

Lending, Credit & Finance Consultation Paper

Closed 15 Sep 2017

Opened 18 Jul 2017

Contact

Steve Chandler

01481 712706

lcf@gfsc.gg

Feedback updated 12 Feb 2018

We asked

We asked for feedback on a number of legislative proposals for regulating firms involved in lending, credit and finance.

Responses were received from a cross section of industry, trade associations, consumer and business groups/committees.

Feedback was also obtained from attendees of presentations and one to one meetings with various stakeholders conducted on the content and subject matter of the Consultation Paper.

Overall the consultation has highlighted evidence of support, a willingness by stakeholders to continue to be involved and helpful suggestions to further the foundation built so far.

You said

The majority of the feedback was supportive or strongly supportive of the proposals for the legislative and regulatory approach set out in the Consultation Paper. The inclusion of indicative rules in the Consultation Paper was highlighted as being particularly useful in helping to make recommendations to strengthen the proposals. We will consult again as the development of the rules and regulations evolve.

Respondents strongly agreed with the need for the Bailiwick to provide financial consumer protection. This is evidenced through the suggestions made to improve the proposals outlined in the Consultation Paper. It is further endorsed through recognition that the introduction of financial consumer safeguards can be a competitive advantage, which could be marketed to enhance customer propositions.

There was positive encouragement on the innovative financial aspects of the consultation. Comment included recognition of the advantages gained through surety of the Commission's technology neutral regulatory position. Knowledge and clarity of the regulatory stance regarding technology was seen as an enabler for consideration of investment to raise and enrich market competitiveness. In response to this observation the Commission plans to highlight its willingness to use the Innovation SoundBox as a means through which the use of innovative financial technology can be discussed and approved.

We did

At this stage we are heartened by the positive attitude to the proposals and the continuing support to progress development. Expressions of encouragement included:

- The legislative and regulatory framework should encourage competition and growth;
- Strong support for the consumer financial credit proposals;
- Encouragement to implement a framework that portrays a positive approach towards progressing advances in the use of technology and the digital sector;

- Support for enabling proposals that would be applicable to all lending, credit and finance businesses; and
- Agreement with the proposal to repeal the NRFSB Law.

The following is a summary of the key points extracted from the consultation responses including instances where as a result of respondent recommendations modifications have been made to the original design:

- The Regulated Activities Officer (“RAO”) does not need to be a Bailiwick resident only a senior official who is principally involved in the firm’s lending and credit activities;
- Ensure consumers clearly understand the financial commitment and the terms, including fees, charges, interest, repayment requirements, early settlement and any other key factors;
- Protection against financial harm to consumers which will include clear and understandable controls relating to financial promotions and marketing, including for example publication of an APR;
- A recommendation to include an appeal process should a licence not be granted;
- An ability for applicants to demonstrate that they are operating in a jurisdiction with equivalent legislation and therefore achieve deemed compliance;
- Define terminology through inclusion of definitions or guidance;
- Clarify low risk activities and those activities which the framework is not intended to cover;
- Enable identification of businesses offering or entering into regulated credit agreements (or offering ancillary services in relation to those agreements) which will require regulation; and
- Include a right to cancel / cooling off period other than for where the circumstances make it impracticable to do so.

We would like to thank everyone who responded to the Consultation Paper and to those who participated and contributed at the various stakeholder engagement events.

The feedback received has played a helpful role in the LCF Project’s development. The suggestions, and recommendations evidence a determination by business and consumer alike to implement a framework that

stimulates growth and expansion while retaining practical and proportionate consumer financial protection.

Next Steps

The Consultation Paper sought to formulate a legislative framework which (1) promotes growth in respect of lending, credit and financial services, (2) provides compliance with international AML/CFT standards and (3) protects the interests of the consumer. The support expressed demonstrates confirmation to further progress the Project objectives. The next stage is for the Commission to liaise with relevant civil servants who will advise the Committee for Economic Development (“the Committee”) and the Policy & Resources Committee (“PRC”) in respect of the same. It is envisaged that the Committee and PRC will then consider and, if felt appropriate approve a Policy Letter to be presented to the States of Guernsey, again for approval, asking the Law Officers of the Crown to produce a *Projet de Loi* giving effect to the proposals.

Please note

This feedback statement is a project working document that summarises responses received to the LCF Consultation Paper. The comments do not prejudice any final decision to be made by the Committee or the States of Guernsey.

Overview



Bailiwick residents are not immune from an over reliance on credit following the prolonged low interest rate environment or unaffected by unscrupulous lending. The Bailiwick shares potential lending hot spots, which have been publicised in the UK; for example a lack of understanding of the terms of a Personal Contract Plan (“PCP”) for a new car, or unaffordable loans. The Commission in conjunction with the States of Guernsey wants to ensure that for the first time Bailiwick residents are awarded regulatory consumer protection.

Financial services businesses in the Bailiwick have an opportunity to innovate, evolve and grow through the regulatory framework proposed in this paper. We have included some enterprising innovative alternative finance opportunities, such as the regulation of Customer Due Diligence (“CDD”) Platforms, which merit consideration. The Commission has sought to create a principles based regulatory environment which could act as a stimulus for both the innovative business of today and potential finance business of the future; ultimately we want to see good finance business flourish.

I hope that whatever your background (and we are all ultimately consumers), you will consider feeding into this consultation process. All comments, in writing, via Citizen Space, or even simply over a coffee with us, will be valued.

Gillian Browning

Director, Fiduciary Supervision Policy & Innovations Division

Guernsey Financial Services Commission

The proposals for the Lending, Credit & Finance project have been developed with assistance from focus groups that included representatives from industry, associations, consumer bodies and the States of Guernsey. We are grateful for all the contributions, support and input provided.

What happens next

Thank you for completing the Consultation Paper's questions.

Your views and comments are important and will contribute to the development of the Lending, Credit and Finance Law.

Related

 [LCF Consultation Paper](#)

2.1 MB (PDF document)

[➔ Guernsey Financial Services Commission](#)

[➔ Citizens Advice Guernsey](#)

[➔ States of Guernsey Digital Sector Framework](#)

[➔ LCF Discussion Paper](#)

Audiences

Consumer Financial Advisor Financial Services Business FinTech Lending, Credit & Finance Business
NRFSB Prescribed Business Lenders

Lending, Credit & Finance Consultation Paper



Contents

<i>Title</i>	<i>Page</i>
<i>1. Executive Summary.....</i>	<i>1</i>
<i>2. Discussion Paper Feedback.....</i>	<i>4</i>
<i>3. The LCF Law Framework.....</i>	<i>5</i>
<i>4. The Lending, Credit & Finance Law</i>	<i>12</i>
<i>5. Class 1 Alternative Financial Products & Services</i>	<i>21</i>
<i>6. Class 1 Crowdfund And P2P Business Models.....</i>	<i>27</i>
<i>7. Class 3 Lending, Credit & Finance Consumer Protection.....</i>	<i>32</i>
<i>8. Minimum Criteria For Licensing.....</i>	<i>44</i>
<i>9. Supervision</i>	<i>45</i>
<i>10. Implementing The New Framework.....</i>	<i>48</i>
<i>11. Consultation Questions.....</i>	<i>54</i>
<i>Appendix A. Principles Of Conduct Of Finance Business.....</i>	<i>56</i>
<i>Appendix B. The Indicative Lending, Credit And Finance Law (Class 1) Rules 20[XX]</i>	<i>58</i>
<i>Appendix C. The Indicative Lending, Credit & Finance Law (Class 3 Licensee) Rules 20[XX]</i>	<i>75</i>
<i>Appendix D. Matchmaking Crowdfunding Model</i>	<i>93</i>
<i>Appendix E. Affordability Assessment Suggested Criteria.</i>	<i>94</i>
<i>Appendix F. The Customer Journey.....</i>	<i>95</i>
<i>Appendix G. Definitions.....</i>	<i>97</i>

Responding to the Consultation Paper



Responses to this Consultation Paper are sought by Monday, 15 September 2017.

We welcome and strongly encourage recipients to provide feedback or comment on any section or question.



You can send your responses to us using the online submission tool, Citizen Space, accessible on our website at:

<https://consultationhub.gfsc.gg>



Or in writing to:

Steve Chandler
Guernsey Financial Services Commission
Fiduciary Supervision, Policy & Innovations Division
Glategny Court,
Glategny Esplanade
St Peter Port
Guernsey
GY1 3HQ



Telephone +44 (0) 1481 712706



Email Lending Credit and Finance - lcf@gfsc.gg

Foreword

Bailiwick residents are not immune from an over reliance on credit following the prolonged low interest rate environment or unaffected by unscrupulous lending. The Bailiwick shares potential lending hot spots, which have been publicised in the UK; for example a lack of understanding of the terms of a Personal Contract Plan (“PCP”) for a new car, or unaffordable loans. The Commission in conjunction with the States of Guernsey wants to ensure that for the first time Bailiwick residents are given regulatory consumer protection.

Financial services businesses in the Bailiwick have an opportunity to innovate, evolve and grow through the regulatory framework proposed in this paper. We have included some enterprising innovative alternative finance opportunities, such as the regulation of Customer Due Diligence (“CDD”) Platforms, which merit consideration. The Commission has sought to create a principles based regulatory environment which could act as a stimulus for both the innovative business of today and potential finance business of the future; ultimately we want to see good finance business flourish.

I hope that whatever your background (and we are all ultimately consumers), you will consider feeding into this consultation process. All comments, in writing, via Citizen Space, or even simply over a coffee with us, will be valued.

Gillian Browning

Director, Fiduciary Supervision Policy & Innovations Division

Guernsey Financial Services Commission

1. Executive Summary

1.1. Purpose of the Consultation Paper


Consistent with the Commission's objectives, the proposals in this Consultation Paper are designed to enhance the levels of confidence and security in the Bailiwick's lending, credit and finance infrastructure thereby further augmenting its development as a financial centre.

In August 2016 a Discussion Paper was issued that outlined a set of proposals relating to the introduction of new regulation and legislation. Thirty nine responses were received, analysed and used to further develop the proposals described in this consultation.

The purpose of this Consultation Paper is to consult on new lending, credit and finance legislation. We welcome comments on our proposals.

Following analysis of responses to the consultation, we intend to ask the States of Guernsey (via the Committee *for* Economic Development), to consider passing a Policy Letter asking the Law Officers of the Crown to produce a Projet de Loi giving effect to the proposals set out in this Consultation Paper.

This Consultation Paper is a working document and does not prejudice any final decision to be made by the Commission, the Committee *for* Economic Development or the States of Guernsey.



The proposals for the Lending, Credit & Finance project have been developed with assistance from focus groups that included representatives from industry, associations, consumer bodies and the States of Guernsey. We are grateful for all the contributions, support and input provided.

“Islanders seek help for £5.5m worth of debt”

Guernsey Press

25 May 2017

1.2. Objectives

The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law 2008 (“NRFSB Law”) is to be repealed and replaced by a new Lending, Credit & Finance Law.

The Lending, Credit & Finance Law seeks to provide:

- A stable regulatory environment that enables the Bailiwick’s digital strategic aims for business growth;¹
- A framework that supports the reputation of the Bailiwick as a financial services jurisdiction and a good place to do business; and
- Regulation of Bailiwick and non-Bailiwick firms providing lending, credit & finance products and services to ensure appropriate consumer protection is in place.

Frequently during the development of the proposals, participants and respondents to the Discussion Paper emphasised the need to apply controls and measures that are practical and proportionate. The proposals we put forward here seek to meet that aim.

1.3. Scope

This Consultation Paper seeks to formulate a legislative framework which (1) promotes growth in respect of lending, credit and financial services, (2) provides compliance with international AML/CFT standards and (3) protects the interests of the consumer.

The proposed regulatory framework will make it a formal requirement for:

1. Firms operating by way of business in or from within the Bailiwick and providing lending, credit and finance; and
2. Bailiwick firms operating in the sphere of lending and credit services and operating alternative financial services anywhere in the world.

To apply standards and behaviours that are in accordance with international standards, to conduct themselves with integrity and to treat their customers fairly.

1.4. Overview of Reasons for Change

If vulnerable consumers are not to be exploited by the unscrupulous, it is important that laws are in place to ensure that usury² cannot be practiced. Despite effective, equitable and transparent consumer credit legislation being an expected component of a modern economy, the Bailiwick of Guernsey does not currently have any legislation to enable the Commission to supervise the conduct and prudential controls of entities offering lending and ancillary activities.

Additionally, the pace of technological change is such that the Bailiwick needs to be able to respond nimbly to ensure appropriate prudential, consumer and financial crime protection is in place. It is important that consumers are able to exercise choice and avail themselves of new options confident in the knowledge that providers are reputable.

¹ SMART Guernsey The Digital Sector Strategic Framework

² Lending of money at excessively high rates of interest

*“2,388 Enquiries
made to Citizens
Advice
Guernsey”*

1.5. Customer Financial Vulnerability

The statistics stated below are taken from The Citizens Advice Guernsey Annual Report 2016.³

The statistics serve as evidence of current levels of consumer financial vulnerability within the Bailiwick.

Citizens Advice Guernsey Annual Report 2016

10,245

10,245 enquires received by the Citizens Advice Guernsey.

£5.5M

Money advisors negotiated repayments of £5,542,744

2,388

2,388 enquiries related to debt and money issues.

£4.29M

The amount that Citizens Advice Guernsey advisors negotiated repayments for in respect of secured and unsecured loans.

£83,810

The amount that Citizens Advice Guernsey advisors negotiated repayments for in respect of catalogue or HP

£305,550

The amount that Citizens Advice Guernsey advisors negotiated repayments in respect of credit cards

³ Citizens Advice Guernsey Annual Report May 2016

2. Discussion Paper Feedback

The Discussion Paper used the differing types of Guernsey milk as a means to describe the Lending, Credit & Finance Law's proposed legislative and regulatory framework. The majority of respondents agreed with the Discussion Paper's ⁴ proposed framework, although a number considered the proposals to be retail orientated and consequently outside the scope of their business activities. These comments have been incorporated into the proposals included in this Consultation Paper.

The Discussion Paper outlined various proposals to introduce controls and measures in respect of financial promotions, assessing creditworthiness, transparency and responsible lending. The majority of respondents replied encouragingly and provided examples of existing best practice, which have been instrumental in some of the proposals outlined in this Consultation Paper. Consideration was given as to whether the Bailiwick should introduce a code of practice for consumer lending or amalgamate with the Jersey Code of Practice for Consumer Lending but ultimately it was concluded that an unenforceable code was insufficient for the Bailiwick's needs.

The Discussion Paper sought specific views on topics such as the transparency of financial arrangements. Generally respondents were in favour of introducing an obligation on lending, credit and finance firms to provide a full explanation of all the features of a loan, credit arrangement or any funding mechanism, including fees, and key risks prior to agreement. Despite majority agreement, a proportion commented that such controls already exist due to businesses having to comply with legislative and regulatory requirements of other jurisdictions. Equally it was expressed that some firms had such procedures in place since it was an accepted best practice. The Commission has recognised and catered for such practice in the proposals.

Some respondents raised concern about creating an imbalance with businesses located in other jurisdictions and the potential to create a competitive disadvantage through excessive local controls. The Commission's view is that the proposals are consistent with other jurisdictions and indeed as noted by some respondents a proportion of licensees are already obliged to comply with requirements relating to financial promotions. ⁵

Respondents to the Discussion Paper commented on the potential beneficial advantages of regulation from both a lender and consumer's perspective; for example an existing lending institution remarked on the competitive benefits of having a level playing field with jurisdictions that have established legislative and regulatory financial consumer protection.

In summary, the Discussion Paper feedback demonstrated material acceptance and support of the proposals and provided the mandate for development of this Consultation Paper.

⁴ <https://www.gfsc.gg/news/article/commission-consults-proposals-revise-bailiwicks-financial-regulatory-infrastructure>

⁵ The Association of Guernsey Banks ("AGB") has published a non-statutory code outlining the requirements for Association members in respect of deposit advertisements.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987 or the Licensees (Conduct of Business) Rules 2016, ("the COB Rules") and included within the COB Rules are the requirements expected of a Licensee regarding promotions and advertising.

3. The LCF Law Framework

This section of the Consultation Paper sets out the proposed framework of the Lending, Credit & Finance Law.

3.1. The Lending, Credit & Finance Law

The NRFSB Law will be repealed and replaced by a new Law, the Lending Credit & Finance Law (“the LCF Law”).

3.2. The Lending Credit & Finance Law Purpose

The LCF Law will set out:

- The activities that will require licensing and registration for anti-money laundering and countering financing of terrorism (“AML/CFT”) purposes, consumer protection and alternative financial products and services;
- The ability for the Commission and States of Guernsey Policy & Resources Committee to make rules in respect of certain classes of Licensee;
- The minimum criteria for licensing; and
- The supplementary provisions found in the Principal Regulatory Laws (e.g. appeals, service of notices).

3.3. The Lending, Credit & Finance Law Regulation Structure

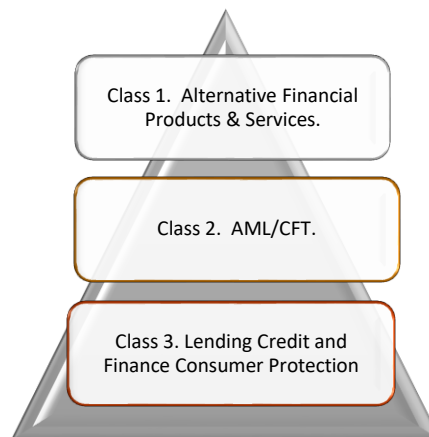
It is anticipated that the LCF Law will be structured similarly to the other Principal Regulatory Laws. Licensees will be required to comply with the Principles of Conduct of Financial Business and specific Principles, Rules or Guidance to the extent they are issued in respect of the conduct of their business.



- The Law sets out who needs to be a Licensee.
- The Principles establish the behaviour and standards of a Licensee.
- The Rules state the controls and measures that a Licensee must observe.
- The Guidance describes the means by which Licensees comply with the stipulated requirements.

3.4. The Lending Credit & Finance Law Classes

The LCF Law is intended to cover three strands of registration or licensing (i.e. alternative financial products and services, AML/CFT and consumer protection), each of which have distinct and separate rationales and therefore risks and exemptions. The Commission therefore intends that the LCF Law will create three separate classes of Licensee that are required to register, each with their own exemptions and rules (where appropriate):



3.5. Class 1 Licensees

The Class 1 Alternative Financial Products and Services section of the LCF Law will cover those businesses who provide alternative financial products and services which do not fall within the supervision of any other division within the Commission but require supervision and rules (such as prudential, conduct rules) to be applied to them.

Class 1 seeks to recognise the ongoing innovation and disruption within financial services, typically due to developments in technology, and provide a stable regulatory framework to cover both current and future change.

Frequently the types of products and services being developed do not align themselves with legacy controls. Clarity of the legislative and regulatory framework is seen as an advantage to businesses and customers. Positioning new and emerging financial services and products in a separate regulatory class should allow for a nimble regulatory response to enable and encourage growth in the digital sector together with the comfort to consumers that there are measures in place to protect their interests. It is proposed to include enabling provisions within the LCF Law to allow (in the future) for additional alternative financial products and services to be added by Regulation with appropriate rules and standards issued.

The Rules issued under the Lending, Credit & Finance Law in respect of Class 1 will cover the more detailed provisions regarding a Licensee's management and responsibility for alternative financial services, for example the robustness of an internet platform.

Class 1 currently sets out a requirement to register and the application of rules in respect of:

- Crowdfunding via equity or debt;
- Peer to Peer lending; and
- Alternative financial business models.

Consistent with the Class 1 ethos of providing for future change the Consultation Paper Class 1 section includes three proposals that merit further consideration:

- AML/CFT Platforms;
- Electronic Agents; and
- Green Investments.

3.6. Class 2 Licensees

Whilst international AML/CFT standards have evolved since the introduction of the NRFSB Law, the rationale for having AML/CFT regulation and rules for businesses registered under the NRFSB Law remain the same. The Bailiwick still needs to comply with the FATF recommendations so the scope, and need, to amend the classes of businesses to which Schedule 1 of the NRFSB Law apply is minimal. However for consistency with the other Classes, the Commission is proposing to regulate all Class 2 Licensees as opposed to the former status of registration for AML/CFT purposes.

Class 2 AML Licensees will continue to comply with the various AML/CFT laws including the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law and the associated regulations and Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (or its successor) but the Commission does not intend on introducing any conduct or prudential controls and measures.

Consultation Explanatory Note.

During the development of this Consultation Paper feedback was received which indicated that the NRFSB Law arguably captures certain entities and activities that it was never intended to cover or could not be sufficiently interpreted to identify whether a business's activities required registration. To resolve the matter we are proposing that the Commission has the ability to issue statutory exclusions.

We have reviewed the comments received regarding these matters and sought to clarify existing anomalies through minor amendments to the replacement LCF Law, Class 2, Schedule 2, [formerly *Schedule 1 of the NRFSB Law*].

3.7. Class 3 Licensees

Class 3 Licensees will be those entities providing lending, credit or ancillary debt related services to retail customers.

The Commission intends to issue Rules under Class 3 which will cover the following areas:

- Corporate Governance;
- Fair Treatment of Borrowers;
- Responsible Lending;
- Assessing Creditworthiness;
- Right to Cancel; and
- Financial Promotions & Marketing.

Further information can be found at Appendix C of this Consultation Paper.

➤ *See Appendix C. The Indicative Lending Credit & Finance Law (Class 3 Licensee) Rules.*

3.8. The Lending, Credit & Finance Law Arrangement of Sections

It is proposed that the LCF Law will be constructed as follows:

- Part 1 Class 1 Alternative Financial Products & Services.
- Part 2 Class 2 AML/CFT.
- Part 3 Class 3 Lending, Credit and Finance Consumer Protection.
- Part 4 Miscellaneous, Supplementary & General provisions.

Each Part will include a separate schedule which will set out (1) the activities carried out that will require licensing; and (2) incidental or other activities which will not require licensing.

