Chapter 5

Responsible lending

5.1 Application [deleted]

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5.2 Creditworthiness assessment: before agreement [deleted]

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5.2A Creditworthiness assessment

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Application

5.2A.1 R Subject to ■ CONC 5.2A.2R, this section applies to a *firm* with respect to *consumer credit lending*.

5.2A.2 R This section does not apply to:

(1) an agreement under which a *firm* takes an article in *pawn* and under the terms of the agreement:

(a) the *customer's* total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article *pawned* by the *customer*; and

(b) the effect of the passing of property in the *pawned* article to the *firm* under section 120 of the *CCA*, or of a sale of the article under section 121 of the *CCA*, would, therefore, be (at the very least) to discharge the debt secured by the pawn and any other obligation to pay a sum of money under the agreement including any expenses of sale;

(2) a current account agreement where:

(a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and

(b) if the account-holder did so, this would be a *regulated credit agreement* (overrunning);

(3) a *non-commercial agreement*; or

(4) a *small borrower-lender-supplier agreement* which is a *restricted-use credit agreement*.

Interpretation

5.2A.3 R In this section, references to 'repayment' refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *regulated credit agreement* or any charge payable by the customer under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates).

Creditworthiness assessment

5.2A.4 R A *firm* must undertake a reasonable assessment of the creditworthiness of a *customer* before:

(1) entering into a *regulated credit agreement*; or

(2) significantly increasing the amount of *credit* provided under a *regulated credit agreement*; or

(3) significantly increasing a *credit limit* for *running-account credit* under a *regulated credit agreement*.

5.2A.5 R The *firm* must not take a step in ■ CONC 5.2A.4R(1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a *creditworthiness assessment* and, where relevant, the assessment under ■ CONC 5.2A.31R(2) (guarantors) in accordance with the *rules* set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.2A.6 G If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last *creditworthiness assessment*, a cumulative increase that is significant, then a further *creditworthiness assessment* is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.2A.7 R A *firm* must base its *creditworthiness assessment* on sufficient information:

(1) of which it is aware at the time the *creditworthiness assessment* is carried out;

(2) obtained, where appropriate, from the *customer*, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable *creditworthiness assessment*.

5.2A.8 G ■ CONC 5.2A.20R to ■ CONC 5.2A.25G contain *rules* and *guidance* in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the *creditworthiness assessment*, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

5.2A.9 R *Rules* and *guidance* in this section apply in relation to carrying out a *creditworthiness assessment*.

The subject matter of the creditworthiness assessment

5.2A.10 R The *firm* must consider:

(1) the risk that the *customer* will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the *customer* of not being able to make repayments under the agreement in accordance with ■ CONC 5.2A.12R (referred to as 'affordability risk' in this section).

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5.2A.11 G In relation to ■ CONC 5.2A.10R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the *creditworthiness assessment*.

5.2A.12 R The *firm* must consider the *customer's* ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an *open-end agreement*, within a reasonable period;

(2) out of, or using, one or more of the following:

(a) the *customer's* income;

(b) income from savings or assets jointly held by the *customer* with another *person*, income received by the *customer* jointly with another *person* or income received by another *person* in so far as it is reasonable to expect such income to be available to the *customer* to make repayments under the agreement; and/or

(c) savings or other assets where the *customer* has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the *customer* having to borrow to meet the repayments;

(4) without failing to make any other payment the *customer* has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the *customer's* financial situation.

5.2A.13 R If the *customer* intends to make repayments (wholly or partly) using savings or other assets, the *firm* must take into account:

(1) the purpose for which the savings or assets are or will be held;

(2) the likelihood of the savings or assets being available to make repayments under the agreement; and

(3) any significant adverse impact on the *customer's* financial situation of using those savings or assets.

5.2A.14 R When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

The customer's income and expenditure

5.2A.15 R (1) This *rule* applies unless:

(a) the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer* is able to make repayments in accordance with ■ CONC 5.2A.12R, so as to make the actions described in (2) to (4) disproportionate; or

(b) the *customer* has indicated clearly an intention to repay wholly using savings or other assets (see ■ CONC 5.2A.13R).

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer's* current income.

(3) Where it is reasonably foreseeable that there is likely to be a reduction in the *customer's* income:

(a) during the term of the agreement; or

(b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see ■ CONC 5.2A.26R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.

(4) The *firm* must take account of the *customer's* income it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future increase in the *customer's* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.2A.16 G (1) A *firm* that proposes to rely on the exception in ■ CONC 5.2A.15R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *customer's* income disproportionate.

(2) An estimate of the *customer's* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(3) For the purpose of considering the *customer's* income under ■ CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the *customer* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *customer*).

