

**MORTGAGES AND HOME FINANCE (MISCELLANEOUS AMENDMENTS)
INSTRUMENT 2016**

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 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 213 (The compensation scheme); and
 - (5) section 214 (General).
- 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 23 September 2016.

Amendments to the 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) below:

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D
Compensation sourcebook (COMP)	Annex E
Consumer Credit sourcebook (CONC)	Annex F

Amendments to the material outside the Handbook

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

Notes

- F. In the Annexes to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Mortgages and Home Finance (Miscellaneous Amendments) Instrument 2016.

By order of the Board
22 September 2016

Annex A

Amendments to the Glossary of definitions

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

Amend the following definitions as shown.

<i>participant firm</i>	<p>(1) (except in <i>FEES</i> 1 and <i>FEES</i> 6) a <i>firm</i> or a <i>member</i> other than:</p> <p>(a) (in accordance with section 213(10) of the <i>Act</i> (The compensation scheme) and regulation 2 of the <i>Electing Participants Regulations</i> (Persons not to be regarded as relevant persons) an <i>incoming EEA firm</i> which is:</p> <p>...</p> <p>(v) an <i>IMD insurance intermediary</i> or an <i>IMD reinsurance intermediary</i> which is neither (i) or (ii); <u>or</u></p> <p>(vi) an <i>AIFM</i> managing an <i>unauthorised AIF</i> or providing the services in article 6(4) of <i>AIFMD</i>; <u>or</u></p> <p>(vii) <u>an <i>MCD mortgage credit intermediary</i></u>;</p> <p>in relation to its <i>passport activities</i>, unless it has <i>top-up cover</i> ;</p> <p>...</p>
<i>residential renovation agreement</i>	<p>an unsecured a <i>credit agreement</i> entered into on or after 21 March 2016 the purpose of which is the renovation of residential property, as described in paragraph 2a of article 2 of the <i>Consumer Credit Directive</i>, <u>and which is not secured on land</u>.</p>
<i>top-up cover</i>	<p>cover provided by the <i>compensation scheme</i> for <i>claims</i> against an <i>incoming EEA firm</i> (which is a <i>credit institution</i>, an <i>IMD insurance intermediary</i>, an <i>IMD reinsurance intermediary</i>, a <i>MiFID investment firm</i>, a <i>UCITS management company</i>, <u>an <i>MCD mortgage credit intermediary</i></u> or an <i>AIFM</i>) in relation to the <i>firm's passport activities</i> and in addition to, or due to the absence of, the cover provided by the <i>firm's Home State</i> compensation scheme (see <i>COMP</i> 14 (Participation by EEA firms)).</p>

Annex B**Amendments to the Fees manual (FEES)**

In this Annex, underlining indicates new text.

6 Financial Services Compensation Scheme Funding

...

6.6 Incoming EEA firms

- 6.6.1 R If an *incoming EEA firm*, which is a *CRD credit institution*, an *IMD insurance intermediary*, an *MCD mortgage credit intermediary* or *MiFID investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the firm's *Home State* scheme.

Annex C

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

4 Advising and selling standards

...

4.4A Initial disclosure requirements

...

Method of providing initial disclosure in all cases

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

...

- (1A) an *MCD mortgage arranger* ~~who is not also~~ (unless it is also acting as an *MCD mortgage lender* and carrying out a direct sales-only sale of the proposed regulated mortgage contract) must provide the information in *MCOB 4.4A.1R(1)* and (2), *MCOB 4.4A.4R(1)(a)* and (3), and *MCOB 4.4A.8R(1)(a)*, (c), (d) and (2) in a *durable medium*; and

...

...

4A Additional MCD advising and selling standards

4A.1 Additional disclosure by MCD mortgage credit intermediaries

- 4A.1.1 R An *MCD mortgage arranger* ~~who is not also~~ (unless it is also acting as an *MCD mortgage lender* and carrying out a direct sales-only sale of the proposed regulated mortgage contract) must, in good time before carrying out any *MCD mortgage credit intermediation activity*, provide the *consumer* with at least the following information in a *durable medium*:

...

...

- 4A.1.5 R An *MCD mortgage credit intermediary* who is not a *tiered MCD mortgage credit intermediary* ~~and who is not also~~ (unless it is also acting as an *MCD mortgage lender* and carrying out a direct sales-only sale of the proposed regulated mortgage contract), but who receives commission from one or more *MCD mortgage lenders* must, at the *consumer's* request, provide

information on the variation in levels of commission payable by the *MCD mortgage lenders* providing the *MCD regulated mortgage contract* being offered to the *consumer*. The *consumer* must be informed that they have the right to request such information.

