

**Combined response to third consultation on
crowdfunding and the draft legislation and licence conditions for
crowdfunding platforms**

PLUS

**other non-crowdfunding related changes to
the Regulated Activities Order,
Financial Services (Exemptions) Regulations
and Financial Services (Fees) Order**

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**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

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*Keeling Schedules reflect the amendments to the legislation, i.e. they show in one document the effect of amendments

GLOSSARY OF TERMS

Authority	the Isle of Man Financial Services Authority
Commission	the Financial Supervision Commission
ERegs	Financial Services (Exemptions) Regulations
Fees Order	Financial Services (Fees) Order
FSA08	Financial Services Act 2008
RAO	Regulated Activities Order
Rule Book	Financial Services Rule Book 2013

1. BACKGROUND TO CONSULTATION PAPER

The [third consultation on crowdfunding](#)¹ contained the draft amended Regulated Activities Order, Financial Services (Exemptions) Regulations and a new Financial Services (Fees) Order together with the draft rules for crowdfunding platforms. The consultation, issued jointly by the Isle of Man Financial Services Authority (**the Authority**), the regulatory body for the financial sector, and the Isle of Man Office of Fair Trading, was in two parts —

Part 1 was particularly relevant to —

- any person currently offering investment-based or loan-based crowdfunding services or considering providing such services; and
- to consumers who may be interested in using such services.

Part 2 was relevant to —

- all persons holding a licence under the Financial Services Act 2008 (**FSA08**); and
- those who are exempt from requiring a licence under the FSA2008, **particularly individuals providing director services.**

As the Authority was proposing changes to the Regulated Activities Order (**RAO**) and the Financial Services (Exemptions) Regulations (**ERegs**) in respect of crowdfunding platforms, the opportunity was also taken to make some house-keeping and other amendments to that secondary legislation which would normally be undertaken at this time. *The most significant changes to the legislation were the proposed amendments to the exemptions relating to directors.* The reasons for the proposed amendments were that it has become apparent that individuals are taking advantage of the various exemptions resulting in individuals holding significant numbers of directorships (some in excess of licensed Professional Officers) by way of business without a financial services licence. This situation —

- creates an unlevel playing field for Professional Officers, as they have come forward for licensing, are required to abide by the rules applied to them and have to pay fees (which are now based on the number of directorships they hold); and
- is perceived as being outwith the original spirit and intention of the legislation.

In addition, a new Financial Services (Fees) Order (**Fees Order**) was prepared which —

- included a new fee for Class 6 (Crowdfunding platforms) which is based on the “Class 2 in any other case” fee;
- included a new fee specifically for Class 2(3) – *arranging deals in investments*;
- corrected an error contained in the existing Fees Order; and
- provided additional clarification on certain calculations.

¹ <http://www.iomfsa.im/ConsultationDetail.gov?id=554>

The proposed crowdfunding regime is generally supported by both Government and industry and, although the regime is, in some instances, more onerous than that of the UK, the proposals (incorporating appropriate changes following the consultation) will ensure that both loan and investment crowdfunding are appropriately regulated and the risks mitigated. The decision to initially apply the crowdfunding rules by licence condition provides an opportunity for those rules to be tested and adapted where necessary before they are incorporated into the Financial Services Rule Book (**Rule Book**). In addition, with regard to the amendments to the director exemptions, it is considered that the amendments made to the proposals following the consultation comments will resolve most, if not all of the issues raised, yet still meet the spirit of the intended changes.

A total of 17 consultation responses were received to the third consultation, two of which confirmed the respondents had no comments to make. The respondents included: two professional bodies; two firms of advocates; one firm of accountants; two Government departments; two licenceholders; three local firms; one charity and two individuals. Aside from some queries and general comments, ten responses focussed on the amendment to director exemptions; five commented on the crowdfunding proposals and two raised other minor matters relating to limited partnerships with separate legal personality which were resolved directly with those respondents. Some responses covered more than one subject.

No comments were received in relation to the following secondary legislation to be made by the Isle of Man Office of Fair Trading²:

- (1) Financial Services Disputes (Definition) (Amendment) Order 2016; and
- (2) Moneylenders (Exempt Person) Regulations 2016.³

² <https://www.gov.im/oft/>

³ <https://www.gov.im/oft/ConsultationDetail.gov?id=558>

2. CROWDFUNDING

2.1 Background to consultation on crowdfunding

The Financial Supervision Commission⁴ issued a [first consultation](#)⁵ on crowdfunding between April and June 2015 in order to obtain views to enable it to make an informed decision on the next steps towards establishing a specific class of regulated activity encompassing both investment-based and loan-based crowdfunding. A [second consultation](#)⁶ was issued on 28 September 2015 which incorporated –

- a brief summary of the responses to the first consultation;
- details of the planned regulated activity;
- information about which rules contained in the Rule Book may apply; and
- an indication of the nature of specific new rules (which will initially be applied by licence condition) anticipated for crowdfunding activity.

2.2 Consultation comments and post-consultation amendments

2.2.1 One respondent queried the lack of definitions relating to crowdfunding.

Whilst this is noted, it is not considered desirable to include additional definitions. Firstly because this tends to be the case in many jurisdictions and also to provide flexibility for this innovative concept. In a response to a previous consultation, one firm of advocates stated that it was refreshing that the Authority had not tried to define the activity too closely as this provided some flexibility of approach.

2.2.2 Two respondents were concerned that the Isle of Man proposals were more onerous than those of the UK and may be unattractive to potential operators.

It is accepted that the Authority's proposals are in some ways more onerous than those of the UK but it is important that the need for new ideas and products should be balanced against the risks, especially those to consumers. The Authority believes it has established a good regulatory framework with relevant consumer warnings and limits to mitigate and manage the risk to consumers.

2.2.3 One respondent was concerned about the lack of a secondary market.

The lack of a secondary market for investment-based crowdfunding has been raised at each of the previous two crowdfunding consultations. In response, the Authority has indicated that it is unable to support a secondary market of that nature, and at this time, for a number of reasons –

⁴ In November 2015 the Isle of Man Financial Services Authority succeeded the Financial Supervision Commission following the latter's merger with the Insurance and Pensions Authority.

⁵ <http://www.fsc.gov.im/lib/docs/fsc/consultations/consultationcrowdfunding16042015.pdf>

⁶ <http://www.iomfsa.im/lib/docs/iomfsa/consultations/consultationcrowdfunding280915.pdf>

- there is a danger that retail customers could invest in/lend to companies using a secondary market and therefore bypass the Authority's risk warnings to their potential detriment;
- crowdfunding is a new area for the Authority and staff already need to gain experience with this new regulated activity;
- IOSCO principles would require significant oversight, systems, resources etc. in relation to an investment secondary market and the Authority would need to seek considerable additional funding and resources to begin to set up the necessary framework; and
- most crowdfunding jurisdictions do not permit secondary markets.