(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out. If, in such a case, the *customer's* income does not increase in line with expectations, the *firm* should consider deferring or limiting the obligation to repay until the *customer's* income has reached an appropriate level.

(5) Income can include income other than salary and wages.

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5.2A.17 R

(1) This *rule*:

(a) applies only where ■ CONC 5.2A.15R also applies; and

(b) does not apply where the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer's* non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer's* current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the *customer's* non-discretionary expenditure:

(a) during the term of the agreement; or

(b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see ■ CONC 5.2A.26R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that increase.

(4) The *firm* must take account of the *customer's* non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future decrease in non-discretionary expenditure where the *firm* reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.2A.18 G

(1) Non-discretionary expenditure referred to in ■ CONC 5.2A.17R includes payments needed to meet *priority debts* and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the *customer* has a contractual or statutory obligation to make, such as payment obligations arising under a *credit agreement* or a mortgage contract. Where there is a reasonable expectation that the *customer* will have responsibility to pay only a share or a part of a payment required pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

An analysis of the size of the *customer's* debts compared to the *customer's* income may therefore form part of the *creditworthiness assessment* where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in ■ CONC 5.2A.20R.

Non-discretionary expenditure includes expenditure for other *persons* whose financial obligations the *customer* meets wholly or in part. Where the *firm* has under ■ CONC 5.2A.12R(2)(b) taken into account income received by the *customer* jointly with another *person* or income received by a *person* other than the *customer* it should also take into account non-discretionary expenditure relating to that other *person*. In those circumstances, references in this section to non-discretionary expenditure of the *customer* should be taken to include the non-discretionary expenditure of the other *person*.

An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

Where the *firm* can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the *customer's* income therefore applies, the *firm* is similarly not required to determine or estimate the *customer's* non-discretionary expenditure.

5.2A.19 G

(1) For the purpose of considering the *customer's* non-discretionary expenditure under ■ CONC 5.2A.17R, the *firm* may take into account statistical data unless it knows or has reasonable cause to suspect that the *customer's* non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the *customer's* situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the *firm* is aware, or has reasonable cause to be aware from information in its possession, that the composition of the *customer's* household, or the number of dependants that the *customer* has, or the level of the *customer's* existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

5.2A.20 R

(1) The extent and scope of the *creditworthiness assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The *firm* must consider:

(a) the types of information to use in the *creditworthiness assessment*;

(b) the content and level of detail of the information to use;

(c) whether the information in the *firm's* possession is sufficient;

(d) whether and to what extent to obtain additional information from the *customer*;

(e) whether and to what extent to obtain information from a *credit reference agency*;

(f) any other sources of information to use;

(g) whether and to what extent to verify the accuracy of the information that is used;

(h) the degree of evaluation and analysis of the information that is used; and

(i) the steps to take to determine or estimate the *customer's* income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *creditworthiness assessment* a reasonable one include each of the following where applicable to the agreement:

(a) the type of *credit*;

(b) the amount of the *credit* or, where applicable, the *credit limit*;

(c) the duration (or likely duration) of the *credit*;

(d) the frequency of the repayments;

(e) the amounts of the repayments;

(f) the *total amount payable*;

(g) the *total charge for credit*;

(h) the *annual percentage rate of charge*;

(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates) is fixed or variable;

(j) any other costs which will or may be payable by or on behalf of the *customer* in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates; and

(k) any other potential adverse consequences for the *customer* arising under the agreement from a failure to make a repayment by the due date.

5.2A.21 G (1) The *firm* may have regard, where appropriate, to the purpose for which the *customer* intends to use the *credit*.

(2) When considering, having regard to the factors in ■ CONC 5.2A.20R, what steps the *firm* needs to undertake to make the *creditworthiness assessment* a reasonable one, the *firm* should consider whether the

factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the *firm* should weigh up the factors before deciding what type of *creditworthiness assessment* is required.

5.2A.22 G The *firm* should also have regard to information of which it is aware at the time the *creditworthiness assessment* is carried out that may indicate that:

(1) the *customer* is in, has recently experienced, or is likely to experience, financial difficulties (see ■ CONC 1.3); or

(2) the *customer* is particularly vulnerable, for example because the *customer* has mental health difficulties or mental capacity limitations (see ■ CONC 2.10 and ■ CONC 7.2).

5.2A.23 G The *firm* may have regard, where appropriate, to information obtained in the course of previous dealings with the *customer*. However, the *firm* should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.2A.24 G The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

Factors that will affect that level of risk include the actual or potential cost of the *credit* and the *total amount payable* in absolute terms and relative to the *customer's* financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the *total charge for credit* are low, the amount of information that is sufficient to support a reasonable *creditworthiness assessment* may be less than would be required:

(a) in the case of more expensive *credit* or *credit* that is higher in amount; or

(b) where it is known that the *customer's* financial situation is such that the *credit* may be expected to have a more significant impact.