Part 1 Class 1 Alternative Financial Products & Services.

Schedule 1.

- Part I. Activities which require a licence (alternative financial products and services).
- Part II. Definitions.

Part 2 Class 2 AML/CFT.

Schedule 2.

- Part I. Activities which require a licence.
- Part II. Activities which do not need licensing (ie regulated under a Principal Regulatory Law or ancillary activities).

Part 3 Class 3 Lending, Credit and Finance Consumer Protection.

Schedule 3.

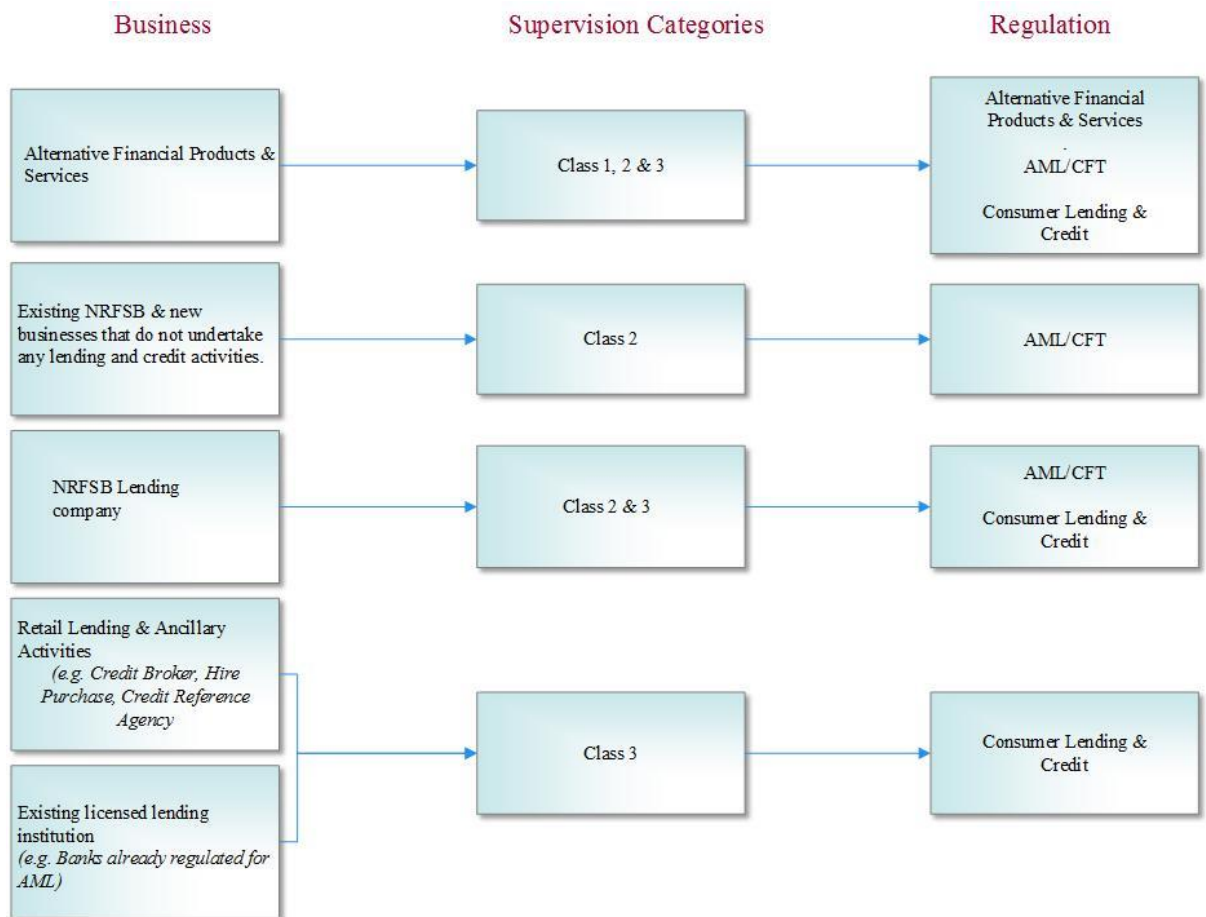
- Part I. Activities which require a licence.
- Part II. Activities which do not need licensing.

3.9. Licensing Requirements

Inclusion of customer lending and credit controls and alternative financial services and products controls will impact the regulatory status of some existing NRFSB firms and also some Licensees who are currently licensed under one or more of the Principal Regulatory Laws. The additional two classes could necessitate some firms requiring an additional regulatory licence.

3.10. Identifying Applicable Classes

The diagram below depicts the applicable Classes for the various types of business activities:



Consultation Paper Explanatory Note

A new Firm providing a P2P platform would require registration as a Class 1, 2 & 3 Licensee.

A Bank would be required to register as a Class 3 lending institution. As Banks are already regulated for AML/CFT purposes they will not require a Class 2 Licence.

An existing NRFSB engaged in lending would require a registration as Class 2 Licensee for AML/CFT purposes and to register as a Class 3 Licensee in respect of their lending activities.

3.11. Existing License under Principal Regulatory Laws – Class 2 and Class 3 Businesses

The Commission does not wish to duplicate compliance with various sets of rules and regulations unless absolutely necessary. Therefore where a Licensee is already licensed under one of the Principal Regulatory Laws and there is an overlap between the requirements of the rules or regulations made under the Principal Regulatory Laws and any rules issued under the LCF Law the Licensee may be deemed to be compliant with certain sections of the Rules.

3.12. Group Standards – Equivalence

In order to avoid duplication between a Class 1 or Class 3 Licensee's existing obligations with another jurisdiction's standards, the Commission is proposing including a provision that if a Licensee complies with policies, procedures and controls, which are deemed equivalent to the Bailiwick of Guernsey standards then the Licensee is deemed to have complied with the rules issued under the LCF Law.

There will be certain rules that this "deemed compliance" will not apply to, such as complaint handling and information to be given on how to complain, as these are subject to local requirements.

The Annual Return for such Licensees will also contain a 'comply or explain' statement in respect of compliance with the LCF Law.

Consultation Paper Explanatory Note

The Commission proposes to deem the UK's Financial Conduct Authority ('FCA') and the Irish Central Bank of Ireland ('CBI') rules as equivalent standards to those set out within this CP.

All other jurisdictions will be considered on a case by case basis as part of the application process; applicants will be required to evidence equivalent legislation regulations and Rules and that the interest of Bailiwick residents will not be prejudiced by reliance on the regimes of those jurisdictions.

3. 13. Bailiwick Businesses Operating Outside the Bailiwick of Guernsey

In terms of conduct standards, where a Class 3 Licensee which is a Bailiwick business is operating outside of the Bailiwick the Commission is aware that that business will need to comply with the rules and regulations of the jurisdiction in which it is operating.

The Commission does not intend to add an additional layer of complexity by automatically requiring those businesses to also comply with the conduct sections of the Class 3 Rules. The proposal is the Bailiwick's standards are deemed the minimum and any Licensee complying with standards that compare or exceed these requirements is deemed to comply with the Bailiwick's requirements in respect of those activities.

The Annual Return for such Licensees will contain a declaration that any such rules have been complied with during the relevant period.

3.14. Revision of Laws

Whilst a review of the NFRSB Law did not form part of the Revision of Laws Project (“ROL Project”) it is envisaged that many of the matters consulted upon in the ROL Project will equally apply to businesses licensed under the LCF Law. For example, power to appoint an administration manager, power to appoint a skilled person, the use of names, confidentiality of information provided by foreign authorities and restrictions on disclosure of information. In addition the Commission is proposing that the enforcement powers set out in the proposed new Enforcement Law will apply to entities licensed under the LCF Law including the ability to suspend or revoke a license and the ability to appoint a receiver.

In summary, the Commission is proposing that the powers which apply under the Principal Regulatory Laws will also apply under the Lending, Credit and Finance Law.

4. The Lending, Credit & Finance Law

This section expands upon the components of each individual class and provides details of their structure and objective.

4.1. Part 1 of the LCF Law: Class 1, Alternative Financial Products & Services

The following will be required to be licensed under the LCF Law, Class 1, Alternative Financial Products & Services:

- A Bailiwick person carrying out the activities set out in Schedule 1 operating by way of business anywhere in the world; and
- Any person other than a Bailiwick person carrying out the activities set out in Schedule 1 and operating by way of business in or from within the Bailiwick.

4.1.1. Additional Provisions

The LCF Law Part 1 will also include the following:

- Specific requirements relating to alternative financial services and products;
- The Policy & Resources Committee may by regulation amend Schedule 1 by adding, deleting or amending any Class or description of business;
- An applicant must apply to the Commission for licensing as a Class 1 Licensee in such form and manner as the Commission may determine and must be accompanied by the items set out in the Lending, Credit & Finance Law;
- The Commission may grant the application, refuse the application or grant the application subject to conditions;
- The Commission will not grant an application unless satisfied that the minimum criteria for licensing are fulfilled; and
- Definitions of terms used in Class 1.

4.1.2. Schedule 1: Class 1 Entities & Activities

The LCF Law Schedule 1 will set out that any business undertaking the following activities will require a Class 1 Licence:

- A Bailiwick person operating an electronic platform in relation to loan based crowdfunding;
- A Bailiwick person operating an electronic platform in relation to equity based crowdfunding;
- A Bailiwick person operating an electronic platform in relation to lending;
- A Bailiwick person operating an alternative financing business model; and
- Any person other than a Bailiwick person carrying out the above activities and operating by way of business in or from within the Bailiwick.

Consultation Paper Explanatory Note

An alternative financing business model is one which has similar characteristics to a crowdfund or P2P provider in that investment is obtained for further lending but the business model does not include the use of a platform.

4.2. Part 2 of the LCF Law: Class 2, AML/CFT

Those businesses specified in Schedule 2 Part I (*currently the NRFSB Schedule 1*)⁷ will require a Licence under the LCF Law, Class 2; UNLESS:

- Those businesses are regulated businesses under a Principal Regulatory Law;
- Those businesses are conducting ‘incidental activities’;
- Those businesses are not acting by way of business in or from within the Bailiwick;
- Those businesses fall within the existing exemption contained at section 3 of the NRFSB Law;
- Those businesses fall within the proposed additional statutory exemptions.

Consultation Paper Explanatory Note

The proposal is to replicate the existing NRFSB Schedule 1 in the LCF Law as Schedule 2, with three notable proposed amendments.

- 1) The list of activities in Schedule 1 to the NRFSB law is driven by standards set by FATF and accordingly the scope to amend is limited, but should be revised to reflect emerging AML/CFT risks. Drawing on FATF identified emerging risks, the Commission proposes that entities operating licensed crowdfunding and peer to peer (“P2P”) lending platforms are included within the LCF Law equivalent list of financial service businesses (*LCF Law Part 2, Schedule 2*).
- 2) Amendments will be made to clarify the definition of “customer” to ensure that activities that would otherwise be regulated are excluded where they are undertaken in respect of group entities.
- 3) Since the introduction of the NRFSB Law in 2008, directions have been given under section 44 of the NRFSB Law that a business will not be treated as carrying on business in Guernsey (and therefore are not required to register) on a number of occasions. Given the AML/CFT focus of the NRFSB Law, these directions were given on the basis of an assessment of the activities undertaken and the AML/CFT risk. We are therefore proposing that the Commission has the ability to issue statutory exclusions.

⁷ <http://www.guernseylegalresources.gg/article/97032/Registration-of-Non-Regulated-Financial-Services-Businesses-Bailiwick-of-Guernsey-Law-2008-Consolidated-text>

4.2.1. Additional Provisions

The LCF Law Part 2 will also include the following:

- The States of Guernsey Policy & Resources Committee (“P&R”) may by regulation amend Schedule 2 by adding, deleting or amending any Class or description of business;
- An applicant must apply to the Commission for licensing as a Class 2 Licensee in such form and manner as the Commission may determine and must be accompanied by the items set out in the LCF Law;
- The Commission may grant the application, refuse the application or grant the application subject to conditions; and
- The Commission will not grant an application unless satisfied that the minimum criteria for licensing are fulfilled.

Consultation Paper Explanatory Note

The Discussion Paper proposed that the exemption currently contained in section 3 of the NRFSB Law, Exemptions from Requirement to Register, would be withdrawn as it only provides exemption in limited instances.

This proposal was broadly supported by respondents however upon further research it appears that these exemptions are beneficial to businesses such as hotels that may provide foreign exchange to their guests on an incidental and ad hoc basis.

The Commission therefore proposes that this exemption will be replicated in the LCF Law.

The Commission’s website and LCF Application form will include a notice alerting applicants that in order for a financial service business to ‘not be required to be registered’ by the Commission they must meet all of the criteria stated.

4.3. Part 3 of the LCF Law: Class 3, Lending, Credit & Finance Consumer Protection

The following will be required to be licensed under the LCF Law, Class 3, Lending, Credit & Finance Consumer Protection:

- A Bailiwick person carrying out the activities set out in Schedule 3 operating by way of business anywhere in the world; and
- Any person other than a Bailiwick person carrying out the activities set out in Schedule 3 and operating by way of business in, or from within, the Bailiwick.

Consultation Paper Explanatory Note

Some Class 2 Licensees will also need to be licensed as a Class 3 Licensee. In addition, some entities already holding a license under one of the Principal Regulatory Laws (for example a Bank undertaking retail lending) will also need to be licensed as a Class 3 Licensee.

➤ See Appendix C. *The Indicative Lending Credit & Finance Law (Class 3 Licensee) Rules.*

4.3.1. Additional Provisions

The LCF Law Part 3 will also include the following:

- A statutory 14 day cooling off period (*see section 7.10*);
- Statutory power for the Commission to regulate and challenge unfair contract terms in standard form contracts (*see section 4.7*);
- The States of Guernsey Policy & Resources Committee (“P&R”) may by regulation amend Schedule 3 by adding, deleting or amending any Class or description of business; (*See Appendix C The Lending Credit & Finance Law (Class 3 Licensee) Rules*).
- An applicant must apply to the Commission for licensing as a Class 3 Licensee in such form and manner as the Commission may determine and must be accompanied by the items set out in the LCF Law;
- The Commission may grant the application, refuse the application or grant the application subject to conditions;
- The Commission will not grant an application unless satisfied that the minimum criteria for licensing are fulfilled;
- A provision that any contract made in breach of the requirement to be licensed is void. This matches the provision of s32 of the POI Law;
- Incidental and other activities [i.e. those activities which will not require licensing]; and
- Definitions of terms used in Class 3.

4.4. Schedule 3: Class 3 Entities & Activities

The LCF Law Schedule 3 will set out that any business undertaking the following activities will require a Class 3 Licence:

- Entering into a “regulated agreement” as lender; (➤ *4.5 Regulated Agreement*).
- Effecting an introduction of a retail customer to a lender or owner with a view to those persons entering into a regulated agreement (or agreements that would fall within these definitions if the lender was acting by way of business in Guernsey);
- Presenting or offering an agreement which would be a regulated agreement;
- Assisting a retail customer by undertaking preparatory work with a view to that person entering into a regulated agreement with a lender or owner (who is not the credit broker);
- Acting as an intermediary broker or agent between the lender and the borrower;
- Entering into a regulated agreement (or an agreement that would fall within these definitions if the lender was acting by way of business in Guernsey) on behalf of a lender or owner; and
- Carrying on a “debt related regulated activity” (i.e. debt counselling, debt administration, credit reference agency).

Consultation Paper Explanatory Note

It is proposed that any non-Bailiwick person which is regulated by the FCA or the CBI and undertaking the above activities on an occasional basis will not be required to register. A de minimis threshold for operating on an “occasional basis” will be set by reference to turnover, number of transactions in a given period and/or lending amount.

4.5. Regulated Agreement

A “regulated agreement” will include the following:

1. An agreement between a lender and a retail customer where credit is provided, repayment is delayed for over a year, the credit is for any amount and interest or other credit related charges are made. This includes borrowing secured over real property.
2. Hire purchase agreement – (whilst the owner of goods cannot technically be said to be extending credit (because repayment is not being deferred) a hirer will be deemed to have been provided with credit to finance the transaction of an amount equal to the total price of the goods).

Consultation Paper Explanatory Note

In practice: the proposals EXCLUDE any borrowing (1) by any company, partnership, trust (unless secured over residential property); (2) for the purposes of trade, profession or business (unless secured over residential property); and (3) for buy to let purposes (unless “accidental landlords” as set out below.)

In practice: the proposals INCLUDE credit cards and store cards.

In practice: the proposals INCLUDE borrowing secured by “mortgages” over Guernsey property used predominantly as residential property for a borrower or connected persons where the borrower is any individual (HNWI or otherwise) or a corporate or trust etc.

An accidental landlord is one who becomes a landlord as a result of circumstance as opposed to making a conscious decision to become a landlord by way of business.

As an example, an “accidental landlord” would include (1) an inheritance property which is subsequently let; or (2) where as a result of an inability to sell a property, it becomes a buy to let.

4.6. Not Included in the Lending Credit & Finance Law

The LCF Law is not intended to cover:

- Arrangements which are provided without interest or other credit related charges;
- Credit agreements where the term for repayment is less than 12 months (excluding high interest, short term, unsecured non-bank lending, see section 7.8.4.);
- Those offering running trade account credit, for example milkmen or a builder's merchant;
- A family lending arrangement, which is not by way of business;
- Loans to employees;
- Employee mortgages provided via the employer;
- Payment for utilities by direct debit or standing order;
- Payment for insurance by instalments arranged by an insurer or licensed insurance intermediary;
- An agreement for credit entered into as lender by Government bodies;
- Activities by investment firms such as stock lending or allowing the borrower to carry out transactions related to financial instruments; and
- Commercial banking. (Company, partnership, trust (unless secured over residential property)).
- Buy to let purposes (unless "accidental landlords").

Consultation Paper Explanatory Note

If a household item is purchased from a utility company under a credit arrangement, the repayments exceed 12 months and interest is charged then the utility company will need to be licensed as Class 3, or arrange for a suitably licensed entity to provide the finance.

4.7. Ordonnance Donnant Pouvoir à la Cour de Réduire les Intérêts Ecessifs 1930

The Ordonnance Donnant Pouvoir à la Cour de Réduire les Intérêts Ecessifs 1930 provides that the Royal Court has powers to reduce interest at a rate exceeding 10 per cent per annum where, taking in to account all the circumstances, that rate is considered unreasonable. The Royal Court also has powers to reduce interest rates on hire purchase agreements where it considers that the interest rate is excessive taking into account the value of the goods acquired by the relevant agreement. This Ordonnance applies to both regulated lenders and unregulated lenders. The Commission is not proposing any amendments to the Ordinance.

4.8. Consumer Credit

The proposals contained in this Consultation Paper, as regards consumer credit, are broadly:

- An individual lending by way of business will require a licence and as a result their prudential controls and conduct will be regulated by the Commission and they will be required to comply with rules issued. The primary consequence for non-compliance will be regulatory.
- Class 3 Licensees will be required (by primary legislation) to provide a 14 day right to cancel.
- The Commission will have the power (in primary legislation) to challenge unfair terms in standard form contracts. Regulatory powers will include dialogue with the Licensee; licence conditions; public statements; and ultimately the ability to apply to court for an injunction. The primary legislation will provide that an unfair term is not binding on the borrower but the contract will continue to bind the parties if the “blue pencil”⁸ test can be applied.
- Any contract entered into by a lender acting in breach of the requirement to be licensed will be void.

The Commission is not proposing that legislation similar to the UK Consumer Credit Act 1974 be enacted as it considers that regulatory sanction, as opposed to statutory, will be sufficient and proportionate for the Bailiwick.

The Commission is aware that enabling legislation has been enacted for a trading standards law in Guernsey (but not Alderney or Sark) which provides the ability to legislate in the same areas as the UK’s Consumer Rights Act 2015.

⁸ A Blue Pencil test is a legal concept in common law countries where a court finds that portions of a contract is void or unenforceable, but other portions of the contract are enforceable. The Blue Pencil Rule allows the legally-valid enforceable provisions of the contract to stand despite the nullification of the legally-void, unenforceable provisions.

4.9. LCF Law, Part 4, Miscellaneous, Supplementary & General Provisions

This part of the LCF Law will set out the provisions that apply to all Licensees including the miscellaneous and supplementary provisions that you would expect in a regulatory law. For example:

- Licensing. (*Formerly NRFSB Law, Registration*);
- Validity of registration and general requirements (*Formerly NRFSB Law, Registration*);
- Change of control and the ability for the Commission to charge a fee for considering such change of control. (*New addition*);
- Conditions on license. (*Formerly NRFSB Law, Registration*);
- Rulemaking ability for each Class of Licence (*Formerly NRFSB Law, Making of Rules*);
- Ability to Deem that an Application has been Withdrawn or Surrendered. (*New addition*);
- Requirement for Commission's consent to the surrender of a Licensee's licence. (*Formerly NRFSB Law, Registration*);
- Restrictions on Names. (*New addition*);
- Mutual recognition of jurisdictions. (*New addition*);
- Site Visits. (*Formerly NRFSB Law, Powers of Commission to Obtain Information*);
- Power to request and obtain information and documents. (*Formerly NRFSB Law, Obtaining of Information*);
- Service of Notices. (*Formerly NRFSB Law, Miscellaneous*); and
- Interpretation. (*Formerly NRFSB Law, Miscellaneous*).

5. Alternative Financial Products & Services Proposals

This section outlines proposals relating to alternative financial services and products including those originating through technology.

5.1. Commission's Approach to Innovative Financial Services

The advances in technology have been heralded by some market commentators as akin to a fourth industrial revolution.⁹ The scale, scope and complexity are anticipated to fundamentally alter lifestyles and workplaces and the financial market is one of the industrial fields experiencing digital transformation.

The seismic changes occurring have prompted financial institutions to question whether there are regulatory concerns or risks in embracing the new technology. The Commission has to date adopted a practice of openness relating to the methods employed to deliver products and services on the proviso that there is no compromise to established legislative and regulatory requirements.