However, a respondent to this consultation suggested that it could be possible to permit a transfer market in relation to loan-based crowdfunding only; such that a platform would transfer existing loans already made by the platform itself to client lenders, and also from one client lender to another. In the case in point there would be no premium or discount applied to the loans and they would not be traded as such, but it would allow a lender to opt out of a loan assuming that a willing replacement lender can be found. As the IOSCO principles relate only to investment secondary markets, the level of resources needed to permit this activity is much reduced.

Therefore, the rules have been amended to permit a loan-based crowdfunding licenceholder to facilitate limited secondary trading in loans, being only in relation to loans originally facilitated by that licenceholder and not for third-parties.

- 2.2.4 One respondent raised concerns regarding the limitation that Restricted Clients may only invest in companies with a maximum of £1 million fund raising cap. This was because it was felt that such a cap is likely to limit such clients to smaller (and higher risk) companies' initial investment activities and limit the opportunity for them to invest in second round funding of larger, more established businesses.

The Authority's decision to limit the investment in or loans from Restricted Clients to companies with a £1 million fund raising cap was designed to limit the potential loss which may be incurred in the event that the company failed. However, as the cap could work against the interests of investors and lenders, the £1 million fund raising cap has been removed from the rules.

- 2.2.5 Three respondents (including both professional bodies) were seeking the facility to provide a fully managed 'incubating' service to new crowdfunding operations.

The Authority has previously confirmed that the outsourcing of specific functions to another entity is permissible subject to the Authority's existing outsourcing rules and guidance which apply to all licenceholder types, and will also apply to Class 6 – Crowdfunding Platforms. It is envisaged that there are many aspects of the business and administration of a Class 6 licenceholder that could be feasibly outsourced by such a licenceholder should it desire to do so.

However, to effectively ‘fully manage’ another licenceholder, the Authority’s financial services licencing policy requires the managing licenceholder to hold the same class of licence as the managed licenceholder (effectively resulting in a manager having the same skills and necessary track record and experience in that regulated activity as the entity it is managing). There is an important restriction that prevents a Class 6 crowdfunding platform from undertaking any other class of regulated activity, therefore only another crowdfunding platform with the relevant expertise and experience could be considered for providing such a fully managed service.

3. OTHER LEGISLATIVE AMENDMENTS

3.1 Background to other legislative amendments

As the Authority was proposing changes to the RAO, ERegs and Fees Order in respect of crowdfunding platforms, in order to make the best use of its resources and Tynwald time the opportunity has also been taken to make some house-keeping and other amendments to these documents.

3.2 Consultation comments on the RAO and post-consultation amendments

3.2.1 Class 2 regulated activity is investment business. In Class 2(7) – *advising any person (other than a manager or trustee of a retirement benefit scheme) on the suitability or otherwise of an investment*, a new sub-paragraph (a) has been included to permit licenceholders to advise a trustee or manager of a retirement benefits scheme where there is only one member of that scheme under this sub-class rather than requiring a sub-class (6) – *advising a trustee or manager of a retirement benefit scheme on the suitability or otherwise of an investment*. The rationale for this change is to permit financial advisers (who hold Class 2(3) – *arranging deals in investments* and (7)) to advise on Self Invested Personal Pensions where there is only one member, which is similar to advising an individual on a personal pension scheme. Sub-class (6) is considered more onerous and attracts a higher fee as advice to a trustee or manager of other retirement benefits scheme would impact on all the members of the scheme rather than just one. No comments were received on this amendment and therefore it is being taken forward.

3.2.2 The Professional Services exclusion in paragraph 2(n) excludes the activities of arranging deals, managing investments, administering and safeguarding investments and advising on investments where that activity is carried on by a ‘specified person’⁷, provided that it is —

- wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and

⁷ A ‘specified person’ is an advocate or firm of advocates, a registered legal practitioner or firm of registered legal practitioners or a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants in Scotland, the Institute of Chartered Accountants in Ireland or the Association of Chartered Certified Accountants.

- is carried on at the time when, or within a reasonable period after, the advice is given or professional activity is undertaken,

unless that person ‘holds himself out’ as being available to carry on that activity in addition to his professional services. It is understood that some professional bodies do prohibit their members from undertaking certain activities. It is therefore considered appropriate that this exclusion clarifies that any activity undertaken by a person in his professional capacity must not be prohibited by that person’s professional body. No comments were received on this amendment and therefore it is being taken forward.

3.2.3 Class 4 regulated activity is corporate services. In Class 4(6) – *acting as director or alternate director of a company*, “or alternate director” has been deleted from the activity and included for clarity in the definition of “director” in Schedule 2. Also in the definition —

- reference to a council member of a foundation has been deleted as this is now contained in the definition of “director” in the FSA08 and should not be repeated in secondary legislation; and
- for clarity, where a limited partnership which has elected to have legal personality, a person who is a general partner has been inserted.

As a result of comments received, in the second bullet “a person” has been amended to “an individual”.

3.2.4 In Class 4(9) – *acting or arranging for another person to act as a nominee shareholder or nominee member of a company or limited partnership*, it has been clarified that the activity extends to a limited partner of a limited partnership which has elected to have legal personality. Some respondents were unsure why the amendment was being made. Where a limited partnership elects to have legal personality it becomes a body corporate and therefore a limited partner is similar to shareholder. The amendment will be taken forward.

3.2.5 Exclusion 4(a) – *landlord, property manager or estate agent*, excludes the provision of or arranging for —

- premises for use as a registered office for a company;
- accommodation address facilities for a company or partnership; and
- premises for use as a place of business by a partnership.

Potential abuse of this exclusion has been identified where a landlord purported to have leased his own undivided premises to multiple “tenants” (companies) for such activities and it is therefore appropriate that the exclusion be limited to where a person acts in his capacity as landlord, property manager or estate agent, such activity is wholly incidental to that capacity and the activity must result in the granting of exclusive possession of the premises or accommodation address in question. No comments were received on this amendment and therefore it is being taken forward.