5.2A.25 G (1) In relation to ■ CONC 5.2A.24G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the *customer's* outstanding debts relative to the *customer's* income is high; or

(b) there is a high likelihood that the *customer* will not make repayments under the agreement by their due dates.

(2) In relation to ■ CONC 5.2A.25G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

5.2A.26 R In relation to an *open-end agreement*, the *firm* must make a reasonable assumption about the likely duration of the *credit* which should take into account:

(1) the terms and conditions of the agreement;

(2) any pre-contractual disclosure and explanation given to the customer under the *CCA* or *CONC*; and

(3) the *customer's* intentions, where known to the *firm*.

Assumptions in relation to running-account credit

5.2A.27 R (1) In relation to entering into a *regulated credit agreement* for *running-account credit*, the *firm* must assume that the *customer* draws down the entire *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(2) In relation to significantly increasing the *credit limit* that applies to an existing *regulated credit agreement* for *running-account credit*, the *firm* must assume that the *customer* draws down the entire available balance up to the increased *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(3) If, after considering the individual circumstances of the particular *customer* of which the *firm* is aware at the time the *creditworthiness assessment* is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of *credit* and repayments over the duration or likely duration of the *credit*, then the *firm* must do so and these assumptions must be reasonable ones.

(4) The *firm* must set the *credit limit* in the light of the assumptions in (1) to (3).

5.2A.28 G (1) Unless (2) applies, the *firm* should, when making an assumption about the length of a reasonable period for repayment for the purposes of ■ CONC 5.2A.27R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*. The *firm* should take into account the terms and conditions of a loan likely to be available to that *customer* (whether from the *firm* or from another *lender*) and any other factors that the *firm* reasonably considers to be relevant.

(2) If, however, after considering the individual circumstances of the particular *customer* of which the *firm* is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the *firm* may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the *customer* complied with those terms, the drawdown of the *credit limit* would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.

(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of ■ CONC 5.2A.27R(3), in addition to the assumptions described in ■ CONC 5.2A.27R(1) or (2). In those circumstances, the *firm* should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of its *customers* in relation to that product or type of product, or of *customers* of that type generally, but should also consider any factors particular to the individual *customer*, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in ■ CONC 5.2A.27R(1) or (2), as well as in respect of the subsequent duration of the *credit*, depending on those factors.

Lending to joint borrowers and businesses

5.2A.29 G The *firm* may need to take into account the different circumstances that may surround a *customer* where the *customer* is borrowing for business purposes. For example, it may be reasonable to take into account the *customer's* business plan, although the *creditworthiness assessment* should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the *customer* is less regular than for other types of *customer*.

5.2A.30 G (1) Where there are *customers* acting together as joint *borrowers*, the *firm* should consider whether it may be appropriate to carry out a *creditworthiness assessment* separately for each *customer* (as well as one for them together), having regard to the risk to that *customer* arising from the agreement were the *customer* to be treated as being solely responsible for obligations of the joint *borrowers* under the agreement.

(2) Where the *borrower* is a *partnership* or one or more members of an unincorporated association acting as agent for other such members, the *partners* or members may be treated as a single *customer* for the purposes of the *creditworthiness assessment*.

Creditworthiness assessment where there is a guarantor

5.2A.31 R (1) This *rule* applies if, in relation to a *regulated credit agreement*:

(a) an *individual* other than the *borrower* (in this section referred to as 'the guarantor') is to provide a guarantee or an indemnity (or both) (in this *rule* and ■ CONC 5.2A.32G referred to as 'the guarantee'); and

(b) the *firm* is required to undertake a *creditworthiness assessment* in respect of the *borrower*.

(2) Before entering into the *regulated credit agreement* or significantly increasing the amount of *credit* provided under the agreement or significantly increasing a *credit limit* for *running-account credit* under the agreement, the *firm* must undertake a reasonable assessment of the potential for the guarantor's commitments in respect of the agreement to have a significant adverse impact on the guarantor's financial situation.

(3) The *firm* must base the assessment under (2) on sufficient information:

(a) of which it is aware at the time the assessment is carried out;

(b) obtained, where appropriate, from the guarantor or from the *borrower* on the guarantor's behalf, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable assessment.

