

**Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of changes to regulatory arrangements relating to the regulation of consumer credit activities**

**A. Summary**

1. This application is made by the Solicitors Regulation Authority (SRA) to the Legal Services Board (LSB) for approval of changes to the SRA's regulatory arrangements, to give effect to the transfer of regulation of consumer credit activities from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA). The FCA will take responsibility of regulating these activities on 1 April 2014.

**B. Details of the SRA's current regulatory arrangements**

2. Since October 2011 the SRA has adopted an outcomes focused approach to regulation. This is a regulatory regime that focuses on the high level principles and outcomes that should drive the provision of services to clients. In the SRA Code of Conduct for example, we have replaced detailed rules with mandatory outcomes. These set out the outcomes we expect the firms and individuals we regulate to achieve in particular contexts whilst allowing flexibility in how those outcomes are achieved. Similar provisions are contained in the rules relating to specialist services including financial services.

**Consumer credit**

3. The current consumer credit regime is set out in the Consumer Credit Act 1974 (CCA 1974) and secondary legislation, as well as in guidance published by the OFT on subject matters.
4. SRA authorised firms currently carry on consumer credit activities under an OFT group consumer credit licence which is held by the Law Society (managed by the SRA). The group licensing system has enabled firms to operate without having an individual licence, provided that they are overseen by their professional body. Group licences have been issued in terms that permit specified descriptions of persons and/or businesses (the specified members of the group falling within the parameters as stated on the group licence) to carry on the credit activities, and/or ancillary credit, specified in the licence, under cover of that licence. The SRA has been responsible for ensuring the competence and integrity of its regulated community that carry on licensable consumer credit activities under the cover of the group licence. This has reduced costs and regulatory burdens for those covered by the group licence.

5. The way in which firms carry on credit activities is governed by their duties as members of the profession, including their obligations to their clients, to third parties and to the administration of justice as set out in the SRA Handbook and other regulatory provisions.

### **Financial services**

6. Under Part XX of the Financial Services and Markets Act 2000 (FSMA) (<http://www.legislation.gov.uk/ukpga/2000/8/part/XX>), the carrying on of FSMA regulated activities by members of a Designated Professional Body (DPB), such as the Law Society, is exempt from the general prohibition. Therefore, SRA authorised firms carrying on regulated activities under the Part XX regime do not have to be authorised by the FCA. These firms are referred to as exempt professional firms (EPFs). As a DPB, the SRA is required to have rules that govern the carrying on of exempt regulated activities; these are the SRA Financial Services (Scope) Rules 2001 (Scope Rules) and the SRA Financial Services (Conduct of Business) Rules 2001 (COB Rules). These rules are linked to the SRA Principles that underpin all regulatory issues. The most relevant principles are that those we regulate must:

- uphold the rule of law and the proper administration of justice;
- act with integrity;
- not allow their independence to be compromised;
- act in the best interests of each client;
- provide a proper standard of service to their clients;
- behave in a way that maintains the trust the public places in the regulated person/entity and in the provision of legal services.

7. The purpose of the Scope Rules is to set out the scope of the regulated activities (an activity which is specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) which may be undertaken by firms that are not regulated by the FCA. These rules:

- (i) prohibit firms which are not regulated by the FCA from carrying on certain regulated activities;
- (ii) set out the basic conditions which those firms must satisfy when carrying on any regulated activities; and
- (iii) set out other restrictions on regulated activities carried on by those firms.

### **C. Nature and effect of the proposed alterations to the SRA's regulatory arrangements**

8. The SRA Amendment to Regulatory Arrangements (Consumer Credit) Rules [2014], which are set out in Annex 1, were made by the SRA Board on 22 January 2014, subject to approval by the FCA and the LSB. The FCA has since approved the rules. The changes are intended to facilitate the transfer of regulation of consumer credit activities as the OFT's group licence regime ceases to exist from 31 March 2014. The FCA has consulted on the transfer of regulation generally and specifically on the regulatory framework that will govern credit activities. The SRA's proposed amendments have not been consulted upon more widely as this would duplicate the FCA's consultation. The change to the

Scope Rules is so that SRA authorised firms may carry on credit activities without being regulated by the FCA, if they can meet the conditions specified in sections 327 and 332 of FSMA.

9. The effect of these rules will be to:
- (i) add to the Scope Rules by making reference to credit-related regulated activities, and;
  - (ii) add new definitions of terms used in the Scope Rules, including "CONC" and "credit-related regulated activity" to the SRA Handbook Glossary.
10. The SRA Board has agreed to insert the following new rule into the Scope Rules:

"5.11 Credit-related regulated activities

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

11. It is proposed that the terms in italics will be defined in the SRA Handbook Glossary as follows:

**"CONC**

means the *FCA's Consumer Credit sourcebook*"

**"credit-related regulated activity**

means any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order*:

- (i) entering into a regulated credit agreement as lender (article 60B(1));
- (ii) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B(2));
- (iii) credit broking (article 36A);
- (iv) debt adjusting (article 39D(1) and (2));
- (v) debt counselling (article 39E(1) and (2));
- (vi) debt collecting (article 39F(1) and (2));
- (vii) debt administration (article 39G(1) and (2));
- (viii) entering into a regulated consumer hire agreement as owner (article 60N(1));

- (ix) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement (article 60N(2));
- (x) providing credit information services (article 89A);
- (xi) providing credit references (article 89B);
- (xii) operating an electronic system in relation to lending (article 36H);
- (xiii) agreeing to carry on a regulated activity (article 64) so far as relevant to any of the activities in (i) to (xii);

which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (x) and (xi), relates to information about a person's financial standing."

