CROWDFUNDING (AMENDMENT) 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 137R (Financial promotion);
(c) section 137T (General supplementary powers); and
(d) 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 4 August 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).

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Amendments to material outside the Handbook

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

Citation

F. This instrument may be cited as the Crowdfunding (Amendment) Instrument 2014.

By order of the Board of the Financial Conduct Authority
24 July 2014
Annex A

Amendments to the Glossary of definitions

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

advising on investments

(1) (except in SUP 10A (Approved Persons) and APER) the regulated activity, specified in article 53 of the Regulated Activities Order (Advising on investments), which is in summary: advising a person if the advice is:

... 

(b) advice on the merits of his doing any of the following (whether as principal or agent):

(i) buying, selling, subscribing for or underwriting a particular investment which is a security or relevant investment (that is, any designated investment (other than a P2P agreement), funeral plan contract, pure protecting contract, general insurance contract or right to or interests in a funeral plan contract); or 

... 

applicable asset

... 

(b) in relation to safeguarding and administering investments that is not MiFID business, acting as trustee or depositary of a UCITS, and/or acting as trustee or depositary of an AIF, a designated investment (other than a P2P agreement).

arranging (bringing about) deals in investments

the regulated activity, specified in article 25(1) of the Regulated Activities Order, which is in summary: making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is:

(a) a designated investment (other than a P2P agreement); or 

... 

credit

(3) (in relation to a credit-related regulated activity or operating an electronic system in relation to lending) includes a cash loan and any other form of financial accommodation, but an item entering into the total charge for credit is not treated as...
credit even though time is allowed for its payment.

(in accordance with section 22 of the Act (the classes of activity and categories of investments)) any of the following activities specified in Part 2 or 3A of the Regulated Activities Order (Specified Activities):

(l) operating an electronic system in relation to lending (article 36H), but (other than in FEES and SUP) only insofar as it relates to a borrower or prospective borrower under a P2P agreement;

…

designated investment business

any of the following activities:

(b) dealing in investments as agent (article 21) but only in relation to designated investments (other than P2P agreements);

…

c) arranging (bringing about) deals in investments (article 25(1)), but only in relation to designated investments (other than P2P agreements);

(d) making arrangements with a view to transactions in investments (article 25(2)), but only in relation to designated investments (other than P2P agreements);

(db) operating an electronic system in relation to lending (article 36H), but only in relation to facilitating a person becoming a lender insofar as it relates to a lender or
prospective lender under a \textit{P2P agreement} and in relation to the supplemental activities in article 36H(3)(a), (b) and (d);

(e) \textit{managing investments} (article 37), but only if the assets consist of or include (or may consist of or include) \textit{designated investments} (other than \textit{P2P agreements}); …

(f) \textit{safeguarding and administering investments} (article 40), but only if the assets consist of or include (or may consist of or include) \textit{designated investments} (other than \textit{P2P agreements}); …

(m) \textit{advising on investments} (article 53), but only in relation to \textit{designated investments} (other than \textit{P2P agreements}); …

\textit{making arrangements with a view to transactions in investments} the \textit{regulated activity}, specified in article 25(2) of the \textit{Regulated Activities Order} (Arranging deals in investments …):

(a) \textit{a designated investment} (other than a \textit{P2P agreement}); or

…

\textit{managing investments} the \textit{regulated activity}, specified in article 37 of the \textit{Regulated Activities Order} (Managing investments) … if:

(a) the assets consist of or include any \textit{security} or \textit{contractually based investment} (that is, any \textit{designated investment} (other than a \textit{P2P agreement})…

…

\textit{option} the \textit{investment}, specified in article 83 of the \textit{Regulated Activities Order} (Options), which is an option to acquire or dispose of:

(a) \textit{a designated investment} (other than a \textit{P2P agreement}, an option or …

…
the regulated activity, specified in article 40 of the Regulated Activities Order (Safeguarding and administering investments), which is in summary: the safeguarding of assets belonging to another and the administration of those assets, or arranging for one or more other persons to carry on that activity, where:

(a) the assets consist of or include any security or contractually based investment (that is, any designated investment (other than a P2P agreement), funeral plan contract or right to or interest in a funeral plan contract); or

(b) the arrangements for their safeguarding and administration are such that the assets may consist of or include designated investments (other than P2P agreements), and either the assets have at any time since 1 June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which designated investments (other than P2P agreements) would be safeguarded and administered.
Annex B

Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Annex 1 Detailed application of SYSC

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<table>
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<tr>
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<th>Application of the common platform requirements (SYSC 4 to 10)</th>
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<tr>
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<tr>
<td>2.13A R</td>
<td>SYSC 6.3 only applies to a firm in relation to carrying on a credit-related regulated activity, or operating an electronic system in relation to lending, to which the Money Laundering Regulations also apply.</td>
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<table>
<thead>
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<th>Part 3</th>
<th>Tables summarising the application of the common platform requirements to different types of firm</th>
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<tr>
<th>Provision SYSC 6 6.3.1R</th>
<th>COLUMN A Application to a common platform firm other than to a UCITS investment firm</th>
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<th>COLUMN B Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs</th>
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<tbody>
<tr>
<td></td>
<td>Rule</td>
<td>Rule</td>
<td>Rule</td>
<td>For firms carrying on a credit-related regulated activity, or</td>
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<td>Regulation</td>
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<tr>
<td>SYSC 6.3.2G</td>
<td>Guidance</td>
<td>Guidance</td>
<td>Guidance</td>
<td>For firms carrying on a credit-related regulated activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</td>
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<td>SYSC 6.3.3R</td>
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<td>For firms carrying on a credit-related regulated activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</td>
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<td>SYSC 6.3.4 G</td>
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<td>SYSC 6.3.5G</td>
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<tr>
<td>SYSC 6.3.6G</td>
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supervisory authority for the purposes of those regulations. (FCA Handbook only)

