

Chapter 6

Information about the firm, its
services and remuneration

6.2B Describing advice services

Application

- 6.2B.1** **R** (1) This section applies to a *firm* that provides:
- (a) *investment advice* in the course of *MiFID*, *equivalent third country* or *optional exemption business* to *clients* in relation to *financial instruments* or *structured deposits*; or
 - (b) *investment advice* to *retail clients* in the *United Kingdom* in relation to *financial instruments*, *structured deposits* or other *retail investment products*; or
 - (c) *basic advice* to *retail clients* in the *United Kingdom*.
- 6.2B.2** **R** (1) This section does not apply to a *firm* when it makes a *personal recommendation* or provides *basic advice* to an employee, if that recommendation or advice is provided under the terms of an agreement between the *firm* and that employee's employer which is subject to the rules on *consultancy charges* (■ COBS 6.1C).
- (2) This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.
- 6.2B.3** **G** *P2P agreements* are neither *financial instruments* nor *retail investment products*. This section does not apply to a *firm* when it is *advising on P2P agreements*.
- 6.2B.4** **G** (1) This section applies in accordance with the territorial scope of the general application of this sourcebook as modified in ■ COBS 1 Annex 1.
- (2) But the effect of ■ COBS 6.2B.1R(1) and ■ COBS 6.2B.6R to ■ COBS 6.2B.9R includes that:
- (a) this section does not apply to a *firm* that provides *investment advice* to a *retail client* in relation to a *retail investment product* that is not a *financial instrument* if the *retail client* is outside the *United Kingdom*; and
 - (b) a *firm* that carries on *MiFID* or *equivalent third country business* with a *retail client* outside the *United Kingdom* need only have regard to *financial instruments* and *structured deposits* (and not other *retail investment products*) in conducting its assessment for the purposes of ■ COBS 6.2B.11R.

Introduction

6.2B.5 **G** This section transposed provisions in *MiFID* on describing advice services relating to *financial instruments* and *structured deposits* for all *clients* and reproduces a number of provisions of the *MiFID Org Regulation* as explained in **■ COBS 1.2**. The requirements apply in relation to *MiFID*, *equivalent third country* or *optional exemption business*. The requirements are extended to apply to other *investment advice* and cover other *retail investment products* when the *client* is a *retail client* in the *United Kingdom*.

Interpretation of rules and guidance: relevant products

6.2B.6 **R** In this section a “relevant product” is:

- (1) where the *client* is a *retail client* in the *United Kingdom*, a *financial instrument*, *structured deposit* or other *retail investment product*; or
- (2) otherwise, a *financial instrument* or *structured deposit*.

[Note: article 1(4) of *MiFID*]

Interpretation of provisions marked “UK”: MiFID business

6.2B.7 **R** A *firm* must treat obligations in relation to *financial instruments* as extending to other *retail investment products* when complying with the provisions in this section marked “UK” in the course of *MiFID business* with a *retail client* in the *United Kingdom*.

6.2B.8 **G** References to *financial instruments* include *structured deposits* (but not other *retail investment products*) when a *firm* is complying with the provisions in this section marked “UK” in the course of *MiFID business* with a *retail client* outside the *United Kingdom* or with a *professional client*.

[Note: article 1(2) of the *MiFID Org Regulation*]

Interpretation of provisions marked “UK”: non-MiFID business

6.2B.9 **R** In relation to business that is not *MiFID business*, a *firm* must comply with provisions in this section marked “UK” as if they were *rules* but:

- (1) reading references to *financial instruments* as including *structured deposits* and (if the *client* is a *retail client* in the *United Kingdom*) other *retail investment products*;
- (2) (for business that is not *equivalent business of a third country investment firm* or *MiFID optional exemption business*) the *firm* need not comply with the following provisions of the *MiFID Org Regulation*:
 - (a) the requirement in paragraph 2 of article 52(1) of the *MiFID Org Regulation* (reproduced in **■ COBS 6.2B.32UK**) not to give undue prominence to their *independent advice services*;
 - (b) the requirement in article 52(4) of the *MiFID Org Regulation* (reproduced in **■ COBS 6.2B.36UK**) to distinguish the range of *financial instruments* issued or provided by entities not being closely linked with the *firm*; and

- (c) the requirement in article 53(3)(c) of the *MiFID Org Regulation* (reproduced in ■ COBS 6.2B.29UK) that a *firm* does not allow a natural person to provide both *independent advice* and *restricted advice*.

Interpretation: non-independent advice and restricted advice

- 6.2B.10 **G** This section refers to both “restricted advice” and “non-independent advice”. These terms have the same meaning.

