

*APPENDIX 2: Suggested Amendments to the proposed SME Regulations
April 2015*

<i>Proposed Revised Provisions</i>	<i>Potential Amendments/Comments</i>
PART 1 – PRELIMINARY	
In exercise of the powers conferred on the Central Bank of Ireland (the Bank) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the Act), the Bank, having consulted with [] in accordance with section 49(1) of the Act , hereby makes the following Regulations:	
1. These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Lending to Small and Medium Enterprises) Regulations 201[5].	
2. In these Regulations: 'advertisement' means any communication the purpose of which is to advertise a product, service or lender the subject of these Regulations, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC); 'alternative arrangement' means an agreement to discharge the borrower's debt obligations to the lender which is entered into in order to address arrears or financial difficulties and which is a variation or alternative to the terms and conditions of the credit facility agreement; 'Appeals Panel' means an appeals panel established under Regulation 21; 'arrears' means where a borrower has not made a payment or part of a payment in accordance with a credit facility agreement by the scheduled due date for payment and in the case of an overdraft where the borrower's overdraft limit is exceeded for 30 consecutive days; 'borrower' means a micro, small or medium-sized enterprise, in the State	BPMI suggests some wording amendments opposite. The amendment to the definition of " <i>credit</i> " is to reflect that BPMI does not believe that credit cards should come within scope of the proposed Regulations as set out in our response to Question 6 of CP91. The amendment to the definition of " <i>financial difficulties</i> " is to reflect BPMI's view that it is not in the best interests of the SME customer to consider the borrower is automatically in financial difficulty where it is in arrears in relation to an alternative arrangement. Where the alternative arrangement is a new agreement between the lender and the borrower, the SME borrower should be treated as in arrears in relation to that alternative arrangement before it is considered in financial difficulty. Furthermore, it is difficult to determine how Regulation 14(2) and 17(2) would work together given that based on the current definition of financial difficulties; both provisions could apply to the

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<p>that is availing or proposing to avail of credit; 'cash' includes money in any form; 'complaint' means an expression of grievance or dissatisfaction by a borrower, either orally or in writing, in connection with - (a) the provision of credit or an alternative arrangement, or (b) the refusal of a lender to provide credit or an alternative arrangement to a borrower, and complainant shall be construed accordingly; 'credit' means a deferred payment, cash loan or other similar financial accommodation, including hire purchase, invoice discounting and the letting of goods <u>and excluding business credit cards</u>; 'credit facility agreement' means an agreement whereby a lender grants or promises to grant credit; 'Credit Review Office' means the office established under guidelines made by the Minister for Finance under Section 210(1) of the National Asset Management Agency Act 2009; 'durable medium' means any instrument which: (a) enables the borrower to store information addressed to that borrower in a way accessible for future reference and for a period of time adequate for the purpose, and (b) allows the unchanged reproduction of the information stored; 'financial difficulties' means a credit facility agreement to which one or more of the following apply: (a) the borrower is in arrears under the credit facility agreement <u>or alternative arrangement</u> for three consecutive months; (b) where the credit facility agreement is an overdraft, the approved limit on the overdraft is exceeded for 90 consecutive days <u>and there has been no engagement with the borrower</u>; And financial difficulties cases shall be construed accordingly.</p>	<p>same borrower at the one time.</p> <p>BPFI has also suggested the inclusion of the wording <i>"and there has been no engagement with the borrower"</i> as included in the existing SME Code.</p> <p>With regard to the scope of the proposed Regulations, BPFI outlines a suggested alternative in Appendix 1. In general, however, BPFI believes that the application of the definition of <i>"SME"</i> as proposed is too broad. BPFI believes the scope of the protections provided under the proposed Regulations should be restricted for the following reasons:</p> <p>(a) The intent of existing SME Code (and the new Regulations) is to afford protections to the less sophisticated SME borrower, who does not necessarily have access to a full suite of professional financial advisors; and</p> <p>(b) Regulations become more prescriptive, if larger (and more financially sophisticated) borrowers come within scope - the one-size-fits-all nature of the proposed Regulations could create more red tape for more financially sophisticated borrowers, at the top end of the spectrum. Therefore, BPFI are of the view that the application of the definition of <i>"micro, small or medium enterprise"</i> should be revisited by the CBI.</p> <p>As outlined in Appendix 1 in response to Question 8 of CP91, the introduction of a concept of <i>"not co-operating"</i> in an SME context is a complex matter, given the notable differences between SME customers and personal customers. As such, it warrants further careful consideration and BPFI would welcome the opportunity to discuss the matter with the CBI in early course.</p>

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<p>'guarantee' means a contract by which a person becomes bound to another for the fulfilment of a promise or engagement or other duty of a third party <u>and includes inter-company guarantees and corporate guarantors</u>;</p> <p>'invoice discounting' means the provision of credit based on the unpaid sales invoices of a borrower;</p> <p>'lender' means a regulated financial service provider providing or offering to provide credit facility agreements;</p> <p>'micro, small or medium enterprise' means a micro, small or medium enterprise, within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003;</p> <p>'multi-lender credit' means credit offered or granted by two or more lenders working together to provide funds to one or more borrowers as part of the same arrangement;</p> <p>'not co-operating' means when:</p> <p>(a) the borrower has failed to make a full and truthful disclosure to the lender of the information required by the lender to assess the borrower's financial situation, within the timeframe specified by the lender, and</p> <p>(b) the warning letter, required in accordance with Regulation 15(3), has been issued to the borrower and the borrower has not carried out the action(s) specified in that letter.</p> <p>'overdraft' means a credit facility agreement effected by permitting a borrower's current account to go into debit;</p> <p>'record' means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form;</p> <p>'security' means assets, undertakings, indemnities, guarantees or charges over assets offered to a lender to secure a credit facility;</p> <p>'special purpose vehicle' means a corporation, trust or other entity,</p>	

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established for, and the activities of which are limited to, accomplishing a specific objective.	
3. These Regulations come into force on the [].	<p>BPFI is of the view that the date inserted in Regulation 3 should take into account an appropriate timeframe from the date of publication of the finalised Regulations as set out in our response to Question 1 of CP91 in Appendix 1.</p> <p>The Regulations should apply from a point in time forward for engagements with SME customers.</p>
<p>4. Application of these Regulations</p> <p>(1) These Regulations apply to:</p> <p>(a) a lender providing or offering to provide a credit facility agreement, to which a borrower is a party or will be a party, and</p> <p>(b) any activity by a lender involved in proposing or undertaking preparatory work for entering into a credit facility agreement with a borrower.</p> <p>(2) These Regulations shall not apply:</p> <p>(a) where the borrower is a regulated financial service provider authorised to provide credit;</p> <p>(b) to multi-lender credit, and</p> <p>(c) to credit offered or granted to special purpose vehicles.</p>	<p>We believe that wording within 4 (1) (b) is too broad and unnecessary given that each regulation sets out the circumstances for the specific requirements.</p>
<p><u>5. Nothing in these Regulations prohibits a lender from acting with all necessary speed:</u></p> <p><u>a) where in the circumstances of the case it is necessary to initiate a liquidation, receivership, examinership or similar insolvency event or where another lender or other third parties initiate such actions;</u></p> <p><u>b) where it is necessary in order for a lender to protect its legitimate commercial interests; or</u></p>	<p>BPFI requests reinsertion into the Regulations of this text extracted from the existing SME Code:</p> <p><i>Nothing in these Regulations prohibits a lender from acting with all necessary speed:</i></p> <p><i>a) where in the circumstances of the case it is necessary to initiate a liquidation, receivership, examinership or similar insolvency event or where another lender</i></p>