(4) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

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5.2A.32 G

(1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the *borrower*, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last assessment under ■ CONC 5.2A.31R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this *guidance*, references to 'payment' refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The *firm* should, when carrying out an assessment under ■ CONC 5.2A.31R(2), have regard to ■ CONC 5.2A.8G to ■ CONC 5.2A.24G(1) (excluding ■ CONC 5.2A.9R, ■ CONC 5.2A.14R, ■ CONC 5.2A.16G(4), ■ CONC 5.2A.20R(3) and ■ CONC 5.2A.21G(1)), ■ CONC 5.2A.29G and ■ CONC 5.2A.30G but as if:

(a) each of those provisions that is a *rule* were *guidance* and as if 'should' appeared in that *rule* instead of 'must' or 'may';

(b) references to 'agreement' are to the 'guarantee';

(c) subject to (g) below, references to 'the *customer*' or '*borrower*' are references to the 'guarantor';

(d) references to 'repayments' are references to 'payments';

(e) references to 'repay' are references to 'pay';

(f) references to the '*creditworthiness assessment*' are references to the assessment under ■ CONC 5.2A.31R(2);

(g) references in ■ CONC 5.2A.20R(2)(d) and ■ CONC 5.2A.23G to 'the *customer*' are to the 'guarantor' as well as 'the *customer*'; and

(h) the reference in ■ CONC 5.2A.20R(2) to the factors listed in ■ CONC 5.2A.20R(3) is to the factors listed in ■ CONC 5.2A.32G(5).

(5) The factors to which the *firm* should have regard for the purposes of ■ CONC 5.2A.19R(2) when deciding what steps should be taken to make the assessment under ■ CONC 5.2A.31R(2) a reasonable one include each of the following:

(a) the total potential liability of the guarantor under the guarantee;

(b) the duration (or likely duration) of the guarantee;

(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and

(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor's financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under ■ CONC 5.2A.31R(2), do not remove or reduce the obligation on the *firm* to carry out a reasonable *creditworthiness assessment* of the *borrower*. *Firms* are reminded of the *rule* in ■ CONC 5.2A.14R that, in considering affordability risk for the *borrower*, a *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

Policies and procedures for creditworthiness assessment

5.2A.33 R A *firm* must:

establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out *creditworthiness assessments* or assessments under ■ CONC 5.2A.31R(2); and

(b) setting out the principal factors it will take into account in carrying out *creditworthiness assessments* or assessments under ■ CONC 5.2A.31R(2);

set out the policies and procedures in (1) in writing, and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;

assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the *firm's* compliance with those policies and procedures and with its obligations under ■ CONC 5.2A;

in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;

maintain a record, on paper or in electronic form, of each transaction where a *regulated credit agreement* is entered into, or where there is a significant increase in the amount of *credit* provided under a *regulated credit agreement* or a *credit limit* for *running-account credit* under a *regulated credit agreement*, sufficient to demonstrate that:

(a) a *creditworthiness assessment* or an assessment under ■ CONC 5.2A.31R(2) was carried out where required; and

(b) the *creditworthiness assessment* or the assessment under ■ CONC 5.2A.31R(2) was reasonable and was undertaken in accordance with ■ CONC 5.2A,

and so to enable the *FCA* to monitor the *firm's* compliance with its obligations under ■ CONC 5.2A; and

(other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

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5.2A.34 G *Firms* are reminded of the *guidance* on record-keeping in ■ SYSC 9.1.4G and ■ 9.1.5G.

Unfair business practices

5.2A.35 R A *firm* must not complete some or all of those parts of an application for *credit* under a *regulated credit agreement* intended to be completed by the *customer*, without the consent of the *customer* or unless the *customer* has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.2A.36 R A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or has reasonable cause to suspect that the *customer* has not been truthful in completing the application in relation to information relevant to the *creditworthiness assessment*.

5.2A.37 G An example of when a *firm* has reasonable cause to suspect that the *customer* has not been truthful may be where information supplied by the *customer* concerning income or employment status is clearly inconsistent with other information of which the *firm* is aware.

5.3 Conduct of business in relation to creditworthiness and affordability [deleted]

[deleted]

5.4 Conduct of business: credit brokers

Application

5.4.1 R This section applies to a *firm* with respect to *credit broking*.

Conduct of business

5.4.2 R (1) In giving explanations or advice, or in making recommendations, a *firm* must pay due regard to the *customer's* needs and circumstances.

(2) In complying with (1) a *firm* must pay due regard to whether the *credit* product is affordable and whether there are any factors that the *firm* knows, or reasonably ought to know, that may make the product unsuitable for that *customer*.

[**Note**: paragraphs 4.32 to 4.36 of *CBG*]

5.4.3 R A *firm* which undertakes to search the product market or a part of it before effecting an introduction must, before doing so, search the product market to the extent stated to the *customer*.

[**Note**: paragraph 4.41j of *CBG*]

5.5 Creditworthiness assessment: P2P agreements [deleted]

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5.5A Creditworthiness assessment: P2P agreements

Application

5.5A.1 R Subject to ■ CONC 5.5A.2R, this section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* or a prospective *borrower* under a *P2P agreement*.

