Consultation Paper

09/22**

Financial Services Authority

Regulating sale and rent back – the full regime

September 2009

Contents

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 30 November 2009.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/Pages/Library/Policy/CP/2009/cp09_22_response.shtml).

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Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

1 Overview

1.1 Sale and rent back (SRB) involves individuals (often those facing financial difficulties) selling their home at a discount in return for the right to remain in their property as a tenant for a set period, typically on an assured shorthold tenancy agreement.

1.2 In response to stakeholder concerns, at Budget 2008, the government asked the Office of Fair Trading (OFT) to investigate the SRB market, drawing on contributions from us. On 14 May 2008 the OFT announced that it would conduct a formal market study of this market, working to an expedited timetable. On 15 October 2008, the OFT[1] published its study on SRB which found that:

- some consumers are entering into an SRB agreement when it is not necessarily the best option for them;
- the lack of long-term security of tenure means that there is substantial risk involved in the transaction; and
- SRB deals are complex to evaluate, particularly for consumers already in stressful and difficult financial and emotional situations.

1.3 As a result of this analysis the OFT recommended that SRB transactions should become subject to statutory regulation and that this regulation should fall under the responsibilities of the FSA.

1.4 In the 2008 Pre-Budget Report the government confirmed its intention to consult on giving us the power to regulate the SRB market, this was followed by a Treasury consultation document[2] and finally our Consultation Paper (CP) CP09/06,[3] published in February 2009.

1.5 The agreed regulatory approach[4] had two stages. An interim regime was brought in on 1 July 2009 to address the most immediate problems for consumers. The interim regime would then be followed by a full regime which would be implemented on 30 June 2010.

1 http://www.oft.gov.uk/shared_oft/reports/consumer_protection/oft1018.pdf

2 http://www.hm-treasury.gov.uk/d/consult_rent_sale060209.pdf

3 http://www.fsa.gov.uk/pubs/cp/cp09_06.pdf

4 This was explained in the Treasury document http://www.hm-treasury.gov.uk/d/consultsalerent_response020609.pdf and our policy statement http://www.fsa.gov.uk/pubs/policy/ps09_09.pdf

Purpose of this CP

1.6 This paper sets out and seeks views on our proposed approach to the application of a full regulatory regime to the SRB market, including the rules and guidance that we propose to apply to firms carrying on these activities.

1.7 Chapter 10 also includes a consultation by the Financial Ombudsman Service on extending its voluntary jurisdiction to include sale and rent back activities.

Structure and content of this CP

1.8 The rest of this paper is structured as follows:

- Chapter 2 provides a brief analysis of the characteristics of the SRB market.
- Chapter 3 outlines our regulatory options for the full regime.
- Chapter 4 discusses our proposals for authorisation.
- Chapter 5 outlines our approach to regulatory fees.
- Chapter 6 discusses high level standards, competence, supervision and EU directives.
- Chapter 7 considers prudential requirements.
- Chapter 8 discusses our approach to regulatory reporting.
- Chapter 9 considers our conduct of business rules.
- Chapter 10 considers complaints and redress arrangements.
- Annexes A and B contain a cost benefit analysis of our proposals and an analysis of their compatibility with our statutory objectives and the principles of good regulation.
- Annex C lists the consultation questions.
- Appendix 1 includes the draft instrument and proposed rules.
- Appendix 2 includes the draft content of our consumer factsheet on SRB.
- Appendix 3 includes the draft FOS instrument.

Regulatory proposals

1.9 The interim regime was designed to bring in basic protections for consumers and was a fast regulatory response to address the most severe consumer detriment. It required firms:

- to be authorised on an interim basis if conducting SRB business;
- to comply with our Principles for Businesses and threshold conditions, specified parts of the handbook, and tailored conduct of business rules designed to address the causes of the most severe detriments occurring in the market; and

- to be subject to our dispute resolution rules, including access to the Financial Ombudsman Service (FOS).

1.10 We now propose to implement a full and detailed regulatory regime, to be effective as of 30 June 2010. The full regime will build on the requirements of the interim regime to provide more comprehensive protection for consumers.

1.11 The existing home reversion rules within the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) provided a logical starting point for developing our regulatory proposals for SRB, due to the similarities in the structure of the products. However, we recognise that the SRB market differs significantly to the home reversion market. Our proposals reflect this and our requirements for SRB are tailored accordingly.

1.12 We are proposing to include the conduct of business requirements for SRBs in an expanded MCOB.

1.13 Our regulatory proposals are designed to implement a risk-based proportionate regulatory regime for SRB sales, focusing on outcomes received by consumers and providing appropriate consumer protection for those entering into SRB agreements. More specifically, the objectives we are seeking to achieve are that:

- firms are fit and proper and appropriately resourced;
- firms' staff are competent to carry out the responsibilities of their role;
- consumers get clear, concise and consistent information about a firm's services and products (including appropriate risk warnings) so they can make informed choices;
- consumers have time to consider the nature of the product and alternatives on offer and seek appropriate advice to help them decide;
- consumers are sold appropriate products that take account of their circumstances, needs, and affordability; and
- if things go wrong, consumers have appropriate protection.

Pre-consultation

1.14 Our proposals as set out in the CP have been discussed with a range of stakeholders including the relevant trade bodies, consumer groups and firms. We have also consulted our Consumer Panel, Practitioner Panel and Smaller Businesses Practitioner Panel. We would like to thank all those who have contributed to these discussions, which have helped to inform our proposals.

Who should read this paper?

1.15 This CP will be of interest to firms active in the SRB market, relevant trade bodies and consumer representatives.

Next steps

1.16 **This consultation will close on 30 November 2009.** We will then finalise our proposals in light of the responses received with a view to implementing the full regime on 30 June 2010.

1.17 We usually allow a three month period for consultation, but for this CP we are allowing only two months. The reason for this is that legislation requires the full regime to be implemented on 30 June 2010, and firms need as much time as possible to prepare and apply for the full regime. We plan to publish a Policy Statement and final rules in the new year.

1.18 **Firms should be aware that if they have not received permission for the full regime by 30 June 2010, then they will not be able to conduct SRB business until they receive that permission. This applies whether or not the firm had permission for the interim regime.**

1.19 We therefore encourage firms to begin applying as soon as possible, in order to increase the likelihood that their applications will be processed before the full regime begins on 30 June 2010. We will make application forms for the full regime available from early December 2009. Information about the application process and application forms will be accessible from the authorisation pages of our website at http://www.fsa.gov.uk/Pages/Doing/how. We are required under our legislation to process applications within 6 months of an application being deemed complete, or 12 months in total. While we will endeavour to process them more quickly, where there are complications, or where the applicant wishes to appeal against our initial judgment, the full time period may be required. Firms who apply before the final rules are published will be asked subsequently to confirm that they can comply with the final regime before their application is finally determined.

CONSUMERS

These proposals will be of interest to consumers who are considering entering into an SRB agreement and consumer bodies representing the interests of these consumers. In particular, consumers should note the addition of conduct of business rules designed to prevent the use of high-pressure selling techniques, and to ensure consumers enter into SRB agreements that they understand and that are appropriate to their circumstances.

2 Characteristics of the market

2.1 SRB agreements involve individuals selling their home, usually at a discount, in exchange for obtaining a tenancy agreement to remain in the property for a set period. Typically, this right to remain is achieved through an assured shorthold tenancy of six to 12 months, although in some cases a longer tenancy period is offered that may extend for a number of years.

2.2 The level of the discount varies in each individual case, but is usually 20–30% of the market value of the property. The rental payable is agreed at the time of the sale, and can be at local market rates, or at a lower rate (usually in exchange for a larger discount on the sale price).

2.3 SRB agreements generally involve a full sale, where the consumer sells the entire property to an SRB provider. A minority of SRB providers offer 'partial' SRB. In this model, less than 100% of the property is sold to the provider and the consumer retains a financial (or 'beneficial') interest in the property, although the full title to the property passes to the SRB provider at the sale. More commonly, where the transaction involves a full sale, the customer may be offered some kind of incentive as part of the deal, such as the right to a share in a portion of the appreciation of the property value, or return all or part of the original discount after a set period. They may also be offered an option to re-purchase the property.

Market Participants

2.4 In the past, SRB schemes were predominantly provided by local authorities and social landlords. However, the industry has grown quickly in recent years, and now appears highly fragmented. In 2008 the OFT believed there was likely to be over 1,000 firms operating in the SRB market, although industry sources generally estimated a much lower figure. The number of firms currently active has reduced with fewer than 80 firms authorised under the interim regime. These firms are mostly very small firms, with just a few larger firms.

2.5 **Since the outset of the interim regime on 1 July 2009 it has been a criminal offence for firms to continue to operate without authorisation (unless they are doing so through a legitimate exemption or exclusion). We are actively monitoring the market for unauthorised activity and we will be taking action against those firms still active without the necessary permission.**

2.6 The majority of firms in the interim regime applied for both advising/arranging and providing/administration activities, although a significant minority applied for advising or arranging only. Firms offering only advising or arranging appear more aligned to the 'matchmaking' model where the firm matches potential SRB sellers with SRB providers (often 'armchair investors' who may be unauthorised on the basis that they do not participate in SRB by way of business). Their business is very different to the traditional model of a financial services intermediary. We are aware that introducer arrangements are in place in this market, but we have limited information on this.

2.7 There still appears to be limited involvement in SRB by administrators at present, although it is possible that this market may develop in the future.

2.8 There is a range of funding arrangements in place among interim permitted firms, including commercial arrangements, loan and overdraft facilities, personal wealth and buy-to-let mortgages. Buy-to-let mortgages are more common for the smallest firms – however, this source of funding is limited due to current market conditions.

2.9 The OFT estimated that around 50,000 households had entered into SRB agreements by summer 2008 – most in the past two years. Consumers engaging in SRB agreements tend to be those in financial difficulty, often facing repossession, and the speed of the transaction is often a feature. The OFT found some firms advertising that they can complete an SRB within 48 hours, although in practice most transactions take significantly longer than this.

2.10 SRB firms have also been affected by recent changes to the mortgage market. While the number of consumers in arrears (and therefore more likely to consider SRB) has increased, the government has put in place several new initiatives to support borrowers facing financial difficulties and lenders are more likely to offer alternatives to repossession. Falling house prices may lead to SRB being inappropriate for some home owners (due to having a reduced level of equity in the property). Also, the reduced availability of buy-to-let mortgages may be limiting opportunities for some SRB firms.

Q1: Does our analysis fit with your understanding?

Q2: To what extent are introducer arrangements used in the SRB market?
What type of firms use introducer arrangements?

3 Regulatory options

3.1 This chapter sets out our approach to the regulation of sale and rent back (SRB) firms.

3.2 Under the Financial Services and Markets Act 2000 (FSMA), we must act, so far as reasonably possible, in a way which is compatible with our statutory objectives. These are:

- the protection of consumers;
- public awareness;
- market confidence; and
- the reduction of financial crime.

3.3 In deciding how we regulate any activity, we start by assessing the risk the activity poses to our statutory objectives. We then seek to identify the most appropriate way of mitigating those risks from the range of regulatory tools available to us under FSMA. We take into account the particular features of the products we are dealing with, the types of consumers and the size of the market.

Risks to our statutory objectives from SRB

3.4 SRBs are complex products and as such we see them as a higher risk than, for example, standard mortgages. In CP09/06 we outlined the risks from SRB that we had identified to our statutory objectives. In particular we identified risks posed by SRB to our consumer protection objective, through risks such as:

- consumers mis-buying SRB products;
- firms mis-selling SRB products;
- unreasonably low valuations leading to consumers not receiving a fair price;
- security of tenure; and
- access to redress.

3.5 Our view is that these risks still exist in the SRB market.

Regulatory options

3.6 When considering our approach for the full regime we considered a number of options.

Option 1: Do nothing.

We had already considered this option for the interim regime. Given the considerable consumer detriment identified in the OFT's market study, and its argument that the existing regulatory framework is unable to tackle the market failures in SRB, we do not believe this is a viable option. Responses to both the OFT and Treasury consultation supported overwhelmingly the regulation of the sector. We continue to believe there is considerable potential for consumer detriment in the SRB market. We have therefore concluded that doing nothing is still not an acceptable option.

Option 2: Continue the interim regime.

The interim regime was a targeted response to tackle the most immediate areas of consumer detriment as swiftly as possible. It was not intended as a permanent or comprehensive response and did not tackle all areas of possible detriment. We believe that there continue to be practices in the market that are not adequately addressed by the interim regime and that have the potential to lead to significant consumer detriment. Therefore we do not propose to extend the interim regime.

Option 3: Create a more comprehensive regime to address continuing areas of consumer detriment.

We believe that risks to consumers persist in this market. These arise from areas such as:

- high pressure selling – where consumers are encouraged to commit to SRB schemes without having adequate time to consider the details of the scheme or possible alternatives;
- inappropriate sales – where consumers' needs and circumstances are not adequately considered to ensure that SRB is a sustainable solution for them; and
- the sustainability of firms' business models, including inadequacy of financial resources.

We believe these risks would be most effectively addressed by the application of more comprehensive rules to protect consumers. This is our preferred option.

3.7 As a result, it is our intention to apply further specific rules to SRB firms in areas such as financial promotions, advice and selling, disclosure and capital requirements.

Q3: Do you agree with our approach to regulating SRBs?

Cost benefit analysis and compatibility statement

3.8 A separate cost benefit analysis of our SRB proposals for the full regime can be found in Annex A. A statement explaining why we believe these proposals are compatible with our statutory objectives and the principles of good regulation is in Annex B.

4 Authorisation

4.1 The legislative framework established for the interim regime will continue unchanged into the full regime. Full details about the legislative background can be found in HM Treasury's CP and consultation response published earlier this year.[5] We shall be publishing guidance on the regulated activities in our 'Perimeter Guidance Manual' (PERG), which is one of our handbook regulatory guides. The draft of this guidance is in Annex G of Appendix 1.

4.2 In summary, the Treasury defined a regulated SRB as:

(i) an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into – the arrangement is one under which a person (the "agreement provider") buys all or part of the qualifying interest in land (other than a timeshare accommodation) in the United Kingdom from an individual or trustees (the "agreement seller"); and

(ii) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so; but such an arrangement is not a regulated sale and rent back agreement if it is a regulated home reversion plan.

4.3 The following activities are regulated activities:

- entering into an SRB agreement as an agreement provider;
- administering an SRB agreement;
- arranging an SRB agreement (including arranging to vary the terms of an SRB agreement); and
- advising on an SRB agreement (including advising on varying the terms of an SRB agreement).

5 Regulating the sale and rent back market: a consultation http://www.hm-treasury.gov.uk/d/consult_rent_sale060209.pdf; Regulating the sale and rent back market: a summary of responses to consultation http://www.hm-treasury.gov.uk/d/consultsalerent_response020609.pdf

4.4 **Firms carrying on any regulated activities must be authorised to do so, unless an exemption or exclusion legitimately applies. SRB firms must be directly authorised – there is no appointed representatives regime for SRB (see paragraph 4.18).**

4.5 The following persons are exempt from the need for authorisation for SRB activities:

- an exempt professional firm (for example, a firm of solicitors, accountants or actuaries) carrying on regulated activities incidental to its main business;
- housing associations (currently defined as a 'registered social landlord') in Scotland, England and Wales (but not a subsidiary);
- the Homes and Communities Agency, the Tenants Advisory Service, Scottish Homes and the Northern Ireland Housing Executive: and
- a local authority.

4.6 Exclusions include the following:

- introducers – those who only introduce to authorised persons are excluded from the regulated SRB activities, subject to certain conditions, including handling client money and disclosing the financial interests of the introducer;
- any person acting as a trustee, nominee or personal representative; and
- newspapers or periodical publications containing advice.

Authorisation

4.7 **The interim regime will end at midnight on 29 June 2010 and the full regime will begin on 30 June 2010. All firms will need to apply for authorisation in order to undertake SRB business in the full regime, even those that have been permitted to carry on SRB activities under the interim regime. Applications must be made in line with the timetable outlined in the 'next steps' section of Chapter 1. Firms authorised under the interim regime who wish to continue to operate within the market will be required to lodge a fresh application for the full regime. If a firm has been granted interim permission, it does not automatically mean that the firm will achieve authorisation for the full regime.**

4.8 Firms will have to obtain permission for each of the regulated SRB activities they undertake (e.g. entering into an SRB, advising on an SRB, arranging an SRB, etc).

4.9 Information on the proposed application fees for the full regime can be found in Chapter 5.

4.10 Transitional arrangements will apply to any SRB business that is underway when the full regime comes into force. Details of the proposed transitional provisions can be found in Annex E of Appendix 1.

Variation of Permission (VoP)

4.11 Similarly those firms that applied for a VoP to operate in the interim SRB regime will need to re-apply for a VoP to operate in the full SRB regime.

4.12 Firms wishing to become authorised to conduct SRB business for the first time and are already authorised to carry on other regulated activities must apply for a VoP before they can operate in the SRB market.

4.13 The current application form for a VoP is available on our website at http://www.fsa.gov.uk/pubs/other/mgi_form.doc. Information on application fees for VoPs is outlined in chapter 5.

Q4: Do you have any comments on the perimeter guidance for SRB?

Q5: Do you agree with our proposals on authorisation?

Approved Persons

4.14 Our handbook defines certain 'controlled functions' (CFs) and requires that persons who carry out these functions become 'approved persons'.[6] CFs are those roles in an FSA regulated business that have a particular regulatory significance. They fall into two broad categories – 'significant influence' functions and a 'customer facing' function. The requirements relating to the approval of an approved person are set out in the following parts of our Handbook:

- Statements of Principle and Code of Practice for Approved Persons (APER). This sets out the standards of behaviour that we expect of approved persons.
- The Fit and Proper test for Approved Persons (FIT). This sets out our minimum standards for becoming and remaining an approved person.
- Supervision Manual (SUP) chapter 10. This explains the controlled functions and lays out the boundaries of the approved persons' regime.

4.15 To become an approved person, an individual must be approved by us as fit and proper. This involves an assessment of an individual's honesty and integrity, competence and capability and financial soundness. An approved person must perform the controlled function(s) in line with a Code of Practice, which is set out in APER 3 & APER 4.

4.16 Firms authorised under the interim SRB regime were not subject to our approved persons provisions. However, for the full regime we propose to apply these provisions to SRB firms in the same way as for other home finance firms. The customer function does not apply to home finance firms on the basis that other requirements such as

6 An 'approved person' is a person in relation to whom the FSA has given its approval under s.59 of FSMA for the performance of a 'controlled function'.

conduct of business rules, systems and controls provisions and training and competence requirements provide sufficient safeguards. We propose to continue this approach for the SRB market. Therefore:

- significant influence functions (CF1-6, 11, 28 and 29) will apply as appropriate to all persons performing these functions; and
- the customer function (CF30) will not apply.

4.17 We believe this proposal is proportionate to the risks arising from the SRB market, considering the other measures we are putting into place to protect consumers. It is consistent with the existing approved persons' regime for similar product areas and with the emphasis we place on the responsibility of a firm's senior management to ensure compliance with our requirements.

Q6: Do you agree with our approved persons proposals for SRB?

Appointed representatives

4.18 The government did not consider it appropriate to put an appointed representatives'[7] regime in place for SRB, and so the legislation does not include any provision for appointed representatives. Therefore **all firms who wish to undertake SRB activity must be directly authorised** (unless they are exempt or using a legitimate exclusion).

4.19 The effect of this is that if a directly authorised firm has appointed representatives for types of business other than SRB, those appointed representatives will not be able to carry on regulated SRB activities unless they are authorised for SRB activities in their own right. Firms will need to consider the implications of this on their business models going forward as it is not possible for a firm to be both directly authorised and an appointed representative.

Unauthorised business

4.20 **As stated above, all firms carrying on regulated SRB activities must be authorised to do so, unless they are exempt or using a legitimate exclusion. Where firms undertake business without being appropriately authorised they are committing a criminal offence.**

4.21 **We are currently actively monitoring the market for unauthorised business being undertaken under the interim regime and we shall be continuing to monitor the market under the full regime. There is a dedicated unauthorised business enforcement team supporting this monitoring activity and we will take action where we find that firms are carrying on SRB business without being appropriately authorised. This may include civil or criminal proceedings, which may lead to fines or imprisonment. Firms may also face consequences such as being required to pay compensation or agreements being ruled unenforceable.**

7 Where permitted, appointed representatives are exempt from regulation but allowed to carry on regulated activities where an authorised firm accepts responsibility on their behalf, according to certain conditions being met.

4.22 One of the considerations taken into account when deciding whether a firm needs to be authorised is the 'by way of business' test.[8] This is the test used to decide whether a firm is carrying on a regulated activity by way of business, in which case they must be authorised to do so. Some operators in the SRB market are not authorised on the basis that they consider they are not conducting SRB business by way of business. These operators are generally small-scale 'armchair' investors who act as SRB providers only on a very infrequent basis, often as part of the 'matchmaker' business model, where they are put in touch with potential SRB sellers by an authorised SRB adviser or arranger.

4.23 We are concerned about the lack of consumer protection in this situation, as the SRB seller (i.e. the consumer) will not benefit from the majority of the consumer protections put in place for the full regime. Although the number of SRB agreements entered into by each unauthorised provider by definition must be small, in total these cases may make up a significant part of the market, and there is potential for consumer detriment in each case. We are considering several measures to counter this risk.

4.24 We propose to apply a number of requirements to SRB firms who may be involved in arranging agreements with unauthorised providers. Under the interim regime, if an authorised firm enters into an agreement with an unauthorised firm, we require them to:

- protect customers' interests to a reasonable standard (MCOB 2.6A.17AR); and
- disclose to the consumer that key protections under the regulatory system would not apply and that the provider would not be subject to the jurisdiction of the FOS (MCOB 5.9.3R).

4.25 We propose to continue these requirements under the full regime. We also propose to introduce the following requirements:

- All authorised firms who pass business to unauthorised providers must keep a record of business passed to these firms (MCOB 5.9.8R). This will help firms with their own internal monitoring to ensure that they do not pass business to unauthorised firms that are carrying on SRB activities by way of business, as well as for our use in the supervision of firms.
- Authorised firms will be required to disclose any fees and commissions received from unauthorised providers (MCOB 4.11.1R(1)(c)) as part of initial disclosure requirements, so it will be clear if the authorised firm is receiving any money from an unauthorised provider, how much, and in what circumstances.
- If an authorised firm becomes aware that an unauthorised provider appears likely to be in breach of the 'by way of business' test they should not refer SRB sellers to them, and should warn their customers against proceeding with any agreements with these firms (MCOB 5.9.5G). They should also inform us.

8 The requirements of the 'by way of business' test for SRB are outlined in Q38 of the perimeter guidance in Annex G of Appendix 1.

Guidance on the 'by way of business test'

4.26 As discussed above there are a number of operators in the SRB market who are not authorised because they do not pass the 'by way of business' test – because they enter into SRB agreements as a purely one-off investment, with no intention of investing in future SRB transactions. While this is legitimate in certain circumstances, in the majority of cases authorisation is required to undertake SRB business. We are including clear guidance on the application of the 'by way of business test' for SRB in PERG which can be found in Annex G of Appendix 1. This includes guidance on when SRB activities are being carried on 'by way of business' and therefore where authorisation is required.

4.27 The guidance makes it clear that a firm can be undertaking SRB activities 'by way of business' even where they enter into only one sale and rent back agreement per year, particularly where a commercial element is involved. Therefore persons undertaking such SRB business will need to be authorised.

4.28 Examples of the limited circumstances where the 'by the way of business' test is unlikely to be satisfied (and therefore where authorisation would not be required) include:

- where an individual enters into a one-off SRB agreement for a SRB seller who is a friend or member of his family; and
- when a person provides a service without any expectation of reward or payment of any kind.

Q7: Do you agree with our approach to dealing with unauthorised business?

5 Regulatory fees

5.1 Authorised firms pay regulatory fees, which enable us to recover the costs of carrying out our statutory functions. The amendments we propose to make to the FEES Manual which are described in this section are in Annex C of Appendix 1. (Firms may also be liable for levies to fund the operation of the FOS and FSCS which are discussed later in this chapter).

5.2 Our regulatory fees fall into two broad categories:

(i) **Application fees/VoP fees:** These are contributions to the cost of processing certain one-off regulatory transactions – for example, applications from new firms for authorisation or a VoP (application fees are non-refundable); and

(ii) **Periodic fees:** These are annual fees that we set each year following consultation in February.

5.3 Application and periodic fees are determined by the allocation of firms to one or more 'fee-blocks' (groups of fee-payers). Fee-payers are pooled together according to the scope of their permissions, so firms conducting similar activities pay fees on a similar basis. Fee-blocks are also relevant to determining VoP fees.

Fee-block allocation

5.4 As set out earlier, SRB activities are broadly in line with those for existing regulated home finance firms. We therefore propose that newly authorised firms carrying out SRB activities are placed within the same fee-block as other home finance providers. That is:

- SRB providers and administrators will be allocated to the A.2 fee-block (Home finance providers and administrators);
- SRB intermediaries will be allocated to the A.18 fee-block (Home finance providers, advisers and arrangers); and
- SRB firms that act as both provider and adviser/arranger will be allocated to both the A.2 and A.18 fee-blocks.

5.5 In Chapter 8 of CP09/06, we explained the proposed application fees for the interim and full SRB regime, and that regulatory fees will apply in the usual way, that is, an application fee followed by periodic fees.

5.6 Under the interim regulatory regime, the application fee was set at a lower amount than our usual application fee because the requirements were less than the full regulatory regime. The application fee for interim SRB providers and administrators is £3,000 and for SRB advisers and arrangers it is £1,000.

5.7 Firms with interim permission will be required to lodge a fresh application for authorisation, as explained in Chapter 4.

Application fees

5.8 An application fee is a one-off, non-refundable fee that covers the cost of processing applications and depends on the regulated activities the firm wishes to undertake. The fee payable is determined by the complexity of the application. If the application is straightforward (£1,500), moderately complex (£5,000) or complex (£25,000).

5.9 The application fees proposed have not changed from the amounts described in CP09/06, and are consistent with our approach to other home finance providers. That is:

- for authorisation for SRB providers and administrators (firms that enter into or administer SRB agreements) the fee payable will be £5,000; and
- for authorisation for SRB advisers and arrangers (firms that advise on or arrange SRB activities) the fee payable will be £1,500.

5.10 Where a firm applies for SRB permissions in both fee blocks (i.e. both providing and administration and advising and arranging), the fee payable will be £5,000.

5.11 In CP09/06 it was explained that firms applying for interim permission would pay a portion of the total fee when submitting their application for the interim regime, and then pay the balance when they applied for the full regime (assuming they applied for the same activities for the full regime). The amount to be paid for interim applications was set at £3,000 for providers and administrators and £1,000 for advisers and arrangers. When these firms went on to apply for the full regime they would pay a top-up amount (of £2,000 for providers and administrators and £500 for advisers and arrangers), to bring them in line with the relevant full application fee.

Variation of Permission (VoP) Fees

5.12 An authorised firm that applies to extend its permission to include SRB activities is liable to pay a VoP application fee. The amount of the application fee is determined by the complexity of the application.

VoP applications for the full regime for firms that have not held interim permission

5.13 In CP09/06 we proposed that under the full regime, the VoP fee payable by firms (who do not hold interim permission) seeking to extend their permission to carry out SRB transactions is calculated at 50% of the relevant application fee where the variation involves moving into an additional fee-block, or £250 where the firm is extending the scope of their permission but remain in the same fee-block. So for firms (who are not currently authorised as a home finance provider or administrator) seeking a variation to become an SRB provider or administrator the fee payable will be 50% of £5,000 and for firms (not currently authorised as a home finance adviser or arranger) seeking a variation to become an SRB adviser or arranger the fee payable will be 50% of £1,500.

VoP applications for the full regime for firms that have held interim permission

5.14 Under the interim regime, authorised firms could apply for an interim VoP. Firms who obtained interim permission through a VoP and wish to continue conducting SRB activities under the full regulatory regime will need to apply for a new VoP under the full regime.