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<p><u><i>c) where there is reasonable evidence of fraud, terrorist connections, money laundering, terrorist connections and/or misrepresentation, and the provisions of these Regulations are without prejudice to a lender's regulatory and/or legal obligations and legal rights to enforce any agreement including any security taken in connection with any agreement.</i></u></p>	<p><i>or other third parties initiate such actions;</i> <i>b) where it is necessary in order for a lender to protect its legitimate commercial interests; or</i> <i>c) where there is reasonable evidence of fraud, terrorist connections, money laundering, terrorist connections and/or misrepresentation, and the provisions of these Regulations are without prejudice to a lender's regulatory and/or legal obligations and legal rights to enforce any agreement including any security taken in connection with any agreement.</i></p>
<p>PART 2 - GENERAL</p>	
<p>Unsolicited Credit</p>	
<p>5. A lender shall not offer unsolicited credit to a borrower which has been approved by the lender in advance of the credit being offered to the borrower.</p>	
<p>Expertise for Business Lending</p>	
<p>6. (1) In each office of the lender which is concerned with lending activity subject to these Regulations, the lender shall appoint at least one individual with responsibility for:</p> <ul style="list-style-type: none"> a) the provision of credit to borrowers, b) borrowers in arrears, and c) borrowers in financial difficulties. 	<p>The requirement to appoint individuals per office is potentially very onerous. The appointed person per office should only be required to act as the contact point for the unit/area/individual etc. with responsibility for provision of credit, borrowers in arrears and financial difficulty. Based on Regulation 6 (1), a contact point will not be appointed in offices where there is no lending to SMEs.</p> <p>The proposed Regulations must take into account that banks and SMEs are embracing online service fulfilment, and banks have adopted (and continue to evolve) new business models to reflect customer needs. This is particularly relevant in the context of lending and customer engagements, where online fulfilment will streamline processes and provide flexibility to SMEs.</p> <p>We advocate that there should not be a requirement to appoint an individual with responsibility for provision of credit, arrears and financial difficulties in</p>

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	each office of the lender which is concerned with lending activity, as provided for under Regulation 6 (1), as this impinges evolving business models, which are designed around the needs of SMEs.
<p>(2) A lender shall provide appropriate training for staff concerned with lending activity subject to these Regulations which shall include, at a minimum, training on:</p> <ul style="list-style-type: none"> a) the requirements of these Regulations, and b) the lender's policies and procedures for: <ul style="list-style-type: none"> i. the assessment of applications for credit, and ii. for dealing with borrowers in financial difficulties. 	
<p>(3) A lender shall offer its borrowers an option of an annual meeting which shall, at a minimum, include a review of:</p> <ul style="list-style-type: none"> a) all credit facility agreements, b) security held in respect of credit facility agreements, and c) alternative arrangements, if applicable. 	
<p>(4) Where a borrower accepts the offer of an annual meeting referred to in paragraph (3) the lender shall arrange the meeting and meet with the borrower. Such a meeting may take place by way of telephone or video conferencing where acceptable to the borrower.</p>	We request that the CBI considers the amendment opposite to reflect that other methods of communicating with customers, such as telephone and video conferencing, are becoming more popular. The proposed Regulations should afford some flexibility in that regard, to align with the evolving need of SME customers.
<p>(5) Where a borrower requests a lender to perform a review of the borrower's credit facility agreements or alternative arrangements, the lender shall, having regard to the borrower's specific circumstances:</p> <ul style="list-style-type: none"> a) advise the borrower of any information that may be required from the borrower, b) upon receipt of the required information complete the review within a 	Provision 6 (5) will necessitate the implementation of a new process within lending institutions. It is presumed that the clock will only start/resume upon the receipt of the required information from the borrower.

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<p>reasonable timeframe, c) inform the borrower of the timeframe for completion of the review, and d) upon receipt of the required information complete the requested review within the timeframes notified to the borrower.</p>	
<p>(6) The lender shall record the results of the review referred to in paragraphs (3) and (5) in a durable medium and inform the borrower of the results.</p>	<p>BPFI would query the requirement to inform the borrower of the results of the review if the results do not necessitate a change to the credit facility/arrangement or no new actions are required by either party. It would not be an efficient use of resources (which could be applied to other value-add activities which may be of greater benefit to the SME customer) to have to comply with this requirement in these circumstances.</p>
PART 3 - ADVERTISING	
<p>7. A lender shall ensure that:</p> <ul style="list-style-type: none"> a) an advertisement for variable-rate credit shall contain the following warning statement: Warning: The cost of your monthly repayments may increase. b) an advertisement for fixed-rate credit shall contain the following warning statement: Warning: You may have to pay charges if you repay early, in full or in part, a fixed-rate credit facility. c) an advertisement for interest-only credit shall contain the following warning statement: Warning: The entire amount that you have borrowed will still be outstanding at the end of the interest-only period. d) an advertisement for a debt consolidation facility shall contain the following warning: Warning: This new credit facility may take longer to repay than your previous credit facilities. You may pay more than if you paid over a 	<p>Under the transposition of the Mortgage Credit Directive (MCD), various parties are working to consolidate the warnings required by lending institutions - this work would be appropriately incorporated into the SME Regulations to cover what is currently proposed under Regulation 7 and to consolidate the warnings across the various Codes/Regulations.</p> <p>Under Regulation 7 (a), monthly repayments may not always increase. In addition, repayments may not always be monthly, so the reference to monthly should be removed. Please see suggested amended wording opposite.</p>

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<p>shorter term.</p> <p>e) where an advertisement includes an interest rate, the advertisement shall clearly state if the rate is fixed or variable.</p> <p>f) an advertisement for a loan shall, if displaying an interest rate and the term, display the total cost of credit.</p> <p>g) advertisements for the consolidation of two or more debts shall, where sample figures are offered in the advertisement, indicate the difference between the total cost of credit of the consolidated credit and the total cost of credit of the individual debts that are the subject of consolidation.</p>	
<p><u>(2) It is not necessary for a lender to display the warning statements required in this Regulation 7 if the advertisement does not refer to the benefits of a product or service, but only names the product or service and/or invites a borrower to discuss the product or service in more detail with the lender.</u></p>	<p>BPFI would advocate the inclusion of the text opposite at Regulation 7(2) so to equalise SME credit advertising obligations with those that currently apply to personal consumer credit adverts under CPC. CPC does not require lenders to provide warnings on personal consumer credit adverts unless specific benefits of the product are being promoted. For example, a typical 'come talk to us about personal loans' poster would not require the CPC consumer credit warning (under CPC 9.9), as the consumer will be provided with this information/warning at a later stage in the lending process. It does not seem to be the case that a similar exemption is intended for SME lending adverts in the proposed Regulations.</p>
<p>PART 4 - PROVISION OF INFORMATION</p>	
<p>8. Provision of Information - General</p>	
<p>(1) A lender shall ensure that information provided to borrowers is clear and comprehensible, and that information of material importance is specifically brought to the attention of the borrower.</p>	
<p>(2) A lender shall not present information in a way which disguises, diminishes or obscures information of material importance.</p>	
<p>(3) A lender shall ensure that all warning statements required under these</p>	

