condition 2D* (Appropriate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement. This chapter also builds on *Principle 4* which requires a *firm* to maintain adequate financial resources by setting out appropriate requirements for a *firm* according to what type of *firm* it is.
- 12.1.3 G Prudential standards have an important role in minimising the risk of harm to consumers by requiring a *firm* to behave prudently in monitoring and managing business and financial risks.
- 12.1.4 G More generally, having adequate financial resources gives the *firm* a degree of resilience and some indication to consumers of creditworthiness, substance and the commitment of its owners. The *rules* in this chapter aim to ensure that a *firm* has financial resources which can provide cover for operational and compliance failures and pay redress, as well as reducing the possibility of a shortfall in funds and providing a cushion against disruption if the *firm* ceases to trade.

Relevant accounting principles

- 12.1.5 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its *annual financial statements* unless a *rule* requires otherwise.

Actions for damages

- 12.1.6 R A contravention of the *rules* in this chapter does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

12.2 Financial resources requirements

General solvency requirement

- 12.2.1 R A *firm* must at all times be able to meet its liabilities as they fall due.

General financial resource requirement

- 12.2.2 R A *firm* must ensure that at all times its *financial resources* are not less than its *financial resources requirement*.

Financial resources requirement: firms carrying on other regulated activities

- 12.2.3 R The *financial resources requirement* for a *firm* carrying on one or more *regulated activities* in addition to *operating an electronic system in relation*

to lending, is the higher of:

- (1) the *financial resources requirement* which is applied by this chapter; and
- (2) the financial resources or own funds requirement which is applied by another *rule* or by directly applicable legislation of the *EU* to the *firm*.

Financial resources requirement

- 12.2.4 R On its *accounting reference date* in each year, a *firm* must calculate:
- (1) the total value of *loaned funds* outstanding on that date; and
 - (2) the sum of:
 - (a) 0.2% of the first £50 million of that total value;
 - (b) 0.15% of the next £200 million of that total value;
 - (c) 0.1% of the next £250 million of that total value; and
 - (d) 0.05% of any remaining total value.
- 12.2.5 R The total value of *loaned funds* outstanding is the total amount of funds that are currently being provided to borrowers under *P2P agreements* through an *operator of an electronic system in relation to lending*.
- 12.2.6 R The *financial resources requirement* for a *firm* to which this chapter applies is the higher of:
- (1) £50,000; and
 - (2) the sum calculated in accordance with *IPRU(INV) 12.2.4R(2)* for the period until (subject to *IPRU(INV) 12.2.9R*) its next *accounting reference date*.
- 12.2.7 R To determine a *firm's financial resources requirement* for the period beginning on the date on which it obtains a *Part 4A permission* and ending on the day before its next *accounting reference date*, the *firm* must carry out the calculation in *IPRU(INV) 12.2.4R(2)* on the basis of the total value of *loaned funds* the *firm* projects will be outstanding on the *day* before its next *accounting reference date*.

Determining the financial resources requirement

12.2.8 G If the *firm* has 30,000 individuals each lending £100,000, the total value of the firm's *loaned funds* outstanding is £3,000,000,000. If the *firm* does not carry on any other *regulated activity* to which another higher financial resources or own funds requirement applies, its *financial resources requirement* is £1,900,000. This is calculated as follows:

- (1) $0.2\% \times £50,000,000 = £100,000$;
- (2) $0.15\% \times £200,000,000 = £300,000$;
- (3) $0.1\% \times £250,000,000 = £250,000$;
- (4) $0.05\% \times £2,500,000,000 = £1,250,000$.

Recalculating the financial resources requirement

12.2.9 R If the *firm* experiences a greater than 25% increase in the total value of *loaned funds* outstanding compared to the value used in its last *financial resources requirement* calculation, it must recalculate its *financial resources requirement* using the higher total value of *loaned funds* outstanding.

