



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

CONSULTATION PAPER CP18-04/T16

**CONSULTATION ON POSSIBLE  
EXPANSION OF CLASS 6 REGULATED  
ACTIVITY (CROWDFUNDING  
PLATFORMS) TO INCLUDE LIMITED  
SECONDARY TRADING FACILITIES**

Issue Date: 22 August 2018

Closing Date: 05 October 2018

## CONSULTATION PAPER – CP18-04/T16

This Consultation Paper is issued by the Isle of Man Financial Services Authority (**‘the Authority’**), which is the regulatory body for financial services in the Isle of Man.

The purpose of this paper is to obtain information, views and evidence regarding a possible expansion of Class 6 regulated activity (crowdfunding platforms) that could permit a limited ability for investment-based crowdfunding platforms to facilitate secondary trading of investments, if those investments were originally crowdfunded using the same licensed Class 6 investment-based crowdfunding platform.

If it is determined, following consultation to progress the expansion of Class 6 would be by way of amendment to the Regulated Activities Order 2011 (**‘the RAO’**), and the regulatory requirements would be made by amendment to the current Licence Conditions for Crowdfunding Platforms (**‘the Standard Licence Conditions’** or **‘SLCs’**). Also, other consequential changes would be required such as to the Training and Competence Framework, and to the Financial Services (Fees) Order 2018. This paper therefore provides details on the potential expansion of Class 6 and includes related documents as Appendices, upon which comments are welcomed.

The closing date for comments is **05 October 2018**. Please send comments by email to [Policy@iomfsa.im](mailto:Policy@iomfsa.im) or alternatively by post to:

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If you have a query in relation to how this consultation has been carried out, please contact the Authority’s Policy and Authorisations Division by email at [Policy@iomfsa.im](mailto:Policy@iomfsa.im) or by telephone on +44 (0) 1624 646000.

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## GLOSSARY

<b>Term</b>	<b>Meaning in this document</b>
<b>Authority</b>	Isle of Man Financial Services Authority
<b>Class 6</b>	The regulated activity of operating a crowdfunding platform (in the context of this paper being investment-based crowdfunding)
<b>Fees Order</b>	The Financial Services (Fees) Order 2018
<b>FSA08</b>	Financial Services Act 2008
<b>Licensing Policy</b>	The Licensing Policy for Regulated Activities under the Financial Services Act 2008
<b>RAO</b>	The Regulated Activities Order 2011
<b>Rule Book</b>	Financial Services Rule Book 2016
<b>Standard Licence Conditions (or SLCs)</b>	The Licence Conditions for Crowdfunding Platforms

## 1 EXECUTIVE SUMMARY

### 1.1 Overview

In 2016 the Authority introduced the regulated activity of operating loan-based and investment-based ‘Crowdfunding Platforms’ as Class 6 regulated activity under the FSA08. Also in 2016, the regulatory requirements rules for crowdfunding platforms were consulted upon and determined, and these requirements were applied by way of Standard Licence Condition initially (as opposed to Rules in the Financial Services Rule Book 2016) so that their efficacy could be tested before becoming secondary legislation.

At the time the Authority was unable to support requests to introduce secondary markets in crowdfunded investments, and explained in its response to the third consultation:

*“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 –*

- *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 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.<sup>1</sup>”*

The Authority has not received any applications to undertake Class 6 - crowdfunding activity since its introduction. This could be due to the lack of secondary trading facilities, or entirely unrelated.

In the intervening period, some jurisdictions, including the UK and New Zealand, have permitted limited forms of secondary trading.

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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 Closing date of consultation: 31 January 2016/ Date of summary: 31 March 2016

Of course, the customer dangers and resource implications still apply, but the Authority has determined, in its efforts to address change in the financial services industry, to consider introducing a limited level of secondary trading that it may support, and how the risks and costs of doing so can be appropriately mitigated.

This consultation paper sets out the type of secondary trading that the Authority may support, and the necessary changes to the RAO, Standard Licence Conditions, and other changes that would result from a decision to follow this course of action, and seeks the views of all interested parties.