Firms holding themselves out as independent

- 6.2B.11 **R** If a *firm* informs a *client* that it provides *independent advice*, that *firm* must assess a sufficient range of relevant products available on the market which must:

- (1) be sufficiently diverse with regard to their:
 - (a) type; and
 - (b) issuers or product providers,
 to ensure that the *client’s* investment objectives can be suitably met; and
- (2) not be limited to relevant products issued or provided by:
 - (a) the *firm* itself or by entities having close links with the *firm*; or
 - (b) other entities with which the *firm* has such close legal or economic relationships, including contractual relationships, as to present a risk of impairing the independent basis of the advice provided.

[Note: article 24(7)(a) of *MiFID*]

- 6.2B.12 **R** ■ COBS 6.2B.11R does not apply to *group personal pension schemes* if a *firm* discloses information to a *client* in accordance with the *rule on group personal pension schemes* (■ COBS 6.1C.20AR).

- 6.2B.13 **G** The combined effect of ■ COBS 6.2B.6R and ■ COBS 6.2B.11R is that the assessment undertaken by a *firm* for the purpose of ■ COBS 6.2B.11R must:

- (1) where the *client* is a *retail client* in the *United Kingdom*, include a sufficient range of *financial instruments, structured deposits* and other *retail investment products*; or otherwise
- (2) include a sufficient range of *financial instruments* and *structured deposits*,

which in each case must meet the requirements as to diversity and scope in ■ COBS 6.2B.11R(1) and ■ (2) respectively.

Requirements for firms providing focused independent advice

6.2B.14 G A firm that holds itself out as providing *independent advice* may provide broad and general advice or specialist and specific advice.

[Note: recital 71 to the *MiFID Org Regulation*]

6.2B.15 UK 53(2)An investment firm that provides investment advice on an independent basis and that focuses on certain categories or a specified range of financial instruments shall comply with the following requirements:

(a)the firm shall market itself in a way that is intended only to attract clients with a preference for those categories or range of financial instruments;

(b)the firm shall require clients to indicate that they are only interested in investing in the specified category or range of financial instruments; and

(c)prior to the provision of the service, the firm shall ensure that its service is appropriate for each new client on the basis that its business model matches the client’s needs and objectives, and the range of financial instruments that are suitable for the client. Where this is not the case the firm shall not provide such a service to the client.

[Note: article 53(2) of the *MiFID Org Regulation*]

6.2B.16 G (1) ■ **COBS 6.2B.15UK** means that a firm providing *independent advice* need not provide advice on all relevant products. A firm may market itself as, for example, an independent stockbroker that provides *independent advice* on shares only. A firm might alternatively market itself on the basis of providing *independent advice* on a particular product market such as ethical and socially responsible investments. The requirements in ■ **COBS 6.2B.15UK** apply to ensure that clients of a firm that provides *independent advice* on a focused basis properly understand the nature of the advice that they will receive and that the service is appropriate.

(2) A firm that provides *independent advice* in respect of a relatively narrow market should not hold itself out as acting independently in a broader sense. A firm which specialises in providing advice in respect of a particular market might include reference to the provision of independent investment advice in its name. However, it would need to be clear in any marketing materials, and when describing its service, that it only provides *independent advice* in respect of that particular product market.

Sufficient range

6.2B.17 G The extent of the assessment which a firm is required to undertake in order to meet the requirement to assess a sufficient range of relevant products will depend on:

(1) the nature of the *independent advice* service provided by the firm (general or focused) for the purposes of ■ **COBS 6.2B.15UK**;

- (2) the investment objectives of the *client* (■ COBS 6.2B.11R(1)); and
- (3) the *firm's* close links and relationships with product providers and issuers (■ COBS 6.2B.11R(2)).

6.2B.18 UK

53(1) Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with [■ COBS 6.2B.11R]. The selection process shall include the following elements: ...

(a) the number and variety of financial instruments considered is proportionate to the scope of investment advice services offered by the independent investment adviser;

(b) the number and variety of financial instruments considered is adequately representative of financial instruments available on the market;

(c) the quantity of financial instruments issued by the investment firm itself or by entities closely linked to the investment firm itself is proportionate to the total amount of financial instruments considered; and

(d) the criteria for selecting the various financial instruments shall include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and shall ensure that the selection of the instruments that may be recommended is not biased.

Where such a comparison is not possible due to the business model or the specific scope of the service provided, the investment firm providing investment advice shall not present itself as independent.

[Note: article 53(1) of the MiFID Org Regulation]

6.2B.19 G

- (1) ■ COBS 6.2B.11R does not require a *firm* providing *independent advice* to assess every relevant product available on the market before making a *personal recommendation*.

[Note: recital 73 to MiFID]

- (2) Notwithstanding (1), since the assessment conducted by the *firm* must be such as to ensure the *client's* investment objectives can be suitably met, a *firm* providing *independent advice* should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of ■ COBS 6.2B.15UK) on which it provides advice. When the *client* is a *retail client* in the *United Kingdom*, this means being in a position to advise on all types of *financial instrument*, *structured deposit* and other *retail investment products*.