12.2.10 R A *firm* must notify the FCA of any change, or any likely change, in its *financial resources requirement* within 14 days of that change, or it becoming aware that the change is likely, whichever is the earlier.

12.3 Calculation of financial resources

12.3.1 R (1) A *firm* must at all times have available the amount and type of *financial resources* required by this chapter (see *IPRU(INV)* 12.3.2R).

(2) In arriving at its calculation of its *financial resources*, a *firm* must deduct certain items (see *IPRU(INV)* 12.3.3R).

12.3.2 R Table: Items which are eligible to contribute to the *financial resources* of a *firm*

	Item	Additional explanation
1.	Share capital	This must be fully paid and may include:
		(1) ordinary <i>share</i> capital; or
		(2) preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).

	Item	Additional explanation	
2.	Capital other than <i>share</i> capital (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i> :	
		(1)	capital account, that is the account:
		(a)	into which capital contributed by the <i>partners</i> is paid; and
		(b)	from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:
			(i) he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i> ; or
			(ii) the <i>partnership</i> is otherwise dissolved or wound up; and
		(2)	current accounts according to the most recent financial statement.
		For the purpose of the calculation of <i>financial resources</i> , in respect of a <i>defined benefit occupational pension scheme</i> :	
		(1)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;
		(2)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one financial year.
3.	Reserves (Note 1)	These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i> .	
		For the purposes of calculating <i>financial resources</i> , a <i>firm</i> must make the following adjustments to its reserves, where appropriate:	

	Item	Additional explanation
		(1) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;
		(2) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
		(3) in respect of a <i>defined benefit occupational pension scheme</i> :
		(a) a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;
		(b) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one financial year.
4.	Interim net profits (Note 1)	If a <i>firm</i> seeks to include interim net profits in the calculation of its <i>financial resources</i> , the profits have, subject to Note 1, to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.
5.	Revaluation reserves	
6.	Subordinated loans/debt	Subordinated loans/debt must be included in <i>financial resources</i> on the basis of the provisions in this chapter that apply to subordinated loans/debt.
Note:		
1	Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.	

12.3.3 R Table: Items which must be deducted in arriving at *financial resources*

1	<i>Investments in own shares</i>
2	<i>Investments in subsidiaries</i> (Note 1)

3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)
Notes	<p>1. <i>Investments in subsidiaries</i> are the full balance sheet value.</p> <p>2. Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.</p> <p>3. The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the capital resources are being computed.</p>

Subordinated loans/debt

- 12.3.4 R A subordinated loan/debt must not form part of the *financial resources* of the *firm* unless it meets the following conditions:
- (1) it has an original maturity of:
 - (a) at least five years; or
 - (b) it is subject to five years' notice of repayment;
 - (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
 - (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm* and such event of default must not prejudice the subordination in (2);
 - (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
 - (5) the subordinated loan/debt must not become due and payable before its stated final maturity date except on an event of default complying with (3);
 - (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
 - (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;

- (8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms that provide for the conditions set out in this *rule*; and
- (9) the loan/debt must be unsecured and fully paid up.

12.3.5 R When calculating its *financial resources*, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

a - b		
where:		
a	=	Items 1 -5 in the table of items which are eligible to contribute to a <i>firm's financial resources</i> (see <i>IPRU(INV)</i> 12.3.2R)
b	=	Items 1- 5 in the table of items which must be deducted from a <i>firm's financial resources</i> (see <i>IPRU(INV)</i> 12.3.3R)

12.3.6 G *IPRU(INV)* 12.3.5R can be illustrated as follows:

(1)

Share Capital	£20,000
Reserves	£30,000
Subordinated loans/debts	£10,000
Intangible Assets	£10,000
As subordinated loans/debts (£10,000) are less than the total of share capital + reserves – intangible assets (£40,000) the <i>firm</i> need not exclude any of its subordinated loans/debts pursuant to <i>IPRU(INV)</i> 12.3.5R. Therefore, total <i>financial resources</i> will be £50,000.	

