

## 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) Subject to (3) and (4), a licenceholder must not facilitate secondary trading in investments or loans. For the avoidance of doubt, the provision of communication channels, discussion or bulletin boards to enable clients, potential clients, or potential traders of crowdfunded loans or 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.
- (4) A licenceholder may facilitate secondary trading in investments only if-
  - (a) its licence extends to the provision of Class 6(2)(b) services;
  - (b) any secondary trading in an investment is facilitated on the same platform used for the Class 6(2)(a) initial crowdfunded purchase of the investment; and
  - (c) the clients permitted to use the platform to sell investments are restricted to those which originally used that platform to purchase those investments.

#### 2. Prohibition on providing recommendations or advice

- (1) A licenceholder must not provide a recommendation or advice to a potential purchaser of investments, whether in respect of initial purchase or secondary trading, 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 2.30 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, in the English language, on the homepage of its website, containing the information specified in condition 5. Where a licenceholder’s target client market is not English speaking, the same text must be provided in the language(s) of the target market(s) as well as in English.
- (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, or any secondary trading facility. 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), secondary traders of crowdfunded investments or loans and borrowers;
  - (b) after the Class 6 financial services licence has been in issue for thirteen months, generalised data including, where applicable —

- (i) the actual default rates of borrowers using the platform, where default has occurred over the following periods since the crowdfunded loan was issued, including a summary of the assumptions used in determining that rate, over the following periods since the crowdfunded loan was issued —
  - (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, investors and issuers, nor between persons using secondary trading facilities.

## **5. General Warning about Crowdfunding**

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

- (1) the exact wording of items (i) to (vi) of (e);
- (2) where investment-based crowdfunding or secondary trading in investments is facilitated, the exact wording of item (vii) of (e);
- (3) text provided by the licenceholder to cover matters specified in (viii) of (e);
- (4) where loan-based crowdfunding or secondary trading in loans is facilitated, text provided by the licenceholder to cover matters specified in (ix) of (e); and
- (5) 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. Even where a secondary trading facility is provided on the platform, the ability to buy and sell depends on demand and you should not assume you will be able to trade because of the existence of a secondary trading facility.
- (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 or a secondary trading opportunity 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 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.

**6A. Website disclosure – Class 6(2)(b) activity (secondary trading in investments) information**

- (1) If a licenceholder is authorised to conduct Class 6(2)(b) activity (the operation of secondary trading facilities in investments), it must segregate the secondary trading facility from the initial crowdfunding postings into a distinct secondary trading area of its website.
- (2) A licenceholder must only permit secondary trading in investments if they were originally crowdfunded on its platform, and must ensure that each secondary trading opportunity refers potential traders to-
  - (a) the matters that were set out at condition 8 as part of the original crowdfunding;
  - (b) any updates to the matters at (a);
  - (c) the latest 3 years of annual financial statements (or all annual financial statements since incorporation if that period is less than 3 years) of the body corporate whose investments are available for secondary trading; and
  - (d) whether the potential seller of the investment is a member of the body corporate's executive officers, directors (or equivalent) or controllers or in any other way linked to the management or organisation of the body corporate.

**7. Oversight of crowdfunding postings or secondary trading opportunities**

- (1) A licenceholder must take reasonable measures to maintain effective methods of reviewing and monitoring the content of crowdfunding postings, secondary trading opportunities and materials available on its website, to ensure that they are and remain true, are not misleading and do not contain any misrepresentations. For secondary trading opportunities the licenceholder must also ensure that the potential seller does not make a statement or provide information inconsistent with the materials at condition 6A(2).
- (2) Where crowdfunding postings, secondary trading opportunities 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, secondary trading opportunities or materials are found to be untrue and/or misleading after being placed on the website and made available to potential lenders, investors or traders, the licenceholder must immediately remove the crowdfunding posting or secondary trading opportunity and withdraw the material in question, and terminate any commitments to purchase an investment or make a trade or loan made to date.

## **7A. Oversight of crowdfunding activities and secondary trading opportunities**

- (1) A licenceholder must maintain effective methods of reviewing and monitoring crowdfunding postings and secondary trading opportunities to ensure that the following activity is prohibited:
  - (a) market or price manipulation (or attempts at market or price manipulation);
  - (b) insider trading;
  - (c) front running; and
  - (d) other fraudulent or deceptive conduct or market abuse.
- (2) If a licenceholder knows or suspects that prohibited activity under (1) has occurred, or been attempted, the licenceholder must make a report to the Authority within 1 business day of the knowledge or suspicion.
- (3) A report under (2), shall be in such form as is required by the Authority, together with such documents and information as it may reasonably require.
- (4) For the avoidance of doubt, the requirement to make a report under (2) does not limit or preclude any other reporting obligations of the licenceholder including reports required to be made to the Financial Intelligence Unit ('FIU').