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<p>Regulations are prominent. They shall be in a box, in bold type and of a font size that is at least equal to the predominant font size used throughout the document or advertisement.</p>	
<p>9. Pre-Contract Information</p> <p>(1) Where a borrower engages with a lender prior to submitting an application for credit, the lender shall:</p> <ul style="list-style-type: none"> a) provide the borrower with the information specified in Regulation 11(1), b) inform the borrower of the information referred to in Regulation 11(1)(c) that is relevant to that borrower’s proposed application, and c) provide information specific to the borrower on the steps that the borrower can take to improve the prospect of a successful credit application. 	<p>In practice, SMEs can seek support prior to formal application therefore Regulation 9 (1) (c) should not require the information to be specific to the individual customer, but rather be more general guidance on successful applications for credit. Specific information for each customer would slow down access to credit.</p>
<p>(2) In good time before the borrower is bound by a credit facility agreement, the lender shall provide the borrower with the following information:</p> <ul style="list-style-type: none"> a) the type of credit facility agreement, b) the name and the geographical address of the lender, c) the total amount of credit, d) the duration of the credit facility agreement, e) an explanation of the terms of material importance in the credit facility agreement, f) terms and conditions applying to the credit facility agreement together with the relevant fees, charges and interest rates which will apply to the credit facility agreement including an explanation of the basis for calculation of the interest charge, g) an outline of the steps to be completed to facilitate drawdown of the credit granted under the credit facility agreement, h) the amount, number and frequency of payments to be made by the borrower and, where applicable, the order in which payments will be 	<p>The presumption is that this information can be provided in the Letter of Offer to the SME. Otherwise, if this is required in a standalone document there will be a requirement for system changes, substantial cost implications for the lenders and ultimately delays in providing the credit facility agreement to the borrower. Therefore, the language at Regulation 9 (2) (q) should be amended as suggested opposite.</p> <p>It is often the case that SMEs require emergency or immediate funding, requested through direct channels (an emerging operation model, as discussed further in our response to Question 3 in Appendix 1), and which is provided by banks to facilitate customers. Such funding is typically provided by way of an overdraft, which facilitates the issue of a sanction letter after funds have been released. In the proposed Regulations, Regulation 9 (2) would seem to remove the use of sanction letters in this type of scenario, which is potentially detrimental for SME customers. As explained above, the present position for certain smaller borrowing requests is for sanction letters to issue after funds have been released. This allows the lender to react quickly to customer</p>

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<p>allocated to different outstanding balances charged at different interest rates,</p> <p>i) if a lender intends to impose a charge in respect of the provision of credit, and there is an option whereby the borrower can incorporate the charge into the amount advanced to the borrower, the lender shall inform the borrower of the option of paying the charge separately, and the overall cost to the borrower of paying the charge over the term of the credit facility agreement,</p> <p>j) where applicable:</p> <ul style="list-style-type: none"> i. the charges for maintaining an account or accounts recording payment transactions and drawdowns (unless the opening of any such account is optional), ii. any charges for using a means of payment for both payment transactions and drawdowns, iii. any other charges deriving from the credit facility agreement, and iv. the conditions under which those charges may be changed, <p>k) where the conclusion of an ancillary service contract (in particular, an insurance policy) is compulsory to obtain the credit or to obtain it on the terms and conditions marketed, a statement of the obligation to enter into such a contract,</p> <p>l) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and any charges payable for default or any unauthorised overdraft balance,</p> <p>m) a warning of the consequences of missing payments due under the credit facility agreement, as follows:</p> <p>Warning: If you do not meet the repayments on your credit facility agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the</p>	<p>requests, some of which are time critical and restricting this practice would serve to hinder an SME customer’s ability to do business. BPFi requests that the CBI reconsider this consequence of Regulation 9 (2).</p> <p>Regulation 9 is predicated on actually lending money to the SME customer. It also does not make sense in the context of Invoice Discounting.</p> <p>Regulation 9 (2) (h) should be amended as suggested opposite as the current requirement is unduly onerous given that this information may not be known at time of issue of the letter of offer.</p> <p>Regulation 9 (2) (r) will have significant cost implications for lenders with regard to system/IT changes, particularly in the case of customers in difficulty where the solutions provided by lenders are bespoke. It would be extremely difficult to build a calculator which could cater for the variety of facilities which are required by customers where this provision relates to all credit facility agreements as opposed to mortgages under previous Codes. The more complex nature of these facilities presents a significant risk that an “indication” as required in this provision could be inaccurate, and possibly misleading and confusing to a customer. Part 5 of the proposed Regulations outlines that credit must be “appropriate” to the borrower, and BPFi members believe this clause gives the required protection in this regard.</p> <p>In the case of Regulation 9 (2) (r) being applied to customers refinancing debts with other financial institutions, the offer letter may not, in some cases, be issued until written confirmation of the existing terms and conditions is supplied by the customer. This will create a further delay for the customer.</p>

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<p>future.</p> <ul style="list-style-type: none"> n) where applicable, the security sought, o) a statement that there is a right of withdrawal from the credit facility agreement or that there is no such right, as the case may be, and the terms applying to that right of withdrawal, p) a statement of the right of early repayment, and, where applicable, information concerning the lender's right to compensation and the way in which that compensation will be determined. For this purpose, the lender shall provide a worked example of an early redemption charge specific to the borrowers case, q) a statement of the borrower's right to be supplied, on request and free of charge, with a copy of the draft credit facility agreement, where the information referred to in this Regulation 9(2) is not provided within the body of the draft credit facility agreement, r) where a credit facility is offered to a borrower for the purpose of consolidating other credit facilities, the lender shall provide the borrower with a written indicative comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated credit facility on offer, s) where applicable, a statement that the collection of payments under the credit facility agreement may be passed to another organisation or debt-collection agency, or that the lender may sell the debt, and t) the length of time for which the credit offer is valid. 	
<p>10. Post-Sale Information requirements</p> <p>(1) A lender shall, provide a borrower with a statement of account—, (or schedule or confirmations, as most appropriate to the product) at least once a year, which in the case of a statement shall include:</p> <ul style="list-style-type: none"> a) the period to which the statement of account relates, b) the amounts and dates of drawdowns (if any), 	<p>We suggest the amendments opposite to cater for different types of products.</p>