(2)

Share Capital	£20,000
Reserves	£30,000
Subordinated loans/debts	£60,000

Intangible Assets	£10,000
As subordinated loans/debts (£60,000) exceed the total of share capital + reserves – intangible assets (£40,000) by £20,000, the <i>firm</i> should exclude £20,000 of its subordinated loans/debts when calculating its <i>financial resources</i> . Therefore, total <i>financial resources</i> will be £80,000.	

12.4 Notification requirements

12.4.1	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<i>IPRU(INV)</i> 12.2.10R	A change or likely change, in a <i>firm's financial resources requirement</i> .	The <i>financial resources requirement</i> as recalculated	A greater than 25% increase in the <i>firm's</i> total value of the amount of <i>loaned funds</i> outstanding compared to the value used in its last <i>financial resources requirement</i> calculation	Within 14 <i>days</i> of the trigger event

Appendix 1: Glossary of terms for IPRU(INV) 12

If a defined term does not appear in the *IPRU(INV)* glossary below, the definition appearing in the main Handbook Glossary applies.

financial resources a *firm's* financial resources as calculated in accordance with *IPRU(INV)* 12.3 (Calculation of financial resources).

financial resources requirement an amount of *financial resources* that a *firm* must hold as set out in *IPRU(INV)* 12.2 (Financial resources requirements).

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

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

2.2.-1 R ...

- (2) This section applies in relation to other *designated investment business* carried on for a *retail client*:
- (a) in relation to a *derivative*, a *warrant*, a *non-readily realisable security*, a *P2P agreement*, or *stock lending activity*, but as regards the matters in *COBS 2.2.1R(1)(b)* only; and

...

...

4.7.5A G ...

Warrants and derivatives

4.7.6 R ...

...

Non-readily realisable securities

4.7.7 R (1) Unless permitted by *COBS 4.7.8R*, a *firm* must not *communicate* or *approve a direct-offer financial promotion* relating to a *non-readily realisable security* to or for *communication* to a *retail client* without the conditions in (2) and (3) being satisfied.

(2) The first condition is that the *retail client* recipient of the *direct-offer financial promotion* is one of the following:

- (a) certified as a ‘high net worth investor’ in accordance with *COBS 4.7.9R*;
- (b) certified as a ‘sophisticated investor’ in accordance with *COBS 4.7.9R*;
- (c) self-certified as a ‘sophisticated investor’ in accordance with *COBS 4.7.9R*;
- (d) certified as a ‘restricted investor’ in accordance with *COBS 4.7.10R*.

- (3) The second condition is that *firm* itself or the *person* who will *arrange* or *deal* in relation to the *non-readily realisable security* will comply with the *rules* on appropriateness (see *COBS 10*) or equivalent requirements for any application or order that the *person* is aware, or ought reasonably to be aware, is in response to the *direct offer financial promotion*.

4.7.8 R A *firm* may *communicate* or *approve* a *direct-offer financial promotion* relating to a *non-readily realisable security* to or for *communication* to a *retail client* if:

- (1) the *firm* itself will comply with the *suitability rules (COBS 9)* in relation to the *investment* promoted; or
- (2) the *retail client* has confirmed before the promotion is made that they are a *retail client* of another *firm* that will comply with the *suitability rules (COBS 9)* in relation to the *investment* promoted; or
- (3) the *retail client* is a *corporate finance contact* or a *venture capital contact*.

4.7.9 R A certified high net worth investor, a certified sophisticated investor or a self-certified sophisticated investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the terms set out in the applicable rule listed below, substituting “non-readily realisable securities” for “non-mainstream pooled investments”:

- (1) certified high net worth investor: *COBS 4.12.6R*;
- (2) certified sophisticated investor: *COBS 4.12.7R*;
- (3) self-certified sophisticated investor: *COBS 4.12.8R*.