The Commission recognises the economic value, advantages and consumer benefits obtainable through the provision of innovative financial services, and in keeping with other regulators has adopted a technology neutral approach. Notwithstanding the Commission adopting a neutral stance towards the use of technology and being openly receptive to the use of technology in providing financial services, businesses and existing financial service incumbents view regulation as a major challenge to both advancement and the integration of FinTech.¹⁰

To counter concern and to support and encourage innovative growth and expansion in the digital sector the Commission has publicly stated its aim to stimulate and foster innovation in the Bailiwick. Consistent with the drive to encourage and provide opportunity for growth in the digital sector this Consultation Paper includes an opportunity to comment on three prospective innovative change proposals:

- AML/CFT Platforms - licence for regulatory purposes AML/CFT CDD service providers;
- Electronic Agents – enact the enabling provision of the Electronic Transactions Laws to add acting as an electronic agent to be in scope of the LCF Law as an alternative financial product and service; and
- Green Investment – include green investments within the LCF Law scope.

The Consultation Paper also outlines the Commission's current thinking and position regarding various developments occurring in the FinTech arena.

⁹ *The World Economic Forum theme in 2016 – Mastering the Fourth Industrial Revolution.*

¹⁰ *PwC Global FinTech Report 2017. Redrawing the Lines: FinTech Growing Influence on Financial Services.* <https://www.pwc.com/gx/en/industries/financial-services/fintech-survey/report.html>

5.2. AML/CFT Platforms

Using technology for the purposes of collating customer due diligence has been a subject that RegTech providers and existing licensees have explored and in some circumstances progressed. Frequently the products or solutions developed address a proportion of the onboarding process from an efficiency and consistency perspective, however the process improvements rarely enable other parties to rely on or use the ‘solution’.

In order to enable wider benefits it is suggested that the AML/CFT regime is extended to include AML/CFT CDD platforms.¹¹ An AML/CFT CDD Platform is an internet based CDD servicing and depository service. The suggestion is that the AML/CFT platform provider would be regulated as a financial services business and be subject to (AML/CFT focused) supervisory scrutiny and legally obliged to comply with AML/CFT controls and measures as described in the AML/CFT Handbook.

The Commission’s proposal would be to include ‘acting as an AML/CFT platform’ within Class 1 of the Lending, Credit & Finance Law. As a regulated financial services business, the AML/CFT regime would apply and therefore the AML/CFT Platform would have equivalent status as an introducer, enabling both unregulated and regulated licensees to use/rely on the (LCF Law regulated) platform provider for verification of a customer at a specific point of time (we envisage client take on).

The Institute of International Finance (“IIF”)¹² commented on the potential of technology to strengthen the AML/CFT framework in their document, *Deploying RegTech Against Financial Crime*. The IIF noted that support was necessary from the FATF to improve effectiveness of its member states’ information sharing regimes by incorporating clearer guidance on the topic in the FATF Recommendations.

The Commission is mindful of the growing number of businesses operating AML/CFT CDD Platforms in the Bailiwick, and thus includes this proposal for comment as it potentially presents both commercial advantage and further cements the Bailiwick’s position as a leading jurisdiction for AML/CFT.

5.3. Electronic Agents

The rise of automation (e.g. high frequency trading platforms, robo-adviser algorithms) is leading to increasing questions over the legal capacity of such algorithms, bots, and pieces of software to bind the company/person employing the technology. Industry feedback indicated that it is only a matter of time before we “hit the buffers” of what is possible legally as there is no certainty as to the enforceability of contracts entered into by the algorithm. Guernsey’s Electronic Transactions Law is relatively unique amongst other jurisdictions in that it has an enabling provision for “Electronic Agents” (defined as a computer program or electronic or other automated means used independently to initiate an action or to respond in whole or in part to information or actions in electronic form or communicated by electronic means, without review or action by a natural person).

Under the enabling provisions of the Electronic Transactions (Guernsey) Law 2000,¹³ Electronic Transactions (Sark) Law 2001 & Electronic Transactions (Alderney) Law 2001) it

¹¹ The inclusion of the word platform in the service terminology is to provide a general description that includes internet based system for storing and sharing data.

¹² <https://www.iif.com/publication/research-note/deploying-regtech-against-financial-crime>

¹³ “Electronic Agent” means a computer program or electronic or other automated means used independently to initiate an action or to respond in whole or in part to information or actions in electronic form or communicated

could be possible, subject to political approval, to enact the enabling provisions of the Electronic Transactions Laws, and add ‘Acting as an Electronic Agent’ to the scope of the new Law and identify software as a legal body (i.e. an Electronic Agent).

The proposal is theoretical at this stage as it is recognised that registration would be dependent on a range of specified controls, measures and criteria, for example an MLRO in Guernsey, mind/management/substance in Guernsey, GFSC ‘consent’ for the electronic agent operating under tightly defined parameters (e.g. for x provider, to make y decision). The proposal is included in the Consultation Paper as a call for input on the topic in order to ascertain industry opinion and appetite for the proposal.

5.4. Green Investments

At present, certification of what is or is not a “green investment” is a subject of self-reporting or voluntary regulation. One of the market mechanisms by which this is undertaken is through the internationally accepted climate bonds standard and certification scheme that is overseen by the International Capital Markets Association (“ICMA”). Under the certification schemes, the issuer must pay for an external reviewer to verify that their bond issuance has complied with the necessary standards to be considered “green”. There are other mechanisms including the Chinese Ministry of Environmental Protection Certificate scheme which, while similar to the ICMA scheme permits the use of “clean coal” with the aim of increasing the efficiency of plants and thereby reducing environmental impact.

External reviewers, whilst they may be subject to professional standards where they are members of scientific organisations or other professional bodies, would not appear to be currently subject to oversight by financial services regulators anywhere in the world.

Arising from this, two possible opportunities exist for the Bailiwick; firstly, should the Commission consider developing rules in the investment space to enable “green investment” funds to hold themselves out as quality-assured by the Commission? In order to implement this proposal, the Commission envisages that it would need to develop specific rules detailing minimum criteria to be met in order for the fund to be accredited as a ‘green investment’; in addition it could accredit independent assessors providing the necessary scientific assurance in respect of the investment, supported by an Advisory committee.

The second opportunity that could either be progressed at the same time or subsequently, could be for the Commission to regulate more broadly multi-disciplinary practices in this space (for example the independent assessors including, a geologist, auditor, meteorologist, natural scientist etc.). At present, reviews are currently based on scientific analysis with little if any consideration of the nature of the financial product itself and its variables. With multi-disciplinary practices becoming more common could Guernsey create a framework for multi-disciplinary practices to develop, using a combination of the well-trodden path of good standards of corporate governance, minimum criteria for licensing and accepted scientific methodologies?

by electronic means, without review or action by a natural person. Appendix (X) Extract from The Electronic Transactions (Guernsey) Law 2000

“Digital Economy Could Raise Extra £14m in Tax”

Guernsey Press

May 2017

5.5. FinTech

The digital economy vision for Guernsey, outlined in the SMART Guernsey document, The Digital Sector Strategic Framework (“the Framework”) includes:

“By 2026 Guernsey aspires to be a leading innovative and entrepreneurial community, the location of choice for a diverse range of low footprint, high value, digital businesses, maximizing economic growth and opportunity for the Island”.

The Framework further comments that it will make Guernsey:

“A centre of excellence for future digital technology developing new and innovative businesses in all sectors including (but not limited to), FinTech, data storage and analytics; cyber security; R&D, institutional peer to peer lending, digital transactions (Blockchain) and wealth management platforms.”

The depth of change that FinTech is both potentially capable of and actually delivering is testing existing legislative and regulatory boundaries. Achieving the Bailiwick’s strategic digital aims necessitates forward thinking, responsive and proportionate regulation.

A key factor in supporting the economic growth objectives is clarity of regulatory requirements. FinTech is in essence a disruptor and challenger to legacy systems and methods, which presents a different dimension to the risks involved and therefore features as an area of regulatory attention. The purpose of the Alternative Financial Products & Services Class is to deliver a legislative and regulatory framework that can accommodate the advances of digital technology.

5.5.1. RegTech

RegTech is considered a sub-set of FinTech. It is the use of technology to facilitate the delivery of regulatory requirements more efficiently and effectively than existing capabilities.

5.5.2. Distributed Ledger Technology

Distributed ledger technology (“DLT”) is viewed by external commentators¹⁴ as having the means to enable significant change in the operational processes currently used by the financial market. Businesses are researching and investing in the development of DLT in order to identify and deliver cost benefits and efficiency savings.

The Commission recognises the significant potential offered by DLT and is supportive of licensees using its capability within their business, which may not require any regulatory approval. The Commission is also mindful that DLT is currently a subject being discussed by a selection of international authorities and regulators. The wide range of attention generated by the research undertaken speculatively suggests the introduction of consistent controls, therefore it is viewed prudent to defer the introduction of controls that are uninformed on future outcomes.¹⁵

¹⁴ Distributed Ledger Technology & Cybersecurity – Improving Information Security in the Financial Sector

¹⁵ Bank for International Settlements, Distributed Ledger Technology in Payment Clearing & Settlement.

“Convertible VC, which can be used to move value into and out of fiat currencies and the regulated financial system, is likely to present ML/TF risks.”

5.5.3. Robo-Advisors

A robo-advisor is generally defined as an online wealth management service that provides portfolio management advice without the use of human financial planners. This should not be considered a definitive definition since in some instances it is questionable whether a system is actually providing advice as opposed to simply presenting a range of options for consideration by the consumer. The defining factor is the manner and extent in which the service presents its product choices to the user.

The Commission considers that the involvement of a system as opposed to human engagement does not negate or remove the provider’s regulatory and legislative obligations which remain identical to all forms of wealth management servicing. The likelihood is that similarly to an equity crowdfund, an online wealth management advisory service, (robo-advisor), would require a licence under the Protection of Investors (Bailiwick of Guernsey) Law. However, where the products and service offered are lending, credit and finance related and not captured under the requirements of the Protection of Investors Law, the proposal is that the robo-advisor provider would be viewed as a Class 3 business.

5.5.4. Virtual Currencies (“VC”)

Virtual currencies are an area of innovation which the Commission continues to monitor closely while recognising that there are currently significant risks associated with them. In light of those risks, the Commission published a notice stating that it will adopt a cautious approach and may well refuse applications to register financial services business where the use of virtual currency is involved.¹⁶

In June 2015 The Financial Action Task Force (“FATF”) issued Guidance for a Risk-Based Approach to Virtual Currencies.¹⁷ The guidance commented that:

Under the risk-based approach, countries could also consider regulating financial institutions or designated non-financial business and profession (“DNFBP”) that send, receive, and store VC, but do not provide exchange or cash-in / cash-out services between virtual and fiat currency.

The same FATF document also posted the following note of caution:

“Convertible VC, which can be used to move value into and out of fiat currencies and the regulated financial system, is likely to present ML/TF risks.”

In May, 2014 the US Securities & Exchange Commission, Office of Investor Education and Advocacy,¹⁸ issued an investor alert to make investors aware about the potential risks of investments involving Bitcoin and other forms of virtual currency.

In light of the comments and statements made by international authorities the Commission intends to continue its current stance.

To be clear, the Commission’s caution about virtual currencies does not extend to other uses for the underlying distributed ledger technology. For example, the

¹⁶ <https://www.gfsc.gg/news/article/virtual-currencies>

¹⁷ FATF. Virtual Currencies. Guidance for a Risk-Based Approach. June 2015

¹⁸ http://www.sec.gov/oiea/investor-alerts-bulletins/investoralertsia_bitcoin.html

*“2016 FinTech
Investment
US\$24.7
Billion.”*

[KPMG - The Pulse of
Fintech Q4 2016](#)

Commission engaged with a fund administrator in 2016/17 and its implementation of a Blockchain solution for managing the administration of a private equity fund in Guernsey as a global first.

5.5.5. Internet Banking

Internet banking, including mobile access, is not considered a Class 3 Alternative Financial Product and Service. Internet banking is a distribution channel through which a customer can access a range of bank services. Savings, investments, loans and credit are all obtainable via an internet banking service, however the primary use is for a bank customer to access and operate his or her account online. It is therefore anticipated that it is unlikely that the proposed Lending, Credit & Finance Law will introduce measures that are not currently in place.

6. Class 1 Alternative Financial Products and Services

6.1. Class 1 Scope

The States of Guernsey's, SMART Guernsey Digital Sector Strategic Framework includes comment that developing institutional and business Peer to Peer Platforms ("P2P Platforms") is a digital business opportunity. It is intended that the LCF Law apply to the following categories of Class 1 Licensee:

- P2P Platforms;
- Crowdfund Platforms; and
- Alternative Financial Business Models.

The Class 1 Rules that apply to those categories of Licensee will seek to support the SMART Guernsey objective through implementing controls and measures that provide:

- Clarity on the legislative and regulatory landscape for the business models; and
- Risk mitigation measures applicable to the Funder and the Recipient.

The Commission proposes that the scope of crowdfunding regulation is restricted to arranging loans and investment crowdfunding (not including charity and reward based crowdfunding).

6.2. Terminology

For the purpose of this Consultation Paper and the draft Class 1 Alternative Financial Services & Products (Funding Models) Rules the following terminology is used:

- Funder – the person or body who provides the funds, whether by debt or equity or any other instrument;
- Platform – the website through which the service and product is conducted; and
- Recipient – the person or body who is seeking to obtain funds (whether by debt, equity or any other instrument).

Consultation Paper Explanatory Note

A crowdfund lender and crowdfund borrower (including P2P) are distinguished from a borrower and lender by including the letters 'CF' before the term. The purpose is to enable identification of the specific controls and measures that are specifically relative to crowdfunding.

“Britain's most senior financial regulator believes that the “fast-moving, evolving” peer to peer (P2P) lending industry poses “some quite big challenges in terms of transparency and fairness.”

Business Insider
December 2016

6.3. Basic Features of a Crowdfund & P2P Platform

The following is provided for the purposes of clarifying how a P2P Platform or Crowdfund Platform operates:

- P2P Platforms are broadly those that supply a “matching service” for Funders and Recipients where a Recipient may seek finance from a group of Funders;
- Crowdfunding Platforms are broadly those that host Recipients who are seeking finance from a wider range and higher number of Funders;
- Recipients can either be individuals or a business seeking finance;
- Recipients may be seeking finance through either debt or equity;
- Funders are individuals or entities providing finance to individuals or businesses;
- The attraction to the Funder is potentially a higher return than market rates;
- Funders may wish to provide finance to projects not just for financial return but to support a business sector of interest or social impact;
- Funders can provide different amounts;
- The Platform offers details of the Recipient so that the Funder can select the Recipient or different Recipients to whom they wish to provide finance;
- Funders can choose to fund the entire amount of the finance or be aggregated by the Platform with other Funders;
- Where the Funding is via debt (1) the Platform sets a risk factor¹⁹ and an interest rate; (2) interest is paid to the Funders until the loan matures, repaid early or defaults; and
- Fees are paid by the Funder and Recipient to the Platform.

➤ See Appendix D. Matchmaking Crowdfunding Model.

Consultation Paper Explanatory Note

It is not the intention of the Funder that dictates whether it is a regulated activity, but whether the funding is actually charitable, reward based or financial return based.

¹⁹ A platform risk factor is a risk category or categories that the Crowdfund & P2P provider chooses to apply.

“Should the model continue to gain traction with potential lenders, up to £12.3 Billion lending could be facilitated through the P2P model each year.”

Nesta

<http://www.nesta.org.uk/publications/banking-each-other-rise-peer-peer-lending-businesses>

6.4. Interaction with POI Law

Whilst it may be seen that Platforms are undertaking the restricted activities of (for example) promotion, registration and subscription as set out in the POI Law the Commission is proposing that an amendment is made to the POI Law to clarify that any Platform is not required to obtain a POI licence provided it is licensed under the LCF Law. The Commission is also proposing that where a Recipient raises funds through a Platform they may be deemed to have complied with the Prospectus Rules 2008 (or their successor), provided the Platform has complied with the disclosure requirements of the Class 1 Rules.

6.5. Risk Factors

The proposed Class 1 Rules are designed to protect Funders using Platforms by ensuring that the Platform includes advice and guidance to enable potential users to make an informed decision about the service offered.

The Class 1 Rules will therefore deal with the following common risk factors applicable to the Platforms (among other matters):

- Risk of Non-Transparency;
- Risk of Platform Failure or Closure;
- Risk of Cyber-Attack;
- Risk of Fraud;
- Risk of Illiquidity; and
- Risk of Default.

Consultation Paper Explanatory Note

If the Platform is domiciled in the Bailiwick it would require licensing as Classes 1, 2 & 3 under the LCF Law.

6.6. Content of Class 1 Rules

The LCF Class 1 Rules will contain Rules that are specific to a crowdfund and P2P service as follows. The additional Rules are:

- Controls & measures regarding the CF Lender & CF Borrower;
- Capital standards;
- Resolution plans;
- Categorisation of crowdfund and P2P funders funding limits;
- Responsibility for technology;
- Financial promotions and marketing;
- Website management; and
- Website contingency plans.

➤ See Appendix B. The Indicative Lending, Credit & Finance Class 1 Rules

6.7. Categories of Crowdfund or P2P Funder

In order to provide protection to the Funder it is proposed to introduce differing categories of Funder based upon a person's awareness of the risks of partaking in the product offering and their financial stability.

The implementation of the categories enables a level of control on Funders inadvertently over committing their financial resources to high risk propositions. Equally it provides assurance to the provider that a Funder is not taking excessive financial risk, which provides for stability in the lending.

The proposed categories are:

<i>Type</i>	<i>Description</i>	<i>Limit</i>
<i>General Funder</i>	<i>An individual Funder who certifies his or her understanding of the product offering.</i>	<i>The individual Funder is restricted to a maximum of £1,500 per single loan with a maximum funding of £5,000 per annum.</i>
<i>Capital Reserve Funder Category I.</i>	<i>An individual Funder who certifies his or her understanding of the product offering and has a minimum of £200,000 net available assets.</i>	<i>The individual Funder is restricted to the lower amount of 5% of his or her net available assets, or £10,000. With an ultimate maximum funding of £50,000 per annum.</i>
<i>Capital Reserve Funder, Category II.</i>	<i>An individual Funder who certifies his or her understanding of the product offering and has a minimum of £500,000 net available assets.</i>	<i>The individual Funder is restricted to a maximum of no more than 20% of net available assets at the point of funding.</i>

Consultation Paper Explanatory Note

The default category is General Funder.

6.8. Financial Resources Requirements. (“FRR”)

It is fundamental to introducing controls and measures that crowdfund and P2P providers maintain an appropriate level of net tangible assets therefore it is proposed that crowdfunding and P2P platform providers should be subject to FRR.

The Commission proposes to introduce measures that comprise of a minimum capital requirement, which will include minimum net tangible asset reserves geared to the level of lending.

6.9. Employee Screening & Employee Training

It is proposed to include the same requirements as those described in the POI Law.

7. Class 3 Lending, Credit & Finance Consumer Protection

This section outlines proposals relating to the Class 3 lending, credit and finance customer protection proposals.

7.1. Objective of the Class 3 Rules

It is intended to strengthen customer protection and therefore we propose the introduction of rules that necessitate lending and credit providers to assess the creditworthiness of a customer and to ensure a customer is both conversant and in agreement with the product and service at the outset.

The objective is not to provide a substitute or replacement to existing controls and measures rather to integrate the proposed customer lending and credit controls so that they complement, work in tandem or in some instances underpin the provisions contained in the Principles of Conduct of Finance Business (“the Principles”).²⁰

The purpose of the controls and measures is to implement proposals which will benefit customers and business by:

- Clarifying the standards and behaviour expected;
- Supporting the Principles, Rules and guidance, which add further protection to customers;
- Promoting consistent application of consumer lending, credit and finance protection by the firms; and
- Enabling greater understanding and awareness.

The Class 3 Rules consist of lending, credit and finance customer protection controls and measures aimed at avoiding adding to a customer’s difficulties through ensuring a person’s credit worthiness. It is acknowledged that the controls will not eradicate a customer’s financial difficulties, however it is likely that licensees will identify instances where they can prevent or minimise the risk of a customer encountering serious financial difficulties.

7.2. Application of Rules

The categories of activities, products and services provided by Class 3 Licensees range from ancillary services such as debt administration and credit reference agencies to banks, commercial lenders and hire purchase providers.

The breadth and diversity of activities require a legislative and regulatory framework that consists of a set of measures that are adaptable and responsive to the variety of businesses included under the scope of the Lending, Credit & Finance Law.

²⁰ *The Principles are only applicable to businesses licensed or registered with the Commission and they are a general statement of fundamental obligations that firms should comply with under their regulatory responsibilities.*

“A single unemployed parent obtained consolidation loans from two different companies”

Citizens Advice
Guernsey

7.3 Content of the Class 3 Rules

The indicative Class 3 Rules are made up of the following sections which underpin the general Conduct of Financial Services Business in Guernsey Principles.

Conduct of Business including:

- Fitness and Propriety;
- Fair Treatment of Borrowers (Details to be provided, dealing with vulnerable customers, financial difficulties);
- Responsible Lending (Affordability, Creditworthiness);
- Financial Promotions and Advertising;
- Financial Statements;
- Notification to the Commission.
- Corporate Governance including;
 - Public Indemnity Insurance;
 - Record Keeping;
 - Complaints; and
 - Conflicts of Interest.

Whilst a formal consultation will be undertaken on the Class 3 Rules in due course, for ease of reference we have set out at Appendix C the form and content of the Class 3 Rules that the Commission would envisage consulting upon. The following section is a brief overview of the content of the Class 3 Rules.

➤ *See Appendix C. The Indicative Lending, Credit & Finance Class 3 Rules*

7.4 The Customer Journey

In order to depict the level of beneficial change the LCF Law provides to a customer three diagrams are included in Appendix F. The diagrams depict the customer's position in respect of:

- Conduct of Business;
- Responsible Lending; and
- Fair Treatment of Borrowers.