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<ul style="list-style-type: none"> c) the balance from the previous statement and the date of that balance, d) the current balance, e) the dates and amounts of payments made by the borrower <u>(if any)</u>, f) the interest rate(s) applied, g) all interest charged, <u>(if any)</u>, h) all charges that have been applied <u>(if any)</u>, and i) for credit card accounts and, where applicable, the minimum amount to be paid. 	
<p>(2) Where applicable, a lender shall inform a borrower of any change in fees or charges, before the change enters into force.</p>	
<p>(3) A lender shall give notice to the borrower of any change in the interest rate before the change enters into force. The notice shall state:</p> <ul style="list-style-type: none"> a) the date the change in interest rate comes into effect, b) the payments amount after the entry into force of the new interest rate <u>(if this changes)</u> and, if the number or frequency of the payments changes, particulars of the changes, c) that the borrower should contact the lender if he or she anticipates difficulties meeting the change in repayments prompted by the change in the interest rate, and d) where the change in interest rate arises as a result of a change in the interest margin on a credit facility, the details of that change. 	<p>We request the text "<i>if this changes</i>" is inserted in Regulation 10 (3) (b) as shown opposite. The BPFII request this amendment to reflect that (as previously discussed with/demonstrated to the CBI by individual member banks) certain banks do not alter the repayment amounts based on a variance in the interest rate. SME customers often prefer to fix the amount of repayments so that they have certainty as to the amount required for repayment each month/quarter etc., and banks will cater for this by varying the term of the loan as opposed to the repayment amounts. For example, if the interest rate rises the customer may have an additional monthly payment(s) to make at the end of the loan or if the interest rate decreases the customer will have repaid the loan earlier.</p>
<p>(4) Paragraph (3) shall not apply where:</p> <ul style="list-style-type: none"> a) the change in the interest rate is caused by a change in a reference rate which <u>may</u> changes on a daily, or weekly <u>or monthly</u> basis, b) the new reference rate is made publicly available, and c) information concerning the new reference rate is kept available on the premises of the lender or on its website. 	<p>The insertion of "<i>may change</i>" and "<i>monthly</i>" (shown opposite) is to make this Regulation workable and suitable for SME customers as opposed to personal consumers, given that there is a greater amount of interest rates available to SME customers. BPFII is of the view that it would be in the better interest of SME customers to allow them to monitor interest rates in the media/on lenders' websites as opposed to receiving monthly notifications from lenders.</p>

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(5) Before-When applying a full or partial early repayment to a credit facility, a lender shall promptly provide the borrower with a worked calculation of the early redemption charge applicable.	BPFI suggest the amendment to the proposed Regulations shown opposite, because where the SME customer wishes to redeem a facility which has a market-related rate, the rate is in constant movement and therefore it would not be possible to provide an accurate worked calculation to the customer beforehand.
(6) A lender shall notify a guarantor promptly if the terms of a credit facility agreement have changed. The notification shall include an explanation of the impact which that change will have on the guarantor's obligations under the guarantee.	Regulation 10 (6) should be amended as suggested opposite, as the guarantor should be encouraged/required to get independent advice in relation to the impact of any change to the credit facility agreement, as opposed to the bank being required to provide an explanation of the impact on the guarantor's obligations.
(7) Subject to Regulation 23(1), a lender shall provide the borrower, on request and free of charge, with a copy of any credit facility agreement between the borrower and the lender.	
(8) The lender shall inform the borrower that it has appointed a third party to engage with the borrower in relation to its credit facility agreement and the lender shall explain the role of the third party and the extent of its authority to act on behalf of the lender prior to a third party engaging with a borrower.	
PART 5 - APPLICATIONS FOR CREDIT	
11. Applications for Credit (1) The lender shall publish on its website, and otherwise make available to borrowers in any office of the lender dealing with lending subject to these Regulations, the following information: <ol style="list-style-type: none"> a) that the borrower is entitled to request a meeting with the lender to discuss any proposed application for credit, b) the timelines which apply to the assessment of an application for credit 	The requirement to consult both CCR and AnaCredit must be kept in mind in the context of this provision. A certain timeline must be afforded to lenders to carry out the necessary checks required under law, prior to approving any credit. Guidance around information requirements is currently provided to SMEs; however, any specific requirements to be provided as under Regulation 11 (1)

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<p>as set out in the lender's policies and procedures,</p> <ul style="list-style-type: none"> c) a comprehensive list of the information that may be required from a borrower in support of a borrower's application for credit, d) that the lender may require submission of a business plan in support of an application for credit, e) a description of the information that may be required in a business plan, including information on the structure and content of the business plan, f) information about Government support schemes available from or through the lender, and g) a description of the lender's policies on security. 	<p>(c) will be determined on a case-by-case basis, with reference to the borrower characteristics.</p>
<p>(2) Prior to entering into a credit facility agreement, a lender shall gather and record sufficient information from the borrower to assess whether that credit is suitable to that borrower. The level of information gathered should be appropriate to the nature and complexity of the credit facility agreement being sought by the borrower and at a minimum shall be to a level that allows the lender to assess the borrower's likely ability to repay the debt over the duration of the agreement.</p>	
<p>(3) The lender shall offer a credit facility agreement to a borrower only where it has satisfied itself on reasonable grounds that the credit is appropriate to the borrower.</p>	
<p>(4) A lender shall gather and record information and carry out a further affordability assessment in accordance with paragraph (2) prior to advancing additional credit to a borrower, whether by way of a top-up on an existing loan or by a new agreement to provide credit.</p>	
<p>(5) If a lender cannot make a decision within 15 working days of receipt of a completed application on whether it will grant or refuse an application for credit it shall inform the borrower that the lender's assessment of the</p>	

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<p>application will take longer than 15 working days, the reason(s) why and the expected timeframe within which a decision will be made.</p>	
<p>12. Security (1) A lender shall ensure that any security which the lender is seeking in support of the application for credit is reasonable and proportionate having due regard to the nature, liquidity and value of the security offered and to the value of the credit offered.</p>	
<p>(2) A lender shall ensure that any guarantee which the lender is seeking in support of the application for credit is reasonable and proportionate having due regard to the nature, liquidity and value of the other security offered and to the value of the credit offered.</p>	<p>BPFI is of the view that this Regulation 12 (2) may be a duplicate of Regulation 12 (1), given that the definition of security includes guarantee.</p>
<p>(3) Where a lender seeks security or a guarantee in support of the borrower's application, it shall provide the borrower and, where applicable, the guarantor with a clear explanation of why the security or guarantee is required, together with an explanation of the potential consequences for the borrower or guarantor of providing such security or guarantee.</p>	<p>BPFI believes that, specifically with regard to the guarantor, the requirement that the guarantor documentation outlines the obligations of the guarantor pursuant to section (5) below affords sufficient protection and more than enough information regarding the implication for the guarantor of providing the guarantee. BPFI therefore requests removal of reference to the guarantor in section (3). As referenced above in relation to Regulation 10 (6) the guarantor should be encouraged/required to get independent advice in relation to the provision of the guarantee - there is a risk that if the lender gets involved with the guarantor in explaining the consequence of providing the guarantee that the guarantor may not seek independent legal advice.</p>
<p>(4) Where a lender seeks security or a guarantee which exceeds the value of the credit sought, it shall notify the borrower and, where applicable, the guarantor of that fact and provide a detailed explanation of the reasons why that level of security or guarantee is considered reasonable and proportionate to support the application for credit.</p>	<p>BPFI advocates the deletion of Regulation 12 (4) which, in its view, serves only to dictate lending criteria. Each bank will have its own lending criteria, risk appetite and terms around the provision of security/guarantees and prescribing this within Regulations is not in the interests of prudential and sustainable lending. We request therefore that this Regulation is deleted.</p>

