

Chapter 6

Information about the firm, its
services and remuneration

6.1B Retail investment product provider, operator of an electronic system in relation to lending, and platform service provider requirements relating to adviser charging and remuneration

Application - Who? What?

- 6.1B.1** **R** (1) This section applies to:
- (a) a *firm* which is a *retail investment product* provider;
 - (b) in relation to ■ COBS 6.1B.9 R, ■ COBS 6.1B.10 G and ■ COBS 6.1B.11 G, a *platform service provider*; and
 - (c) a *firm* which is an *operator of an electronic system in relation to lending*;
- in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product* or *P2P agreement* and also where a *retail investment product* transaction is executed by a *platform service provider* and no *personal recommendation* has been made.
- (2) This section does not apply to a *retail investment product* provider in circumstances where a *firm* gives advice or provides services to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- 6.1B.1A** **G** ■ PERG 8.30B (Personal recommendations) describes what is meant by a *personal recommendation* in the context of the definition of the *regulated activity of advising on investments (except P2P agreements)*. That *guidance* is also relevant to the meaning of *personal recommendation* in this section in relation to a *retail investment product*. The *guidance* in ■ PERG 8.24 to ■ PERG 8.30B does not apply to the *regulated activity of advising on P2P agreements*.
- 6.1B.1B** **G** In this section, ■ COBS 6.1B.5AR and ■ COBS 6.1B.7AR are not relevant in circumstances where a *retail client* receives a *personal recommendation* in relation to a *P2P agreement*.
- 6.1B.2** **R** This section does not apply to a *firm* when a *retail client* receives *basic advice* in accordance with the *basic advice rules*.

6.1B.2A **R** This section does not apply to a *firm* in circumstances where a *retail client* receives a *personal recommendation* in relation to one of the *firm's Holloway sickness policies*, provided that the *Holloway policy special application conditions* are met.

6.1B.3 **G** This section applies to a *firm* when it makes a *personal recommendation* on a *retail investment product* or *P2P agreement* and where a *retail investment product* for which it is the *retail investment product provider* or *P2P agreement* which it facilitates as the *operator of an electronic system in relation to lending* is the subject of a *personal recommendation* made by another *firm*.

Application - Where?

6.1B.4 **R** This section does not apply if the *retail client* is outside the *United Kingdom*.

Requirement not to offer commissions

6.1B.5 **R** (1) Except as specified in **COBS 6.1B.5AR**, a *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, or to any other third party for the benefit of that *firm*, in connection with that *firm's business of advising* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.

(2) Paragraph (1) does not apply to minor non-monetary benefits which meet the requirements of:

- (a) **COBS 2.3A.19R**, in connection with the provision of *investment services*; or
- (b) **COBS 6.1A.5AR(2)**, in connection with other business.

6.1B.5-A **G** The *guidance* in **COBS 6.1A.5BG** is also relevant for the purposes of **COBS 6.1B.5R(2)**.

6.1B.5A **R** A *firm* and its *associates* may:

- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in **COBS 6.1B.5 R** if:
 - (a) the *personal recommendation* was made on or before 30 December 2012;
 - (b) the offer and payment was permitted by the *rules* in force on 30 December 2012;
 - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
 - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and

(e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and

(2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

6.1B.5B G A *firm* may continue paying commission, remuneration or benefits of any kind to another *firm* in relation to a *personal recommendation* made by that other *firm* in circumstances where that other *firm* may accept that commission, remuneration or benefit of any kind (see ■ COBS 6.1A.4A R and ■ COBS 6.1A.4AA G).

6.1B.6 G [deleted]

Distinguishing product and P2P platform charges from adviser charges

6.1B.7 R A *firm* must:

(1) take reasonable steps to ensure that its *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* are not structured so that they could mislead or conceal from a *retail client* the distinction between those charges and any *adviser charges* payable in respect of its *retail investment products* or investments in *P2P agreements* made through the system of which it is the *operator of an electronic system in relation to lending*;

(2) not include in any marketing materials in respect of its *retail investment products*, the service it offers as an *operator of an electronic system in relation to lending* or facilities for collecting *adviser charges* any statements about the appropriateness of levels of *adviser charges* that a *firm* could charge in making *personal recommendations* or providing related services in relation to its *retail investment products* or investments through the system in relation to which it is the *operator of an electronic system in relation to lending* ; and

(3) not defer, discount or rebate *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable, including by maintaining *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1B.7A R or ■ COBS 6.1E.10R (2), is payable to the *retail client*.