## **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 (or 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 and secondary trading in investments – eligible investments**

- (1) A licenceholder may only facilitate investment-based crowdfunding, and the secondary trading of investments, where the investments offered for crowdfunding or secondary trading are limited to the following –
  - (a) common shares of a body corporate that is not an open-ended investment company or any other form of collective investment scheme;
  - (b) non-convertible preference shares of a body corporate that is not an open-ended investment company or any other form of collective investment scheme;
  - (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 or any other form of collective investment scheme, where the debt securities are linked to a fixed or floating interest rate.
- (2) A licenceholder may not facilitate investment-based crowdfunding or secondary trading in investments 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 (c) of condition 8.

## 11. Client acceptance – lenders, investors or secondary traders 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, or when permitting access to secondary trading facilities, a licenceholder must determine which of the following three categories of client the lender, investor or secondary trader 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, investor or secondary trader who has read the General Warning about Crowdfunding and who signs a Risk Acknowledgement Form for a specific crowdfunding posting or secondary trade (a “**Restricted Client**”);
  - (b) any body corporate or any individual lender, investor or secondary trader who has read the General Warning about Crowdfunding and who signs a Risk Acknowledgement Form for a specific crowdfunding posting or secondary trade, 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, investor or secondary trader who has read the General Warning about Crowdfunding and who signs a Risk Acknowledgement Form for a specific crowdfunding posting or secondary trade, 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, investment or secondary trade 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) (including any secondary trading) 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) (including any secondary trading) 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 or by utilising secondary trading facilities on that platform —
  - (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 (including via secondary trading facilities);
- (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 (including via secondary trading facilities on that platform). 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 material 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 (or equivalent);
- (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 or via secondary trading facilities on that platform;
- (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, or secondary trades, 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/secondary trader client agreement**

- (1) A licenceholder must enter into a written agreement with each client that is a potential investor, lender, or potential user of its secondary trading facilities.
- (2) The agreement required by (1) must contain the following —

- (a) the terms and conditions under which the investor / lender / secondary trader may purchase investments or make loans through the licenceholder's crowdfunding platform, whether by initial crowdfunding or secondary trading;
- (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 or market manipulation 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, or secondary trades, in the event of the licenceholder ceasing to carry on the regulated activity of facilitating investment-based crowdfunding \*;
- (i) 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, including via secondary trading.*

*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, including via secondary trading.*

*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/secondary trader - Risk Acknowledgement Form

- (1) A licenceholder must obtain and retain a signed Risk Acknowledgement Form, in respect of each investment, loan or secondary trade made by a client who is an investor / lender or secondary trader, irrespective of whether the client is certified as Restricted, High Net Worth or Unlimited in the 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, and secondary trading in such loans or investments, 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/secondary trade [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, loans or secondary trades 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 —
  - (a) 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;
  - (b) 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;
  - (c) the initial value of the investments will result in the licenceholder holding no more than a 5 percent interest in the issuer;
  - (d) in the calculation of the licenceholder's financial resources, any investments in clients are subjected to a market value adjustment of 100%; and
  - (e) 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 or secondary trading opportunity 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, loan or secondary trading opportunity that is or has been subject to a crowdfunding posting, or solicit potential investors, lenders or secondary traders, apart from by reference to the fact that a crowdfunding posting or secondary trading opportunity 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.