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<p>(5) Where credit is offered to a borrower by a lender subject to a guarantee, the guarantee documentation shall outline the obligations of the guarantor and shall, where relevant, contain the following warning statements:</p> <p>Warning: As a guarantor of this any credit, you will have to repay the debt amount(s), any interest and all associated charges if the borrower(s) do(es) not. Before you sign this guarantee you should get independent legal advice.</p> <p>Warning: As a guarantor of this credit, you may be at risk of losing your home if the borrower does not keep up repayments on this credit facility agreement.</p>	<p>It is standard market practice for guarantors to provide “all sums” guarantees to lenders, whereby the guarantee is designed to cover not only the present credit facility agreement but also future agreements entered into between the lender and the borrower.</p> <p>In such cases, lenders put protections in place so that the borrower and the guarantor are clearly advised as to the meaning and effect of an “all sums” clause in relation to future borrowings, to ensure that the guarantor and borrower are, at all times, fully aware of the extent of the guarantor’s liability.</p> <p>All sums guarantees are commonly used in the SME market because they are often more cost effective and efficient in terms of administration for SME customers. SME customers are aware of the benefits of requiring guarantors to provide an “all sums” guarantee rather than separate guarantees over a period of time, particularly where the SME customer will require top-ups of its credit facilities and consequently, will often request this type of guarantee to be put in place.</p> <p>We would suggest that the warning in Regulation 12 (5) is amended, as shown opposite, to ensure that the warning is not interpreted by guarantors as being at variance with the terms of the guarantee, where the guarantee is to cover not just the present credit facility but may also apply to future credit facilities.</p> <p>BPFI also queries the relevance of the second warning in relation to losing your home in the context of corporate guarantee and would suggest that this is restricted to use in relation to personal guarantees.</p>
<p>(6) A lender shall, <u>where requested by the borrower</u>, promptly return any security held by the lender to the borrower when all credit for which the security is pledged has been repaid, unless the borrower requests the lender to retain the security.</p>	<p>As advised to the CBI previously, in a case where the borrower has notified of the intention to seek credit again in the future, the security would not be released. This is in order to avoid the borrower incurring additional costs associated with release and re-registration of the security. We would suggest that Regulation 12 (6) should be amended as suggested opposite to avoid any</p>

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	unnecessary costs being incurred by the borrower.
<p>(7) Where security on a credit facility has been realised, a lender shall immediately inform the borrower of the borrower's liability for:</p> <ul style="list-style-type: none"> a) the balance of any residual debt, b) the interest rate on the residual debt, and c) any costs for the realisation of the security which have been added to the debt. 	
PART 6 - DECLINING/WITHDRAWING CREDIT	
<p>13. Refusing or Withdrawing Credit</p> <p>(1) If a lender is refusing a credit application, the lender shall provide the borrower with at least the following information:</p> <ul style="list-style-type: none"> a) an explanation of the reason(s) why the application for credit was refused. The explanation provided shall: <ul style="list-style-type: none"> i. be clear and comprehensible, ii. identify the application (or part thereof) that was refused, and iii. be specific to the borrower's application (or part thereof), b) information on the lender's internal appeals procedure established pursuant to Regulation 21 and information on how to appeal a decision by the lender to refuse an application for credit, c) where the lender's decisions are subject to review by the Credit Review Office, information about the role of the Credit Review Office and the contact details for the Credit Review Office, d) information about any other supports available from or through the lender, which may include relevant Government support schemes, and e) information about the borrower's right to make a complaint under the lender's complaints procedure established pursuant to Regulation 22. 	<p>Standardised decline letters are used by banks to facilitate a meaningful response to customers within a tight timeframe. Customisation of decline responses on a case-by-case basis would be impractical, cause significant technology issues and would serve only to extend the timeframe in which banks can respond to customers.</p> <p>As the CBI will be aware, two member banks revisited the standard list of reasons for decline and the language used in October last year. The revised list of decline reasons was submitted to the CBI by the relevant banks in November 2014 and the banks in question have proceeded to implement the system changes to reflect the enhanced standard of language used in setting out the reasons for a decline. We assume that compliance by other banks with the standard reasons for decline, as submitted to the CBI last year, is sufficient in the case of communicating a decline.</p> <p>Under Regulation 13 (1) (d) the amount of information that could be provided is significant. It is suggested therefore that Letters of Decline could instead direct a SME to a website, such as the Local Enterprise SME Online Tool, that sets out the various supports available to SMEs. Letters of Decline already provide reference to some government supports including Micro Finance Ireland (MFI) and the Credit Guarantee Scheme. The Small Business Finance website also outlines government supports. In any case, lenders cannot notify of all available</p>

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	supports nor is it their role to do so.
(2) Where a lender decides to withdraw or amend a credit facility agreement it shall promptly notify the borrower of the proposed withdrawal or amendment and of the reason(s) for the withdrawal or amendment.	
PART 7 - ARREARS	
14. Arrears (1) Where a borrower notifies a lender that the borrower may be at risk of going into arrears or a borrower in arrears is concerned about going into financial difficulties, the lender shall: <ul style="list-style-type: none"> a) offer the borrower the option of an immediate review of the borrower's credit facility agreements, alternative arrangements and security, as appropriate, b) where the borrower agrees to the review referred to in sub-paragraph (a), the lender shall perform the review and identify what options are available to the borrower to address the borrower's anticipated arrears, having regard to the particular circumstances of the borrower, c) assess if the borrower's circumstances are such that Part 8 [<i>Financial Difficulties</i>] of these Regulations should be applied to the borrower's case, and d) where a review referred to in sub-paragraph (a) is performed, the lender shall inform the borrower of the outcome of the review and any recommended course of action which the borrower should take on foot of the review. 	
(2) Where a borrower's account remains in arrears, <u>for ten working days where the arrears relate to an overdraft; and otherwise for forty working days where the arrears do not relate to an overdraft,</u> after the arrears first arose the lender shall, within five working days: <ul style="list-style-type: none"> a) inform the borrower that it is in arrears; <u>and,</u> 	This provision represents a new process under the SME Regulations and presents difficulties in the context of timings. The 10 working days of arrears is not ideal - for example, other accounts of the SME may be operating normally and for some minor reason a payment has not been made on one account. The arrears could potentially be cleared on day 11, but the bank would have already