5.15 In CP09/06, chapter 8, our intention was for firms who opted to apply for an interim VoP to pay application fees on the following basis.

- An interim authorisation fee of £250 would be payable by firms who currently undertake the same related regulated home finance activities (so extending to an SRB permission within their existing fee-block).
- For firms who are currently active in the home finance market but in an unrelated regulated home finance activity to that which they applied for under the interim regime (so moving into an additional fee-block), are required to pay 50% of the relevant interim authorisation application fee (either 50% of £3,000 or 50% of £1,000).
- For firms who are not active in the home finance market, a variation of permission fee of 50% of the relevant interim authorisation fee (either 50% of £3,000 or 50% of £1,000) would apply for a VoP to also undertake SRB activities.

5.16 Table 1 at the end of this chapter summarise the VoP fees for firms who applied for the SRB interim regime and those that will apply for the full SRB regime.

5.17 It has been drawn to our attention that there is some ambiguity in the text in CP09/6 (paragraphs 8.9 to 8.11) as it does not differentiate clearly between the different types of activities in the home finance market and the fees payable in respect of each of these activities. In the text we have suggested that a firm applying for an interim VoP will pay an interim authorisation application fee of (a) £250 if that firm is already active in the home finance market or (b) 50% of the relevant interim authorisation fee if the firm is not currently active in the home finance market. This is contrary to the policy intention and rules consulted on.

5.18 As a result of this, some firms incorrectly concluded that they fell within category 1 or 2 of Table 1, and submitted the £250 fee, rather than the fee for category 3 or 4. Due to the ambiguity in the consultation text we decided at the time not to enforce the rules but to regularise the position under the full regime as firms will receive full credit for all fees paid under the interim regime.

5.19 Firms with an interim VoP applying for a VoP under the full SRB regime for the same activities they obtained interim permission for will have any fees already paid deducted from the amounts due for a VoP under the full regime. Those firms who paid a fee of £250 under the interim regime but were required to pay a fee of £1,500 or £500 will be required to pay a top-up amount to align them with the interim fees rules and put them into the same position as other firms who apply for a VoP and move into a new fee-block as a result.

5.20 To comply with our VoP fee requirements under the full regime, those firms in category 4 of the table will be required to pay a top-up amount of £2,250 to become an SRB provider and administrator, and those firms in category 3 will be required to pay a top-up amount of £500 to become an SRB arranger and adviser. These fees will be due and payable by the firms at the time of submitting an application for authorisation under the full regime.

Transitional provisions in relation to fees

5.21 A number of firms who will be applying for authorisation to carry out SRB activities under the full regulatory regime will have interim SRB permission. The authorisation fees payable by these firms will be net of any fee paid under the interim SRB permission. Because the application fees for those moving from the interim regime to the full regime will only apply for a short period of time, we will include transitional rules to cover the relevant period.

5.22 It is anticipated that these transitional provisions will take effect from the 6th January 2010 until 29th June 2010.

Periodic fees

5.23 As with application fees, the periodic fees (which are payable annually) are based on the fee-blocks into which a firm falls. We propose to apply the existing tariff-bases in A.2 and A.18 to the new SRB activities.

5.24 We will be consulting on the periodic fee rates for 2010/11 in February 2010.

Q8: Do you have any comments on our FSA fees proposals?

Table 1 Fees for interim and full SRB VoP applications

Category	Firms current permission covers to undertake	Application to vary permission to become	Has there been a change of fee-block resulting from the VoP?	Interim SRB VoP fee	Full SRB VoP fee if firm paid correct interim fee	Total (SRB interim & full) VoP fee	Full SRB VoP fee ("top-up fee") if firm was allowed to pay incorrect interim fee of £250
1	Home finance activities which falls within fee-block A.2	SRB provider and administrator (firms which enter into or administer SRB agreements)	No – SRB providers and administrators are placed within fee-block A.2	£250	No fee payable (provided £250 paid for an interim VoP)	£250	Not applicable
2.	Home finance activities which falls within fee-block A.18	SRB intermediary (firms that advise on or arrange SRB agreements)	No – SRB advisers and arrangers are placed within fee-block A.18	£250	No fee payable (provided £250 paid for an interim VoP)	£250	Not applicable
3	Home finance activities which falls within fee-block A.2	(a) SRB intermediary	(a) Unless (b) below applies, yes - SRB intermediaries fall within fee-block A.18.	(a) £500	(a) £250	(a) £750 – see note (i) below	(a) £500
		(b) both (a) and SRB provider and administrator	(b) in the case of firms authorised as home finance providers, these are already allocated to fee-blocks A.2 and A.18, so there will be no change of fee-block.	(b) £250	(b) No fee payable (provided £250 paid for an interim VoP)	(b) £250	(b) Not applicable
4	Home finance activities which fall within fee-block A.18	(a) SRB provider and administrator	(a) & (b) Yes - firm will also fall within fee-block A.2 for SRB provider and administrator activities.	(a) £1,500	(a) £1,000	(a) £2,500	(a) £2,250
		(b) both (a) and SRB intermediary		(b) £1,500 – see note (ii) below	(b) £1,000	(b) £2,500 – see note (ii) below	(b) £2,250 see note (ii) below
5	activities other than home finance market activities	(a) SRB provider and administrator or (b) SRB intermediary or (c) both (a) and (b)	(a), (b) & (c) Yes - firm will fall within fee-block A.2 or A.18 or both	(a) £1,500 or (b) £500 or (c) £1,500 - see note in (ii) below	(a) £1,000 or (b) £250 or (c) £1,000 - see note (ii) below	(a) £2,500 or (b) £750 or (c) £2,500 - see note in (ii) below	(a) £2,250 or (b) £500 or (c) £2,250 - see note (ii) below

Notes:

(i) The same amount will be payable where a firm applies to do SRB activities in the A.2 and A.18 fee-blocks, unless that firm is already authorised as a home finance provider.

(ii) Firms holding an interim VoP for SRB activities within both the A.2 and A.18 fee-block, applying for a VoP for the A.2 and A.18 fee-block under the full regime, will pay the higher of the two relevant application fees.

FOS and FSCS fees[9]

5.25 The FOS is largely funded by case-fees payable by the firms that give rise to FOS complaints. The FOS case-fee rules are set by the FOS and are currently £500 per case, although this only applies with respect of the fourth and subsequent chargeable case in any financial year.

5.26 All firms that fall within the scope of the FOS must also contribute to the general costs of the service, based on the fee-block they come under for authorisation purposes. At present, the FOS industry-blocks broadly follow our fee-blocks, so we propose a similar approach for the new regulated SRB activities, as follows:

- SRB providers and administrators should be covered by FOS industry block 1 (deposit acceptors, home finance providers and administrators).
- Firms that advise and arrange on SRB should be covered by industry block 16 (home finance providers, advisers and arrangers).
- Firms that act as both providers and intermediaries of SRB should be covered by both industry blocks 1 and 16.

5.27 For 2009/10, the FOS general levy for industry block 1 is £0.027 per relevant account, subject to a minimum of £100. The number of relevant accounts is based on the amount of business done with private individuals, where the business is within the FOS's jurisdiction. For industry block 16 there is a flat fee of £70.

5.28 Details of the FOS general levy for 2009/10 were consulted on in our Regulatory Fees and Levies CP in February 2009[10] and confirmed in June 2009.[11]

5.29 The FSCS may impose two types of levy on a participant firm: a management expenses levy and a compensation costs levy.

5.30 The management expenses levy covers the costs of running the FSCS in a financial year. This represents the maximum that can be levied under the rules not necessarily the amount the FSCS would levy within the coming year. We consult annually on FSCS management expenses.

5.31 The compensation costs levy covers the actual or anticipated compensation payments in relation to claims against firms. The actual amount payable by firms will vary from year to year, depending on the number of defaults that require funding by those firms. We do not consult on this amount as it is set by the FSCS board.

5.32 As outlined in Chapter 10, for the full regime SRB firms will be included in FSCS for the activities of advising and arranging only. For the purpose of calculating FSCS fees, firms arranging and advising on SRBs will fall within class E2, (home finance intermediation) as this includes arranging and advising on SRBs.

Q9: Do you agree with our proposed allocation of SRB firms to FOS industry blocks and FSCS contribution groups?

9 Chapter 10 sets out our approach to complaints and redress for the full regime, including our approach to FOS and FSCS.

10 CP09/7: Regulatory fees & levies: rates proposals 2009/10 http://www.fsa.gov.uk/pubs/cp/cp09_07.pdf

11 PS09/8: Consolidated policy statement on our fee raising arrangements and regulatory fees and levies 2009/10 http://www.fsa.gov.uk/pubs/policy/ps09_08.pdf

6 High-level standards, competence, supervision and EU directives

High-level standards

6.1 This chapter sets out the high-level requirements we are proposing for the full SRB regime.

6.2 The interim regime implemented the following requirements:

- Principles for Businesses;
- parts of the fees provisions;
- Threshold conditions, including a requirement for firms to be fit and proper; and
- a small number of systems and controls provisions (Senior management arrangements, systems and controls (SYSC) 4, 5 and 9).

6.3 These requirements will continue into the full regime. In addition we propose to also apply the following additional requirements:

- additional systems and controls provisions (SYSC 6-8,10) and 18 (whistle blowing);
- the approval of key individuals who carry on certain functions; and
- the application of the General Provisions (GEN) sourcebook.

6.4 The SYSC provisions are a set of rules and guidance, expanding on Principle 3 (which requires firms to take reasonable care to organise and control their affairs responsibly and effectively with adequate risk management systems). SRB firms will be captured under the relevant home finance activity.

6.5 As explained in Chapter 4 we propose to apply approved persons requirements to SRB firms. The requirements for Approved Persons are set out in three sections of our Handbook, SUP 10, FIT and APER. These explain the functions which require approval, the criteria we use to approve individuals and the principles that approved persons must observe when performing their role.

6.6 The GEN sourcebook relates to the underlying legal framework of the Handbook and regulation of financial services, disclosure and the key facts logo.

Money laundering

6.7 There is scope for money laundering and mortgage fraud to occur within the SRB market and therefore we propose to apply the systems and controls requirements in relation to compliance, financial crime and money laundering within SYSC 6 to SRB firms. These require firms to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime.

Q10: Do you agree with our proposal to apply the SYSC 6 requirements in relation to financial crime and money laundering rules?

Competence

6.8 Under the interim regime the requirements of our Training and Competence sourcebook (TC) were applied to the SRB activities. We felt this was appropriate due to the level of risk attached to these products. We plan to continue this approach for the full regime.

6.9 For the full regime we will be applying a common sales standard across all sales of SRB, rather than separate standards for advised and non-advised sales (as discussed in Chapter 9). Every SRB case must be assessed for affordability and appropriateness before the consumer enters into the agreement, and certain information disclosures must be provided.

6.10 Under the provisions of the competent employees rule[12] (SYSC5.1.1R) firms must ensure that staff are competent to carry out the responsibilities of their role. The TC sourcebook supports the FSA's supervisory function by supplementing the competent employees rule for retail activities specified in TC Appendix 1, which includes "Advising on regulated sale and rent back agreements" In particular the TC sourcebook states that firms:

- must not assess an employee as competent to advise on SRB until the employee has demonstrated the necessary competence to do so (TC2.1.1R);
- must not allow an employee to carry on an activity without appropriate supervision (TC 2.1.2R); and
- must review on a regular and frequent basis employees' competence and take appropriate action to ensure that they remain competent for their role (TC 2.1.12R).

6.11 We do not intend to introduce appropriate exam standards for SRB for the full regime. Due to the size of the market we feel that the costs of putting an SRB examination requirement in place would be disproportionate. We believe that the application of the competent employee rule in SYSC and the requirements of the TC sourcebook will be sufficient to address the standards of advisers within the market, given that we have simplified sales standards.

12 http://fsahandbook.info/FSA/glossary-html/handbook/Glossary/C?definition=G2498

6.12 Firms must keep appropriate records as evidence that they have complied with the requirements in TC.

Q11: Do you have any comments on our proposed TC requirements for those undertaking SRB activities?

Supervision

6.13 We require all firms we regulate to meet the standards set out in the relevant rules and guidance and to supply us with information so that we can monitor their business. We monitor or supervise firms in a variety of ways, and apply a risk-based approach to supervision, as outlined in the 'Being regulated' section within the 'Doing business with the FSA' part of our website.

6.14 The range of supervision tools we use is wide and can include visits to firms and desk-based monitoring (for example, the collection of data from firms). We tailor our approach for individual firms depending on the risks we consider them to pose to our statutory objectives.

6.15 SRB firms are currently supervised as 'small firms', meaning that they do not have a relationship manager. Therefore obtaining data about firms is a key tool for the efficient supervision of firms. Regulatory returns are one way in which we can build a picture of and develop risk profiles for individual firms. More information on our approach to regulatory reporting is set out in Chapter 8.

6.16 We also use intelligence that we receive about firms in the market, with further investigation likely to be triggered by, for example, financial irregularities, complaints from customers, industry bodies or consumer groups, or media reports as well as regulatory returns. Under SYSC 9 we require firms to have appropriate record-keeping systems in place, and under Principle 11 firms are required to deal with regulators in an open and cooperative way and disclose to us appropriately anything relating to the firm of which we would reasonably expect notice. In addition to the reporting requirements outlined above, we can request further information from firms as required.

Q12: Do you have any comments on our proposed approach to supervision of SRB firms?

European Directives

6.17 Our proposed rules also need to take account of applicable EU directives. We are responsible for implementing these for the financial services that we regulate and propose to extend our rules, where relevant, to cover SRB activities.

6.18 The Distance Marketing of Consumer Financial Services Directive (DMD) applies to financial services (including those 'of a credit nature') where the firm has put in place facilities designed to enable a consumer to deal with it exclusively at a distance (for example by post, telephone or internet). So it applies where the firms and the

consumer are not simultaneously physically present throughout the offer, negotiation and conclusion of the contract. The DMD sets minimum standards for information that must be provided to consumers before they enter into an SRB mediation contract in this way. The relevant rules applying to SRB mediation contracts can be found in MCOB 4.

7 Prudential requirements

7.1 In this section, we outline the requirements we propose to apply to firms carrying on SRB business to ensure that they are financially sound and prudently managed. The relevant draft rules are in Annex D of Appendix 1.

7.2 We recognise that, as with other home finance business, the risks to consumers of firms that fail are relatively low, compared, for example, to deposit takers. However, SRB business does pose some prudential risks, as customers are reliant on SRB firms in a number of ways, not least because their security of tenure is vulnerable if firms are unable to meet their financial commitments.

7.3 After considering the risks that could arise from firms operating in this market without adequate capital resources or sustainable business models we propose to apply to SRB firms the requirements for home finance activities set out in chapters 3 and 4 of MIPRU.[13]

Capital resources requirements

7.4 We stated in CP09/06[14] on the interim regime that the full regime could include a requirement for firms to maintain a minimum amount of capital resources, using the example of £100,000 that currently applies for home financing.

7.5 Having obtained more information about this sector, we propose that SRB firms should be subject to capital resources requirements similar to other home finance firms to ensure, as far as possible, that the costs of failure are borne by firms' business owners and not by their customers or by other regulated firms. The aim is to ensure that resources exist to meet the liabilities of individual firms arising in law and/or from the failure to meet our disclosure and other rules, to provide a cushion against the potential disruption to customers and to provide for an orderly wind-down if a firm fails.

13 MIPRU is the Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries.

14 Paragraph 1.18 of CP 09/06: regulating sale and rent back: an interim regime, issued in February 2009.

Professional indemnity insurance

7.6 In addition to capital resources requirements, we propose that professional indemnity insurance (PII) requirements will also apply to firms undertaking SRB intermediation activity.

7.7 PII provides additional protection for consumers in the form of funds available to meet customer claims arising from professional negligence or unsuitable advice and helps to maintain the public's confidence in the market. The cost of meeting such claims could otherwise put the firm's capital resources under pressure and, in extreme cases, cause the firm to fail. So PII also serves to reduce claims on the FSCS.

7.8 The prudential requirements that we propose to apply are set out in MIPRU and we outline them below.

SRB providers and administrators

7.9 Our proposals for SRB providers and administrators mirror those that apply to other home finance providers and administrators. In summary, the requirements we intend to apply are:

- **For SRB providers:** The requirement is 1% of the firm's tangible assets with a minimum of £100,000.
- **For SRB administrators:** (that administer assets off-balance sheet), the requirement is 10% of the firm's annual income, with a minimum of £100,000. The requirement reflects that firms may receive and transmit payments from providers to customers, and the operational risks in administering products, which are designed for consumers who may be vulnerable.
- **For SRB providers or administrators that also give SRB advice:** We propose to apply a PII requirement (see the section on SRB intermediaries below).

7.10 These requirements will apply to SRB providers and administrators that are not currently authorised for other regulated activities. Where firms are already authorised for other such activities, the requirements may not apply, or be combined with the existing requirements for such firms.

7.11 We are mindful that the application of prudential requirements can impose costs on firms and may impact on the number of firms active in the market. However we feel that these costs are justified given the potential risks to consumers and the market.

SRB intermediaries

7.12 In view of the risks of inappropriate sales in the SRB market (as discussed in Chapter 3), we propose that SRB intermediaries should be subject to a PII requirement and a modest capital resources requirement. We differentiate between those that handle client assets and those that do not.

7.13 The firm should have a PII policy with a specified minimum limit of indemnity and a maximum excess. This requirement does not apply though where the firm has net tangible assets of more than £1 million or uses a comparable guarantee provided by another authorised person with net tangible assets of more than £1 million.

7.14 We propose to allow intermediaries to arrange a comparable guarantee extended by a substantial fellow group entity.

SRB intermediaries that do not handle client money or other client assets

7.15 As for other home finance intermediaries, we propose SRB intermediaries that do not handle client assets should be required to have:

- capital resources of the higher of £5,000 and 2.5% of annual income; and
- PII cover of 10% of annual income subject to a minimum limit of either £100,000 for each claim or £500,000 in aggregate.

SRB intermediaries that handle client money or other client assets

7.16 To reflect the greater risk that a firm holding client assets pose to consumers, we propose that such an intermediary:

- will need a separate permission to do so;
- must hold more capital resources – the higher of £10,000 or 5% of annual income; and
- must have PII cover of 10% of annual income subject to a minimum limit of either £100,000 for each claim or £500,000 in aggregate.

Methodology for calculating capital resources

7.17 The methodology and definitions for calculating a firm's capital resources match those for other home finance firms.

7.18 Broadly, a firm may include in its capital resources its permanent share capital, partnership or sole trader's capital, share premium account, reserves and interim net profits, with a deduction for its intangible assets. Goodwill must be deducted as an intangible asset. This follows our general line for all authorised firms to count only assets on which customers and creditors can rely.

7.19 A firm may also include subordinated loans that comply with the relevant rules, subject to certain restrictions if the firm is an intermediary and holds client assets. This can provide an attractive option for raising capital, particularly for the smaller firm.

7.20 As with other home finance business, we propose that sole proprietors or partners not holding client assets, should be allowed to include in their firm's capital resources personal assets not needed to meet their non-business liabilities. Any such personal assets and liabilities should be valued in line with generally accepted accounting principles. This approach does not extend to sole proprietors or partnerships that hold client assets; they must meet their capital resources requirements using only business assets.

Additional prudential rules

7.21 We are aware that some SRB products include a form of cash incentive paid out after a set period of time - for example, the SRB seller may share in the appreciation of the property value during the period of the SRB agreement, or be paid a portion of the original discount on the purchase price. In such cases there is a risk that the customer will suffer a financial loss if the firm fails and is unable to meet its commitments. To protect against this we propose to introduce a rule, similar to an existing rule in the home reversion regime, to require SRB firms who provide this type of commitment to customers either to arrange adequate insurance or enter into a written agreement with a credit institution to cover their obligations (MIPRU 4.4.12R) (see Annex D of Appendix 1).

Q13: Do you agree with the capital requirements we propose to apply to:

(i) SRB providers and administrators?

(ii) SRB intermediaries that do not handle client assets?

(iii) SRB intermediaries that do handle client assets?

Q14: Do you agree with the proposal to apply a PII requirement to firms that undertake SRB mediation activity?

Q15: Do you have any concerns about your ability to obtain appropriate PII for your SRB mediation activity?

Q16: Do you agree with the proposal to require firms to obtain insurance or an agreement with a credit institution to protect consumers in the event that they are not able to meet future obligations that they have to consumers under the terms of the SRB product?

8 Regulatory reporting

8.1 All regulated firms are required to provide us with information about the levels of business they undertake, financial resources and profitability, and details concerning the volume and/or timing of specified events. This data is a key part of our risk-based approach to the supervision of regulated firms. The frequency of these reports depends on the size and nature of the activities that firms undertake.

8.2 We are currently developing our reporting requirements for SRB firms and plan to consult on these in a quarterly consultation paper early next year. In the meantime, in order to inform our monitoring of firms and ensure that firms continue to meet the threshold conditions we are proposing to continue the approach we adopted for the interim regime. However we will also require all firms to submit a complaints return.

8.3 Therefore, until further notice, SRB firms will be required to submit the following information on a six-monthly basis:

- sales volumes;
- management accounts (e.g. the balance sheet, profit/loss statement, management report); and
- details of funding arrangements.

8.4 For firms that were interim authorised we will require submission of this information on a six-monthly basis according to their existing schedule. For firms that are newly authorised for the full regime, we will require this information within three months of the beginning of the regime (30 June 2010) and on a six-monthly basis thereafter.

Complaints return

8.5 All firms that are permitted to carry on regulated activities in the UK with retail customers are required to submit a Complaints Return. Therefore SRB firms will be required to report electronically information to us about complaints they have received by completing and submitting the Complaints return in line with DISP 1.10

(in the Dispute Resolution: Complaints sourcebook). You can see a copy of the Complaints return on our website: http://www.fsa.gov.uk/pubs/forms/Future/disp1_annex1R_01082009.pdf.

8.6 Complaints must be reported according to the firm's accounting reference date, as described in DISP 1.10. SRB complaints will be reported under the product/service grouping 'home finance' and the product/service 'other regulated home finance products'.

Q17: Do you have any comments on the proposed reporting requirements?

9 Conduct of business proposals

9.1 In this chapter, we describe the conduct of business requirements that we propose to apply under the full regime to SRB firms. The proposed amendments to the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) are set out in Annex E of Appendix 1.

9.2 Under the interim regime, firms are required to comply with a number of rules relating to the way they conduct their business. These rules were designed to address the causes of the most severe consumer detriment occurring in the market. We indicated in our consultation on those rules (CP09/06) that further conduct rules would be considered for the full regulatory regime. This chapter explains the interim rules that will be carried over into the full regime and describes the additional protections we propose to put in place under the full regime to protect the particularly vulnerable consumers in this market.

9.3 Consumers interested in SRB are invariably in debt, in many cases facing repossession and already feeling under considerable pressure. They are likely to find it difficult to consider the transaction dispassionately and unlikely to take time to consider alternative courses of action. As we saw from the consumer research undertaken as part of the OFT's market study, some SRB representatives can be very persuasive and in some cases put considerable pressure on consumers, targeting and exploiting their difficult circumstances.

9.4 We are therefore proposing a package of measures designed to protect consumers from feeling pressurised into entering a SRB agreement. This includes specific proposals aimed at addressing exploitative advertising practices, such as banning cold-calling, banning leaflet dropping through letterboxes and prohibiting the use of certain emotive terms and phrases in promotional material. The introduction of a cooling-off period will give consumers more time to consider whether to proceed. A specific sales standard and enhanced disclosure requirements are proposed to help customers better understand the details of SRB agreements. We also plan to apply specific requirements relating to the type of tenancy agreements to improve tenure.

Financial promotions and communications

9.5 As explained in Chapter 1, the SRB legislative structure came into effect on 1 July 2009. Under the Financial Services and Markets Act 2000 (Financial Promotions) Order (FPO), entering into, advising on, arranging or agreeing to arrange a regulated SRB are now 'controlled activities'[15], which means that we have power to regulate any financial promotions made in relation to SRB business.

9.6 The OFT's report into this market indicated that the most common source of awareness of SRB is advertising in newspapers (local and national) and on daytime television. Another source of advertising particular to this market is flyers pushed through letter boxes.

9.7 Under the interim regime, we imposed a number of high-level requirements aimed at ensuring that any communications with consumers, including financial promotions, were clear, fair and not misleading.

9.8 For the full regime, in addition to applying the clear, fair and not misleading communications rule (in MCOB 2.2.6R), we are proposing to apply to SRB firms a comprehensive set of financial promotions rules (MCOB 3). The overall aim remains to ensure that promotions, whether written or oral, are carried out in a way that is clear, fair and not misleading.

9.9 These rules cover promotions by any medium. So, for example, they cover the use of written material such as printed brochures or advertisements, electronic communication such as the internet, digital interactive television and emails, radio and television broadcasts, and also information provided orally, over the telephone or in the course of a personal visit.

9.10 The key requirements in MCOB 3 relating to the content of financial promotions, which we propose to apply to SRB business are as follows.

- Financial promotions must be clear, fair and not misleading (MCOB 3.8B.1R).
- Financial promotions should be balanced – for example, they should show the basis for any relevant assumptions made and ensure that these assumptions are reasonable; they should not disguise or misrepresent the purpose of the promotion and they should not give undue prominence to the advantages over the disadvantages or omit any detail that would render them anything other than clear, fair and not misleading (MCOB 3.8B.5E(1)).
- Financial promotions must advise the reader to request a 'key terms statement' to help them fully understand the product's risks and features (MCOB 3.8B.4R(2)).
- Every financial promotion must include a prescribed risk warning (MCOB 3.8B.4R(2)).

9.11 We are also proposing to:

- require firms to confirm that a promotion complies with the rules and to keep a record of the promotions that they have approved (MCOB 3.10.1R);

15 http://www.opsi.gov.uk/si/si2009/uksi_20 091342_en_3

- prohibit cold-calling (MCOB 3.7.3R); and
- require that a product that falls within the definition of a 'sale and rent back agreement' must be described as such and not, for example, 'equity release' as currently happens (MCOB 3.8B.4R(1)).

9.12 The OFT study found evidence of schemes being advertised as offering long-term security with very little detail of the nature of the tenure. In January 2009 (before the introduction of the interim regime), the OFT followed this up with an investigation of statements made in the adverts and websites of 16 firms. The OFT found that some claims were false or overstated in relation to the following areas.

- Security of tenure – often over stated or minimum terms not explained.
- The buy-back option – adverts did not state that terms and conditions applied.
- Fair/competitive rents – some providers could not justify this claim.

9.13 The requirements introduced under the interim regime for 'clear, fair and not misleading' communications with consumers mean that these practices should now have stopped. This is something that we are proactively monitoring under the interim regime and we shall take enforcement action as necessary to ensure that advertising standards improve.

9.14 We have also seen both through our own analysis, as well as through the OFT's study, that SRB advertising targets those consumers facing repossession, in a particularly tough financial situation or needing to get money out of their home fast. Many mention 'quick sales', stressing the potential speed of the transaction. Many referred to 'discretion' and 'confidentiality'. Most make a point about the simplicity of the process. Given the particular vulnerability of consumers in this market and the way that marketing and advertising materials seek to exploit that vulnerability, we believe that extra requirements to protect consumers are warranted.

9.15 We therefore propose to apply the following additional requirements to the SRB market:

- The use of certain emotive language in SRB financial promotions will be banned, such as 'fast sales', 'rescue', 'cash quickly'.
- Dropping leaflets through letter boxes will be prohibited. This practice tends to be targeted at particular localities, housing estates and individuals who may be experiencing financial hardship (MCOB 3.8B.3R).
- Requirements around a firm's brand advertising will be tightened. MCOB financial promotion requirements do not apply to promotions that contain nothing other than a firm's name, its logo, a contact point and phone number and a brief factual statement of the firm's business (MCOB 3.2.5R). However, to ensure that SRB firms do not exploit the 'brief factual statement' provision to include additional promotional material, we are proposing to prescribe the wording allowed within these adverts, i.e. to limit firms to describing their business as 'sale and rent back' or 'sell your house and rent it back' only (MCOB 3.2.4AR). If firms wanted to go beyond this, it would fall outside of the exemption and the full MCOB 3 regime would apply.

