Chapter 6

Information about the firm, its services and remuneration
6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)

Application

6.1.1  
(1) This section applies to a firm that carries on designated investment business, other than MiFID, equivalent third country or optional exemption business or insurance distribution activities, for a retail client.

(2) [deleted]

6.1.2  
If a firm provides basic advice on stakeholder products in accordance with the basic advice rules, this section does not apply to that service.

6.1.3  
This section imposes requirements relating to disclosure of information to clients that are additional to the general requirement in COBS 2.2.

Information about a firm and its services

6.1.4  
A firm must provide a client with the following general information, if relevant:

(1) the name and address of the firm, and the contact details necessary to enable a client to communicate effectively with the firm;

(2) [deleted]

(3) the methods of communication to be used between the firm and the client including, where relevant, those for the sending and reception of orders;

(4) a statement of the fact that the firm is authorised and the name of the competent authority that has authorised it;

(5) [deleted]

(6) if the firm is acting through an appointed representative, a statement of this fact

(7) the nature, frequency and timing of the reports on the performance of the service to be provided by the firm to the client in accordance with the rules on reporting to clients on the provision of services (COBS 16);

(8) (a) in the case of a common platform firm, a description, which may be provided in summary form, of the conflicts of interest policy;
(b) other than in the case of a common platform firm, when a material interest or conflict of interest may or does arise, the manner in which the firm will ensure fair treatment of the client;

(9) in the case of a common platform firm, at any time that the client requests it, further details of the conflicts of interest policy.

6.1.5 A firm disclosing details of its authorisation should refer to the appropriate forms of words set out in GEN 4 Annex 1 R or GEN 4 Annex 1A R as appropriate.

6.1.6 (1) A firm that manages investments for a client must establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of designated investments included in the client portfolio, so as to enable the client to assess the firm’s performance.

(2) If a firm proposes to manage investments for a client, the firm must provide the client with such of the following information as is applicable:

(a) information on the method and frequency of valuation of the designated investments in the client portfolio;

(b) details of any delegation of the discretionary management of all or part of the designated investments or funds in the client portfolio;

(c) a specification of any benchmark against which the performance of the client portfolio will be compared;

(d) the types of designated investments that may be included in the client portfolio and types of transaction that may be carried out in those designated investments, including any limits; and

(e) the management objectives, the level of risk to be reflected in the manager’s exercise of discretion, and any specific constraints on that discretion.

Information concerning safeguarding of designated investments belonging to clients and client money

6.1.7 (1) A firm that holds designated investments or client money for a client subject to the custody chapter or the client money chapter must provide that client with the following information:

(a) if applicable,

   (i) that the designated investments or client money of that client may be held by a third party on behalf of the firm;

   (ii) the responsibility of the firm under the applicable national law for any acts or omissions of the third party; and

   (iii) the consequences for the client of the insolvency of the third party;

   (b) if applicable, that the designated investments belonging to the client may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
(c) if it is not possible under national law for designated investments belonging to a client held with a third party to be separately identifiable from the proprietary designated investments of that third party or of the firm, that fact and a prominent warning of the resulting risks;

(d) if applicable, that accounts that contain designated investments or client money belonging to that client are or will be subject to the law of a jurisdiction other than that of a EEA State, an indication that the rights of the client relating to those instruments or money may differ accordingly;

(e) a summary description of the steps which it takes to ensure the protection of any designated investments belonging to the client or client money it holds, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in an EEA State.

(2) A firm that holds designated investments or client money for a client must inform the client:

(a) if applicable, about the existence and the terms of any security interest or lien which the firm has or may have over the client’s designated investments or client money, or any right of set-off it holds in relation to the client’s designated investments or client money; and

(b) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.

(3) A firm within (1) must also, before entering into securities financing transactions in relation to designated investments held by it on behalf of a client, or before otherwise using such designated investments for its own account or the account of another client, in good time before the use of those designated investments provide the client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the firm with respect to the use of those designated investments, including the terms for their restitution, and on the risks involved.
6.1.7A

Firms subject to either or both the custody rules and the client money rules are reminded of the information requirements concerning custody assets and client money in [CASS 9.3 (Prime brokerage agreement disclosure annex)] and [CASS 9.4 (Information to clients concerning custody assets and client money)].

6.1.8

[deleted]

Information about costs and associated charges

6.1.9

A firm must provide a client with information on costs and associated charges including, if applicable:

1. the total price to be paid by the client in connection with the designated investment or the designated investment business, including all related fees, commissions, charges and expenses, and all taxes payable via the firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it. The commissions charged by the firm must be itemised separately in every case;

2. if any part of the total price referred to (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

3. notice of the possibility that other costs, including taxes, related to transactions in connection with the designated investment or the designated investment business may arise for the client that are not paid via the firm or imposed by it; and

4. the arrangements for payment or other performance.

6.1.10

The rules on inducements in [COBS 2.3] may also require a firm to disclose information to a client in relation to benefits provided to the firm.

Timing of disclosure

6.1.11

1. A firm must provide a client with the information required by this section in good time before the provision of designated investment business unless otherwise provided by this rule.

2. A firm may instead provide that information immediately after starting to provide designated investment business if:

   a. the firm was unable to comply with (1) because, at the request of the client, the agreement was concluded using a means of distance communication which prevented the firm from doing so; and

   b. in any case where the rule on voice telephony communications ([COBS 5.1.12 R]) does not otherwise apply, the firm complies with
that rule in relation to the client, as if that client were a consumer.

6.1.12 **G**  
A firm should take into account COBS 8.1.3 R (1), which requires earlier disclosure of some items of information covered in this section.

**Medium of disclosure**

6.1.13 **R**  
Except where expressly provided, a firm must provide the information required by this section in a durable medium or via a website (where it does not constitute a durable medium) where the website conditions are satisfied.

**Keeping the client up to date**

6.1.14 **R**

(1) A firm must notify a client in good time about any material change to the information provided under this section which is relevant to a service that the firm is providing to that client.

(2) A firm must provide this notification in a durable medium if the information to which it relates was given in a durable medium.

**Existing clients**

6.1.15 **G**

(1) A firm need not treat each of several transactions in respect of the same type of financial instrument as a new or different service and so does not need to comply with the disclosure rules in this chapter in relation to each transaction.

(2) But a firm should ensure that the client has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

**Compensation information**

6.1.16 **R**

(1) A firm must make available to a client, who has used or intends to use the firm’s services, information necessary for the identification of the compensation scheme or any other investor-compensation scheme of which the firm is a member (including, if relevant, membership through a branch) or any alternative arrangement provided for in accordance with the Investor Compensation Directive.
(2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the EEA State pursuant to article 2(3) of the Investor Compensation Directive.

(3) A firm must provide, on the client’s request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

(4) The information provided for in this rule must be made available in a durable medium or via a website if the website conditions are satisfied in the official language or languages of the EEA State.

[Note: article 10(1) and (2) of the Investor Compensation Directive]

Record keeping: information about the firm and compensation information

6.1.17 Firms are reminded of the general record-keeping requirements in SYSC 3.2 and SYSC 9.
6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

Application

6.1ZA.1 (1) Subject to (2) and (3), this section applies to a firm:
   (a) in relation to its MiFID, equivalent third country or optional exemption business; and
   (b) carrying on insurance distribution activities.

   (2) COBS 6.1ZA.16R does not apply to a firm in respect of its MiFID optional exemption business.

   (3) Where a firm is carrying on insurance distribution activities for a professional client only those rules which implement the requirements of the IDD apply.

6.1ZA.1A For the purposes of COBS 6.1ZA.1R(3) if a rule implements a requirement of the IDD, a note (“Note:”) follows the rule indicating which provision is being implemented.

6.1ZA.2 This section imposes requirements relating to disclosure of information to clients that are additional to the general requirements in COBS 2.2A.

Effect of provisions marked “EU” for third country investment firms and MiFID optional exemption firms

6.1ZA.3 Provisions in this section marked “EU” apply in relation to MiFID optional exemption business as if they were rules (see COBS 1.2.2G).