4.7.10 R A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

<u>“RESTRICTED INVESTOR STATEMENT</u>	
<u>I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:</u>	
<u>(a)</u>	<u>in the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities; and</u>
<u>(b)</u>	<u>I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.</u>

<u>Net assets for these purposes do not include:</u>	
(a)	<u>the property which is my primary residence or any money raised through a loan secured on that property;</u>
(b)	<u>any rights of mine under a qualifying contract of insurance; or</u>
(c)	<u>any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled.</u>
<u>I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.</u>	
<u>Signature:</u>	
<u>Date:”</u>	

...

- 10.1.2 R This chapter applies to a *firm* which *arranges* or *deals* in relation to a *non-readily realisable security*, *derivative* or *warrant* with or for a *retail client* and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.

...

- 14.3.1 R This section applies to a *firm* in relation to:
- (1) *MiFID* or *equivalent third country business*; and
 - (2) the following *regulated activities* when carried on for a *retail client*:
 - (a) making a *personal recommendation* about a *designated investment*; or
 - (b) *managing investments* that are *designated investments*; or
 - (c) *arranging*, (*bringing about*) or *executing a deal* in a *warrant*, *non-readily realisable security* or *derivative*; or
 - (d) *engaging in stock lending activity*; or
 - (e) *operating an electronic system in relation to lending*, but only in relation to facilitating a person becoming a lender under a *P2P agreement*.

...

P2P agreements

- 14.3.7A G Examples of information a firm should provide to explain the specific nature and risks of a P2P agreement include:
- (1) expected and actual default rates in line with the requirements in COBS 4.6 on past and future performance;
 - (2) a summary of the assumptions used in determining expected future default rates;
 - (3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the firm considers the borrower eligible for a P2P agreement;
 - (4) where lenders have the choice to invest in specific P2P agreements, details of the creditworthiness assessment of the borrower carried out;
 - (5) whether the P2P agreement benefits from any security and if so, what;
 - (6) a fair description of the likely actual return, taking into account fees, default rates and taxation;
 - (7) an explanation of how any tax liability for lenders arising from investment in P2P agreements would be calculated;
 - (8) an explanation of the firm's procedure for dealing with a loan in late payment or default;
 - (9) the procedure for a lender to access their money before the term of the P2P agreement has expired;
 - (10) an explanation of what would happen if the firm fails, including confirmation that there is no recourse to the Financial Services Compensation Scheme.

...

TP2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
<u>2.-2</u>	<u>COBS, with the exception of</u>	<u>R</u>	<u>The rules listed in column (2) do not apply to an operator of an electronic</u>	<u>From 1 April 2014 to 30 September</u>	<u>1 April 2014</u>

	<u>COBS 15</u>		<u>system in relation to lending who holds an interim permission</u>	<u>2014</u>	
...					
<u>2.-1A</u>	<u>COBS 4.7.7R to COBS 4.7.10R</u>	<u>R</u>	<u>A firm may comply with the rules in COBS 4.7 as they were in force at 31 March 2014</u>	<u>From 1 April 2014 to 30 September 2014</u>	<u>1 April 2014</u>
...					
<u>2.4-A</u>	<u>COBS 10.1.2R</u>	<u>R</u>	<u>A firm may comply with the rules in COBS 10 as they were in force at 31 March 2014</u>	<u>From 1 April 2014 to 30 September 2014</u>	<u>1 April 2014</u>
...					