## **1.2 What is the purpose of this Consultation Paper?**

The Authority invites interested parties to consider the possible introduction of a limited form of secondary trading facility for investments resulting from investment-based crowdfunding as set out in this paper.

The Authority is aware of the cost of regulation upon regulated entities and seeks to meet its regulatory objectives with minimum negative impact.

The Authority welcomes views in relation to the proposals. Comments should be submitted to the Authority prior to the consultation's closing date of 5 October 2018.

## **1.3 Who may be affected by this Consultation Paper?**

This paper will be of particular interest to all regulated entities, potential crowdfunders, professional advisors as well as the general public, being potential consumers of investment-based crowdfunding platforms.

# **2 CONSULTATION PROCESS**

## **2.1 The Authority's regulatory objectives**

The Authority's regulatory objectives are set out in section 2(2) of the FSA2008 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

The proposals in this Consultation Paper are relevant to all three objectives. The possible extension of Class 6 regulated activity to include a limited form of secondary trading of investments resulting from investment-based crowdfunding may support the confidence and development objective, and the restrictions on this activity are designed in order to protect consumers and reduce financial crime (being the potential for market manipulation).

The Authority is required to give consideration to certain factors when undertaking its role in accordance with paragraph 3 of Schedule 1 to the FSA08. The factors that are most relevant to this proposal are as follows:

Factor	Information
The need to use resources in an efficient and economic way.	Limiting the nature of the secondary trading that may be permissible ensures unjustifiable resources are not utilised in the regulation, monitoring and supervision of the activity, yet provides a method by which some secondary trading can be facilitated with necessary consumer protections built in.
The desirability of facilitating the development of the financial services, insurance and pensions industries.	The proposed introduction of a limited secondary trading ability is a further step towards development of the financial services industry.

## 2.2 Responding to the Consultation Paper

The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the proposals in this document. The purpose of this consultation is to gather views and evidence from which an informed decision as to whether or not to proceed will be made. However, please note that your comments may not result in a change to the proposals.

The Authority wishes to encourage submission of views, but requests that comments are not submitted anonymously, as they will not be considered or included in the Consultation Response.

Professional bodies, trade associations and other representative groups are asked to provide a summary of the people and organisations that they represent when responding, as well as the methodology used to gain members' input.

### **3 PROPOSALS IN RELATION TO THE POSSIBLE EXTENSION OF CLASS 6 REGULATED ACTIVITY**

#### **3.1 Possible amendment to the Regulated Activities Order 2011 ('the RAO')**

The operation of an investment-based crowdfunding platform, if not for the provisions of the RAO, would amount to Class 2 (investment business) and require a Class 2 financial services licence permission. When the Authority introduced Class 6 regulated activity it also introduced an exclusion in the RAO from Class 2 for activities that are regulated under Class 6 – (investment-based crowdfunding), and made it clear that a crowdfunding platform could not undertake any other form of regulated activity.

Operating a secondary market for investments is investment business, and the definition of crowdfunding in the RAO at present doesn't extend to that aspect of Class 2. Therefore, if a platform were to be permitted to also facilitate secondary trading in crowdfunded-investments it would need either to do so through a different regulated entity – licenced for Class 2 business; or the definition of Class 6 activity would need to be amended.

Because only limited secondary trading is being considered, it is preferable to amend Class 6 rather than introduce secondary trading provisions into Class 2 regulatory requirements.

**Draft amendments to Class 6 of the RAO are set out in Appendix A of this Consultation Paper.**

#### **3.2 Possible amendment to the Standard Licence Conditions for Crowdfunding Platforms**

Because the requirements for crowdfunding platforms were new and untested, they were introduced as licence conditions, instead of Rules in the Financial Services Rule Book 2016. This is beneficial because it allows the provisions to be 'tested' before being brought into secondary legislation. This makes them relatively easy to amend, yet they are mandatory requirements, with appropriate sanctions if breached.

In order to address risks, but provide a limited method of secondary trading (that aims to achieve sufficient consumer protection, not increase the likelihood of financial crime, and be potentially manageable within resources) an outline of what the Authority may be minded to contemplate follows. **Draft amendments to the Standard Licence Conditions for Crowdfunding Platforms are set out in Appendix B of this Consultation Paper**, and the outline below makes reference in red text to where, in the draft SLCs, the matter is dealt with.