6.1ZA.4 The effect of GEN 2.2.22AR is that provisions in this section marked “EU” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

[Note: ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices. See https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]
**Information about a firm and its services: MiFID business**

6.1ZA.5 **EU**

47(1) Investment firms shall provide clients or potential clients with the following general information, where relevant:

(a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;

(b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;

(c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;

(d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;

(e) where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;

(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with Article 25(6) of Directive 2014/65/EU;

(g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State;

(h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with Article 34;

(i) at the request of the client, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions set out Article 3(2) are satisfied.

The information listed in points (a) to (i) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

[Note: article 47(1) of the MiFID Org Regulation]

6.1ZA.6 **G**

Reference in COBS 6.1ZA.5EU to “Article 25(6) of Directive 2014/65/EU” is to the requirements in COBS 16A.2.1R.

6.1ZA.7 **G**

A firm disclosing details of its authorisation should refer to the appropriate form of words set out in GEN 4 Annex 1R or GEN 4 Annex 1AR as appropriate.

**Information about a firm and its services: insurance distribution**

6.1ZA.7A **R**

A firm carrying on insurance distribution activities must provide a retail client with the following general information, if relevant:

(1) the name and address of the firm, and the contact details necessary to enable a client to communicate effectively with the firm;
(2) the methods of communication to be used between the firm and the client including, where relevant, those for the sending and reception of orders;

(3) a statement of the fact that the firm is authorised and the name of the competent authority that has authorised it;

(4) if the firm is acting through an appointed representative a statement of this fact specifying the EEA State in which that appointed representative is registered;

(5) the nature, frequency and timing of the reports on the performance of the service to be provided by the firm to the client in accordance with the rules on reporting to clients on the provision of services (COBS 16 or COBS 16A in relation to an insurance-based investment product);

(6) (a) a description, which may be provided in summary form, of (as applicable) the conflicts of interest policy, SYSC 3.3.1EU (applied by SYSC 3.3.3R) or the policy required by article 4(1) of the IDD Regulation; and

(b) if not included in the information provided under (a), when a material interest or conflict of interest may or does arise, the manner in which the firm will ensure fair treatment of the client;

(7) at any time that the client requests it, further details of the conflicts of interest policy.

The timing of these disclosures is governed by COBS 6.1ZA.19AR.

Status disclosure general information: insurance distribution

In good time before the conclusion of a life policy and, if necessary, on its amendment:

(1) a firm must provide the client with at least the following information:

(a) its identity, address and whether it is an insurance intermediary or an insurance undertaking;

(b) whether it provides a personal recommendation about the insurance products offered;

(c) the procedures allowing clients and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its clients; and

(2) an insurance intermediary must also provide the client with the following information:

(a) the fact that it is included in the Financial Services Register (or if it is not on the Financial Services Register, the register in which it has been included) and the means for verifying this;
(b) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer);

(c) whether a given insurance undertaking (that is not a pure reinsurer) or its parent undertaking has a direct or indirect holding representing 10% or more of the voting rights or capital in the firm; and

(d) whether it is representing the client or is acting for and on behalf of the insurer.

[Note: articles 18 and 19(1)(a) and (b) of the IDD]

6.1ZA.7C

Where an insurance intermediary proposes or advises on a life policy, in good time before the conclusion of a life policy and, if necessary, on its amendment, an insurance intermediary must provide the client with at least information on whether the firm:

(1) gives a personal recommendation on the basis of a fair and personal analysis; or

(2) is under a contractual obligation to conduct insurance distribution exclusively with one or more insurance undertakings, in which case it must provide the names of those insurance undertakings; or

(3) is not under a contractual obligation to conduct insurance distribution exclusively with one or more insurance undertakings; and
does not give a personal recommendation on the basis of a fair and personal analysis,
in which case it must provide its client with the name of those insurance undertakings with which the insurance intermediary may and does conduct business.

[Note: article 19(1)(c) of the IDD]

6.1ZA.7D

If an insurance intermediary informs a client that it gives a personal recommendation on the basis of a fair and personal analysis, it must give that personal recommendation on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation in accordance with professional criteria, regarding which life policy would be adequate to meet the client’s needs.

[Note: article 20(3) of the IDD]

Information about a firm’s portfolio management service:
MiFID business

6.1ZA.8

47(2) When providing the service of portfolio management, investment firms shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm’s performance.
47(3) Where investment firms propose to provide portfolio management services to a client or potential client, they shall provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:

(a) information on the method and frequency of valuation of the financial instruments in the client portfolio;

(b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;

(c) a specification of any benchmark against which the performance of the client portfolio will be compared;

(d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;

(e) the management objectives, the level of risk to be reflected in the manager’s exercise of discretion, and any specific constraints on that discretion.

The information listed in points (a) to (e) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

[Note: articles 47(2) and (3) of the MiFID Org Regulation]

Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business

49(1) Investment firms holding financial instruments or funds belonging to clients shall provide those clients or potential clients with the information specified in paragraphs 2 to 7 where relevant.

49(2) The investment firm shall inform the client or potential client where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm and of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.

49(3) Where financial instruments of the client or potential client may, if permitted by national law, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.

49(4) The investment firm shall inform the client or potential client where it is not possible under national law for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks.

49(5) The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a Member State and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

49(6) An investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the...
client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds.

49(7) An investment firm, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a client, or before otherwise using such financial instruments for its own account or the account of another client shall in good time before the use of those instruments provide the client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

[Note: article 49 of the MiFID Org Regulation]

Firms subject to either or both the custody rules and the client money rules are reminded of the information requirements concerning custody assets and client money in ■ CASS 9.3 (Prime brokerage agreement disclosure annex) and ■ CASS 9.4 (Information to clients concerning custody assets and client money).

Information concerning safeguarding of client money: insurance distribution

6.1ZA.10A (1) Where a firm doing insurance distribution activities holds client money for a retail client and has elected to comply with the client money chapter, it must provide that client with the information specified in:

(a) ■ COBS 6.1.7R; or

(b) (if it is a firm doing MiFID, equivalent third country or optional exemption business) ■ COBS 6.1ZA.9EU and ■ COBS 6.1.7R(1)(e);

in relation to that client money.

(2) For the purposes of ■ COBS 6.1ZA.10AR(1)(b), ■ COBS 1.2.3R applies except ‘funds’ should be read as meaning client money that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its insurance distribution activities.

(3) The timing of this disclosure is governed by ■ COBS 6.1ZA.19AR.

Information about costs and associated charges: MiFID and insurance distribution

6.1ZA.11 A firm must provide a client with at least the following information about all costs and related charges (see also ■ COBS 2.2A.2R):

(1) (as applicable) information relating to:

(a) both investment services and ancillary services; and

(b) the distribution of an insurance-based investment product;

(2) where relevant, the cost of any investment advice;
(3) the cost of the financial instrument or insurance-based investment product recommended or marketed to the client;

(4) information on how the client may pay; and

(5) details of any third party payments.

[Note: article 24(4)(c) of MiFID, article 29(1)(c) of the IDD]

6.1ZA.12 R

(1) A firm must aggregate the information about costs and charges required by COBS 2.2A.2R and COBS 6.1ZA.11R, where those costs and charges are not caused by the occurrence of underlying market risk. This is to allow the client to understand the overall cost, and the cumulative effect on the return, of the investment.

(2) A firm must provide the client with an itemised breakdown of the costs and charges information required by (1) and COBS 6.1ZA.11R when requested by the client.

(3) The information must, where applicable, be provided to the client on a regular basis, and at least annually, during the life of the investment.

[Note: article 24(4) of MiFID, second paragraph of article 29(1) of the IDD]

6.1ZA.13 R

(1) A firm must provide the information required by COBS 6.1ZA.11R and COBS 6.1ZA.12R 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 or insurance-based investment product 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, third paragraph of article 29(1) of the IDD]

Costs and associated charges disclosure: MiFID

50(1) For the purposes of providing information to clients on all costs and charges pursuant to Article 24(4) of Directive 2014/65/EU, investment firms shall comply with the detailed requirements in paragraphs 2 to 10.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a
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derivative and the eligible counterparty intends to offer them to its clients.

