

## SCHEDULE 1

### PART I

#### *Controlled Activities*

##### [<sup>F1</sup>Operating an electronic system in relation to lending

**4C.**—(1) Where the [<sup>F2</sup>conditions in sub-paragraphs (2), (2A) and (2C) are] satisfied, operating an electronic system which enables the operator (“A”) to facilitate persons (“B” and “C”) becoming the lender and borrower under a paragraph 4C agreement is a controlled activity.

(2) The condition [<sup>F3</sup>in this sub-paragraph] is that the system operated by A is capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).

[  
<sup>F4</sup>(2A) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—

- (a) receive payments in respect of [<sup>F5</sup>either interest or capital or both] due under the agreement from C, and
- (b) make payments in respect of [<sup>F6</sup>either interest or capital or both] due under the agreement to B.

(2B) For the purposes of sub-paragraph (2A)—

- (a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that sub-paragraph;
- (b) it is immaterial that—
  - (i) payments may be subject to conditions;
  - (ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.

(2C) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform, either or both of the following—

- (a) to take steps to procure the payment of a debt under the agreement;
- (b) to exercise or enforce rights under the agreement on behalf of B.]

[  
<sup>F7</sup>(2D) Where A carries on the activity specified by sub-paragraph (1), it is a controlled activity for A to operate an electronic system where—

- (a) that system enables A to facilitate a person (“B”) assuming the rights of the lender under a paragraph 4C agreement by assignment or operation of law, and
- (b) the conditions in sub-paragraphs (2), (2A) and (2C) are satisfied where C is the borrower under the agreement in paragraph (a).]

(3) The following are controlled activities if carried on by A in the course of, or in connection with, the carrying on by A of the activity specified by [<sup>F8</sup>sub-paragraph] (1) [<sup>F9</sup>or (2D)]—

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- (a) presenting or offering paragraph 4C agreements to [<sup>F10</sup>either B or C] with a view to B becoming the lender under the paragraph 4C agreement [<sup>F11</sup>or] C becoming the borrower under the paragraph 4C agreement,
- (b) furnishing information relevant to the financial standing of a person (“Y”) with a view to assisting in the determination as to whether another person should—
  - (i) enter into, as the lender, a paragraph 4C agreement with Y, or
  - (ii) assume the rights of the lender under a paragraph 4C agreement under which Y is the borrower,
- (c) taking steps to procure the payment of a debt due under a paragraph 4C agreement,
- (d) [<sup>F12</sup>taking steps to perform duties, or exercise or enforce] rights under a paragraph 4C agreement on behalf of the lender,
- (e) [<sup>F13</sup>taking steps with a view to] ascertaining whether a credit information agency (within the meaning given by article 89A(6)) holds information relevant to the financial standing of an individual or relevant person,
- (f) [<sup>F14</sup>taking steps with a view to] ascertaining the contents of such information,
- (g) [<sup>F15</sup>taking steps with a view to] securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information, <sup>F16</sup> ...
- (h) [<sup>F17</sup>taking steps with a view to] securing that a credit information agency which holds such information—
  - (i) stops holding the information, or
  - (ii) does not provide it to any other person<sup>F18</sup>, or
- (i) giving advice in relation to the taking of any of the steps in sub-paragraphs (e) to (h)]

[<sup>F19</sup>(4) A “paragraph 4C agreement” is an agreement by which one person provides another person with credit and in relation to which—

- (a) the condition in sub-paragraph (4A) is satisfied, and
- (b) the condition in either sub-paragraph (5) or (6) is satisfied, or was satisfied at the time the agreement was entered into.

(4A) The condition in this sub-paragraph is that A does not provide credit, assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.]

(5) The condition in this [<sup>F20</sup>sub-paragraph] is that the lender is an individual or relevant person.

(6) The condition in this [<sup>F21</sup>sub-paragraph] is that the borrower is an individual or relevant person and—

- (a) the lender provides the borrower with credit less than or equal to £25,000, or
- (b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) of article 60C of the Regulated Activities Order (exempt agreements: exemptions relating to nature of agreement) apply for the purposes of paragraph (6)(b).

(8) It is immaterial for the purposes of this paragraph whether the lender is carrying on a regulated activity.