1. The Authority only wishes to permit investments that have been initially crowdfunded on the particular crowdfunding platform (as an initial crowdfunding or as a subsequent capital raising exercise for an existing company) to have secondary trading facilities on that platform; i.e. a company's investments can only be sold on the platform's secondary trading facilities if that company used that platform to issue those investments – this is the same position as in New Zealand. See SLC 1(4) and 6A(2).

*This ensures the potential purchaser has access to the original crowdfunding documentation and other updated data about the company on that platform, and that the platform can monitor the totals invested / traded so as to remain within permissible limits.*

2. Similarly, the Authority would only permit investors who have purchased their investments on a particular crowdfunding platform, to sell those investments on that platform; and only after a minimum 'hold period'. The Securities and Exchange Commission in the USA applies a general one year holding period before allowing resale. See SLC 1(4)(c) and 19A(b).

*This helps to prevent fraudulent offers of investments, because the platform will already know its customer as a result of the initial purchase. The hold period ensures the facility is not used for short-term trading, which is contrary to the ethos of crowdfunding – which is designed for longer term investments to facilitate entrepreneurship and new ventures with longer term capital raising.*

3. Secondary purchasers would only be permitted to use the crowdfunding platform if they are registered with the platform for crowdfunding; and the purchases would need to be subject to the same 'client type' limits as apply to initial crowdfunding and as part of those limits (not additional limits). The secondary purchasers of investments would also need to receive the same (mandated) warnings as the original buyers. See SLC 4(2), 5, 6A(2), 11, 13, and 14.

*Retaining the client types, and the permissible levels of investment continues the protections provided for retail and unsophisticated investors into what are often risky, long-term investments. The Authority is not minded to provide for secondary trading limits in addition to initial purchase limits, as a secondary purchase can be equally, if not more, risky than an original purchase. Ensuring the secondary purchasers are provided with the same warnings as initial purchasers also helps inform them and therefore protects them.*

4. The permitted secondary trading facilities would be ‘auction / bid’ type and not real time trading – this would be akin to an online bulletin board only; listing details of investments for sale, and any bids from potential purchasers including what price they are offering to pay and how many of the investments they wish to buy (available for others to see). [See SLC 19A\(c\)](#).

*Such a trading facility would avoid the activity becoming the investment activity of being a broker. Where a trading facility is a sell / buy auction platform, the current exemption for Class 6 (crowdfunding platforms) of “arrangement of deals in investments” remains sufficiently wide, which is important because the Authority is not minded to provide for further exemptions.*

*Additionally, it avoids a crowdfunding platform from ‘facilitating’ and ensures that it does not become a Multilateral Trading Facility (‘MTF’)<sup>2</sup>.*

5. The permitted secondary trading facilities would need to ensure that the sellers of investments do not know the identity of potential purchasers when determining which (if any) bid to accept. [See SLC 19A\(c\)\(i\)](#).

*This provision is very important to the Authority’s regulatory objectives and avoids conflicts arising, or the possibility of acting in concert, and is considered more likely to result in fair outcomes. Research has shown that small markets of non-listed, private shares can facilitate market manipulation and money laundering, and anonymity between potential purchasers / sellers would help to mitigate this risk.*

6. The permitted secondary trading facilities would also need to ensure that each purchaser / bidder can see the prices bid by others, and the number of investments they want to buy (in the knowledge that highest price is not necessarily what will be chosen by the seller), as well as the final prices paid and number ultimately bought. [See SLC 19A\(c\)\(iv\), \(v\) and \(vi\)](#).

*This provision is instrumental in ensuring markets are fair, efficient and transparent and it would also provide important pre- and post-trade information.*

7. The Authority would require auctions to be held only in trading cycles, rather than continuous trading. A large UK crowdfunding platform with a secondary market uses trading cycles – via a bulletin board system. [See SLC 19A\(c\)](#).