5.5A.2 R This section does not apply in relation to:

(1) an agreement under which a *person* takes an article in *pawn* and under the terms of the agreement:

(a) the *borrower's* total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article *pawned* by the *borrower*; and

(b) the effect of the passing of property in the *pawned* article to the *person* under section 120 of the *CCA*, or of a sale of the article under section 121 of the *CCA*, would, therefore, be (at the very least) to discharge the debt secured by the *pawn* and any other obligation to pay a sum of money under the agreement including any expenses of sale; or

(2) a current account agreement where:

(a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and

(b) if the account-holder did so, this would be a *P2P agreement* (overrunning).

5.5A.3 G (1) This section contains *rules* and *guidance* that apply to a *person* operating an electronic system that facilitates *persons* becoming *lenders* and *borrowers* under *P2P agreements*, in contrast to ■ CONC 5.2A which applies to a *lender* engaged in *consumer credit lending*.

(2) Where ■ CONC 5.2A applies to a *lender*, and ■ CONC 5.5A applies to the *person* operating the electronic system, each will be subject to a separate obligation to undertake a *creditworthiness assessment*. However, *firms* are reminded of ■ SYSC 8 which permits outsourcing of operational functions subject to certain requirements (and with the

firm outsourcing functions remaining fully responsible for discharging all of its obligations under the *regulatory system*).

Interpretation

5.5A.4 R In this section, references to 'repayment' refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *P2P agreement* or any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates) and references to a '*borrower*' include, where the context so allows, references to a prospective *borrower*.

Creditworthiness assessment

5.5A.5 R A *firm* must undertake a reasonable assessment of the creditworthiness of a *borrower* before:

(1) a *P2P agreement* is made; or

(2) the amount of *credit* provided under a *P2P agreement* is significantly increased; or

(3) a *credit limit* for *running-account credit* under a *P2P agreement* is significantly increased.

5.5A.6 R The *firm* must not facilitate the taking of a step in ■ CONC 5.5A.5R(1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a *creditworthiness assessment* and, where relevant, the assessment under ■ CONC 5.5A.32R(2) (guarantors) in accordance with the *rules* set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.5A.7 G If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last *creditworthiness assessment*, a cumulative increase that is significant, then a further *creditworthiness assessment* is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.5A.8 R A *firm* must base its *creditworthiness assessment* on sufficient information:

(1) of which it is aware at the time the *creditworthiness assessment* is carried out;

(2) obtained, where appropriate, from the *borrower*, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable *creditworthiness assessment*.

5.5A.9 G ■ CONC 5.5A.21R to ■ CONC 5.5A.26G contain *rules* and *guidance* in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the *creditworthiness assessment*, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

5.5A.10 R *Rules* and *guidance* in this section apply in relation to carrying out a *creditworthiness assessment*.

The subject matter of the creditworthiness assessment

5.5A.11 R The *firm* must consider:

(1) the risk that the *borrower* will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the *borrower* of not being able to make repayments under the agreement in accordance with ■ CONC 5.5A.13R (referred to as 'affordability risk' in this section).

5.5A.12 G In relation to ■ CONC 5.5A.11R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the *creditworthiness assessment*.

5.5A.13 R The *firm* must consider the *borrower's* ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an *open-end agreement*, within a reasonable period;

(2) out of, or using, one or more of the following:

(a) the *borrower's* income;

(b) income from savings or assets jointly held by the *borrower* with another *person*, income received by the *borrower* jointly with another *person* or income received by another *person* in so far as it is reasonable to expect such income to be available to the *borrower* to make repayments under the agreement; and/or

(c) savings or other assets where the *borrower* has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the *borrower* having to borrow to meet the repayments;

(4) without failing to make any other payment the *borrower* has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the *borrower's* financial situation.

5.5A.14 R If the *borrower* intends to make repayments (wholly or partly) using savings or other assets, the *firm* must take into account:

(1) the purpose for which the savings or assets are or will be held;

(2) the likelihood of the savings or assets being available to make repayments under the agreement; and

(3) any significant adverse impact on the *borrower's* financial situation of using those savings or assets.

5.5A.15 R When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

The borrower's income and expenditure

5.5A.16 R (1) This *rule* applies unless:

(a) the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *borrower* is able to make repayments in accordance with ■ CONC 5.5A.13R, so as to make the actions described in (2) to (4) disproportionate; or

(b) the *borrower* has indicated clearly an intention to repay wholly using savings or other assets (see ■ CONC 5.5A.14R).

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *borrower's* current income.

(3) Where it is reasonably foreseeable that there is likely to be a reduction in the *borrower's* income:

(a) during the term of the agreement; or

(b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see ■ CONC 5.5A.27R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.