➤ *See Appendix F. The Customer Journey*

7.5 Corporate Governance

Ultimately, corporate governance is about the behaviour of Boards and their directors.

The Guernsey Financial Sector, Code of Corporate Governance: <https://www.gfsc.gg>

The Board and/or senior management and/or primary persons responsible for the lending and credit products and services provided by the Licensee must ensure that there are effective and appropriate policies, procedures and controls in place which provide for the Board and/or senior management and/or primary persons to meet its obligations under the Law and these Rules.

The Board and/or senior management and/or primary persons responsible for the lending and credit products and services provided by the Licensee must retain responsibility for the outsourcing of any of its lending and credit functions.

7.5.1 Regulated Activities Officer

Every Class 3 Licensee must appoint a Regulated Activities Officer and a deputy.

Consultation Paper Explanatory Note

The Regulated Activities Officer is the person who is primarily responsible and senior person involved in the Licensee's lending, credit and finance activities. It is anticipated that Licensees will be able to identify appropriate personnel by virtue of the expectation that there would already be in place management oversight of existing lending, credit and finance arrangements.

Licensees do not have to adopt the formal title however Licensees will be required to inform the Commission of the identity of the person and his or her deputy.

7.5.2 Monitoring Lending, Credit & Finance Activities

The Commission proposes that it is the responsibility of the Board and/or senior management to ensure that the lending and credit activities are periodically reviewed for compliance with the requirements of the LCF Law.

7.5.3 Compliance Arrangements

The Class 3 Rules propose to require that the Board and/or senior management and/or primary persons responsible for the lending and credit products and services provided by the Licensee have effective responsibility for compliance with the Lending, Credit & Finance Law and any rules or guidance made under the Law.

Where the Licensee outsources their regulated activities or any function of their regulated activities to a third party (either within the Bailiwick or overseas, or within its group or externally) the Board and senior management retain ultimate responsibility.

Consultation Paper Explanatory Note

It is acknowledged that finance companies authorise agents to arrange and approve financial terms with a customer. It is possible for the agent to be perceived as the first party by virtue of being the customer's point of contact. The purpose of the proposal is to ensure that the Licensee's Board (*the finance company*) recognise that despite the existence of a contractual arrangement between the Licensee and their agent, the Board cannot be absolved from their LCF legislative responsibilities and ultimate obligations to the customer.

The contracted delegated levels of customer engagement can extend to the full borrowing process e.g. negotiating, arranging, approval agreement and ongoing management. The intention is not to remove or dilute the level of control that a finance provider extends to their agent, however despite the extent to which the Licensee Board's has delegated their lending and credit authority, the Board's duty is to be assured that their agent is complying with the LCF Law.

The agent has a duty of care to ensure that they conduct themselves in accordance with the LCF Law.

7.5.4 Conflicts of Interest

It is proposed that the Class 3 Rules should require that Licensees must establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organisation of the Licensee and the nature, scale and complexity of its regulated business.

Consultation Paper Explanatory Note

It is expected that Licensees would already have in place a conflicts of interest policy and procedure. The requirement is that a Class 3 Licensee will include lending and credit activities and transactions conducted by the Licensee if they are not already part of the policy.

7.5.5 Complaints

It is proposed that the Class 3 Rules should require that every Licensee must have in place a written procedure for the effective consideration and fair and proper handling of complaints relating to the Licensee's regulated activities.

Every Licensee should have in place complaint management controls and measures for their regulated activities that include the following:

- Customers must be informed of what to do in the event they have a complaint;
- Licensees must maintain records of all lending and credit complaints;
- The Licensee's complaint handling policy must be available on request; and
- The Licensee's complaint handling policy includes that customers are informed that they may complain to the Channel Islands Financial Ombudsman. ("CIFO").

7.5.6 Record Keeping

It is proposed that the Class 3 Rules include requirements in respect of record keeping.

7.5.7 Annual Compliance Return

It is proposed that the Class 3 Rules includes a requirement in respect of information a Licensee should provide to the Commission.

7.6 Fair Treatment of Borrowers

A financial institution should observe high standards of integrity and fair dealing in the conduct of its business.

7.6.1 Fair Treatment of Borrowers Statement

Whilst the Principle is sufficient for explaining conduct expectations there are some behaviours that merit comment in order to enhance the general level of protection afforded to consumers. It is therefore proposed to introduce a Fair Treatment of Borrowers Statement that clarifies inappropriate practices.

The Fair Treatment of Borrowers Statement will state that customers of a Licensee can expect that they will not be subject to the following behaviours from the Licensee or any person acting on their behalf:

- High pressure selling and/or sales techniques;
- Aggressive, intimidating or oppressive behaviour;
- Instigation of proceedings to realise security on a borrowing without previous discussion and notice to the debtor or as a last resort;
- Use of misleading names or a pyramid of names which are deliberately intended to confuse or hide the identity of a Firm; and
- Making false statements about the Firm's status for example stating that it is a charitable non-profit organisation or sponsored by a public or highly reputable body or association.

7.6.2 Debt Management

It is not proposed to introduce rules relating to debt management and debt recovery but rather to state a series of good practice measures. The following are a Licensee's expected systems and controls:

- Licensees will assist their customers to manage their finances through pro-active and reactive controls. The purpose of these controls is to identify causes for concern regarding a customer's creditworthiness and financial vulnerability;
- Licensees should ensure that their customer facing and loan and credit approval employees are sufficiently trained to identify customers who could be in financial stress; and
- Where financial difficulties are identified the Licensee should attempt to address the matter with the customer expediently in order to prevent the matter deteriorating to an unmanageable position.

7.7 Responsible Lending

Customers can expect that where a Licensee provides a lending and/or credit facility then the Licensee must set out adequate details that include the following:

- The customer will be provided an adequate explanation of a loan or credit arrangement;
- The customer will be provided with full details of the terms upon which the provider of the lending or credit facility is prepared to make the advance to the customer; and
- The customer will be provided with details on their rights to cancel.

Consultation Paper Explanatory Note

As part of the pre-contractual arrangements the Licensee should invite and encourage customers to ask questions about an arrangement or facility to ensure that they are fully conversant and in agreement.

7.7.1 Hire Purchase Disclosure Requirements

In addition to the information to be disclosed for all lending, credit and finance arrangements the Class 3 Rules include within the Responsible Lending section that for hire purchase agreements the disclosure to the customer should include:

- Informing the customer that they do not own the goods until the full terms of the agreement have been fulfilled;
- Details of any balloon payments; and
- Details of any default or repossession terms.

7.8 Assessing Creditworthiness

The Licensee's responsibility is to ensure that the outcome of the Affordability Assessment provides a suitable level of confidence that the customer is not over extending their ability to meet a liability.

7.8.1 Conducting the Assessment

An Affordability Assessment should be compiled during the pre-contractual negotiations and on any occasion where the customer requests a roll-over of a fixed term financing arrangement.

The Affordability Assessment should be based on sufficient information obtained from the applicant and/or third parties and enquiries made to substantiate the ability to repay.

The Commission is aware that the nature of lenders and the circumstances in which they lend vary greatly across the industry. For that reason, the Commission is not setting out how an Affordability Assessment should be conducted. Licensees should apply a proportionate and pragmatic approach, however the Affordability Assessment should extend to more than simply ensuring there is sufficient surplus in a customer's income and expenditure.

Respondents to the Discussion Paper provided a range of suggestions for firms to use when compiling and conducting an Affordability Assessment, which can serve as a useful guide. The suggestions provided are included in Appendix E.

The proposal is to permit licensees to decide the degree of information for each Affordability Assessment, providing the selected criteria achieves a decisive analysis and evaluation of a customer's creditworthiness.

➤ *See Appendix E. Affordability Assessment Suggested Criteria.*

“An unemployed person with no assets was given a loan”

Citizens Advice
Guernsey

7.8.2. Affordability Assessment: Procedures

Licencees should develop and implement procedures that describe their process for conducting an Affordability Assessment.

The procedures should describe the requirements, permissible discretions and any other steps considered appropriate to achieve the objective of the Affordability Assessment. The additional steps could entail approval limits, evidential support and managing false or inaccurate data/information.

Where there is more than one Licensee involved in the lending (i.e. credit broker and lender) the Licensee’s procedures should set out the circumstances in which (1) the credit broker may conduct the Affordability Assessment and (2) the lender may rely on such Affordability Assessment.

It is proposed to include in the LCF Law Class 3 Rules that a Class 3 Licensee must be reasonably satisfied that a customer is able to meet their commitment. This obligation extends to loans or credit provided to persons not in employment. For example a pensioner considering equity release. Class 3 Licensees must ensure that the borrower is not over committed and that they have the ability to repay.

➤ See Appendix C *The Indicative Lending, Credit & Finance Law (Class 3 Licensee) Rules 20[XX]*.

7.8.3. Rollover of Loans and/or Credit

It is not proposed to implement a provision or Rule which sets a cap on the number of times a Licensee may roll over a loan or credit facility. Licensees should however ensure that the renewal and/or rollover of loan and credit facilities are justifiable and that customers have not got themselves into a position that actually exceeds their financial capabilities.

The absence of specific regulatory Rules regarding rollovers does not dismiss an expected level of conduct regarding ensuring a customer’s creditworthiness.

7.8.4. High Interest, Short Term, Unsecured Non-Bank Lending

In July 2012 the Commission published its Policy on High Interest, Short-Term, Unsecured Non-Bank Lending.²¹ The Commission intends to continue this policy.

High interest short-term unsecured lending, also known as payday loans, are viewed as those with the highest potential to put customers at most risk financially, due to the high costs and high interest rates which result in the customer falling in to financial difficulties. While it is not possible to restrict the use of UK service providers, the Commission’s policy does enable protection relating to local firms offering these products and also restricts local advertising and marketing.

²¹

<https://www.gfsc.gg/news/article/policy-high-interest-short-term-unsecured-non-bank-lending>
<https://www.gfsc.gg/news/article/policy-high-interest-short-term-unsecured-non-bank-lending>

*“TV Advert
banned for
implying 5,833%
APR was
‘irrelevant’*

<http://www.bbc.co.uk/news/uk-26950172>

7.9. Financial Promotions & Marketing

A Licensee shall take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him or her to make a balanced and informed decision.

7.9.1. Financial Services Financial Promotions & Advertising Principles for Licensees

The Class 3 Rules will:

- Prohibit or restrict the manner in which licensees or non-licensed businesses issuing promotions in the Bailiwick of Guernsey may promote any category or description of financial products and services whether by advertisements, promotional and marketing material issued to the public;
- Specify the circumstances in which a financial services product and/or service may be issued and prohibit or restrict the promotion of not complying with the Rules; and
- Impose requirements as to the form and content in relation to any financial services products and services.

7.9.2. Online & Social Media Promotions

The proposed controls and measures include online and electronic communication, including promoting financial products via social media.

The overriding control is to present fair, clear and not misleading information. Firms using social media promotions should consider the wording of a social media message and ensure it presents a balanced message. A balanced message is one which provides customers with an appreciation of a product or service and the associated risks. A limitation of characters should not serve as a reason to omit risk warnings in a message or restrict information about the product or service.

Consultation Paper Explanatory Note

Social media is increasing in use, however in some instances there are limitations to the amount of characters that can be used. The proposal is not to implement controls that constrain use by requiring extensive obligatory wording that prevent or limit sufficient characters to form a coherent message.

If a balanced view cannot be presented within the character limit then the medium should not be used to advertise.

7.9.3. Annual Percentage Rate (“APR”)

It is not proposed to implement a Rule regarding inclusion of an APR in all advertising and financial promotions.

Consultation Paper Explanatory Note

The omission of a Rule does not dismiss a Licensee’s obligation to include it as it is expected that licensees will display the APR as part of the Principle to fully inform customers of their products and services. It is also acknowledged that in some instances Licensees are already obliged to quote the APR as a requirement of a trade or industry code.²²

Consultation Paper Explanatory Note

Personal Contract Plans (“PCP”)

For the benefit of clarification a PCP arrangement is included in the scope of the proposals.

A PCP loan is one that has low periodic repayments often with a deposit made at the commencement of the loan. PCP’s are most frequently used for car purchases. The loan usually includes the arrangement for when the agreement ends. There are usually a number of options available, including returning the asset (car) purchased, payment of a final amount or refinance.

A PCP includes a guaranteed minimum future value (“GMFV”) final payment, also known as a balloon payment, after which ownership of the asset is acquired.

A PCP is sometimes promoted as 0% APR because effectively until paid for, the asset (car) is hired.

The controls and measures proposed include transparency of the arrangement, including notification of the interest, the GMFV and terms relating to repossession if the customer defaults on loan payments.

²² The Association of Guernsey Banks (“AGB”) has published a non-statutory code outlining the requirements for Association members in respect of deposit advertisements.

“Payday lender complaints rise threefold as debt worries grow”

*Financial Times
13 June 2017*

7.10. Right to Cancel

The proposal is to introduce a statutory right that borrowers are able to cancel, without any penalty, within 14 calendar days for specific lending and credit facilities.

7.10.1. Provisions in Respect of a Right to Cancel

Applicable lending and credit contracts that include a right to cancel after 14 calendar days are:

- A contract that involves the provision of a financial service or product by a Licensee other than the identified exemptions;
- Debt restructuring; and
- Credit broking.

The Rules will specify that the right to cancel only applies to the credit arrangement and not the purchase of any underlying asset which may be financed through the credit arrangement. However where, from the consumer’s perspective, the financing and the purchase of the underlying asset are interlinked (e.g. the purchase of a car via finance arranged by the car salesperson) then the purchase of the underlying asset may also be cancelled, with any deposit returned to the borrower.

Consultation Paper Explanatory Note

Whilst the Commission will not have the power to require the amendment of a term of a particular contract, or template contracts, the level of complaints and any indication that the Licensee is benefitting from unfair bargaining power may be taken into account by the Commission when considering continued fitness and propriety.

7.10.2. Right to Cancel Licensee & Customer’s Obligations

The 14 day period is intended purely as the period during which a customer may give notice to cancel an arrangement. The 14 day period is not intended to include time to restore or return to the same position as at the outset of the arrangement.

Providing time to consider is different to the right to cancel. Pre-contractually, the customer needs time to be able to consider the offer before committing to the facility. The right to cancel occurs once the lending or credit contract is entered into.

It is the customer’s responsibility to instigate the right to cancel and notify the service or product provider.

The terms of a right to cancel should include the conditions necessary to satisfactorily cancel and any consequences occurring through not correctly exercising the conditions.

7.10.3. Exercising the Right to Cancel

When a customer exercises their right they could be liable for some costs. These could be expenses or charges for the service during the 14 day right to cancel period. The customer is required to pay such costs provided they are justifiable, in proportion to the product and service use and disclosed prior to concluding the contract.

The onus is upon the service/product provider to evidence the costs.

It is not intended to allow any penalty fees to be charged when a customer exercises their right.

The Rules will specify that customers are allowed a period of 14 clear calendar days during which they can exercise their right to cancel.

Calendar days includes all weekends and statutory holidays e.g. bank holidays and festive days. Although the period includes non-business days the customer must be allowed 14 clear days, it is not acceptable to include delays through delivery.

7.10.4. Right to Cancel Exemptions

The following are exempt from providing a right to cancel obligation:

- Short term in case of need facilities including overdrafts;
- Relationship managed client portfolios;
- Facilities supported by security; as the time involved and frequent use of legal or independent advice is considered sufficient rationale for exclusion; and
- Contracts where the customer has commenced use of an agreement or taken immediate advantage of the contract purpose.

8. Minimum Criteria for Licensing

This section outlines the LCF Law licensing criteria proposals.

8.1. Minimum Criteria for Licensing

It is proposed that the Commission will not grant an application for a licence unless it is satisfied that the statutory minimum criteria for licensing are fulfilled.

The onus will be on the applicant to evidence satisfaction of such criteria and satisfy the Commission that the minimum criteria for licensing have been met.

The minimum criteria for licensing for a LCF Licensee will be consistent with the requirements of the Principal Regulatory Laws, including the draft minimum criteria for licensing contained in the Revision of Laws Project.

The minimum criteria for licensing for an LCF Licensee includes:

- Conducting business with integrity and skill;
- Acting with prudence and integrity;
- Acting in a professional manner;
- Maintaining obligatory capital requirements;
- Maintaining obligatory liquidity requirements;
- Staffing;
- Systems and controls; and
- Acting in accordance with the Principles of Conduct of Finance Business and any rules, codes, guidance, principles and instructions issued under the LCF Law.

8.2. Fit & Proper Test

In addition to the minimum criteria for licensing the Commission is proposing that a fit and proper test will be applied to those persons who, whether or not they are directors of the business, are responsible (under the immediate authority of the directors) for the conduct of lending and credit activities (to be known as the “Regulated Activities Officer”).

9. Supervision

This section outlines the intended regulatory supervisory proposals.

9.1. Approach to Supervision

Supervision of licensees will be conducted using a risk based methodology. In 2013 the Commission implemented PRISM (**P**robability **R**isk and **I**mpact **S**yste**M**). Under the Lending, Credit & Finance Law all Classes 1, 2 & 3 will be included in the PRISM supervisory model.

The Commission has published an explanatory document on PRISM that describes how financial services will be supervised using PRISM on its website.²³

9.2. Reporting

Currently NRFSBs are not required to submit data to the Commission other than the Financial Crime annual return. In order for the Commission to fulfil their supervisory responsibilities it is proposed under the Lending, Credit & Finance Law Licensees will be required to submit details and information on their activities.

Licensees will report using the Commission's online submissions portal.

9.3. Financial Crime Reporting

Classes 2 Licensees will be required to complete the Financial Crime Return following the Lending, Credit & Finance Law's implementation.

Consultation Paper Explanatory Note

The Financial Crime return satisfies the Commission's AML/CFT reporting requirements and therefore it is not proposed under the Lending, Credit & Finance Law to add any additional routine reporting to the existing requirements.

9.4. Class 1 & 3 Reporting

Class 1 and 3 Licensees will be required to provide periodic reporting of the consumer lending and credit element activities and, if applicable, data specifically relating to alternative lending products and services.

9.5. On-Site Supervisory Visits

The Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008 Law currently includes provision for the Commission to conduct site visits and does not require change to accommodate the Lending, Credit & Finance Law. However the definition of "regulatory Law" in the Financial Services Commission (Bailiwick of Guernsey) 1987 will require updating by regulation.

²³ [Risk Based Supervision in Guernsey](#)

9.6. Class 1 and Class 3 Data Reporting Requirements

The following table is an indication of the likely information that will be sought from Class 1 and Class 3 Licensees.

Please note that a customer is the common term used. It is acknowledged that some businesses use alternative descriptions such as business relationships and/or client.

Information to be Reported	
What was the Licensee's turnover from regulated activities?	
What was the Licensee's net profit or profit from regulated activities?	
How many customers does the Licensee have?	
Customer credit risk profile.	<i>The lending, credit and finance credit risk rating determined by the Licensee.</i>
Number of Crowdfund and/or P2P Funders.	<i>Number of crowdfund and/or P2P funders per category e.g. General Funder, Capital Reserve Category 1 & Capital Reserve Category II</i>
Number of new customers during previous 12 months.	<i>New business only statistics.</i>
Sources of new business.	<i>Where business originates from. i.e. internet, face to face etc.</i>
Customer origins.	<i>Customer location statistics</i>
Lending.	<i>Number of current customers and the total amount lent to each category of customer.</i>
Product.	<i>Type of loan, interest rates, term of borrowing and number of secured and unsecured advances.</i>
Bad debts.	<i>Breakdown of number and value and the level of debt risk.</i>
Audited or unaudited accounts.	<i>To be submitted online.</i>

9.7. Supervision of Financial Promotions Compliance

In the interests of protecting lending, credit and finance customers and the reputation of the Bailiwick it is essential that non-compliant financial promotions are either amended or withdrawn speedily.

The Commission will not act as approver for lending and credit financial promotions. In the event that the Commission becomes aware of a Licensee not complying with the promotional controls and measures the Commission might consider the following actions:

- Contacting the Licensee, informing them of the area(s) of concern and seeking correction; and
- In exceptional circumstances consider implementing supervisory measures to prevent occurrence or if it appears necessary the proportional firmer regulatory action.

9.8. Application Fee and Annual Fees

The revised legislative and regulatory framework presents differing levels of supervisory responsibilities. The new framework includes existing licensees and businesses not currently subject to regulatory supervision. For example the emergence of FinTech presents new challenges in interpreting the business model, particularly where the new entrants are using advances in technology to deliver alternatives to the traditional customer experience, for example the use of app products and services. These categories of activities can be of a highly complex nature necessitating a heightened level of analysis in order to make an informed decision.

Each of these factors will be considered in due course and proposed fees will be included in a future consultation regarding the Commission's fees.

10. Implementing the New Framework

This section sets out our approach on the transition arrangements for existing NRFSBs, existing licensees and new LCF Licensees.

10.1. Transitional Arrangements

We want to make sure that the transition from the NRFSB regime to the Lending, Credit & Finance Law's requirements is as straightforward as possible. The intention is not to provide an over bureaucratic and administrative environment that necessitates excessive changes to a Firm's existing practices.

There will be an element of change and therefore we are proposing a process that provides firms with time to adjust to the new requirements. However we also need to ensure that during the transitional period firms remain accountable and responsible as per their existing legal and regulatory obligations. This section outlines the proposed process to migrate from existing legislative obligation to those of the Lending, Credit & Finance Law.