Annex E

Amendments to the Client Assets sourcebook (CASS)

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

TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4)	(5) Transitional provision	(6) Transitional provision: dates in force	(7) Handbook provision: coming into force
<u>-1</u>	<u>CASS 1A</u>	<u>R</u>		<u>CASS 1A does not apply to an operator of an electronic system in relation to lending who holds an interim permission.</u>	<u>From 1 April 2014 to 30 September 2014</u>	<u>1 April 2014</u>
...						
<u>11</u>	<u>CASS 7 and CASS 7A</u>	<u>R</u>		<u>The rules listed in column (2) do not apply to an operator of an electronic system in relation to lending who holds an interim permission.</u>	<u>From 1 April 2014 to 30 September 2014</u>	<u>1 April 2014</u>
<u>12</u>	<u>CASS 7 and 7A</u>	<u>R</u>	(1)	<u>The rules in column (2) apply to an operator of an electronic system in relation to lending where the FCA or PRA has granted an application made by the firm for Part 4A permission and an interim permission the firm was treated as having has ceased to have effect.</u>	<u>Indefinitely</u>	<u>1 April 2014</u>
			(2)	<u>The rules in column (2) apply in relation to money held by the firm on the date on which the written notice given by the FCA or PRA under section 55V(5)</u>		

			<p><u>of the Act takes effect, to the extent that such money was received, or is held in the course of or in connection with the operation of an electronic system in relation to lending carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be money which was received, or held in the course of or in connection with the operation of an electronic system in relation to lending).</u></p>		
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Annex F

Amendments to the Supervision manual (SUP)

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

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/ period	due date
...				
RAG 4	<ul style="list-style-type: none"> • managing investments • establishing, operating or winding up a collective investment scheme • establishing, operating or winding up a stakeholder pension scheme • establishing, operating or winding up a personal pension scheme • managing an <i>AIF</i> • managing a <i>UCITS</i> • <u>operating an electronic system in relation to lending (FCA- authorised persons only)</u> 	<p><i>SUP</i> 16.12.14R</p> <p><i>SUP</i> 16.12.15R or <i>SUP</i> 16.12.15B for <i>UK</i> <i>designated</i> <i>investment</i> <i>firms</i></p>	<p><i>SUP</i> 16.12.14R</p> <p><i>SUP</i> 16.12.16R or <i>SUP</i> 16.12.16AR for <i>UK</i> <i>designated</i> <i>investment</i> <i>firms</i></p>	<p><i>SUP</i> 16.12.14R <i>SUP</i> 16.12.17R</p>

...				

...

...

In the table in 16.12.15R, between the columns ‘IPRU(INV) Chapter 11...’ and ‘IPRU(INV) Chapter 13’, insert the following new column with the following entries in the appropriate places.

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

...	...	<u>IPRU(INV) Chapter 12</u>	...
<i>Annual report and accounts</i>	...	<u>No standard format (Note 13)</u>	...
...			
Balance sheet	...	<u>FSA029</u>	...
Income statement	...	<u>FSA030</u>	...
Capital adequacy	...	<u>FIN069</u>	...
...			
Client money and client assets	...	<u>FSA039</u>	...
...			
<u>Securitisation: trading book</u>	...		
<u>Information on P2P agreements</u>	...	<u>FIN070</u>	...

...

In the table in 16.12.16R after ‘FIN068’ and before Section A RMAR insert the following new rows.

16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm’s accounting reference date*, unless indicated otherwise.

<u>FIN069</u>						<u>Quarterly</u>
<u>FIN070</u>						<u>Quarterly</u>

In the table in 16.12.17R after FIN068 and before Section A RMAR insert the following new rows.

- 16.12.17 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency set out in *SUP* 16.12.16R, unless indicated otherwise.

<u>FIN069</u>				<u>20</u> <u>business</u> <u>days</u>		
<u>FIN070</u>				<u>20</u> <u>business</u> <u>days</u>		

...

