

Draft changes to rules in the SRA Handbook

SRA Financial Services (Scope) Rules 2001

Prohibited activities

- 3.1 A *firm* must not carry on, or agree to carry on, any of the following activities:
- (m)
 - (n) entering into a *regulated home reversion plan* as a provider or administering a *regulated home reversion plan* (unless this is in the *firm's* capacity as a trustee or personal representative and the reversion seller is a beneficiary under the trust, will or intestacy); or
 - (o) entering into a *regulated sale and rent back agreement* as an *agreement provider* or administering a *regulated sale and rent back agreement* (unless this is in the *firm's* capacity as a trustee or personal representative and the *agreement seller* is a beneficiary under the trust, will or intestacy);
 - (p) entering into a *regulated credit agreement* as lender except where the *regulated credit agreement* relates to the payment of disbursements or professional fees;
 - (q) exercising, or having the right to exercise, the lender's rights and duties under a *regulated credit agreement* except where the *regulated credit agreement* relates to the payment of disbursements or professional fees;
 - (r) entering into a *regulated consumer hire agreement* as owner;
 - (s) exercising, or having the right to exercise, the owner's rights and duties under a *regulated consumer hire agreement*; or
 - (t) operating an electronic system in relation to lending within the meaning of article 36H of the *Regulated Activities Order* or entering into (or exercising or having the right to exercise rights and duties under) an article 36H agreement.

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5.11 Credit-related regulated activities

Where a **firm** carries on a **credit-related regulated activity** or a connected activity it must comply with the provisions and guidance set out in Rule 1.3R of the transitional provisions in the **FCA's CONC** as they were in force immediately before 1 April 2014 in relation to that activity, with any appropriate modification to take into account the coming into force of HM Treasury Orders that give effect to the transfer of consumer credit regulation from the OFT to the **FCA**.¹

- (a) A **firm** must not enter into any transaction with a **client** in which it:
 - (i) provides the **client** with credit card cheques, a credit or store card, **credit tokens**, **running account credit**, a current account or **high-cost short-term credit**;
 - (ii) holds a **continuous payment authority** over the **client's** account; or
 - (iii) takes any article from the **client** in **pledge** or **pawn** as security for the transaction.
- (b) A **firm** must not enter into a regulated credit agreement as lender which is secured on land by a legal or equitable mortgage.
- (c) A **firm** must not act as lender under a regulated credit agreement which includes a variable rate of interest.
- (d) A **firm** must not provide a **debt management plan** to a **client**.
- (e) A **firm** must not charge a separate fee for, or attribute any element of the **firm's** fees to, **credit broking services**.

Note

- (i) A **firm** which relies on the Part XX exemption cannot carry on **insurance mediation activities** unless they are on the **FCA's** Exempt Professional Firms (EPF) Register and appoint an **insurance mediation officer**. **Firms** wishing to be on this Register should notify the **SRA** (contactcentre@sra.org.uk and 0370 606 2555) and provide details of their **insurance mediation officer**. The EPF Register can be accessed on the **FCA** website - see www.fca.org.uk.

¹ The transitional provisions will remain in force until the new provisions are brought into force.

During the transitional period between 1 April 2014 and 31 October 2015², *firms* carrying on *credit-related regulated activities* will be required to comply with the guidance and other provisions listed in the transitional

provisions in the *FCA's CONC*. These provisions should not impose any new obligations as *firms* should already be complying with them but *firms* will need to adopt a common sense approach in interpreting them, for example, references to the OFT in these provisions and guidance should be read as if they referred to the *FCA* and references to the relevant supervisory authority mean the *SRA*

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SRA Financial Services (Conduct of Business) Rules 2001

Rule 9A Credit-related regulated activities

1. Where a *firm* undertakes *credit-related regulated activities*, it must comply with appendix 2 to these rules.

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APPENDIX 2: Credit-related Regulated Activities

1. Disclosure of information
 - (a) Where a *firm* undertakes *credit-related regulated activities* for a *client*, it must ensure that information in connection with such activities and any agreements to which they relate is communicated to the *client* in a way that is clear, fair and not misleading.
 - (b) Where a *firm* carries on the activity of *credit broking*, it must indicate in any advertising and documentation intended for consumers or *clients* the extent and scope of its *credit broking activities, in particular* whether the *firm* works exclusively with one or more lenders or as an independent broker.

² The transitional period will be extended until the new provisions are brought into force. The FCA has agreed this extension.