6.1B.7A R A *retail investment product* provider may maintain *retail investment product* charges at a level such that a cash rebate is payable to the *retail client* if:

- (1) the *retail investment product* transaction was agreed on or before 5 April 2014 and executed within a reasonable time of that agreement; and
- (2) the *retail client's* right to receive the cash rebate arose on or before 5 April 2014; and
- (3) on or after 6 April 2014 no change is made to that product, or, where there is such a change on or after 6 April 2014, only in relation to the unchanged part of that product.

6.1B.7B G In the *FCA's* view, if the *platform service provider* retained any part of a rebate on or before 5 April 2014, the *retail client* is unlikely to have had a right to receive that part of the rebate.

6.1B.7C G The following examples do not entail changes to the *retail investment product*:

- (1) no change is made to the *retail client's* investment in the relevant product or to the level of the *retail client's* regular contributions into that product;
- (2) the *retail client's* investment in, or regular contribution to, the relevant product is reduced: the *retail investment product* provider may continue to pay the cash rebate associated with the reduced investment amount;
- (3) the *retail client's* investment in the relevant product is transferred from accumulation *units* to income *units* or vice versa;
- (4) part of the *retail client's* investment is switched between funds within a *retail investment product*, such as a *SIPP*, or a *retail investment product* wrapper, such as an *ISA*: the *retail investment product* provider may continue to pay the cash rebate associated with the part of the *retail client's* investment which has not been switched into another fund;
- (5) the level of cash rebate payable to the *retail client* is reduced;
- (6) the product is converted to a share class which does not pay a commission, remuneration or benefit of any kind to a *firm* and is otherwise unchanged.

6.1B.8 G ■ COBS 6.1B.7 R does not prevent a *firm* from offering a promotional discount to a *retail client* in the form of extra *units* or additional investment, but a *firm* should not offer to invest more than 100% of the *retail client's* investment.

Requirements on firms facilitating the payment of adviser charges

6.1B.9 R ■ COBS 6.1B.7 R does not prevent a *firm* from offering a promotional discount to a *retail client* in the form of extra *units* or additional investment, but a

firm that offers to facilitate, directly or through a third party, the payment of *adviser charges*, including by means of a *platform service* must:

- (1) obtain and validate instructions from a *retail client* in relation to an *adviser charge*;
- (2) offer sufficient flexibility in terms of the *adviser charges* it facilitates; and
- (3) not pay out or advance *adviser charges* to the *firm* to which the *adviser charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *adviser charge* from the *retail client* (including paying any *adviser charges* to the *firm* that it cannot recover from the *retail client*).

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- 6.1B.9A** G A *firm* facilitates the payment of *adviser charges* for the purposes of ■ COBS 6.1B.9 R if the *adviser charge* is not paid directly by the *retail client*, but is instead paid on behalf of the *retail client* via the *firm*.
- 6.1B.9B** G A *firm* may facilitate the payment of *adviser charges* for the purposes of ■ COBS 6.1B.9 R by:
- (1) selling all or part of the *retail client's retail investment product* to pay the *adviser charge*; or
 - (2) disposing of or reducing all or part of the *retail client's* rights under the *retail investment product* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *adviser charge*; or
 - (3) separating out an amount or amounts for the payment of the *adviser charge* from the amount received from the *retail client* to be invested or from the *premium* in the case of a *life policy*; or
 - (4) paying the *adviser charge* from the *retail client's* cash account.
- 6.1B.10** G A *firm* should consider whether the flexibility in levels of *adviser charges* it offers to facilitate is sufficient so as not to unduly influence or restrict the charging structure and *adviser charges* that the *firm* providing the *personal recommendation* or related services can use.
- 6.1B.11** G ■ COBS 6.1B.9R(3) does not prevent a *firm*, if this is in the *retail client's* best interests, from entering into an agreement with another *firm* which is providing a *personal recommendation* to a *retail client*, or with a *retail client* of such a *firm*, to provide it with *credit* separately in accordance with the *rules* and *guidance* on providing credit and other benefits to *firms* that provide *personal recommendations* on *retail investment products* or *P2P agreements* (see ■ COBS 2.3.12 E, ■ COBS 2.3.12A G), ■ COBS 2.3A.27E and ■ COBS 2.3A.28G).