10.2. Transitional Period for Submitting an Application

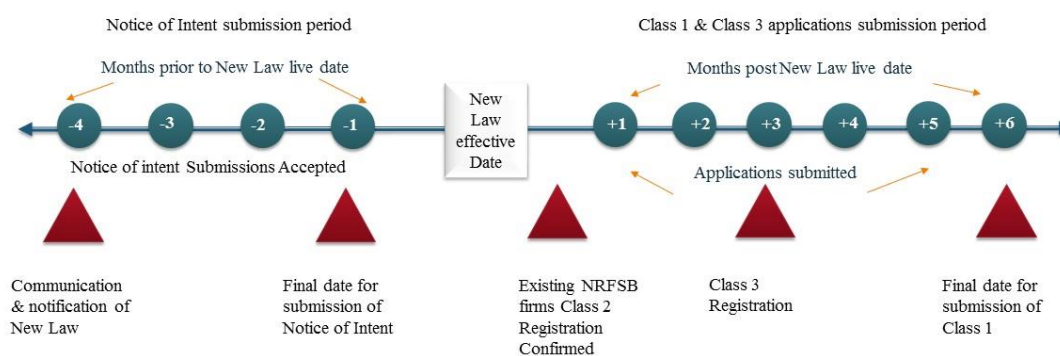
We propose to allow firms a period of time to prepare and adjust to the new requirements and amend existing processes and procedures prior to submitting an application.

The proposal is to allow a staggered period with the allowed submission time relative to the circumstances of the Firm, for example:

- All existing NRFSBs, regulated firms and other businesses affected by the Lending, Credit & Finance Law's scope, will be required to provide a Notice of Intent to submit an application stating which class(es) they will be applying for. Final date for submission is 30 working days prior to the Lending, Credit & Finance Law becoming effective;
- All existing NRFSB firms will be confirmed as Class 2 AML/CFT by the Commission upon receipt of the hard copy Notice of Intent;
- Firms that already have NRFSB registration or are regulated under one of the Principal Regulatory Laws but require a Class 3 Consumer Lending, Credit & Finance Licence will be expected to apply within 3 months of the Lending, Credit & Finance Law's effective date;
- Firms that already have NRFSB registration or are regulated under one of the Principal Regulatory Laws but require a Class 1 Alternative Financial Products and Services Licence, will have a maximum of 6 months before submitting an application;
- Existing firms carrying on business in the Bailiwick prior to the Lending, Credit & Finance Law's effective date, which are new to regulation, will be provided a maximum of 6 months before submitting an application for Class 1 and 3 months for Class 3; and
- Firms that begin operating after the commencement date of the Lending, Credit & Finance Law will submit an application under the new arrangements and must not begin to operate until registrations or licenses under the appropriate Classes have been issued by the Commission.

10.3. Transitional Period Timeline for Submitting an Application

The diagram below depicts the proposed transition timeline.



10.4. Confirmation of Submission of a Notice of Intent

The Commission will confirm receipt of the Notice of Intent, which will serve as registration of their Class 2 AML/CFT and act as an interim authorisation pending receipt of the application, and required information for any other Classes.

If a Firm requires Class 2 only then a Lending, Credit & Finance Law licence will be issued as at the date the Lending, Credit and Finance Law becomes effective.

If a Firm intends to apply for other Classes then the Commission will acknowledge the submission and monitor for submission of the application together with the accompanying documentation required for the additional Class or Classes, (including, if applicable, Personnel Questionnaires (“Form OPQs”) for all personnel requiring submission under the Lending, Credit & Finance Law’s requirements).

10.5. Failure to Submit a Notice of Intent

If a Firm does not register a Notice of Intent, then it must cease carrying out any of the activities specified under the Lending, Credit & Finance Law with effect from the date the Lending, Credit & Finance Law becomes effective.

10.6. Public Record

Once an application has been received and analysed the Commission will continue to publish details on its website of a Licensee’s title, Commission reference, contact address, principal address and the type of financial services business carried out as specified in the Class Schedules.

Firms are encouraged to submit their applications at their earliest opportunity in order that they may inform consumers of their licensing status.

10.7. Class 3 Consumer Lending, Credit & Finance Licence Transitional Arrangements

The Class 3 Rules which relate to products and services will apply to all contracts made on or after the date the Lending, Credit and Finance Law becomes effective.

With respect to contracts entered into prior to this date:

- If a Class 3 Licensee is satisfied that the continued lending is affordable based upon the customer's repayment history, a full Affordability Assessment can be waived and replaced by an explanatory note. However, where a customer seeks to refinance a contract which was entered into prior to the date the Lending, Credit and Finance Law becomes effective an Affordability Assessment should be undertaken;
- The Obligation to treat a customer fairly applies regardless of when the contract was entered into; and
- Complaint handling. There will be no need to provide information regarding the Licensee's complaint procedure to existing customers (unless requested). The Commission expects that complaints arising or continuing on or after the date the Lending, Credit and Finance Law becomes effective will be dealt with in accordance with complaint procedures which are compliant with the Class 3 Rules.

Within 3 months of the LCF Law becoming effective Lenders should ensure that any credit broker relationships entered into prior to the date the LCF Law becomes effective comply with the Class 3 Rules.

Consultation Explanatory Note.

It is not necessary for a retrospective review to be conducted for existing borrowers. The Affordability Assessment review and completion of an explanatory note of existing borrowing is only required when a trigger event spurs a need to review a customer's position.

10.8. Banks

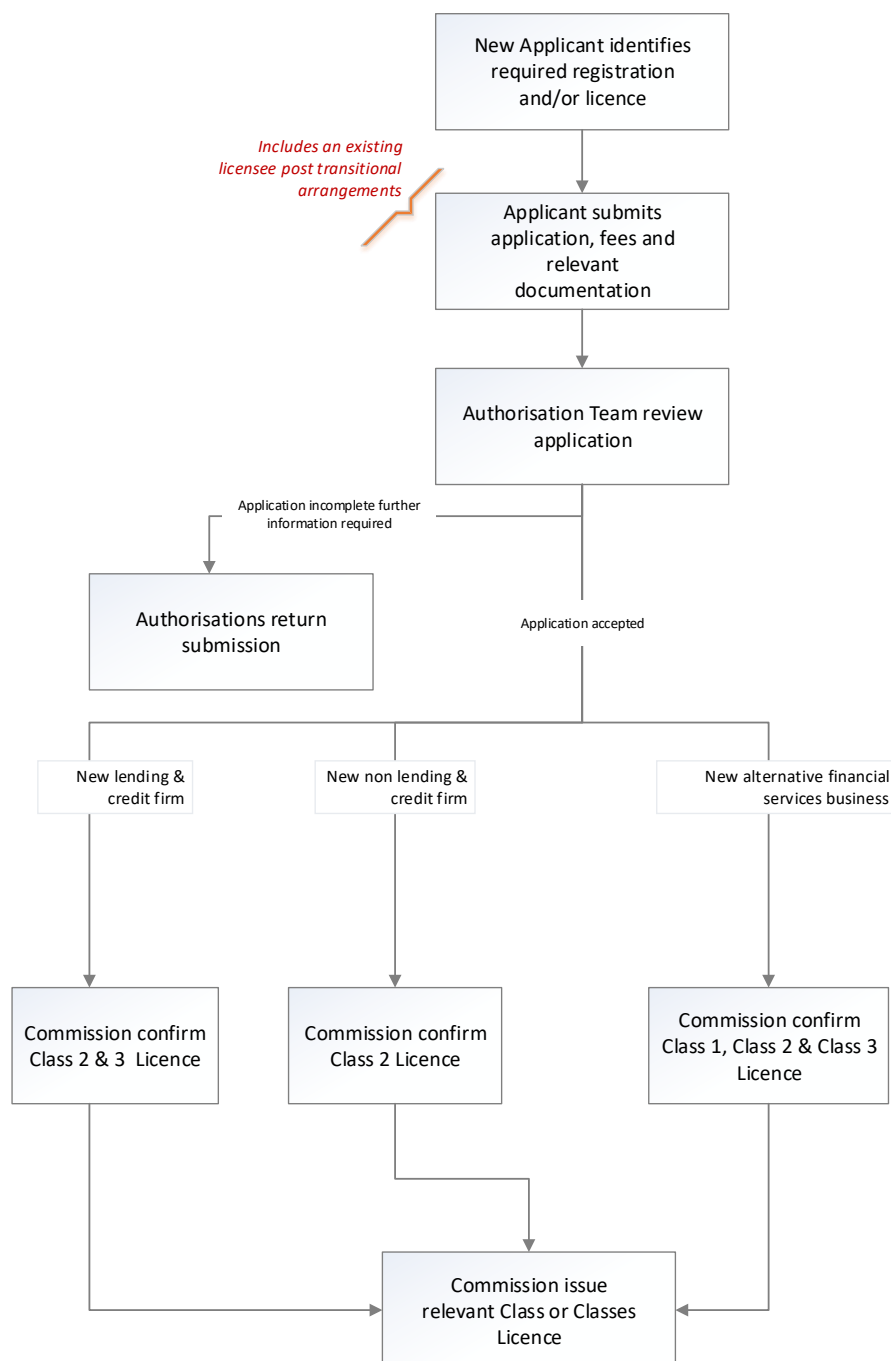
It is proposed that Banks will be required to comply with the relevant consumer lending and credit requirements.

Consultation Explanatory Note.

A Bank will not need to apply for a Class 2 AML/CFT Licence because they are already regulated under the Banking Supervision (Bailiwick of Guernsey) Law, which includes an obligation for them to comply with the AML/CFT Handbook's rules and regulations for all their financial services business.

10.9. New Applications Process

All new applicants will be required to submit an application in accordance with the requirements of the Lending, Credit & Finance Law. The following diagram depicts the application process.



10.10. Information and Documentation to be provided with New Applications

A new application will be introduced to accommodate the requirements of the Lending, Credit Finance Law.

It is proposed to implement one application form which is divided in to sections comprising of information and requirements that will be common to any category of applicant and the details and information specific to each class. Applicants will be required to complete the respective sections and provide the details and documents relative to the Class or Classes.

The proposed information is listed below:

10.10.1. All Applications

- A completed Lending, Credit & Finance Law Application;
- Fees for the Class or Classes applied for; and
- Form OPQs or OAs for each natural person who is a beneficial owner, controller, partner, director, company secretary, money laundering reporting officer or senior officer.

10.10.2. Class 1. Alternative Financial Services & Products

- Operational procedures specific to the operating of the alternative financial product or service;
- Lending and credit controls in respect of the consumer who both borrows and/or invests in a P2P and/or loan crowdfund;
- Proposed advertisement or invitation to P2P investors. Full details of the P2P and/or loan crowdfund proposition;
- P2P Investor procedures;
- Lending and credit capitalisation processes and procedures;
- Details of P2P financial contingency and bad debt arrangements; and
- Details of the proposed internet platform or other delivery channel methods.

When a Firm uses FinTech to provide lending and credit financial products and services the following additional requirements are required:

- Confirmation that the method deployed meets the legal and regulatory requirements described under Class 2;
- An explanation of the alternative technological method employed;
- A statement of the tangible benefits to the consumer; and
- Assurance that an assessment of the operational risks has been undertaken and those identified through the use of the technology have been adequately managed or mitigated.

10.10.3. Class 2. AML/CFT

- Business Risk Assessment;
- Business organogram;
- 3 year business plan;
- Copy of most recent audited accounts or management accounts if audited statements are over 6 months old; and
- Copies of the Firm's anti-money laundering policy and procedures.

10.10.4. Class 3. Consumer Lending, Credit & Finance Protection

- Lending, credit and finance operational procedures;
- Business continuity plans and procedures;
- Lending and credit operational procedures;
- Copy of the Firm's lending and credit controls e.g. risk management, bad and doubtful management, risk audit controls, approval processes and monitoring;
- Lending and credit approval procedures;
- Lending and credit debt governance procedures; and
- Details of proposed or existing market.

Consultation Paper Explanatory Note

A business applying for more than one Class will be required to provide all the information listed for each Class applied for. For example an alternative financial service business will be required to provide all information listed under Class's 1, 2 & 3.

11. Consultation Questions

Question 1

Do you have any consultation feedback on the proposed legislative scope and structure of the Lending, Credit & Finance Law?

Question 2

Do you have any comments on the indicative proposals relating to the Class 1 Rules of the Lending, Credit & Finance Law?

Question 3

Do you have any comments on the indicative proposals relating to the Class 2 Rules of the Lending, Credit & Finance Law?

Question 4

Do you have any comments on the indicative proposals relating to the Class 3 Rules of the Lending, Credit & Finance Law?

Question 5

Do you have any comments on the proposals relating to the minimum licensing criteria?

Question 6

Do you have any comments on the proposals relating to proposed transition process?

Question 7

Do you have any comment or suggestion on content for rules relating to financial resource requirements?

Question 8

Are there any other alternative financial products and services that the Commission should consider in addition to those included in the Consultation Paper?

Question 9

Do you have any comment on the AML/CFT Platform proposal?

Question 10

Do you have any comment on the Electronic Agent proposal?

Question 11

Do you have comment on the Green Investment proposal?

Question 12

Do you have any further comment or suggestion on the topics raised in this Consultation Paper?

Appendix A. Principles of Conduct of Finance Business

The Principles are a general statement of fundamental obligations that firms should comply with under their regulatory responsibilities. The Principles include a brief description of their intended purpose, however the Principles are only applicable to businesses licensed or registered with the Commission and they do not include any underlying description of the Commission's expectations of how a Firm applies each Principle. The proposal is to develop the provisions contained in the Principles as the basic fundamental criteria for lending, credit and finance rules and guidance. It is proposed to expand the current descriptions with clear statements of what is expected by all consumer lending, credit and finance providers. It is envisaged that this will provide clarity on the standards and behaviour expected and promote consistent application by the firms.

The GFSC Principles of Conduct of Finance Business	
Integrity	
	A Licensee should observe high standards of integrity and fair dealing in the conducts of its business.
Skill, Care & Diligence	
	A Licensee should act with due skill, care and diligence towards its customers and counterparties
Conflicts of Interest	
	A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the financial institution would place his or her interests above its own, the financial institution should live up to that expectation.
Information about Customers	
	A Licensee should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives, which might reasonably be expected to be relevant in enabling it to fulfill its responsibilities to them.
Information for Customers	
	A Licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him or her to make a balanced and informed decision. A Licensee should similarly be ready to provide a customer with a full and fair account of the fulfillment of its responsibilities to him or her.
Customer Assets	
	Where a Licensee has control of, or is otherwise responsible for, assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibilities it has accepted.

Market Practice
A Licensee should observe high standards of market conduct, and should also comply with any code of standard as in force from time to time and issued or approved by the Commission.
Financial Resources
A Licensee should ensure that it maintains adequate financial resources to meet its business commitments and to withstand the risks to which its business is subject.
Internal Organisation
A Licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the licensee employs staff or is responsible for the conduct of business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.
Relations with GFSC
A Licensee should deal with the Commission in an open and co-operative manner and keep the Commission promptly informed of anything concerning the Licensee, which might reasonably be expected to be disclosed to it.

Appendix B. The Indicative Lending, Credit and Finance Law (Class 1) Rules 20[XX]

To aid understanding of the legislative proposals we have drafted a set of indicative Rules in the following Appendix.

Throughout these draft Rules the Commission has inserted “Consultation Paper Explanatory Notes” and “Guidance Notes”.

The Consultation Paper Explanatory Notes are inserted in order to provide an explanation for the reader of the rationale for a statement, or for additional information. The Commission does not intend that these notes form part of the *Class 1* Rules.

The Guidance Notes are inserted in order to provide supporting information specific to a point or topic. The Guidance Notes will form part of the *Class 1* Rules.

In order to distinguish between the two types of supporting notes, the Consultation Paper Explanatory Notes are duly titled as such and included in grey shaded text boxes.

Consultation Paper Explanatory Note.

Example

The Rules are only indicative and will subject to a formal consultation which will be undertaken in due course.

Appendix B. The Indicative Lending, Credit and Finance Law (Class 1 Rules 20[XX])

Introduction, Principles, Definitions

These Rules may be cited as the Lending, Credit and Finance Licensee (Class 1) (Conduct of Business) Rules 20XX (*“The LCF Class 1 Licensee Rules”*) and shall come into operation on [Day Month Year].

The *LCF Class 1 Licensee Rules* apply to all *Class 1 Licensees* unless specifically agreed otherwise by the Commission in accordance with Rules [X].

Rules Relating to Corporate Governance and Senior Management Responsibility in respect of Regulated Activities

1. The Board and/or senior management and/or Regulated Activities Officer responsible for Regulated Activities must ensure that there are effective and appropriate policies, procedures and controls, as described at Rule (X), in place which provide for the Board and/or senior management and/or primary persons to meet their obligations under the Law and these Rules.
2. The Board and/or senior management and/or Regulated Activities Officer responsible for the Regulated Activities must retain responsibility for the outsourcing of any of the *Class 1 Licensee’s* lending and credit functions.

Compliance Arrangements

3. The Board has effective responsibility for compliance with the Law, the Class 1 Rules and any rules or guidance relating to *Class 1 Licensees* made under the Law. It is the responsibility of the Board and/or senior management and/or Regulated Activities Officer to ensure that the Regulated Activities are periodically reviewed and that the Licensee complies with the Class 1 Rules.
4. Where the Licensee outsources their Regulated Activities or any function of their Regulated Activities to a third party (either within the Bailiwick or overseas, or within their group or externally) the Board and/or senior management and/or Regulated Activities Officer remain ultimately responsible for the lending and credit products and services provided by the Licensee.
5. A *Class 1 Licensee* must file with the Commission its compliance return annually in the format defined in Schedule [] and within the timeframe stated in Rule [X].

Conduct of Business

Fitness and Propriety

6. A *Class 1 Licensee* must observe [*the Principles*] in carrying on its Regulated Activities

Record Keeping

7. A *Class 1 Licensee* must keep and properly maintain records relating to its Regulated Activities and transactions and all other activities affecting its Regulated Activities in a form capable of prompt reproduction in English and capable of being checked or audited, so as to demonstrate compliance with the regulations and Rules.
8. A *Class 1 Licensee* must make such records available at any time to the Commission, its employees and any person authorised by it for any purpose whatsoever.
9. *Class 1 Licensees* must review, at least annually, the ease of retrieval of, and condition of paper and electronically [digital] retrievable records including telephone records and other system recordings.

Record Retention

10. As part of their operational controls *Class 1 Licensee* must establish file and record retention periods which are appropriate and consistent with the products and facilities offered.

Consultation Paper Explanatory Note

It is proposed to include file retention periods that are in line with General Data Protection Rules.

Crowdfund & P2P Agreements – Record Retention

11. A Crowdfund Platform must retain a copy record of all agreements (CF Borrower and CF Lender), the Category of Crowdfund and P2P Funder Certification and the Affordability Assessment conducted to confirm the certification.

Destruction of Records or Files

12. Without limiting any other obligation under the Lending, Credit & Finance Law or the rules and regulations made under it or under the laws of Guernsey, a *Class 1 Licensee* must ensure that it and its directors and employees and other persons to the extent that they are under its power and control will not, without the express consent in writing of the Commission, amend, destroy, make further entries in, or erase any record or file (whether in documentary or electronic form) which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under the Lending, Credit & Finance Law or the rules and regulations made under it.

Complaints

13. Every *Class 1 Licensee* must have in operation and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of complaints relating to the *Class 1 Licensee's* Regulated Activities.
14. CF Lenders and CF Borrowers must be informed:
 - a) Of what to do in the event they have a complaint; and
 - b) That they may complain to the Channel Islands Financial Ombudsman. ("CIFO").
15. *Class 1 Licensees* must maintain records of all lending and credit complaints.
16. The *Class 1 Licensee's* complaints handling policy must be available on request.

Client Assets

17. Details are excluded as the Commission are proposing to issue details on client assets separately.

Conflicts of Interest

18. *Class 1 Licensees* must establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organisation of the *Class 1 Licensee* and the nature, scale and complexity of its Regulated Activities.
19. Where a *Class 1 Licensee* is a member of a group, the policy must also take into account any circumstances, of which the *Class 1 Licensee* is or must be aware, which may give rise to a conflict of interest arising as a result of other members of the group.
20. The content of a Conflicts of Interest Policy must include the following:
 - a) It must identify, with reference to the specific regulated activities carried out by or on behalf of the *Class 1 Licensee*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interest of one or more customers; and
 - b) It must specify procedures to be followed in order to manage such conflicts.
21. *Class 1 Licensees* must ensure that any procedures provided for in Rules [X] are designed to ensure that [relevant persons] engaged in Regulated Activities involving a conflict of interest carry on the Regulated Activities at a level of independence appropriate to the size and organization of the *Class 1 Licensee* and the nature, scale and complexity of the business and of the group to which it belongs.

Class 1 Rules Explanatory Note

It is acknowledged that some *Class 1 Licensees* have a limited number of personnel. The limited numbers can impair the Licensee's ability to implement levels of segregation. The Rule provides for these instances by allowing a *Class 1 Licensee* to design their conflicts of interest procedures in line with the business size, number of employees, senior management, skill and experience.

22. For the purposes of Rule [X] the procedures to be followed and the measures to be adopted must include such of the following as are necessary and appropriate for the *Class 1 Licensee* to ensure the requisite degree of independence / that conflicts of interest are managed appropriately]:

- a) Procedures to prevent or control the simultaneous or sequential involvement of a relevant person in the *Class 1 Licensee's* lending and credit processes from impairing the proper management of conflicts of interest.
 - b) Procedures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out the sales and servicing of lending and credit facilities.
 - c) Procedures for the recording, the review and the approval of conflicts of interest.
 - d) Procedures for recording and approving that there is no conflict of interest in respect of the receipt and acceptance of any gifts or inducements.
23. The policy will include instances where the lending *Class 1 Licensee* has beneficial financial interest in another party.

Annual Compliance Return

24. A *Class 1 Licensee* must file annually with the Commission a compliance return in the format described. The annual return will contain declarations that:
- a) They are complying with laws, regulations and rules of the home jurisdiction; and
 - b) They are complying with the law, regulations and rules of the jurisdictions in which they are operating.

Class 1 Rules Explanatory Note

The place of operation includes the crowdfund and P2P head office, primary place of business, point of contact office and where the server is based.