[<sup>F22</sup>(9) In this paragraph—

“assignment”, in relation to Scotland, means assignation;

“borrower” means a person who receives credit under a paragraph 4C agreement or a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law;

“credit” has the meaning given by article 60L of the Regulated Activities Order;

“lender” means—

- (a) a person providing credit under a paragraph 4C agreement, or
- (b) a person who by assignment or operation of law has assumed the rights of a person who provided credit under such an agreement;

“relevant person” means—

- (a) a partnership consisting of two or three persons not all of whom are bodies corporate, or
- (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.]

[<sup>F23</sup>(10) For the purposes of the application of section 21(9) and (10) of the Act (restrictions on financial promotion) to an activity of a kind specified by this paragraph, paragraph 26D of this Schedule (relevant credit agreements), and article 4 (definition of controlled activities and controlled investments) in so far as it relates to that paragraph, [<sup>F24</sup>have] effect as if the reference to a relevant credit agreement in paragraph 26D includes a reference to a paragraph 4C agreement.]]

#### Textual Amendments

- F1** Sch. 1 paras. 4B, 4C inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **17(6)(a)**
- F2** Words in Sch. 1 para. 4C(1) substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **10(8)(b)(i)**
- F3** Words in Sch. 1 para. 4C(2) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **10(8)(b)(ii)**
- F4** Sch. 1 paras. 4C(2A)-(2C) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **10(8)(b)(iii)**
- F5** Words in Sch. 1 para. 4C(2A)(a) substituted (17.3.2016) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), arts. 1(2)(3)(a), **6(2)(a)** (with Pt. 5)
- F6** Words in Sch. 1 para. 4C(2A)(b) substituted (17.3.2016) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), arts. 1(2)(3)(a), **6(2)(a)** (with Pt. 5)
- F7** Sch. 1 para. 4C(2D) inserted (17.3.2016) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), arts. 1(2)(3)(a), **6(2)(b)** (with Pt. 5)
- F8** Word in Sch. 1 para. 4C(3) substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **10(8)(b)(iv)**
- F9** Words in Sch. 1 para. 4C(3) inserted (17.3.2016) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), arts. 1(2)(3)(a), **6(2)(c)(i)** (with Pt. 5)
- F10** Words in Sch. 1 para. 4C(3)(a) substituted (17.3.2016) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), arts. 1(2)(3)(a), **6(2)(c)(ii)(aa)** (with Pt. 5)
- F11** Word in Sch. 1 para. 4C(3)(a) substituted (17.3.2016) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), arts. 1(2)(3)(a), **6(2)(c)(ii)(bb)** (with Pt. 5)

**Changes to legislation:** There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Paragraph 4C. (See end of Document for details)

- F12** Words in Sch. 1 para. 4C(3)(d) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(c)(iii)** (with Pt. 5)
- F13** Words in Sch. 1 para. 4C(3)(e) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(c)(iv)** (with Pt. 5)
- F14** Words in Sch. 1 para. 4C(3)(f) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(c)(iv)** (with Pt. 5)
- F15** Words in Sch. 1 para. 4C(3)(g) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(c)(iv)** (with Pt. 5)
- F16** Word in Sch. 1 para. 4C(3)(g) deleted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(c)(v)** (with Pt. 5)
- F17** Words in Sch. 1 para. 4C(3)(h) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(c)(iv)** (with Pt. 5)
- F18** Sch. 1 para. 4C(3)(i) and preceding word inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(c)(vi)** (with Pt. 5)
- F19** Sch. 1 para. 4C(4)(4A) substituted for Sch. 1 para. 4C(4) (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(d)** (with Pt. 5)
- F20** Word in Sch. 1 para. 4C(5) substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), arts. 1(3)(4), **10(8)(b)(vi)**
- F21** Word in Sch. 1 para. 4C(6) substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), arts. 1(3)(4), **10(8)(b)(vii)**
- F22** Sch. 1 para. 4C(9) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(e)** (with Pt. 5)
- F23** Sch. 1 para. 4C(10) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), arts. 1(3)(4), **10(8)(b)(viii)**
- F24** Word in Sch. 1 para. 4C(10) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(a), **6(2)(f)** (with Pt. 5)

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, Paragraph 4C.