- 3.2.6 In the Interpretation section of Class 4, the definition of “company” is extended to include a limited partnership under the Partnership Act 1909 which has elected to have legal personality. Some respondents were unsure why the amendment was being made. Where a limited partnership elects to have legal personality it becomes a body corporate. The amendment will be taken forward.
- 3.2.7 The definition of “accommodation address facilities” in Schedule 2 has been amended to clarify, that the receipt or dispatch on behalf of a person of any communication or packet by post or a courier service, does not constitute accommodation address facilities which would require a Class 4 financial services licence, but that the provision of an address to undertake such activity would do so. The definition also makes reference to the Foreign Companies Act 2014. As a result of consultation comments, the reference to section 313(1)(c) of the Companies Act 1931 has been removed.
- 3.2.8 The reference to “the Commission” in the definition of “administration services (in relation to a company)” in Schedule 2 has been changed to “the Department of Economic Development” as responsibility for the Companies Registry has moved to that department. All other references to “Commission” have been changed to “Authority”. No comments were received on these amendments and therefore they stand.
- 3.2.9 A definition of “person” has been included which reflects that of the current Interpretation Act 1976 and therefore retains the status quo. This is required because the new Interpretation Act 2015 (which may come into effect in 2016) takes unincorporated bodies out of the definition. It is important that the original definition is retained for the Authority’s purposes. No comments were received on this amendment and therefore it stands.
- 3.2.10 The definition of “Retirement Benefits Schemes” has been extended to include the statement “regardless of any exceptions contained in the Retirement Benefits Schemes (Excepted Schemes) Regulations 2001”, to ensure that all relevant schemes are caught. No comments were received on this amendment and therefore it stands.

3.3 Consultation comments on the ERegs and post-consultation amendments

- 3.3.1 Reference to the “Financial Supervision Commission” have been changed to “Isle of Man Financial Services Authority” and all references to “Commission” have been changed to “Authority”. No comments were received on these amendments and therefore they stand.
- 3.3.2 Regulation 4 has been clarified to state that the exemptions from the requirements of section 4 of the Act – *prohibition of regulated activity except in accordance with a licence*, only apply to persons that do not already hold a financial services licence issued under section 7 of the Act – *issue of a licence*, in respect of a particular class of regulated activity, in the circumstances there specified. No comments were received on this amendment and therefore it stands.

3.3.3 Acting as a director by way of business is a regulated activity in order to ensure persons acting in that capacity meet standards such as fitness and propriety, which assists to maintain confidence in the Island's financial services industry. However, there are a number of exemptions relating to this activity. Currently, exemption 4.2 – *Directorships – de minimis activities*, exempts an individual from the requirement to hold a financial services licence if that individual acts as director of no more than 10 companies. Exemption 4.3 – *Group officers*, exempts an individual who is an officer of a company which is part of a group, for any company which is a member of that group; the number of groups being limited to 3 and each group counting as one of the de minimis under exemption 4.2.

It has become apparent that some individuals are taking advantage not only of the exemptions under 4.2 and 4.3 but also other exemptions such as —

- 4.1 – *Regulated activities* where acting as director (or secretary) to a regulated company is exempted; and
- 4.7 *Domestic services* where acting as a director to a local asset holding, manufacturing, property holding companies or those providing goods and services is exempt.

This has resulted in some individuals holding significant numbers of directorships (some in excess of licensed Professional Officers), by way of business without a financial services licence.

This situation —

- creates an unlevel playing field for Professional Officers as they have come forward for licensing, are required to abide by the rules applied to them and have to pay fees (which are now based on the number of directorships they hold); and
- is perceived as being outwith the original spirit and intention of the legislation.

On the basis of the above, it is considered that the use of the exemptions should be restricted. Exemption 4.2 has therefore been amended so that persons wishing to take advantage of the de minimis level of 10 directorships or less, have to take account of any directorships under exemption 4.7 – *Domestic services*. In addition, in exemption 4.3 – *Group officers*, the number of directorships relating to groups has been reduced from 3 groups to 1 group (which will count as one of the de minimis directorships). This is likely to mean that individuals will need to come forward for a financial services licence, or reduce the number of directorships held. In order to assist, a transitional provision has been included which requires an application to be made by 30 November 2016.

Five respondents were concerned that the proposed changes to the de minimis exemption would act as a disincentive for local professionals to take on directorships of charitable companies, many of which are on a pro bono basis, with the resultant loss of expertise.

The dangers of dis-incentivising local professionals from becoming directors of foreign charitable companies active in the Island are probably as, if not more, acute than in relation to Manx charitable companies, in that there are additional legalities inherent in operating in different jurisdiction to that in which the company is established and, presumably, also registered. The Acting Attorney General has a supervisory remit of charities whose activities fall to be registered in the Island under the Charities Registration Act 1989. This Act requires —

- any charitable entity operating in the Island in some capacity to be registered;
- any charitable entity established in the Island to be registered irrespective of whether its public activities are wholly off Island;
- a genuine and substantial connection with the Island, which is more than just being been established as a Manx entity.

In order to address this concern, a new exemption has been included which will exempt an individual acting as a director or secretary of a charity registered under the 1989 Act but only where the individual receives no remuneration for that role (for the avoidance of doubt remuneration would not include reimbursement of expenses).

Five respondents considered that including in the de minimis calculation directorships of privately owned companies and companies where an individual was a ‘significant’ investor was not appropriate.

It is important to note that the directorships of privately owned companies, where the director is the owner, are not caught by the FSA08 as the directorship is not undertaken ‘by way of business’ (i.e. the business of offering one’s services to others as a director). To clarify this position, the Authority intends to issue guidance on this point. However, acting as a director of other companies where the director has a smaller percentage ownership could be caught under the FSA08. On reflection, further clarity was required and therefore a new exemption has been included where acting as the director of a company where the director has an investment of 10% or more in that company will be exempt.

One respondent was concerned that the proposals could adversely impact on investment funds being able to appoint sufficiently qualified, local independent non-executive directors.

It was determined that this was a concern that should be addressed. Currently, under exemption 4.1, the Authority exempts an individual acting as a director of a ‘regulated entity’⁸ which includes being a director of a licensed functionary to funds, but not directors

⁸ Means a company which is —

- licensed under the FSA08;
 - authorised under the Insurance Act 2008 (IA2008);
 - the holder of a permit under section 22 of the IA2008;
 - registered under section 25 of the IA2008;
 - registered under section 36(1) of the Retirement Benefits Schemes Act 2000 (RBSA2000);
 - a trustee of a retirement benefits scheme that is registered as authorised or recognised under the RBSA2000;
- or

of the funds themselves. As the Authority does review the fitness and propriety of directors of collective investment schemes established under Schedule 1⁹ or paragraph 2 of Schedule 2¹⁰, exemption 4.1 has been extended to cover directorships of these types of collective investment schemes.

Two respondents were concerned that the reduction in the number of groups could lead to businesses relocating elsewhere or severely hamper perfectly justifiable structures.

It is considered that the proposal to reduce the 'group' exemption to directorships held for one group should remain as it is likely that the concerns raised will be addressed by the above amendments, especially as most of the affected groups are collective investment scheme groups.

In addition to its original proposals, the Authority has also included a new Class 4 de minimis exemption for company secretaryships, similar to that for directorships, i.e. for an individual holding 10 or fewer appointments as company secretary.