16 Annex 24R

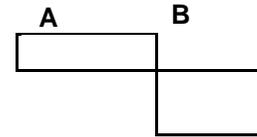
Data items for SUP 16.12R

After FIN068 add the following new data items FIN069 and FIN070, as shown on the following pages. The text is not underlined.

and £500m
£250m



- 18 Variable financial resources requirement
- 19 Total financial resources requirement



Financial resources test

- 20 Surplus/Deficit of financial resources



[FCA] FIN070: Information on Peer-to-Peer agreements

Note: Questions 7A and 12G: Loan terms must be reported in months

		A	B	C	D
		At start of the reporting period	New during the reporting period	Withdrawn during the reporting period	At end of the reporting period
1	Number of investors				
2	Amount invested into loans				
3	Proportion invested into unsecured loans over the reporting period				
4	Average interest rate net of charges and expected defaults over the reporting period				
5	Average expected default rate over the reporting period				
6	Average actual default rate over the reporting period				
7	Average term of new loans over the reporting period				
8	Do you operate a contingency fund?				
<p><i>If the answer to 8 is "yes" complete the answers to 9 and 10, otherwise go to question 11</i></p>					
9	Total amount held in the contingency fund at the end of the reporting period				
10	Amount held in the contingency fund as a proportion of total loans outstanding at the end of the reporting period				

11 Do you allow investors to choose from different loan categories which have different rates of return and expected default rates?

If the answer to 11 is "no" then do not complete the remainder of the form

If the answer to 11 is "yes" please complete the following information for the loan categories attracting the greatest amount of money, starting with the category raising the greatest amount of investment over the reporting period, up to a maximum of ten.

12 Loan categories

	A	B	C	D	E	F	G
	Total number of investors over the reporting period	Total amount invested over the reporting period	Proportion invested into unsecured loans over the reporting period	Average interest rate net of charges and expected defaults over the reporting period	Average expected default rate over the reporting period	Average actual default rate over the reporting period	Average term over the reporting period
1							
2							
...							
10							

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24R

After the notes for FIN068 add the following new notes. The text is not underlined.

FIN069: Financial resources requirements for operators of an electronic system in relation to lending**Introduction**

The purpose is to provide a framework for the collection of information required by the *FCA* as a basis for its supervision function. It also has the purpose to help the *FCA* monitor *firms'* capital adequacy and financial soundness. This data item is intended to reflect the underlying *financial resources requirements* contained in *IPRU(INV)* 12 (as they apply to an *operator of an electronic system in relation to lending*) and facilitates monitoring against the requirements set out there.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 2006, as appropriate, or the provisions of the *firm's* accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. Interpretive provisions of the *Handbook* apply to this guidance in the same way as they apply to the *Handbook*. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the *firm's* accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 2006 as appropriate) or IFRS.
- The data item should be provided on a solo basis (not on a consolidated basis).
- For a *sole trader*, only the assets and liabilities of the business should be included.
- The data item should be consistent in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory annual accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the *firm*. A data item is likely to give a misleading impression if a *firm* wrongly omits or includes a material item or presents a material item in the wrong way.
- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

Currency

You should report in sterling. Figures should be reported in 000s.