- (3) For example, a *firm* providing *independent advice* on *personal pension schemes* should be in a position to consider all *personal pension schemes*. What will constitute a sufficient range of *personal pension schemes* to be considered before providing a *client* with a *personal recommendation* will, however, depend upon the investment objectives of that *client*.

(4) A *firm* not specialising in a particular market would generally be expected to be in a position to consider all relevant product types which would be capable of meeting the investment objectives of its *clients*.

(5) If a *firm* that provides focused *independent advice* is not able to recommend a *financial instrument* that would meet the investment objectives of a *client*, the *firm* should not provide that *client* with a *personal recommendation*. For example, if a *firm* providing *independent advice* on *shares* considered that a *client's* investment objectives would be better met by way of investment in an accumulation product, it should not provide that *client* with a *personal recommendation*.

Guidance on the independence standard

6.2B.20 G A *personal recommendation* on a relevant product that invests in a number of underlying relevant products would not of itself enable the *firm* providing the *personal recommendation* to satisfy the requirement to have considered a sufficient range of relevant products which are sufficiently diverse (■ COBS 6.2B.11R), even if the relevant product invests in a wide range of underlying *investments*.

6.2B.21 G The effect of ■ COBS 6.2B.11R(2) is that a *firm* which is subject to any form of agreement with an issuer or provider of relevant products that confines that *firm* to providing advice on relevant products issued or provided by that other *person* only will not be in a position to provide *independent advice*.

6.2B.22 G The fact that a *firm* is owned by, or owns, in whole or in part, the issuer or provider of relevant products does not prevent that *firm* from providing *independent advice*, provided that the *firm's* assessment of relevant products is:

- (1) not limited to relevant products issued or provided by that related issuer or provider (■ COBS 6.2B.11R(2));
- (2) proportionate; and
- (3) not biased (■ COBS 6.2B.18UK).

6.2B.23 G In providing *independent advice* to a *retail client* in the *United Kingdom* a *firm* should consider financial products other than relevant products which are capable of meeting the investment needs and objectives of that *retail client*, examples of which could include national savings and investments (ns&i) products and *cash deposit ISAs*.

Use of platforms

6.2B.24 R A *firm* which:

- (1) holds itself out to a *retail client* in the *United Kingdom* as acting independently; and

(2) relies upon a single *platform service* to facilitate the majority of its *personal recommendations*,

must ensure that, as appropriate, the selection of relevant products made available by the *platform service provider* is such as to enable the *firm* to satisfy the requirements of ■ COBS 6.2B.11R.

6.2B.25 G When a *firm* considers whether a *platform service provider's* selection of relevant products enables it to satisfy the requirements of ■ COBS 6.2B.11R, a *firm* should take into account any fees, commission or non-monetary benefits the *platform service provider* receives in relation to those relevant products.

Use of panels

6.2B.26 G A *firm* providing *independent advice* may satisfy the requirement to assess a sufficient range of relevant products which are sufficiently diverse (■ COBS 6.2B.11R) by using 'panels'. Such a *firm* would need to ensure that any panel is sufficiently broad in its composition to enable the *firm* to make *personal recommendations* based on an assessment of a sufficient range of relevant products available on the market which are sufficiently diverse. The *firm* would need to review the panel regularly and ensure that the *client's* investment objectives can be suitably met.

6.2B.27 G When using a panel a *firm* may exclude a certain type or class of relevant product from the panel if, after review, there is a valid reason, consistent with this section and the *client's best interests rule*, for doing so.

6.2B.28 G If a *firm* providing *independent advice* chooses to engage a third party to conduct an assessment of the relevant products available on the market, the *firm* remains responsible for complying with the requirements of ■ COBS 6.2B.11R to ensure that its advice is based on an assessment of a sufficient range of relevant products which are sufficiently diverse as to ensure that the *client's* investment objectives can be suitably met.

Requirements for firms providing both independent and restricted advice

6.2B.29 UK 53(3)An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:

(a)in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with [■ COBS 6.2B.33R] and the relevant implementing measures;

(b)the investment firm has presented itself as independent for the services for which it provides investment advice on an independent basis; and

(c)the investment firms has adequate organisational requirements and controls in place to ensure that both types of advice services and advisers are clearly separated from each other and that clients are not likely to be confused about the type of advice that they are

receiving and are given the type of advice that is appropriate for them. The investment firm shall not allow a natural person to provide both independent and non-independent advice.