- 3.3.4 Exemption 4.5 – *Nominee services* exempts persons acting solely in the capacity of a nominee, whether as one or a combination of a nominee shareholder, nominee member of a company or nominee partner to a limited partnership provided that the nominee is a directly and wholly-owned subsidiary of a licenceholder and the activity is wholly incidental to the regulated activity. The amendment clarifies that, in order to be exempt, the activity carried on by the nominee company must be solely on behalf of companies which are in the same group as the nominee company. As a result of comments received, the wording has been amended to state that the activity carried on by the nominee company is wholly incidental to, and being conducted exclusively in connection with, the Class 4 regulated activity undertaken by the licenceholder.
- 3.3.5 Exemption 4.6(2) – *Company officers and employees*, exempts an individual who is not an employee, director or other officer of a Class 4 licenceholder but is an employee, director or other officer of a company in the same group as the licenceholder and carries on the activity “under the direction of and in the course of business of the licenceholder”. The wording has been amended to read “carries on that activity on behalf of the licenceholder” as under the original wording could be misunderstood. No comments were received on this amendment and therefore it is being taken forward.
- 3.3.6 The definition of “director” has been amended to align with that in the RAO (see 3.2.3 above).
- 3.3.7 A new definition of “person” has been included to align with the RAO (see 3.2.9 above).

• regulated by the Gambling Supervision Commission.

⁹ Authorised collective investment schemes

¹⁰ Full international schemes

3.3.8 The definition of “regulated entity” has been amended to remove reference to companies regulated by the Insurance and Pensions Authority as it is now superfluous. No comments were received on this amendment.

3.4 Consultation comments on the Fees Order and post-consultation amendments

3.4.1 The changes in the Fees Order are to provide clarity and amend errors. Licence fees are not being amended at this time, apart from to introduce a fee for Class 6 – crowdfunding platforms and a fee for Class 2(3) only.

3.4.2 In article 3, “nominee exception” has been corrected to “nominee exemption” and the definition has also been extended to include wholly owned subsidiaries of a Class 4 licenceholder whose business consists solely of acting as director or secretary (but not both) of the client companies of the licenceholder (exemption 4.4 – *Corporate officers*). No comments were received on this amendment.

3.4.3 In the Schedule to the Fees Order —

- in row 1, it is clarified that the figures should be taken from the deposit taking return for 31 March before the annual review date;
- in row 5, a new Class 2(3) (*arranging deals in investments*) fee has been inserted, which reflects the fee payable under the previous Fees Order, as the wording of row 6 has been amended and does not now cover Class 2(3) activity;
- in row 6 (previously row 5), reference to Class 2(6) (*advising a trustee or manager of a retirement benefits scheme*) has been removed and the fee now relates to Class 2(3) and (7) (financial adviser);
- in row 8 (previously row 7), Class 2(7) (advising) has been included to permit investment advisers to retirement benefit schemes to also provide advice to other persons;
- in row 14, the explanation has been corrected to read “Where the above licenceholder is also licensed to carry on Class 1 regulated activity, the annual fee in this row is not payable”;
- in row 25, it is clarified that the figures should be taken from the last annual regulatory return made to the Authority on or before 30 April before the annual review date;
- in row 26, Class 5(6) (*acting as an enforcer*) has been added to the professional officer activities and it is clarified that the figures should be taken from the last annual regulatory return made to the Authority on or before 30 April before the annual review date;
- in table 2 of the Schedule, “annual compliance return” is replaced with “annual regulatory return”.

No comments were received on these amendments.

4. NEXT STEPS

The Authority has considered responses to the consultation and made amendments to its proposals as outlined in sections 2 (crowdfunding) and 3 (other legislative amendments) above. Keeling versions (i.e. versions showing amendments) of the following legislation are included as appendices to this consultation response —

- [Appendix A – Licence conditions for crowdfunding platforms](#)
- [Appendix B – Regulated Activities Order \(Keeling Schedule\)](#)
- [Appendix C – Financial Services \(Exemptions\) Regulations \(Keeling Schedule\)](#)
- [Appendix D – Financial Services \(Fees\) Order 2016.](#)

The following legislation has been made by the Authority and is due to be laid before Tynwald for approval at the April 2016 sitting to come into force on 1 May 2016:

- (1) Financial Services (Exemptions) (Amendment) Regulations 2016; and
- (2) Financial Services (Fees) Order 2016.

The Regulated Activities (Amendment) Order 2016 has been made by the Treasury and is due to be laid before Tynwald for approval at the April 2016 sitting to come into force on 1 May 2016.

The following legislation has been made by the Isle of Man Office of Fair Trading and is due to be laid before Tynwald for approval at the April 2016 sitting to come into force on 1 May 2016:

- (a) Financial Services Disputes (Definition) (Amendment) Order 2016; and
- (b) Moneylenders (Exempt Person) Regulations 2016.

Licence Conditions for Crowdfunding Platforms

*Please note: In due course, at an update of the Financial Services Rule Book (**Rule Book**), the licence conditions will become Rules. Meanwhile the same effect as Rules can be created by using licence conditions, and this method has the added benefit of allowing the conditions / Rules to be 'tested' practically before they become part of the Rule Book (which, given the Rule Book is secondary legislation, is harder to amend than a licence condition).*

The following conditions are imposed in respect of Class 6 regulated activities undertaken.

Specific conditions for crowdfunding platforms

1. Scope of permissible activity

- (1) A licenceholder must not facilitate crowdfunding that is neither loan-based, nor investment-based.
- (2) A licenceholder must not facilitate secondary trading in investments. For the avoidance of doubt, the provision of communication channels or discussion boards to enable clients, potential clients, or potential traders of crowdfunded investments to communicate with one another is an example of facilitation of secondary trading.
- (3) A licenceholder may facilitate secondary trading in loans but only in relation to loans originally facilitated by that licenceholder.

2. Prohibition on providing recommendations or advice

- (1) A licenceholder must not provide a recommendation or advice to a potential purchaser of investments or a potential lender.
- (2) Despite (1), and provided that the following would not be viewed by a reasonable person as an assessment of the quality or commercial viability of a crowdfunding posting, a licenceholder may –
 - (a) display information about a crowdfunding posting on its website if the information is presented or displayed in a fair, balanced and reasonable manner;
 - (b) use objective criteria to limit the crowdfunding postings on its website, provided the objective criteria are disclosed on the website and applied consistently to all crowdfunding postings on the website;
 - (c) prohibit crowdfunding postings on its website based on a good faith determination, or in order to comply with condition 7;
 - (d) provide general information and educational materials about crowdfunding to potential purchasers of investments or potential lenders, provided that the information and materials are presented in a fair, balanced and reasonable manner;

- (e) provide on its website search functions or other tools for potential purchasers of investments or potential lenders to search, sort or categorise crowdfunding postings according to objective criteria.