(4) The *firm* must take account of the *borrower's* income it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future increase in the *borrower's* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.5A.17 G (1) A *firm* that proposes to rely on the exception in ■ CONC 5.5A.16R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *borrower's* income disproportionate.

(2) An estimate of the *borrower's* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(3) For the purpose of considering the *borrower's* income under ■ CONC 5.2A.16R, it is not generally sufficient to rely solely on a statement of current income made by the *borrower* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *borrower*).

(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out.

(5) Income can include income other than salary or wages.

5.5A.18 R

(1) This *rule*:

(a) applies only where ■ CONC 5.5A.16R also applies; and

(b) does not apply where the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *borrower's* non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *borrower's* current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the *borrower's* non-discretionary expenditure:

during the term of the agreement; or

in the case of an *open-end agreement*, during the likely duration of the *credit* (see ■ CONC 5.5A.27R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that increase.

(4) The *firm* must take account of the *borrower's* non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future decrease in non-discretionary expenditure where the *firm* reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.5A.19 G

(1) Non-discretionary expenditure referred to in ■ CONC 5.5A.18R includes payments needed to meet *priority debts* and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the *borrower* has a contractual or statutory obligation to make, such as payment obligations arising under a *credit agreement* or a mortgage contract. Where there is a reasonable expectation that the *borrower* will have responsibility to pay only a share or a part of a payment required

pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

(2) An analysis of the size of the *borrower's* debts compared to the *borrower's* income may therefore form part of the *creditworthiness assessment* where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in ■ CONC 5.5A.21R.

(3) Non-discretionary expenditure includes expenditure for other *persons* whose financial obligations the borrower meets wholly or in part. Where the *firm* has under ■ CONC 5.5A.13R(2)(b) taken into account income received by the *borrower* jointly with another *person* or income received by a *person* other than the *borrower* it should also take into account non-discretionary expenditure relating to that other *person*. In those circumstances, references in this section to non-discretionary expenditure of the *borrower* should be taken to include the non-discretionary expenditure of the other *person*.

(4) An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(5) Where the *firm* can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the *borrower's* income therefore applies, the *firm* is similarly not required to determine or estimate the *borrower's* non-discretionary expenditure.

5.5A.20 G

(1) For the purpose of considering the *borrower's* non-discretionary expenditure under ■ CONC 5.5A.18R, the *firm* may take into account statistical data unless it knows or has reasonable cause to suspect that the *borrower's* non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the *borrower's* situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the *firm* is aware, or has reasonable cause to be aware from information in its possession, that the composition of the *borrower's* household, or the number of dependants that the *borrower* has, or the level of the *borrower's* existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

5.5A.21 R

(1) The extent and scope of the *creditworthiness assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The *firm* must consider:

(a) the types of information to use in the *creditworthiness assessment*;

(b) the content and level of detail of the information to use;

(c) whether the information in the *firm's* possession is sufficient;

(d) whether and to what extent to obtain additional information from the *borrower*;

(e) whether and to what extent to obtain information from a *credit reference agency*;

(f) any other sources of information to use;

(g) whether and to what extent to verify the accuracy of the information that is used;

(h) the degree of evaluation and analysis of the information that is used; and

(i) the steps to take to determine or estimate the *borrower's* income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *creditworthiness assessment* a reasonable one include each of the following where applicable to the agreement:

(a) the type of *credit*;

(b) the amount of the *credit* or, where applicable, the *credit limit*;

(c) the duration (or likely duration) of the *credit*;

(d) the frequency of the repayments;

(e) the amounts of the repayments;

(f) the *total amount payable*;

(g) the *total charge for credit* or the *cost of credit*;

(h) the *annual percentage rate of charge*;

(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an option to purchase the *goods* to which the agreement relates) is fixed or variable;

(j) any other costs which will or may be payable by or on behalf of the *borrower* in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an option to purchase the *goods* to which the agreement relates; and

(k) any other potential adverse consequences for the *borrower* arising under the agreement from a failure to make a repayment by the due date.

5.5A.22 G (1) The *firm* may have regard, where appropriate, to the purpose for which the *borrower* intends to use the *credit*.

(2) When considering, having regard to the factors in ■ CONC 5.5A.21R, what steps the *firm* needs to undertake to make the *creditworthiness assessment* a reasonable one, the *firm* should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the *firm* should weigh up the factors before deciding what type of *creditworthiness assessment* is required.

5.5A.23 G The *firm* should also have regard to information of which it is aware at the time the *creditworthiness assessment* is carried out that may indicate that:

(1) the *borrower* is in, has recently experienced, or is likely to experience, financial difficulties (see ■ CONC 1.3); or

(2) the *borrower* is particularly vulnerable, for example because the *borrower* has mental health difficulties or mental capacity limitations (see ■ CONC 2.10 and ■ CONC 7.2).