[Note: article 53(3) of the *MiFID Org Regulation*]

6.2B.30 **G** A firm that offers an unlimited range of *regulated mortgage contracts*, or gives advice in relation to *contracts of insurance* on the basis of a fair analysis, but offers *restricted advice* on relevant products should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it offers an unlimited range of *regulated mortgage contracts* or gives advice in relation to *contracts of insurance* on the basis of a fair analysis provided it makes clear in accordance with the *fair, clear and not misleading rule* (■ COBS 4.2.1R) that it provides *restricted advice* on relevant products.

6.2B.31 **G** A firm that provides *basic advice on stakeholder products* may still use the facilities and stationery it uses for other business in accordance with the rule on basic advice on stakeholder products: other issues (■ COBS 9.6.17 R (2)).

6.2B.32 **UK** 52(1)Where advice is offered or provided to the same client on both an independent and non-independent basis, investment firms shall explain the scope of both services to allow investors to understand the differences between them and not present itself as an independent investment adviser for the overall activity. Firms shall not give undue prominence to their independent investment advice services over non-independent investment services in their communications with clients.

[Note: article 52(1) of the *MiFID Org Regulation*]

Disclosing the nature of advice provided

6.2B.33 **R** (1) A firm must disclose to a *client*, in good time before the provision of *investment advice* or *basic advice*:

- (a) whether its advice will be:
 - (i) *independent advice*; or
 - (ii) *restricted advice*;
- (b) whether the advice will be based on a broad or more restricted analysis of different types of relevant products; and
- (c) where the advice will be *restricted advice*, whether the range will be limited to relevant products issued or provided by entities having close links with the *firm* or any other legal or economic relationships, such as contractual relationships, so as to present a risk of impairing the independent basis of the advice provided.

[Note: article 24(4)(a)(i) and (ii) of *MiFID*]

(2) A firm must include the term “independent advice” or “restricted advice” or both, as relevant, in the disclosure.

6.2B.34 **R** (1) A *firm* must provide the information required by **■ COBS 6.2B.33R** in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[Note: article 24(5) of *MiFID*]

6.2B.35 **UK** 52(1) Investment firms shall explain in a clear and concise way whether and why investment advice qualifies as independent or non-independent and the type and nature of the restrictions that apply, including, when providing investment advice on an independent basis, the prohibition to receive and retain inducements.

[Note: article 52(1) of the *MiFID Org Regulation*]

6.2B.36 **UK** 52(2) Investment firms providing investment advice, on an independent or non-independent basis, shall explain to the client the range of financial instruments that may be recommended, including the firm's relationship with the issuers or providers of the instruments.

52(3) Investment firms shall provide a description of the types of financial instruments considered, the range of financial instruments and providers analysed per each type of instrument according to the scope of the service, and, when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis and the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, such as risks, costs and complexity of the financial instruments.

52(4) When the range of financial instruments assessed by the investment firm providing investment advice on an independent basis includes the investment firm's own financial instruments or those issued or provided by entities having close links or any other close legal or economic relationship with the investment firm as well as other issuers or providers which are not linked or related, the investment firm shall distinguish, for each type of financial instrument, the range of the financial instruments issued or provided by entities not having any links with the investment firm.

[Note: article 52(2), (3) and (4) of the *MiFID Org Regulation*]

Medium of disclosure

6.2B.37 **G** A *firm* should provide the disclosure information required by the *rule* on describing the breadth of a *firm's* advice service (**■ COBS 6.2B.33R**) in a *durable medium* or through a website (if it does not constitute a *durable medium*) provided the *website conditions* are satisfied.

Additional oral disclosure for firms providing restricted advice

6.2B.38 **R** If a *firm* provides *restricted advice* and engages in spoken interaction with the *retail client*, in addition to the disclosure required by **■ COBS 6.2B.33R**, a *firm* must disclose orally in good time before the provision of its *investment advice* that it provides *restricted advice* and the nature of that restriction.

6.2B.39 **G** Examples of statements which would comply with **COBS 6.2B.38R** include:

- (1) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [Firm X] [products/stakeholder products] only"; or
- (2) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [products/stakeholder products] from a limited number of companies that [Firm X] has selected".

Record keeping

6.2B.40 **G** *Firms* are reminded of the general record keeping requirements in **SYSC 3.2** and **SYSC 9**. A *firm* should keep appropriate records of the disclosures required by this section.

Systems and controls

- 6.2B.41** **G**
- (1) *Firms* are reminded of the systems and controls requirements in *SYSC*.
 - (2) A *firm* providing *restricted advice* should take reasonable care to establish and maintain appropriate systems and controls to ensure that if there is no relevant product in the *firm's* range of products which meets the investment needs and objectives of the *client*, no *personal recommendation* should be made.
 - (3) A *firm* specialising in a particular market should take reasonable care to establish and maintain appropriate systems and controls to ensure that it does not make a *personal recommendation* if there is a relevant product outside the market on which it provides *investment advice* which would meet the investment needs and objectives of the *client*.