

Peer-to-Peer Finance Association Operating Principles (2 August 2011)

Introduction

The Peer-to-Peer Finance Association brings together businesses that operate peer-to-peer finance platforms in order to set minimum standards of good practice, particularly when dealing with consumers and small businesses. Peer-to-peer finance platforms facilitate funding via direct, one-to-one contracts between a single recipient and multiple providers of funds, where the majority of providers and borrowers are consumers or small businesses. Generally, funding is in the form of a simple loan, but other instruments may evolve over time.

Membership of the Association is open to all businesses operating a peer to peer finance platform and admission is subject to the Rules of the Association. Members must comply with the Rules and the Operating Principles.

Effective regulation of peer-to-peer finance platforms will ensure that services are fair and transparent, and that operational risks are managed in a way that shifts the regulatory burden from market participants to the platform operator. In turn, this enables platform operators to provide broad public access to simple, transparent, low cost financial services.

However, the current regulatory framework does not specifically regulate peer-to-peer finance. Accordingly, members should not only comply with applicable law, regulation and industry rules (e.g. governing the use of credit reference data), but also following the Operating Principles. These principles set out the key requirements for the orderly operation of peer-to-peer finance platforms:

1. Senior management systems and controls;
2. Minimum capital requirements;
3. Segregation of participants' funds;
4. Clear rules governing use of the platform, consistent with these Operating Principles;
5. Marketing and customer communications that are clear, fair and not misleading;
6. Secure and reliable IT systems;
7. Fair complaints handling; and
8. The orderly administration of contracts in the event a platform ceases to operate.

1. Senior Management Systems and Controls

Each Member should have at least one director that the Member would be prepared to nominate to the Financial Services Authority as the Member's "Approved Person" if that regulatory requirement applied to the Member.

2. Minimum Capital Requirements

Each Member will maintain own funds (as defined in Part 2 of Schedule 3 to the Payment Services Regulations 2009 (“PSRs”)¹) equivalent to at least the amount calculated in accordance with “Method A” of the PSRs. Once each year, within 28 days after the Member’s financial year end, a Director of each Member shall notify the Association in writing of the amount of the Member’s own funds.

3. Segregation of Customer Funds

Each member should segregate their customers’ funds from the Member’s own funds and company assets, in a segregated bank account which is designated in such a way as to show that it is an account which is held for the purpose of safeguarding the customers’ funds and be used only for holding those funds (“Segregated Account”) in accordance with paragraphs 4 to 8 and 11 to 15 (inclusive) of Regulation 19 of the PSRs.

4. Rules Governing the Use of Platforms

- (a) Each member’s own terms and conditions should cover (i) eligibility to use the platform; (ii) registration and membership set-up; (iii) how the borrowing and lending processes work; (iv) segregation of funds; (v) how loan contracts are concluded; (vi) how loans are serviced; (vii) processes for the recovery of missed payments; (viii) the fees and charges that apply; (ix) variation (x) termination; (xi) use of personal data; (xii) liability for user content posted on the platform; (xiii) limits on liability; and (xiv) complaints handling.
- (b) Members may lend or invest their own money on their own platform, provided that each Member which does lend or invest its own money on its own platform clearly discloses that fact to its customers. Members should not borrow or raise funds through their own platform. Each Member must ensure that it has no bias towards either providers or recipients of funds. Shareholders and employees can lend and borrow on an arm’s length commercial basis.
- (c) Each Member should report its lenders’ returns based on the amount of interest earned on the money whilst the money is "at risk", rather than in the Member’s Segregated Account. Each Member must publish on its Platform:
 - i. at all times, transparent and justifiable estimates of what it reasonably estimates the default rate to be in relation to the loans or other instruments offered (if the risk is borne by the lender or investor) and in so doing may include that default rate within the overall return that it estimates the lender or investor will receive (assuming the funding arrangement runs to term);
 - ii. at all times, details of the Member’s collections procedures and define when a payment due under any loan or other instrument is considered “late” or in “default”;
 - iii. on a monthly basis, the number of loans or other instruments on its Platform that have suffered late payment and those which have been the subject of a default;

¹ <http://www.legislation.gov.uk/ukxi/2009/209/contents/made>

- iv. on a monthly basis, the total amount of principal outstanding in relation to loans or other instruments on its Platform that (a) are then suffering late payment(s) and (b) have been the subject of a default that has not been rectified.

5. Marketing and Customer Communications

Each Member must comply with the law and regulations applicable to their sales and marketing activity, as well as the applicable provisions of the Codes of Advertising Practice promulgated by the Committees of Advertising Practice administered by the Advertising Standards Authority.

6. Systems Infrastructure

Members must ensure that their overall information technology (“IT”) strategies and systems are secure, reliable and proportionate to the nature, scale and complexity of their business and are sufficiently robust to facilitate, on an ongoing basis, the Member’s compliance with applicable law, regulation, the Rules and these Operating Principles.

7. Complaints Handling

Each Member must have its own fair, standard and defined complaints handling process that should resolve most complaints about the Member’s activities. Each Member must inform its customers about its complaints mechanism and any legal right to refer a complaint to an authority (e.g. the Financial Ombudsman Service). Such information should be given in the Member’s terms and conditions and on first contact with the customer about a complaint. Each Member should retain records of complaints so these can be used to help other resolve the complaints if necessary.

8. Orderly Run-off

Each Member must make arrangements to ensure the orderly administration of its customers’ contracts in the event the Member or the Member’s Platform ceases to operate. Such arrangements to include (these can be delegated to a reputable third party):

- sufficient manpower to administer the contracts in run-off;
- a suitable collection and payment process for repayments;
- a suitable disbursement process for net proceeds due to lenders;
- the ability for customers to communicate with the operator;
- maintenance of requisite licence approvals;
- compliance with applicable law, regulations, the Rules and the Operating Principles;
- allowance for office and sundry expenses.

These Operating Principles are not intended to confer a benefit on any third party and no person other than a party may enforce the terms of these Operating Principles by virtue of the Contracts (Rights of Third Parties) Act 1999 or any other such law or regulatory provision.