- Risk warnings will be required to be applied where SRB firms are advertising quick property sales but staying silent about the possibility of the consumer renting the property back (MCOB 3.8B.4R). We are concerned that firms may try to circumvent the SRB financial promotions rules by advertising the fact that they can sell a home quickly – but then, once a consumer makes contact, offering a SRB. Therefore we are proposing that the default position should be that a SRB regulated firm must apply the prescribed risk warning in all advertisements that promote fast property sales.

Q18: Do you agree with our approach to financial promotions and communications?

The sales process

9.16 As we have noted previously, some SRB firms specifically target consumers who are in a particularly vulnerable state and under immense pressure to solve their debt problems quickly.

9.17 As part of the package of measures designed to remove some of the pressure on consumers and to enable them to properly consider whether SRB is the right option for them, we are proposing to:

- require a basic affordability and appropriateness test for all sales;
- create an FSA consumer factsheet on SRB which firms will be required to provide to and discuss with consumers as part of the sales process;
- introduce a cooling-off period; and
- ensure that a consumer has appropriate protections where the provider commissions a valuation.

Advice and selling standards

9.18 Currently some SRB firms may make a specific recommendation to a consumer to take out a particular SRB. Others simply provide the consumer with information on a number of appropriate SRB products available to them and leave it for the consumer to make their own choice. Under the Regulated Activities Order (RAO)[16] the former is an advised sale (i.e. where a recommendation is made to take out a particular SRB) and the latter (information-only) is a non-advised sale.

9.19 We believe the advised versus non-advised distinction is not appropriate for the SRB market, for several reasons. We are aware that non-advised sales make up a significant proportion of SRB sales, and we are concerned that firms may exploit non-advised sales as a route to minimising their regulatory responsibilities. This is particularly

16 The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) http://www.opsi.gov.uk/acts/acts2000/ukpga_20000008_en_1

worrying given the extent of consumer detriment that may arise from inappropriate sales. In addition, the SRB market has not had a tradition of financial advice in the same way as longer established sectors of financial services, so many firms will not have clear processes in place for delivering advice.

9.20 Therefore we are proposing to remove any distinction between advised and non-advised sales in this market. Instead we propose to require firms to apply a single sales standard across all SRB sales (MCOB 4.11.3R to 4.11.6G(3)), based on the assessment of affordability and appropriateness for each sale.

9.21 Responsibility is placed on the SRB provider to ensure that the provisions in MCOB 4.11 are complied with, unless it is satisfied on reasonable grounds that another regulated firm (i.e. an intermediary) has already carried this out in relation to the particular SRB agreement (MCOB 4.11.8R).

Assessing affordability

9.22 In every sale, a firm will be required to assess whether a customer can afford the SRB. Given that the customer is already in financially pressured circumstances, a proper assessment of affordability is critical, particularly as the outcome for the customer if they are not able to afford to make the rental payments is the loss of the home that they have been so keen to keep in the first place. We are proposing to require firms to assess a consumer's affordability based on the following:

- the initial monthly rental payments, stress tested to take account of any likely future rises;
- information provided by the customer on income, expenditure and resources; and
- any likely changes to the customer's income, expenditure or resources.

9.23 We shall also be requiring that affordability must be assessed on the basis of the customer's disposable income only and that firms must not rely on any lump sums received under the terms of the SRB agreement, whether received at the outset of the agreement or whether payable to the customer at a later date.

9.24 Firms will be required to keep a record of the information they have used in their assessment of the affordability (MCOB 4.11.7R) including a record of the information provided to it to assess the customer's income, expenditure and resources, as well as their needs, objectives and individual circumstances. The record must explain why the agreement was considered as being affordable and appropriate.

Assessing appropriateness

9.25 In every sale, a firm will also be required to assess the appropriateness of a product for the consumer. This will include consideration of whether the SRB agreement is appropriate to the particular needs, objectives and circumstances of that customer.

9.26 As part of this assessment the firm will be required to check:

- whether the benefits to the customer outweigh any adverse effects on the customer's entitlement to means tested benefits, if any, and the customers entitlement to housing benefit; and
- whether it would be feasible for the customer to raise funds through alternative methods.

9.27 While a firm will be required to consider the adverse effects on the consumers' benefits position, we recognise that a firm may have insufficient knowledge of benefits to reach a conclusion on this. Where this is the case an appropriate agency must be contacted to clarify the situation.

Q19: Do you agree that there should be an affordability and appropriateness test across all sales?

Q20: Do you have any comments on how firms should be required to assess affordability?

Consumer factsheet on SRB

9.28 As part of the sales process we are proposing to require firms to provide an FSA consumer factsheet on SRB. This must be given out at two separate stages in the sales process: the first is at the initial meeting with a consumer where they have expressed an interest in entering into an SRB agreement; and the second is with the pre-offer document at the beginning of the cooling-off stage (cooling-off is explained below). We are proposing to require firms to talk through the leaflet as part of the sales process, exploring all options with the consumer before discussing the merits of an SRB agreement (MCOB 4.11.2R). The factsheet is not a substitute for free independent advice but the provision of independent and standardised information will go some way to making sure the consumer does not take out an SRB agreement inappropriately.

9.29 The factsheet will encourage consumers to seek independent free advice and will highlight the risks involved in SRB. It will also encourage consumers to:

- consider whether SRB is the right option for them; and
- think about whether there are any other options which may be open to them.

9.30 The factsheet will be an A4 two sided document. This will available to print from our website, or can be ordered from us. The leaflet is still under development, but an outline of the things we intend it to cover is set out in Appendix 2.

Q21: Do you agree with our proposals for all firms to provide a factsheet to consumers as part of the sales process?

Q22: Do you have any comments on the proposed content of the factsheet?

Cooling-off period

9.31 As discussed above, high pressure selling has been identified as a particular risk for SRB, with many sales taking place within consumers' homes where they may be particularly vulnerable to high-pressure sales techniques. In order to give consumers an opportunity to consider the benefits and disadvantages of entering into an SRB agreement without being subjected to unnecessary pressure we are proposing to introduce a cooling-off period. The proposed process for cooling-off is outlined below.

9.32 Some concerns have been raised that the introduction of a cooling-off period would cause an unacceptable delay that may result in properties being taken into possession before the SRB is concluded. To overcome potential issues in this area we are proposing to require SRB firms to write to lenders at the beginning of the cooling-off period (MCOB 6.9.9R). This would not only alert the lender to put a hold on any pending repossession activity, but would also give lenders confirmation that a genuine SRB agreement is actively under consideration.

9.33 We have discussed our proposals with the Ministry of Justice and understand that under section 36 of the Administration of Justice Act 1970, the courts have the discretion to adjourn proceedings or stay the execution of an order where it appears that the borrower can rectify the default in the mortgage payments within a reasonable period of time. Assuming that the borrower is able to confirm to the court either before or at the hearing that they are arranging an SRB (for example by producing relevant documentation), this should be sufficient for the court to adjourn any proceedings that are pending.

Proposed process for cooling-off

9.34 We are proposing a cooling-off period of 14 days, the same period as Consumer Credit Act (CCA) credit agreements secured on land. This would allow a reasonable period for the consumer to reflect, but without unduly lengthening the process. The proposed timetable is as follows:

- Day one: the SRB provider provides the SRB seller with a copy of the SRB pre-offer document (MCOB 6.9.4R) and draft copies of associated contracts related to the SRB agreement, such as the SRB contract or the tenancy agreement. These documents are provided in a non-executable form, so the customer cannot accept the agreements at this point. We will require the provider to issue a notice to the SRB seller's mortgage lender and other secured creditors to make them aware that a SRB cooling-off period has commenced. The SRB seller will also be given a copy of our consumer factsheet to remind them of the risks and alternatives, and promoting the benefit of obtaining independent advice, and a copy of the independent valuation report. The firm may not contact the SRB seller during this period.

- Day fifteen: the cooling-off period ends and the firm can contact the SRB seller. At this point the firm provides the SRB seller with the unexecuted offer document agreement and other relevant contracts for signature (MCOB 6.9.11R).

9.35 The SRB provider must not instigate any contact with the SRB seller throughout the course of the 14 days (MCOB 6.9.5R). If the SRB seller contacts the firm during this period (for example to question a term of the agreement), then the firm may answer the question in a factual way, but must not use any language or conduct which could be interpreted as exerting pressure on the SRB seller to enter into the agreement (MCOB 6.9.6R).

9.36 Consumers will be prompted (in the pre-offer document and the SRB consumer factsheet) to obtain some form of advice during the cooling-off period. However the waiting times to arrange appointments for face-to-face advice may often exceed a 14-day period, possibly by a significant margin, subject to current demands on advice agencies. We examined the possibility of setting a longer cooling-off period to reduce this risk. However, we concluded that there would be no guarantee that extending the cooling-off period to 21 or 28 days would give all SRB sellers access to advice, or that they would take it. This would also lengthen the process quite significantly.

Q23: Do you agree with our proposals to introduce a cooling-off period?

Q24: Do you agree that the cooling-off period should be 14 days? How long do you think the cooling-off period should be?

Q25: Do you have any comments on the cooling-off process?

Valuations

9.37 The valuation of the property is a key element of an SRB agreement. The OFT's market study raised concerns over the transparency of valuations, leading to consumers being misled about the market value of the property and finding it difficult to assess the merits of the SRB provider's offer.

9.38 In our consultation for the interim regime CP09/06 we raised the idea that consumers should commission their own valuation report, where the valuer would act directly on behalf of the consumer and the consumer would have the right of redress against the valuer. However following further consideration we did not believe that this requirement was appropriate for the SRB market. Therefore it was not adopted for the interim regime.

9.39 For the purposes of the interim regime we introduced several conduct of business rules designed to provide some protections for consumers, including that firms should ensure valuers are independent of the provider; the valuation is disclosed to the customer; and, if the valuation report is not prepared for the consumer they are made aware of this to prompt them to consider whether they need to take further action.

9.40 For the full regime we are proposing to add to the interim rules, but we remain of the view that it would not be appropriate to expect a consumer, already in extreme financial difficulties, to pay upfront costs to commission their own separate report. Instead, we will require that an independent valuation is carried out before the SRB agreement is entered into. That valuation must be carried out by a valuer who is independent of the SRB provider and who must be a member of a professional body (e.g. RICS). A copy of the valuation report must be provided to the consumer at or before the cooling-off stage.

9.41 We are also consulting on a requirement for the valuer to owe a duty of care to the consumer as well as to the firm, which will mean that the consumer will have a right of redress against the valuer, through the application of MCOB 2.6A.13E(2)(b).

9.42 There are a number of ways that consumers can obtain information on property values without incurring a cost – for example, through seeking the views of local estate agents, checking the local press for property advertisements or through the internet, verifying recent sale prices of houses in their locality. This would give the consumer the comfort of independent information without the additional cost. We propose to add a rule requiring firms to draw this to the attention of consumers (MCOB 5.9.1R(1A)(ea)) as part of pre-sale disclosure.

9.43 We believe that this approach is both appropriate and proportionate to protecting consumers who are in financial difficulties and may not be in a position to pay the upfront cost of a valuation.

Q26: Do you agree that our approach to valuations strikes a reasonable balance between the consumer's interest in an unbiased view of the property value and the cost to them of commissioning their own valuation?

Q27: Do you agree with our proposal for the valuer to owe a duty of care to the consumer as well as the firm?

Disclosure

9.44 Disclosure requirements aim to ensure that firms give the consumers clear, accurate and comprehensible information about the services the firm offers and the products on offer before they buy, so they can make an informed choice.

9.45 The interim regime was designed to address concerns expressed in the OFT's market study that SRB agreements and the alternatives available are complex and difficult to evaluate and that consumers are often not aware of, or not able to assess, the full costs and risks associated with an SRB agreement. This leads to considerable consumer detriment arising from entering into a less suitable arrangement.

9.46 We recognise that these issues faced by consumers can prevent them making a proper assessment of the agreement before they enter into it. This can mean they receive poor value or enter into an inappropriate agreement. It can also prevent competition

operating effectively in the SRB market – as firms are less able to compete on the value they offer if consumers are unable to correctly assess and compare the value of different deals on offer, or properly understand who they are dealing with.

9.47 Therefore, for the interim regime we introduced a requirement for clear and intelligible disclosure of the main terms of the SRB agreement. We are building on that requirement considerably for the purposes of the full regime and proposing an information package along the lines of other home finance firms, but designed to take account of the nature and size of this particular market.

Initial disclosure requirements

9.48 Initial disclosure is information that a consumer gets about the services the firm will provide for them. We propose to require firms to disclose to the consumer the following information when a consumer first makes contact with a firm (MCOB 4.11.1R):

- The service the firm offers – i.e. whether they are the provider or an intermediary and details of the SRB activities that they are authorised to carry on.
- If they are an intermediary, how wide a range of providers they deal with – i.e. a single provider or a range and whether the providers they deal with are authorised (MCOB 4.11.1R(1)(b)). If the provider is unauthorised then the firm will have a responsibility to provide the further disclosures on unauthorised providers set out in MCOB 5.9.3 before the consumer enters into the agreement.
- How much the customer will have to pay the firm for its services.
- Any other fees, charges or retentions in relation to the agreement and the basis and amount of any remuneration they receive in relation to any sale, whether from an authorised or unauthorised provider.

9.49 So even in those cases where the sale involves an unauthorised provider, full disclosure must be given to the consumer of any payments made by that unauthorised provider to the intermediary.

9.50 We are not proposing to prescribe the format and presentation of this information other than that it be provided both orally and in writing as part of our initial disclosure requirements (MCOB 4.11.1R).

Scope of service and independence

9.51 We believe that the concepts of scope of service and independence are not relevant in the current SRB market and their use would not provide particular benefits to consumers in terms of their understanding. There are no specific tools in place (such as sourcing systems) to help firms identify what is available in the SRB market, and the market itself is fragmented, with many operators focusing on specific geographic areas. Products themselves can be fairly 'fluid' according to specific situations, such

as judgements made by providers according to their local knowledge about property values. The scope of service offered by firms is usually restricted to products they offer, or that individual investors may be willing to provide. Therefore we do not propose to use these concepts in the SRB regime, such as in initial disclosure, other than to require intermediaries to state that they deal with a single provider or range of providers.

Q28: Do you agree with our initial disclosure proposals?

Pre-application disclosure

9.52 The purpose of pre-application disclosure is to ensure that a consumer can make an informed decision about the product on offer before entering into it, and will have information that would enable them to shop around if they wish to do so. We are proposing to require that firms provide consumers with a 'key terms document' setting out in plain and understandable language a number of specific terms of the agreement, in a prescribed order (MCOB 5.9.1R). We propose to retain a number of terms that were required under the interim regime, including:

- the market value of the property (or an estimate if the valuation has not been carried out at the time the key terms document is given out);
- the price to be paid for the property;
- the minimum period that a customer has a contractual right to remain in the property;
- the rent due under the agreement;
- the circumstances under which the rent can be changed; and
- the risks associated with the agreement (such as the risk of the loss of the right to occupy the property if the terms of the tenancy are not abided by).

9.53 For the full regime, we are proposing to include the following additional requirements which we believe will assist in helping consumers understand the SRB deal they are being offered:

- use of the key facts logo;
- for intermediated sales, details of the fees or charges that are payable to an SRB arranger or SRB adviser;
- where the customer is given an option to buy back the property at some future date from the agreement provider, details of the option; how it might be exercised; any restrictions and/or charges applying; and how the repurchase price is determined;
- what a customer should do if they wish to make a complaint about the firm and their entitlement to refer complaints to the Financial Ombudsman Service (FOS); and

- information regarding a customer's entitlement to compensation under the Financial Services Compensation Scheme (FSCS).

9.54 This information must be provided in good time before a consumer applies for a SRB to enable them to consider what's on offer and help them make the right choice.

9.55 Under the interim regime pre-application disclosure requirements fell only on SRB providers. For the full regime we are widening this to cover both providers and intermediaries (MCOB 5.9.1R(1)).

Q29: Do you agree with our proposals regarding a key terms statement?

Offer-stage disclosure

9.56 At the point before a consumer enters into a SRB agreement we are proposing to apply offer-stage disclosure. The purpose of this is to set out the terms of the agreement in a clear format and to give the consumer time to consider whether to proceed with the agreement.

9.57 The offer documents (see Annex E of Appendix 1) will be given out in two parts, stage one (pre-offer document) and stage two (offer document), as part of the cooling-off process outlined above. These documents will consist of two main elements:

- information prompting the consumer to consider whether the SRB is the right option for them, and an outline of the cooling-off process; and
- disclosure information that mirrors the information required in the pre-sale disclosure document, with the addition of information on the valuation of the property established from the independent valuation report.

9.58 At the time the stage one pre-offer document is provided to the customer the firm must also provide a copy of the valuation report and a copy of our consumer factsheet on SRB, as well as draft copies of any contracts related to the SRB agreement.

9.59 The stage two offer document follows a similar format to the stage one document. However, it includes a box for the applicant to sign to confirm whether they accept the offer, plus a space to state the date that the document was signed. This must be signed and dated in accordance with the cooling-off requirements by the customer once they have decided whether they wish to proceed with the agreement. Executable copies of any contracts related to the SRB agreement are also supplied at this stage.

9.60 We have included within our proposals provision that a firm may issue a pre-offer document instead of the pre-disclosure 'key terms statement' if the firm is in a position to do so. This would mean that an independent valuation had already been carried out.

9.61 The offer process (including the cooling-off period) must take place before the customer becomes committed to entering into the agreement. This means that firms will not be allowed to require consumers to sign-up to anything committing them to

the agreement before the end of the cooling-off process. Therefore the use of 'option agreements' that commit consumers to specific terms before the end of the cooling-off period are not acceptable.

Q30: Do you agree with our proposals for offer stage disclosure?

Post-sale disclosure

9.62 There are limited circumstances in which an SRB agreement can be varied post-sale, and a large proportion of the variations that could take place are governed by existing conventions under landlord and tenant relationships. Therefore we are not proposing to impose detailed post-sale disclosure requirements on firms. While there may well be circumstances where communication is required post-sale, we consider that it is proportionate to rely on Principle 7– 'A firm must pay due regard to the information needs of its clients, and communicate information to them in a way that is clear, fair and not misleading'.

Q31: Do you agree with our proposals not to implement a post sale disclosure regime?

Setting minimum standards for product terms

9.63 In their market study the OFT was concerned that the tenure offered by SRB products did not always reflect assurances of security given at the outset by SRB firms, and was particularly concerned about the lack of transparency given the fact that consumers were usually giving up a big part of their equity in return for the right to remain as tenants in their home. As a possible solution to this they recommended that consideration was given to setting minimum standards for SRB products – for example by linking the percentage of discount given on the property to the term of the tenancy offered, so that a certain percentage discount would be linked to a minimum period of tenure.

9.64 We have given consideration to this, but at present we do not have sufficient evidence to suggest that regulatory intervention of this kind would be effective in reducing consumer detriment in the SRB market. The introduction of a cooling-off period will give consumers time to consider other options available to them. We do, however, recognise the risks to consumers arising from the lack of security of tenure for many SRB tenants beyond the limited protection of an assured shorthold tenancy agreement. Our approach to this is discussed below.

9.65 We propose to re-visit the issue of minimum standards within our post implementation review once we have collected a fuller picture of the market through regulatory reporting. This information will enable us to address any issues and implement appropriate solutions.

Q32: Do you agree with our approach not to impose minimum standards for products?

Security of tenure

9.66 One of the key risks associated with SRB agreements is that consumers may not have security of tenure in line with the expectations they had when they entered into the agreement. There are a number of circumstances under which a tenancy can be terminated, either by the provider under the terms of the lease, or under other circumstances, such as a mortgage lender taking possession if a provider has arrears on a buy-to-let mortgage underpinning the SRB agreement. If the SRB seller has an assured shorthold tenancy agreement, they will have limited protection under tenancy laws, as this type of agreement does not extend beyond 12 months.

9.67 We propose to continue the interim requirement for firms to make consumers aware of their security of tenure through disclosure requirements at the pre-sales and offer stages. For example, firms are required to: clearly state the minimum contractual period the SRB seller has the right to remain in the property; provide a warning that once the minimum contractual period expires the SRB agreement seller and their family may be required to leave the property; and provide a warning that failure to abide by the terms of the tenancy may result in the loss of the right to occupy the property (MCOB 5.9.1R(1)(l)(i)). We will also continue with a high-level requirement for firms to ensure that due regard is paid to the interests of its customers when exercising rights or discretions under a SRB (MCOB 2.6A.8R).

9.68 A further solution would be to require that the tenancy agreement is structured as an assured tenancy under the Housing Act 1996 and that each of its terms, including any grounds on which the SRB provider is entitled to seek possession of the property, are fair (MCOB 2.6A.5BR). The aim of this would be to ensure security of tenure for SRB sellers and put an end to those cases where, notwithstanding promises made to consumers about the right to remain in their homes, tenancies are brought to an end after six months.

9.69 We are consulting on introducing such a requirement. We also propose to require that where the funding for the SRB agreement is a buy-to-let mortgage, the mortgagee must have consented to the proposed letting under the agreement, and agreed that they will not seek to recover possession from the court other than for grounds allowed under our rules (i.e. acceptable purposes under the Housing Act 1996 for assured tenancies).

9.70 We are aware that due to current market conditions buy-to-let funding is already constrained significantly, so we don't believe this proposal will have a significant impact on the market.

Q33: Do you agree with our proposal that to provide consumers with security of tenure, a tenancy agreement under a SRB agreement must be an assured tenancy?

Excessive charges

9.71 To protect what are often vulnerable consumers who are making quick decisions, we are proposing to carry across from the interim regime the excessive charging rules within MCOB 12.5 to the full SRB regime. This will continue to ensure that any SRB agreement that a customer enters into does not impose and cannot be used to impose excessive charges upon them.

Q34: Do you agree with our proposal to apply a rule on excessive charges?

Record keeping requirements

9.72 Firms are required to keep records of how they comply with our requirements when dealing with consumers in relation to SRB agreements. The proposed record keeping requirements are contained in Annex E of Appendix 1. The key areas where firms will be required to maintain records are:

- any financial promotion issued and the individual who approved it (for one year from the date when it was last communicated);
- the information obtained with regard to the appropriateness and affordability assessment (for three years);
- the contact details of SRB providers that intermediaries have carried out SRB transactions with, making it clear whether it is an authorised or an unauthorised SRB agreement provider (the longer of a period 12 months from the end of the minimum period that the SRB agreement seller and his family have the contractual right to remain in the property, or for five years from the date of the agreement);
- the pre-sale and offer information given to the customer at the start of the SRB contract (the longer of a period of 12 months from the end of the minimum period that the SRB agreement seller and his family have the contractual right to remain in the property, or for five years from the date of the cooling-off period notice).

9.73 These requirements are to enable us to monitor compliance with our rules as well as being part of good business practice. Although we indicate minimum periods for which these records must be kept, firms may decide to keep them longer – for example, where there is the possibility of a complaint or legal action.

Q35: Do you have any comments about our approach to record keeping?

Transitional arrangements

9.74 The full SRB regime will come into effect on 30 June 2010. For firms that are currently interim regulated there will be a crossover point where the requirements of the interim regime end and the full regime commences. Transitional rules have been created to provide firms with clear information on how to deal with pipeline business during this period. This covers the sales process and provision of disclosure documents. The transitional provisions will be in place for a relatively short period of time due to the nature of SRB agreements. The transitional rules can be found in Annex E of Appendix 1.

Q36: Do you have any comments about our transitional arrangements?

10 Complaints and redress arrangements

10.1 This chapter sets out the requirements designed to address some of the consumer detriment occurring in this market by ensuring that consumers have access to appropriate redress if things go wrong.

10.2 Our complaints handling rules have been designed to provide a framework for dealing with financial services complaints. We do not intend to apply our rules to complaints relating to the ongoing landlord/tenant relationship – unless the complaint was that an action by the landlord breached the agreement that formed the basis of the original SRB agreement.

Complaints handling and the Financial Ombudsman Service (FOS)

10.3 We applied most of our DISP[17] rules to SRB firms in the interim regime, with the exception of DISP 1.10 relating to complaints reporting. For the full regime we plan to apply all of DISP including the complaints reporting requirement. This approach is consistent with our approach for other categories of home finance, so all home finance firms will be subject to a single standard of complaints handling and consumers will have access to independent arrangements for the review and settlement of their complaints.

10.4 Under our complaints handling rules SRB firms will be required to:

- have internal complaint handling procedures;
- publicise these procedures;
- make provision for complaint handling (such as requiring complaints to be investigated by an appropriate person);
- provide fair compensation in certain circumstances (e.g. where a firm decides that redress is appropriate);
- use the complaint-handling procedures (e.g. ensure employees are aware of procedures);

17 The DISP sourcebook is available at www.fsahandbook.info/FSA/html/handbook/DISP

- deal with complaints within time limits (e.g. acknowledge complaints promptly and normally give a final response within eight weeks);
- report to us the number and type of complaints received, as set out in DISP 1.10.

10.5 If a firm fails to resolve a complaint to the satisfaction of the consumer, or cannot provide a final response within eight weeks, they will be required to inform the consumer that they have the right to refer their complaint to the FOS. The FOS provides an independent system for settling complaints.

10.6 SRB firms already fall under the compulsory jurisdiction of FOS except for complaints relating to pure landlord and tenant disputes which are excluded from FOS. This approach will continue for the full regime.

Q37: Do you agree with our proposal to apply DISP complaints reporting rules to SRB firms?

Rental disputes

10.7 As mentioned above, FOS will not cover pure landlord and tenant issues relating to regulated SRB agreements. We understand that tenants have only very limited protection from rent increases – for example referral to the Residential Property Tribunal Service may only be available during the initial six months of a tenancy.

10.8 We propose to continue to cover this issue through disclosure, by requiring SRB providers to disclose the circumstances in which the rent can be increased or changed in any way, so that the SRB seller enters the SRB contract fully aware of the risks.

Q38: Do you agree with our proposal to continue to cover the issue of rental disputes through disclosure?

Compensation and the Financial Services Compensation Scheme (FSCS)

10.9 The FSCS provides a final safety net for consumers if an authorised firm is unable or likely to be unable to meet its financial obligations towards its customers. The rules covering compensation are in the COMP sourcebook of our Handbook.

10.10 Most regulated activities in the retail markets (including home finance advice and arranging) are covered by the FSCS. However, home finance providing and administration activities are excluded from FSCS coverage on proportionate and cost-effectiveness grounds because the circumstances in which a customer is likely to suffer loss in the event of a provider defaulting are limited and there is potential scope for a market solution, such as the transfer of a portfolio to another lender, generally without loss to the borrower.

10.11 We believe that the risks posed by SRB are in many respects similar to home reversions, as customers generally receive funds from the transaction upfront. The majority of disputes that may occur thereafter relate to tenancy issues, which are largely outside our remit. However we recognise that the fact that the provider, rather than the consumer, has title to the property does create some additional consumer risks in the event of a provider default. Our approach to this is discussed below.

SRB advising and arranging

10.12 Interim authorised firms were excluded from the scope of FSCS on the grounds that we did not believe it was fair to expect regulated firms to contribute towards funding compensation payments made for unauthorised firms whose compliance with all of the threshold conditions had not yet been assessed. However firms with an interim VoP were included for advising and arranging activities.

10.13 For the full regime we propose to include SRB firms in the scope of the FSCS for the activities of advising and arranging only. This is consistent with the approach adopted for other home finance regimes and we believe that the type of risks posed by SRB firms are similar to other home finance firms for advising and arranging activities.

SRB providing and administration

10.14 The most imminent risk to an SRB seller arising from the failure of an SRB provider is to their tenancy – for example, if the property is sold or taken into possession.