50(2) For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following:

(a) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and

(b) all costs and associated charges associated with the manufacturing and managing of the financial instruments.

Costs referred to in points (a) and (b) are listed in Annex II to this Regulation. For the purposes of point (a), third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage.

50(3) Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, investment firms shall provide an indication of the currency involved and the applicable currency conversion rates and costs. Investments firms shall also inform about the arrangements for payment or other performance.

50(4) In relation to the disclosure of product costs and charges that are not included in the UCITS KIID, the investment firms shall calculate and disclose these costs, for example, by liaising with UCITS management companies to obtain the relevant information.

50(5) The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:

(a) where the investment firm recommends or markets financial instruments to clients; or

(b) where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPS KID in relation to the relevant financial instruments, in accordance with relevant Union legislation.

50(6) Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/ KIID in accordance with relevant Union legislation shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

50(7) Where more than one investment firm provides investment or ancillary services to the client, each investment firm shall provide information about the costs of the investment or ancillary services it provides. An investment firm that recommends or markets to its clients the services provided by another firm, shall aggregate the cost and charges of its services together with the cost and charges of the services provided by the other firm. An investment firm shall take into account the costs and charges associated to the provision of other investment or ancillary services by other firms where it has directed the client to these other firms.

50(8) Where calculating costs and charges on an ex-ante basis, investment firms shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the investment firm shall make reasonable estimations of these costs. Investment firms shall review ex-ante assumptions based on the ex-post experience and shall make adjustment to these assumptions, where necessary.
50(9) Investment firms shall provide annual ex-post information about all costs and charges related to both the financial instrument(s) and investment and ancillary service(s) where they have recommended or marketed the financial instrument(s) or where they have provided the client with the KID/KIID in relation to the financial instrument(s) and they have or have had an ongoing relationship with the client during the year. Such information shall be based on costs incurred and shall be provided on a personalised basis.

Investment firms may choose to provide such aggregated information on costs and charges of the investment services and the financial instruments together with any existing periodic reporting to clients.

50(10) Investment firms shall provide their clients with an illustration showing the cumulative effect of costs on return when providing investment services. Such an illustration shall be provided both on an ex-ante and ex-post basis. Investment firms shall ensure that the illustration meets the following requirements:

(a) the illustration shows the effect of the overall costs and charges on the return of the investment;

(b) the illustration shows any anticipated spikes or fluctuations in the costs; and

(c) the illustration is accompanied by a description of the illustration.

[Note: article 50 of the MiFID Org Regulation]

6.1ZA.15 The rules on inducements in ■ COBS 2.3A may also require a firm to disclose information to a client in relation to the benefits provided to a firm.

Costs and associated charges disclosure: insurance distribution

6.1ZA.15A In addition to the information specified by ■ COBS 2.2A.2R and ■ COBS 6.1ZA.11R, a firm carrying on insurance distribution activities must provide a retail client with the following information on costs and associated charges, if applicable:

(1) the total price to be paid by the client in connection with the life policy or the insurance distribution activity, including all related fees, commissions, charges and expenses, and all taxes payable via the firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it. The commissions charged by the firm must be itemised separately in every case;

(2) if any part of the total price referred to in (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(3) notice of the possibility that other costs, including taxes, related to transactions in connection with the life policy or the insurance distribution activity may arise for the client that are not paid via the firm or imposed by it; and

(4) the arrangements for payment or other performance.

The timing of this disclosure is governed by ■ COBS 6.1ZA.19AR.
6.1ZA.15B R

Remuneration received by firm disclosure: insurance intermediaries

In good time before the conclusion of the life policy and, if necessary, on its amendment, an insurance intermediary must provide the client with information:

1. on the nature of the remuneration received in relation to the life policy;
2. about whether in relation to the life policy it works on the basis of:
   a. a fee, that is remuneration paid directly by the client; or
   b. a commission of any kind, that is the remuneration included in the premium; or
   c. any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract; or
   d. on the basis of a combination of any type of remuneration set out above in (a), (b) and (c).

[Note: article 19(1)(d) and (e) of the IDD]

6.1ZA.15C R

Remuneration of employees disclosure: insurers

In good time before the conclusion of a life policy an insurance undertaking must provide its client with information on the nature of the remuneration received by its employees in relation to the life policy.

[Note: article 19(4) of the IDD]

6.1ZA.15D R

General remuneration disclosure: insurance distributors

The remuneration referred to in this section includes remuneration that is not guaranteed or which is contingent on meeting certain targets.

6.1ZA.15E G

The information required to be disclosed by COBS 6.1ZA.15B R and COBS 6.1ZA.15C R includes the type of the remuneration and, taking into account the clear, fair and not misleading rule (COBS 4.2.1 R), should also include the source of the remuneration.

6.1ZA.15F G

When considering what information to provide about the remuneration, a firm should include all remuneration which the insurance intermediary or the employee of an insurance undertaking, receives or may receive in relation to the distribution of the life policy. This includes remuneration:

1. provided indirectly by the insurer or another firm within the distribution chain; or
2. provided by way of a bonus (whether financial or non-financial) paid to the firm by the insurer or another firm, or provided by the firm to its employees, where this bonus is contingent on the achievement of a target to which the distribution of the particular life policy could contribute. For example, this can include cash bonuses paid for achieving a sales target and additional annual leave for achieving a
high customer service score on sales calls, profit share arrangements, overrides or other enhanced commissions.

6.1ZA.15G

If any payments, other than ongoing premiums and scheduled payments, are made by the client under the life policy after its conclusion, a firm must make the disclosures required by COBS 6.1ZA.14AR or COBS 6.1ZA.14BR, for each such payment.

[Note: articles 19(3) and (5) of the IDD]

6.1ZA.15H

Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Insurance distributors fee disclosure: additional requirements

6.1ZA.15I

(1) Where a fee is payable in relation to a life policy, the firm must inform its client of the amount of the fee.

(2) The information in (1) must be given before the client incurs liability to pay the fee, or before conclusion of the life policy, whichever is earlier.

(3) To the extent that it is not possible for an amount to be given, a firm must give the basis for its calculation.

[Note: articles 19(2) and (5) of the IDD]

6.1ZA.15J

The fee disclosure requirement extends to all such fees that may be charged during the life of a policy.

[Note: article 19(3) of the IDD]

Information about costs and charges of different services or products: MiFID business

6.1ZA.16

(1) This rule applies to a firm that offers an investment service with another service or product or as part of a package or as a condition of the same agreement or package.

(2) The firm must inform the client whether it is possible to buy the different components separately and must provide information on the costs and charges of each component.

(3) If the agreement or package is offered to a retail client, the firm must:

(a) inform that retail client if the risks resulting from the agreement or package are likely to be different from the risks associated with the components when taken separately; and

(b) provide that retail client with an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

[Note: article 24(11) of MiFID]
Cross selling requirements where insurance is the primary product

6.1ZA.16A When offering a non-insurance ancillary product or service as part of a package or the same agreement with a life policy, a firm must:

(1) inform the client whether it is possible to buy the different components separately and, if so, must provide the client with an adequate description of:

(ba) the different components;

(b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and

(2) provide the client with separate evidence of the costs and charges of each component.

[Note: article 24(1) and (2) of the IDD]

Cross selling requirements where insurance is the ancillary product

6.1ZA.16B When offering a life policy ancillary to and as part of a package or in the same agreement with a non-insurance product or service, a firm must offer the client the option of buying the non-insurance goods or services separately.

6.1ZA.16C ■ COBS 6.1ZA.16BR does not apply where the non-insurance product or service is any of the following:

(1) investment services or activities; or

(2) a credit agreement as defined in point 3 of article 4 of the MCD which is:

a MCD credit agreement; or
an exempt MCD credit agreement; or
a CBTL credit agreement; or
a credit agreement referred to in articles 72G(3B) and (4) of the Regulated Activities Order; or

(3) a payment account as defined in regulation 2(1) of the Payment Accounts Regulations.