## **19A. Requirements in connection with the operation of secondary trading facilities in investments**

A licenceholder that facilitates secondary trading facilities in investments must do so in compliance with the following:

- (a) the execution and administration of the transfer of ownership of the investments from seller to purchaser must be undertaken by the licenceholder;
- (b) investments may only be traded if they have been owned by the seller for a minimum period of 12 months;
- (c) facilitation of trading to be by bulletin board only, in trading cycles of a maximum of one open week in each month (with a closed period of at least 3 weeks between open weeks), and no real time, automatic or continuous trading to be facilitated. And in connection with the bulletin board:
  - (i) the identity of potential secondary traders must be anonymous and undiscoverable by each other at the time expressions of interest or bids are made, posted on the bulletin board or accepted, and remain so until a successful agreement to trade has been established;
  - (ii) the data available on the bulletin board, in addition to the requirements at condition 6A(2), in relation to a potential sale must include the number of investments offered for sale and whether the potential seller holds or has held 15 percent or more of the voting rights in the relevant body corporate;
  - (iii) where the potential seller holds, or has held 15 percent or more of the voting rights in the relevant body corporate at any time, the licenceholder must ensure offers for sale are limited to no more than 8 percent of the total voting rights in issue at any one time, with at least 20 business days elapsing between more than one such offer for sale;
  - (iv) the data available on the bulletin board, in relation to potential purchasers, must be limited to the number of investments of the relevant body corporate they wish to purchase, the price per investment they are prepared to pay, and must be viewable by all users of the bulletin board;



- (v) the seller must have full discretion over the acceptance (or otherwise) of bids to purchase; and
- (vi) immediately on conclusion of a secondary trade, the number of investments sold and price paid must be available on the Bulletin board, viewable by all users of it.

**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 or secondary trades if at any time it ceases to carry on the regulated activity of facilitating investment-based crowdfunding.

**20A. Regulatory Reporting**

In addition to any other reporting requirements, a licenceholder that offers secondary trading opportunities for investments on its platform, must report details of all trades completed by such date and in such form as the Authority may reasonably require.

**21. Financial Services Rule Book Rules which are applicable as conditions of the licence to crowdfunding platforms**

The following rules are applicable to Class 6 regulated activity as conditions of the licence, despite Rule 3 of the Financial Services Rule Book—

<b>Part</b>	<b>Subject</b>	<b>Rules</b>
1	Introductory	1.1 to 1.3
2	Financial Resources and Reporting	2.1 to 2.13; and 2.25 to 2.33
3	Client Money	3.2 to 3.15; 3.19 to 3.21
4	Clients' Investments	4.3 (if the licence extends to the provision of Class 6(2)(b) services)
5	Audit	5.2 to 5.11; and 5.16 to 5.18
6	Conduct of Business	6.1 to 6.14; 6.36; 6.40; and 6.72
7	Administration	7.1 to 7.20; and 7.22
8	Risk Management and Internal Control	8.1 to 8.6; 8.8 to 8.11; 8.13 to 8.21; 8.23 to 8.32; 8.57 to 8.59

**22. Financial Services Rule Book Rules (as modified) which are applicable to crowdfunding platforms as conditions of the licence**

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

- (a) Rule 4.3 – Records of transactions, if the licence extends to the provision of Class 6(2)(b) services, is modified to read:

**4.3 Records of transactions**

(1) A licenceholder must maintain records containing entries of all purchases and sales of, and other transactions relating to, an investment which the licenceholder facilitates through secondary trading facilities on behalf of clients, including —

- (a) the nature, price and amount of the investment;
- (b) the identity of the clients;
- (c) the nature of the transaction; and
- (d) the time and date of the transaction.

(2) The records referred to in paragraph (1) must enable the investments to which they relate to be traced into and out of client, brokerage or other accounts.

(3) A licenceholder must preserve any records referred to in this rule for at least 6 years.

- (b) In Appendix 2 – Minimum Share Capital Requirements etc. (Rule 2.30), insert —

<b>Class</b>	<b>Description</b>	<b>Minimum Share Capital Requirement</b>	<b>Minimum Net Tangible Asset Requirement</b>
6 (1) or 6(2)(a)	Crowdfunding Platform	£25,000	£50,000 <i>(plus for loan-based crowdfunding see additional requirement in table below)</i>
Class 6(2)(a) and (b)	Crowdfunding Platform	£25,000	£75,000

**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

(c) The following definitions are omitted from rule 3.4 —

- (1) “**specified client bank account**”;
- (2) “**client free money account**”;
- (3) “**client settlement account**”;
- (4) “**subscription and/or redemption account**”; and
- (5) “**trust bank account**”.

(c) The Client Account Information specified by the Authority in accordance with rule 3.6 is modified by including the following row for Class 6 in the table on page 1.

(d) Rule 8.57 is modified to include the following row for Class 6 in the Table —

<b>Professional Indemnity Insurance</b>		
<b>Class of Regulated Activity</b>	<b>Minimum cover to be the greater of</b>	<b>Regulatory maximum cover</b>
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