3. Net tangible assets – additional requirements

- (1) A licenceholder must calculate the amount of loans outstanding on a daily basis.
- (2) If the calculation in (1) results in a required increase of net tangible assets (“an increase calculation”) per Rule 2.37 and Appendix 3 of the Rule Book, of greater than £5,000 when compared to the net tangible asset requirement applying at the date of calculation, the licenceholder must –
 - (a) notify the Authority in writing of this fact within 48 hours of performing the increase calculation;
 - (b) inform the Authority how it plans to address the increase in net tangible assets; and
 - (c) ensure the necessary increase is in place within 20 business days of the increase calculation.
- (3) For the purpose of this condition, loans outstanding means any funds that have been provided to borrowers as a result of a loan made through an operator of loan-based crowdfunding services that have not yet been repaid to the lender.

4. Website disclosure – licenceholder information

- (1) A licenceholder must prominently display a General Warning about Crowdfunding on the homepage of its website, containing the information specified in condition 5.
- (2) A licenceholder’s website functionality must ensure, and record, that any person accessing the website has confirmed that they have read and understood the General Warning about Crowdfunding before such persons may access any crowdfunding postings facilitated by the licenceholder. Such records must be retained for a minimum of 6 years.
- (3) A licenceholder’s website must clearly disclose the following information –
 - (a) all fees, costs and other expenses that may be charged to, or imposed on clients of all types, for example investors, lenders, issuers (i.e. those issuing crowdfunded investments) and borrowers;
 - (b) after the Class 6 financial services licence has been in issue for twelve months, generalised data including, where applicable –
 - (i) the actual default rates of borrowers using the platform including a summary of the assumptions used in determining that rate —
 - (A) the first 12 months;
 - (B) from 1 year to 2 years;
 - (C) from 2 years to 3 years;
 - (ii) the percentage rate of failure of issuers, which have successfully used the platform to issue crowdfunded investments, over the following periods since the crowdfunded investment was issued –
 - (A) the first 12 months;
 - (B) from 1 year to 2 years;
 - (C) from 2 years to 3 years;

- (c) the fact that the Isle of Man Financial Services Ombudsman Scheme applies in connection with certain complaints about the crowdfunding platform only, and does not apply to complaints between borrowers and lenders, or investors and issuers.

5. General Warning about Crowdfunding

The General Warning about Crowdfunding required by condition 4(1) must, as a minimum, contain –

- (a) the exact wording of items (i) to (vi) of (e);
- (b) where investment-based crowdfunding is facilitated, the exact wording of item (vii) of (e);
- (c) text provided by the licenceholder to cover matters specified in (viii) of (e);
- (d) where loan-based crowdfunding is facilitated, text provided by the licenceholder to cover matters specified in (ix) of (e); and
- (e) the items referred to in (a) to (d) are –
 - (i) Companies seeking loans and/or investment via this website include new businesses. Many businesses fail, which means that investment in, or lending to, them is speculative and carries high risks.
 - (ii) You may lose your entire investment or money lent and you must be in a position to bear this risk of loss without undue hardship.
 - (iii) Investments and loans are not bank deposits and there is no compensation scheme available.
 - (iv) We are not permitted to provide you with advice or use discretion in relation to investments or loans and you are strongly recommended to seek independent advice, including in relation to taxation or whether this activity is permissible in your country before committing yourself.
 - (v) There is no guarantee you will be able to sell your investment or call in your loan when you want to, or at all.
 - (vi) Investors and lenders should consider diversifying any investments and loans across companies and business sectors to help to spread risk.
 - (vii) Companies may need more funding to grow or survive. If they issue further investments your share of the company will reduce (known as ‘dilution’) unless you contribute a proportion of the new investment.
 - (viii) The appearance of a crowdfunding posting on the platform cannot be relied on by a potential lender or investor in assessing whether the opportunity is suitable for them.
 - (ix) A description of the interest rate risk a lender will face.

6. Website disclosure – crowdfunding posting information

- (1) If a licenceholder is authorised to conduct investment-based and loan-based crowdfunding, and uses one website for both types of crowdfunding, it must segregate the crowdfunding postings relating to each type into distinct areas of its website; making clear which area relates to which type of crowdfunding, and the differences between investment-based and loan-based crowdfunding.
- (2) Despite (1), a licenceholder must ensure that each crowdfunding posting facilitated on its website has a dedicated webpage and clearly specifies whether the crowdfunding posting is in relation to loan-based crowdfunding or investment-based crowdfunding.
- (3) A licenceholder must only permit crowdfunding postings in relation to direct investments in, or loans to, bodies corporate. Loans to, or investment in, collective investment schemes are not permitted.

- (4) A licenceholder must ensure that each crowdfunding posting contains, as a minimum, the matters set out at condition 8.
- (5) The information available regarding a crowdfunding posting, including the matters set out in condition 8, should remain unaltered, apart from the amount pledged to date, for the duration of the availability of the investment or loan. However, if a material change (which is not untrue and/or misleading) in respect of an open crowdfunding posting occurs, the licenceholder must ensure that committed investors or lenders are made aware of the change immediately, and provided with 10 business days in which to confirm their commitment. In the absence of confirmation of commitment within this 10 day period the licenceholder must consider the previous commitment to purchase an investment or make a loan terminated.

7. Oversight of crowdfunding postings

- (1) A licenceholder must maintain effective methods of reviewing and monitoring the content of crowdfunding postings and materials available on its website, to ensure that they are and remain true, are not misleading and do not contain any misrepresentations.
- (2) Where crowdfunding postings or materials are found to be untrue and/or misleading before being made available on the website they must not be displayed on the website until and unless suitably amended.
- (3) Where crowdfunding postings or materials are found to be untrue and/or misleading after being placed on the website and made available to potential lenders and/or investors, the licenceholder must immediately remove the crowdfunding posting and withdraw the material, and terminate any commitments to purchase an investment or make a loan made to date.

8. Mandatory minimum contents of crowdfunding posting

A licenceholder must ensure that the following information is displayed in the crowdfunding posting –

- (a) the full name of the body corporate seeking the investment or loan, its jurisdiction of incorporation and incorporation reference number;
- (b) a description of the body corporate’s business, the purpose of its fund raising and whether fund raising of another type is concurrently taking place or intended;
- (c) the full names and positions of the body corporate’s executive officers, directors (or equivalent) and controllers (and the information required by condition 10(2) if applicable);
- (d) the target level of funding being sought and how overfunding will be dealt with;
- (e) the duration of the crowdfunding posting (if any set period);
- (f) a business plan which details how the body corporate intends to use the funding raised by the crowdfunding posting and, where applicable, funds sourced by other means, and the principal risks facing the business;
- (g) where a body corporate is already trading, its most recent financial statements;
- (h) where a body corporate has not started trading, its financial projections;
- (i) the amount pledged to date (which must be updated daily by the licenceholder);
- (j) A “Crowdfunding Offering Document” that includes the terms of the investment / loan including –
 - (i) a description of the investment offered, its price and a description of its particular risks;*
 - (ii) the interest payable, duration of loan, details of any security;†

- (iii) the evidence of investment / lending an investor / lender will be provided with;
- (iv) a fair description of the likely annual return from the investment or loan, taking into account fees;
- (v) individual investor or lender limits (if any – not to be confused with the limits applicable per client type);
- (vi) rights attaching to investments – including dividend rights and voting rights. Pre-emption / tag-along rights are highly preferable (and where pre-emption, or tag-along does not exist the crowdfunding offering document must disclose the specific risks of the lack of these protections);*
- (vii) rights attaching to loans;†
- (viii) the lack of exit opportunity (and what exit opportunities do exist, if anything is provided for);
- (ix) whether there is an additional non-investment / non-loan reward or perk – if so this must be described and the terms on which it is available.