[Note: article 24(3) of the IDD]

6.1ZA.16D ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16CR do not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[Note: article 24(5) of the IDD]
In addition to the rules in ■ COBS 6.1ZA.16AR and ■ 6.1ZA.16BR firms should still comply with the other rules in COBS relating to the offer and sale of insurance products that form part of the package or agreement, such as ■ COBS 2.5 (Optional additional products).

[Note: article 24(6) of the IDD]

Timing of disclosure: MiFID business

46(2) Investment firms shall, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

[Note: article 46(2) of the MiFID Org Regulation]

The following provisions of COBS reproduce the information requirements contained in Articles 47 to 50 of the MiFID Org Regulation: ■ COBS 6.1ZA.5EU, ■ COBS 6.12A.8EU, ■ COBS 6.12A.9EU, ■ COBS 6.12A.14EU, and ■ COBS 14.3A.5EU.

Medium of disclosure: MiFID business

46(3) The information referred to in paragraphs 1 and 2 shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[Note: article 46(3) of the MiFID Org Regulation]

Timing of disclosure: specified rules for insurance distribution

(1) A firm must provide a client with the information required by ■ COBS 6.1ZA.7AR, ■ COBS 6.12A.10AR and ■ COBS 6.12A.15AR in good time before the provision of the insurance distribution activity concerned unless otherwise provided by this rule.

(2) A firm may instead provide that information immediately after starting to provide the insurance distribution activity concerned if:

(a) the firm was unable to comply with (1) because, at the request of the client, the agreement was concluded using a means of distance communication which prevented the firm from doing so; and

(b) in any case where the rule on voice telephony communications (■ COBS 5.1.12R) does not otherwise apply, the firm complies with that rule in relation to the retail client, as if that client were a consumer.

Medium of disclosure: insurance distribution

Where this section requires an insurance distributor to provide information to clients in relation to a life policy it must do so in accordance with ■ COBS 7.4 (Means of communication to clients), unless COBS 6.1ZA.18AR(2) applies.

[Note: article 23 of the IDD]
Keeping the client up to date: MiFID business

46(4) Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

[Note: article 46(4) of the MiFID Org Regulation]

Keeping the client up to date: insurance distribution

(1) A firm carrying on insurance distribution activities must notify a client in good time about any material change to the information provided in relation to an insurance distribution activity under this section which is relevant to a service that the firm is providing to that client.

(2) A firm must provide this notification in a durable medium if the information to which it relates was given in a durable medium.

Existing clients: MiFID business

(1) A firm need not treat each of several transactions in respect of the same type of financial instrument as a new or different service and so does not need to comply with the disclosure rules in this chapter in relation to each transaction.

[Note: recital 69 to the MiFID Org Regulation]

(2) A firm should ensure that the client has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

Compensation information: MiFID business

(1) A firm must make available to a client, who has used or intends to use a firm’s services, information necessary for the identification of the compensation scheme or any other investor-compensation scheme of which the firm is a member (including, if relevant, membership through a branch) or any alternative arrangement provided for in accordance with the Investor Compensation Directive.

(2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the EEA State pursuant to article 2(3) of the Investor Compensation Directive.

(3) A firm must provide, on the client’s request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

(4) The information provided for in this rule must be made available in a durable medium or via a website if the website conditions are satisfied in the official language or languages of the EEA State.

[Note: article 10(1) and (2) of the Investor Compensation Directive]
Record keeping: information about the firm and compensation information for MiFID business and insurance distribution

6.1ZA.23 Firms are reminded of the general record-keeping requirements SYSC 3.2 (for insurers and managing agents) and SYSC 9 (for other firms).
6.1A Adviser charging and remuneration

Application - Who? What?

6.1A.1 R (1) This section applies to a firm which makes personal recommendations to retail clients in relation to retail investment products or P2P agreements.

(2) This section does not apply to a firm giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme.

6.1A.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.

6.1A.1B G In this section, ■ COBS 6.1A.4AR, ■ COBS 6.1A.4ABR and ■ COBS 6.1A.4BR are not relevant to a firm making personal recommendations in relation to P2P agreements.

6.1A.2 R This section does not apply to a firm when it gives basic advice in accordance with the basic advice rules.

6.1A.2A R 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.

Application - Where?

6.1A.3 R This section does not apply if the retail client is outside the United Kingdom.

Requirement to be paid through adviser charges


(1) only be remunerated for the personal recommendation (and any other related services provided by the firm) by adviser charges; and
(2) not solicit or accept (and ensure that none of its associates solicits or accepts) any other commissions, remuneration or benefit of any kind in connection with the firm's business of advising or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the retail client; and

(3) not solicit or accept (and ensure that none of its associates solicits or accepts) adviser charges in relation to the retail client's retail investment product or P2P agreement which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the adviser charges are recovered from the retail client.

A firm and its associates may:

(1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in COBS 6.1A.4 if:

(a) the personal recommendation was made on or before 30 December 2012;
(b) the solicitation and acceptance of the commission, remuneration or benefit of any kind 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 that firm or its associate.

(1) A firm may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a retail investment product which was made by the retail client following a personal recommendation made, or a transaction executed, on or before 30 December 2012. This is the case even if the firm makes a personal recommendation to the same retail client after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre 31 December 2012 personal recommendation or transaction, rather than the new personal recommendation. Of course this is dependent upon the terms of the contract contemplating the continued receipt of such payments.

(2) Examples of circumstances where a commission, remuneration or benefit is clearly linked to the retention of an investment in a retail investment product and can therefore continue to be accepted
include (in each case where the terms of the contract contemplate a continued payment of the kind referred to in (1)):

(a) no change is made to the retail client's investment in the relevant retail investment product;

(b) the retail client's investment in, or regular contribution to, the relevant retail investment product is reduced; the firm may continue to accept the payment associated with the reduced investment amount;

(c) the retail client's investment in the relevant retail investment product is transferred from accumulation units to income units or vice versa;

(d) the retail client transfers all or part of his investment between funds within a life policy.

(3) If a firm makes a personal recommendation to a retail client and wishes to:

(a) receive remuneration for that personal recommendation in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by (1); or

(b) be paid additional amounts for any actions which are linked to a new amount invested by the retail client in the relevant retail investment product;

it should only be paid those additional amounts for that personal recommendation or for those actions by adviser charges.

(4) A firm may offset against any adviser charges which are payable by the retail client any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in (1).

A firm and its associates may solicit and accept a commission, remuneration or benefit of any kind from a discretionary investment manager in the circumstances in COBS 6.1A.4 R if:

(1) the firm or its associates recommended the discretionary investment manager to a retail client on or before 30 December 2012;

(2) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the rules in force on 30 December 2012;

(3) 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;

(4) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and

(5) the retail client agreed an investment mandate with the discretionary investment manager within a reasonable time of the recommendation to use the discretionary investment manager being made.
If a firm makes a recommendation of a discretionary investment manager to a retail client and wishes to:

(a) receive remuneration for that recommendation in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by § COBS 6.1A.4AB R; or

(b) be paid additional amounts for any actions linked to a new amount invested by the retail client through the same discretionary investment manager;

it should only be paid those additional amounts for that recommendation or for those actions by adviser charges.

(2) A firm may offset against any adviser charges which are payable by the retail client any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in § COBS 6.1A.4AB R.

Re-registration of commission when a retail client moves to a new adviser

(1) before the arrangement is entered into, disclose to the retail client that the transfer of the commission, remuneration or benefit of any kind will be requested by the firm or its associate;

(2) throughout the period during which the firm or its associate receives the commission, remuneration or benefit of any kind, provide the retail client with an ongoing service; and

(3) as soon as reasonably practicable after it makes the disclosure in (1):

(a) disclose to the retail client, as a cash amount or percentage of funds under management, the amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and

(b) provide the retail client with a description of the ongoing service it will provide to the retail client in accordance with (2).

A firm may receive an adviser charge that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the firm refunds any such payment to the retail client.

Acceptable minor non-monetary benefits

(1) For the purposes of § COBS 6.1A.4R(2), a firm or its associate may solicit or accept minor non-monetary benefits which meet the requirements of:

(a) § COBS 2.3A.15R, in relation to the provision of investment services; or

(b) paragraph (2), in relation to other business.