[**Note:** article 15(2) of the *MCD*]

- 4A.1.6 R An *MCD mortgage credit intermediary* ~~who is not also~~ (unless it is also acting as an *MCD mortgage lender* and carrying out a direct sales-only sale of the proposed *regulated mortgage contract*) must inform the *MCD mortgage lender* of any fee payable by the *consumer* to the *MCD mortgage credit intermediary* for its services, for the purpose of calculating the *APRC*.

[**Note:** article 15(4) of the *MCD*]

- 4A.1.7 R An *MCD mortgage credit intermediary* ~~who is not also~~ (unless it is also acting as an *MCD mortgage lender* and carrying out a direct sales-only sale of the proposed *regulated mortgage contract*) must require their *appointed representatives* to disclose to the *consumer* the capacity in which the *appointed representative* is acting and the *MCD mortgage credit intermediary* that the *appointed representative* is representing when contacting or before dealing with any *consumer*.

[**Note:** article 15(5) of the *MCD*]

4A.2 Adequate explanations

- 4A.2.1 R ...

(2) The explanations must, where applicable, include:

- (a) the pre-contractual information to be provided in accordance with:
- (i) the *ESIS* or *illustration*; and
 - (ii) in the case of an *MCD mortgage credit intermediary* (unless it is also acting as an *MCD mortgage lender* and carrying out a direct sale of the proposed *MCD regulated mortgage contract*), *MCOB* 4.4A.1R(1) and *MCOB* 4.4A.1R(2), *MCOB* 4.4A.4R, *MCOB* 4.4A.8R(1)(a), (c), (d) and (2), and *MCOB* 4A.1.1R to *MCOB* 4A.1.7R ;

...

...

5A Instructions to complete the *ESIS*

Annex 2R

...

...			
4	(Where applicable <u>there is a credit intermediary who is not the lender</u>) Section ‘2. Credit intermediary’		
4.1	R	Where an <i>MCD mortgage credit intermediary</i> (other than the lender) provides an <i>ESIS</i> to a consumer, the <i>MCD mortgage credit intermediary</i> must include the following information:	
		...	
...			

...

TP1 MCD Transitional Provisions

1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>59</u>	<u>MCOB 5A</u> <u>Annex 2R</u>	<u>R</u>	<u>A firm that is an <i>MCD mortgage lender</i>, when carrying out a direct sale of an <i>MCD regulated mortgage contract</i>, may provide the content in Section 2 of the <i>ESIS</i> (“Credit intermediary”) in addition to that in Section 1 (“Lender”).</u>	<u>From 23 September 2016 until 21 March 2019</u>	<u>23 September 2016</u>

Annex D

Amendments to the Supervision manual (SUP)

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

The form at SUP 12 Annex 3R (Add an appointed representative or tied agent form) is amended as shown.

12 Annex Add an appointed representative or tied agent form
3R

Financial Conduct Authority



Add an appointed representative or tied agent form

Notification under *SUP 12.7.1R* (i.e. the form in *SUP 12 Ann 3R*)

Firm name (i.e. the principal firm)[†]

("The firm")

Firm reference number^{§*}

Address^{§*}

Please return the form to:

Financial Conduct Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

United Kingdom

Telephone +44 (0) 300 500 0597

Facsimile +44 (0) 207 066 0017

E-mail iva@fca.org.uk

Website <http://www.fca.org.uk>

Registered as a Limited Company in England and Wales No 1920623. Registered Office as above.

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

* These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online

[§] Denotes a mandatory field

...

New Appointed Representative Details	Section B
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		Yes	No
...			
12	Will the appointed representative undertake home finance activities? †	<input type="checkbox"/>	<input type="checkbox"/>
12A	<u>Will the appointed representative undertake consumer buy-to-let mortgage business? †</u>	<input type="checkbox"/>	<input type="checkbox"/>

...

† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

§ Denotes a mandatory field

The form at SUP 12 Annex 4R (Appointed representative notification form) is amended as shown.

12 Annex 4R **Appointed representative ~~notification form~~ or tied agent – change details**

...

Appointed representative or tied agent – change details

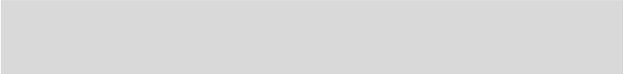
Notification under *SUP 12.7.7R* (i.e. the form in *SUP 12 Ann 4R*)

...