Data Elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

Description	Data Element	Guidance
Financial resources		
	1 to 14	The figures entered in this section should be consistent with those entered in FSA029 submitted for the same reporting period.
Qualifying ordinary <i>share</i> capital (excluding preference shares)	1 B	For a definition of this term, see <i>IPRU(INV)</i> 12.3.2R – Item 1 (1). This does not include the share premium account (see Data Element 5B).
Qualifying preference <i>share</i> capital	2 B	For a definition of this term, see <i>IPRU(INV)</i> 12.3.2R – Item 1 (2)
Eligible <i>limited liability partnership</i> member's capital, <i>sole traders</i> capital or <i>partnership</i> capital	3 B	For a definition of this term, see <i>IPRU(INV)</i> 12.3.2R – Item 2
Reserves	4 B	For a definition of this term, see <i>IPRU(INV)</i> 12.3.2R – Item 3. This figure does not include revaluation reserves (see Data Element 7B) and the share premium account (see Data Element 5B).
Share premium account	5 B	
Interim net profits	6 B	For a definition of this term, see <i>IPRU(INV)</i> 12.3.2R – Item 4
Revaluation reserves	7B	
Subordinated loans/debt	8 B	For a definition of this term, see <i>IPRU(INV)</i> 12.3.2R – Item 6 and <i>IPRU(INV)</i> 12.3.4R. Insert gross figure prior to any excess deductions (see <i>IPRU(INV)</i> 12.3.5R). Any subordinated loans/debt excess deduction will be inserted in Data Element 14A.
Less:		
<i>Investments</i> in own shares	9A	
<i>Investments</i> in subsidiaries	10 A	For a definition of this term, see <i>IPRU(INV)</i> 12.3.3R – Note 1
Intangible assets	11 A	For a definition of this term, see <i>IPRU(INV)</i> 12.3.3R – Note 2
Interim net losses	12 A	For a definition of this term, see <i>IPRU(INV)</i> 12.3.3R – Note 3
Excess <i>limited liability partnership</i> member's drawings	13 A	For a definition of this term, see <i>IPRU(INV)</i> 12.3.3R – Note 3
Excess subordinated loans/debt	14 A	Insert the figure which is calculated in accordance with <i>IPRU(INV)</i> 12.3.5R. For further guidance, please see <i>IPRU(INV)</i> 12.3.6G.
Total Deductions	15 B	The sum of cells 9A to 14A
<i>Financial resources</i>	16 B	The sum of cells 1B to 8B minus total deductions (15B).
Annual calculation of financial resources requirement		
Total amount of <i>loaned funds</i>	17 A	The <i>loaned funds</i> definition is any funds that have been provided to borrowers under a

		<i>P2P agreement through the operator of an electronic system in relation to lending. (See IPRU(INV) 12.2.5R and IPRU(INV) 12.2.8G). Check whether IPRU(INV) 12.2.7R or IPRU(INV) 12.2.9R should apply when calculating total amount of loaned funds outstanding.</i>
0.2% of first £50m of <i>loaned funds</i>	17 B	Insert the figure that equals 0.2% of the volume of <i>loaned funds</i> outstanding up to £50m. For further guidance, please see <i>IPRU(INV) 12.2.4R and IPRU(INV) 12.2.8G.</i>
0.15% of <i>loaned funds</i> between £50m and £250m	17 C	Insert the figure that equals 0.15% of the volume of <i>loaned funds</i> outstanding above £50m up to £250m. For further guidance, please see <i>IPRU(INV) 12.2.4R and IPRU(INV) 12.2.8G.</i>
0.1% of <i>loaned funds</i> between £250m and £500m	17 D	Insert the figure that equals 0.1% of the volume of <i>loaned funds</i> outstanding above £250m up to £500m. For further guidance, please see <i>IPRU(INV) 12.2.4R and IPRU(INV) 12.2.8G.</i>
0.05% of <i>loaned funds</i> above £500m	17 E	Insert the figure that equals 0.05% of the volume of <i>loaned funds</i> outstanding above £500m. For further guidance, please see <i>IPRU(INV) 12.2.4R and IPRU(INV) 12.2.8G.</i>
Variable financial resources requirement	18 A	The sum of cells 17B to 17E.
Total <i>financial resources requirement</i>	19 B	The higher of the base requirement <i>IPRU(INV) 12.2.4R(1)</i> or the variable financial resources requirement in Data Element 21A.
Financial resources test		
Surplus / deficit of financial resources	20 A	16 B – 19 B

FIN070: Information on P2P agreements

Introduction

The purpose of this data item is to provide a framework for the collection of information required by the *FCA* as a basis for its supervision activities. It will help the *FCA* monitor investor experience and alert us to problems or changes in the risk profile of the market as a whole.