5.5A.24 G The *firm* may have regard, where appropriate, to information obtained in the course of previous dealings with the *borrower*. However, the *firm* should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.5A.25 G (1) The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

(2) Factors that will affect that level of risk include the actual or potential cost of the *credit* and the *total amount payable* (or, where the *P2P agreement* is not a *regulated credit agreement*, the sum of the *cost of credit* plus the *credit limit* or the total sums made available under the *P2P agreement*, as well as any *advance payment*) in absolute terms and relative to the *borrower's* financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the *total charge for credit* are low, the amount of information that is sufficient to support a reasonable *creditworthiness assessment* may be less than would be required:

(a) in the case of more expensive *credit* or *credit* that is higher in amount; or

(b) where it is known that the *borrower's* financial situation is such that the *credit* may be expected to have a more significant impact.

5.5A.26 G (1) In relation to ■ CONC 5.5A.25G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the *borrower's* outstanding debts relative to the *borrower's* income is high; or

(b) there is a high likelihood that the *borrower* will not make repayments under the agreement by their due dates.

(2) In relation to ■ CONC 5.5A.26G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

5.5A.27 R In relation to an *open-end agreement*, the *firm* must make a reasonable assumption about the likely duration of the *credit* which should take into account:

(1) the terms and conditions of the agreement;

(2) any pre-contractual disclosure and explanation given to the *borrower* under the *CCA* or *CONC*; and

(3) the *borrower's* intentions, where known to the *firm*.

Assumptions in relation to running-account credit

5.5A.28 R (1) In relation to a *lender* entering into a *P2P agreement* for *running-account credit*, the *firm* must assume that the *borrower* draws down the entire *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(2) In relation to a *lender* significantly increasing the *credit limit* that applies to an existing *P2P agreement* for *running-account credit*, the *firm* must assume that the *borrower* draws down the entire available balance up to the increased *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(3) If, after considering the individual circumstances of the particular *borrower* of which the *firm* is aware at the time the *creditworthiness assessment* is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of *credit* and repayments over the duration or likely duration of the *credit*, then the *firm* must do so and these assumptions must be reasonable ones.

(4) The *firm* must take reasonable steps to procure the *lender* under the *P2P agreement* to set the *credit limit* in the light of the assumptions in (1) to (3).

5.5A.29 G (1) Unless (2) applies, the *firm* should, when making an assumption about the length of a reasonable period for repayment for the purposes of ■ CONC 5.5A.28R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*. The *firm* should take into account the terms and conditions of a loan likely to be available to that *borrower* (whether from the *lender* under the *P2P agreement* or from another *lender*) and any other factors that the *firm* reasonably considers to be relevant.

(2) If, however, after considering the individual circumstances of the particular *borrower* of which the *firm* is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the *firm* may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the *borrower* complied with those terms, the drawdown of the *credit limit* would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.

(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of ■ CONC 5.5A.28R(3), in addition to the assumptions described in ■ CONC 5.5A.28R(1) or (2). In those circumstances, the *firm* should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of *borrowers* under *P2P agreements* which it has facilitated, or of *borrowers* of that type generally, but should also consider any factors particular to the individual *borrower*, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in ■ CONC 5.5A.28R(1) or (2), as well as in respect of the subsequent duration of the *credit*, depending on those factors.

Lending to joint borrowers and businesses

5.5A.30 G The *firm* may need to take into account the different circumstances that may surround a *borrower* where the *borrower* is borrowing for business purposes. For example, it may be reasonable to take into account the *borrower's* business plan, although the *creditworthiness assessment* should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the *borrower* is less regular than for other types of *borrower*.

5.5A.31 G (1) Where there are *borrowers* acting together as joint *borrowers*, the *firm* should consider whether it may be appropriate to carry out a *creditworthiness assessment* separately for each *borrower* (as well as one for them together), having regard to the risk to that *borrower* arising from the agreement were the *borrower* to be treated as being solely responsible for obligations of the joint *borrowers* under the agreement.

(2) Where the *borrower* is a *partnership* or one or more members of an unincorporated association acting as agent for other such members, the members or *partners* may be treated as a single *borrower* for the purposes of the *creditworthiness assessment*.

Creditworthiness assessment where there is a guarantor

5.5A.32 R (1) This *rule* applies if, in relation to a *P2P agreement*:

(a) an *individual* other than the *borrower* (in this section referred to as 'the guarantor') is to provide a guarantee or an indemnity (or both) (in this *rule* and ■ CONC 5.2A.33G referred to as 'the guarantee'); and

(b) the *firm* is required to undertake a *creditworthiness assessment* in respect of the *borrower*.