10.15 We have also identified some other situations specific to SRB where there is a potential for SRB consumers to suffer a loss if the firm fails. This often stems from something presented as a product feature, including where:

- the SRB provider offers the seller a share in the appreciation of the value of the property (for example the SRB seller will be paid a proportion of the increase in value, usually at the end of a set period);
- the SRB provider refunds part or all of the original discount at the end of a set period;
- the SRB seller is given the option of buying back the property at some point in the future;
- the SRB provider retains a portion of the purchase price to cover the rent for a set period.

10.16 There is less likely to be an orderly market solution to the failure of SRB firms compared with other home finance firms, such as mortgage lenders where finance is likely to be taken over by another firm, and so there is a potential for consumer loss. At present we do not have sufficient evidence of how widespread the practices are that may lead to losses or what the extent of any losses will be. However because the SRB market is relatively small, with mostly small firms operating within it, we

believe that the failure of any particular firm would impact relatively few consumers. Therefore at present we do not propose to include SRB providing or administration activities in the scope of FSCS. However we do plan to include a number of measures in the full regime to address the associated risks posed to consumers.

10.17 We have limited powers over security of tenure issues as this area is governed by specific property and tenancy laws. However we will require that the relative lack of security of tenure (beyond the initial contractual tenancy period) is made clear to consumers through disclosure requirements before they enter into a SRB agreement. We also have several high level requirements (2.6A.1R to 2.6A.11G) to ensure that customers interests are protected, including that:

- due regard is paid to the interests of its customers by firms when exercising rights or discretions under a SRB;
- the interests of customers are protected to a reasonable standard; and
- any interest (legal or beneficial) the customer has in the property is protected.

10.18 We are also consulting on whether we should require tenancies under SRB agreements to be structured as an assured tenancy (as discussed in Chapter 9) to ensure the tenancy rights of SRB sellers. This would give SRB sellers increased security of tenure, and would also provide improved protection if the SRB provider were to fail.

10.19 We are proposing to address the specific risks associated with commitments to consumers arising from product features by the addition of a rule in MIPRU (MIPRU 4.4.12R). This will require firms to cover any outstanding commitments to consumers through arranging adequate insurance or a written guarantee from a financial institution to cover these obligations. This proposal is discussed in more detail in Chapter 7.

Q39: Do you agree with our proposals to include advisers and arrangers within the scope of the FSCS?

Q40: Do you agree that providers and administrators should not be brought into the scope?

Q41: Do you agree with our proposals to address the risks of provider default?

FOS & FSCS fees

10.20 The fees relating to the FOS and FSCS are outlined in Chapter 5 of this CP.

FOS Voluntary Jurisdiction

10.21 The FOS operates a voluntary jurisdiction, in order to allow businesses to sign up with the FOS for certain types of complaint which would not otherwise be covered by its compulsory jurisdiction or its consumer credit jurisdiction. Activities covered

by the voluntary jurisdiction include some which are directed at consumers in the UK by financial businesses from an establishment elsewhere in the EEA. The voluntary jurisdiction also covers complaints about acts or omissions that took place before the business signed up with the FOS.

10.22 The FOS last year extended the range of activities which are covered by its voluntary jurisdiction to include all those activities directed at consumers in the UK by financial services businesses from an establishment elsewhere in the EEA that would be covered by the compulsory jurisdiction if conducted from an establishment in the UK.[18] The list of activities covered by the voluntary jurisdiction in this way is not automatically updated to reflect changes in the compulsory jurisdiction – a decision needs to be made in each case. In this case there appears to be no reason why EEA businesses providing SRB services to UK consumers should not be able to offer access to the FOS in the same way as providers of other services that would be regulated if provided from the UK. The FOS therefore proposes that SRB activities should be included in its voluntary jurisdiction. This would be achieved by changing the date at DISP 2.5.1R(1)(c) to 1 July 2009, as that is the date from which SRB activities became regulated (see Appendix 3).

10.23 The effect of this change would be that EEA-based SRB businesses which are out of scope of FSA regulation for territorial reasons may choose, if they wish, to give their customers in the UK access to the FOS through the voluntary jurisdiction. By doing this, such businesses would also be covered by the FOS for acts or omissions that took place both before they joined the voluntary jurisdiction and before 1 July 2009. Such businesses would also be covered by industry fee block 10V in Annex 1 Part 4 of FEES 5, which means that they would be liable to FOS for an annual levy (currently £75) and would be subject to case fees in the same way as other firms covered by the FOS.

10.24 Changing the date at DISP 2.5.1R(1)(c) to 1 July 2009 would also have the effect of extending the scope of the voluntary jurisdiction to include the operation of multilateral trading facilities, as this became a regulated activity on 1 November 2007 as a consequence of the implementation of MiFID. This extension would allow EEA-based operators of multilateral trading facilities which are out of scope of FSA regulation for territorial reasons to offer their eligible UK complainants access to the FOS through the voluntary jurisdiction. Operators joining the voluntary jurisdiction on this basis would be covered for the same acts or omissions and subject to the same fees and levies as described for SRB businesses above.

Q42: Do you agree that the FOS should extend the scope of its voluntary jurisdiction to include SRB activities and operation of multilateral trading facilities?

18 PS08/3, Dispute Resolution: the Complaints sourcebook – further simplification, minor changes and extending the voluntary jurisdiction (March 2008)

Annex A

Market failure and cost benefit analysis

Market failure analysis

1. The market failure analysis indicates that the sale and rent back (SRB) market is a fragmented market with little competitive pressure on SRB providers. Evidence from the Office of Fair Trading (OFT)[1] report suggested that there is neither competition on price or quality of SRB products. It is a market characterised mainly by sole traders that act locally and target consumers with high levels of arrears, many of whom are facing repossession.

2 We have identified the existence of informational asymmetries, mainly arising from the valuation of the property and the price discount in combination with the terms of the tenancy agreement, which may not be understood by consumers. It is likely that this lack of knowledge has been exploited by some SRB providers and consumers enter into an SRB agreement when it is not the best option for them. In this context the terms and features of a SRB agreement are of particular importance.

3. The OFT also reported that SRB transactions are carried out very quickly and high-pressure sales tactics are prevalent in the market, inducing consumers to enter into an SRB agreement when it may not be the best option for them.

4. The introduction of the interim regime was designed as a quick response to a regulatory gap and targeted the worst incidences of consumer detriment. For example, by introducing a basic level of disclosure covering main features of SRB agreements. Following the implementation of the interim regime, information imbalances still exist and competition pressures remain very low.

5. We analyse below the incremental cost and benefits of the full regime.

Cost benefit analysis (CBA)

6. The Financial Services and Markets Act 2000 (FSMA) requires us to publish a CBA when we publish draft rules or guidance on rules. This includes an analysis of the benefits and an estimate of the costs that will arise from the full proposals being

1 http://www.oft.gov.uk/shared_oft/reports/consumer_protection/oft1018.pdf

made, taking as a baseline, where appropriate, what firms currently do under the interim regime.

7. To conduct this CBA, we have had access to the following sources of information:

- a small survey distributed to SRB firms who applied for interim permission, which asked for an estimate of the costs associated with several of the proposals;
- previous analysis undertaken by us of the costs of the interim regime;
- previous analysis undertaken by us on the regulation of home reversions;
- information provided by the National Landlords Association and the Rent Back Charter Association; and
- the OFT's market study on SRB.

Estimated population of firms

8. For the interim regime 67 firms applied for authorisation and (currently) 11 firms applied for a variation of permission. We expect a greater number than this to apply for the full regime as some firms did not qualify to make an application to carry on SRB activities under the interim regime. This was because they did not have previous experience in the SRB market. We believe that 100 is a realistic estimate for the number of firms likely to apply to carry on SRB business under the full regime.

9. However, given that there is some uncertainty around this figure, we have based our assessment of the likely costs to firms of the proposed regulatory regime on a 'per firm' basis and we use different scenarios of the total population to estimate the likely cost to the industry as a whole.

Direct costs to the FSA

10. The direct costs are the additional costs incurred by us to introduce and implement these proposals. We broadly estimate that we will incur a **total one-off cost** broadly in the region of **£1m** and **on-going costs** will be **minimal**. These costs breakdown as follows.

- The cost to enable all firms to be brought onto our systems, instead of the manual work that was in place for the interim regime is estimated at £500,000 to £1m. However, the temporary continuation of manual reporting for the full regime will still require receipt and analysis of reports that firms submit. It is estimated that this additional work will require a total resource of £10,000.
- Additional staff will be required to consider applications for permissions under the full regime. We estimate this will cost around £45,000.
- The production of an FSA consumer factsheet to be issued by firms at both the advice and cooling-off stages of SRB transactions is estimated to cost £10,000.

- As the new regime will run alongside the existing mortgage and home finance regime we anticipate that most of the ongoing costs will be managed within our existing resources. We do not expect to require considerable additional resourcing.

Compliance costs to firms

11. We have estimated that the introduction of the full regime will lead to the following total one-off costs and ongoing cost per firm. These costs vary according to firms' current exposure to our regulation.

Table 1: Total one-off and ongoing incremental compliance cost per firm

	Firm already interim authorised	Firm new to authorisation	Firm applying for VoPs from the interim regime	Firm applying for VoPs new – to SRB regulation
Total one-off	£13,000 to £31,000	£16,000 to £36,000	£6,000 to £9,000	£7,000 to £9,300
Total ongoing	£10,000 to £15,000	£10,000 to £15,000	£3,000 to £8,000	£3,000 to £8,500

12. The breakdown of the estimated incremental costs to firms are summarised in Table 2 and discussed in detail below.

Table 2: Breakdown of incremental compliance costs per firm type

Cost per firm	Firm already interim authorised	Firm new to authorisation	Firms applying for VoPs from the interim regime	Firms applying for VoPs – new to SRB regulation
One-off costs				
Cost of compiling an application	£1,000	£2,500	£300	£800
Application fees	£500 to £2,000	£1,500 to £5,000	£0 to £2,250	£250 to £,2500
System and Controls	minimal	minimal	minimal	minimal
Approved persons	£170	£170	minimal	minimal
Reporting	minimal to £4,000	minimal to £4,000	minimal	minimal
Financial promotions	£10,000	£10,000	£5,000	£5,000
Secure tenancy agreements	£1,000	£1,000	£1,000	£1,000
Prudential requirements	£400 to £13,000	£400 to £13,000	minimal	minimal
Total one-off costs	**£13,070 to £31,170**	**£15,570 to £35,670**	**£6,300 to £8,550**	**£7,050 to £9,300**
Ongoing costs				
System and Controls	minimal	minimal	minimal	minimal
Financial promotions	£6,000	£6,000	minimal	minimal
Advice and selling	minimal	minimal	minimal	minimal
Cooling-off disclosure	£2,500 to £7,500	£2,500 to £7,500	£2,500 to £7,500	£2,500 to £7,500
Reporting	minimal	minimal	minimal	minimal
Other fees	£1,200	£1,200	varies	varies
Total ongoing costs	**£9,700 to £14,700**	**£9,700 to £14,700**	**£2,500 to £7,500**	**£2,500 to £7,500**

13. Table 3 shows the total costs to the industry. One of the difficulties in determining the total cost to the industry of our proposed full regime is the uncertainty over the size of the industry, and the number of firms involved. As we noted previously, we consider that a realistic estimate for the size of the industry once the full regime is in place is 100 firms.

Table 3: Total costs to the industry under different population scenarios

Number of firms	Total one-off costs	Total ongoing costs
Scenario 1 18 new firms, 67 moving from interim to full, 15 VoPs (of which 11 are interim VoPs)	£1.3m to £2.9m	£900K to £1.4m
Scenario 2 20 new firms, 67 moving from interim to full, 20 VoPs (of which 11 are interim VoPs)	£1.3m to £3m	£900K to £1.5m
Scenario 3 30 new firms, 55 moving from interim to full, 10 VoPs (of which 8 are interim VoPs	£1.3m to £2.9m	£900K to £1.4m
Scenario 4 40 new firms, 67 moving from interim to full, 30 VoPs (of which 11 are interim VoPs)	£1.8m to £3.8m	£1.1m to £1.8m

Cost of compiling an application

14. Firms will be required to be authorised under the full regime in order to be able perform any SRB activity, as outlined in Chapter 4. Based on estimates used in the Home Reversion and the interim SRB regimes we estimate that:

- firms new to authorisation will likely require 25 hours of senior management and 70 hours of compliance staff to apply, which amounts to a total cost per firm of £2,500;[2]
- firms that are interim authorised will require 10 hours of senior management and 30 hours of compliance staff to compile an application to bridge the gap between the interim and the full regime, which amounts to a total cost per firm of £1,000;[2]
- firms that apply for a VoP in the full regime will require eight hours of senior management and 25 hours of compliance staff, to compile which amounts to a total cost per firm of £800;[2] and
- firms already holding a VoP in the interim regime and wishing to transfer it will require three hours of senior management and seven hours of compliance staff time, which amounts to a total cost per firm of £300.[2]

2 For the calculation of the total cost per firm, we used hourly rates figures based on the Administrative Burdens report, which is available at www.fsa.gov.uk/pubs/other/Admin_Burdens_Report_20060621.pdf.

Application fees

15. Firms will also have to pay a one-off application fee for the full regime depending on the permissions of the firm and whether they are part of the interim regime or not, as detailed in Chapter 5. For firms new to SRB this fee is £1,500 for advisers and arrangers and £5,000 for providers and administrators. For firms seeking a VoP this fee is £250 for those staying in the same fee block and 50% of the application fee for those moving to into an additional fee block.

16. Firms already holding an interim permission will need to pay a top-up amount to reach the full regime fees. The top-up amount is £2,000 for SRB providers and administrators and £500 for advisers and arrangers. Firms holding an interim VoP would pay an amount from £0 to £2,250 determined by their allocation in a fee block.

Other fees

17. In terms of ongoing fees, firms will be subject our periodic fees, FOS and FSCS levies. For an SRB provider who also provides advice, it is estimated that our fees would total £950, a FOS levy of £170 and a £40 FSCS levy, which includes base costs and compensation levy.[3]

18. For firms that have applied for a VoP the fee will vary depending on the activities they are currently undertaking.

Systems and controls

19. The proposed system and control rules (SYSC) are high-level obligations that leave firms with flexibility about how to implement them. We estimate compliance costs to be of no more than minimal significance given that the majority of firms in the SRB market are small and should not require substantial additional effort to comply.

Approved persons

20. We estimate the costs of firms applying for the approved persons' regime to be £170 per firm.[4] We expect that firms who have applied for a VoP would have the approved person functions already and therefore, if the same individuals are carrying on these roles in respect of the new SRB activity, the costs would be minimal.

Conduct of business rules

Financial promotions

21. From firm questionnaire responses, the cost to comply with our financial promotion requirements (more restrictive brand advertising, banning the use of emotive words, prohibiting leaflet drops) range from very minimal for some firms to tens of thousands for others, depending on how much firms are reliant on leaflet dropping. As there is

3 This estimate is based on an SRB provider who undertakes 50 transactions during the year, and earns £50,000 annual income from advising in the 2009/10 levy year.

4 Based on previous calculations in CP 174, Prudential and other requirements for mortgage firms and insurance intermediaries, http://www.fsa.gov.uk/pubs/cp/cp174.pdf.

such a differing range of estimates from firms in respect of the new requirements, £10,000 has been used as an estimate of the average costs involved for firms that are moving from the interim regime to the full regime. Firms who have applied for a VoP will incur significantly less costs as they will already have similar systems in place in relation to financial promotions procedures and we estimate this to be on average £5,000 depending on their reliance on leaflets.

22. Firms new to SRB regulation and firms moving from the interim regime to the full regime will incur estimated ongoing costs of £6,000 to account for compliance support for sign off of financial promotions. Ongoing costs are estimated to be minimal for VoP firms as the requirements will be a small addition to current processes.

Advice and selling

23. Firm questionnaire responses regarding the costs of implementing advice stated that many firms already provided advice. It is, however, difficult to determine if firms would class advice in the same way as we have in this CP. Therefore, firms stating that the costs would be minimal can only be taken as anecdotal.

24. As part of the sales process firms will also be required to provide an FSA consumer leaflet, which will detail the alternative options that consumers should consider and urge them to seek independent advice. Firms will not incur a cost to order this leaflet.

Cooling off and disclosure

25. For the interim regime many firms employed compliance consultants to assist with the production of the required disclosure documents. We envisage authorisation applications for the full regime to be carried out in the same manner. Therefore, on the basis that the disclosure is not complex and can be created without the need for complex systems, we anticipate the one-off cost of production to be wrapped up in the cost of compiling an application for authorisation.

26. In relation to a cooling-off period, firms stated that a loss of business might occur of around 10%–20% of their yearly sales. In terms of admin costs firms stated that additional conveyance costs would be incurred of between £50 and £150 per transaction if a cooling-off period was implemented and that could amount to a total cost of £2,500 to £7,500.[5] Some firms also felt that they might lose customers after paying a valuation fee of around £220. It is, however, very difficult to determine how many customers will opt out due to the cooling-off period.

Secure tenancy agreements

27. The cost of firms requiring re-drafting of contracts from assured short-hold tenancy agreements to assured tenancy agreements has been estimated as a one-off cost of £1,000. This would cover a legal firm producing an assured tenancy template that firms can populate with personalised customer details.

5 Based on an SRB firm that undertakes 50 transactions per year.

Prudential requirements

28. Firms will be required to retain a certain amount of capital as detailed in Chapter 7. We have used the data received by SRB firms who applied for the interim regime to make informed assumptions[6] about the amount of capital firms may need to hold under our prudential proposals to estimate the costs.

29. Based on this data, we have assumed that large SRB providers may be required to hold £200,000 in capital, small and administrator providers will need to hold £100,000 and intermediaries will need to hold the higher requirement of £5,000 and £10,000 (depending on whether they handle client money or not). Additionally, intermediaries will have an extra cost arising from Professional Indemnity Insurance (PII) requirements ranging from £1,000 to £3,000 depending on the size of the intermediary.

30. Using the above assumptions we estimate that compliance with capital requirements will create a one-off cost for providers ranging from £7,000 to £13,000 depending on their size, for administrators around £7,000 and for intermediaries around £400 to £800 depending on their business model and size. Ongoing costs may apply to each firm if their turnover and size change and they need to top-up to meet the requirements.

31. Firms applying for a VoP should already hold the necessary capital requirements and have PII cover, so we are expecting costs for these firms to be minimal.

Regulatory reporting

32. From questionnaire responses, firms estimated that the cost of system changes in respect of the reporting requirements ranged from minimal to £4,000. These estimates are dependent on whether firms have in-house systems that are inexpensive to change or outsourced systems where changes are charged per data item. Firms who have applied for a VoP will have complaint reporting systems already in place and therefore their costs would be considerably lower than new firms as many complaint data fields will already be present. We expect their costs to be minimal.

33. It is estimated that the ongoing costs for firms to report the data will be low due to the low level of transactions carried out by SRB firms.

Market impacts

Improvement in the suitability of sales

34. The OFT market study presented evidence of consumer detriment due to bad practices in the market. The proposed authorisation, approved persons and conduct of business requirements will impose a minimum standard of service and should lead to an improvement in the average quality standard in the SRB market.

6 Based on data received by SRB firms during the interim authorisation period, we estimated that medium/large providers could have on average tangible assets around £20m (100 houses of £200,000); medium/large administrators could have on average annual income close to £1m and medium/large advisers around £200,000. For small firms we assumed that they fall to the minimum capital requirement.

35. Financial promotion rules that will prohibit the emotive terms and phrases from advertisement and ban cold-calling and leaflet dropping, aim to ensure that promotions do not take advantage of vulnerable consumers.

36. The cooling-off period combats high pressure sales tactics by giving more time for people to reflect. This, combined with the regulatory disclosure requirements, may encourage consumers to seek more appropriate routes for them. This benefit arises if consumers use the information provided to form better choices and take advantage of the cooling-off period to seek advice or shop around for a better deal. In practice we recognise that changes in consumer behaviour as a result of these requirements might be modest. The improvement in the suitability of purchases is likely to be mainly driven by the minimum selling standards imposed on SRB firms (e.g. the affordability and appropriateness test). Supervision and enforcement of these will be crucial and should materially reduce current levels of unsuitability.

Improvement in the quality of firms and contract terms

37. The authorisation, approved person and prudential requirements are designed to ensure that only firms that are financially sound and have good practices in place are able to remain to the market, thereby reducing the risk of consumer detriment and market disruption at the point of entry.

38. Due to the complexity of some contracts offered by the SRB firms, there are cases where consumers can potentially face losses if a firm fails (e.g. where cash incentives materialise after a set period). Based on data from the interim authorised firms, most firms are adequately capitalised to cover their obligations in case of default and only a handful are not. In these cases prudential requirements will have an additional benefit on minimising probable losses. Also, capital requirements will reduce the burden on FSCS from insolvent intermediaries.

38. Assured tenancies will mitigate the risk of eviction of the tenant on unspecified grounds and termination of the agreement within a short term. Quality of the contracts will be improved as a result.

Efficiency in competition

40. The full regime, and in particular the prudential requirements are likely to limit new entrants in the SRB markets by creating higher barriers to entry and also cause a number of firms to exit. This is likely to reduce the number of firms in a market that is already fragmented, potentially damaging competition. However, to the extent that the regime is mainly effective at deterring entry from poor quality firms and poor practices in terms of excessive price and contract standards, the nature of competition may not necessarily worsen from the current situation.

41. In addition, we recognise that changes in consumer behaviour as result of the regime may be modest and so competitive pressures from consumers on SRB firms to offer good value products might not be materially enhanced in practice. So we do not expect competition to materially improve in terms of the price and quality of the

SRB deal above the minimum standard regulation sets. However, the regulatory disclosures and the increase in time for consumers to seek alternative options or better deals set some of the necessary conditions, even if not sufficient, for a more competitive market to emerge.

Q43: Do you have any comments on our CBA?

Annex B

Compatibility statement

1. This annex sets out our assessment of the compatibility of the proposals outlined in this consultation paper (CP) with our general duties under section 2 of the Financial Services and Markets Act 2000 (FSMA) and with the regulatory objectives set out in Chapter 1 of the CP.

Compatibility with our statutory objectives

2. Our four statutory objectives are set out below, along with a description of how our proposals take account of these objectives.

Consumer protection

3. The market and regulatory failure analysis of the current arrangements identified consumer detriment arising as a result of high-pressure selling in a market characterised by information asymmetry as outlined in the CBA (Annex A).

4. The full sale and rent back (SRB) regime will introduce a number of additional high-level standards, as well as prudential and conduct of business requirements. These are explained in Chapters 6, 7 and 9 of this CP.

5. The introduction of prudential requirements will help ensure firms are adequately resourced to facilitate a sustainable market. The additional conduct of business measures will address a number of areas where consumer detriment is occurring. Requirements include targeting exploitative advertising practices, banning cold-calling, banning leaflet dropping through letterboxes and prohibiting the use of certain emotive terms and phrases in promotional material. Specific sales standards and enhanced disclosure requirements are proposed to help customers better understand the details of SRB agreements. The addition of a cooling-off period will give consumers more time to consider whether to proceed. We also plan to apply specific requirements to tenancy agreements to improve tenure.

Market confidence

6. The full regime supports our market confidence objective by helping consumers to be more confident in the SRB market due to the standards a firm will be required to meet. Many consumers are vulnerable and in financial difficulties. Therefore the addition of extra consumer protections, such as selling standards, a cooling-off period and our consumer information factsheet should help consumers to make an informed decision about all the options available to them and whether SRB is the best solution. If SRB intermediaries fail, consumers will be protected by the Financial Services Compensation Scheme (FSCS). The introduction of prudential requirements and insurance against future liabilities should also increase consumer confidence in the SRB market.

Reducing financial crime

7. It is possible that there is scope for money laundering and mortgage fraud to occur as part of an SRB transaction, in the same way as for other mortgage-related products. By bringing SRB firms within our regulatory scope, there may be an increased opportunity for us to identify incidences of financial crime.

Promoting public awareness

8. The proposal for FSA regulation includes the scope for penalties (including the ability to fine). This could be expected to result in significant media attention given to breaches, which is likely to go some way to improve public awareness of the potential detriment resulting from SRB transactions, and a need for consumers to ensure that any SRB firm they are considering doing business with is regulated by us.

9. The addition of an FSA factsheet covering SRB and the alternative options that could be considered will improve consumer awareness of SRB and the need to use a regulated firm. It is envisaged that consumer bodies will stock these at branches, which should help to improve consumer awareness.

Principles of good regulation

10. Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to the principles of good regulation.

The need to use our resources in the most efficient and economic way

11. There will be additional costs associated with the full SRB regime in relation to information systems. Manual processes were adopted for the interim regime and there will be costs associated with bringing the SRB firms onto the relevant FSA systems.

12. Using our analysis and understanding of the SRB market, the most effective and efficient way of supervising firms in the SRB market is to bring all firms across to the relevant FSA systems. The regulatory reporting requirements we are imposing upon firms will feed into these systems, helping to ensure the most efficient use of our supervisory resources to carry out risk-based supervision.

The responsibilities of those who manage the affairs of authorised persons

13. Our requirements place responsibility on Boards, Chief Executives and senior management teams for determining how to deploy their resources in the most effective way to achieve defined regulatory outcomes. The application of the approved person's regime and senior management arrangements, systems and controls (SYSC) will require fit and proper senior management to have appropriate control, supervision and accountability.

The restrictions we impose on the industry must be proportionate to the benefits that are expected to result from those restrictions

14. The CBA in Annex A estimates the incremental costs and analyses the resulting benefits. It has been informed by pre-consultation with industry through a questionnaire that has been used to estimate the costs of our new requirements on firms.

15. We expect the benefits to be proportionate to the costs.

The desirability of facilitating innovation in connection with regulated activities

16. Our requirements are aimed at consumer protection, ensuring that information is clear, fair and not misleading to ensure consumers understand the terms and risks of SRB arrangements. These requirements are not expected to unduly inhibit future beneficial product innovations for the industry.

The international character of financial services and markets and the desirability of maintaining the competitive position of the UK

17. Currently this is mainly a national market. The standards proposed are not expected to damage the position, and moreover, it may improve confidence within the market and promote entry by good quality firms.

The need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions

18. Implementation of full SRB regulation will increase barriers to entry, in particular with the introduction of prudential regulation. The interim regime has already led to some firms exiting the market and we envisage a further reduction in interim authorised firms moving across to the full regime. However, to the extent that the regime mainly deters firms representing poor value for consumers, any impact on competition may not necessarily worsen the previous position. We believe that 100 is a realistic estimate of firms likely to apply to carry on SRB activities under the full regime, as new players without previous SRB experience can apply for authorisation.

The desirability of facilitating competition between those who are subject to any form of regulation by the FSA

19. The introduction of additional disclosure and a cooling-off period will incentivise a few consumers to obtain a better deal and allow them time to explore alternatives. To a limited extent this may facilitate competition in this market.

Acting in a way that we consider most appropriate for the purpose of meeting our statutory objectives

20. As explained in Chapter 3, we have explored other options and believe our preferred option is the most appropriate way to address the risks in this market and meet our statutory objectives.

Q44: Do you agree with the compatibility statement?

Annex C

Consultation questions

Q1: Does our analysis fit with your understanding?

Q2: To what extent are introducer arrangements used in the SRB market?
What type of firms use introducer arrangements?

Q3: Do you agree with our approach to regulating SRBs?

Q4: Do you have any comments on the perimeter guidance for SRB?

Q5: Do you agree with our proposals on authorisation?

Q6: Do you agree with our approved persons proposals for SRB?

QQ7: Do you agree with our approach to dealing with unauthorised business?

Q8: Do you have any comments on our FSA fees proposals?

Q9: Do you agree with our proposed allocation of SRB firms to FOS industry blocks and FSCS contribution groups?

Q10: Do you agree with our proposal to apply the SYSC 6 requirements in relation to financial crime and money laundering rules?

Q11: Do you have any comments on our proposed TC requirements for those undertaking SRB activities?

Q12: Do you have any comments on our proposed approach to supervision of SRB firms?