Requirement for Audit

25. To be consulted upon.

P2P Platform and Crowdfund Platform Advertising and Promotions (including website)

26. Subject to Rule [X] below the *Class 1 Licensee*, if responsible for promotion and advertising, must ensure that any materials issued:
- a) Use plain and intelligible language and be clearly recognisable as an advertisement.
 - b) Contain information that is clear, fair, reasonable and not misleading or likely to be misunderstood.
 - c) Specify the name of the *Class 1 Licensee* making the promotion or on whose behalf the promotion is made.
 - d) Contain the regulatory status of the *Class 1 Licensee* on all advertising and promotional communications.
 - e) Contain sufficient information, to enable an informed assessment of the financial product(s) or service(s) to which it relates to be made.
27. Advertising and financial promotional material that comprise or solely consist of the *Class 1 Licensee's* name, logo, contact details and a statement that finance is available, or

promotions that are a brief factual description of the *Class 1 Licensee's* product or service, do not need to comply with Rule [X].

28. Rule [X] points (a- e) are applicable to all promotional and advertising controls issued and published online and/or by electronic communication, including promoting financial products through the use of social media channels.
29. The *Class 1 Licensee* is responsible for all financial promotions and advertisements that they publish or issue. The *Class 1 Licensee* cannot delegate approval for financial promotional material or advertisements relating to Regulated Activities to a third party.
30. The website must inform consumers of their position relating to financial services compensation schemes and whether there is or is not any protection offered.
31. The website must include a risk warning alerting consumers to the risks associated with crowdfunding.

Consultation Paper Explanatory Note

It is acknowledged that registering agreement to continue is not confirmation that the customer has indeed read and understood the risk warnings, however it serves as evidence of alerting the customer.

32. The crowdfund and P2P website must:
 - (i) Comply with the advertising and promotions controls Rules [X – X];
 - (ii) Not contain any statement, promise or forecast which is untrue, likely to be misunderstood or misleading;
 - (iii) Not be designed in such a way as to distort or conceal any relevant subject;
 - (iv) When seeking investment be clearly recognisable as an advertisement;
 - (v) State that repayment of the capital value is not guaranteed;
 - (vi) Include a statement alerting consumers to the risk that promoted and market financial returns are not guaranteed and that there is a risk of losses occurring;
 - (vii) Promotions must not compare the product to savings accounts or banking arrangements (create impression of security);
 - (viii) Explain the balance of risks to the CF Lender against potential reward;
 - (ix) Provide equal prominence to the risks and rewards of the investment ;
 - (x) Include whether there is an ability for the CF Lender to realise their funding prior to expiry of time and the terms of any such means to realise their funding;
 - (xi) Not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to;
 - (xii) Not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance; and

- (xiii) Take all reasonable steps with a view to ensuring that any form of promotion or advertising in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.
- 33. *Class 1 Licensee* must ensure that it is clear to the consumer which type of crowdfunding is offered.
- 34. *Class 1 Licensees* must display the information stated in the Crowdfunding Customer Transparency Rules and guidance as set out in Rule [X].

Relationship with Funder – On-boarding

- 35. Funders make a declaration confirming that they understand that their investment does not fall within the scope of the Guernsey Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance 2008 and accordingly any loss of investment is not eligible for compensation under that Ordinance.
- 36. *Class 1 Licensees* must clearly distinguish each type of funding (ie equity or debt) in the website menu and segregate the two services making it clear which website pages and information pertaining to each category.
- 37. The *Class 1 Licensee's* crowdfunding website must include and record confirmation that the CF Lender and/or CF Borrower has read and understood the risk warning (which must contain the information set out at [] above and that they agree to continue to access the service.
- 38. The crowdfunding website must display the same information from commencement of the service until its fulfilment other than for the following permissible exceptions:
 - (i) Material change to information that is either incorrect, untrue or misleading;
 - (ii) Subject to an instruction for change by legal or regulatory authorities; and
 - (iii) Updates to amount pledged.

Class 1 Rules Guidance

When changes are made to the website it must include a note stating that the site has been updated, date of update and what has changed or been amended.

Material changes exclude typographical correction. Examples of what could be construed as a material change is an update to published risk warnings.

- 39. Committed CF Lenders must be made aware of any significant change and their confirmation to continue acquired within ten business days of the change occurring.

Class 1 Rules Guidance

Instances where the CF Lender's confirmation has not been obtained within ten business days must not be construed as tacit agreement. Licensees must consider it to be the opposite and implying that the CF Lender does not agree to continue to invest or lend.

Licensees can elect to display on their website a notice that CF Lender agreement to material changes is sought and the day by which agreement or rejection is required (i.e. start and finish dates of the ten business day period).

- 40. *Class 1 Licensees* must maintain regular oversight of the crowdfund website and ensure it is current and accurate:

- (i) State the expected and actual default rates on past and future performance;
- (ii) Include a description of the assumptions upon which expected future returns have been based;
- (iii) Include a statement that CF Lenders take independent tax advice. The *Class 1 Licensee* must obtain confirmation that the CF Lender accepts that any potential tax liability is their responsibility;
- (iv) A description of the *Class 1 Licensee's* procedures for managing late repayments, defaults and bad debts;
- (v) Details of the procedure on how withdrawals can be made, including how the CF Lender can access their funds before the end of the P2P agreement;
- (vi) A description of the assessment process for Recipients, including the creditworthiness and any ranking given to a Recipient regarding their potential liability; and
- (vii) A description of likely returns including any fees or commissions deducted.

Crowdfunding Customer Transparency Requirements

41. All materials issued in relation to the funding of the Recipient must:

- (i) State the full name of the Recipient, its jurisdiction of incorporation and incorporation number;
- (ii) State the business activities, purpose of the fund raising, any previous or current funding taking place of a similar nature;
- (iii) State the full names and positions of the body corporate's board of directors (or senior management and/or controllers' equivalent);
- (iv) Notify Funders of the cash balance proposed to be maintained in relation to bad debt provision;
- (v) State the target level of funding sought;
- (vi) State the start and final date during which Cf Lenders can participate;
- (vii) Have in place a business plan on the purpose and intentions of the Recipient;
- (viii) Publish details of whether any other funds have been raised or are intended to be raised and from whom;
- (ix) Publish trading information and/or financial statements on the body corporate(s) seeking the funding;
- (x) States amounts pledged (see website requirements regarding updates);
- (xi) Provide a crowdfund loan or investment document that fully details all the material the terms of investment / loan including the offer, price, risks, interest payable, duration of the loan, security; and
- (xii) Stipulate the maximum any CF Lender may provide.

Crowdfund & P2P Disclosure Requirements

42. A *Class 1 Licensee* providing crowdfund and P2P Platforms are required to include the following material facts on the webpages or any accompanying document detailing the proposition offered to the CF Lender and the CF Borrower:
- a) The terms of the funding;
 - b) Price;
 - c) Risks;
 - d) Interest payable;
 - e) Duration of the loan;
 - f) Security held or to be obtained;
 - g) Anticipated return including any forecasts upon which the likely return is stated;
 - h) Individual limits of investment or lending;
 - i) Customer rights attached to the investment or lending;
 - j) Fees; and
 - k) Exit or cancellation obligations or restrictions.

Crowdfunding Providers GFSC Transparency Requirements

43. *Class 1 Licensees* will be required to provide data on their financial resources when applying for licensing.
44. *Class 1 Licensees* on an annual basis will be required to provide the Commission with data on the loans granted, outstanding, repaid and those that are either in default or at risk of default.
45. *Class 1 Licensees* will be required to notify the Commission of any adverse liquidity issues or significant complaints regarding any previous loan crowdfunding and peer to peer facilities.
46. *Class 1 Licensees* must disclose to the Commission any adverse findings identified by the accountants or auditors of any of the companies in the loan based crowd funding group, whether reported or not.
47. *Class 1 Licensees* providing Crowdfund and P2P Platforms must disclose to the Commission the Directors' investment in the fund, if this is the case.
48. The Commission will determine when the *Class 1 Licensee* will be required to submit details of the level of investment and at what point data is to be provided on the issue rate.

Types of Funder

49. The Platform must categorise each Funder as either a General Funder, Capital Reserve Funder Category I or Capital Reserve Category II.
50. The Platform must have policies, procedures and controls to identify the categories of Funders in accordance with the prescribed levels.
51. The Platform must have policies, procedures and controls to ensure that the limits are adhered to for each category of Crowdfund or P2P Funder.

Categories of Crowdfund or P2P Funder

- (i) General Funder = an individual Funder who certifies his or her understanding of the product offering.
- (ii) Capital Reserve Funder Category I = an individual Funder who certifies his or her understanding of the product offering and has a minimum of £200,000 net available assets.
- (iii) Capital Reserve Funder Category II = an individual Funder who certifies his or her understanding of the product offering and has a minimum of £500,000 net available assets.

Crowdfund or P2P Funder Limits

- (i) General Funder = the individual Funder is restricted to a maximum of £1,500 per single loan with a maximum funding of £5,000 per annum.
- (ii) Capital Reserve Funder Category I = the individual Funder is restricted to the lower amount of 5% of his or her net available assets, or £10,000. With an ultimate maximum of £50,000 per annum.
- (iii) Capital Reserve Funder Category II = the individual Funder is restricted to a maximum of no more than 20% of net available assets at the point of funding.

Class 1 Licensee Explanatory Note

The default category is General Funder.

Determining a CF Lender's Net Available Assets

52. Net available assets does not include:
 - (i) The property which is the retail CF Lender's/investor's primary residence or any existing financing arranged where the property has been used a security; or
 - (ii) Any rights of the Funder under a qualifying contract of insurance; or
 - (iii) Any benefits (in the form of pensions or otherwise) which are payable on the termination of the Funder's service or on the Funder's death or retirement and to which the Funder is (or their dependents are), or maybe entitled; or
 - (iv) Any funds that the Funder does not have absolute title to, unless the investment is made jointly and severally by all parties; and
 - (v) Any funds that are held in security by another financial institution.

Determining Net Available Assets – Joint Names

53. Where funding is made in joint names each party is required to certify their own position.
54. The net worth position is the lower of each party's stated available net worth.

Crowdfunding and P2P Funder Requirements

55. Each *Class 1 Licensee* must enter into an agreement with a Funder where the Funder confirms which of the Crowdfund and P2P Funder categories they fall within.
56. The agreement must include a certification statement that confirms their net available asset position.
57. Lenders must sign a certification declaring that they will not invest more of their net available assets than the prescribed level.
58. The Commission will require details of crowdfunding lending as part of the proposed annual collation of *Class 1 Licensee* data.

Consultation Paper Explanatory Note

If a Funder's net available asset category equates to either a Capital Reserve Funder Category I or Capital Reserve Funder Category II and the Funder elects to be categorised at a lower level or at a General Funder Level then the *Class 1 Licensee* must apply the chosen lower level.

Crowdfunding and P2P Funder Certification

59. Each Crowdfund and P2P lending *Class 1 Licensee* will be required to obtain a net available asset certification from Funders that includes the following:
 - (i). The Class 1 Licensee's calculation and recorded evidence of the Funder's Crowdfund and P2P Funder Limit category as per rule [X];

Confirmation that the stated net available assets excludes the items listed in Rule [X] above;

Confirmation that the Funder will not lend more than the permissible amount for the category;

Signature and date of signature;

Confirmation that the Funder has read the risk warnings published by the Platform;

Confirmation that the Funder understands and accepts the risks associated with the arrangement;

Confirmation that they understand and accept that they could lose the amount funded;

Confirmation that they accept that all tax related matters are their responsibility and that they have considered taking independent tax advice;

Confirmation that the Funder accepts and understands that the Platform will complete an Affordability Assessment and that they may be requested to provide data to support their statement; and

Confirmation that certification is not confirmation of acceptance by the crowdfund provider of the selected category and that the crowdfund provider may elect a lower choice category.

Consultation Paper Explanatory Note

The points excluded from inclusion in the net investable asset position must be included as individual items not by use of a collective or cross reference.

The certification must state the respective amount for each category in the signed certification.

Determining Net Available Assets Class 1 Licensee Obligations

60. The *Class 1 Licensee* must complete an Affordability Assessment to confirm that they are satisfied with the customer's statement as to their net available asset position. This is particularly relevant if the investor / CF Lender has other commitments that might be reliant, either secured or unsecured, upon the customer's net available worth.
61. The crowdfund must not include any form of automatic investment or lending mechanism that bypasses customer choice.

Risk Warnings

62. *Class 1 Licensees* must provide Funders with a general description of the nature and risks of the proposition offered via the Platform. That description must explain the nature of the specific type of funding concerned, as well as the risks particular to that specific type of funding in sufficient detail to enable the Funder to make an informed decision on whether to fund; and include the following:
 - (i) A statement of the risks associated with the funding;
 - (ii) A risk statement on the risk of losing their entire funding amount; and
 - (iii) A risk statement on the volatility associated with the proposition.

Loans to Lending Business

63. *Class 1 Licensees* are not permitted to lend to borrowers who are not authorised to lend onwards.

Consultation Paper Explanatory Note

The purpose of the Rule is to prevent a crowdfund being used to acquire funding for a lending business as this would be equivalent to unauthorised acceptance of deposits and therefore acting as a bank.

Consultation Paper Explanatory Note

The Indicative Rules are in respect of individuals only and do not apply to Business to Business Loans ("B2B loans").

Crowdfund Maturity & Closing the Loan

64. A *Class 1 Licensee* who is providing a crowdfund (*including P2P*) is not permitted to complete and close an investment or loan unless the full, (total) amount of the loan has been repaid to each CF Lender/investor.

Consultation Paper Explanatory Note

The full amount is considered equal to a minimum of the total level of lending/investment made by each CF Lender. Interest paid during the life span of the arrangement does not qualify as a repayment sum.

Insurance

65. A *Class 1 Licensee* crowdfund provider (*including P2P*) must have in place professional indemnity insurance which is commensurate with the business activities. The *Class 1 Licensee* will be required to report the insurance cover at the point of an application and on a bi-annual basis.

Crowdfund Contingency Plan

66. A *Class 1 Licensee* crowdfund provider (*including P2P*) must have a plan that provides for the continued administration of the crowdfund in the eventuality that the *Class 1 Licensee* is unable to continue to fulfil their obligations to the Funders.

Crowdfund Funds Loan/Investment Client Money Rules

67. *Class 1 Licensees* that hold money in relation to equity funding are subject to the client money rules as detailed in the Licensees (Conduct of Business) Rules. Loan based crowdfunding will be subject to similar rules as detailed below:

Crowdfund Loan/Investment Funds Segregation

68. A *Class 1 Licensee* crowdfund provider (*including P2P*) must not hold monies received from CF Lenders in the same account(s) as monies received from CF Borrowers.

Crowdfund Account Reconciliation

69. A *Class 1 Licensee* crowdfund provider (*including P2P*) must have effective accounting controls for bookkeeping and reconciling the transactions of the crowdfund. This includes:
- (i) Reconciliation of receipts and payments;
 - (ii) The crowdfund fund balance, CF Lenders balances and CF Borrowers balances;
 - (iii) Receipts and payments of CF Lenders and CF Borrowers interest amounts;
 - (iv) Debt collection;
 - (v) Defaulted and late payments; and
 - (vi) Segregation of loan investments and loan repayments.

Financial Resources Requirements. ("FRR")

70. To be consulted upon.

Crowdfund Platform – Recipient Protection

71. In order to provide protection to a Recipient *Class 1 Licensees* providing loan-based crowdfunding will be required to include the following in their customer agreements:
- (i) The details stated on the website. If changes have occurred since the Recipient details were published on the website then the current information must be stated with details of the changes made and the date(s) of any change.
 - (ii) The agreement must restrict the Recipient from entering into another crowdfunding platform whilst the invitation on the platform is open.
 - (iii) The agreement must include the right to restrict or remove a Recipient from the crowdfund platform in the event of misleading, deceptive, disguised, omitted, detrimental, suspected fraudulent information or any other reason that the Licensee determines as a reason for exclusion.

Consultation Paper Explanatory Note

A *Class 1 Licensee's* Board could stipulate an unacceptable Recipient risk criteria, which would result in restricting or removing a Recipient from the fund.

- (iv) The agreement must include preventing the CF Borrower from arranging finance in conjunction with the CF Borrower and platform provider to participate in the crowdfund.
- (v) The terms provided via the platform do not differ in relation to the level of investor / CF Lender. The crowdfunding platform must offer the same terms for all.

Crowdfund Platform – Funder Protection

72. In order to provide protection to a Funder *Class 1 Licensees* providing loan-based crowdfunding will be required to include the following in their customer agreements:
- (i) The details stated on the website. If changes have occurred since the Recipient details were published on the website then the current information must be stated with details of the changes made and the date(s) of any change;
 - (ii) Details of the platform provider's contingency plans for loss of service;
 - (iii) Details the procedures to be administered by the platform in regard to repayment to the Funder;
 - (iv) Details the procedures to be administered by the platform provider in the event of late repayments or if CF Borrowers are in default;
 - (v) The agreement must include the right to restrict or remove a person from the crowdfund platform in the event of misleading, deceptive, disguised, omitted detrimental or suspected fraudulent information and any other reason the *Class 1 Licensee* determines an appropriate reason for exclusion;
 - (vi) The agreement includes preventing the Funder from arranging finance in conjunction with the Recipient and platform provider to participate in the crowdfund;
 - (vii) The terms of the Recipient and those provided via the platform do not differ in relation to the level of Funder. The crowdfunding platform offers the same terms for all; and
 - (viii) The agreement must include the certification in respect of the Funder's net available asset position.

Crowdfund Loan / Investment Customer Protection Crowdfund Active

73. In order to provide the Funder protection *Class 1 Licensees* providing loan-based crowdfunding once the crowdfund is active (i.e. the funding is in place) the platform provider and the Recipient will be required to provide annual accounts to their lenders.
74. The crowdfund platform provider and CF Borrower is required to provide CF Lenders notice of the following events:
 - (i) Change in business structure;
 - (ii) Change in board members;
 - (iii) Discontinuation of business;
 - (iv) Reorganisation;
 - (v) Take-over; and
 - (vi) Significant changes in assets including acquisition and disposal.

Policies and Procedures

75. A *Class 1 Licensee* must implement appropriate written internal policies, procedures and controls that incorporate the requirements of Rules [X] and [X].

Consultation Paper Explanatory Note

The following sections replicate those included in the Licensees (Conduct of Business) Rules 2016. It is proposed that the sections will be included without change except for references to the licensee class category.

Information regarding all employees

76. A *Class 1 Licensee* shall give written notice to the Commission within fourteen days of it becoming aware of the occurrence of the following in relation to any of its employees:
 - a) A conviction of any offence involving fraud or other dishonesty;
 - b) A conviction of any offence under legislation relating to finance business; or
 - c) The institution of *saisie*, *desastre*, bankruptcy, sequestration or similar proceedings.
77. A *Class 1 Licensee* shall give written notice to the Commission within fourteen days of the summary dismissal of any employee in Guernsey and the reasons for this dismissal, which shall include employees under probation.
78. A record shall be maintained of the names of any employees disciplined by a *Class 1 Licensee* in connection with any breach of the Law or rules made thereunder or with any other conduct which may reasonably be expected to affect the conduct of the Licensee's controlled investment business including particulars of:-
 - a) the offence for which the employee was disciplined; and
 - b) steps taken to discipline the employee.
79. Details of the particulars required to be recorded under Rule [X] [x] and [x] above shall be submitted to the Commission within seven days of the employee being so disciplined. Any record made for the purposes of this Rule shall be kept until six years have expired from the date on which disciplinary steps were taken.

General

80. A *Class 1 Licensee* shall give written notice to the Commission within fourteen days of the occurrence of any of the following:
- a) The presentation of an application for the winding-up (other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation) of, or administration order on, the licensee or a company which is a subsidiary or holding company of the licensee;
 - b) The appointment of a receiver, administrator, administrative receiver or trustee of the Licensee;
 - c) The making of a composition or voluntary arrangement with creditors of the Licensee;
 - d) The granting, withdrawal, or refusal of an application for, or revocation of, any licence, authorisation or registration to carry on finance business under any legislation relating to finance business whether in the Bailiwick of Guernsey or elsewhere;
 - e) The appointment of inspectors by a statutory or other regulatory authority (including a Self-Regulatory Organisation) or Recognised Professional Body to investigate the affairs of the Licensee;
 - f) The imposition of disciplinary measures or sanctions on the licensee or its directors in relation to its finance business by any regulatory authority (including a Self-Regulatory Organisation) or Recognised Professional Body;
 - g) The bringing against any licensee or its directors of any material legal action or proceedings, or any arbitration to which the Licensee is a party, relating to finance business; and
 - h) The conviction of the Licensee of any offence under legislation relating to finance business, companies or bankruptcy or of any offence involving fraud or dishonesty.

Holding Company

81. A *Class 1 Licensee* shall give written notice to the Commission within fourteen days if it becomes or ceases to be a subsidiary of another company or entity. The notice shall specify the following information if this has not already been notified:
- a) the holding company's (or entity's) name;
 - b) its principal business;
 - c) the name of its directors; and
 - d) the address of its registered office.

Subsidiaries

82. A *Class 1 Licensee* shall give written notice to the Commission within fourteen days of the formation, acquisition, disposal or dissolution of a subsidiary.

The notice shall specify the following:

- a) the subsidiary's name; and
- b) its principal business, if any.

Proposed Change in Restricted Activity

83. A *Class 1 Licensee* shall give written notice to the Commission within fourteen days of any significant change in the business plan, irrespective of whether it requires any change to its licence.

Written Notice

84. A *Class 1 Licensee* shall give written notice and details to the Commission within fourteen days where it has reason to believe that:-
- a) it will be unable to comply with, or be unable to demonstrate compliance with, the requirements of the *Class 1 Licensees Rules*;
 - b) a director or employee has been engaged in activities involving fraud or other dishonesty in relation to the Licensee's controlled investment business in Guernsey;
 - c) the Licensee's auditor may qualify the accounts; or
 - d) the liabilities of a subsidiary or holding company of the Licensee exceed its assets.