** Omit this matter if loan-based crowdfunding*

† Omit this matter if investment-based crowdfunding

9. Investment-based crowdfunding – eligible investments

- (1) A licenceholder may only facilitate investment-based crowdfunding where the investments offered are limited to the following –
 - (a) common shares of a body corporate that is not an open-ended investment company;
 - (b) non-convertible preference shares of a body corporate that is not an open-ended investment company;
 - (c) a unit of a limited partnership which is not a collective investment scheme; and
 - (d) non-convertible debt securities of a body corporate that is not an open-ended investment company, where the debt securities are linked to a fixed or floating interest rate.
- (2) A licenceholder may not facilitate investment-based crowdfunding where the investments to be offered include redeemable shares, options, futures, contracts for difference or any other derivative or securitised product.

10. Client acceptance – borrowers and/or issuers

- (1) Despite compliance with Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”) requirements, prior to accepting a borrower or issuer as a client, a licenceholder must –
 - (a) require the borrower’s or issuer’s executive officers, directors (or equivalent) and controllers to provide sufficient information to ensure that the licenceholder can successfully conduct integrity checks in relation to those persons concerning at least the following matters –
 - (i) convictions for fraud or dishonesty;
 - (ii) bankruptcy and insolvency; and
 - (iii) company officer disqualification proceedings;

- (b) confirm the existence of the body corporate and its business registration / incorporation, and whether the body corporate is the subject of insolvency proceedings, penalties or sanctions; and
 - (c) require the borrower or issuer to confirm its adherence to any applicable laws in its jurisdiction of incorporation, including those in relation to fund raising or offering loans or investments.
- (2) If it appears to the licenceholder that data resulting from its checks and confirmations is adverse, it must carefully determine whether to permit the borrower and /or issuer to utilise its services, and where the licenceholder determines to permit the borrower and/or issuer to use its services, the licenceholder must ensure that the adverse information is appropriately disclosed per paragraph 3 of condition 8.

11. Client acceptance – lenders and/or investors and linked restrictions

- (1) Despite compliance with AML/CFT requirements, when accepting a pledge of funds from a lender or investor in respect of a crowdfunding posting, a licenceholder must determine which of the following three categories of client the lender or investor belongs to, and ensure the certifications in the client agreement (see condition 13) are obtained and retained-
- (a) any body corporate or any individual lender or investor who has read the General Warning about Crowdfunding and who signs a Risk Acknowledgement Form for a specific crowdfunding posting (a **“Restricted Client”**);
 - (b) any body corporate or any individual lender or investor who has read the General Warning about Crowdfunding and who signs a Risk Acknowledgement Form for a specific crowdfunding posting, and who also (in a dedicated area of the client agreement) certifies that they have a minimum of £100,000 net worth available for investment / lending, excluding their principal place of residence or insurance or pension arrangements, and that they consider themselves experienced in making investments or loans into early stage illiquid businesses (a **“High Net Worth Client”**);
 - (c) any body corporate or any individual lender or investor who has read the General Warning about Crowdfunding and who signs a Risk Acknowledgement Form for a specific crowdfunding posting, and who also (in a dedicated area of the client agreement) certifies that they have a minimum of £500,000 net worth available for investment / lending, excluding their principal place of residence or insurance or pension arrangements, and that they consider themselves experienced in making investments or loans into early stage illiquid businesses (an **“Unlimited Client”**).
- (2) If a loan or investment is to be made in joint names, all persons must certify their own position, and the licenceholder must apply the most restrictive category of client type to the joint position.
- (3) A licenceholder must have effective systems and controls in place to ensure that –
- (a) a Restricted Client is limited, in any one calendar year, to making loans and or investments via that licenceholder’s crowdfunding platform(s) of no more than a maximum combined total of £5000, and no more than £1500 per single investment or loan; and
 - (b) a High Net Worth Client is limited, in any one calendar year, to making loans and or investments via that licenceholder’s crowdfunding platform(s) of no more than a maximum combined total of £50000, and no more than £10000 per single investment or loan.

12. Client acceptance – issuer/borrower client agreement

- (1) A licenceholder must enter into a written agreement with each client that is a potential issuer or borrower.
- (2) The agreement required by (1) must contain the following –
 - (a) the terms and conditions under which the issuer / borrower proposes to offer investments or loans through the licenceholder’s crowdfunding platform;
 - (b) confirmation that the issuer / borrower will comply with the licenceholder’s crowdfunding posting policies, including confirmation that the information the client provides to the licenceholder, or posts on the crowdfunding platform, will –
 - (i) comply with applicable investment and lending legislation;
 - (ii) not contain a misrepresentation or any material that cannot be reasonably supported;
 - (iii) be presented in a fair and balanced manner; and
 - (iv) not be misleading;
 - (c) confirmation that the client is responsible for compliance with all applicable laws including those in its jurisdiction of incorporation in respect of fund raising or offering loans or investments;
 - (d) a requirement for the client to prepare and send, whether by electronic means or otherwise, to its continuing investors / lenders which have invested or lent as a result of the crowdfunding posting –
 - (i) annual financial statements; and
 - (ii) a notice detailing the actual use of the gross proceeds received by the client as a result of the crowdfunding; but
 - (iii) the notice in (ii) ceases to be required if the client has disclosed in one or more prior notices the actual use of the entire gross proceeds from the crowdfunding;
 - (e) confirmation that the client, or any director, officer or controller thereof, must not lend or finance, or arrange lending or financing for an investor to invest in the client, or a lender to lend to the client;
 - (f) confirmation that the client must not use more than one crowdfunding platform to solicit an investment or a loan at any time when it currently has an open crowdfunding posting on any crowdfunding platform;
 - (g) confirmation that the client must ensure that all investments or loans posted on the crowdfunding platform have the same price, terms and conditions irrespective of the category of the potential investor or lender, the value of the investment or loan or any other matter;
 - (h) confirmation that neither the client nor any other person may advertise the investment or loan that is subject to the crowdfunding posting, or solicit potential investors or lenders, other than by referring to the fact that crowdfunding postings are available on the licenceholder’s crowdfunding platform;
 - (i) confirmation that no material must be posted on any other website (including that of the client) or supplied to any potential investors or lenders in connection with a crowdfunding posting, that is not available from the crowdfunding platform;
 - (j) a requirement for clients that have issued investments as a result of a crowdfunding posting, to make a notice of certain events available to each person that became, and

remains, an investor as a result of the crowdfunding posting. Such notice must be made where possible in advance of, or at least within 10 days of, the occurrence of the following events –