Q13: Do you agree with the capital requirements we propose to apply to:

(i) SRB providers and administrators?

(ii) SRB intermediaries that do not handle client assets?

(iii) SRB intermediaries that do handle client assets?

Q14: Do you agree with the proposal to apply a PII requirement to firms that undertake SRB mediation activity?

Q15: Do you have any concerns about your ability to obtain appropriate PII for your SRB mediation activity?

Q16: Do you agree with the proposal to require firms to obtain insurance or an agreement with a credit institution to protect consumers in the event that they are not able to meet future obligations that they have to consumers under the terms of the SRB product?

Q17: Do you have any comments on the proposed reporting requirements?

Q18: Do you agree with our approach to financial promotions and communications?

Q19: Do you agree that there should be an affordability and appropriateness test across all sales?

Q20: Do you have any comments on how firms should be required to assess affordability?

Q21: Do you agree with our proposals for all firms to provide a factsheet to consumers as part of the sales process?

Q22: Do you have any comments on the proposed content of the factsheet?

Q23: Do you agree with our proposals to introduce a cooling-off period?

Q24: Do you agree that the cooling-off period should be 14 days? How long do you think the cooling-off period should be?

Q25: Do you have any comments on the cooling-off process?

Q26: Do you agree that our approach to valuations strikes a reasonable balance between the consumer's interest in an unbiased view of the property value and the cost to them of commissioning their own valuation?

Q27: Do you agree with our proposal for the valuer to owe a duty of care to the consumer as well as the firm?

Q28: Do you agree with our initial disclosure proposals?

Q29: Do you agree with our proposals regarding a key terms statement?

Q30: Do you agree with our proposals for offer stage disclosure?

Q31: Do you agree with our proposals not to implement a post sale disclosure regime?

Q32: Do you agree with our approach not to impose minimum standards for products?

Q33: Do you agree with our proposal that to provide consumers with security of tenure, a tenancy agreement under a SRB agreement must be an assured tenancy?

Q34: Do you agree with our proposal to apply a rule on excessive charges?

Q35: Do you have any comments about our approach to record keeping?

Q36: Do you have any comments about our transitional arrangements?

Q37: Do you agree with our proposal to apply DISP complaints reporting rules to SRB firms?

Q38: Do you agree with our proposal to continue to cover the issue of rental disputes through disclosure?

Q39: Do you agree with our proposals to include advisers and arrangers within the scope of the FSCS?

Q40: Do you agree that providers and administrators should not be brought into the scope?

Q41: Do you agree with our proposals to address the risks of provider default?

Q42: Do you agree that the FOS should extend the scope of its voluntary jurisdiction to include SRB activities and operation of multilateral trading facilities?

Q43: Do you have any comments on our CBA?

Q44: Do you agree with the compatibility statement?

Appendix 1

Draft Handbook text

SALE AND RENT BACK INSTRUMENT 2010

Powers exercised

A. The Financial Services 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 138 (General rule-making power);
(2) section 145 (Financial promotion rules);
(3) section 149 (Evidential provisions);
(4) section 156 (General supplementary powers);
(5) section 157(1) (Guidance);
(6) section 213 (The compensation scheme);
(7) section 214 (General); and
(8) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).

B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [30 June 2010].

Amendments to the Handbook

D. The modules of the FSA'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
General Provisions (GEN)	Annex B
Fees manual (FEES)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex E
Supervision manual (SUP)	Annex F

Amendments to material outside the Handbook

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

Notes

F. In 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 Sale and Rent Back Instrument 2010.

By order of the Board
[……] 2010

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

distance regulated sale and rent back mediation contract	a *distance contract*, the making or performance of which constitutes, or is part of: (a) *advising on a regulated sale and rent back agreement*; or (b) *arranging (bringing about) a regulated sale and rent back agreement*; or (c) *making arrangements with a view to a regulated sale and rent back agreement*; or (d) agreeing to carry on a *regulated sale and rent back mediation activity* in (a) to (c).
SRB intermediary	a *firm* with *permission* (or which ought to have *permission*) to carry on a *regulated sale and rent back mediation activity*.

Amend the following definitions as shown.

client	… (8) (in relation to a *regulated sale and rent back agreement*, except in *PROF*): (a) the individual or trustee who is the *SRB agreement seller* or potential *SRB agreement seller*; or (b) an individual who is an *unauthorised SRB agreement provider* or potential *unauthorised SRB agreement provider* and who does not have, or would not be required to have, *permission* to *enter into a regulated sale and rent back agreement*.
SRB agreement seller	(in accordance with article 63J(3)(a) of the *Regulated Activities Order*) an individual or trustees, ~~or a *related party* of his,~~ who sells all or part of the *qualifying interest in land* in the *United Kingdom* to an agreement provider under a *regulated sale and rent back*

agreement and who, or a *related party* of who, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so.

Annex B

Amendments to the General Provisions (GEN)

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

4.2 Purpose

…

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

…

(4) for *electronic commerce activities* carried on from an *establishment* in the *United Kingdom*, in *COBS* 5.2, *ICOBS* 3.2 and *MCOB* 2.8; ~~and~~

(5) for *regulated mortgage contracts* and *home purchase plans*, initial disclosure requirements in *MCOB* 5, and disclosure at the offer stage in *MCOB* 6; ~~and~~

(6) for *equity release transactions*, initial disclosure requirements in *MCOB* 8.4, pre-application disclosure requirements in *MCOB* 9.4 and disclosure at the offer stage in *MCOB* 9.5; and

(7) for *regulated sale and rent back agreements*, initial disclosure requirements in *MCOB* 4.11, pre-sale disclosure requirements in *MCOB* 5.9 and disclosure at the offer stage requirements in *MCOB* 6.9.

Annex C

Amendments to the Fees Manual (FEES)

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

...

FEES 3 Annex 1 R Authorisation fees payable

…

R Part 2 – Complexity Groupings Straightforward Cases R

Straightforward cases	
Activity group	Description
…	
A.18	*Home finance providers*, *advisers* and *arrangers* (excluding *home finance providers*). In the case of applicants for *interim RSRB permission* within this activity group the specified amount payable is £1,000. ~~In the case of applicants for *full RSRB permission* within this activity group the specified amount payable is £500~~.
...	

Moderately Complex Cases R

Moderately complex cases	
Activity group	Description
…	
A.2	*Home finance providers* and *administrators*. In the case of applicants for *interim RSRB permission* within this activity group the specified amount payable is £3,000.

	~~In the case of applicants for *full RSRB permission* within this activity group the specified amount payable is £2,000.~~
…	

...

FEES TP Transitional Provisions

FEES TP 1.1

(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
…					
5.	*FEES* 3 Annex 1 R part 1 and Activity Groups A.2 and A.18	R	The amount payable under *FEES* 3 Annex 1R part 1 is modified as follows: i) for an applicant for *full RSRB permission* within the A.18 activity group who was granted, up until 29 June 2010, an *interim RSRB permission* within this activity group that was not an interim variation of permission, the specified amount payable is £500. ii) for an applicant for *full RSRB permission* within the A.2 activity group who was granted, up until 29 June 2010, an *interim RSRB*	6 January 2010 to 29 June 2010	6 January 2010

			permission within this activity group that was not an interim variation of permission, the specified amount payable is £2,000		
6.	*FEES* 3.2.7(p)	R	(1) The fee payable under *FEES* 3.2.7(p) is modified in relation to a *firm* applying for any one or more *regulated sale and rent back activities* as follows. (2) Unless (3) applies, if the variation involves the *firm* applying for any one or more *regulated sale and rent back activities* and that *firm* was granted, up until 29 June 2010, an *interim RSRB permission* that was an interim variation of permission the fee is 50% of the highest of the tariffs set out in *FEES* 3 Annex 1 R which apply to that application net of any *interim RSRB permission* application fee paid to the *FSA*. (3) If the activity groups applicable to a *firm*, as specified at Part 1 of FEES 4 Annex 1 R, were not altered when it was granted an *interim RSRB permission* that was an interim variation of permission and will not alter if it is granted a *full RSRB permission*, no fee is payable.	6 January 2010 to 29 June 2010	6 January 2010

Annex D

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, underlining indicates new text.

Regulated sale and rent back agreements: additional requirement

4.4.12 R If a *SRB agreement provider* agrees, under the terms of a *regulated sale and rent back agreement*, to account to the *SRB agreement seller* for any monetary sum, whether after a qualifying period, over a period of time or otherwise, the provider must:

(1) take out and maintain adequate insurance from an *insurance undertaking* authorised in the *EEA* or a *person* of equivalent status in:

(a) a *Zone A country*; or

(b) the Channel Islands, Gibraltar, Bermuda, or the Isle of Man; or

(2) enter into a written agreement with a *credit institution*;

to meet these obligations in the event that the *SRB agreement provider* is unable to do so.

4.4.13 G An example of where this additional requirement would apply would be a term of a *regulated sale and rent back agreement* under which the *SRB agreement seller* was to receive from the *SRB agreement provider* a refund of an agreed percentage of the discount on the sale price of the property to which the agreement relates after an agreed qualifying period.

Annex E

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, unless otherwise stated.

1.2 General application: who? what?

1.2.1 R (1) This sourcebook applies to every *firm* that:

…

(b) *communicates* or *approves* a *financial promotion* of *qualifying credit*, of a *home purchase plan*, ~~or~~ of a *home reversion plan* or of a *regulated sale and rent back agreement*.

…

Firm types and the home finance activities

1.2.2 G …

(3) … and *PERG* 14 contains detailed *guidance* on *home purchase activities*, ~~and~~ *reversion activities* and *regulated sale and rent back activities*.

…

2.1.2 R This table belongs to MCOB 2.1.1R

(1) Category of firm	(2) Applicable section
…	
reversion adviser	…
SRB administrator	*MCOB* 2.1, *MCOB* 2.2.1G, *MCOB* 2.2.3R, *MCOB* 2.2.7G, *MCOB* 2.2.8G, *MCOB* 2.6A.17AR, *MCOB* 2.6A.18G, *MCOB* 2.8.1G to *MCOB* 2.8.5G
SRB adviser	~~As for a *SRB agreement provider* but *MCOB* 2.6A does not apply~~ Whole chapter except *MCOB* 2.2.5G, *MCOB* 2.2.6AR, *MCOB* 2.2.8AR, *MCOB* 2.2.8BG, *MCOB* 2.6A.5R, *MCOB* 2.6A .7G, *MCOB*

	2.6A.17R and *MCOB* 2.8.6G
~~*SRB administrator*~~ *SRB arranger*	~~As for a *SRB agreement provider* together with *MCOB* 2.6A.17AR and *MCOB* 2.6A.18G (which do apply) but the relevant provisions of *MCOB* 2.6A only apply when making arrangements for a *regulated sale and rent back agreement* to be entered into by a *SRB agreement seller* with, or administering a *regulated sale and rent back agreement* provided by, an *unauthorised SRB agreement provider*.~~ Whole chapter except *MCOB* 2.2.5G, *MCOB* 2.2.6AR, *MCOB* 2.2.8AR, *MCOB* 2.2.8BG, *MCOB* 2.6A.5R, *MCOB* 2.6A .7G, *MCOB* 2.6A.17R and *MCOB* 2.8.6G
SRB agreement provider	~~*MCOB* 2.1, *MCOB* 2.2.6R to 2.2.7G, *MCOB* 2.4.1G to 2.4.3G, *MCOB* 2.6A.1R to 2.6A.4G, *MCOB* 2.6A.5AR, *MCOB* 2.6A.8R to 2.6A.12R, *MCOB* 2.6A.13E (1) and (4) and *MCOB* 2.6A.15R to 2.6A.16G~~. Whole chapter except *MCOB* 2.2.5G, *MCOB* 2.2.6AR, *MCOB* 2.2.8AR, *MCOB* 2.2.8BG, *MCOB* 2.6A.5R, *MCOB* 2.6A.7G, *MCOB* 2.6A.17R, *MCOB* 2.6A.17AR, *MCOB* 2.6A.18G and *MCOB* 2.8.6G
…	

What?

2.1.3 R This chapter applies in relation to:

…

(1A) to the extent specified in *MCOB* 2.1.2R Table, *regulated sale and rent back activity*;

…

(3) the *communication* or *approval* of a *financial promotion* of *qualifying credit*, of a *home purchase plan*, ~~or~~ of a *home reversion plan* or of a *regulated sale and rent back agreement*.

Prescribed terms for regulated mortgage contracts, ~~and~~ home reversion plans and regulated sale and rent back agreements

2.2.3 R In any communication to a *customer*, a *firm* must:

…

(3) describe any *lifetime mortgage* as a 'lifetime mortgage'; ~~and~~

(4) describe any *home reversion plan* as a 'home reversion plan'; and

(5) describe any *regulated sale and rent back agreement* as a 'sale and rent back agreement';

…

…

2.2.6A R A *firm* which approves a *financial promotion* of a *home purchase plan* ~~or~~ ~~*regulated sale and rent back agreement*~~ must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.

…

2.2.8 G … In respect of *financial promotions* of *qualifying credit*, ~~or~~ of *home reversion plans* or of *regulated sale and rent back agreements*, *firms* should note the separate requirements of *MCOB* 3.

…

2.3 Inducements: regulated mortgage contracts, ~~and~~ home reversion plans and regulated sale and rent back agreements

…

Prohibition of inducements

2.3.2 R A *firm* must take reasonable steps to ensure that it, and any *person* acting on its behalf, does not:

…

(2) direct or refer any actual or potential business in relation to a *regulated mortgage contract*, ~~or~~ *home reversion plan* or *regulated sale and rent back agreement* to another *person* on its own initiative or on the instructions of an *associate*;

…

…

2.3.6 R (1) A *firm* must not operate a system of giving or offering inducements to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or any other third party whereby the value of the inducement increases if the intermediary or third party, such as a packager,

exceeds a target set for the amount of business referred (for example, a volume override).

…

Quantification of inducements

2.3.7 R (1) A *mortgage lender*, ~~or~~ *reversion provider* or *SRB agreement provider* must quantify in cash terms, any material inducement it offers to a *mortgage intermediary, reversion intermediary, SRB intermediary* or a third party.

…

2.3.8 R (1) …

(1A) Quantification of any material inducement offered by a *SRB agreement provider* in connection with the conclusion of a *regulated sale and rent back agreement* must be included in the disclosures made to the potential *SRB agreement seller* under *MCOB* 5.9.1R(1A)(c).

…

…

Fair treatment

2.4.2 G …

(2) For *regulated sale and rent back agreements*, the *firm* should avoid practices that commit *customers* (or lead *customers* to believe they are committed) to any such agreement before they have been able to consider the information that is required by *MCOB* 5.9.1R (Pre-sale disclosure) and before the expiry of the 14 day cooling-off period as required by *MCOB* 6.9.4R (Written pre-offer document: Stage One).

…

2.6A.4 G (1) In the ~~FSA's~~ *FSA's* view, a *customer's* interests will include:

…

(b) protection of any interest (legal or beneficial) that the *customer* retains, acquires or is intended to acquire in the property, including the expectation that such interests will be unencumbered by third party interests; ~~and~~

(c) … Or in circumstances where that is not practicable (for example, on *repossession*), that an appropriate amount will be returned to the *customer*; and

(d) a *customer's* contractual entitlement to receive certain sums back after a qualifying period, such as where it has been agreed that a certain percentage of discount will be refunded to the *customer* after a set period of tenancy.

…

Protecting customer's interests under regulated sale and rent back agreements: security of tenure

2.6A.5B R (1) A *firm* must ensure that under the terms of a *regulated sale and rent back agreement*, the tenancy which governs the *SRB agreement seller's* entitlement to continue to reside in the property is structured as an assured tenancy under the Housing Act 1996, and that each of its terms is fair.

(2) A *firm* must not include in the tenancy agreement any grounds to evict, or threaten to or take any steps to evict, the *SRB agreement seller* other than by applying to the court for a possession order based on a ground for possession applicable for an assured tenancy under the Housing Act 1996 and then only if it is fair for the *firm* to rely on that ground. The *firm* must not include or rely on Ground 6 (Demolition or reconstruction) and Ground 9 (Suitable alternative accommodation) under that Act.

(3) Where a *SRB agreement provider* requires financing to enable it to enter into a *regulated sale and rent back agreement*, the *firm* must ensure that the mortgagee has agreed in writing to the proposed letting under the agreement and has agreed in writing that it will not seek to recover possession from the court in reliance on a ground other than one on which the provider is entitled to rely under this *rule*. The *firm* must provide a copy of the mortgagee's agreement in writing on these matters to the *SRB agreement seller*.

2.6A.5C G A landlord, such as a *SRB agreement provider*, can only seek possession of a property during the fixed term of an assured tenancy if one of a limited number of grounds for possession set out in the Housing Act 1996 apply and the terms of the tenancy make provision for it to be ended on any of these grounds. Once the fixed term of the assured tenancy has ended, the landlord can only seek possession if one or more of the 17 grounds for possession set out in the 1996 Act apply. In either event it is for the court to decide whether one or more of the grounds for possession actually apply in the particular circumstances of any case.

…

2.6A.13 E …

(3) ~~For a *home reversion plan*, compliance~~ Compliance with (1) and (2) may be relied on as tending to establish compliance with *MCOB*

2.6A.12R.

(4) ~~For a *regulated sale and rent back agreement*, compliance with (1) may be relied upon as tending to establish compliance with the competence requirement of *MCOB* 2.6A.12R.~~ [deleted]

(5) For a *regulated sale and rent back agreement*, contravention of (1) or (2) may be relied on as tending to show contravention of *MCOB* 2.6A.12R.

…

General provisions related to distance contracts

2.7.4 R During the course of a *distance contract* with a *consumer*, the making or performance of which constitutes or is part of a *regulated mortgage contract*, ~~or~~ *home purchase plan* or *regulated sale and rent back agreement*:

(1) the *firm* must, at the *consumer's* request, provide a paper copy of the contractual terms and conditions of the *regulated mortgage contract*, *home purchase plan*, *regulated sale and rent back agreement* or services being provided by the *firm*; and

(2) the *firm* must comply with the *customer's* request to change the means of distance communication used, unless this is incompatible with the *regulated mortgage contract*, *home purchase plan*, *regulated sale and rent back agreement* or service being provided by the *firm*.

…

3.1 Application: Who?

3.1.1 R This chapter applies to every *firm* which *communicates* or *approves* a *financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a *regulated sale and rent back agreement*.

3.1.2 G This chapter applies generally to *firms* in relation to all *financial promotions* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a *regulated sale and rent back agreement*. …

…

3.1.7 G A *financial promotion* may relate to other *controlled investments* in addition to *qualifying credit*, ~~and~~ *home reversion plans* and *regulated sale and rent back agreements*, for example a building society leaflet which describes the range of mortgage, savings and insurance products it provides. …

…

Nationals of other EEA State~~s~~

3.1.11 G A national of an *EEA State* (other than the *United Kingdom*) wishing to take

advantage of the exemption in article 36 of the *Financial Promotion Order* in respect of a *financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a *regulated sale and rent back agreement* should act in conformity with the *rules* in this chapter.

…

3.2 Application: what?

…

Application for a financial promotion of a regulated sale and rent back agreement

3.2.-2A R This chapter applies to the *communication* or *approval* of a *financial promotion* of a *regulated sale and rent back agreement* as follows:

Application, purpose and general	*MCOB* 3.1 to *MCOB* 3.5
Form and content of non-real time qualifying credit promotions	*MCOB* 3.6 in accordance with *MCOB* 3.8B
Unsolicited real time financial promotions of qualifying credit or regulated sale and rent back agreements	*MCOB* 3.7
Form and content of financial promotions of regulated sale and rent back agreements	*MCOB* 3.8B
Confirmation of compliance: financial promotions of qualifying credit or regulated sale and rent back agreements	*MCOB* 3.9
Records: non-real time financial promotions of qualifying credit or regulated sale and rent back agreements	*MCOB* 3.10
The Internet and other electronic media.	*MCOB* 3.12

…

3.2.4A R This chapter does not apply to a *firm* in relation to a *financial promotion* of a *home reversion plan* or a *regulated sale and rent back agreement* of a kind listed in *MCOB* 3.2.5R, unless the *firm approves* the *financial promotion*. However, the requirements relating to how *non-real time promotions* concerning *regulated sale and rent back agreements* and advertisements that could result in the conclusion of such agreements must be described and the risk warning that must be given (see *MCOB* 3.8B.4R) continue to apply.

…

3.2.6 G *MCOB* 3.2.5R(2) exempts a *financial promotion* made by a *firm* or an *appointed representative* which refers to its activities only in general terms in image or brand advertising. The items identified in *MCOB* 3.2.5R(2) do not enable detailed information to be given about the *qualifying credit*, ~~or~~ *home reversion plan* or *regulated sale and rent back agreement* available from the *firm*. …

…

3.3 Application: where?

Territorial Scope

3.3.1 R This chapter applies to a *firm* in relation to:

(1) the *communication* of a *financial promotion* to a *person* in the *United Kingdom*;

(2) the *communication* of an *unsolicited real time financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*, unless it is made from a place and for the purposes of a business which is only carried on outside the *United Kingdom*;

(3) the approval of a *non-real time financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement* for *communication* to a *person* in the *United Kingdom*; and

…

…

Exceptions to territorial scope: rules without territorial limitation for approval of financial promotions

3.3.3 R Subject to *MCOB* 3.3.5R the following parts of this chapter apply without any territorial limitation if a *firm approves* a *financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*:

…

(2) *rules* requiring a *financial promotion* to be clear, fair and not misleading (see *MCOB* 3.6.3R(1) in relation to *qualifying credit*, ~~and~~ *MCOB* 3.8A.1R in relation to a *home reversion plan* and *MCOB* 3.8B.1R in relation to a *regulated sale and rent back agreement*); and

…

…

3.4 Purpose

…

3.4.2 G (1) The purpose of this chapter is to provide *rules* and *guidance* for a *firm* which wishes to *communicate* or *approve* a *financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a *regulated sale and rent back agreement*.

…

…

3.7 Unsolicited real time financial promotion of qualifying credit, ~~or~~ a home reversion plan or regulated sale and rent back agreement

…

3.7.1 R …

(4) If a *financial promotion* is solicited by a *person* ("R") it is treated as also having been solicited by any other *person* to whom it is made at the same time as R if that other *person* is a *close relative* of R or is expected to enter into a *home reversion plan*, a *regulated sale and rent back agreement* or any contract for *qualifying credit* jointly with R.

…

Prohibition on unsolicited real time financial promotions to customers

3.7.3 R A *firm* must not make an *unsolicited real time financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a *regulated sale and rent back agreement* unless the *customer* has an established existing relationship with the *firm* and the relationship is such that the *customer* envisages receiving such *financial promotions*.

…

After MCOB 3.8A insert the following new section. The text is not underlined.

3.8B Form and content of financial promotions of regulated sale and rent back agreements

Clear, fair and not misleading

3.8B.1 R A *firm* which *communicates* or *approves* a *financial promotion* of a *regulated sale and rent back agreement* must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.

3.8B.2 G The guidance on the clear, fair and not misleading standard at *MCOB*

3.6.5G, *MCOB* 3.6.10G and *MCOB* 3.6.14G may be relevant.

[**Note:** A comparative financial promotion will need to comply with regulation 4A of the Control of Misleading Advertisements Regulations 1988.]

Ban on SRB leaflet dropping

3.8B.3 R A *regulated sale and rent back firm* must not *communicate* an unsolicited *non-real time financial promotion* that relates to a *regulated sale and rent back agreement* to a potential *SRB agreement seller* in the form of a leaflet or brochure in non-electronic form.

Non-real time financial promotions to customers and advertisements

3.8B.4 R A *non-real time financial promotion* relating to a *regulated sale and rent back agreement*, whether described as such or not, and any other advertisement which is issued by a *regulated sale and rent back firm* that could lead to the conclusion of a *regulated sale and rent back agreement*, must:

(1) describe any *regulated sale and rent back agreement* as a "sale and rent back agreement" and not use any other expression such as "equity release" to describe it; and

(2) must contain a risk warning that uses the following wording:

"*You are unlikely to get the full market value of your home should you enter into a sale and rent back arrangement and may only be able to live there while you comply with the tenancy agreement. There may be other options available. For further information, please ask for a key terms statement.*".

3.8B.5 E (1) A *firm* should take reasonable steps to ensure that, for a *non-real time financial promotion*:

(a) it includes any matters the omission of which causes the *financial promotion* not to be clear, fair and not misleading;

(b) if it describes a feature of any *regulated sale and rent back agreement*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;

(c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);

(d) the accuracy of all statements of fact in it can be substantiated;

(e) its promotional purpose is not in any way disguised or misrepresented;

(f) any statement of fact, promise or prediction is clear, fair and

not misleading and any relevant assumptions are clearly and prominently disclosed;

(g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;

(h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;

(i) it does not contain any false indications, in particular as to the *firm's* resources and scale of activities;

(j) the design, content or format does not in any way disguise, obscure or diminish the significance of any statement, warning or other matter which the *regulated sale and rent back agreement* is required by this chapter to contain; and

(k) it does not include any reference to approval by the *FSA* or any government body, unless such approval has been obtained in writing from the *FSA* or that body (see also *GEN* 1.2 (Referring to approval by the FSA)).

(2) (a) Contravention of (1) may be relied on as tending to show contravention of *MCOB* 3.8B.1 R.

(b) Compliance with (1) may be relied on as tending to show compliance with *MCOB* 3.8B.1 R.

3.8B.6 G The effect of giving no less prominence to the possible disadvantages than to the benefits associated with a feature will depend on the context of the promotion. The costs, restrictions or conditions relating to a feature such as any option available should be detailed for the following non-exhaustive examples:

(1) where any part of the discount on the market value of the property is to be repaid to the *consumer* after a qualifying period; and

(2) where a *consumer* is to benefit from shared appreciation in the value of the property.

Exploitation of customer

3.8B.7 R A *firm* must not in any *financial promotion* of a *regulated sale and rent back agreement* exploit the vulnerable nature or circumstances of any *customer* who may be in financial difficulties and at risk of losing his or her home and must accordingly avoid using in the promotion phrases or terms such as "fast sales", "rescue" or "cash quickly" or any other similar

expression.

No approval of real time financial promotions of a regulated sale and rent back agreement

3.8B.8 R A *firm* must not approve a *real time financial promotion* of a *regulated sale and rent back agreement*.

Referring to the FSA

3.8B.9 G The guidance on referring to the *FSA* in a *financial promotion* may be relevant (see *MCOB* 3.6.2G (3)).

Amend the following as shown.

3.9 Confirmation of compliance: financial promotions of qualifying credit, ~~or~~ home reversion plans or regulated sale and rent back agreements

3.9.1 R (1) Before a *firm communicates* or *approves* a *non-real time financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a *regulated sale and rent back agreement* it must confirm that the *financial promotion* complies with the *rules* in this chapter.

…

3.9.2 G (1) 'Appropriate expertise' will vary depending on the complexity of the *financial promotion* and the *qualifying credit*, ~~or~~ *home reversion plan* or *regulated sale and rent back agreement* to which it relates. The individuals engaged by a *firm* to confirm the compliance of its *financial promotions* with this chapter may themselves have different levels of expertise and therefore a different level of authority for confirmation depending on the type of promotion and the *qualifying credit*, ~~or~~ *home reversion plan* or *regulated sale and rent back agreement* involved.

…

3.10 Records: non-real time financial promotions of qualifying credit, ~~or~~ a home reversion plan or a regulated sale and rent back agreement

Requirement to make and retain records

3.10.1 R A *firm* must make an adequate record of each *non-real time financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement* which it has confirmed as complying with the *rules* in this chapter. The record must be retained for a year from the date at which the *financial promotion* was last *communicated*.

3.10.2 G In deciding what is an adequate record, a *firm* should consider including, or providing reference to, where appropriate, such matters as:

…

(4) the evidence supporting any material factual statement about *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement* in the *financial promotion*. …

…

…

3.12 The Internet and other electronic media

…

Approach and general guidance

3.12.2 G Any material which meets the definition of a *financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement* including any video or moving image material incorporated in any website containing such a *financial promotion* should comply with the *rules* in this chapter. ...