(2) An acceptable minor non-monetary benefit is one which:
(a) is clearly disclosed prior to the provision of the relevant service to the client, which the firm may describe in a generic way;

(b) is capable of enhancing the quality of service provided to the client;

(c) is of a scale and nature that it could not be judged to impair the firm’s compliance with its duty to act honestly, fairly and professionally in the best interests of the client;

(d) is reasonable, proportionate and of a scale that is unlikely to influence the firm’s behaviour in any way that is detrimental to the interests of the relevant client; and

(e) consists of:

(i) information or documentation relating to a specific retail investment product or a service provided in the course of carrying on related designated investment business, that is generic in nature or personalised to reflect the circumstances of an individual client;

(ii) written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any firms wishing to receive it, or to the general public;

(iii) participation in conferences, seminars and other training events on the benefits and features of a specific retail investment product or a service provided in the course of carrying on related designated investment business; and

(iv) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under (iii).

(v) research relating to an issue of shares, debentures, warrants or certificates representing certain securities by an issuer, which is:

(A) produced:

(1) prior to the issue being completed; and

(2) by a person that is providing underwriting or placing services to the issuer on that issue; and

(B) made available to prospective investors in the issue; or

(vi) research that is received so that the firm may evaluate the research provider’s research service, provided that:

(A) it is received during a trial period that lasts no longer than three months;

(B) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;

(C) the trial period is not commenced with the research provider within 12 months from the termination of an
arrangement for the provision of research (including any previous trial period) with the research provider; and

(D) the firm makes and retains a record of the dates of any trial period accepted under this rule, as well as a record of how the conditions in (A) to (C) were satisfied for each such trial period.

6.1A.5B  ▶ COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a client in relation to MiFID, equivalent third country or optional exemption business or the distribution of an insurance-based investment product. For the purposes of ▶ COBS 2.3A.19R(2) and ▶ COBS 6.1A.5AR(2), those conditions are also likely to be relevant to firms considering whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service to a client in relation to the restriction in ▶ COBS 6.1A.4R(2).

[Note: articles 24(7) and (8) of MiFID refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the client]

Related and other services

6.1A.6  ‘Related service(s)’ for the purposes of ▶ COBS 6.1A includes:

(1) arranging or executing a transaction which has been recommended to a retail client by the firm, an associate or another firm in the same group or conducting administrative tasks associated with that transaction; or

(2) managing a relationship between a retail client (to whom the firm provides personal recommendations on retail investment products or P2P agreements) and a discretionary investment manager or providing a service to such a client in relation to the investments managed by such a manager; or

(3) recommending a discretionary investment manager to a retail client (to whom the firm provides personal recommendations or other services in relation to retail investment products or P2P agreements).

6.1A.6A  ‘Other services’ in ▶ COBS 6.1A.6R (3) includes:

(1) providing information relating to retail investment products, P2P agreements or operators of electronic systems in relation to lending to the retail client, for example, general market research; or

(2) passing on information from the discretionary investment manager to the retail client.

Guidance on the requirement to be paid through adviser charges

6.1A.7  The requirement to be paid through adviser charges does not prevent a firm from making use of any facility for the payment of adviser charges on behalf of the retail client offered by another firm or other third parties provided that the facility complies with the requirements of ▶ COBS 6.1B.9R.
Examples of payments and benefits that should not be accepted under the requirement to be paid through adviser charges include:

1. A share of the retail investment product charges or platform service provider’s charges, or retail investment product provider’s or platform service provider’s revenues or profits;

2. A commission set and payable by a retail investment product provider or an operator of an electronic system in relation to lending in any jurisdiction; and

3. A share of the operator of the electronic system in relation to lending’s charges, revenues or profits.

Requirements on a firm making a personal recommendation in respect of its own retail investment products or P2P agreements

If the firm or its associate is the retail investment product provider, platform service provider or operator of an electronic system in relation to lending, the firm must ensure that the level of its adviser charges is at least reasonably representative of the cost of the services associated with making the personal recommendation (and related services).

An adviser charge is likely to be reasonably representative of the cost of the services associated with making the personal recommendation if:

1. The total expected costs associated with making a personal recommendation and distributing the retail investment product will:
   (a) be recovered through adviser charges; and
   (b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the retail investment product);

2. The adviser charges are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the firm’s established payback period; and

3. Were the personal recommendation and any related services to be provided by an unconnected firm, the level of adviser charges would be appropriate in the context of the service being provided by the firm.

1. In COBS 6.1A.10G(1), the total costs associated with making a personal recommendation and distributing the retail investment product include attributable indirect costs from the firm’s (or group’s) wider business such as firm or group overheads.

2. In COBS 6.1A.10G(2), the firm’s established payback period is the period of time in which the cash outflows associated with an investment made by the firm (or group) are expected to be recovered from the cash inflows generated by the adviser charges.
**Requirement to use a charging structure**

6.1A.11 **R** A *firm* must determine and use an appropriate charging structure for calculating its *adviser charge* for each *retail client*.

6.1A.12 **G** A *firm* can use a standard charging structure.

6.1A.13 **G** In determining its charging structure and *adviser charges* a *firm* should have regard to its duties under the **client’s best interests rule**. Practices which may indicate that a *firm* is not in compliance with this duty include:

1. varying its *adviser charges* inappropriately according to provider or, for substitutable and competing *retail investment products*, the type of *retail investment product*; or

2. allowing the availability or limitations of services offered by third parties to facilitate the payment of *adviser charges* to influence inappropriately its charging structure or *adviser charges*; or

3. varying its *adviser charges* inappropriately according to *operator of an electronic system in relation to lending*.

6.1A.14 **R** A *firm* must not use a charging structure which conceals the amount or purpose of any of its *adviser charges* from a *retail client*.

6.1A.14A **R** A *firm* must not make a **personal recommendation** to a **retail client** in relation to a **retail investment product** or **P2P agreement** if it knows, or ought to know, that:

1. the product’s charges, the *platform service provider’s* charges or the *operator of the electronic system in relation to lending*’s charges are presented in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable by that *retail client*; or

2. the product’s charges or other payments are maintained by the *retail investment product provider* or *operator of the 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*.

6.1A.15 **G** A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *adviser charges* if, for example:

1. it makes arrangements for amounts in excess of its *adviser charges* to be deducted from a *retail client’s* investments from the outset, in order to be able to provide a cash refund to the *retail client* later; or

2. it provides other services to a *retail client* (for example, *advising on a home finance transaction* or *advising on an equity release transaction*), and its *adviser charges* do not represent a reasonable proportion of the costs associated with the **personal recommendation** for the **retail investment product** or **P2P agreement** and its related services.
Calculation of the cost of adviser services to a client

6.1.16

In order to meet its responsibilities under the client’s best interests rule and Principle 6 (Customers’ interests), a firm should consider whether the personal recommendation or any other related service is likely to be of value to the retail client when the total charges the retail client is likely to be required to pay are taken into account.

Initial information for clients on the cost of adviser services

6.1.17

A firm must disclose its charging structure to a retail client in writing, in good time before making the personal recommendation (or providing related services).

6.1.18

A firm may wish to consider disclosing as its charging structure a list of the advisory services it offers with the associated indicative charges which will be used for calculating the adviser charge for each service.

6.1.19

In order to meet the requirement in the rule on information disclosure before providing services (COBS 2.2.1 R), a firm should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses cash terms. If a firm’s charging structure is in non-cash terms, examples in cash terms should be used to illustrate how the charging structure will be applied in practice.

6.1.20

A firm is unlikely to meet its obligations under the fair, clear and not misleading rule and the client’s best interests rule unless it ensures that:

1. the charging structure it discloses reflects, as closely as is practicable, the total adviser charge to be paid; for example, the firm should avoid using a wide range; and

2. if using hourly rates in its charging structure, it states whether the rates are indicative or actual hourly rates, provides the basis (if any) upon which the rates may vary and provides an approximate indication of the number of hours that the provision of each service is likely to require.