2. Regulated credit agreements

- (a) Where a *firm* carries on a *credit-related regulated activity* involving a proposed *regulated credit agreement*, it must provide adequate explanations to the *client* in order to enable the *client* to assess whether the proposed *regulated credit agreement* is suitable to the *client's* needs and financial situation.
- (b) Before entering into a *regulated credit agreement* as lender, the *firm* must assess the *client's* creditworthiness on the basis of sufficient information to enable the *firm* to make the assessment, where appropriate such information will be obtained from the *client* and, where necessary, from a *credit reference agency*.
- (c) After entering into a *regulated credit agreement* where a *firm* is the lender, if the parties agree to change the total amount of credit, the *firm* must update the financial information the *firm* holds concerning the *client* and assess the *client's* creditworthiness before any significant increase in the total amount of credit.
- (d) In the event of a *firm* assigning to a third party its rights as lender in relation to a *regulated credit agreement*, the *firm* must inform the *client* of the assignment.

3. Appropriation of payments

Where a *firm* is entitled to payments from the same *client* in respect of two or more *regulated credit agreements*, the *firm* must allow the *client* to put any payments made, in respect of those agreements, towards the satisfaction of the sum due under any one or more of the agreements in such proportions as the *client* thinks fit.

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SRA Code of Conduct 2011

Chapter 6: Your client and introductions to third parties

IB (6.1) any *arrangement* you enter into in respect of *regulated mortgage contracts*, *regulated credit agreements*, *general insurance contracts* (including after the event insurance) or *pure protection contracts*, provides that referrals will only be made where this is

in the best interests of the particular *client* and the contract or agreement is suitable for the needs of that *client*;

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SRA Handbook Glossary 2012

New defined terms

The majority of these terms have been taken from the FCA Handbook Glossary and adapted where necessary.

continuous payment authority

_____ means consent given by a *client* for a *firm* to make one or more requests to a payment service provider for one or more payments from the *client's* payment account, but excluding:

_____ (a) a direct debit to which the Direct Debit guarantee applies; and

_____ (b) separate consent given by a *client* to a *firm*, following the making of the regulated credit agreement, for the *firm* to make a single request to a payment service provider for one payment of a specified amount from the *client's* payment account on the same day as the consent is given or on a specified day.

credit broking

_____ means an activity of the kind specified in article 36A of the Regulated Activities Order.

credit token

means a card, check, voucher, coupon, stamp, form, booklet or other document or thing given to a *client* by a *person* carrying on a credit-related regulated activity ("the provider"), who undertakes that:

_____ (a) on production of it (whether or not some other action is also required) the provider will supply cash, goods or services (or any of them) on *credit*, or

_____ (b) where, on the production of it to a third party (whether or not any other action is also required), the third party supplies *cash, goods* and services (or any of them), the provider will pay the third party for them (whether or not deducting any discount or commission), in return for payment to the provider by the *client* and the provider shall, without prejudice to the definition of credit, be taken to provide credit drawn on whenever a third party supplies the *client* with cash, goods or services; and

the use of an object to operate a machine provided by the person giving the object or a third party shall be treated as the production of the object to that person or third party.

debt management plan

means a non-statutory agreement between a *client* and one or more of the *client's* lenders the aim of which is to discharge or liquidate the *client's* debts, by making regular payments to a third party which administers the plan and distributes the money to the lenders.

high-cost short term credit

means a *regulated credit agreement* :

(a) which is a borrower-lender agreement or a P2P agreement;

(b) in relation to which the *APR* is equal to or exceeds 100%;

(c) either:

(i) in relation to which a *financial promotion* indicates (by express words or otherwise) that the *credit* is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the *credit* is to be provided for a short term; or

(ii) under which the *credit* is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the *credit* is advanced;

(d) which is not secured by a mortgage, charge or *pledge*; and

(e) which is not:

(i) a credit agreement in relation to which the lender is a community finance organisation; or

(ii) a home credit loan agreement, a bill of sale loan agreement or a borrower-lender agreement enabling a borrower to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.

legal or equitable mortgage

includes a legal or equitable charge and, in Scotland, a heritable security.

pawn

means any article subject to a *pledge*.

pawnee

_____ means a person who takes any article in *pawn* and includes any person to whom the rights and duties of the original *pawnee* have passed by assignment or operation of law.

pledge

_____ *pawnee's* rights over an article taken in *pawn*.

regulated credit agreement

has the meaning given by article 60B(3) of the *Regulated Activities Order* .

regulated consumer hire agreement

has the meaning given by article 60N(3) of the *Regulated Activities Order* .

running account credit

_____ means a facility under a credit agreement under which the borrower or another person is enabled to receive from time to time from the lender, or a third party, cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the borrower, the credit limit (if any) is not at any time exceeded.