3.12.3 G As indicated in *MCOB* 3.3 (Application: where?), for the purposes of the *financial promotion rules* there are two types of approach to *financial promotion communicated* via the Internet and other electronic media:

…

(2) *non-real time financial promotions* where the *customer* may, for example, choose from reading a description of the *qualifying credit*, ~~or~~ *home reversion plan* or *regulated sale and rent back agreement* through to the completion of a contract in a similar way to browsing through a leaflet rack. …

3.12.4 G …

(3) When designing websites and other electronic media, *firms* should be aware of the difficulties that can arise when reproducing certain colours and printing certain types of text. These difficulties could cause problems with the presentation and retrieval of required information. Any *financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or of a *regulated sale and rent back agreement communicated* by the Internet, digital or other forms of interactive television is subject to the requirements on form and content in this chapter.

…

4.1 Application

…

4.1.2 R This Table belongs to MCOB 4.1.1R

(1) Category of firm	(2) Applicable section
…	
SRB adviser	*MCOB* 4.1, *MCOB* 4.2, *MCOB* 4.5, *MCOB* 4.6 and *MCOB* 4.11
SRB arranger	*MCOB* 4.1, *MCOB* 4.2, *MCOB* 4.5, *MCOB* 4.6 and *MCOB* 4.11
SRB agreement provider	*MCOB* 4.1, *MCOB* 4.2 and *MCOB* 4.11
…	

…

4.1.6 G *MCOB* 4.1.5R means that this chapter, *MCOB* 4, deals with standard *regulated mortgage contracts*, ~~and~~ *home purchase plans* and *regulated sale and rent back agreements* only and therefore *firms* should note that the scope of service *rules* in this chapter do not apply in respect of *equity release transactions*.

…

4.5 Additional disclosure for distance mortgage mediation contracts, ~~and~~ distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers

4.5.1 G (1) There are certain additional disclosure requirements laid down by the *Distance Marketing Directive* that will have to be provided by a *mortgage intermediary*, ~~and~~ a *home purchase intermediary* and a *SRB intermediary* to a *consumer* prior to the conclusion of a *distance mortgage mediation contract*, ~~or~~ a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract*. …

(2) … *MCOB* 4.5 and *MCOB* 4.6 will only be relevant if a *mortgage intermediary*, ~~or~~ a *home purchase intermediary* or a *SRB intermediary* enters into a *distance contract* in respect of its *mortgage mediation activities*, ~~or~~ *home purchase mediation activities* or *regulated sale and rent back mediation activities* quite independent of any contractual arrangement with a *consumer* relating to a particular *regulated mortgage contract*, ~~or~~ *home purchase plan* or *regulated sale and rent back agreement*. …

4.5.2 R If the initial contact of a kind in *MCOB* 4.4.1R(1) is with a *consumer* with a view to concluding a *distance mortgage mediation contract*, ~~or~~ a *distance home purchase mediation contract* or a *distance regulated sale and rent*

back mediation contract, a *firm* must:

(1) in addition to initial disclosure information and any other required information, provide the *consumer* with the information in *MCOB* 4 Annex 3R in a *durable* medium in good time before the conclusion of the *distance mortgage mediation contract*, ~~or~~ *distance home purchase mediation contract* or *distance regulated sale and rent back mediation contract* with that *customer* unless an exemption in (2), (3), (4) or (5) applies.

…

4.5.3 G …

(2) … However, if a service of a different nature is proposed, the *firm* is expected to provide a fresh initial disclosure document and, in respect of *distance mortgage mediation contacts*, ~~and~~ *distance home purchase mediation contracts* and *distance regulated sale and rent back mediation contracts* with a *consumer*, this will need to be accompanied by the information in *MCOB* 4 Annex 3R.

4.6 Cancellation of distance mortgage mediation contracts, ~~and~~ distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts

4.6.1 G A *consumer* has no right to cancel a *home finance transaction* concluded with a *firm* but may have a right to cancel a *distance contract* concluded with a *mortgage intermediary* or a *home purchase intermediary* for the provision of his services. Whether a *mortgage intermediary*, ~~or~~ a *home purchase intermediary* or a *SRB intermediary* concludes a *distance mortgage mediation contract*, ~~or~~ a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* with a *consumer* will depend on the circumstances. For example, an intermediary may not, in *advising on* or *arranging a regulated mortgage contract*, ~~or~~ *home purchase plan* or *regulated sale and rent back agreement*, act contractually on behalf of, or for, the *customer*. …

…

Cancellation period

4.6.4 R (1) A *consumer* has a right to cancel a *distance mortgage mediation contract*, ~~or~~ a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* in accordance with this section.

…

Exercising the right to cancel

4.6.5 R A *consumer* who has a right to cancel a *distance mortgage mediation contract*, ~~or~~ a *distance home purchase mediation contract* or a *distance*

regulated sale and rent back mediation contract may, without giving any reason, cancel the contract by serving notice on the *firm*, before the expiry of the cancellation period in *MCOB* 4.6.4R either:

…

…

After MCOB 4.10 insert the following new section. The text is not underlined.

4.11 Sale and rent back: advising and selling standards

Initial disclosure requirements

4.11.1 R (1) A *regulated sale and rent back firm*, on first making contact with a potential *SRB agreement seller* for whom it anticipates it might carry on any *regulated sale and rent back activity*, must make the following disclosures to him, both orally and in writing:

(a) the service the *firm* is offering the *customer*, making it clear whether the *firm* will be acting as a *SRB agreement provider*, a *SRB adviser or* a *SRB arranger* and the particular *regulated sale and rent back activities* for which the *firm* has a *Part IV permission*;

(b) if the *firm* is acting as an intermediary, whether it deals with a single or a range of *SRB agreement providers* and whether or not those providers are authorised under the *Act*; and

(c) how much the *firm* will receive in connection with the transaction, whether by way of fees, commissions, charges, retentions or otherwise and whether any such sum will be payable out of the sale proceeds of the property, paid directly by the *customer* or provider or otherwise and, where appropriate, if any of these will be payable if the *customer* decides not to enter into a *regulated sale and rent back agreement*.

(2) If the precise fees, commissions, charges, retentions or other sums in (1)(c) are not known in advance, the *firm* should estimate the amount likely to apply in respect of the transaction.

FSA consumer factsheet on sale and rent back

4.11.2 R (1) As soon as the *customer* expresses an interest in becoming a *SRB agreement seller*, a *regulated sale and rent back firm* must provide him with the *FSA* consumer factsheet on sale and rent back in a *durable medium* which may be accessed through [hyper-link].

(2) The *firm* on providing the *FSA* consumer factsheet in (1) to the *customer* must give him an oral explanation of it, so as to ensure that the *customer* fully understands its contents.

Affordability and appropriateness

4.11.3 R A *regulated sale and rent back firm* must not permit a potential *SRB agreement seller* to become contractually committed to enter into a *regulated sale and rent back agreement* unless it has reasonable grounds to be satisfied that:

(1) the *customer* can afford the payments he will be liable to make under the agreement; and

(2) the proposed *regulated sale and rent back agreement* is appropriate to the needs, objectives and circumstances of the *customer*.

4.11.4 E (1) In assessing whether a *customer* can afford to enter into a particular *regulated sale and rent back agreement*, a *firm* should have due regard to the following:

(a) the rental payments that will be due under the agreement as the consideration for him being permitted to continue residing in the property, stress tested to take account of possible rental increases that might arise in the future;

(b) information that the *customer* provides about his income and expenditure calculated on a monthly basis, and any other resources that he has available; and

(c) any likely change to the *customer's* income, expenditure or resources.

(2) The *firm* should explain to the *customer* that it will base its assessment on whether he can afford to enter into the particular *regulated sale and rent back agreement* on the information he provides to the *firm* about his income, expenditure and resources.

(3) In assessing affordability under (1) the *firm*:

(a) must not rely to a material extent on any lump sum the *customer* receives which represents the net sale proceeds of the property; and

(b) must disregard any discount or any future sum that may be payable to the *customer* under the terms of the *regulated sale and rent back agreement*.

(4) Contravention of (1), (2) or (3) may be relied upon as tending to show contravention of *MCOB* 4.11.3R(1).

4.11.5 E (1) In assessing whether a particular *regulated sale and rent back agreement* is appropriate to the needs, objectives and circumstances of a potential *SRB agreement seller*, a *firm* should have due regard to the following:

(a) whether the benefits to the *customer* in entering into the proposed *regulated sale and rent back agreement* outweigh any adverse effects it may have for him, including on his entitlement to means tested benefits and housing benefits; and

(b) the feasibility of the *customer* raising funds by alternative methods other than by a sale of his property.

(2) Contravention of (1) may be relied upon as tending to show contravention of *MCOB* 4.11.3R(2).

4.11.6 G (1) A consideration of the *customer's* benefits position will need to focus on whether by entering into the proposed *regulated sale and rent back agreement*, his entitlement to means tested benefit will be adversely affected because of his receipt of the net sale proceeds of sale (if any) of the property. The *customer's* possible loss of entitlement to claim housing benefit should also be assessed. Where a *firm* has insufficient knowledge of means tested and housing benefits to reach a conclusion on this, it should contact the appropriate HM Government Department to establish the position.

(2) The *firm* should consider whether a *customer* in *arrears* under his *regulated mortgage contract* or *home purchase plan* has contacted his *mortgage lender* or *home purchase provider* to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that might apply in the *customer's* circumstances.

(3) *Firms* are reminded that under *MCOB* 4.11.2R they are required to provide the *customer* with the *FSA* consumer factsheet on sale and rent back and give him an oral explanation of its contents. The *FSA* expects this to be done in the course of a face-to-face meeting. *Firms* will be expected in the course of this discussion with the *customer* to explain alternative options that may be available to him, such as liaising with his *mortgage lender* or *home purchase provider* to negotiate a forbearance strategy or approaching his local authority about the availability of mortgage rescue schemes.

Record keeping

4.11.7 R (1) A *firm* must make and retain a record of the *customer* information that has been provided to it, including that relating to:

(a) the *customer's* income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments; and

(b) the *customer's* needs, objectives and individual circumstances that it has obtained from him for the purpose of assessing

appropriateness;

and which explains why the *firm* concluded that the *customer* could afford, and why it was appropriate for him, to enter into the proposed *regulated sale and rent back agreement*.

(2) The record in (1) must be retained for a minimum of three years from the date on which the assessment of affordability and appropriateness was made.

Reliance on another firm

4.11.8 R A *firm* need not comply with the requirements imposed on a *regulated sale and rent back firm* in this section to the extent that it is satisfied on reasonable grounds that another *firm* has already done so.

4.11.9 G The effect of *MCOB* 4.11.8R is that a *SRB agreement provider* is expected to carry out its own assessments of affordability and appropriateness in relation to a particular *regulated sale and rent back agreement,* unless it is reasonable for it to rely on another *firm* to have done so in relation to a particular transaction.

Amend the following as shown.

4 Annex 3R Additional information requirements in respect of distance mortgage mediation contracts, ~~and~~ distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers

This table belongs to MCOB 4.5.2R

Additional information for distance contracts with retail customers consumers	
All the contractual terms and conditions on which the service will be provided including, in particular, the following information:	
…	
(6)	details of: (a) the *EEA State* or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *customer* prior to the conclusion of the *regulated mortgage contract*, ~~or~~ *home purchase plan* or *regulated sale and rent back agreement*; (b) any contractual clause on law applicable to the *regulated mortgage contract*, ~~or~~ *home purchase plan* or *regulated sale and rent back agreement* or on competent court, or both; and (c) the language in which the contract is supplied and in which the *firm* will communicate during the course of the *regulated mortgage contract*, ~~or~~ *home purchase plan* or *regulated sale and*

	rent back agreement.

…

5.1 Application

…

5.1.2 R This Table belongs to MCOB 5.1.1R

(1) Category of firm	(2) Applicable section
…	
SRB adviser	~~*MCOB* 5.1.1R, *MCOB* 5.1.2R, *MCOB* 5.9.4R and *MCOB* 5.9.5G~~ *MCOB* 5.1.1R to *MCOB* 5.1.3R, *MCOB* 5.2 and *MCOB* 5.9
SRB agreement provider	*MCOB* 5.1.1R to 5.1.3R, *MCOB* 5.2, *MCOB* 5.9.1R ~~and~~ to *MCOB* 5.9.2R (including *MCOB* 5.9.1AR to *MCO*B 5.9.1FG), *MCOB* 5.9.6R and MCOB 5.9.7G
SRB arranger	~~*MCOB* 5.1.1 R, *MCOB* 5.1.2R, *MCOB* 5.9.3R to *MCOB* 5.9.5G~~ *MCOB* 5.1.1R to *MCOB* 5.1.3R, *MCOB* 5.2 and *MCOB* 5.9

…

5.9 Pre-sale disclosure for regulated ~~Regulated~~ sale and rent back agreements

Pre-sale disclosure

5.9.1 R (1) A *SRB agreement provider* and a *SRB intermediary* (in this section "a firm") ~~must not *enter into a regulated sale and rent back agreement* with a *SRB agreement seller* (the *customer*) unless the following~~ must, as soon as a *customer* expresses an interest in becoming a *SRB agreement seller*, and before accepting any fees, commissions or other sums or undertaking any action that commits the *customer* in any way to entering into a specific agreement, ensure that the disclosures and warnings set out in (1A) are ~~have been~~ made to the ~~*SRB agreement seller*~~ *customer*, both orally and confirmed in writing~~:~~ and he is given an adequate opportunity to consider them.

(1A) The disclosures and warnings referred to in (1) are the following:

(a) where a valuation of the property that is the subject matter of the *regulated sale and rent back agreement* has already been carried out in accordance with *MCOB* 2.6A.12R, a statement of its ~~the~~ market value ~~of the property that is the subject matter of the *regulated sale and rent back agreement*, as determined by any independent valuation under *MCOB* 2.6A.12R~~ or if a valuation of the property has not yet been carried out, the price or value of the property on which the proposed *regulated sale and rent back agreement* would be based (estimated if necessary);

...

(c) any fees, charges or retentions that the ~~*firm*~~ firm will deduct from the purchase price for the property, ~~and~~ net of any fees or charges otherwise payable, and whether there are any fees, charges or other sums that are payable to any *SRB intermediary* that is involved in the proposed transaction or to a third party;

(d) the purchase price that that the ~~*firm* will~~ firm is prepared to pay the *SRB agreement seller* for the property, net of any fees, charges or retentions;

…

(ea) that the *SRB agreement seller* should in his own best interests independently seek whatever information he can on the market value of his property, as explained in the *FSA* consumer factsheet provided to the *customer*, before proceeding with the proposed transaction and how and from where information on its value may be available;

(f) brief details of the ~~type and period~~ main terms of the tenancy under the proposed *regulated sale and rent back agreement*, including its type, the letting period and the security of tenure the *SRB agreement seller* will be given under it, and explaining that the seller cannot be evicted unless the *SRB agreement provider* obtains a possession order from the court in accordance with the Housing Act 1996 and explaining the seller's ability to terminate the tenancy;

…

(ia) where the *SRB agreement seller* is to be given an option under the proposed agreement to buy back the property at some future date from the *SRB agreement provider*, a

statement confirming that this is the case, together with details of the option, including how it may be exercised and any restrictions such as time limits that will apply to it, and a clear explanation as to how the repurchase price is to be determined;

…

(h) if the terms of the tenancy provide for a period of occupancy that is shorter than the minimum contractual period under (g), details of how the ~~*firm*~~ firm intends to meet the contractual period under (g);

…

(k) the circumstances in which the rent in (j) can be increased or changed in any way; ~~and~~

(l) the risks associated with the transaction from the *SRB agreement seller's* perspective, including in particular:

…

(ii) that failure to obtain legal or professional advice may mean his interests are not fully protected;

(m) whether there any other features or restrictions in the *regulated sale and rent back agreement* which the *SRB agreement seller* would reasonably need to know about for the purpose of making an informed judgment about the merits of entering into the proposed agreement;

(n) information on what the *SRB agreement seller* should do if he wishes to make a complaint against the firm arising out of or in connection with the proposed *regulated sale and rent back agreement*, including providing an address and phone number at which the firm may be contacted should the *customer* wish to pursue a complaint and that if he cannot settle his complaint with the firm, that he may be entitled to refer it to the *Financial Ombudsman Service*; and

(o) information on the circumstances in which the *SRB agreement seller* might be entitled to compensation under the Financial Services Compensation Scheme, depending on the type of business and the circumstances of the claim, and, if so, details of the relevant coverage.

…

(3) In making the disclosures in writing to the *SRB agreement seller* that

are required by (1) and (1A), the firm must make prominent use of the key facts logo in accordance with *GEN* 5.1 (Application and purpose), followed by the text "about this sale and rent back agreement".

Compliance with the pre-sale disclosure requirement

5.9.1A R A firm may comply with *MCOB* 5.9.1R (Pre-sale disclosure) by providing the potential *SRB agreement seller* with the written pre-offer document that is required by *MCOB* 6.9 4R (Written pre-offer document: Stage One) if this can be done as quickly as providing the pre-sale disclosures, provided that the firm must not accept any fees, charges or other sums from the *customer* or undertake any action that commits the *customer* to the proposed *regulated sale and rent back agreement* until:

(1) the written pre-offer document that is required by *MCOB* 6.9.4R has been provided to the *customer*; and

(2) the written offer document for signing (Stage Two) that is required by *MCOB* 6.9.11R (1) has been returned to the firm duly signed by the *customer*.

Information on valuations

5.9.1B R Where the potential *SRB agreement seller* has not commissioned his own valuation of the property, it is the firm's responsibility to ensure that he realises that there other possible sources of information on the property's value that are available to him, including local estate agents, local newspapers which carry advertisements for the sale of residential property in the *customer's* locality and on-line sites where details of recent property sales in the locality may be accessed.

5.9.1C G There is no requirement for the property to be valued before making the pre-sale disclosures. An independent valuation of the property must, however, be carried out before the provider supplies the *customer* with the written pre-offer document at Stage One (see *MCOB* 6.9.4R).

Disclosure of relevant features or restrictions

5.9.1D G Examples of features of a *regulated sale and rent agreement* that a *SRB agreement seller* would reasonably need to know about (see *MCOB* 5.9.1R(1A)(m)) would include an arrangement under which the seller is to receive from the *SRB agreement provider* a refund of some agreed percentage of the discount (on the market value of the property) that was reflected in the sale price under the *regulated sale and rent back agreement* after the end of the agreed letting term. Should any restrictions or the payment of any costs or fees be attached to the seller's entitlement to exercise such an option, these should be explained clearly.

Revised pre-sale disclosures

5.9.1E R Where a firm has already provided the required pre-sale disclosures and the terms for the proposed *regulated sale and rent back agreement* are subsequently materially altered, the firm must ensure that, at the firm's option, either:

(1) the pre-sale disclosures are re-issued to the *customer*, incorporating the agreed amendment; or

(2) the agreed amendment is incorporated in the written pre-offer document at Stage One (see *MCOB* 6.9.4R).

5.9.1F G What constitutes "materially altered" requires consideration of the facts of each individual case. For example, a change in the proposed purchase or valuation price of the property should normally be regarded as material, as would the introduction of an additional charge applying to the *regulated sale and rent back agreement* when it did not previously.

Records of pre-sale disclosure

5.9.2 R A ~~*SRB agreement provider*~~ firm must keep a record of the disclosures and warnings made to the *SRB agreement seller* under *MCOB* 5.9.1R for a period of:

…

Initial disclosure information to SRB agreement sellers: unauthorised SRB agreement providers

5.9.3 R (1) A ~~*firm*~~ *SRB intermediary* must ensure that, on first making contact with a prospective *SRB agreement seller*, whether or not he is the ~~*firm's*~~ firm's *customer*, …

…

Initial disclosure information~~:~~ to unauthorised SRB agreement providers

5.9.4 R (1) A ~~*firm*~~ *SRB intermediary* must ensure that, …

…

5.9.5 G A *person* may enter into a *regulated sale and rent back agreement* as agreement provider without being regulated by the *FSA* (or an *exempt person*) if the *person* does not do so by way of business. However, a *SRB intermediary* should at all times be conscious of its obligations under *Principle* 6 (Customers' interests). Should the firm have any reason to believe or entertain any suspicions that the *SRB agreement seller* may be proposing to enter into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider* notwithstanding that the provider appears to be doing so by way of business and therefore appears to require authorisation under the *Act*, the firm should warn the seller that he should not be proceeding with the transaction.

Uncertainty whether the arrangements constitute a sale and rent back agreement

5.9.6 R (1) If, at the point that the required pre-sale disclosures must be provided to a potential *SRB agreement seller*, a firm is uncertain whether the arrangement will qualify as a *regulated sale and rent back agreement*, the firm must:

(a) provide the required pre-sale disclosures on the basis that the arrangement might constitute a *regulated sale and rent back agreement*; or

(b) seek to obtain from the potential seller information that will enable the firm to ascertain whether the contract will qualify as a *regulated sale and rent back agreement*.

(2) Where (1)(b) applies, pre-sale disclosures must be provided, unless, on the basis of information the potential seller provides, the firm has reasonable evidence that the contract would not qualify as a *regulated sale and rent agreement*.

5.9.7 G If the firm has reasonable evidence that the contract is not a *regulated sale and rent back agreement*, for example where at least 40% of the property is not going to be occupied as a dwelling by the seller or his family, and has not provided the required pre-sale disclosures and it is subsequently found that the contract does qualify as a *regulated sale and rent back agreement*, there is no requirement to provide separate pre-sale disclosures at that stage. However, the requirement to integrate the pre-sale disclosures into the written pre-offer document at Stage One that is required by *MCOB* 6.9.4R will apply.

Record of sale and rent back providers

5.9.8 R A *SRB intermediary* must for each *regulated sale and rent back agreement* in relation to which it carries on *regulated sale and rent back mediation activity* keep a record of the contact details of the provider that enters into or is proposed to enter into the agreement, making it clear whether the provider is a *SRB agreement provider* or an *unauthorised SRB agreement provider* and keep the record for a period of:

(1) 12 months after the end of the minimum period that the *SRB agreement seller* and his family have a contractual right to remain in the property; or

(2) five years from the date of the agreement;

whichever is the longer.

…

6.1 Application

…

6.1.2 R This Table belongs to *MCOB* 6.1.1R

(1) Category of firm	(2) Applicable section
…	
reversion provider	…
SRB agreement provider	*MCOB* 6.1.1R to 6.1.3R, *MCOB* 6.1.5R, *MCOB* 6.2, *MCOB* 6.3 and *MCOB* 6.9

…

After MCOB 6.8 insert the following new section. The text is not underlined.

6.9 Regulated sale and rent back agreements

6.9.1 R A *SRB agreement provider* must not enter into a *regulated sale and rent back agreement* unless it follows the process outlined in this section.

Valuation of the property

6.9.2 R (1) A *SRB agreement provider* intending to enter into a specific *regulated sale and rent back agreement* with a *SRB agreement seller* and before it complies with the other requirements in this section, must ensure that the property is properly valued by a valuer that meets the competence and independence requirements (see *MCOB* 2.6A.12R and *MCOB* 2.6A.13E).

(2) Where the *SRB agreement provider* has applied to a *mortgage lender* for financing for a proposed *regulated sale and rent back agreement* and the relevant lender in accordance with its standard lending practices requires its own valuation of the property to be carried out, the valuation will only satisfy the requirements of (1) if the property is properly valued by a valuer that meets the competence and independence requirements (see *MCOB* 2.6A.12R and *MCOB* 2.6A.13E).

(3) The *firm* must ensure that a copy of the valuation report accompanies the written pre-offer document at Stage One (see *MCOB* 6.9.4R).

(4) This *rule* does not apply if the *SRB agreement seller* has already obtained his own recent valuation of the property from a valuer that meets the competence and independence requirements (see *MCOB* 2.6A.12R and *MCOB* 2.6A.13E).

6.9.3 G The valuation required by *MCOB* 6.9.2R need not be commissioned by the *SRB agreement provider*. It may be, for instance, that because the provider needs financing in connection with the proposed transaction, a third party *mortgage lender* will require a valuation of the property in accordance with its normal

lending practices before making any financing available. But the valuer must still meet the competence and independence requirements.

Written pre-offer document: Stage One

6.9.4 R (1) As soon as a *SRB agreement provider* agrees the key terms of a proposed *regulated sale and rent back agreement* with a *SRB agreement seller* and before he becomes contractually committed to enter into the agreement, the *SRB agreement provider* must provide the seller with a written pre-offer document summarising its key terms (Stage One).

(2) The written pre-offer document must be in the form prescribed by *MCOB* 6 Annex 2R and must be adapted by the *firm*, as appropriate, to the extent specified.

(3) The written pre-offer document must be accompanied by the *FSA* consumer factsheet on sale and rent back (even if the *firm* has already provided this) which the *firm* must provide to the *customer* in a *durable medium* and which may be accessed through [hyper-link].

(4) On providing the *FSA* consumer factsheet to the *SRB agreement seller*, the *firm* must give him an oral explanation of what it contains, so as to ensure that he understands its contents, unless the *firm* has already done so.

(5) The *firm* must ensure that the written pre-offer document is accompanied by all associated legal documents in draft form that the seller will need to sign at Stage Two (*MCOB* 6.9.11R) to give effect to the proposed *regulated sale and rent back agreement.*

Cooling-off: No contact between SRB agreement provider and SRB agreement seller

6.9.5 R The *SRB agreement provider* must not instigate any contact or otherwise seek to communicate with the *SRB agreement seller* or a member of his family for a period of 14 *days* from the time that he has been supplied with the written pre-offer document at Stage One, together with the associated legal documentation in draft form.

6.9.6 R If the *SRB agreement seller* or a member of his family makes contact with the *SRB agreement provider* during the 14 *day* cooling-off period, for example because he wants to query a term of the written pre-offer document, the provider must endeavour to answer the query in as factual a manner as the circumstances permit but avoid any language or conduct which could be interpreted as amounting to an attempt to exert pressure on the *SRB agreement seller* to enter into the proposed agreement.

Exercise of cooling-off rights: costs and expenses

6.9.7 R The *SRB agreement provider* must not charge or seek to charge a potential *SRB agreement seller* for any fee, cost, or expense unless and until the seller has

entered into the *regulated sale and rent back agreement* following the 14 *day* cooling-off period (see *MCOB* 6.9.5R).

Responsibility of SRB agreement provider during cooling-off period

6.9.8 R The *SRB agreement provider* must not offer to or *enter into a regulated sale and rent back agreement* with the seller until the 14 *day* cooling off period (see *MCOB* 6.9.5R) has elapsed and must not allow the seller to become contractually committed to enter into any such agreement by signing any associated legal documentation to give effect to it within such period.

Requirement to notify the mortgage lender or home purchase provider where the seller is in arrears

6.9.9 R As soon as a *SRB agreement provider* has provided the written pre-offer document at Stage One to a *SRB agreement seller* who is *in arrears* under his *regulated mortgage contract* or *home purchase plan* on the property to which the proposed *regulated sale and rent back agreement relates*, it must, in a *durable medium*, immediately notify the *mortgage lender*, *home purchase provider* or the providers of other loans that may be secured on the property:

(1) explaining that the *firm* is proposing to enter into a *regulated sale and rent back agreement* with the seller and that, as required by the *FSA*, he will be given a cooling-off period of 14 days before deciding whether he wishes to enter into the proposed agreement;

(2) summarising the key terms of the proposed agreement;

(3) advising the lender or provider that the proposed agreement is likely to be relevant to any repossession action or other forbearance option the lender or provider may already be, or may be contemplating, taking with respect to the property; and

(4) giving the *firm's* contact details should the lender or provider wish for any further information.