6.1.21

[deleted]

Ongoing payment of adviser charges

6.1.22

A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

1. the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

   a. the firm has disclosed that service along with the adviser charge; and

   b. the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances,
without penalty and without requiring the retail client to give any reason; or

(2) the adviser charge relates to a retail investment product or arrangement with an operator of an electronic system in relation to lending for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.

6.1A.22A To comply with the rule on providing a retail client with the right to cancel an ongoing service for the provision of personal recommendations or related services without penalty (■ COBS 6.1A.22R (1)(b)) a firm should:

(1) ensure that any notice period of the retail client's right of cancellation is reasonable;

(2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the firm up to the date of cancellation of the ongoing service; and

(3) not make cancellation conditional on, for example, requiring the retail client to sell any retail investment products or to assign any P2P agreements to which the ongoing service relates.

6.1A.22B If a retail client exercises his right to cancel an ongoing service, the firm must clearly disclose to the retail client whether charges for other services provided by the firm, such as custody services, will continue to be payable by the retail client.

6.1A.23 If ■ COBS 6.1A.22R(1) or ■ (2) do not apply, a firm may not offer credit to a retail client for the purpose of paying adviser charges unless this would be in the best interests of the retail client.

Disclosure of total adviser charges payable

6.1A.24 (1) A firm must agree with and disclose to a retail client the total adviser charge payable to it or any of its associates by a retail client.

(2) A disclosure under (1) must:

(a) be in cash terms (or convert non-cash terms into illustrative cash equivalents);

(b) be as early as practicable;

(c) be in a durable medium or through a website (if it does not constitute a durable medium) if the website conditions are satisfied; and

(d) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the adviser charge is payable and the implications for the retail client if the retail investment product or arrangement with the operator of an electronic system in relation to lending is
cancelled before the adviser charge is paid and, if there is no ongoing service, the sum total of all payments.

6.1A.24A ● If the price of the retail investment product may vary as a result of fluctuations in the financial markets and the adviser charge is expressed as a percentage of that price, a firm need not disclose to the retail client the total adviser charge payable to the firm or any of its associates by the retail client until after execution of the transaction, provided it then does so promptly.

6.1A.25 ● A firm may include the information required by the rule on disclosure of total adviser charges (■ COBS 6.1A.24 R) in a suitability report.

6.1A.26 ● To comply with the rule on disclosure of total adviser charges (■ COBS 6.1A.24 R) and the fair, clear and not misleading rule, a firm’s disclosure of the total adviser charge should:

(1) provide information to the retail client as to which particular service an adviser charge applied to;

(2) include information as to when payment of the adviser charge is due;

(3) inform the retail client if the total adviser charge varies materially from the charge indicated for that service in the firm's charging structure;

(4) if an ongoing adviser charge is expressed as a percentage of funds under management, clearly reflect in the disclosure that the adviser charge may increase as the fund grows; and

(5) if an ongoing adviser charge applies for an ongoing service, clearly confirm the details of the ongoing service, its associated charges, and how the retail client can cancel this service and cease payment of the associated charges.

Record keeping

6.1A.27 ● A firm must keep a record of:

(1) its charging structure;

(2) the total adviser charge payable by each retail client; and

(3) if the total adviser charge paid by a retail client has varied materially from the charge indicated for that service in the firm's charging structure, the reasons for that difference.
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 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 ■ 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 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 This section does not apply to a firm when a retail client receives basic advice in accordance with the basic advice rules.
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.

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.

This section does not apply if the retail client is outside the United Kingdom.

(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.

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

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.5R 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 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 [deleted]

Distinguishing product and P2P platform charges from adviser charges

6.1B.7 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 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.

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.

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.

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

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
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).

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.

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.

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.

COBS 6.18.9R(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).
6.1C Consultancy charging and remuneration

**Application - Who? What?**

6.1C.1 (Application - Who? What?) and 6.1C.3 (Interpretation) mean (for example) that the cost of any advice given to an employee pursuant to an agreement between the employer and the adviser about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of a group personal pension scheme or group stakeholder pension scheme are subject to the rules in this section, not the rules on adviser charging (6.1A).

6.1C.2 This section does not apply if the employer is outside the United Kingdom.

**Interpretation**

6.1C.3 In this section ‘giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme’ includes:

1. giving advice or assistance to an employer on the operation of such a scheme;

2. taking, or helping the employer to take, the steps that must be taken to enable an employee of the employer to become a member of such a scheme; and

3. giving advice to an employee, pursuant to an agreement between the employer and the adviser, about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of such a scheme.

**Requirement to be paid through consultancy charges**

6.1C.4
6.1.5  R  Excerpt as specified in □ COBS 6.1.5A R, □ COBS 6.1.5B R and □ COBS 6.1.5C R, a firm must:

(1) only be remunerated for giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme by consultancy charges or by a fee payable by the employer;

(2) not solicit or accept (and ensure that none of its associates solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to that advice, or those services, regardless of whether it intends to refund the payments or pass the benefits on to the group personal pension scheme or group stakeholder pension scheme; and

(3) not solicit or accept (and ensure that none of its associates solicits or accepts) consultancy charges which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the consultancy charges are recovered from the relevant group personal pension scheme or group stakeholder pension scheme.

6.1.5A  R  A firm and its associates may, except in relation to a qualifying scheme:

(1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in □ COBS 6.1.5 R if:

(a) the employer's part of the relevant scheme was established on or before 30 December 2012; and

(b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the rules in force on 30 December 2012; and

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

Re-registration of commission when an employer moves to a new adviser

6.1.5B  R  If an employer chooses to appoint a firm to provide advice or services in connection with a group personal pension scheme or a group stakeholder pension scheme and that firm or its associate enters into an arrangement in □ COBS 6.1.5AR (2), the firm must:

(1) before the arrangement is entered into, disclose to the employer that the transfer of the commission, remuneration or benefit of any kind will be requested by the firm or its associate;

(2) throughout the period during which the firm or its associate receives the commission, remuneration or benefit of any kind, provide the employer with an ongoing service; and

(3) as soon as reasonably practicable after it makes the disclosure in (1):

(a) disclose to the employer the basis and amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
(b) provide the employer with a description of the ongoing service it will provide to the employer in accordance with (2).

6.1C.5C R  In connection with a qualifying scheme, a firm may only solicit or accept consultancy charges from an operator of a qualifying scheme if the operator has confirmed that express agreement has been given by members of that scheme under COBS 19.6.4 R.

6.1C.6 G  A firm may receive a consultancy charge that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the firm passes any such payments to the relevant group personal pension scheme or group stakeholder pension scheme.

6.1C.7 G  The requirement to be paid through consultancy charges does not prevent a firm from making use of any facility for the payment of consultancy charges provided by another firm or other third parties provided that the facility complies with the requirements of COBS 6.1D.9 R.

6.1C.8 G  Examples of payments and benefits that should not be accepted under the requirement only to be paid through consultancy charges include:

(1) a share of the charges applied to a group personal pension scheme, group stakeholder pension scheme or the scheme provider’s revenues or profits (except if the firm providing the advice to an employer in relation to such a scheme is the scheme provider);

(2) a commission set and payable by a retail investment product provider in any jurisdiction.

Requirements on a product provider giving advice to an employer in respect of the product provider’s own group personal pension scheme or group stakeholder pension scheme products.

6.1C.9 R  If the firm or its associate is the group personal pension scheme or group stakeholder pension scheme provider, the firm must ensure that the level of its consultancy charges is at least reasonably representative of the cost associated with giving the advice to the employer in relation to the relevant scheme.

6.1C.10 G  A consultancy charge is likely to be reasonably representative of the cost of the services associated with giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme if:

(1) the total expected costs associated with advising the employer in relation to the group personal pension scheme or group stakeholder pension scheme will:

(a) be recovered through consultancy charges; and
(b) not be recovered by charges for, or profits from, other services (such as those associated with establishing and operating that scheme);

(2) consultancy charges are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the firm’s established payback period; and

(3) (were the services to be provided by an unconnected firm), the level of consultancy charges would be appropriate in the context of the service being provided by the firm.