Appendix C. The Indicative Lending, Credit & Finance Law (Class 3 Licensee) Rules 20[XX]

To aid understanding of the legislative proposals we have drafted a set of indicative Rules in the following Appendix.

Throughout these draft Rules the Commission has inserted “Consultation Paper Explanatory Notes” and “Guidance Notes”.

The Consultation Paper Explanatory Notes are inserted in order to provide an explanation for the reader of the rationale for a statement, or for additional information. The Commission does not intend that these notes form part of the *Class 3* Rules.

The Guidance Notes are inserted in order to provide supporting information specific to a point or topic. The Guidance Notes will form part of the *Class 3* Rules.

In order to distinguish between the two types of supporting notes, the Consultation Paper Explanatory Notes are duly titled as such and included in grey shaded text boxes.

Consultation Paper Explanatory Note.

Example.

The Rules are only indicative and will subject to a formal consultation which will be undertaken in due course.

Appendix C. The Indicative Lending, Credit & Finance Law (Class 3 Licensee) Rules 20[XX]

Introduction, Principles, Definitions

These Rules may be cited as the Lending, Credit and Finance (*Class 3 Licensee*) (Conduct of Business) Rules 20XX (*“The LCF Class 3 Licensee Rules”*) and shall come into operation on [Day Month Year].

The *LCF Class 3 Licensee Rules* apply to all *Class 3 Licensees* unless specifically agreed otherwise by the Commission in accordance with Rules [X].

Interpretation

Regulated Activities Officer: means the person occupying the position of Regulated Activities Officer by whatever name called.

References to the Board, and/or senior management, and/or the Regulated Activities Officer must be read as meaning the controlling lending, credit and finance representatives.

Rules Relating to Corporate Governance and Senior Management Responsibility in respect of Regulated Activities

1. The Board and/or senior management and/or Regulated Activities Officer responsible for Regulated Activities must ensure that there are effective and appropriate policies, procedures and controls, as described at Rule (X), in place which provide for the Board and/or senior management and/or primary persons to meet its obligations under the Law and these Rules.
2. The Board and/or senior management and/or Regulated Activities Officer responsible for the Regulated Activities must retain responsibility for the outsourcing of any of its lending and credit functions.
3. Every Licensee must appoint a Regulated Activities Officer and a replacement to fill this position if it becomes vacant.
4. The Board must ensure that the Regulated Activities Officer appointed:
 - a) Be a natural person;
 - b) Be resident in Guernsey;
 - c) Has sufficient resources to perform their duties;
 - d) Has timely access to all records required under Rule [X];
 - e) Be sufficiently senior so as to discharge effectively their responsibilities under the Class 3 Rules;
 - f) Be fully aware of both their obligations and those of the *Class 3 Licensee* under the Lending, Credit & Finance Law and the Class 3 Rules; and
 - g) Have a nominated person to act as their deputy during periods of absence by the Regulated Activities Officer.

Consultation Paper Explanatory Note

The Regulated Activities Officer is the person who is primarily responsible and senior person involved in the Licensee's lending, credit and finance activities. It is anticipated that Licensee's will be able to identify appropriate personnel by virtue of the expectation that there would already be in place management oversight of existing lending, credit and finance arrangements.

Licensees do not have to adopt the formal title however Licensees will be required to inform the Commission of the identity of the person and his or her deputy.

Compliance Arrangements

5. The Board has responsibility for compliance with the Law, the Class 3 Rules and any rules or guidance relating to *Class 3 Licensees* made under the Law. It is the responsibility of the Board and/or senior management to ensure that the Regulated Activities are periodically reviewed and that the Licensee complies with the Class 3 Rules.

Consultation Paper Explanatory Note

It is not proposed that Licensees commission an independent review and report, merely ensure that the Licensee's directors are assured of compliance with the Lending, Credit & Finance Law's controls and measures.

6. Where the *Class 3 Licensee* outsources their Regulated Activities or any function of their Regulated Activities to a third party (either within the Bailiwick or overseas, or within its group or externally) the Board and/or senior management and/or Regulated Activities Officer retain ultimate responsibility for the Regulated Activities provided by the Licensee.

Annual Compliance Return

7. A *Class 3 Licensee* must file with the Commission a compliance return annually in the format described. The annual return will contain declarations that where applicable :
 - a) They are complying with laws, regulations and rules of the home jurisdiction; and
 - b) They are complying with the law, regulations and rules of the jurisdictions in which they are operating.

Conduct of Business

Appointment of Agents

8. It is the responsibility of the *Class 3 Licensee* to ensure that the activities of their agent are reviewed and managed in accordance with the requirements of the Class 3 Rules.

Consultation Paper Explanatory Note

Licensees that offer, arrange, or provide a loan, credit or hire purchase arrangement through another financial institution (e.g. where a store offers hire purchase through a lender) are expected to comply with the controls and measures as the customer's 'point of contact.' However the Board and senior management responsible for the lending and credit products and services provided remain ultimately responsible.

Fitness and Propriety

9. A *Class 3 Licensee* must observe [*the Principles*] in carrying on its Regulated Activities

Class 3 Rules Guidance

The Commission has a continuing duty to determine whether a *Class 3 Licensee* remains a fit and proper person to carry on Regulated Activities. In so doing, the Commission will take account of whether the Licensee has observed the Principles.

- The Principles are a statement of the standards expected of a Licensee.
- Breach of a Principle will be taken into account for the purposes of discipline and intervention.
- The Principles are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.
- In considering whether a *Class 3 Licensee* remains a fit and proper person, the Commission will also have regard to the minimum criteria for licensing.

10. A *Class 3 Licensee* must have adequate and effective systems of control in place to ensure its agents comply with the requirements of the Class 3 Rules.

Fair Treatment of Customers

11. A *Class 3 Licensee* must treat its customers fairly

Class 3 Rules Guidance

The following is a list of behaviours of a *Class 3 Licensee* (or those appointed to act on their behalf) that will indicate that a *Class 3 Licensee* is not treating its customers fairly:

- Use of high pressure selling and/or sales techniques;
- Use of aggressive, intimidating or oppressive behaviour;
- Preventing customers who have fallen in to financial difficulty and defaulted on a payment from having a period of time to make the repayment;
- Instigating proceedings to realise security on a borrowing without previous discussion and notice to the debtor or as a last resort;
- Use of misleading names or a pyramid of names which are deliberately intended to confuse or hide the identity of a Licensee; and
- Making false statements about the Licensee's status for example stating that it is a charitable non-profit organisation or sponsored by a public or highly reputable body or association.

Customers in Financial Difficulty

12. A *Class 3 Licensees* procedures must include details on the manner in which the Licensee manages customers experiencing financial difficulties including procedures for debt management, debt recovery, support and guidance to the customer and the legal options for the customer and the Licensee.
13. *Class 3 Licensees* will assist their customers to manage their finances through pro-active and reactive controls that can identify causes for concern regarding continued financial stability.
14. *Class 3 Licensees* must ensure that their customer facing and loan and credit approval employees are sufficiently trained to identify customers who could be in financial duress.
15. Where customer financial difficulties are identified the *Class 3 Licensee* must attempt to address the matter with the customer expediently in order to prevent the matter manifesting itself to an unmanageable position.

Class 3 Rules Guidance

It is possible that a customer's circumstances could change, impacting their ability to meet their borrowing. Licensees are expected to apply sensible, pragmatic and sympathetic measures to mitigate financial distress, which could include restructuring if affordable, interest postponement or other debt control means. It is not expected that Licensees will extend a facility if the customer is unable to afford the borrowing.

Vulnerable Customers

16. A *Class 3 Licensee's* procedures must include an awareness of the risks to some people with protected characteristics as described in the States of Guernsey, Guernsey Disability and Inclusion Strategy.

Responsible Lending

Client Relations (including Client Agreements, suitability, fees charges and remuneration). Duty to provide information

17. A *Class 3 Licensee* must ensure that all borrowing agreements, lending and credit terms and contract notices and/or written terms and notices use plain, intelligible and legible language. The term and notice must not be ambiguous or devised in such a manner to deliberately confuse or deceive.
18. Before a *Class 3 Licensee* enters into a lending or credit facility a *Class 3 Licensee* must disclose either to the borrower in writing, verbally or via a durable medium a clear and transparent statement of the lending or credit facility / arrangement.

Class 3 Rules Guidance

In order to comply with rule [17] the *Class 3 Licensee* must provide the following information:

- Costs;
- Charges;
- Interest;
- Penalties;
- Fees;
- Structure and/or schedule of repayments; and
- Remuneration relating to the service or product offered.

19. A *Class 3 Licensee* must ensure that they:
 - (i) Inform the borrower of the interest rate and the total debt;
 - (ii) Provide details of any association or connection with a loan or credit provider and include a statement of any conflict of interest;
 - (iii) Ensure, where comparisons are made, that the comparison is factual, meaningful, balanced, qualified, justified and fair;
 - (iv) Advise the borrower of the consequences of a failure to comply with the terms of the arrangement or credit facility;
 - (v) If applicable, advise the borrower on how to withdraw from the arrangement or credit facility;
 - (vi) Provide information and guidance on complaints and disputes;
 - (vii) Apply appropriate lending behaviours which include the nature, sophistication and health of the borrower (including changes in personal circumstances such as loss or reduction of income, death of partner, serious illness etc.);
 - (viii) Advise the borrower of applicable risks of the arrangement; and
 - (ix) Ensure that the borrower is clear who the lender is.

20. In respect of a hire purchase agreement (“HPA”) the borrower must be informed:
- a) that they do not own the goods until the full terms of the agreement have been fulfilled; and
 - b) of any details of default or repossession terms.
21. Licensees’ policies and procedures must set out the manner in which borrowers may agree to the arrangements.
22. Licensees must be satisfied that each borrower to the arrangement has consented to and approved the terms of the arrangement.
23. Licensees must be satisfied that each borrower to the arrangement understands their obligations and liabilities (and the nature of those liabilities).

Class 3 Rules Guidance.

Risk warnings must be:

- Included in the financial service or product promotion and any contractual documentation;
- Clear concise and written in a manner that can be easily understood; and
- Prominently displayed.

Consultation Paper Explanatory Note

It is acknowledged that a risk warning is simply a preventive notice that an individual could ignore or overlook. Despite recognising the possibility of this occurring it is not proposed to introduce measures that require a Licensee to confirm a borrower’s understanding and acceptance of the risks.

Risk warnings are considered a requirement of the Rule that all financial products and services promotions contain all material account terms that are clear, fair, reasonable and not misleading or misunderstood.

Class 3 Rules Guidance

Licensees must not:

- Encourage or persuade a borrower to waive their rights;
- Use false testimonials or make unsubstantiated claims;
- Disguise or obscure important information, statements or warnings;
- Imply that a borrower is free of debt through a revised debt arrangement;
- Use inducements or incentives in a manner to purposefully disguise or obscure a debt arrangement; and
- Disguise or obscure details regarding early repayment penalties.

Consultation Paper Explanatory Note

If a broker or intermediary has been involved then the ultimate lending or credit financial services business need only have assurance that adequate explanation was provided. It is not necessary to replicate the requirements.

Consultation Paper Explanatory Note

It is acknowledged that online service providers are limited in their ability to ensure a customer is conversant and has received adequate explanation. However, the provision of an online service does not exempt Licensees from their obligations it only means that alternative arrangements are necessary.

Examples of alternative arrangements are that:

- The website providing the online product and service will be expected to deliver information that meets the stated responsible lending criteria listed in point [X]; and
- In order to achieve adequate explanation the website must include a facility to contact the provider. Options available include an online live chat service or standard rate phone service to/from the service provider.

Affordability/Creditworthiness / Suitability

24. A *Class 3 Licensee* must have policies and procedures which set out the process for conducting an Affordability Assessment.
25. A *Class 3 Licensee* must establish, implement and maintain an effective policy in relation to assessing affordability and creditworthiness, set out in writing and appropriate to the size and organisation of the Licensee and the nature, scale and complexity of its Regulated Activities.
26. Subject to the exemptions at rule [] *Class 3 Licensees* must ensure that an Affordability Assessment is conducted prior to entering into the arrangement (or a roll-over of a facility).
27. A *Class 3 Licensee* must obtain sufficient knowledge of the customer's financial suitability to make an informed judgment of a customer's creditworthiness.
28. Where the facility requested is for more than one party the *Class 3 Licensee* must consider the circumstances of each applicant (joint obligators) and the risk of default.
29. A *Class 3 Licensee* must conduct an Affordability Assessment on the guarantor when they are uncertain or unclear that the guarantor has sufficient assets to justify their committing to the guarantee.
30. A *Class 3 Licensee* must not advise, invite or encourage a customer to enter into facility for more than the customer initially requested even if the Affordability Assessment indicates an ability to borrow or use more credit.
31. A *Class 3 Licensee* must not complete the Affordability Assessment on behalf of a customer in particular a Licensee must not instruct a customer on the information to input to achieve approval.
32. A *Class 3 Licensee* must not suggest, encourage or instruct the customer to input false details.
33. A *Class 3 Licensee* must not accept an application where it is known, suspected or the Licensee had reason to be aware that the customer has not been truthful in completing the application and/or that the stated information is false.
34. A *Class 3 Licensee* must not exploit the discretion to self-select the required Affordability Assessment criteria.
35. A *Class 3 Licensee* must not approve an application where there are doubts or inconsistencies about the information provided.

36. In undertaking an Affordability Assessment the *Class 3 Licensee* must be reasonably satisfied on the basis of information available to them at the date of the Affordability Assessment that:
- a) The customer is able to make repayments on time, while meeting other reasonable commitments;
 - b) The customer is able to meet the repayments in a sustainable manner;
 - c) The customer is able to meet the repayments without having to borrow;
 - d) The customer is able to meet the repayments over the life of the agreement, or for such an agreement which is an open-end agreement, be able to repay within a reasonable period; and
 - e) The customer is able to meet the repayments out of income and savings without having to realise security or assets.

Class 3 Rules Guidance

Providing guidance on completion is acceptable providing it is simply explaining a point or answering a question from the customer. For example a customer might enquire as whether they can include bonuses or commission as part of their income.

Affordability Assessment: Online

37. Online products and services demand the ability to provide a fast response, however this must not be a reason to negate conducting an Affordability Assessment or a reason to reduce the extent of which a person's creditworthiness is assessed.
38. The Affordability Assessment must still be completed with the applicant providing a sufficient level of information to achieve an effective assessment.
39. An Affordability Assessment is not required in the following circumstances:
- a) A borrowing facility where the customer holds alternative unsecured or unencumbered funds or net tangible assets with the Licensee in excess of the loan or credit;
 - b) Lending and credit limits provided to manage unnecessary referrals where the Licensee is confident that the limit is consistent with the customer's profile and within their capacity to repay; and
 - c) A change in product or product option where there is no detriment to the customer's creditworthiness.

Consultation Paper Explanatory Note

If the Licensee is confident that a previous Affordability Assessment completed for the existing product is current and suitable for use in respect of the new product then a Licensee may use their discretion as to whether they elect to reassess the customer's financial standing. For example, a customer changing their mortgage for an alternative product option e.g. variable rate to fixed rate.

The discretion does not apply when there is a significant increase in the borrowing or debt restructuring.

Compiling an Affordability Assessment

40. Except for the circumstances stated in Rules [X – X] an Affordability Assessment must be completed during the pre-contractual negotiations, prior to approval of an application of borrowing or credit and on any occasion where the customer requests a roll-over of a fixed term financing arrangement.
41. *Class 3 Licensees* do not require to compile an Affordability Assessment when the purpose is to provide an internal or temporary facility or arrangement which has been agreed on the basis of an analysis of a customer's profile, which confirms financial stability through the customer's:
 - a) Relationship history;
 - b) Comparison against peers;
 - c) Access to credit reference databases evidencing the customer's financial stability; and
 - d) Assurance of credit risk to the customer.
42. An Affordability Assessment does not need to be undertaken if the *Class 3 Licensee* has a current assessment that accurately reflects the customer's ability to afford a facility or arrangement.

Class 3 Rules Guidance

A Licensee can use discretion regarding projected or future lifestyle changes and/or future income where there is a justifiable rationale to do so.

Consultation Paper Explanatory Note

Future lifestyle changes could be a bonus payment expected on the basis of having received confirmation of an award or a history of bonus payments. Equally, a person's contract could include commission on sales, which can fluctuate depending upon performance or terms. Licensees are expected to apply cautionary judgement when applying the future change discretion as it cannot be assumed that there would be continuation of the receipt of a similar amount. An example of future income is where the facility could be for personal development (e.g. costs relating to obtaining a degree or specific training), where upon completion the borrower has raised their marketability.

It is recognised that lenders often implement cautionary controls regarding borrowing. Examples are that the repayment structure is geared to accommodate the interim position and is revised upon the expected change occurring. An Affordability Assessment would still be required but it could include provision for expected future adjustment.

Evidencing of Completing an Affordability Assessment

43. Where an Affordability Assessment is required to be undertaken it must be recorded and retained with the customer record.
44. *Class 3 Licensees* must be satisfied as to the veracity of the information provided.
45. *Class 3 Licensees* must not rely upon an unsubstantiated statement of income and expenditure by the person(s) requesting a facility.

Class 3 Rules Guidance

Evidence to Support an Affordability Assessment

A person's income and expenditure are generally the most predominant factors in an Affordability Assessment. Providing there is confidence in information held it is not mandatory for Licensees to obtain evidence or verify a person's income and expenditure.

An Affordability Assessment can be judged on the basis of risk supported by assessing the person's profile against peers and access to credit reference databases.

Whilst it is not suggested that every facet of an Affordability Assessment requires evidential support it is considered insufficient to simply rely upon a statement of income and expenditure by the person(s) requesting a facility.

Lending Credit & Financial Promotions and Advertising

46. Subject to Rule [X] below the *Class 3 Licensee* must ensure that any materials issued:
 - a) Are clear, fair and not misleading;
 - b) Do not contain any statement, promise or forecast which is untrue;
 - c) Are not designed in such a way as to distort or conceal any relevant subject material;
 - d) Are clearly recognisable as an advertisement;
 - e) Are not likely to be misunderstood;
 - f) Specify the name of the *Class 3 Licensee* making the promotion or on whose behalf the promotion is made;

- g) Contain sufficient information, to enable an informed assessment of the financial product(s) or service(s) to which it relates to be made;
- h) Contain the regulatory status of the Licensee;
- i) Where online and social media is used the advertisement presents a balanced message; and
- j) Contain details of applicable risks of the arrangement.

Class 3 Rules Guidance

Whilst the Commission is not proposing a rule requiring inclusion of an Annual Percentage Rate (“APR”) in all advertising and financial promotions, Licensees will be expected to fully inform the customer of the applicable interest rate and ensure that:

- Where a Licensee uses an alternative interest rate method then the promotion must make it clear that the interest rate is an example and could not be construed as the actual interest rate or APR;
- Where an indicative interest rate or an example APR is used there is an accompanying example and explanation;
- Where either a payment replacement plan or a payment contract plan arrangement (“PCP”) is used then the customer is made fully aware that the capital and interest repayments do not fully repay the borrowing. The customer must be informed of the amount that will be outstanding at the end of the plan;
- Where interest rates subject to change or are variable they must be displayed with an appropriate notice informing the customer. Interest rate changes must be notified to all impacted customers;
- Where either a payment replacement plan or payment contract plan is used then the customer is not misled as to the charges of the arrangement (despite the APR being promoted as 0% due to the asset being hired); and
- In order to provide customers with a hypothetical or theoretical example of a borrowing it may be necessary to include an indicative APR. To alert the customer to the APR financial promotions and advertisements include terms such as, representative APR, indicative APR or typical APR. The use of these terms is acceptable providing it is clear to the reader that the rate is not displayed in a manner that disguises it as an example or that it could be construed as the actual APR.

- 47. Materials that comprise or consist solely of the Licensee’s name, logo, contact details and a statement that finance is available or promotions that are a brief factual description of the Licensee, the product or service do not need to comply with Rule [X].
- 48. Rule [X] points (a- d) are applicable to all promotional and advertising controls issued and published online and/or by electronic communication, including promoting financial products through the use of social media channels.
- 49. The *Class 3 Licensee* is responsible for all financial promotions and advertisements that they publish or issue. The Licensee cannot delegate approval for lending, credit and financial promotional material or advertisements to a third party.

Rules on Withdrawing/Amending Promotions

50. An advertisement or financial promotion that the Commission directs does not conform to the requirements of Rule [X] must be withdrawn or amended.

Promotional & Advertising Content

51. A *Class 3 Licensee* must not issue advertising and promotional material which:
- Uses false testimonials or makes unsubstantiated claims;
 - Disguises or obscures important information, statements or warnings;
 - Contains any representation, which might damage the reputation of the Bailiwick of Guernsey;
 - Contains any statement, promise or forecast which is untrue; and
 - Is designed in such a way as to distort or conceal any relevant subject material.

Record Keeping

52. A *Class 3 Licensee* must keep and properly maintain, records relating to its Regulated Activities and transactions and all other activities affecting its Regulated Activities in a form capable of prompt reproduction in English and capable of being checked or audited, so as to demonstrate compliance with the regulations and Rules.
53. As part of their operational controls the *Class 3 Licensee* must establish file and record retention periods which are appropriate and consistent with the products and facilities offered.
54. A *Class 3 Licensee* must make such records readily retrievable to the Commission, its employees and any person authorised by it for any purpose whatsoever.
55. *Class 3 Licensees* must review, at least annually, the ease of retrieval of, and condition of paper and electronically [digital] retrievable records including telephone records and other system recordings.

Record Retention

56. As part of their operational controls Licensees must establish file and record retention periods in accordance with the Data Protection Law.

Destruction of Records or Files

57. Without limiting any other obligation under the Lending, Credit & Finance Law or the rules and regulations made under it or under the laws of Guernsey, a Licensee must ensure that it and its directors and employees and other persons to the extent that they are under its power and control must not, without the express consent in writing of the Commission, amend, destroy, make further entries in, or erase any record of file (whether in documentary or electronic form) which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under the Lending, Credit & Finance Law or the rules and regulations made under it.