Data protection

6.9.10 G *Firms* will need to consider the implications of the Data Protection Act 1998 under which personal data that a *firm*, as data controller, holds about its *customer* cannot be disclosed to a third party without his consent. In practice the *firm* is likely to need the *SRB agreement seller's* consent to disclosing the matters covered by *MCOB* 6.9.9R to the relevant *mortgage lender* or *home purchase provider*.

Written offer document for signing: Stage Two

6.9.11 R (1) No sooner than 14 *days* after the *SRB agreement provider* has supplied the *SRB agreement seller* with the written pre-offer at Stage One, the provider must provide him with a written offer document for signing (Stage Two),

accompanied by any formal legal documentation that the parties will need to sign to give effect to the proposed *regulated sale and rent back agreement*.

(2) The written offer document for signing (Stage Two) must be in the form prescribed by *MCOB* 6 Annex 3R and must be adapted by the *firm*, as appropriate, to the extent specified.

Records of written pre-offer documents and written offer documents for signing

6.9.12 R The *SRB agreement provider* must keep a record of the written pre-offer document at Stage One and the written offer document for signing at Stage Two for a period of:

(1) 12 months after the end of the minimum period that the *SRB agreement seller* and his family have a contractual right to remain in the property; or

(2) five years from the date of the disclosures and warnings, written offer documents and cooling-off period notices;

whichever is the longer.

…

After MCOB 6 Annex 1, insert the following new Annexes. The text is not underlined.

6 Annex 2R – Written Pre-offer Document of a regulated sale and rent back agreement.

1. This annex belongs to MCOB 6.9.4R.

2. The text in square brackets marked with an asterisk indicates instructions to the firm that must not be included in the Stage One pre-offer document provided to customers.

About this sale and rent back agreement

Date: [date produced by firm]

STAGE ONE – PRE-OFFER DOCUMENT

Please take time to consider the details of this sale and rent back pre-offer document and any associated documents such as the draft sale and rent back contract and draft tenancy agreement.

Is this agreement right for me?

Please consider whether this sale and rent back agreement is the best option for you. You should consider taking independent advice. Please read the enclosed consumer factsheet on SRB from the regulator, the Financial Services Authority for impartial information, including contact details for free advice agencies.

You do not have to agree to the proposed agreement.

How long do I have to consider this agreement?

You have at least fourteen days from the date of this document to consider the information before [name of firm] can give you the Stage Two documents to sign.

[name of firm(s)] must not contact you throughout this fourteen day period. This is to give you time to consider whether you wish to go ahead.

Should I contact my lender?

[name of firm] has written to your mortgage lender to let them know that you are considering entering into a sale and rent back agreement. However you should also contact your lender to let them know what is happening.

*Details of the proposed sale and rent back agreement

[The text in this section 'details of the proposed sale and rent back agreement' is not prescribed – however it must be set out in accordance with MCOB 5.9.1R, but adapted to include the market valuation of the property rather than an estimate] *

---

6 Annex 3R – Cooling-Off Document of a regulated sale and rent back agreement.

1. This annex belongs to MCOB 6.9.11R.

2. The text in square brackets marked with an asterisk indicates instructions to the firm that must not be included in the Stage Two offer document provided to customers.

About this sale and rent back agreement

STAGE TWO – OFFER DOCUMENT

Date: [date produced by firm – must be at least fourteen days after the date of the Stage One document]

Please take time to consider the details of this sale rent back offer and any associated documents such as the sale and rent back contract and tenancy agreement before signing.

Is the agreement right for me?

Please consider whether this sale and rent back agreement is the best option for you. You should consider taking independent advice. The FSA consumer factsheet, which was enclosed in the stage one pre-offer document, gives impartial information and contact details for free advice agencies.

You do not have to agree to this offer.

Should I contact my lender?

[name of firm] have written to your mortgage lender to let them know that you are considering entering into a sale and rent back agreement. However you should also contact your lender to let them know what is happening.

*Details of your offer

[The text in this section 'details of your offer' is not prescribed – however it must be set out in accordance with MCOB 5.9.1R, but adapted to include the market valuation of the property rather than an estimate] *

I/we wish to accept this offer

Signatures of customer(s):	Date signed:

Amend the following as shown.

12.1.6 R This chapter does not apply to a *firm* carrying on *reversion activities* or *regulated sale and rent back activities* in respect of a *customer* acting in his capacity as an *unauthorised reversion provider* or as an *unauthorised SRB agreement provider*.

…

After MCOB TP 2 insert the following new Transitional Provisions. The text is not underlined.

MCOB TP 3 Transitional Provisions

3.1 Transitional Provisions for sale and rent back agreements

(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
1	Every *rule* in *MCOB* unless the context otherwise requires and subject to any more specific transitional provision relating to the matter.	R	(1) If, in relation to *regulated sale and rent back activities*, or the communication of a *financial promotion* relating to a *regulated sale and rent back agreement*, provisions in *MCOB* are dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 30 June 2010. (2) Paragraph (1) is without prejudice to provisions in *MCOB* that applied before 30 June 2010 to *regulated sale and rent back firms* that held an interim authorisation or an interim variation of permission to conduct *regulated sale and rent back activity* in accordance with article 32 of the Financial Services	From 30 June 2010 for 4 weeks.	30 June 2010

			and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) that had been granted by the *FSA*.		
2	-	G	For example if a *customer* has not entered into a *regulated sale and rent back agreement* before 30 June 2010, *a regulated sale and rent back firm* will have to comply with the requirements in *MCOB* when taking any further action (such as issuing a written pre-offer document (Stage One) with cooling-off period (*MCOB* 6.9).		
3	-	G	*MCOB* applies to *regulated sale and rent back agreements* entered into on or after 1 July 2009. *PERG* 14.4A contains *guidance* on the variation of plans entered into before 1 July 2009).		
4	*MCOB* 3.8B.4R	R	(1) A *non-real time financial promotion* of a *regulated sale and rent back agreement* communicated: (a) in a directory (or similar publication) that is updated annually; (b) otherwise than in (a); on or after 30 June 2010 where the deadline for submission for communication was before that date.	(1)(a) from the later of 30 June 2010 or the date of first communication, for one year; (1)(b) from 30 June 2010 for three months.	30 June 2010

…

Schedule 1 Record keeping requirements

…

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
MCOB 4.11.7R	*Customer* information on which an assessment of the affordability and appropriateness for a *regulated sale and rent back agreement* was based	*Customer* information on his income, expenditure, resources, needs, objectives and individual circumstances	The date on which the *firm* reached a conclusion on affordability and appropriateness	Three years
…				
MCOB 5.9.8R	Provider information	A record of the contact details of the provider, making it clear whether it is a *SRB agreement provider* or an *unauthorised SRB agreement provider*	The date on which the *regulated sale and rent back mediation activity* is carried on	The longer of a period of 12 months from the end of the minimum period that the *SRB agreement seller* and his family have the contractual right to remain in the property or five years from the date of the agreement
…				
MCOB 6.9.12R	Each written pre-offer document (Stage One) required	A record of the main terms of the proposed *regulated sale*	The date on which the document is produced	The longer of a period of 12 months from the end of the

	under *MCOB* 6.9.4R	*and rent back agreement*		minimum period that the *SRB agreement seller* and his family have the contractual right to remain in the property or five years from the date of the written pre-offer document
MCOB 6.9.12R	Each written offer document for signing (Stage Two) required under *MCOB* 6.9.11R (1)	A record of the contents of the documents and the cooling-off period	The date on which the document is produced	The longer of a period of 12 months from the end of the minimum period that the *SRB agreement seller* and his family have the contractual right to remain in the property or five years from the date of the written offer document
…				

Annex F

Amendments to the Supervision manual: (*SUP*)

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

TP 1 Transitional provisions

TP 1.1 Transitional provisions applying to the Supervision manual only

…

TP 1.2

(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
…					
15D	*SUP* 16		A *regulated sale and rent back firm* need not comply with the *rules* in *SUP* 16 to the extent that they carry on *regulated sale and rent back activity*, provided that: (a) within a period of 3 months from becoming authorised (for previously *unauthorised persons*); or (b) according to their existing reporting schedules (for *firms* that previously held an interim authorisation or interim variation of permission in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) or hold a *Part IV permission* to carry on *regulated sale and rent back activity* as a result of having made a variation of permission application that has been approved by the *FSA*); and every 6 months after such date until 30 June 2011 (unless otherwise	30 June 2010 to 29 June 2011 (unless otherwise advised by the *FSA*)	30 June 2010.

			advised by the *FSA*), they provide to the *FSA* for the relevant period the following information: (c) management accounts for the *firm*, including a balance sheet, profit/loss statement and management report; (d) details of the *firm's* funding arrangements; and (e) where the *firm* is a *SRB agreement provider*, the number of *regulated sale and rent back agreements* it has entered into in that period, distinguishing between direct and indirect sales.		

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

…

1.4.2 G Table: list of general guidance to be found in *PERG*

Chapter:	Applicable to:	About:
…		
PERG 14: Home reversion, ~~and~~ home finance and regulated sale and rent back activities	Any *person* who needs to know whether his activities in relation to *home reversion plans*, ~~or~~ *home purchase plans* or *regulated sale and rent back agreements* will amount to *regulated activities* or whether the restriction in section 21 of the *Act* will apply to any *financial promotions* he may make.	• the *regulated activities* that arise in connection with *home reversion plans*, ~~and~~ *home purchase plans* and *regulated sale and rent back agreements* and any exclusions that may be relevant • the circumstances in which *financial promotions* about *home reversion plans*, ~~and~~ *home purchase plans* and *regulated sale and rent back agreements* may be made without breaching the restriction in section 21 of the *Act*

…

Rights under a regulated sale and rent back agreement

2.6.27C G In accordance with Article 63J(3)(a) of the *Regulated Activities Order*, a *regulated sale and rent back agreement* is an arrangement under which, at the time it is entered into:

(1) a *person* (the "*SRB agreement provider*") buys all or part of the qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the "agreement seller"); and

(2) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least

40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

Detailed *guidance* on this is set out in *PERG* 14.4A (Activities relating to regulated sale and rent back agreements).

...

2.7.7A G There are ~~eight~~ ten arranging activities that are *regulated activities* under the *Regulated Activities Order*. There are:

…

(7) *arranging (bringing about) a home purchase plan*, which includes arranging for another *person* to vary the terms of a *home purchase plan* entered into by him as home purchaser on or after 6 April 2007 (article 25C(1)); ~~and~~

(8) *making arrangements with a view to a home purchase plan* (article 25C(2))~~.~~;

(9) *arranging (bringing about) a regulated sale and rent back agreement*, which includes arranging for another *person* ("A") to vary the terms of a *regulated sale and rent back agreement* entered into on or after 1 July 2009 by A as agreement seller or agreement provider, in such a way as to vary A's obligations under that agreement (article 25E(1)); and

(10) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2)).

…

Advising on regulated sale and rent back agreements

2.7.16E G Under article 53D of the *Regulated Activities Order*; giving advice to a *person* in his capacity as an *SRB agreement seller* or an *SRB agreement provider* is a *regulated activity* if it is advice on the merits of the *person*:

(1) entering into a particular *regulated sale and rent back agreement*; or

(2) varying the terms of a *regulated sale and rent back agreement.*

Advice on varying terms as referred to in (2) only comes within article 53D where the agreement is entered into by the *person* on or after 1 July 2009 and the variation varies the *person's* obligations under the agreement. Further *guidance* on the scope of the *regulated activity* under article 53D is in PERG 14.4A (Activities relating to regulated sale and rent back agreements).

...

Entering into and administering a regulated sale and rent back agreement

2.7.20C G *Entering into a regulated sale and rent back agreement* as an agreement provider and *administering a regulated sale and rent back agreement* are *regulated activities* under Article 63J of the *Regulated Activities Order* (Regulated sale and rent back agreements). *Guidance* on these *regulated activities* is in *PERG* 14.4A (Activities relating to regulated sale and rent back agreements).

...

2.8.6 G The various activities that involve *arranging* fall into two general types. These are:

(1) t hose relating to arranging a particular transaction or a contract, agreement or plan variation (articles 25(1), 25A(1), 25B(1), ~~and~~ 25C(1), and 25E(1) of the *Regulated Activities Order*); and

(2) those relating to making arrangements with a view to persons entering into certain transactions (articles 25(2), 25A(2), 25B(2), ~~and~~ 25C(2), and 25E(2) of the *Regulated Activities Order*).

…

2.8.6A G …

(1) …

…

(5) Under article 29A, an *unauthorised person* is excluded from the *regulated activity* of arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into on or after 31 October 2004 (article 25A(1)(b)) or a *home reversion plan* or *home purchase plan* entered into on or after 6 April 2007 (articles 25B(1)(b) and 25C(1)(b)) or a *regulated sale and rent back agreement* entered into on or after 1 July 2009 (article 25E(1)(b)). This is if the *arranging* is the result of:

(a) anything done in the course of the administration, by an *authorised person*:

(i) …

…

(iii) of a *home purchase plan* in the way set out in article 63G(a); ~~or~~

(iv) of a *regulated sale and rent back agreement* in the way set out in article 63K(a); or

(b) anything done by the *unauthorised person* in connection with the administration:

(i) ...

…

(iii) of a *home purchase plan* in the way set out in article 63G(b)~~.~~;

(iv) of a *regulated sale and rent back agreement* in the way set out in article 63K(b).

…

(9) Under article 33, making arrangements under which *persons* will be introduced to third parties who will provide independent services (consisting of advice or the exercise of discretion in relation to certain investments) is excluded from articles 25(2), 25A(2), 25B(2), ~~and~~ 25C(2) and 25E(2) only. The party to whom the introduction is made must be of a specified standing (including that of an *authorised person*). The exclusion does not apply where the arrangements relate to a *contract of insurance*.

(10) ….

is excluded from articles 25A(2), 25B(2) ~~and~~ 25C(2), and 25E(2) subject to certain conditions related to the receipt of client money and the disclosure of certain information.

…

2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of:

(1)

…

(3) *advising on a home reversion plan*; ~~and~~

(4) *advising on a home purchase plan*~~.~~; and

(5) *advising on a regulated sale and rent back agreement*.

…

2.8.12A G …

More detailed *guidance* on certain of these exclusion is in *PERG* 4 (Regulated activities connected with mortgages), *PERG* 5 (Insurance

mediation activities), ~~and~~ *PERG* 14.3, ~~and~~ *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

…

2.8.14A G …

These exclusions are subject to certain conditions and are explained in greater detail in *PERG* 4.8 (Administering a regulated mortgage contract), ~~and~~ *PERG* 14.3, ~~and~~ *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

2.8.14B G The following exclusions apply in specified circumstances where a *person* is *administering a home finance* ~~*plan*~~ *transaction*:

…

…

2.9.4 G A *person*…..work on a different basis. They apply where the activity relates to a *home finance transaction* under which the borrower, *reversion occupier*, ~~or~~ *home purchaser* or *SRB agreement seller* as the case may be is a beneficiary.

…

2.9.17A G The exclusions for *overseas persons* who carry on certain *regulated activities* related to *home finance transactions* work in a different way. They depend on the residency of the borrower or borrowers, the *reversion occupier* or *reversion occupiers*, ~~or~~ the *home purchaser* or *home purchasers* or the *SRB agreement seller or SRB agreement sellers* as the case may be. In addition, some of the exclusions also depend on the residency of the reversion provider or *SRB agreement provider*. *Guidance* on these exclusions is in *PERG* 4.11 (Link between activities and the United Kingdom) and *PERG* 14.6 (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities.

…

PERG 2 Annex 2 Regulated activities and the permission regime

…

2 Table

…

Table 1 : Regulated Activities [See note 1 to Table 1]	
Regulated activity	**Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on**
(zj)…	
(zk) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1)) (zl) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2)) (zm) *advising on a regulated sale and rent back agreement* (article 53D)) (zn) *entering into a regulated sale and rent back agreement* (article 63J(1)) (zo) *administering a regulated sale and rent back agreement* (Article 63(J)(2))	rights under a *regulated sale and rent back agreement* (Article 88C)

…

4.1.6 G A *person* may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or *ISA* to repay an interest-only mortgage. Such a *person* should also consult the *guidance* in PERG 2 (Authorisation and regulated activities) PERG 5 (Guidance on insurance mediation activities) and PERG 8 (Financial promotion and related activities). In addition, PERG 14 (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities) has *guidance* on *regulated activities* relating to *home reversion plans*, ~~and~~ *home purchase plans* and *regulated sale and rent back agreements*.

…

7.3.1D G Under article 53D of the *Regulated Activities Order* (Advising on regulated sale and rent back agreements), advising a *person* is a specified kind of activity if:

(1) the advice is given to the *person* in his capacity as an *SRB agreement seller* or *SRB agreement* provider or as a potential *SRB*

agreement seller or *SRB agreement provider* ; and

(2) it is advice on the merits of his doing any of the following:

(a) entering into a particular *regulated sale and rent back agreement* ; or

(b) varying the terms of a *regulated sale and rent back agreement* entered into by him on or after 1 July 2009 in such a way so as to vary his obligations under that agreement.

7.3.2 G Articles 53 , 53A, 53B, ~~and~~ 53C and 53D of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see PERG 8 (Financial promotion and related activities) , PERG 4 (Guidance on regulated activities connected with mortgages), ~~and~~ PERG 14.3, ~~and~~ PERG 14.4 and PERG 14.4A (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

7.3.3 G Under section 22 of the *Act* (Regulated activities), for an activity…~~and~~ , by article 28 of the Financial Services and Markets Act 2000 (Regulated A~~a~~ctivities) (Amendment) (No 2) Order 2006 (SI 2006/2383) and article 27 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) as explained in *PERG* 7.3.3A G.

…

7.4.2 G …

(2) To lead or enable *persons*:

(a) …

…

(e) to enter as *SRB agreement seller* or *SRB agreement provider* into *regulated sale and rent back agreements* or to vary the terms of *regulated sale and rent back agreements* entered into by them as *agreement seller* or *SRB agreement provider* where the agreement was originally established on or after 1 July 2009.

7.4.3 G (1) ...

(3) …But, in the *FSA's* view, a news or information 'service' is not restricted to the giving of only news or information since this would not generally constitute the *regulated activity* of *advising on investments* (see PERG 8.28 (Advice or information)), *advising on regulated mortgage contracts* (see PERG 4.6.13 G to PERG 4.6.16 G (Advice or information)), *advising on a home reversion plan* ~~or~~ *advising on a home purchase plan* or *regulated sale and rent back*

agreements . So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

…

7.4.5 G …

(2)

…

(e) to enter as *SRB agreement seller* or *SRB agreement provider* into *regulated sale and rent back agreements* or to vary the terms of *regulated sale and rent back agreements* entered into by them as *agreement seller* or *SRB agreement provider* where the agreement was originally established on or after 1 July 2009.

…

7.4.9 G ... If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors), as borrowers, as *reversion occupiers* or reversion providers or as *home purchasers* or as *SRB agreement sellers* or *SRB agreement providers* (as the case may be), advice as referred to in PERG 7.4.5G (1), then the publication or service will not be able to benefit from this exclusion.

…

8.17.1A G Section 21 also applies to *financial promotions* concerning *home reversion plans*, ~~and~~ *home purchase plans* and *regulated sale and rent back agreements*. *Guidance* on these activities and related *financial promotions* is given in PERG 14 (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back activities).

…

8.17.12 G Article 28B (Real time communications: introductions) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about *regulated mortgage contracts*, as well as *home reversion plans*, ~~and~~ *home purchase plans* and *regulated sale and rent back agreements*. The exemption is subject to the following conditions being satisfied:

…

…

8.23.3 G …

(1) giving advice on certain investments (articles 53 (Advising on investments), 53A (Advising on regulated mortgage contracts), 53B (Advising on regulated home reversion plans), 53C (Advising on

regulated home purchase plans), 53D (Advising on regulated sale and rent back agreements) and 56 (Advice on syndicate participation at Lloyd's) of the *Regulated Activities Order*) - for example, where the *financial promotion* is the advice;

…

(2C) *making arrangements with a view to a home purchase plan* (article 25C(2) of the *Regulated Activities Order* (Arranging regulated home purchase plans); ~~and~~

(2D) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2) of the *Regulated Activities Order* (Arranging regulated sale and rent back agreements); and

…

8.23.4 G The *guidance* that follows is concerned with the *regulated activities* of *making arrangements with a view to transactions in investments* and *advising on investments*. *Guidance* on the *regulated activities* of *making arrangements with a view to regulated mortgage contracts* and *advising on regulated mortgage contracts* is in PERG 4 (Guidance on regulated activities connected with mortgages). *Guidance* on the *regulated activities* of *making arrangements with a view to a home reversion plan* and *advising on a home reversion plan*, ~~and~~ *making arrangements with a view to a home purchase plan* and *advising on a home purchase plan* and *making arrangements with a view to a regulated sale and rent back agreement* and *advising on a regulated sale and rent back agreement* is in PERG 14 (Guidance on home reversion, ~~and~~ home purchase and sale and rent back activities).

…

8.36.3 G Table Controlled activities

1.	…
…	
18A.	Providing a regulated sale and rent back agreement
18B.	Arranging a regulated sale and rent back agreement
18C.	Advising on a regulated sale and rent back agreement
19.	Agreeing to do any in 3 to ~~18~~ 18C above

8.36.4 G Table Controlled investments

1.	…
…	
17A.	Rights under a regulated sale and rent back agreement
…	

…

PERG 14.1 Background

…

The Q&As that follow are set out in sections:

- general issues (*PERG* 14.2);
- activities relating to home reversion plans (*PERG* 14.3);
- activities relating to home purchase plans (*PERG* 14.4);
- activities relating to regulated sale and rent back agreements *(PERG* 14.4A);
- the 'by way of business' test (*PERG* 14.5);
- carrying in a regulated activity in the United Kingdom (*PERG* 14.6);
- exemptions (*PERG* 14.7); and
- financial promotions (*PERG* 14.8).

14.2 General issues

Q2. What is the purpose of the Regulation of Financial Services (Land Transactions) Act 2005?

…This typically includes:

- schemes (often termed 'equity release schemes') where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property ('home reversion plans'); and
- certain types of Islamic financing arrangements designed to enable the purchase of a home in a way that is acceptable under Islamic law, such as Ijara or diminishing Musharaka ('home purchase plans').
- schemes where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property in return for payment of rent ('sale and rent back agreement').

Q3. I propose to carry on activities in relation to home finance arrangements of the kind mentioned in Q2. In what circumstances will I need to be authorised by the FSA or be an exempt person?

You will need to be an authorised or exempt person if you will:

- be carrying in *regulated activities*;
- be doing so by way of business;
- be doing so on or after 6 April 2007 in relation to home purchase plans and home reversion plans or on or after 1 July 2009 in relation to sale and rent back agreements;
- be doing so in the *United Kingdom*

Q4. How will I know if my proposed home finance activities are regulated?

Regulated activities are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('the *Regulated Activities Order*'). This was amended, following the enactment of the Regulation of Financial Services (Land Transactions) Act 2005, to extend its scope to cover certain home finance activities. These amendments were made in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No2) Order 2006 (SI 2006/2383) which came into effect on 6 April 2007 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) which came into effect on 1 July 2009. Regulated home finance activities are:

- *entering into a home reversion plan*, ~~or~~ *entering into a home purchase plan* or *entering into a regulated sale and rent back agreement* as the provider of the plan/agreement or, in the case of *home reversion plans* and *regulated sale and rent back agreement* only, as a *person* to whom rights or obligations acquired by the provider are transferred or who, during the currency of the plan or agreement, acquires all or part of the interest in land bought by the provider;
- *administering a home reversion plan*, ~~or~~ *administering a home purchase plan* or *administering a regulated sale and rent back agreement* ;
- *arranging (bringing about) a home reversion plan*, ~~or~~ *arranging (bringing about) a home purchase plan* or *arranging (bringing about) a regulated sale and rent back agreement* ;
- *making arrangements with a view to home reversion plans*, ~~or~~ *making arrangements with a view to home purchase plans* or *making arrangement with a view to regulated sale and rent back agreements*;
- *advising on a home reversion plan*, ~~or~~ *advising on a home purchase plan* or *advising on a regulated sale and rent back agreement* ; and
- agreeing to do any of the above.

…

14.3 Activities relating to home reversion plans

...

Q9. What exclusions may be available to me if I am entering into home reversion plans?

The main exclusions are those:

• for trustees who enter into a plan where the reversion occupier is an individual who is a beneficiary under the trust~~, or a related person~~ (article 66(6B) of the *Regulated Activities Order*); and

• for *overseas persons* who satisfy certain conditions (see Q39).

…

Q11. What exclusions may be available to me if I am administering home reversion plans?

…

The other main exclusions are those:

• for trustees who administer a plan where the reversion occupier is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6B) of the *Regulated Activities Order*); and

• for *overseas persons* who satisfy certain conditions (see Q39).

…

Q20. What exclusions may be available to me if I am advising on home reversion plans?

The main exclusions that are available include:

• advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and

• advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order)~~; and~~

~~• *overseas persons* (article 72 of the Regulated Activities Order) (see Q39)~~.

…

14.4 Activities relating to home purchase plans

…

Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?

The main exclusions are:

• for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6C) of the *Regulated Activities Order*); and

• for *overseas persons* who satisfy certain conditions (see Q39).

...

Q30. What exclusions may be available to me if I am administering home purchase plans?

…

The other main exclusions are those:

• for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6C) of the *Regulated Activities Order*); and

• for *overseas persons* who satisfy certain conditions (see Q39).

…

Q36. What exclusions may be available to me if I am advising on home purchase plans?

The main exclusions that are available include:

• advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and

• advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order)~~; and~~

~~• *overseas persons* (article 72 of the Regulated Activities Order) (see Q39)~~.

…

Insert the following new text after PERG 14.4. The text in PERG 14.4A is not underlined.

PERG 14.4A Activities relating to regulated sale and rent back agreements

Q37A. What is a regulated sale and rent back agreement?

Broadly speaking, this is an arrangement under which, at the time it is entered into, a person (the "agreement provider") buys all or part of an interest in land (other than time share accommodation) in the United Kingdom from a homeowner (being an individual or a trustee whose beneficiary is an individual) ("the agreement seller") on the basis that the individual or a related person is entitled under the arrangement, and intends, to use at least 40% of the land as a dwelling. However such an arrangement is not a *regulated sale and rent back agreement* if it is a *home reversion plan*.

This means that an arrangement is not a *regulated sale and rent back agreement* if:

- the agreement seller is not an individual; or
- the land is to be used for the purpose of letting as a dwelling to someone other than a related person of the individual (or beneficiary under the trust) who owns it; or
- the land is used primarily for business purposes; or
- the land is overseas; or
- if it is a *home reversion plan* (see Q5.).

A related person, in relation to an individual, means:

- that person's spouse or civil partner;

- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's

- parent or grandparent;
- child or grandchild; or
- sibling.

As regards the requirement that the conditions need to be met 'at the time the arrangement was entered into', it should be noted that a *regulated sale and rent agreement* is an arrangement that may actually comprise several agreements. For example, a *regulated sale and rent back agreement* may include an agreement for the sale of a freehold interest in land and a subsequent tenancy agreement relating to the occupation of that land. Just because the tenancy agreement was not completed at the same time as the sale of the freehold interest does not mean there is no *regulated sale and rent back agreement*.

Q37B. Can an arrangement that was established before 1 July 2009 be a regulated sale and rent back agreement?

Yes it can be. An arrangement may still be a *regulated sale and rent back agreement* even if it was established before 1 July 2009. However, regulated activities carried on in relation to a sale and rent back agreement established before 1 July 2009 will only be subject to regulation:

- when carried on on or after 1 July 2009; and
- in certain circumstances (see Q37Q for a summary).

Q37C. When will I be carrying on the activity of entering into a regulated sale and rent back agreement?

This will occur when you enter into the agreement at the outset as the agreement provider. It can also occur at a later stage if all or part of the rights or obligations of the agreement provider are transferred to you or if you acquire all or part of the interest in land bought by the agreement provider (where you become an 'agreement transferee'). This is so, whether you are acquiring the rights or obligations from the agreement provider or from an existing agreement transferee. This includes acquiring the rights or obligations or the interest in land purely as an investment. However, investors will only be regulated if they satisfy the 'by way of business test' (see 14.5). We refer to agreement providers and agreement transferees collectively in this guidance as 'agreement purchasers'.