- (i) a fundamental change in the nature, or a discontinuation, of the issuer's business;
 - (ii) a material change to the issuer's capital structure;
 - (iii) a major reorganisation, amalgamation or merger involving the issuer;
 - (iv) a take-over bid, issuer bid or insider bid involving the issuer;
 - (v) a significant acquisition or disposition of assets, property or joint venture interests;
 - (vi) changes to the issuer's directors;
- (k) confirmation that the disclosures required in (j) may cease on the earliest of the following events –
- (i) the issuer ceasing to carry on business;
 - (ii) the issuer becoming listed on a recognised stock exchange; or
 - (iii) if there remain less than 50 investors who invested as a result of the crowdfunding posting;
- (l) details of all fees, costs and other expenses that the licenceholder may charge to, or impose, on the client;
- (m) confirmation that the licenceholder is able to exclude a client from using its services in certain circumstances, which as a minimum should include the following circumstances –
- (i) if the client has been misleading or deceptive;
 - (ii) if fraud is suspected;
 - (iii) if background checks are unsatisfactory;
- (n) where applicable, details of the arrangements for handling and accounting for client money, specifying how client money is at all times separated from the licenceholder's money;
- (o) details of what will happen to ensure the orderly administration of current and recently closed crowdfunding postings in the event of the licenceholder ceasing to carry on the regulated activity of facilitating investment-based crowdfunding*;
- (p) details of the arrangements in place to ensure that loans facilitated by it will continue to be administered in the event of the licenceholder ceasing to carry on the regulated activity of facilitating loan-based crowdfunding†;
- (q) such other terms and conditions as may be required by the licenceholder.

** Omit this matter if loan-based crowdfunding*

† Omit this matter if investment-based crowdfunding

- (3) Each agreement required by (1) must be retained for at least 6 years following cessation of services for that particular client, and may be in electronic form subject to the licenceholder having appropriate systems in place for its retention, verification and security.

13. Client acceptance – investor/lender client agreement

- (1) A licenceholder must enter into a written agreement with each client that is a potential investor or lender.
- (2) The agreement required by (1) must contain the following –
 - (a) the terms and conditions under which the investor / lender may purchase investments or make loans through the licenceholder’s crowdfunding platform;
 - (b) details of all fees, costs and other expenses that the licenceholder may charge to, or impose on, the client;
 - (c) confirmation that the licenceholder is able to exclude a client from using its services in certain circumstances, which as a minimum should include the following circumstances –
 - (i) if the client has made a false declaration as to client type, or has otherwise been misleading or deceptive;
 - (ii) if fraud is suspected;
 - (iii) if background checks are unsatisfactory;
 - (d) a certification of client type, which must be separately signed by the client, and must be in the form of words set out in (3);
 - (e) where applicable, details of the arrangements for handling and accounting for client money, specifying how client money is at all times separated from the licenceholder’s money;
 - (f) details of what the client can expect the licenceholder to do if a borrower’s repayments are late / in default †;
 - (g) details of the arrangements in place to ensure that loans facilitated by it will continue to be administered in the event of the licenceholder ceasing to carry on the regulated activity of facilitating loan-based crowdfunding †;
 - (h) details of what will happen to ensure the orderly administration of current and recently closed crowdfunding postings in the event of the licenceholder ceasing to carry on the regulated activity of facilitating investment-based crowdfunding *;
 - (n) such other terms and conditions as may be required by the licenceholder.

** Omit this matter if loan-based crowdfunding*

† Omit this matter if investment-based crowdfunding

- (3) The form of words required by (2)(d) to certify client type is –

“Restricted Client Certification

I undertake, unless I have met the requirements of, and certified below to be a High Net Worth Client or an Unlimited Client, that in any calendar year, I will not invest or lend more than £1,500 in any one crowdfunded investment or loan, or £5,000 in total in crowdfunded investments or loans.

Signature:

Date:

High Net Worth Client Certification

I undertake that I qualify as a High Net Worth Client, and certify that I consider myself experienced in making investments or loans into early stage illiquid businesses, and I have a minimum of £100,000 net worth available for investment / lending, excluding:

- *my home or any money raised through a loan secured on that property; and*
- *any rights of mine under a contract of insurance; and*
- *any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled.*

I undertake, that in any calendar year, I will not invest or lend more than £10,000 in any single crowdfunded investment or loan, or £50,000 in total in crowdfunded investments or loans.

Signature:

Date:

Unlimited Client Certification

I undertake that I qualify as an Unlimited Client, and certify that I consider myself experienced in making investments or loans into early stage illiquid businesses, and I have a minimum of £500,000 net worth available for investment / lending, excluding:

- *my home or any money raised through a loan secured on that property; and*
- *any rights of mine under a contract of insurance; and*
- *any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled.*

Signature:

Date:"

- (4) Each agreement required by (1) must be retained for at least 6 years following cessation of services for that particular client, and may be in electronic form subject to the licenceholder having appropriate systems in place for its retention, verification and security.

14. Client acceptance – investor/lender - Risk Acknowledgement Form

- (1) A licenceholder must obtain and retain a signed Risk Acknowledgement Form, in respect of each investment or loan made by a client who is an investor or lender, irrespective of whether the client is certified as Restricted, High Net Worth or Unlimited in the investor/lender client agreement.
- (2) The Risk Acknowledgement Form required by (1) must include the form of words set out in (3) in addition to repeating the contents of the General Warning about Crowdfunding (see condition 5).
- (3) The form of words required by (2) is –

“Risk Acknowledgement

I have read the General Warning about Crowdfunding and -

- *I understand that investment-based and loan-based crowdfunding will expose me to significant risk, and that I may lose my entire investment or money lent.*
- *I confirm that I understand there is no compensation scheme available and that I could bear a total loss without suffering undue hardship.*

- *I am aware there could be significant tax or other issues arising from this investment/loan [as appropriate] which can reduce the amount of any return, and that I should take advice on this from a specialist in my own country of tax residency.*
- *I understand and accept that I may never be able to sell the investments I purchase.**
- *I understand that I may need to perform a search with the relevant Companies Registry in order to verify that my investment in the company has been registered.**
- *[Where the particular investment does not have pre-emption, tag-along, or similar rights to protect from dilution, text must be added by the licenceholder to ensure this is made clear and the risks of that situation specifically highlighted.]**
- *I understand and accept that I may never be able to call in my loan or sell the rights to that loan. †*
- *A loan is not the same as a debt security or debenture (which are investments and not loans), and in the event of the borrower becoming insolvent a lender may be treated differently under insolvency law. †*

** Omit this matter if loan-based crowdfunding*

† Omit this matter if investment-based crowdfunding

- (4) Each Risk Acknowledgement Form required by (1) must be retained for at least 6 years following cessation of services for that particular client, and may be in electronic form subject to the licenceholder having appropriate systems in place for its retention, verification and security.