6.1C.10A

(1) In COBS 6.1C.10G(1), the total costs associated with advising the employer in relation to the group personal pension scheme or group stakeholder pension scheme include attributable indirect costs of the firm’s (or group’s) wider business such as firm or group overheads.

(2) In COBS 6.1C.10G(2), the firm’s established payback period is the period of time in which the cash outflows associated with an investment made by the firm (or group) are expected to be recovered from the cash inflows generated by the adviser charges.

Requirement to use a charging structure

6.1C.11

A firm must determine and use an appropriate charging structure for calculating its consultancy charge for each employer.

6.1C.12

A firm can use a standard charging structure.

6.1C.13

(1) In determining its charging structure and consultancy charges a firm should have regard to the best interests of the employer and the employer’s employees.

(2) A firm may not be acting in the best interests of the employer and the employer’s employees if it:

(a) varies its consultancy charges inappropriately according to product provider; or

(b) allows the availability or limitation of services offered by third parties to facilitate the payment of consultancy charges to influence inappropriately its charging structure or consultancy charges.

(3) Firms are reminded that the client’s best interests rule may also apply.

6.1C.14

A firm must not use a charging structure which conceals the amount or purpose of any of its consultancy charges from an employer or an employee.

6.1C.15

A firm is likely to be viewed as operating a charging structure that conceals the amount or purpose of its consultancy charges if, for example, it makes arrangements for amounts in excess of its consultancy charges to be
COBS 6 : Information about the firm, its services and remuneration

Section 6.1C : Consultancy charging and remuneration

deducted from an employee’s investments from the outset, in order to be able to provide a cash payment to the employer or employee later.

Initial information for clients on the cost of consultancy services

6.1C.16 A firm must disclose its charging structure to an employer in writing, in good time before giving advice, or providing services, to the employer in connection with a group personal pension scheme or group stakeholder pension scheme.

6.1C.17 A firm should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses cash terms. If a firm’s charging structure is in non-cash terms, examples in cash terms should be used to illustrate how the charging structure will be applied in practice.

Disclosure of total consultancy charges payable

6.1C.18 (1) A firm must agree with and disclose to an employer the total consultancy charge payable to it or any of its associates.

(2) A disclosure under (1) must:

(a) be in cash terms (or convert non-cash terms into illustrative cash equivalents);

(b) be made as early as practicable and, in any event, before the employer:

(i) selects a particular group personal pension scheme or group stakeholder pension scheme for the benefit of its employees; or

(ii) if applicable, reviews its group personal pension scheme or group stakeholder pension scheme arrangements;

(c) be in a durable medium or through a website (if it does not constitute a durable medium) if the website conditions are satisfied;

(d) if there are payments over a period of time, include:

(i) the amount and frequency of each payment due; and

(ii) the period over which the consultancy charge is payable;

(iii) an explanation of the implications for the employer and its employees if an employee leaves the employer’s service; and

(iv) an explanation of the implications for the employer and its employees if contributions to the group personal pension scheme or group stakeholder pension scheme are cancelled before the consultancy charge is fully paid.

6.1C.19 To comply with the rule on disclosure of total consultancy charges payable (■ COBS 6.1C.18R) and the fair, clear and not misleading rule, a firm’s disclosure of the total consultancy charge should:

(1) provide information to the employer as to which particular service a consultancy charge applies;
(2) include information as to when payment of the consultancy charge is due;

(3) if an ongoing consultancy charge is expressed as a percentage of funds under management, clearly reflect in the disclosure how that consultancy charge may increase as the fund grows.

**Requirement not to make a consultancy charge in certain circumstances**

When an employer asks a firm to provide advice to the employer’s employees, the firm:

1. may make a consultancy charge for the cost of preparing and giving advice to each employee who chooses to accept his employer’s offer of advice;
2. must not make a consultancy charge for the cost of preparing or giving advice to an employee who chooses not to accept the offer of advice;
3. (if the firm prepares generic advice to be given to more than one employee) must not make more than one consultancy charge for preparing that advice.

**Disclosure to employees**

A firm must take reasonable steps to ensure that its representatives, when making contact with an employee with a view to giving a personal recommendation on his or her employer’s group personal pension scheme and/or group stakeholder pension scheme, inform the employee:

1. that the firm will be providing a personal recommendation on a group personal pension scheme and/or group stakeholder pension scheme provided by the employer;
2. whether the employee will be provided with a personal recommendation that is restricted to the group personal pension scheme or group stakeholder pension scheme provided by the employer or the recommendation will also cover other products; and
3. that the employee will have to pay an adviser charge (if applicable) unless the representative is making contact pursuant to an agreement made between the firm and the employer under which the firm is remunerated by consultancy charging or a fee payable by the employer.

**Record-keeping**

A firm must keep a record of:

1. its charging structure;
2. the consultancy charges payable by each employer and each of the employer’s employees; and
(3) if the consultancy charge for a particular service has varied materially from that indicated in the firm's charging structure, the reasons for that difference.
6.1D Product provider requirements relating to consultancy charging and remuneration

Application - Who? What?

6.1D.1 This section applies to a firm that is a group personal pension scheme or group stakeholder pension scheme provider, but only if the firm providing the relevant scheme (or another firm) gives advice, or provides services, to an employer in connection with that scheme.

Application - Where?

6.1D.2 This section does not apply if the employer is outside the United Kingdom.

Interpretation

6.1D.3 In this section ‘giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme’ includes:

(1) giving advice or assistance to an employer on the operation of such a scheme;

(2) taking, or helping the employer to take, the steps that must be taken to enable an employee of the employer to become a member of such a scheme; and

(3) giving advice to an employee, pursuant to an agreement between the employer and the advisor, about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of such a scheme.

Requirement not to offer commission, provide factoring or offer credit to a third party

6.1D.4 (1) Except as specified in COBS 6.1D.6A R, 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, an employee benefit consultant or to any other third party for the benefit of that firm, employee benefit consultant or third party in relation to the sale or purchase of:

(a) a group personal pension scheme or group stakeholder pension scheme, whether or not that sale or purchase is accompanied or
facilitated by advice given to the purchasing employer or the employer’s employees; or

(b) an investment, if that sale or purchase is, or was, for the benefit of an occupational pension scheme established as an alternative to a group personal pension scheme or group stakeholder pension scheme.

(2) Except in connection with a qualifying scheme, paragraph (1)(a) does not prevent a firm from making a payment to a third party that has facilitated the payment of a consultancy charge from a group personal pension scheme or group stakeholder pension scheme, provided that that payment is only in respect of that facilitation.

(3) For the purposes of (1)(b) only, an occupational pension scheme will be established as an alternative to a group personal pension scheme or group stakeholder pension scheme if, in order to meet the most material of its objectives, an employer could reasonably have chosen to establish an occupational pension scheme on the one hand, or a group personal pension scheme or group stakeholder pension scheme on the other, and it chose to establish an occupational pension scheme.

6.1D.5 The requirement not to offer or pay commission does not prevent a firm from making a payment to a third party in respect of administration or other charges incurred, for example a payment to a fund supermarket or a third party administrator.

6.1D.6 A firm that produces a group personal pension scheme or group stakeholder pension scheme must not offer or make any credit available out of its own funds, and to or for the benefit of another firm, an employee benefit consultant or another third party.

6.1D.6A A firm and its associates may, except in connection with a qualifying scheme:

(1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in COBS 6.1D.4 if:

(a) the employer’s part of the relevant scheme was established on or before 30 December 2012; and

(b) the offer or payment was permitted by the rules in force on 30 December 2012; 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.

6.1D.7 A firm must:

(1) take reasonable steps to ensure that its group personal pension scheme and group stakeholder pension scheme charges are not structured so that they could mislead or conceal from an employer
the distinction between those charges and any consultancy charges payable in respect of the scheme; and

(2) not include in any marketing materials in respect of its group personal pension schemes or group stakeholder pension schemes any statements about the appropriateness of levels of consultancy charges that a firm could charge in giving advice to an employer in relation to a such a scheme.

6.1D.8 A firm should not offer to invest more than 100% of the retail client’s contribution to a group personal pension scheme or group stakeholder pension scheme.