So, if you are an agreement transferee under a plan that was established before 1 July 2009, you will only be subject to regulation for carrying on the regulated activity of entering into the plan if you do so on or after 1 July 2009.

Q37D. What exclusions may be available to me if I am entering into regulated sale and rent back agreements as agreement provider?

The main exclusions are those:

- for trustees who enter into a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); and

- for *overseas persons* who satisfy certain conditions (see Q39).

Q37E. When will I be carrying on the activity of administering a regulated sale and rent back agreement ?

This will arise if you carry out any one or more of the following functions for an agreement purchaser or an agreement seller in relation to an agreement that was originally entered into on or after 1 July 2009:

• taking necessary steps to make payments to the agreement seller; or

• taking necessary steps to collect or recover payments due from the agreement seller; or

• notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires him to be notified.

One effect of this is that you will not become subject to regulation if you are administering an agreement that was originally established before 1 July 2009 and an agreement transferee enters into the plan after that date. See Q37Q for more detail about when activities are regulated if an agreement was originally entered into before 1 July 2009.

It is irrelevant for the purposes of determining if you are administering a regulated sale and rent back agreement whether or not the agreement was entered into by way of business. In this respect the activity is similar to the regulated activity of *administering a home reversion plan*.

Q37F. If I collect rent due to an agreement purchaser under a regulated sale and rent back agreement or help the agreement seller set up a direct debit in favour of the agreement purchaser do I need to be regulated?

Yes, it is likely that you will need to be authorised to carry out the *regulated activity* of *administering a regulated sale and rent back agreement*. However the following exclusions may be available:

- where you arrange for an authorised person with the appropriate *Part IV permission* to administer the agreement – this includes where you administer the agreement for a period of up to one month following the termination of such an arrangement; or

- you administer the plan under an agreement with an authorised person which has a *Part IV permission* to administer such an agreement.

Q37G. Are there any other exclusions available in relation to administering a regulated sale and rent back agreement?

The other main exclusions are those:

- for trustees who administer a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); and

- for *overseas persons* who satisfy certain conditions (see Q39).

Q37H. When will I be carrying on the activity of arranging regulated sale and rent back agreements?

There are three types of arranging activity that are regulated. These are making arrangements:

(1) for another *person* to enter into a plan as an agreement purchaser or as an agreement seller;

(2) for another person, being an agreement seller or an agreement purchaser, to vary the terms of an agreement that was originally established on or after 1 July 2009, in such a way as to vary his obligations under that agreement; and

(3) with a view to a person who participates in the arrangements entering into an agreement as an agreement seller or as an agreement purchaser.

But none of these arranging activities will apply to you if they relate to an agreement to which, as a result of your arranging activities, you are or will become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the agreement or the variation as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a person by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of homeowners to agreement providers or of agreement transferees to agreement providers or vice versa or any of these to a *firm* with *permission* (or which ought to have *permission)* to carry on a *regulated sale and rent back mediation activity*.

Q37I. I understand that any transaction that I have arranged before 1 July 2009 is not subject to regulation. But do I need *permission* if I arrange for an agreement transferee to enter into or vary a regulated sale and rent back agreement on or after 1 July 2009?

This depends on the type of arranging you are carrying on. If you are arranging variations, this will only be regulated if the agreement was originally established on or after 1 July 2009.

But, if you are arranging for an agreement transferee to enter into an agreement and the arrangements are being made on or after 1 July 2009, you will be regulated for that arranging activity. See Q39Q for more detail about when activities are regulated if a plan was originally established before 1 July 2009.

Q37J. Will I need to be regulated for arranging for an agreement provider to dispose of his rights and obligations or his interest in land under a regulated sale and rent back agreement to an agreement transferee?

It is only arranging for a person to enter into or vary the terms of an agreement that is subject to regulation. So, you will not need to seek authorisation for providing arranging services to the existing provider who wishes to dispose of his rights, obligations or interests but you are likely to be regulated if you are arranging for the transferee to enter into the agreement by acquiring the rights, obligations or interests.

Q37K. What exclusions may be available to me if I am arranging regulated sale and rent back agreements?

If you are an *unauthorised person* the following exclusions may be available to you:

• where you are arranging for a transaction to be entered into with or through an *authorised person* (article 29 of the *Regulated Activities Order*) (see Q37L); and

• where you have arranged for an authorised person to administer the agreement or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(4) of the Regulated Activities Order).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

• introductions made with a view to the provision of regulated independent advice (article 33 of the Regulated Activities Order) (see Q37M);

• introductions made to a regulated person who carries on regulated sale and rent back agreement activities (article 33A of the Regulated Activities Order) (see Q37N);

• arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); and

• *overseas persons* (article 72 of the Regulated Activities Order) (see Q39).

Q37L. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements ?

The exclusion will apply to you when, as an *unauthorised person*, you are arranging any of the following:

• for a homeowner (your client) to enter into an agreement with an authorised agreement provider or through an authorised intermediary;

• for an agreement provider (your client) to enter into an agreement with a homeowner or to transfer rights or obligations or an interest in land to an agreement transferee if either the agreement transferee is an authorised person or the transaction is to be effected through an authorised intermediary; or

• for an agreement transferee (your client) to acquire rights or obligations from an authorised agreement provider or through an authorised intermediary;

• for your client to vary the terms of a plan where the agreement purchaser is an authorised person or the variation is arranged through an authorised intermediary.

This is subject to your meeting certain conditions which are, broadly speaking, that:

• you must not advise your client on the merits of his entering into the transaction; and

• you must not be paid by anyone other than your client.

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

Q37M. When will the exclusion in article 33 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?

Broadly speaking, the exclusion will apply where:

• your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;

• you make introductions of agreement sellers or agreement purchasers to an *authorised person*, an *exempt person* or an *overseas person*; and

• the introduction is made with a view to the provision of independent advice or the provision of independent discretionary services relating to *regulated sale and rent back agreements*.

Q37N. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?

Broadly speaking, the exclusion will apply where:

• your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;

• you make introductions of agreement sellers, agreement purchasers or prospective agreement sellers or agreement purchasers (your client) to an *authorised person* or an *overseas person*;

• you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and

• you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

Q37O. When will I be carrying on the activity of advising on a regulated sale and rent back agreement ?

This will arise if:

• you are giving advice to a *person* who is or who is contemplating becoming an agreement seller, an agreement provider or an agreement transferee; and

• the advice relates to the merits of his entering into a regulated sale and rent back agreement in that capacity or varying the terms of an agreement that he has already entered into.

Advice on the merits of varying the terms of an agreement will only be regulated where the agreement was originally established on or after 1 July 2009. However, advice given to an agreement transferee on the merits of his entering into an agreement that was originally established before 1 July 2009 will be subject to regulation. See Q37Q for more detail about when activities are regulated if an agreement was originally established before 1 July 2009.

Advice given to a person on the merits of his transferring rights or obligations or interests in land under an agreement to another person is not regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in PERG 4.6 may be applied to the activity on a *regulated sale and rent back agreement*.

Q37P. What exclusions may be available to me if I am advising on regulated sale and rent back agreements?

The main exclusions that are available include:

• advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and

• advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order).

Detailed guidance on the exclusion in article 54 is in PERG 7.

Q37Q. I can see that the fact that the regulated sale and rent back agreement was originally established before 1 July 2009 can affect whether the services that I provide to parties to the agreement after that date are regulated. Can you summarise the position in this respect?

Yes. This all depends on the combination of the date of entry or variation and the capacity in which your customer enters or entered into the agreement. The following table clarifies when your services will be regulated activities and when they will not.

Potential regulated sale and rent back activity	**Whether the activity is regulated if undertaken on or after 1 July 2009 when the agreement was originally established before 1 July 2009**
Entering into an agreement as agreement provider (see Q37C)	N/A - this activity will only take place when the plan is first established
Entering into an agreement as agreement transferee (see Q37C)	Yes, any transfer of the agreement provider's interest in land will be caught
Administering an agreement (see Q37E)	No
Arranging (see Q37H) for a person to enter into an agreement as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes

Arranging variations (see Q37H) of an agreement	No
Advising (see Q37O) a person on entering into an agreement in his capacity as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Advising (see Q37O) a person on varying the terms of an agreement	No

Q37R. Will changes involving the circumstances of the agreement seller that may take place after the agreement has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a regulated sale and rent back agreement. There are two main issues that would need to be considered. These are:

• is the change likely to cause a new agreement to be entered into ; and

• does the change involve a variation of the terms of the agreement (if it was originally entered into on or after 1 July 2009) such as to vary the obligations of the provider or the seller?

Broadly speaking, it would seem likely that if the occupier were to move house, the *regulated sale and rent back agreement* would cease as the tenancy agreement would come to an end and the agreement seller would no longer have the right of occupation.

Changes such as may occur due to marriage or change of occupants, change of other relevant details or drawdown of funds under a staggered payment arrangement may necessitate a new agreement or may involve a variation in the existing agreement depending on the extent to which they alter the obligations of the provider or the occupier. Where such changes do involve a variation, anyone arranging or advising on the variation would potentially need to be authorised or exempt. But this applies only where the agreement was originally entered into on or after 1 July 2009.

Q37S. I am an exempt professional firm. Do I need to be authorised in relation to regulated sale and rent back agreement activities?

Yes, you may need to be authorised. See Q42 for more detail.

Q37T. I am an estate agent. Do I need to be authorised where the vendor of a property has approached me to sell their property but has expressed a desire to remain in the property as tenant?

Yes, it is likely that you will need to be authorised unless you are an exempt person or exclusions apply (see Q37K). This is because it is likely that you will be making arrangements with a view a person who participates in the arrangements entering into an agreement as *SRB agreement provider* and/or *SRB agreement seller*.

Q37U. I am a receiver appointed under the Law of Property Act 1925. Will by activities need to be regulated by the *FSA*?

Your activities in relation to properties subject to regulated sale and rent back agreements could amount to *administering a regulated sale and rent back agreement* where the agreements have been entered into on or after 1 July 2009. Accordingly you may need to be authorised unless you are an exempt person or exclusions apply (see Q37E for the relevant administering activities and Q37F and Q37G for the available exclusions).

Q37V What happens when the agreement seller's right to occupy the land in question under an assured shorthold tenancy ('AST') ends?

A regulated sale and rent back agreement must, at the time it is entered into, give the agreement seller, or related person, an entitlement to occupy at least 40% of the land in question. In the absence of such an entitlement there is no regulated sale and rent back agreement.

As the definition of a regulated sale and rent back agreement refers to 'an arrangement comprised in one or more instruments or agreements', in considering the effect of the end of the tenancy you should look at the arrangement as a whole rather than just any tenancy agreement that may comprise the arrangement. So –

(i) if the arrangement expressly grants the agreement seller an entitlement to occupy the land in question for a specified period of time then the agreement seller retains this entitlement under the regulated sale and rent back agreement even where the AST ends before the specified period ends; and

(ii) if the regulated sale and rent back agreement is expressly stated to end after the termination of the AST then it ceases to be a regulated sale and rent back agreement at that point unless the arrangements are varied by, for example, granting the agreement seller a new AST.

…

14.5 The “by-way-of-business” test

Q38. How do I know if I am carrying on regulated activities by way of business?

A *person* will only need to be *authorised* person or exempt if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated activities)). There are, in fact, three different forms of business test applied to the *home finance transactions* (see Q38A).

Whether or not any particular *person* will meet the requirement that he carries on a *regulated activity* by way of business and so needs *authorisation* or exemption will invariably depend on that person's individual circumstances. A number of factors need to be taken into account in determining whether the test is met. These include:

- the degree of continuity;
- the existence of a commercial element;
- the scale of the activity;
- the proportion which the activity bears to other activities carried on by the same person but which are not regulated; and
- the nature of the particular regulated activity that is carried on.

Corporate plan providers and those who provide professional services to them or to home occupiers are likely to be carrying on their activities by way of business. Unpaid individuals who act as trustees for home occupiers are not likely to be.

~~With *home reversion plans*, it is quite possible that the reversion provider may be an individual who is acting purely in the capacity of investor. Such a person may not be acting by way of business when the criteria listed above are applied to his particular circumstances.~~

Q38A. What are the three different forms of business test referred to in Q38?

They are:

(1) the 'by way of business' test in section 22 of the *Act* applies unchanged in relation to the activity of *entering into a home finance transaction*;

(2) the 'by way of business' test in section 22 of the *Act* applies unchanged in relation to the activity of *administering a home finance transaction*, but another 'by way of business' test arises in relation to *administering a home purchase plan*

because the plan being administered by way of business must itself have been entered into by way of business (see Q28); and

(3) in the case of arranging and advising, the effect of articles 3B to 3D of the *Business Order* is that a *person* is not to be regarded as acting 'by way of business' unless he is 'carrying on the business of engaging in one or more of those activities'.

Q38B. How does the business test in the *Business* Order differ from the business test in section 22 of the *Act*?

The 'carrying on the business' test in the *Business Order* is a narrower test than that of carrying on *regulated activities* 'by way of business' in section 22 of the *Act* as it requires the *regulated activities* to represent the carrying on of a business in their own right.

Q38C. Can you give me some examples where the business test is unlikely to be satisfied?

(1) when an individual enters into a one-off sale and rent back agreement as agreement provider for an agreement seller who is a friend or member of his family whether at market interest rates or not; and

(2) when a person provides a service without any expectation of reward or payment of any kind (but see *PERG* 7.3.4 for examples of when the giving of 'free' advice in relation to *home finance transactions* might still amount to a business).

Q38D. Will I meet the business test if I only enter into one home purchase plan, home reversion plan or regulated sale and rent back agreement a year?

Yes, you might meet the business test. Whether or not you do will depend largely on the facts. The following issues may be helpful to bear in mind:

- the relevant business test here is not the narrower business test under the *Business Order* but the wider one under section 22 of the *Act*; that is whether the activity is being carried on by way of business (see Q38B).

- the expression "carrying on business" suggests the need for a degree of continuity in the activity. Hence, one-off or extremely infrequent acts would usually not be thought to be enough to satisfy the test. However, it is unlikely that a person could successfully claim that entering into a plan or agreement was a "one-off" or very infrequent act if, in all the circumstances, it cannot be shown that they intended this to be the case. This is because there is always a first time that any regular activity is carried on.

- some individuals are clearly in business as sole traders – they will represent themselves as running a business and be registered for VAT etc. Other individuals may not so clearly be in business. In the latter case, it is necessary to consider the

scale of the potential regulated activity. Where a person expects to make a living, or a substantial part of their living, from entering into *home finance transactions* it is likely that they are carrying on such activities by way of business.

With this in mind, if you intend on entering into just one sale and rent back agreement, home reversion plan or home purchase plan each year this may be enough to meet the 'by way of business' test if the scale of this activity is likely to be significant in relation to your other activities.

PERG 14.6 Carrying on a regulated activity in the United Kingdom

Q39. Does a person who acts as provider, administrator, arranger or adviser in relation to home reversion plans, ~~or~~ home purchase plans or regulated sale and rent back agreements from overseas and without maintaining an office in the UK need to be an authorised or exempt person?

...In very broad terms, however, as an overseas person, you are more likely than not to be carrying on a home finance activity in the UK if the home occupier, ~~or~~ reversion ~~provider~~ occupier or agreement seller is normally resident in the UK at the rime that he enters into the plan…..

Table indicating whether authorisation or exemption is likely to be needed by a person who is carrying on home finance activities from overseas.

Activity carried on by overseas person	**Where the reversion occupier, ~~or~~ home purchaser or agreement seller is or was normally resident in the UK at the time he enters or entered into the plan**			**Where the reversion occupier, ~~or~~ home purchaser or agreement seller is or was not normally resident in the UK at the time he enters or entered into the plan**		
	Home reversion plan	**Home purchase plan**	**Regulated sale and rent back agreement**	**Home reversion plan**	**Home purchase plan**	**Regulated sale and rent back agreement**
Entering into or administering	Yes	Yes	Yes	No	No	No
Arranging for persons to enter into plans.	Yes	Yes	Yes	No, provided the reversion purchaser or the reversion transferee, as the case may be, is or was also not normally resident in the UK.	No	No, provided the agreement provider or agreement transferee, as the case may be, is or was also not normally resident in the UK.
Arranging variations	Yes	Yes	Yes	No	No	No

Advising	Yes	Yes	Yes	No, unless the reversion occupier, reversion provider or reversion transferee is located in the UK at the time the advice is given to him.	No, unless the home purchase is located in the UK at the time the advice is given	No, unless the regulated sale and rent back agreement is located in the UK at the time the advice is given

PERG 14.7 Exemptions

…

Q41. What home finance activities can I carry on as an appointed representative?

You will be able to carry on any of the following *regulated activities*:
…

You will not be able to carry on any of the following regulated activities *regulated activities*

- *entering into a home reversion plan*, ~~or~~ *entering into a home purchase plan* or *entering into a regulated sale and rent back agreement*; or
- *administering a home reversion plan*, ~~or~~ *administering a home purchase plan* or *administering a regulated sale and rent back agreement*; or
- *arranging (bringing about) a regulated sale and rent back agreement*; or
- *making arrangements with a view to a regulated sale and rent back agreement*; or
- *advising on a regulated sale and rent back agreement*; or
- agreeing to do any of the above.

Q42. I am an exempt professional firm. Will I be able to carry on any of the regulated activities relating to home reversion plans, ~~and~~ home purchase plans and regulated sale and rent back agreement without needing FSA authorisation?

This depends on the activity in question. Subject to your being able to satisfy the general requirements of Part XX of the Financial Services and Markets Act 2000 you will be able:

- to carry on the regulated activities of:
- *entering into a home reversion plan*; or
- *entering into a home purchase plan;* or
- *entering into a regulated sale and rent back agreement*; or
- *administering a home reversion plan*; or
- *administering a home purchase plan*;
- *administering a regulated sale and rent back agreement* ; or
- agreeing to do any of these things,

but only where you are acting as a trustee or personal representative and the *reversion occupier*, ~~or~~ *home purchaser* or *SRB agreement seller* is a beneficiary under the trust, will or intestacy;

- to carry on the regulated activities of:
- *arranging (bringing about) a home reversion plan*; or
- *arranging (bringing about) a home purchase plan*~~:~~; or
- *arranging (bringing about) a regulated sale and rent back agreement*; or
- *making arrangements with a view to home reversion plans*; or
- *making arrangements with a view to home purchase plans*; or
- *making arrangements with a view to regulated sale and rent back agreement*; or
- agreeing to do any of these things,

without any further restriction; and

- to carry on the regulated activities of
- *advising on a home reversion plan*; or
- *advising on a home purchase plan*; or
- *advising on a regulated sale and rent back* agreement; or
- agreeing to do either any of these things,

but only provided that:

- the advice is given to a trustee or a reversion provider or agreement purchaser who, in either case, is not an individual; or
- the advice is given to an individual but does not amount to a recommendation to enter into a plan as reversion provider, *reversion occupier*, ~~or~~ *home purchaser* or agreement seller; or
- the advice is given to an individual and does amount to a recommendation to enter into a plan as reversion provider, *reversion occupier*, agreement seller, agreement provider or *home purchaser* with a reversion provider, agreement provider or a *home purchase provider* but only if the advice endorses a corresponding recommendation that has been given to the individual by a suitably authorised or exempt person.

PERG 14.8 Financial promotions

Q43. Are there any restrictions if I wish to promote my home finance activities?

Yes. The restriction in section 21 of the Financial Services and Markets Act 2000 will apply, broadly speaking, to any communication which:

- is made in the course of business; and
- invites or induces persons to:
- become a *reversion occupier*, *SRB agreement seller* or *home purchaser*, or
- become a reversion provider or *SRB agreement provider* or
- vary the terms of a *home reversion plan* or a *home purchase plan* that was originally established on or after 6 April 2007 or a *regulated sale and rent back agreement* that was originally established on or after 1 July 2009; or
- be provided, as a reversion occupier, *SRB agreement seller* or home purchase or as a reversion provider or *SRB agreement provider*, with arranging or advisory services.

…

The following table summarises when the financial promotion restriction will apply to communication about home finance plans

A communication inviting or inducing…	**To...**	**Will be a financial promotion?**
…potential reversion occupiers, *SRB agreement sellers* or home purchasers	Enter in a home reversion plan, *regulated sale and rent back agreement*, or a home purchase plan	Yes
…potential home reversion purchasers or transferees or *SRB agreement providers* or transferees	..enter into a home reversion plan or *regulated sale and rent back agreement*	Yes (in the case of transferees, regardless of whether the plan was originally established before 6 April 2007 in the case of *home reversion* transferees and 1 July 2009 in the case of *regulated sale and rent back agreement* transferees)
…potential home purchase providers	…enter into a home purchase plan	~~No~~ Yes
…potential or existing: • reversion occupiers, *SRB agreement sellers* or home purchasers; or • reversion or home purchase providers *or SRB agreement providers*	...be provided with administration services	No
…potential or existing: • reversion occupiers, *SRB agreement sellers* or home purchasers; or • reversion purchasers or transferees or *SRB agreement providers* or transferees	...be provided with arranging or advisory services	Yes (but where the promotion relates to such a person varying the terms of a plan or agreement, this is only where the plan or agreement was originally established on or after 6 April 2007 in the case of *home reversion plans* or *home purchase plan* and 1 July 2009 in the case of *regulated sale and rent back agreements*)
…potential or existing home purchase providers	…be provided with arranging or advisory services	No in relation to advisory services Yes in relation to arranging services
…potential or existing: • reversion occupiers, *SRB agreement*	..decline from entering into or varying the terms of a plan or agreement	No

sellers or home purchasers; or • reversion or home purchase providers or *SRB agreement providers*		
…potential or existing: • reversion occupiers, *SRB agreement sellers* or home purchasers; or • reversion or home purchase providers or *SRB agreement providers*	…dispose of rights, obligations or interests in land that they have under a plan or agreement	No

Q44. What are the restrictions that apply if I am making a financial promotion about home finance plans or activities?

…

If you are an authorised person who is communicating or approving the financial promotion and it is not exempt you will need to comply with the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook (*MCOB* 3 for financial promotions of home reversion plans and *MCOB* 2.2.6A R for financial promotions of home purchase plans and *regulated sale and rent back agreement*).

Appendix 2

FSA consumer factsheet on sale and rent back (SRB) – draft content

1. **Is SRB really right for you?**
    - Obtain independent free advice
    - Consider whether you will be able to afford the rent
2. **What other options do you have?**
    - Have you spoken to your mortgage lender? They may be able to help you
    - Have you spoken to other creditors – you may be able to arrange a repayment plan
    - Your local council may offer a 'mortgage rescue' scheme where they buy your home and allow you to rent it back
    - Depending on your age, equity release may be an option
    - You can shop around SRB firms to compare deals
    - You might be better off selling your home on the open market
3. **Be aware of the risks of SRB**
    - You will normally be paid less than the full market value of your home
    - Check the value of your home so that you can work out whether you are getting a fair deal – using a local estate agent or going on-line to check property sale prices in your area
    - Check how long you can stay in your home as your rental agreement may not be renewed
    - You could still be evicted if you breach any of the terms of your tenancy, for example if you fall behind with your new rental payments
    - If the person or firm buying your home gets into financial difficulties, the property could still be repossessed and you might have to leave

- Check that your SRB provider is authorised by the FSA. If it is not then you will not be protected by the key protections under the regulatory system and the provider of your SRB agreement will not be subject to the FSCS
- Make sure you understand the length of tenancy under the SRB agreement
- Check your eligibility for housing benefit and the effect that a SRB might have of any means-tested benefits

4. **Useful contacts**

- [List of key contacts e.g. debt advice agencies, FSA helpline and moneymadeclear website]

Appendix 3

Draft FOS instrument

Dispute Resolution (Voluntary Jurisdiction) (Sale and Rent Back Amendments) Instrument 2009

Powers exercised

A. The Financial Ombudsman Service Limited makes the rules and guidance in the Annex to this instrument for VJ participants relating to the Voluntary Jurisdiction in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:

(a) section 227 (Voluntary Jurisdiction);
(b) paragraph 14 (the Scheme Operator's rules) of Schedule 17
(c) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making of these rules and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Commencement

C. This instrument comes into force on [ ].

Amendments to the Dispute Resolution: the Complaints sourcebook

D. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Dispute Resolution (Voluntary Jurisdiction) (Sale and Rent Back Amendments) Instrument 2009.

By order of the Board of the Financial Ombudsman Service Limited
[date]

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

(1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

(a) an activity carried on after 28 April 1988 which:

(i) was not a *regulated activity* at the time of the act or omission, but

(ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person,* if later);

(b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;

(c) activities which (at 1 July ~~2007~~ 2009) were *regulated activities* or would be *regulated activities* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP* 2 Annex 1G);

(d) activities which would be *consumer credit activities* if they were carried on from an establishment in the *United Kingdom*;

(e) lending *money* secured by a charge on land;

(f) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);

(g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);

(h) providing ancillary banking services;

(i) acting as an intermediary for a loan secured by a charge over land;

(j) acting as an intermediary for *general insurance business* or *long-term insurance business*;

(k) National Savings and Investments' business;

(l) activities which (at 1 November 2009) were *payment services* or would be *payment services* if they were carried on from an establishment in the *United Kingdom*;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

…

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at 1 July ~~2007~~ 2009

This table belongs to *DISP* 2.5.1R

The activities which (at 1 July ~~2007~~ 2009) were *regulated activities* for the *Voluntary Jurisdiction* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

(1) *accepting deposits* (article 5);
(2) *issuing electronic money* (article 9B);
(3) *effecting contracts of insurance* (article 10(1));
(4) *carrying out contracts of insurance* (article 10(2));
(5) *dealing in investments as principal* (article 14);
(6) *dealing in investments as agent* (article 21);
(7) *arranging (bringing about) deals in investments* (article 25(1));
(8) *making arrangements with a view to transactions in investments* (article 25(2));
(9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
(10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
(11) *arranging (bringing about) a home reversion plan* (article 25B(1));
(12) *making arrangements with a view to a home reversion plan* (article 25B(2));
(13) *arranging (bringing about) a home purchase plan* (article 25C(1));
(14) *making arrangements with a view to a home purchase plan* (article 25C(2));
(14A) *operating a multilateral trading facility* (article 25D);
(14B) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));

(14C) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));

(15) *managing investments* (article 37);

(16) *assisting in the administration and performance of a contract of insurance* (article 39A);

(17) *safeguarding and administering investments* (article 40);

(18) *sending dematerialised instructions* (article 45(1));

(19) *causing dematerialised instructions to be sent* (article 45(2));

(20) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a));

(21) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));

(22) *acting as the depositary or sole director of an open-ended investment company* (article 51(1)(c));

(23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));

(24) *providing basic advice on stakeholder products* (article 52B)

(25) *establishing, operating or winding up a personal pension scheme* (article 52(b));

(26) *advising on investments* (article 53);

(27) *advising on regulated mortgage contracts* (article 53A);

(28) *advising on a home reversion plan* (article 53B)

(29) *advising on a home purchase plan* (article 53C)

(29A) *advising on a regulated sale and rent back agreement* (article 53D)

(30) *advising on syndicate participation at Lloyd's* (article 56);

(31) *managing or underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);

(32) *arranging deals in contracts of insurance written at Lloyd's* (article 58);

(33) *entering into a regulated mortgage contract* (article 61(1));

(34) *administering a regulated mortgage contract* (article 61(2));

(35) *entering into a home reversion plan* (article 63B(1));

(36) *administering a home reversion plan* (article 63B(2));

(37) *entering into a home purchase plan* (article 63F(1));

(38) *administering a home purchase plan* (article 63F(2));

(38A) *entering into a regulated sale and rent back agreement* (article 63J(1));

(38B) *administering a regulated sale and rent back agreement* (article 63J(2));

(39) *entering as provider into a funeral plan contract* (article 59);

(40) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind.

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