15. Target level of funding

A licenceholder must not permit the completion of an investment or loan unless the total level of funds committed by potential investors or lenders is equal to, or higher than the target level of funding specified in the relevant crowdfunding posting.

16. Client money

A licenceholder must not hold monies received in relation to pending investments or loans in the same client bank account as monies it has received in relation to loan repayments that it is administering.

17. Conflicts of interest – additional requirements

- (1) A licenceholder or any director, officer or controller thereof, must not invest in a client.
- (2) Despite (1) a licenceholder may accept investments of an issuer in compensation for services provided to, or for the benefit of, the issuer but only if –
- the licenceholder receives the investments from the issuer as compensation for the services provided to, or for the benefit of, the issuer in connection with the offer or sale of such investments through the licenceholder's crowdfunding platform;
 - the investments are of the same class and have the same terms, conditions and rights as the investments offered or sold through the licenceholder's crowdfunding platform;
 - the initial value of the investments will result in the licenceholder holding no more than a 5 percent interest in the issuer;
 - in the calculation of the licenceholder's financial resources, any investments in clients will be subject to a market value adjustment of 100%; and
 - the interest is adequately disclosed.

- (3) A licenceholder, or any director, officer or controller thereof, must not lend or finance, or arrange lending or financing for an investor to invest, or a lender to lend with regard to any crowdfunding posting on its platform.

18. Advertising of crowdfunding postings externally to the crowdfunding platform – additional requirements

A licenceholder must not, other than on its crowdfunding platform, advertise an investment or loan that is subject to a crowdfunding posting, or solicit potential investors or lenders, apart from by reference to the fact that a crowdfunding posting is available on the licenceholder’s crowdfunding platform.

19. Administration of loans

A licenceholder that facilitates loan-based crowdfunding must administer the loans, which includes, as a minimum-

- (a) creating and recording of the debt;
- (b) providing effective documentation to ensure that loans are legally binding and enforceable; and
- (c) having an effective debt collection process which is fair, orderly and transparent.

20. Business Termination Plan

- (1) A licenceholder that facilitates loan-based crowdfunding must have an effective Business Termination Plan in place to ensure that loans facilitated by it will continue to be administered if at any time it ceases to carry on the regulated activity of facilitating loan-based crowdfunding.
- (2) A licenceholder that facilitates investment-based crowdfunding must have an effective Business Termination Plan in place to ensure continuation of the orderly administration of current and recently closed crowdfunding postings if at any time it ceases to carry on the regulated activity of facilitating investment-based crowdfunding.

21. Financial Services Rule Book Rules which are applicable to crowdfunding platforms

- (1) The following rules are applicable to Class 6 regulated activity –

Part	Subject	Rules
1	Introductory	1.1 to 1.3
2	Financial Resources and Reporting	2.2 to 2.11; 2.13 to 2.15; 2.31 to 2.35; 2.37 to 2.40; and 2.42
3	Client Money	3.2; 3.3; 3.5 to 3.16; 3.17 to 3.19
5	Audit	5.2 to 5.11; 5.20; and 5.22
6	Conduct of Business	6.2 to 6.15; 6.33; 6.37 and 6.75
7	Administration	7.2 to 7.17; and 7.19
8	Risk Management and Internal Control	8.2 to 8.6; 8.7 to 8.9; 8.10 to 8.29; 8.55 to 8.56

22. Financial Services Rule Book Rules (as modified) which are applicable to crowdfunding platforms

Pursuant to section 7(3)(b) of the Financial Services Act 2008, the following rules as modified, apply to the licenceholder –

(a) In Appendix 2 – Minimum Share Capital Requirements etc. (Rule 2.37), insert –

Class	Description	Minimum Share Capital Requirement	Minimum Net Tangible Asset Requirement
6	Crowdfunding Platform	£25,000	£50,000 <i>(plus for loan-based crowdfunding see additional requirement in table below)</i>

Additional Requirement for Loan-Based Crowdfunding based on loaned funds outstanding

In accordance with condition 3, the net tangible asset requirement must be increased by the relevant percentage of the total value of loaned funds in accordance with the table below.

Up to £25 million of loaned funds	Nil
On the next £25 million of loaned funds	0.2% of the total value of loaned funds
On the remainder of loaned funds	0.15% of the total value of loaned funds

(b) Rule 3.4 is modified as follows –

(1) Subject to paragraph (2), in this Part –

“**client bank account**”, in relation to a licenceholder, means an account held by the licenceholder at a recognised bank which is –

- (a) specially created by the licenceholder for the purpose of holding client money; and
- (b) segregated from any account holding money which is not client money;

“**‘client company’ bank account**” means a bank account in the name of the client company and does not constitute a client account;

“**general client bank account**” means a client bank account other than a specified client bank account, which includes in its title the words "client account" or an acceptable abbreviation as detailed in rule 3.10.

(2) An account is not a client bank account if –

- (a) in the event of a failure of the licenceholder, it may be combined with any other account; or
- (b) there is any right of set-off or counterclaim against it in respect of any debt owed by the licenceholder.

(c) In Appendix 5 paragraph (2), insert –

	Paragraphs					
Class	A	B	C	D	E	F
6	Yes	#	Yes	No	No	No

(d) Rule 8.54(1) is modified as follows –

(1) This rule applies to all licenceholders which are licensed to carry on regulated activities falling within Class 2, Class 3, Class 4, Class 5, Class 6, Class 8(2)(a) or Class 8(4), but does not apply to –

- (a) any such licenceholder which is also licensed to carry on regulated activities falling within Class 1; or
- (b) individuals licensed to carry on only activities falling within either or both of –
 - (i) paragraph (6) of Class 4 (acting as officer of company); and
 - (ii) paragraphs (2), (5) or (6) of Class 5 (acting as trustee, protector or enforcer).

(e) In Table A of rule 8.54, insert –

Professional Indemnity Insurance		
Class of Regulated Activity	Minimum cover to be the greater of	Regulatory maximum cover
Class 6	£1.5 million in aggregate or 3 times the annual turnover (excluding dividends received) in the licenceholder's previous year ending on its annual reporting date	£10 million in aggregate