12. It is proposed that the rule will be supported by the following additional note:

"During the transitional period between 1 April 2014 and 30 September 2014, *firms* carrying on *credit-related regulated activities* will be required to comply with the guidance and other provisions listed in the transitional provisions in the *FCA's CONC*. These provisions should not impose any new obligations as *firms* should already be complying with them but *firms* will need to adopt a common sense approach in interpreting them, for example, references to the OFT in these provisions and guidance should be read as if they referred to the *FCA* and references to the relevant supervisory authority mean the *SRA*"

13. The proposed addition to the rules will need to be read in conjunction with the other basic conditions set out in the Scope Rules which identify the FSMA regulated activities that may be undertaken by firms not regulated by the FCA. When considering the Scope Rules firm should continue to have regard to the SRA Principles and other relevant outcomes contained in the SRA Code of Conduct, such as those relating to client care and the management of their business.

#### **D. Rational for amendment**

14. The Government has committed to reforming regulation of the consumer credit market. It is envisaged that a more robust regulatory system will help to deliver the Government's vision for a well-functioning consumer credit market, in which firms meet the standards expected of them, lend responsibly and offer a range of competitively designed and priced products and services that meet consumers' needs. Activities which are licensable under the CCA 1974 will therefore, become regulated activities under FSMA.
15. Under FSMA anyone carrying on regulated activities needs to be regulated by the FCA. Part XX of FSMA enables firms authorised and regulated by the SRA to be treated as EPFs and to carry on activities known as exempt regulated activities provided that these firms are able to comply with the Scope Rules.
16. HM Treasury and the FCA have confirmed that there will be no equivalent group authorisation to replace the existing OFT's group licensing regime. Firms carrying on FSMA regulated consumer credit activities will therefore, have to:

- be individually authorised by the FCA;
  - fall within the Part XX regime; or,
  - cease to carry on consumer credit activities.
17. With the transfer of regulation of consumer credit activities, the SRA must ensure that the Scope Rules governing the carrying on of a FSMA regulated activity, which will now include credit activities are amended. Initially, the SRA's rules must be changed to make it clear that during the transitional period from 1st April 2014 to 30 September 2014, EPFs have to continue to comply with the OFT's current guidance on consumer credit and other related regulations.
18. We believe that creating rules which facilitate the transfer of regulation of consumer credit activities would be consistent with our approach to regulation.

## **E Statement in respect of the Regulatory Objectives**

19. The SRA must, so far as is reasonably practicable, act in a way that is compatible with the regulatory objectives set out in the Legal Services Act 2007, and in a way that it considers to be most appropriate for the purpose of meeting those objectives. Our position with regards to the regulation of consumer credit activities has been led by the transfer of regulation from the OFT to the FCA, as reflected in the relevant provisions of FSMA. Our comments on the regulatory objectives therefore relate to our policy as a DPB in implementing the transfer of regulation.
20. The SRA Board is satisfied that its proposals for implementing the transfer of regulation are compatible with the regulatory objectives and represent the most appropriate means of meeting these objectives whilst fulfilling our obligations under FSMA.

The SRA Board has not identified an adverse effect on any of the regulatory objectives as a result of the proposed amendments.

### **Protecting and promoting the interests of consumers**

21. The amendments highlight the transfer of regulation and will ensure that those we regulate do not carry on an activity without regulation and that through this change the public interest is protected. The changes support the need for organisations to be regulated, encompassing compliance with the regulatory objectives and the professional principles. The public interest is protected by obligations set out in the Scope Rules.

### **Improving access to justice**

22. The amendments are considered to have a neutral effect on this regulatory objective – if we failed to address the transfer of regulation and insisted on all SRA authorised firms seeking FCA authorisation, even though they could fall within the Part XX regime, or that they cease to carry on consumer credit activities, there could be some negative effects on this objective, including clients having to seek alternative representation.

### **Promoting competition in the provision of services**

23. The amendments are considered to have a neutral effect on this regulatory

objective.

#### **Encouraging an independent, strong, diverse and effective legal profession**

24. The amendments are considered to have a neutral effect on this regulatory objective.

#### **Increasing public understanding of the citizen's legal rights and duties**

25. The amendments are considered to have a neutral effect on this regulatory objective.

#### **Promoting and maintaining adherence to the professional principles**

26. The amendments are considered to be proportionate and to have no foreseeable negative effects on this regulatory objective.