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<sup>2</sup> ESMA document 2014/1560 18 December 2014 – Advice – Investment based crowdfunding

*The provision is beneficial for IOSCO international standards reasons and to avoid complexity, cost and unnecessary utilisation of resource. It allows monitoring and paperwork to be completed and transfers to take place during the closed periods.*

8. The Authority would require the crowdfunding platform to administer the transfer of ownership of investments between initial seller and buyer. **See SLC 19A(a).**

*The provision ensures ongoing responsibility and protects purchasers because the licenceholder retains responsibility for this task, rather than the unregulated sellers themselves. It is considered important in relation to fair, efficient and transparent markets, especially as crowdfunded investments tend to be in private companies whose share ownership details will not necessarily be easily available. If the licenceholder administers the transfer, then it will be certain that the transfer has taken place.*

9. The Authority would require the crowdfunding platform to oversee the materials and comments made by sellers in relation to secondary trading opportunities to ensure information provided is not untrue or misleading. **See SLC 19A(a).**

*The SLCs already provide for this oversight in respect of initial crowdfunding postings, and this would be extended to secondary trading opportunities. This provision is similar to the requirements in Ontario, Canada for crowdfunding platforms, and assists in ensuring the fairness and transparency of markets, and protects potential purchasers.*

10. The Authority would require reporting to it of all secondary trades concluded within 24 hours of the completion of each trade, so that monitoring (on the basis of exception reports) could be undertaken to address market manipulation and insider dealing concerns, as well as to ensure the appropriate declarations were made where trades involved persons who held 15% or more of the voting rights by way of their 'now sold' investment. **See SLC 20A.**

*This will require a technology solution which is being investigated and costed, and would need to be a common technology across all such licenceholders, and not bespoke to each licenceholder. It is envisaged that the costs involved for the IT solution will be factored into increased application and licence fees for those providing secondary trading facilities. See section 3.4 of this Consultation Paper.*

11. The Authority would limit the sale of investments if they are part of a controlling holding, so that only a certain percentage of that holding could be sold at any one time / within any one period on a secondary trading facility. Additionally, the Authority would require that any sale by a seller who is either a controller, director

or other non-independent party of the issuer to disclose that fact when placing any amount of investments on the crowdfunding platform's secondary trading facility for sale. See SLC 6A(2)(d), 19A(c)(ii) and (iii).

*This, at an extreme, will assist in preventing 'pump and dump' frauds. It will also assist in the prevention of controllers or other persons closely related to the business (who clearly are likely to have more information on the business than a purchaser, no matter what level of disclosure is provided) from making too quick an exit by sale to the unwitting purchaser, and ensure that their trades are reported.*

Further provisions included in the draft changes to the Standard Licence Conditions include:

- additional mandated warnings dealing with secondary trading issues;
- a requirement for secondary purchasers to have prior access to the original crowdfunding offering documents, as updated;
- extension of requirements relating to client agreements / rules of operation between the crowdfunding platform and its clients – specific to secondary trading.

It is important for readers to also note that irrespective of any changes to the regulatory regime in respect of secondary trading facilities, this does not change company law. Adherence to any regulatory regime does not mean company law requirements are also met, and it would be incumbent on any licence applicant, and any company whose investments are placed on a crowdfunding platform (either initially or via secondary trading) to ensure that they fully consider, and meet, all applicable company law, etc. requirements.

### **3.3 Possible amendment to Training and Competence Framework and Licensing Policy in relation to Crowdfunding Platforms which offer secondary trading facilities**

It is considered important to ensure that a licenceholder that facilitates secondary trading has at least one senior member of staff with appropriate experience, knowledge and qualifications in secondary trading in investments, and this is likely to be a requirement set out in the Training and Competence Framework and Licensing Policy as appropriate, if the changes considered in this Consultation Paper are taken forward.

### 3.4 Possible amendment to the Fees Order in relation to Crowdfunding Platforms which offer secondary trading facilities

As mentioned in 3.2, item 10, introduction of this activity would bring additional costs involving IT cost and the need to resource trade monitoring, and the costs of this will need to be reflected in the Authority's fees.