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<tr>
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<td>For firms carrying on a credit-related regulated activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</td>
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<tr>
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<th>Rule</th>
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<td>For firms carrying on a credit-related regulated activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</td>
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<table>
<thead>
<tr>
<th>SYSC 6.3.9R</th>
<th>Rule</th>
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<tr>
<td></td>
<td>For firms carrying on a credit-related regulated activity, or operating an electronic system in relation to lending, applies only where the Money</td>
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</table>
Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)

<table>
<thead>
<tr>
<th>SYSC 6.3.10G</th>
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<th>Guidance</th>
<th>Guidance</th>
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</table>
|              |          |          | **Guidance**
|              |          |          | For *firms* carrying on a *credit-related regulated activity, or operating an electronic system in relation to lending*, applies only where the *Money Laundering Regulations* apply to the *firm*. Guidance does not apply to a *firm* for which a professional body listed in Schedule 3 to the *Money Laundering Regulations*, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only) |

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<tr>
<th>SYSC 6.3.11G</th>
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Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

9 Suitability (including basic advice)

... 

9.1.1 G This chapter applies to a firm which makes a personal recommendation in relation to a designated investment (other than a P2P agreement).

... 

14 Providing product information to clients 

... 

14.3.1 R This section applies to a firm in relation to:

(1) ... 

(2) the following regulated activities when carried on for a retail client:

(a) making a personal recommendation about a designated investment (other than a P2P agreement); or

(b) managing investments that are designated investments (other than P2P agreements); or

...
Annex D

Amendments to the Supervision manual (SUP)

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

12 Appointed representatives

12.2.7 G (1) The Appointed Representatives Regulations … describe, among other things, the business for which an appointed representative may be exempt or to which sections 20(1) and (1A) and 23(1A) of the Act may not apply, which is business which comprises any of:

... 

(b) arranging (bringing about) deals in investments (article 25(1) of the Regulated Activities Order) (that is in summary, deals in a designated investment (other than a P2P agreement) …

(c) making arrangements with a view to transactions in investments (article 25(2) of the Regulated Activities Order) (that is in summary, transactions in a designated investment (other than a P2P agreement) …

... 

(i) advising on investments (article 53 of the Regulated Activities Order) (that is in summary, on any designated investment (other than a P2P agreement) …

... 

12.5.2 G (2) Under the Appointed Representative Regulations, an appointed representative is treated as representing other counterparties if, broadly, it:

... 

(d) assists in the administration and performance of a contract of insurance (article 39A of the Regulated Activities Order); where an “investment transaction” means a transaction to buy, sell, subscribe for or underwrite a security or designated investment (other than a P2P agreement) …

...
Annex E

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Treating complainants fairly

... 

1.10.1 R  ...

(2) If a firm has permission to carry on only credit-related regulated activities or operating an electronic system in relation to lending and has revenue arising from those activities that is less than or equal to £5,000,000 a year, the firm must provide the FCA with a complete report concerning complaints received from eligible complainants once a year.

...

1.10.4A R  ...

If a firm has permission to carry on only credit-related regulated activities or operating an electronic system in relation to lending and has revenue arising from those activities that is less than or equal to £5,000,000 a year, the relevant reporting period is the year immediately following the firm’s accounting reference date.

...

1.10A.1 R  ...

(1A) (a) This paragraph applies to a firm which:

(i) has permission to carry on only credit-related regulated activities or to operate an electronic system in relation to lending; and

(ii) has revenue arising from those activities that is less than or equal to £5,000,000 a year.

...

In TP 1.1, paragraphs 33 and 34, for every reference to “credit-related regulated activities” substitute a reference to “credit-related regulated activities or operating an electronic system in relation to lending”.

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Annex F

Amendments to the Consumer Credit sourcebook (CONC)

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

1 Application and purpose and guidance on financial difficulties

... 

1.2.1 R CONC applies:

(1) unless otherwise stated in, or in relation to, a rule, to a firm:

(a) except where (b) applies, with respect to carrying on credit-related regulated activities;

(b) with respect to operating an electronic system in relation to lending in relation to a borrower or prospective borrower under a P2P agreement; and

(2) with respect to activities connected activities, unless otherwise stated in, or in relation to, a rule to the activities in (a) and (b).

...

1.2.4 G The credit-related regulated activities comprise consumer credit lending, credit broking, debt counselling, debt adjusting, debt administration, debt collecting, providing credit information services, providing credit references, operating an electronic system in relation to lending (but, other than in FEES and SUP, only insofar as it relates to a borrower or prospective borrower under a P2P agreement) and consumer hiring.

In CONC 12.1, for every reference to “credit-related regulated activities” substitute a reference to “credit-related regulated activities or operating an electronic system in relation to lending”.
Annex G

Amendments to the Listing Rules (LR)

In this Annex, underlining indicates new text.

App 1.1.1

... option the investment, specified in article 83 of the Regulated Activities Order (Options), which is an option to acquire or dispose of:

(a) a designated investment (other than a P2P agreement, an option or ...
Annex H

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

…

2.3.2 G …

(4) The business element for all other regulated activities is that the activities are carried on by way of business. This applies to the activities of effecting or carrying out contracts of insurance, certain activities relating to the Lloyd's market, entering as provider into a funeral plan contract, entering into a home finance transaction or administering a home finance transaction, operating a dormant account fund, and credit-related regulated activities and operating an electronic system in relation to lending carried on by persons other than not-for-profit bodies.