

CONSUMER CREDIT (CREDIT BROKING) 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) section 137A (The FCA’s general rules);
 - (2) section 137R (Financial promotion rules);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- 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 2 January 2015.

Amendments to the FCA Handbook

- D. The Supervision manual (SUP) is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Consumer Credit (Credit Broking) Instrument 2014.

By order of the Board of the Financial Conduct Authority
28 November 2014

Annex A

Amendments to the Supervision manual (SUP)

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

16.12 Integrated Regulatory Reporting

...

16.12.3 R ...

(3) Paragraph (2) does not apply to:

(a) ...

(aa) data item CCR008 from RAG 12 , where SUP 16.3.6R to SUP 16.3.10G will apply; (FCA Handbook only)

(b) ...

...

Regulated Activity Group 12

...

16.12.29C R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm’s accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of data item	Data item (note 1)	Frequency		Submission deadline
...				
Key data (note 9)	...			
<u>Credit broking websites (note 10)</u>	<u>CCR008</u>	<u>Quarterly: 1 January, 1 April, 1 July and 1 October</u>	<u>Quarterly: 1 January, 1 April, 1 July and 1 October</u>	<u>30 business days</u>
...				

<p>Note 10</p>	<p><u>This data item applies to a firm that carries on credit broking where a fee or charge is or may become payable by a customer in connection with the credit broking activities. Firms are also reminded of the requirement to check the accuracy of standing data (including trading name(s) of the firm and website address) and to report changes to the appropriate regulator under SUP 16.10.4R and the requirement to give the appropriate regulator reasonable advance notice of a change in any business name under which the firm carries on a regulated activity or ancillary activity either from an establishment in the United Kingdom or with or for clients in the United Kingdom under SUP 15.5.1R.</u></p>
----------------	---

...

16 Annex 38AR Data Items relating to Consumer Credit activities

After CCR007 insert the following new data item. The text is not underlined.

CCR008 Credit broking websites

For each domain name used or owned by the firm during the reporting period:

Domain name	If the firm acquired or first used the domain name during the reporting period, the date of acquisition or first use	If the firm disposed of or ceased using the domain name during the reporting period, the date of disposal or cessation

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

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

3.7 Financial promotions and communications: credit brokers

Application

...

3.7.2A R CONC 3.7.5R to 3.7.8G:

- (1) apply to a financial promotion or a communication with a customer in relation to credit broking whether or not it is in relation to a regulated credit agreement; but
- (2) do not apply to a financial promotion or a communication with a customer which clearly indicates that it is made solely in respect of credit broking in relation to a credit agreement secured by a legal or equitable mortgage on land.

...

Credit brokers' registered name, and status

...

3.7.5 R A firm must ensure that a financial promotion or a communication with a customer specifies the legal name of the firm as it appears in the Financial Services Register and not merely a trading name.

3.7.6 G CONC 3.7.5R requires all financial promotions and communications with customers to specify the legal name of the firm: the rule does not prohibit the use of trading names, but does require the legal name to be given in addition to any trading name used. If the firm is a company registered under the Companies Act 2006, the firm's legal name will be the name by which it is registered.

3.7.7 R (1) A firm which is a credit broker and not a lender must ensure that any financial promotion states prominently that the firm is a credit broker and that it is not a lender.

- (2) A firm which is both a credit broker and a lender must ensure that any financial promotion that solely promotes its services as a credit broker states prominently that the financial promotion is promoting the firm's services as a credit broker and not its services as a lender.

3.7.8 G For the purposes of CONC 3.7.7R, a statement will not be treated as prominent unless it is presented, in relation to other content of the financial

promotion, in such a way that it is likely that the attention of the average person to whom the financial promotion is directed would be drawn to it.

...

4.4 Pre-contractual requirements: credit brokers

Application

...

4.4.1A R CONC 4.4.3R applies to a firm carrying on credit broking whether or not it is in relation to a regulated credit agreement.

...

Credit broking information notice

- 4.4.3 R (1) A firm must not:
- (a) request, claim, demand, initiate or take payment of a charge from a customer, or from the customer's payment account, in connection with services it has provided or is to provide; or
 - (b) if the purpose, or one of the purposes, is to collect such a charge from a customer, invite or induce a customer to provide information in relation to a payment card or instrument that would enable a payment from the customer's payment account to be initiated by or through the firm or a third party or facilitate the provision of that information by a customer;
- unless that firm has met the conditions in both (2) and (3) in respect of that charge.
- (2) The first condition referred to in (1) is that the firm has sent a notice on paper or in another durable medium to the customer setting out the following clearly, concisely and in plain language (in this rule and CONC 4.4.5G referred to as the "information notice"):
- (a) the legal name of the firm as it appears in the Financial Services Register;
 - (b) if the firm is not a lender, a statement that the firm is a credit broker and that it is not a lender;
 - (c) if the firm is also a lender, a statement that the firm is acting as a credit broker and that it is not acting as a lender;
 - (d) a statement that the customer will be required, or (where relevant) may be required, to pay a charge in connection with the firm's services;