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<p>b) contact the borrower to identify the reason why the arrears have arisen, and e) perform an assessment to establish whether the borrower's circumstances are such that Part 8 of these Regulations should be applied to the borrower's case.</p>	<p>entered into a process with the SME, assessing its circumstances and whether or not it should be treated as being in financial difficulties. Again, referencing the definition of "SME", such a potentially lengthy process could be applied to a range of SMEs, from sole traders to corporates.</p> <p>Such a process would not be appropriate in the context of business credit cards, another reason for their exclusion from the scope of the Regulations.</p> <p>We require Regulation 14 (2) to align the process for overdrafts and arrears on other types of accounts. The 10 days should only apply to overdrafts (i.e., already in excess for 30 days) and 40 days for other accounts. We also require the deletion of Regulations 14 (2) (c) and 14 (3) as it would be too early to determine whether the customer is in financial difficulties and would be unfair to the customer to try to assess this at this stage in the arrears process.</p>
<p>(3) A lender shall promptly inform the borrower of the outcome of the assessment referred to in paragraph (2) and any recommended course of action which the borrower should take on foot of the lender's assessment.</p>	
<p>PART 8 - FINANCIAL DIFFICULTIES</p>	
<p>15. Policy for Financial Difficulties cases</p> <p>(1) A lender shall establish, maintain and adhere to policies and procedures for dealing with borrowers in financial difficulties. The policies and procedures shall have the core objective of assisting the borrower to resolve the financial difficulties. These policies and procedures shall be in writing and shall at a minimum provide for the following matters:</p> <ul style="list-style-type: none"> a) the procedure that the lender will apply when dealing with borrowers in financial difficulties and how it will implement the procedure, b) the information to be sought from borrowers in financial difficulties, c) that the information sought from borrowers be relevant to assessing the financial situation of borrowers, d) that an alternative arrangement may be agreed with borrowers, where 	<p>The requirements under Regulation 15 would seem to disadvantage banks in favour of trade creditors. The fact that the proposed Regulations would not apply to other creditors means those other creditors would be able to act freely and without imposition of the Regulations with the ability to call in any debts owed, while a lender would be engaged in an overly prescriptive and lengthy process.</p> <p>Regulation 15 (1) (f) and (h) suggests that SME debt can be separated out. This is not always possible where the various elements of a connection are cross collateralised. All forms of debt which are associated with an SME must be considered in its entirety to ensure a full picture of the SME's indebtedness is established at the outset, if the lender is to assist the SME to overcome or</p>

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<p>appropriate,</p> <p>e) a description of the types of alternative arrangements that may be offered to those borrowers in financial difficulties by the lender,</p> <p>f) the criteria which the lender will apply when considering which (if any) alternative arrangement is appropriate to the borrower in financial difficulties. The criteria shall at a minimum include the following where appropriate:</p> <ul style="list-style-type: none"> i. the viability of the business, ii. any links with personal debt of the principals of the firm that impacts on the business, iii. any business debt related to property and other investments; iv. the information provided by the borrower, v. the borrower’s current and future repayment capacity, vi. the borrower’s previous repayment history, and vii. whether the borrower has any business debt other than the credit facility in financial difficulties, and if so the overall business indebtedness of the borrower, <p>g) identify the dedicated contact points to which the lender has assigned responsibility for dealing with borrowers in financial difficulties,</p> <p>h) facilitate separate consideration of debt related to the business, debt related to property and other investments or personal debt of the principals of the firm that impact on the business,</p> <p>i) provide for consideration of a financial difficulties case on the specific facts of that case,</p> <p>j) set out that the lender shall consider all reasonable options available before suggesting that a borrower dispose of assets essential to the running of the business, trade or profession of the borrower,</p> <p>k) include the following statement: A key objective of this policy is to assist borrowers to resolve the</p>	<p>resolve its financial difficulties.</p> <p>In addition, some of the criteria mentioned at Regulation 15 (1) (f) will not be relevant to all SMEs, therefore we suggest the insertion of “<i>where appropriate</i>” in Regulation 15 (1) (f) as shown opposite.</p>

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<p>financial difficulties, and</p> <p>l) if a lender cannot make a decision on whether it will facilitate an alternative arrangement within 15 working days from receipt of the information needed in order to allow it to consider the application, specify that the borrower shall be informed promptly about how long it will take to complete its consideration of whether to facilitate the alternative arrangement and the reasons why it will take longer than 15 working days.</p>	
<p>(2) A lender shall apply the policies and procedures established under paragraph (1) to all financial difficulties cases except where the borrower is not co-operating with a lender.</p>	
<p>(3) Prior to classifying a borrower as not co-operating, a lender shall write to the borrower to:</p> <p>a) inform the borrower that it will be classified as not co-operating if it does not undertake specific actions, which shall be outlined in the letter, within at least 20 working days of the date of the letter to enable the lender to complete an assessment of the borrower’s circumstances, and</p> <p>b) outline to the borrower the implications of not co-operating, including that, where applicable, action may be taken to enforce security immediately after classifying the borrower as not co-operating and that the borrower will remain liable for any outstanding debt.</p>	
<p>(4) Where a lender has classified a borrower as not co-operating, following a period whereby the borrower has been given the opportunity to co-operate (in line with paragraph (3)), the lender shall notify the borrower that it has been classified as not co-operating and inform the borrower that, where applicable, action may be taken to enforce security immediately.</p>	
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<p>16. Standard Information for Borrowers</p> <p>(1) A lender shall prepare and make available to borrowers an information booklet containing the following information:</p> <ul style="list-style-type: none"> a) a description of the lender’s policies and procedures required under Regulation 15 for dealing with borrowers in financial difficulties, b) an explanation that the lender may offer the borrower an alternative arrangement to assist the borrower to resolve the financial difficulties, subject to the borrower meeting the lender’s alternative arrangement assessment criteria and to an individual assessment of the borrower’s situation, c) the criteria which shall be applied to the borrower’s financial difficulties case to determine whether an alternative arrangement is suitable to resolve those financial difficulties, d) a statement emphasising that it is in the borrower’s interest to engage with the lender about arrears or financial difficulties, e) an explanation of the meaning of not co-operating under these Regulations and the implications for the borrower of not co-operating, including that a lender may take action to enforce security immediately after classifying a borrower as not co-operating, f) an explanation that the lender may be entitled to impose additional fees or charges on borrowers in financial difficulties in accordance with the terms and conditions of the credit facility agreement, g) a list of the information which the lender may request from the borrower when assessing the borrower’s case, h) a statement that the financial difficulties may impact on the borrower’s credit rating, i) a link to these Regulations and a brief summary of the purpose of these Regulations, j) an explanation that the data relating to the borrower’s arrears may be 	

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<p>shared with relevant credit reference agency or credit register, where permitted by contract or required by law,</p> <p>k) confirmation that each office of the lender dealing with lending subject to these Regulations has a designated contact point for borrowers in financial difficulties,</p> <p>l) a statement advising borrowers of their right to employ third party advisors who may accompany the borrower during discussions with the lender whether these discussions are face to face or not,</p> <p>m) an explanation of the lender’s internal appeals process in respect of a lender’s decision on whether to grant an alternative arrangement and the timeframes involved, and</p> <p>n) information regarding the borrower’s right to make a complaint in accordance with Regulation 22, including the procedure and timeframe for submitting a complaint.</p>	
<p>(2) A lender shall have a dedicated webpage on its website for borrowers in, or concerned about, financial difficulties which shall contain or directly link to the information booklet referred to in paragraph (1).</p>	
<p>(3) The dedicated webpage referred to in paragraph (2) shall contain a statement highlighting the importance of the borrower engaging with the lender to address the financial difficulties. The dedicated webpage shall be prominently and directly linked on the lender’s home page</p>	
<p>17. Communication with Borrowers in Financial Difficulties</p> <p>(1) When contacting a borrower in financial difficulties, a lender shall ensure that:</p> <p>a) the level of contact and communications with the borrower, or any third party acting on its behalf, is proportionate and not excessive, taking into account the particular circumstances of the borrower,</p> <p>b) communications with the borrower are not aggressive, intimidating or</p>	<p>Member banks are committed to ensuring that when contacting a borrower in financial difficulties that all contact is proportionate, not excessive, never aggressive or intimidating. Our understanding is that an overarching communications policy which each lender must have in place, as opposed to any individually negotiated communications plan with the borrower, is the optimum way to achieve this. An overarching communications policy ensures a transparent and standard approach for all borrowers, promoting fairness,</p>