(2) Before the *P2P agreement* is made or the amount of *credit* provided under the agreement is significantly increased or a *credit limit* for *running-account credit* under the agreement is significantly increased, the *firm* must undertake a reasonable assessment of the potential for the guarantor's commitments in respect of the agreement to have a significant adverse impact on the guarantor's financial situation.

(3) The *firm* must base the assessment under (2) on sufficient information:

(a) of which it is aware at the time the assessment is carried out;

(b) obtained, where appropriate, from the guarantor or from the *borrower* on the guarantor's behalf, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable assessment.

(4) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

5.5A.33 G

(1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the *borrower*, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last assessment under ■ CONC 5.5A.32R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this *guidance*, references to payment refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The *firm* should, when carrying out an assessment under ■ CONC 5.5A.32R(2), have regard to ■ CONC 5.5A.9G to ■ CONC 5.5A.25G(1) (excluding ■ CONC 5.5A.10R, ■ CONC 5.5A.15R, ■ CONC 5.5A.17G(4), ■ CONC 5.5A.21R(3) and ■ CONC 5.5A.22G(1)), ■ CONC 5.5A.30G and ■ CONC 5.5A.31G but as if:

(a) each of those provisions that is a *rule* were *guidance* and as if 'should' appeared in that *rule* instead of 'must' or 'may';

(b) references to 'agreement' are to the 'guarantee';

(c) subject to (g) below, references to 'the *borrower*' are references to the 'guarantor';

(d) references to 'repayments' are references to 'payments';

(e) references to 'repay' are references to 'pay';

(f) references to the '*creditworthiness assessment*' are references to the assessment under ■ CONC 5.5A.32R(2);

(g) references in ■ CONC 5.5A.21R(2)(d) and ■ CONC 5.5A.24G to 'the *borrower*' are to the 'guarantor' as well as 'the *borrower*'; and

(h) the reference in ■ CONC 5.5A.21R(2) to the factors listed in ■ CONC 5.5A.21R(3) is to the factors listed in ■ CONC 5.5A.33G (5).

(5) The factors to which the *firm* should have regard for the purposes of ■ CONC 5.5A.21R(2) when deciding what steps should be taken to make the assessment under ■ CONC 5.5A.32R(2) a reasonable one include each of the following:

(a) the total potential liability of the guarantor under the guarantee;

(b) the duration (or likely duration) of the guarantee;

(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and

(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor's financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under ■ CONC 5.5A.32R(2), do not remove or reduce the obligation on the *firm* to carry out a reasonable *creditworthiness assessment* of the *borrower*. *Firms* are reminded of the rule in ■ CONC 5.5A.15R that, in considering affordability risk for the *borrower*, a *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

Policies and procedures for creditworthiness assessment

5.5A.34 R A *firm* must:

(1) establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out *creditworthiness assessments* or assessments under ■ CONC 5.5A.32R(2); and

(b) setting out the principal factors it will take into account in carrying out *creditworthiness assessments* or assessments under ■ CONC 5.5A.32R(2);

(2) set out the policies and procedures in (1) in writing, and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;

(3) assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the *firm's* compliance with those policies and procedures and with its obligations under ■ CONC 5.5A;

(4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;

(5) maintain a record, on paper or in electronic form, of each transaction where a *P2P agreement* is entered into, or where there is a significant increase in the amount of *credit* provided under a *P2P agreement* or a *credit limit* for *running-account credit* under a *P2P agreement*, sufficient to demonstrate that:

(a) a *creditworthiness assessment* or an assessment under ■ CONC 5.5A.32R(2) was carried out where required; and

(b) the *creditworthiness assessment* or the assessment under ■ CONC 5.5A.32R(2) was reasonable and was undertaken in accordance with ■ CONC 5.5A,

and so to enable the *FCA* to monitor the *firm's* compliance with its obligations under ■ CONC 5.5A; and

(6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

5.5A.35 G *Firms* are reminded of the *guidance* on record-keeping in ■ SYSC 9.1.4G and ■ 9.1.5G.

Unfair business practices

5.5A.36 R A *firm* must not complete some or all of those parts of an application for *credit* under a *P2P agreement* intended to be completed by the *borrower*, without the consent of the *borrower* or unless the *borrower* has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.5A.37 R A *firm* must inform the prospective *lender* under a *P2P agreement* where the *firm* knows or has reasonable cause to suspect that the *borrower* has not been truthful in completing the application for *credit* under the *P2P agreement* in relation to information relevant to the *creditworthiness assessment*.

5.5A.38 G An example of when a *firm* has reasonable cause to suspect that the *borrower* has not been truthful may be where information supplied by the *borrower* concerning income or employment status is clearly inconsistent with other information of which the *firm* is aware.