Data Elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

Description	Data Element	Guidance
Total number of investors/ average returns		
Number of investors at the start of the period	1 A	The total number of investors registered with the platform who have funded loans at the start of the reporting period
New investors during the period	1 B	The number of new investors who register

		with the platform and fund loans over the reporting period
Number of investors withdrawing over the period	1 C	The number of investors who cancel their registration during the reporting period
Number of investors at the end of the period	1 D	The total number of investors registered with the platform who have funded loans as at the end of the reporting period
Amount invested at the start of the period	2 A	The total amount loaned as at the start of the reporting period
New money invested during the period	2 B	The amount of new money invested in loans during the reporting period
Money withdrawn during the period	2 C	The amount of money withdrawn from the platform by investors over the reporting period
Amount invested at the end of the period	2 D	The total amount loaned as at the end of the period
Proportion invested into unsecured loans over period	3 A	The proportion (expressed as a percentage to two decimal places) of the amount shown in 2 B accounted for by unsecured loans
Average interest rate net of charges and expected defaults over period	4 A	The average interest rate (to two decimal places) expected by all investors over the reporting period, net of all relevant charges and allowance for expected defaults. Do not make any deductions for tax not paid at source
Average expected default rate over period	5 A	The average expected default rate (to two decimal places) across all loans over the reporting period
Average actual default rate over period	6 A	The average default rate (to two decimal places) across all loans over the reporting period
Average term of new loans over the period	7A	The average term (in months) across all loans over the reporting period
Do you operate a contingency fund?	8A	Answer yes if you operate a contingency fund that aims to cover defaults
Answer the next two questions if you operate a contingency fund that aims to cover defaults		
Total amount held in the contingency fund at the end of the period	9 A	The total amount held in the contingency fund as at the end of the reporting period
Amount held in the contingency fund as a proportion of total loans outstanding at the end of the period	10 A	The amount held in the contingency fund as at the end of the reporting period expressed as a percentage (to two decimal places) of the total amount of outstanding loans
Do you allow investors to choose from different loan categories which have different rates of return and expected default rates?	11A	Answer yes if you allow investors to choose from different loan categories which have different rates of return and expected default rates
If you do not allow investors to choose from different loan categories which have different rates of return and expected default rates, do not provide any further answers If you do, please complete the following information for the loan categories attracting the greatest amount of money, starting with the category raising the greatest amount of investment over the period, up to a maximum of 10		
Total number of investors over the period	12A	The number of investors who fund this category of loans over the reporting period
Total amount invested over the period	12B	The amount of money invested in this category of loans during the reporting period

Proportion invested into unsecured loans over period	12C	The proportion (expressed as a percentage to two decimal places) of the amount shown in 12B accounted for by unsecured loans
Average interest rate net of charges and expected defaults over period	12D	The average interest rate (to two decimal places) expected by investors for this category of loans over the reporting period, net of all relevant charges and allowance for expected defaults. Do not make any deductions for tax not paid at source
Average expected default rate over period	12E	The average expected default rate (to two decimal places) for this category of loans over the reporting period
Average actual default rate over period	12F	The average default rate (to two decimal places) for this category of loans over the reporting period
Average term over the period	12G	The average term (in months) for this category of loans over the reporting period

...

TP 1 Transitional Provisions

...

TP 1.2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>12Y</u> [FCA]	<u>SUP 16.12.15R</u> but only in so far as it relates to <u>FIN069 (Capital adequacy)</u> , <u>FSA039 (Client money and client assets)</u> and <u>FIN070 (Information on P2P agreements)</u>	<u>R</u>	<u>The rule listed in column (2) does not apply to an operator of an electronic system in relation to lending.</u>	<u>From 1 April 2014 to 30 September 2014</u>	<u>1 April 2014</u>
<u>12Z</u> [FCA]	<u>SUP 16.12.15R</u> but only in so far as it relates to <u>annual report and accounts</u> ,	<u>R</u>	<u>The rule listed in column (2) does not apply to an operator of an electronic system in relation to lending who holds an</u>	<u>Indefinitely</u>	<u>1 April 2014</u>

	<u>FSA029 (Balance sheet), FSA030 (Income statement) and FIN069 (Capital adequacy)</u>		<i>interim permission.</i>		
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