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<p>harassing,</p> <p>c) the borrower is given sufficient time to complete an action to which it has committed before follow-up communication is attempted. In deciding what constitutes sufficient time, consideration shall be given to the action the borrower has committed to carry out, including whether it may require assistance or co-operation from a third party in carrying out the action, and</p> <p>d) the lender agrees a communication plan with the borrower.</p>	<p>which can be easily measured.</p> <p>We question the usefulness and practicality of the requirement, under Regulation 17 (1) (d), to agree a communication plan with the borrower. The practicality of implementing this would be a cause for concern, and by extension, implications of non-agreement by the borrower to a plan, necessary contact outside of an agreed plan etc. may cause implementation difficulties. Furthermore, consideration should be given to the fact that the rigidity of being required to comply with a communication plan may not be in the borrower's best interests. On this basis, BPFII advocates the CBI revisits the wording of the proposed Regulation 17.</p>
<p>(2) Within ten working days of the borrower first entering financial difficulties, the lender shall contact the borrower to advise the borrower of the following:</p> <p>(a) the status of the account,</p> <p>(b) the applicability of these Regulations,</p> <p>(c) the availability of the information booklet required under Regulation 16, including details of where it can be located on the lender's website and information on how a borrower can receive a printed copy of the information booklet from the lender, if required,</p> <p>(d) the type of information that may be requested from the borrower by the lender or a reference to where this information is available,</p> <p>(e) if relevant, any impact of the financial difficulties on other credit facilities held by the borrower with that lender,</p> <p>(f) that it is in the borrower's interest to engage with the lender about arrears or financial difficulties, and</p> <p>(g) the option of an immediate review of the borrower's credit facilities, alternative arrangement(s) and security.</p>	

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<p>(3) When the borrower enters financial difficulties, the lender shall appoint an individual <u>a designated contact point for the</u> in the lender as the borrower's point of contact and borrower and inform the borrower of the identity of that individual <u>designated contact point</u>. The borrower shall be advised promptly if the individual who acts as that point of designated <u>contact point</u> changes from time to time.</p>	<p>Lenders will not necessarily have an “individual”, but perhaps a unit or team to deal with borrowers in financial difficulties. We suggest the CBI considers the wording opposite.</p>
<p>(4) A lender shall respond to all written communications <u>(where appropriate)</u> from a borrower regarding financial difficulties or arrears within 10 working days of the date of receipt of those communications.</p>	<p>BPFI believes that this Regulation contradicts timelines quoted in other areas of the proposed Regulations e.g., Regulation 21 (5). We request the suggested amendment opposite as we would question whether the inclusion of such a generic provision to respond to all written communication is necessary.</p>
<p>18. Independent Reports (1) Where a lender requires an independent review by a third party of the borrower’s business in order to assess the future viability of the business, the lender shall: a) explain to the borrower the reasons for the review, b) what will be covered by the review, c) the name of the person carrying out the review, and d) any costs to be borne by the borrower.</p>	
<p>(2) Where the borrower has borne any part of the cost of the independent review, the lender shall promptly provide the borrower with a copy of any report provided to the lender following the review under paragraph (1).</p>	
<p>19. Alternative Arrangements (1) An alternative arrangement offered by a lender to a borrower shall include the following information in the offer documentation: a) the timeframe for the borrower to avail of the offer of the alternative arrangement, b) the new repayment amount(s) on the credit facility under the</p>	<p>We request the CBI to consider adopting the amendments opposite, as depending on the nature of the facility some of the information will be unknown/irrelevant. For example, in the cases of some alternative arrangements the arrears will be included in the amount of all debt obligations, therefore the monetary amount may not be specified.</p>

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<p>proposed alternative arrangement, as applicable, and the number and frequency of those repayment amounts,</p> <p>c) the term of the alternative arrangement,</p> <p>d) the implications arising from an alternative arrangement including the impact on:</p> <ul style="list-style-type: none"> i. the credit term(s), ii. the balance outstanding on the account, and iii. the monetary amount of the arrears on the account. <p>e) <u>Where applicable,</u> the frequency with which the alternative arrangement will be reviewed and the criteria against which the borrower's financial difficulties will be assessed,</p> <p>f) <u>If known,</u> details of any residual debt remaining at the end of an alternative arrangement and owed by the borrower,</p> <p>g) how interest and charges will be applied to the credit facility as a result of the alternative arrangement,</p> <p>h) how the alternative arrangement will be reported by the lender to the relevant credit reference agency or credit register and the anticipated impact of this on the borrower's credit rating, and</p> <p>i) a statement highlighting the borrower's right to seek independent legal and/or financial advice, and a recommendation that they should do so.</p>	
<p>(2) If a lender decides not to offer an alternative arrangement to a borrower, the lender shall:</p> <ul style="list-style-type: none"> a) inform the borrower of the reasons, with reference to the specific criteria applied, for not offering an alternative arrangement, b) advise the borrower of the next steps the lender will <u>may</u> take, c) explain the borrower's right to appeal the lender's decision, and d) refer the borrower to the relevant section concerning appeals in the lender's information booklet required under Regulation 16 of these 	<p>BPFI would suggest the amendment shown opposite. As the lender may not have decided definitively on what steps it will take, it is likely that there may be options available to both the borrower and the lender. The word "may" represents some flexibility, which may be mutually beneficially to both the SME customer and the lender depending on the circumstances of the case.</p>