Complaints

58. Every *Class 3 Licensee* must have in operation and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of complaints relating to the Licensee's Regulated Activities.
59. Customers must be informed:
 - a) Of what to do in the event they have a complaint; and
 - b) That they may complain to the Channel Islands Financial Ombudsman ("CIFO").
60. *Class 3 Licensees* must maintain records of all lending and credit complaints.
61. The *Class 3 Licensee's* complaints handling policy must be available on request.

Client Assets

62. Details are excluded as the Commission is proposing to issue details on client assets separately.

Conflicts of Interest

63. *Class 3 Licensees* must establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organisation of the Licensee and the nature, scale and complexity of its Regulated Activities.
64. Where a *Class 3 Licensee* is a member of a group, the policy must also take into account any circumstances, of which the *Class 3 Licensee* is or should be aware, which may give rise to a conflict of interest arising as a result of other activities of the group.
65. The content of a Conflicts of Interest Policy must include the following matters:
 - a) It must identify, with reference to the specific Regulated Activities carried out by or on behalf of the Licensee, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interest of one or more customers; and
 - b) It must specify procedures to be followed in order to manage such conflicts.
66. *Class 3 Licensees* must ensure that any procedures provided for in Rules [X] are designed to ensure that [relevant persons] engaged in Regulated Activities involving a conflict of interest carry on the Regulated Activities at a level of independence appropriate to the size and organization of the *Class 3 Licensee* and the nature, scale and complexity of the business and of the group to which it belongs.
67. For the purposes of Rule [X] the procedures to be followed and the measures to be adopted must include such of the following as are necessary and appropriate for the *Class 3 Licensee* to ensure that conflicts of interest are managed appropriately:
 - a) Procedures to prevent or control the simultaneous or sequential involvement of a [relevant person] in the Licensee's lending and credit processes impair the proper management of conflicts of interest;
 - b) Procedures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out the Regulated Activities;
 - c) Procedures to manage conflicts where the *Class 3 Licensee* has a financial interest in the outcome of their own or another's Regulated Activities;

Consultation Paper Explanatory Note

Beneficial financial interest is considered to be commission or retrocession fees paid upon sales or sales targets.

- d) Procedures to remove any direct link between remuneration of the [relevant persons] principally engaged in the Regulated Activities and the [*Licensee*] where a conflict of interest may arise in relation to those activities;
- e) Procedures for recording, review and approval of instances included as Conflicts of Interest; and
- f) Procedures for recording and approving there is no conflict of interest in respect of the receipt and acceptance of any gifts or inducements.

Compliance Return

- 68. A *Class 3 Licensee* must file with the Commission a compliance return annually in the format described. The annual return will contain declarations that:
 - a) They are complying with laws, regulations and rules of the home jurisdiction; and
 - b) They are complying with the law, regulations and rules of the jurisdictions in which they are operating.

Requirement for Audit

- 69. The Commission will require audited accounts submitted in respect of *Class 1 & Class 3 Licensees*.

Name and Address

- 70. A *Class 3 Licensee* shall give writtent notice within fourteen days to the Commision of:
 - a) A change in the registered or equivalent name of the *Class 3 Licensee*;
 - b) A change in any business name under which the *Class 3 Licensee* carries on lending credit and financial activities in Guernsey;
 - c) A change in the address of the head office or principal place of business of the *Class 3 Licensee*; and
 - d) A change in the address for the service of notices or documents furnished pursuant to Section [X] of the [Law].

Key Employees

- 71. A *Class 3 Licensee* shall notify the Commission in writing, within fourteen days of the fact, that and the date on which, any person has:
 - a. Become
 - (i) A manager who is connected with the *Class 3 Licensee's* lending, credit and finance activities;
 - (ii) The Regulated Activities Officer as per Rule [X]
 - b. Ceased to be
 - (i) A manager who is connected with the *Class 3 Licensee's* lending, credit and finance activities;
 - (ii) The Regulated Activities Officer as per Rule [X]

Information regarding all employees

72. A *Class 3 Licensee* shall give written notice to the Commission within fourteen days of it becoming aware of the occurrence of the following in relation to any of its employees:
 - a) A conviction of any offence involving fraud or other dishonesty;
 - b) A conviction of any offence under legislation relating to finance business; or
 - c) The institution of *saisie*, *desastre*, bankruptcy, sequestration or similar proceedings.
73. A *Class 3 Licensee* shall give written notice to the Commission within fourteen days of the summary dismissal of any employee in Guernsey and the reasons for this dismissal, which shall include employees under probation.
74. A record shall be maintained of the names of any employees disciplined by a *Class 3 Licensee* in connection with any breach of the Law or rules made thereunder or with any other conduct which may reasonably be expected to affect the conduct of the Licensee's controlled investment business including particulars of:-
 - a) the offence for which the employee was disciplined; and
 - b) steps taken to discipline the employee.
75. Details of the particulars required to be recorded under Rule [X] [x] and [x] above shall be submitted to the Commission within seven days of the employee being so disciplined. Any record made for the purposes of this Rule shall be kept until six years have expired from the date on which disciplinary steps were taken.

General

76. A *Class 3 Licensee* shall give written notice to the Commission within fourteen days of the occurrence of any of the following:
 - a) The presentation of an application for the winding-up (other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation) of, or administration order on, the licensee or a company which is a subsidiary or holding company of the licensee;
 - b) The appointment of a receiver, administrator, administrative receiver or trustee of the Licensee;
 - c) The making of a composition or voluntary arrangement with creditors of the Licensee;
 - d) The granting, withdrawal, or refusal of an application for, or revocation of, any licence, authorisation or registration to carry on finance business under any legislation relating to finance business whether in the Bailiwick of Guernsey or elsewhere;
 - e) The appointment of inspectors by a statutory or other regulatory authority (including a Self-Regulatory Organisation) or Recognised Professional Body to investigate the affairs of the Licensee;
 - f) The imposition of disciplinary measures or sanctions on the licensee or its directors in relation to its finance business by any regulatory authority (including a Self-Regulatory Organisation) or Recognised Professional Body;

- g) The bringing against any licensee or its directors of any material legal action or proceedings, or any arbitration to which the Licensee is a party, relating to finance business; and
- h) The conviction of the Licensee of any offence under legislation relating to finance business, companies or bankruptcy or of any offence involving fraud or dishonesty.

Holding Company

77. A *Class 3 Licensee* shall give written notice to the Commission within fourteen days if it becomes or ceases to be a subsidiary of another company or entity. The notice shall specify the following information if this has not already been notified:
- a) the holding company's (or entity's) name;
 - b) its principal business;
 - c) the name of its directors; and
 - d) the address of its registered office.

Subsidiaries

78. A *Class 3 Licensee* shall give written notice to the Commission within fourteen days of the formation, acquisition, disposal or dissolution of a subsidiary.

The notice shall specify the following:

- a) the subsidiary's name; and
- b) its principal business, if any.

Proposed Change in Restricted Activity

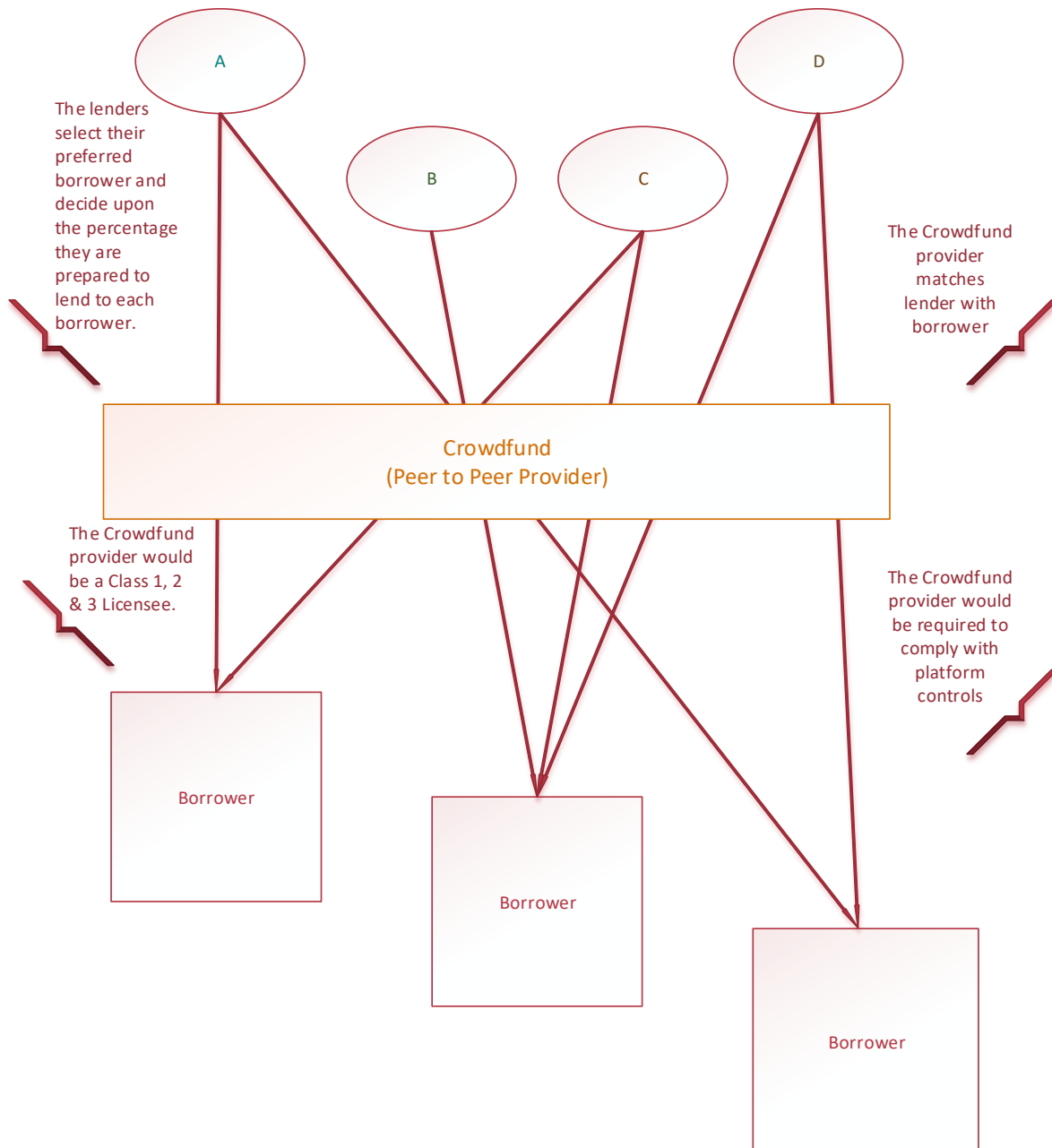
79. A *Class 3 Licensee* shall give written notice to the Commission within fourteen days of any significant change in the business plan, irrespective of whether it requires any change to its licence.

Written Notice

80. A *Class 3 Licensee* shall give written notice and details to the Commission within fourteen days where it has reason to believe that:-
- a) it will be unable to comply with, or be unable to demonstrate compliance with, the requirements of the *Class 3 Licensees Rules*;
 - b) a director or employee has been engaged in activities involving fraud or other dishonesty in relation to the Licensee's controlled investment business in Guernsey;
 - c) the Licensee's auditor may qualify the accounts; or
 - d) the liabilities of a subsidiary or holding company of the Licensee exceed its assets.

Appendix D. Matchmaking Crowdfunding Model

The diagram below depicts a “matchmaking” P2P model, where the Platform is administering the means for a Funder to lend to a Recipient or number of Recipients.



Appendix E. Affordability Assessment Suggested Criteria.

Respondents to the Discussion Paper provided a range of suggestions for firms to use when compiling and conducting an Affordability Assessment, which can serve as a useful guide.

In undertaking an Affordability Assessment the Licensee may wish to consider any of the following factors. They are not an exhaustive list of every factor for consideration, neither are they proposed as a minimum criteria checklist.

- Borrowers' (including Crowdfund and P2P Borrowers) customer profile, age, dependents;
- Type of borrowing or credit;
- Amount of the borrowing or credit;
- Cost of the borrowing or credit;
- Financial position of the borrower (including Crowdfund and P2P Borrowers) at the time of seeking the credit;
- Credit history, including any indications that the customer is experiencing or has experienced financial difficulties;
- Financial commitments including any repayments due in respect of other credit agreements, customer hire agreements, mortgage, payments for rent, tax, utilities(including mobile phone) and other major outgoings;
- Future financial commitments of the customer;
- Expected future changes in circumstances which might reasonably be anticipated to have a significant financial adverse or positive impact on the customer;
- Vulnerability of the customer;
- History of previous borrowings;
- Evidence of income;
- Evidence of expenditure;
- Credit score;
- Credit reference agency report;
- Does the borrower reasonably understand the facility; and
- Is the customer using other sources of borrowing to finance debts, e.g. does the customer have a portfolio of debt?

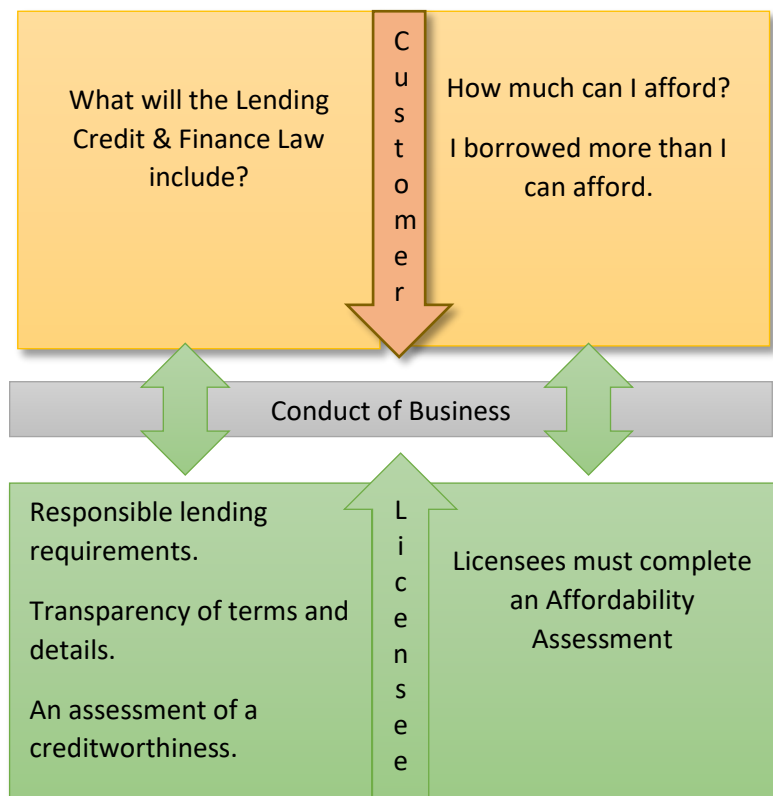
Appendix F. The Customer Journey

The diagrams below depicts a customer's lending, credit and finance journey.

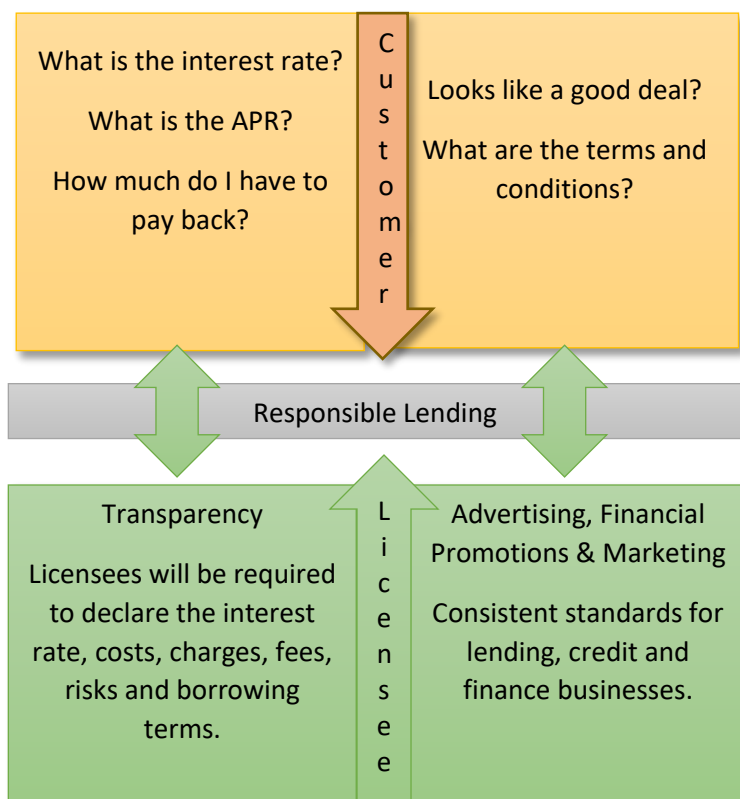
The purpose of the diagrams are to show the impact to the consumer of the proposed consumer lending, credit and finance controls and measures.

The diagrams outlines the position of the customer, the requirements of the Licensee and the legislative and regulatory change.

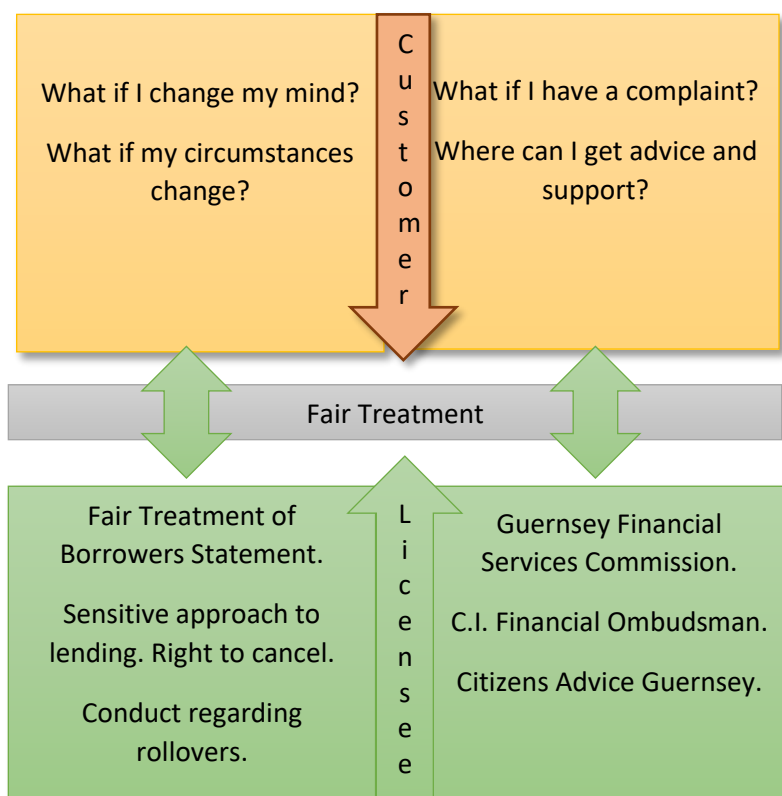
Conduct of Business



Responsible Lending



Fair Treatment of Borrowers



Appendix G. Definitions

AGB	Association of Guernsey Banks
AML	Anti-Money Laundering
AML/CFT	Anti-Money laundering and Countering the Financing of Terrorism
APR	Annual Percentage Rate
B2B	Business to Business
B2C	Business to Consumer
Borrower	The consumer or customer to whom a loan or line of credit is provided.
CDD	Customer Due Diligence
CF Borrower	A crowdfund or P2P borrower
CF Lender	A crowdfund or P2P lender
CIFO	Channel Islands Financial Ombudsman
COB	The Licensees (Conduct of Business) Rules 2016
Commission	GFSC
CS	Citizen Space – online portal for consultations and discussion papers.
DP	Discussion Paper
EU	European Union
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
Firm	A financial services business. A Firm can be a licensee or an FSB who is applying to be a Licensee.
FRR	Financial Resources Requirement
FSBs	Financial Service Businesses
FT	Financing of Terrorism

GFSC	Guernsey Financial Services Commission
KYC	Know Your Customer
LCF	Lending, Credit & Finance
Licensee	Any person who holds a licence from the Commission.
LVDR	Low Value Debt Relief
ML	Money Laundering
New Law	Proposed Lending, Credit & Finance Law
NRFSB	Non-Regulated Financial Services Businesses
NRFSB Law	Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (as amended)
OA	Online Application
OFT	UK Office of Fair Trading
OPQ	Online Personal Questionnaire
P2P	Peer to Peer
PCP	Payment Contract Plan
P&R	States of Guernsey Policy & Resources Committee
POI Law	The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended)
ROL	Revision of Laws
UK	United Kingdom
US	United States of America
VC	Virtual Currency

The following are not intended to be read as definitions for inclusion in the LCF Law.

The descriptions below are interpretations provided for the purposes of this Consultation Paper.

Term	Source	Interpretation
Consumer	UK Consumer Rights Act 2015 & Oxford Dictionary of English.	<p>A “consumer” is an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession.</p> <p>A person who buys or uses goods or services for personal use.</p>
Customer	The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendments) Ordinance 2017 and Handbook on Countering Financial Crime & Terrorist Financing. ²⁴	<p>A person or legal arrangement who is seeking-</p> <ul style="list-style-type: none"> (a) To establish or has established a business relationship with a specified business, or (b) To carry out, or has carried out, an occasional transaction with a specified business, <p>Except that where such a person or legal arrangement is an introducer, the customer is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship.</p>
Retail Customer	MIFID Client Categorisation ²⁵	<p>“Retail client” shall mean a client who is not a Professional Client or an eligible counterparty.</p> <p>A “retail customer” is deemed an equivalent term to a retail client.</p>

²⁴Consultation Draft The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017 Page 47

²⁵ http://www.fxdd.com/fileadmin/user_upload/pdfs/mt/en/MIFID_CLIENT_CATEGORISATION.pdf