Change Details of an Existing Appointed Representative

Section B

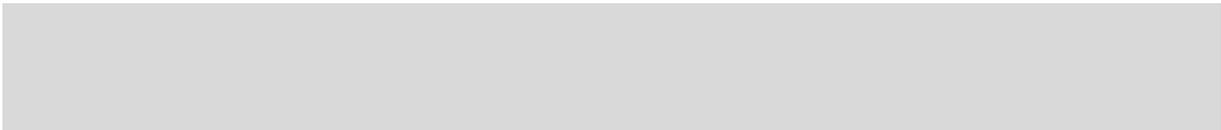
...



Yes No

12 Does the appointed representative undertake home finance activities? †

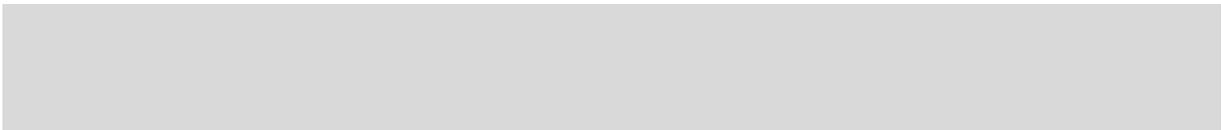
Do you wish to change this? If 'Yes', please provide details below: †



Yes No

12A Does the appointed representative undertake consumer buy-to-let mortgage business? †

Do you wish to change this? If 'Yes', please provide details below: †



...

Amend the following as shown.

13A Qualifying for authorisation under the Act

...

13A Annex 1G Application of the Handbook to Incoming EEA Firms

...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
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...		
<i>COMP</i>	<p>Applies, except in relation to the <i>passport activities</i> of a <i>MiFID investment firm</i>, a <i>CRD credit institution</i> (other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>CRD</i>), an <i>IMD insurance intermediary</i>, a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i>, <u>an <i>MCD mortgage credit intermediary</i></u> and an incoming <i>AIFM branch</i> carrying on either <i>AIFM management functions</i> for an <i>unauthorised AIF</i> or non-core services under article 6.4 of <i>AIFMD</i> (see the definition of "<i>participant firm</i>"). However, a <i>firm</i> specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passport activities</i> (see <i>COMP 14</i> (Participation by EEA Firms)).</p>	<p>Does not apply in relation to the passport activities of an <u>a <i>MiFID investment firm</i>, a <i>CRD credit institution</i>, an <i>IMD insurance intermediary</i>, an <i>MCD mortgage credit intermediary</i></u> or a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> or an <i>incoming EEA AIFM</i> regarding <i>AIFM management functions</i> carried on for an <i>unauthorised AIF</i> or non-core services under article 6.4. Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see <i>COMP 5</i>).</p>
...		

Annex E

Amendments to the Compensation sourcebook (COMP)

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

5 Protected claims

...

5.6 Protected home finance mediation

...

5.6.3 R This section does not apply in respect of a *regulated mortgage contract* which is:

(1) a legacy CCA mortgage contract; ~~or~~

(2) a CBTL credit agreement.

6 Relevant persons and successors in default

...

6.2 Who is a relevant person?

...

6.2.2 G (1) An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, ~~or a MiFID investment firm~~ or an MCD mortgage credit intermediary, and its *appointed representatives*, are not *relevant persons* in relation to the *firm's passported activities*, unless it has *top-up cover*. (See definition of "*participant firm*").

...

Annex F

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

1 Application and purpose and guidance on financial difficulties

...

1.2 Who? What? Where?

...

Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

1.2.8 R Subject to *CONC* 1.2.10R:

...

- (3) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b) credit intermediary* (unless it is also acting as an *MCD article 3(1)(b) creditor* and carrying out a direct sale of the proposed *article 3(1)(b) credit agreement*):

...

...

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

14 **Guidance on home reversion and home purchase activities**

...

14.5 **The “by-way-of-business” test**

...

Q38E. Will I meet the business test if I only enter into one sale and rent back agreement?

Yes, provided you are an *SRB agreement provider* that is not a *related party* in relation to the *SRB agreement seller*.

This is because of an amendment to the *Business Order* made by the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order ~~2011 (SI 2011/2304)~~ 2014 (SI 2014/3340) which came into force on ~~16 September 2011~~ 31 December 2014. This Order also provides that the amendment will cease to have effect on 1 January ~~2015~~ 2022. The Treasury is required to review the operation and effect of the amendment and to publish a report before the end of ~~2012~~ 2017. Following the review, the Treasury will decide whether the amendment should be allowed to expire, be revoked early, or be maintained in force with or without amendments. A further instrument would be needed to maintain the amendment in force or to revoke the amendment early.