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Regulations.	
<p>(3) If a borrower declines to accept an offer of an alternative arrangement made by the lender, the lender shall:</p> <ul style="list-style-type: none"> a) provide the borrower with clear information on the next steps the lender may take, b) inform the borrower of its right to appeal the terms and conditions applying to the alternative arrangement proposed, and c) refer the borrower to the relevant section concerning appeals in the lender's information booklet required under Regulation 16 of these Regulations. 	
<p>20. Operation of an Alternative Arrangement In good time before Where an alternative arrangement comes to an end, a lender shall review the borrower's situation to assess whether a further alternative arrangement is necessary.</p>	<p>It will not always be possible to make this assessment particularly in more complex cases (where there may be a significant sale etc. towards the end of the arrangement) until the arrangement comes to an end and therefore, we would ask that consideration is given to the reinsertion of the language from the existing SME Code.</p>
PART 9 - APPEALS AND COMPLAINTS	
<p>21. Appeals</p> <p>(1) A lender shall establish and implement an internal appeals procedure allowing a borrower to appeal at least the following decisions of the lender:</p> <ul style="list-style-type: none"> a) the refusal of a credit application, b) a term or condition imposed by the lender on the granting of credit (including security and/or guarantees required by the lender), <u>which is specific to the credit facility agreement</u>, c) the withdrawal or reduction of a credit facility, d) a term or condition imposed by the lender on an alternative arrangement, <u>which is specific to the alternative arrangement</u>, and e) the refusal to offer an alternative arrangement to a borrower under 	<p>The current wording of proposed Regulations 21 (1) (b) and (d) is inappropriate in terms of promoting fair treatment by lenders of all SME customers and we therefore suggest the proposed wording opposite.</p> <p>The standard Terms & Conditions which make up part of every lending agreement and apply to all SME customers are integral to the product offering and form a key part of the lending process. SME customers are entitled to appeal bespoke terms and conditions of sanction which are particular to them. However, in the interest of fairness to all SME customers and being mindful of prudential lending standards, standard Terms & Conditions should not be subject to potential appeal as may be implied by the proposed Regulations.</p>

<i>Proposed Revised Provisions</i>	<i>Potential Amendments/Comments</i>
Regulation 19.	
(2) A lender shall allow the borrower a reasonable period of time to consider submitting an appeal to the Appeals Panel, which shall be at least 20 working days from the date of notification of the decision of the lender.	
(3) The procedure referred to in paragraph (1) shall provide that the appeal be conducted by an Appeals Panel as soon as is reasonably practicable after the borrower makes the appeal.	
(4) The Appeals Panel shall be comprised of at least two decision makers who have not been involved in the borrower's case previously. These decision makers shall have sufficient knowledge and experience to conduct the appeal.	
(5) Without prejudice to the generality of paragraph (3), the procedure referred to in paragraph (1) shall provide that if the lender cannot make a decision on the appeal within 15 working days, the lender shall promptly inform the borrower how long it will take to reach its decision and the reasons why it will take longer than 15 working days.	
(6) The procedure referred to in paragraph (1) shall provide that the lender will notify the borrower, within five working days of the completion of the consideration of an appeal, of the decision of the Appeals Panel and explain the reasons for the decision and where the borrower's appeal is upheld, in whole or in part, the terms of any offer being made in a clear and comprehensible manner.	
(7) The lender shall acknowledge on paper or on another durable medium the receipt of each appeal within five working days of receipt of the appeal.	
(8) The lender shall provide the borrower with the name of one or more individuals appointed by the lender to be the borrower's point of contact in relation to the appeal, until the Appeals Panel adjudicates on the appeal.	
(9) Where the lender's decisions are subject to review by the Credit Review Office, the lender shall:	

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<ul style="list-style-type: none"> a) inform the borrower of its right to refer the matter to the Credit Review Office, b) provide the borrower with information about the role of the Credit Review Office, and c) provide the borrower with the contact details of the Credit Review Office. 	
<p>22. Handling Complaints</p> <p>(1) A lender shall make all reasonable efforts to resolve any complaints made by a borrower.</p>	
<p>(2) When a lender receives an oral complaint, it shall offer the borrower the opportunity to have this handled in accordance with the lender's complaint procedure.</p>	
<p>(3) A lender shall have in place a written procedure for the proper handling of complaints. This procedure does not apply where the complaint has been resolved to the complainant's satisfaction within five working days, provided however that a record of this fact is maintained. At a minimum, this procedure shall provide that:</p> <ul style="list-style-type: none"> a) the lender shall acknowledge each complaint within five working days of the complaint being received, b) the lender shall provide the complainant with the name(s) of one or more individual(s) appointed by the lender to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further, c) the lender shall provide the complainant with a regular update, on the progress of the investigation of the complaint at intervals of not greater than 20 working days, starting from the date on which the complaint was made, 	

<i>Proposed Revised Provisions</i>	<i>Potential Amendments/Comments</i>
<p>d) the lender shall attempt to investigate and resolve a complaint within 40 working days of having received the complaint; where the 40 working days have elapsed and the complaint has not been resolved, the lender shall inform the complainant of the anticipated timeframe within which the lender hopes to resolve the complaint and shall inform the borrower that it can refer the matter to the Financial Services Ombudsman where applicable and shall provide the borrower with the contact details of the Financial Services Ombudsman, and</p> <p>e) within five working days of the completion of the investigation, the lender shall advise the borrower of:</p> <ul style="list-style-type: none"> i. the outcome of the investigation, ii. where applicable, the terms of any offer or settlement being made, and iii. where applicable, the fact that the borrower can refer the matter to the Financial Services Ombudsman. 	
<p>(4) A lender shall establish and maintain a register of all complaints from borrowers subject to the complaints procedure required under paragraph (3). This register shall contain:</p> <ul style="list-style-type: none"> a) details of each complaint, b) the date the complaint was received, c) a summary of the lender's response(s) including dates, d) details of any other relevant correspondence or records, e) the action taken to resolve each complaint, f) the date the complaint was resolved, and g) where relevant, the current status of the complaint which has been referred to the Financial Services Ombudsman. 	
<p>(5) A lender shall maintain up to date and comprehensive records for each complaint received from a borrower.</p>	
<p>(6) A lender shall undertake an analysis of the complaints register required</p>	

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under paragraph (4) on a regular basis including investigating whether complaints indicate an isolated issue or a more widespread issue for borrowers. This analysis of complaints shall be reported to the lender's risk or audit committee and to the lender's management body.	
PART 10 - RECORDS AND COMPLIANCE	
23. Records and Compliance	
(1) A lender shall retain all records for six years from the date on which the lender ceased to provide the credit facility or alternative arrangement to the borrower concerned.	
(2) A lender shall prepare and maintain records to demonstrate compliance with these Regulations.	
(3) A lender shall maintain records of all applications for credit and the decision on those applications.	BPFI is of the view that Regulation 23 (3) should be deleted as it duplicates what is set out in Regulation 23 (1) and 23 (4).
(4) A lender shall maintain all documents relating to a credit application which has been refused for at least 12 months or if the decision to refuse the credit application is appealed under Regulation 21, for at least 12 months after the conclusion of the appeal.	
(5) A lender shall ensure that in all its dealings with borrowers it has and employs effectively the resources, systems and control checks that are necessary for compliance with these Regulations.	
PART 11 - MISCELLANEOUS	
24. Information and Explanations in a Durable Medium	
The lender shall provide any information or explanation required to be made to a borrower or a person providing security pursuant to these Regulations in a durable medium.	
25. Outsourced Activity	
A lender shall ensure that any outsourced activity complies with these Regulations.	

<i>Proposed Revised Provisions</i>	<i>Potential Amendments/Comments</i>
<p>26. Code of Conduct on Business Lending to Small and Medium Enterprises The revocation of any Code of Conduct on Business Lending to Small and Medium Enterprises, or part of Code of Conduct on Business Lending to Small and Medium Enterprises, by these Regulations:</p> <ul style="list-style-type: none"> a) does not affect any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation. 	