

**SRA BOARD**  
9 September 2015

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## **Regulation of Consumer Credit Activities (supplemental paper)**

### **Background**

- 1 This paper supplements a substantive paper in relation to the regulation of consumer credit activities noting the outcome of our consultation and the current position in respect of guidance for SRA-authorized firms.
- 2 The Board will be aware from paragraph 11 of the substantive paper that we have been in continuing discussions with the Financial Conduct Authority (FCA) about some technical points of detail and the exact legal wording of the draft rules.
- 3 Following these discussions, the Draft SRA Amendments to Regulatory Arrangements (Consumer Credit) Rules [2015] that we are asking the Board to make are set out in Annex 1.
- 4 There is only one substantive issue that arose out of the discussions with the FCA. This is set out below. The remainder of the rules are as per the substantive paper.

### **Providing credit references**

- 5 The FCA considered that the regulated activity of providing credit references should be added to the list of prohibitions set out in the Scope Rules.
- 6 Providing credit references is a new regulated activity which replaced the activity of 'operating a credit reference agency'. The new activity only applies to a firm if its business primarily consists of providing others with information relevant to someone's financial standing and collecting such information for that purpose.
- 7 We consider that it would be extremely unlikely that any SRA-authorized firm would be undertaking this activity and if they did it would be difficult to see how they would be able to do so under Part 20 (because it is not likely to ever meet the "incidental manner" test). Further, SRA-authorized firms were not able to operate as credit reference agencies under the Office of Fair Trading (OFT) group licence. This was not included in the draft list of prohibited activities upon which we consulted; but we have agreed with the FCA for this activity to be explicitly prohibited so as to make clear that it is not allowed without separate FCA authorisation. Should we permit this, then we would be required to include detailed rules in our Handbook to reflect those in the FCA's Consumer Credit sourcebook (CONC); this would, in our view, be disproportionate given that firms would be highly unlikely to carry out this activity under Part 20.

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- 8 For the reasons stated above, we consider it will have little, if any, impact on SRA-authorized firms or consumers.
- 9 The prohibition has therefore, been added into the draft Scope rules.

**Impact and status of rules**

- 10 We do not consider that our response to the FCA and the amendments made to the draft rules included in the consultation have any negative impact on SRA-authorized firms.
- 11 The draft rules have been agreed with the FCA in principle and the Board is asked to make the Draft SRA Amendments to Regulatory Arrangements (Consumer Credit) Rules [2015]. Following the Board's decision, the rules will be subject to the formal approval of the FCA and the Legal Services Board.

**Recommendation: the Board is asked to make the Draft SRA Amendments to Regulatory Arrangements (Consumer Credit) Rules [2015].**

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<b>Date</b>	8 September 2015

**Annexes**

- Annex 1 Draft SRA Amendments to Regulatory Arrangements (Consumer Credit) Rules [2015]

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**Draft SRA Amendments to Regulatory Arrangements (Consumer Credit) Rules [2015]**

Rules made by the Solicitors Regulation Authority Board on [date].

Made under Part I, Part II, sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985, paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990, section 83 of, and Schedule 11 to, the Legal Services Act 2007 and section 332 of the Financial Services and Markets Act 2000.

Approved by the Financial Conduct Authority under section 332(5) of the Financial Services and Markets Act 2000 on [date].

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 on [date].

**Rule 1**

In IB(6.1) of the SRA Code of Conduct 2011, after "*regulated mortgage contracts*," insert "*regulated credit agreements*" and after "contract" insert "or agreement".

**Rule 2**

The SRA Financial Services (Scope) Rules 2001 shall be amended as follows:

- (a) in the preamble, delete ", into or from" and insert ", for the purposes of the Financial Services and Markets Act 2000" after "United Kingdom";
- (b) replace rule 2.2(b) with:
  - "(b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;"
- (c) in rule 3.1:
  - (i) after sub-paragraph (n), delete "or";
  - (ii) after sub-paragraph (o), substitute ";" for "." and insert:
    - "(p) entering into a *regulated credit agreement* as lender except where the *regulated credit agreement* relates exclusively to the payment of *disbursements* or professional fees due to the *firm*;

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- (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 exclusively to the payment of *disbursements* or professional fees due to the *firm*;
  - (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*;
  - (t) operating an electronic system in relation to lending within the meaning of article 36H of the *Regulated Activities Order*; or
  - (u) carrying on the activity of providing credit references within the meaning of article 89B of the *Regulated Activities Order*."
- (d) replace rule 5.11(a) with:
- "(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:
- (i) enter into a *regulated credit agreement* as lender; or
  - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,
- which* is secured on land by a *legal or equitable mortgage*.
- (c) A *firm* must not:
- (i) enter into a *regulated credit agreement* as lender; or
  - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,
- which* includes a variable rate of interest.