As the IT requirements are not yet fully known and costed it is not yet possible to provide details of level of fees that would be appropriate, but it is important to note that the Authority will charge appropriate fees for this activity.

## 4 QUESTIONS

### Question 1

(a) Please provide any general comments on the proposed introduction of the ability to provide limited secondary trading facilities as part of a crowdfunding platform.

(b) Please provide specific comments on:

(i) the proposed changes to the Standard Licence Conditions, and

(ii) whether they will provide sufficient protection to consumers of secondary trading facilities.

### Question 2

What risks and opportunities for investors and users of a secondary trading facility do you envisage, if the secondary trading facilities are introduced in the manner set out in this Consultation Paper?

### Question 3

What are your views regarding the requirement for the licenceholder to have at least one senior staff member with appropriate investment experience and knowledge?

Should this person have to be of director level, or only have a direct reporting line to the Board?

**Question 4**

Do you have any other feedback on matters set out in this paper?

**5 NEXT STEPS**

Following the closure of the consultation period, the Authority will publish a summary of the comments received, which will be accessible through the Authority's website and the Isle of Man Government's Consultation Hub.<sup>3</sup>

Subject to views expressed in response to the consultation, and the Authority's consideration of the same, it is intended that further work will take place in relation to the technology system that would be required, and ultimately that the changes to the Regulated Activities Order 2011, Fees Order, and the changes to the Standard Licence Conditions for Crowdfunding Platforms may be progressed.

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<sup>3</sup> <https://consult.gov.im/>

## APPENDIX A – DRAFT AMENDMENTS TO THE DEFINITION OF CLASS 6 REGULATED ACTIVITY

Current wording of the Class 6 definition in the RAO shown in black text, with possible changes shown in red text

### CLASS 6 – CROWDFUNDING PLATFORMS

#### *Regulated activities*

- (1) *Operating loan-based crowdfunding services including-*
  - (a) *the operation of an electronic platform in relation to lending in which the operator of the electronic platform facilitates persons to become lenders and borrowers; and*
  - (b) *the administration of crowdfunded lending, including the transfer of repayment funds from borrower to lender and debt collection in relation thereto.*
- (2) *Operating investment-based crowdfunding services, which-*
  - (a) *means the operation of an electronic platform in relation to arranging deals in investments in which the operator of the electronic platform facilitates persons to become issuers of investments or direct investors; and*
  - (b) *may include the operation of secondary trading facilities within the platform at (a), if the secondary trading facilities are operated solely in relation to investments originally facilitated under (a) on that electronic platform.*

It would therefore remain possible for an investment-based crowdfunding platform to operate no secondary trading facilities (i.e. if it sought a licence to undertake only Class 6 activity under (2)(a)), or to also provide secondary trading facilities if it sought a licence to undertake Class 6 activity under (2)(a) and (b).

Ensuring that secondary trading facilities as set out in (2) (b) may be in addition to the services at (2)(a), and not standalone without (2)(a), prevents applications to undertake only secondary trading in investments resulting from investment-based crowdfunding, and bolsters the provisions set out in the Standard Licence Conditions in that regard.

## APPENDIX B – DRAFT AMENDMENTS TO THE STANDARD LICENCE CONDITIONS FOR CROWDFUNDING PLATFORMS

**Current wording of the Standard Licence Conditions for Crowdfunding Platforms shown in black text, with possible changes shown in red text**

### 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 —

- (a) the exact wording of items (i) to (vi) of (e);
- (b) where investment-based crowdfunding **or secondary trading in investments** 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 **or secondary trading in loans** 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. **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.

## 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 5 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**

- (1) In addition to any other reporting requirement, a licence holder that operates secondary trading facilities for investments within the platform must electronically report full details of all trades completed within 24 hours of the completion of each trade.

## **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	<b>Clients' Investments</b>	<b>4.3 (if the licence extends to the provision of Class 6(2)(b) services)</b>
5	Audit	5.2 to 5.11; and 5.16 to <b>5.18</b>
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 —

Class	Description	Minimum Share Capital Requirement	Minimum Net Tangible Asset Requirement
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**”.
- (a) 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.
- (b) 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