- (e) the amount of the charge, or, where that amount is not ascertainable at the time the notice is sent, the basis on which it will be calculated; and
 - (f) when and by what method the *firm* will initiate or take payment of the charge.
- (3) The second condition referred to in (1) is that the *firm* has received from the *customer* a reply to the information notice (in this *rule* and *CONC* 4.4.5G referred to as the “customer confirmation”) on paper or in another *durable medium* in which the *customer* acknowledges receipt of the information notice and confirms that he is aware of its contents.
- (4) The information notice may also contain the *firm*’s trading name, address and other contact details but must not contain any other statements or information additional to those required by (2).
- (5) For the purposes of this *rule*:
- (a) references to “charge” include any fee, charge or financial consideration however described;
 - (b) it is immaterial whether the charge is payable to the *firm* or to a third party.
- (6) The *firm* must keep a record of:
- (a) each information notice; and
 - (b) each customer confirmation.
- 4.4.4 R *CONC* 4.4.3R does not apply where:
- (1) the *customer* indicates to the *firm* that he wishes to enter into a *credit agreement* secured by a *legal or equitable mortgage on land*;
 - (2) the *firm* makes it clear to the *customer* that it is willing to carry on *credit broking* for that *customer* only in relation to *credit agreements* secured by a *legal or equitable mortgage on land*; and
 - (3) the *firm* does not indicate (by express words or otherwise) that it is willing to carry on *credit broking* for that *customer* in relation to *credit agreements* other than *credit agreements* secured by a *legal or equitable mortgage on land*.
- 4.4.5 G (1) *CONC* 4.4.3R prohibits a *firm* from asking a *customer* for any payment details, including the card number and security code of a debit card or a credit card, or using those payment details, without first sending an information notice to the *customer* and receiving a customer confirmation.

- (2) CONC 4.4.3R applies in respect of any sum due from a *customer*, however it is described and irrespective of whether it is payable to the *firm* or a third party (for example, a *firm* cannot avoid the application of this *rule* by describing a charge as a “membership fee” or a “web registration fee”). The fact that a fee or charge may be financed by *credit* does not take the fee or charge outside the *rule*.
- (3) The information notice must not contain anything other than the statements and information required by CONC 4.4.3R(2), except for the *firm*’s trading name, address and other contact details. It should set out the required information clearly and concisely, in plain language. The information notice must be sent to the *customer* in a *durable medium*, for example on paper, as an email, or as an attachment to an email: it is insufficient to make the notice available on a website or to email a link to a webpage that contains the relevant information and statements.
- (4) The *firm* should not ask for or take the *customer*’s payment details until it has received the customer confirmation. This means, for example, that *firms* should construct their websites so that *customers* cannot access any webpage that enables them to input their payment details before they have received the information notice and given the customer confirmation.
- (5) CONC 4.4.3R applies to each *firm* in a chain of *credit brokers* separately. If *firm A* introduces the *customer* to *firm B* (where *B* is a *credit broker*), any information notice given by *A* cannot cover fees which *B* might charge: *B* will have to issue its own information notice to the *customer*, and the *customer* will have to provide a separate customer confirmation, before *B* can ask for or make use of the *customer*’s payment details.
- (6) CONC 4.4.3R does not apply to *credit broking* that relates only to *credit agreements* secured on *land*.

...

11.1 The right to cancel

- 11.1.1 R Except as provided for in CONC 11.1.2R or where PROF 5.4.1R(1) or PROF 5.4.1R(2) applies, a *consumer* has a right to cancel a *distance contract* without penalty and without giving any reason, within 14 calendar days where that contract is:
- (1) a *credit agreement*;
 - (2) an agreement between a *consumer* and a *firm* the subject matter of which comprises or relates to *credit broking*, *debt counselling*, *debt adjusting*, *providing credit information services* or *providing credit references*, other than an agreement that relates to any of those activities in relation to

a consumer hire agreement.

...

12 Requirements for firms with interim permission for credit-related regulated activities

...

12.1.4 R ...

Module	Disapplication or modification
...	
Supervision manual (SUP)	...
	<i>SUP 16 (Reporting requirements) does not apply to a firm with only an interim permission <u>except in relation to data item CCR008.</u></i>
	<i>SUP 16.11 and SUP 16.12 apply to a firm, which was an authorised person immediately before 1 April 2014, with an interim permission that is treated as a variation of permission with respect to credit-related regulated activity or operating an electronic system in relation to lending as if the changes to SUP 16.11 and SUP 16.12 effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made, <u>except in so far as those changes relate to data item CCR008.</u></i>

...

Schedule 1 Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>4.4.3R(6)(a)</u>	<u>Information notice</u>	<u>A copy of the notice, and details of the date on which and the manner by which it was sent</u>	<u>When the notice is sent</u>	<u>18 months from the date on which the notice is sent</u>
<u>4.4.3R(6)(b)</u>	<u>Customer confirmation</u>	<u>A copy of the confirmation, and details of</u>	<u>When the confirmation is</u>	<u>18 months from the date on which the</u>

the date on
which and the
manner by
which it was
received

received

confirmation is
received