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- (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*."; and
- (e) delete Guidance Note (ii) to rule 5.

### **Rule 3**

The SRA Financial Services (Conduct of Business) Rules 2011 shall be amended as follows:

- (a) in the preamble, delete “, into or from” and insert “, for the purposes of the Financial Services and Markets Act 2000” after “United Kingdom”;
- (b) replace rule 2.1(b) with:
  - “(b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence.”;

- (c) insert after rule 9:

#### **" Rule 9A: Credit-related regulated activities**

9A.1 Where a *firm* undertakes *credit-related regulated activities*, it must comply with appendix 2 to these rules.”;

- (d) replace rule 11.1 (a) and (b) with:
  - “(a) compliance with them would be unduly burdensome having regard to the benefit which compliance would confer on *clients* or third parties; and
  - (b) the exercise of the power would not result in any undue risk to *clients* or third parties.”;

- (e) after rule 11.1 insert the following:

“Note

- (i) For the avoidance of doubt, the *SRA* will not waive rules that implement any of the requirements of the Directive 2008/48/EC on credit agreements for consumers. See also the *SRA's* Waivers policies”; and

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(f) insert after Appendix 1:

" 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 Regulated credit agreements

- (a) Where a *firm* carries on a *credit-related regulated activity* involving a proposed *regulated credit agreement*, it must;
  - (i) 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; and
  - (ii) when providing such explanations, comply with the requirements of Article 5(6) of the Directive 2008/48/EC on credit agreements for consumers.
- (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.

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- (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.

4 Consumer Credit Guidance

Where a *firm* undertakes *credit-related regulated activities*, it must have regard to any guidance issued by the SRA from time to time relating to such activities.”

**Rule 4**

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) after the definition of "**connected with**" insert:

**"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:

- (i) a direct debit to which the direct debit guarantee applies; and
- (ii) 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.”;

- (b) after the definition of "**CPE**" insert:

**“credit agreement**

means in accordance with article 60B of the *Regulated Activities Order*, an agreement between an individual ("A") and any other person ("B") under which B provides A with credit of any amount.

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**credit broking**

means an activity of the kind specified in article 36A of the *Regulated Activities Order*.";

- (c) after the definition of "**credit-related regulated activity**" insert:

**"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:

- (i) 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
- (ii) 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.";

- (d) after "**date of notification**" insert:

**"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.";

- (e) after "**general prohibition**" insert:

**"high-cost short term credit**

*means* a *regulated credit agreement*.

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- (i) which is a borrower-lender agreement or a P2P agreement;
- (ii) in relation to which the APR is equal to or exceeds 100%;
- (iii) either:
  - (A) 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
  - (B) 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;
- (iv) which is not secured by a mortgage, charge or *pledge*; and
- (v) which is not:
  - (A) a *credit agreement* in relation to which the lender is a community finance organisation; or
  - (B) 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.";
- (f) after "**Legal Ombudsman**" insert:  
  
"**legal or equitable mortgage**  
  
includes a legal or equitable charge and, in Scotland, a heritable security.";
- (g) after "**part-time**" insert:  
  
"**pawn**  
  
means any article subject to a *pledge*.";
- (h) after "**pawn**" insert:  
  
"**pawnee**

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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.";

- (i) after "plan provider" insert:

**"pledge**

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

- (j) after "**regulated collective investment scheme**" insert:

**"regulated consumer hire agreement**

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

- (k) after "**regulated consumer hire agreement**" insert:

**"regulated credit agreement**

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

- (l) after "**RFL**" insert:

**"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."

## **Rule 5**

These amendment rules come into force on 1 April 2016.