### **F. Statement in respect of the Better Regulation Principles**

27. The SRA considers that the proposed alterations fulfil our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles.
28. The proposals are proportionate and targeted in that they fulfil the SRA's obligation to ensure that as a DPB we have in place rules applicable to the carrying on of credit activities by SRA authorised firms (EPFs).
29. The FCA has consulted publicly on the proposed changes and taken account of the views of stakeholders in developing its approach. We have published information for the profession to help manage the transition and will continue to update information. During the transitional period, EPFs will have to comply with guidance and regulations specified by the FCA and a breach of such will amount to a breach of the SRA's Scope Rules and the SRA would be responsible for enforcement. Any enforcement action will be in accordance with the SRA's enforcement strategy and we are therefore accountable and transparent in our approach.

### **G. Statement in relation to desired outcomes**

30. The SRA's desired outcome is that the individuals and firms that it regulates comply with the Scope Rules if they are involved in the carrying on of credit activities as an EPF. The SRA continues to ensure that it has in place a regulatory framework which is aligned with risk-based, outcomes-focused regulation and contains only those regulations and processes that benefit the public interest.
31. We will assess the outcome of the amendments as we discuss matters with the FCA and continue to develop and operate as a risk-based regulator, focusing on areas of greatest risk and on those issues that matter the most.

### **H. Stakeholder engagement**

32. In addition to responding to the FCA's consultation, the SRA has been involved in meetings with the FCA and will be discussing matters further with other DPBs impacted by the transfer of regulation. Guidance has been provided to SRA authorised firms by way of frequently asked questions which form part of the resources section of the Handbook. The subject has also been considered in the

two e-newsletters SRA Update, which goes to everyone in the profession holding a mySRA account and other subscribers (totalling more than 200,000), and Compliance News, which is targeted specifically at Compliance Officers.

Other regulators affected by the transfer of regulation from the OFT to the FCA, include the Institute of Chartered Accountants of England and Wales, Royal Institute of Chartered Surveyors, the Law Society of Scotland and the Law Society of Northern Ireland. The SRA is proposing to hold discussions with these regulators and the FCA so that we can achieve a consistent and proportionate approach.

**I. Statement in relation to impact on other Approved Regulators**

33. We do not believe our proposals give rise to any conflict between any of the approved regulators.

**J. Implementation timetable**

34.

24 February 2014	Application to the LSB for approval of the SRA Amendment to Regulatory Arrangements (Consumer Credit) Rules [2014]
1 April 2014	Proposed change implemented in Version 9 of the SRA Handbook

**K. SRA contact for matters relating to this application**

35. If the Board have any queries in relation to this application please contact:

Jatinderpal Loyal  
Policy & Strategy  
Solicitors Regulation Authority  
The Cube, 199 Wharfside Street, Birmingham, B1 1RN

Telephone: 0121 329 6673  
Email: [jatinderpal.loyal@sra.org.uk](mailto:jatinderpal.loyal@sra.org.uk)

**Annex 1** SRA Amendment to Regulatory Arrangements (Consumer Credit) Rules [2014]

**Annex 2** SRA Board paper on the regulation of consumer credit activities, 22 January 2014 (attached separately)

## SRA Amendment to Regulatory Arrangements (Consumer Credit) Rules [2014]

### Preamble

Rules dated [date of approval by the Legal Services Board] made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of, and Schedule 11 to, the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, and for the purposes of section 332 of the Financial Services and Markets Act 2000.

### Rule 1

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

(a) insert rule 5.11 as follows:

“5.11 Credit-related regulated activities

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

(b) insert note (ii) to rule 5 as follows:

“(ii) During the transitional period between 1 April 2014 and 30 September 2014, *firms* carrying on *credit-related regulated activities* will be required to comply with the guidance and other provisions listed in the transitional provisions in the *FCA’s CONC*. These provisions should not impose any new obligations as *firms* should already be complying with them but *firms* will need to adopt a common sense approach in interpreting them, for example, references to the OFT in these provisions and guidance should be read as if they referred to the *FCA* and references to the relevant supervisory authority mean the *SRA*.”

### Rule 2

The SRA Handbook Glossary 2012 shall be amended as follows:

(a) after the definition of “**compulsory professional indemnity insurance**” insert:

“**CONC**

means the *FCA’s* Consumer Credit sourcebook”

(b) after the definition of “**CPE**” insert:

“**credit-related regulated activity**



means any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order*:

- (xiv) entering into a regulated credit agreement as lender (article 60B(1));
- (xv) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B(2));
- (xvi) credit broking (article 36A);
- (xvii) debt adjusting (article 39D(1) and (2));
- (xviii) debt counselling (article 39E(1) and (2));
- (xix) debt collecting (article 39F(1) and (2));
- (xx) debt administration (article 39G(1) and (2));
- (xxi) entering into a regulated consumer hire agreement as owner (article 60N(1));
- (xxii) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement (article 60N(2));
- (xxiii) providing credit information services (article 89A);
- (xxiv) providing credit references (article 89B);
- (xxv) operating an electronic system in relation to lending (article 36H);
- (xxvi) agreeing to carry on a regulated activity (article 64) so far as relevant to any of the activities in (i) to (xii);

which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (x) and (xi), relates to information about a person's financial standing."

### **Rule 3**

These amendment rules shall come into force on 1 April 2014.