Requirements on firms facilitating the payment of consultancy charges

6.1D.9 A firm that offers to facilitate, directly or through a third party, the payment of consultancy charges must:

(1) obtain and validate instructions from the relevant employer in relation to the consultancy charge;

(2) offer sufficient flexibility in terms of the consultancy charges it facilitates;

(3) not pay out or advance consultancy charges to the firm to which the consultancy charge is owed over a materially different time period, or on a materially different basis to that in which it recovers the consultancy charges from the employee (including paying any consultancy charges to the firm that it cannot recover from the employee); and

(4) ensure that the consultancy charges levied do not exceed those agreed between the employee’s employer and the relevant adviser (unless the prior written consent of the employee is obtained).

6.1D.9A A firm facilitates the payment of consultancy charges for the purposes of COBS 6.1D.9 R if the consultancy charge is not paid directly by the employee, but is instead paid on behalf of the employee via the firm.

6.1D.9B A firm facilitates the payment of consultancy charges for the purposes of COBS 6.1D.9 R by:

(1) selling all or part of, or rights under, the employee’s investment in a group personal pension scheme or group stakeholder pension scheme to pay the consultancy charge; or

(2) disposing of or reducing all or part of the employee’s rights under the group personal pension scheme or group stakeholder pension scheme (for example, by way of a part disposal which creates benefits under a life policy) to pay the consultancy charge; or

(3) separating out an amount or amounts for the payment of the consultancy charge from the amount received from the employer on
A firm should consider whether the flexibility in levels of consultancy charges it offers to facilitate is sufficient so as not to unduly influence or restrict the charging structure and consultancy charges that the firm providing advice to an employer in relation to a group personal pension scheme or group stakeholder pension scheme can use.

Disclosure of total consultancy charges payable

A firm must, in good time, provide an employee with sufficient information on the total consultancy charge payable by the employee.

To comply with COBS 6.1D.11R, a firm’s disclosure should be in cash terms (or convert non-cash terms into illustrative cash equivalents) and should:

1. include information as to the period over which the consultancy charge is payable;
2. provide information on the implications for the employee if the employee leaves the employer’s service or their contributions to the group personal pension scheme or group stakeholder pension scheme are cancelled before the consultancy charge is fully paid.

A firm may provide the disclosure in COBS 6.1D.11R at the same time as it provides a key features document.
6.1E Platform services: platform charges and using a platform service for advising

Platform service providers: platform charges

6.1E.1 R

(1) A platform service provider must clearly disclose the total platform charge to the retail client in a durable medium in good time before the provision of designated investment business.

(2) In the event that it is not possible to make the disclosure in (1) in good time before the provision of designated investment business, the disclosure must be made as soon as practicable thereafter.

6.1E.2 G

A platform service provider should pay due regard to its obligations under Principle 6 (Customers’ interests), Principle 7 (Communications with clients) and the client's best interests rule, and ensure that it presents retail investment products without bias.

6.1E.3 G

A platform service provider should pay due regard to its obligations under Principle 6 (Customers’ interests) and the client's best interests rule and not vary its platform charges inappropriately according to provider or, for substitutable and competing retail investment products, the type of retail investment product.

Requirement to be paid through platform charges

6.1E.4 R

Except as specified in § COBS 6.1E.6 R and § COBS 6.1E.7 R, a platform service provider must:

(1) only be remunerated for its platform service (and any other related services it provides), by platform charges; and

(2) ensure that none of its associates accepts any remuneration in respect of those services.

6.1E.5 G

Examples of remuneration that should not be accepted by a platform service provider or its associates include (but are not limited to):

(1) a share of an annual management charge; and

This section does not apply if the retail client is outside the United Kingdom.
Section 6.1E : Platform services: platform charges and using a platform service for advising

(2) any payment (other than a product charge or a platform charge) made to a platform service provider in its capacity as a retail investment product provider where the relevant retail investment product is distributed to retail clients by its platform service.

Exceptions

A platform service provider or its associates may solicit and accept payments from:

1. a firm, other than a retail investment product provider, which is in the business of making personal recommendations to retail clients in relation to retail investment products; and/or

2. a firm, other than a retail investment product provider, which is in the business of arranging or dealing retail investment products for retail clients.

Other than in COBS 6.1E.6 R, a platform service provider or its associates may solicit and accept payments from any firm, including a retail investment product provider, which are only for:

1. pricing error corrections;

2. administering corporate actions;

3. research carried out by the platform service provider and management information; and

4. advertising;

provided that:

5. the services are available to firms at a price which does not vary inappropriately according to firm;

6. the payments are reasonable and proportionate for the service; and

7. the payments or service could not reasonably be expected to result in a channelling of business to the firm other than through the normal effect of general advertising.

Distinguishing platform charges from product charges and adviser charges

A platform service provider must not arrange for a retail client to buy a retail investment product if:

1. the product’s charges are presented in a way that offsets or may appear to offset any adviser charges or platform charges that are payable by that retail client; or

2. the platform service provider’s charges are presented in a way that offsets or may appear to offset any product charges or adviser charges that are payable by the retail client; or
(3) the product’s charges or other payments are maintained by the retail investment product provider at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1E.10R (2), is payable to the retail client.

Using a platform service when advising

6.1E.9 R

A firm must not use a platform service as part of a personal recommendation to a retail client in relation to a retail investment product unless it has satisfied itself that the platform service provider, and its associates, only receive remuneration for business carried on in the UK which is permitted by the rules in this section.

Providing additional units or payment in cash to a retail client

6.1E.10 R

■ COBS 6.1E.4 R does not prevent a platform service provider receiving a share of an annual management charge from an authorised fund manager if the platform service provider passes that share on to the retail client in the form of:

(1) additional units; or

(2) cash, provided that it does not offset or appear to offset any adviser charges or platform charges.

6.1E.11 G

Examples of a cash share of an annual management charge that would not offset or appear to offset any adviser charges or platform charges are:

(1) where the retail client has redeemed his retail investment product; or

(2) where the value of the payment made to the retail client in each month does not exceed £1 for each fund.

6.1E.12 G

If a platform service provider passes a share of an annual management charge on to a retail client by way of additional units or cash, it should pay due regard to its obligations under Principle 7 (Communications with clients).
6.1F Using a platform service for arranging and advising

Client's best interests rule and using a platform service

6.1F.1 A firm which:

1) arranges for retail clients to buy retail investment products or makes personal recommendations to retail clients in relation to retail investment products; and

2) uses a platform service for that purpose;

must take reasonable steps to ensure that it uses a platform service which presents its retail investment products without bias.

6.1F.2 When selecting and using a platform service for the purpose described in COBS 6.1F.1 R, a firm should be mindful of its duty to comply with the client's best interests rule and the rules on inducements (COBS 2.3.1 R, COBS 2.3A.5R and COBS 2.3A.15R).
6.1G Re-registration of title to retail investment products

6.1G.1 If a client requests a firm (F) to transfer the title to a retail investment product which is held by F directly, or indirectly through a third party, on that client's behalf to another person (P), and F may lawfully transfer the title to that retail investment product to P, F must execute the client's request within a reasonable time and in an efficient manner.

6.1G.2 A firm acting as a registrar should carry out a request by F for the re-registration of ownership of a retail investment product to P within a reasonable time.
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.
COBS 6 : Information about the firm, its services and remuneration

Section 6.2B : Describing advice services

Introduction

6.2B.5 G This section transposes 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 directly applicable 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 EU provisions: 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 “EU” 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 “EU” 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 EU provisions: 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 “EU” 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.32EU) 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.36EU) 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.29EU) that a firm does not allow a natural person to provide both independent advice and restricted advice.

Interpretation: non-independent advice and restricted advice

Interpretation: non-independent advice and restricted advice

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

Firms holding themselves out as independent

Firms holding themselves out as independent

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]

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).

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

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

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

(1) ■ COBS 6.2B.15EU 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.15EU 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

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.15EU;

(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)).
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 Article 24(7)(a) of Directive 2014/65/EU. 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]

(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.15EU) 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 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 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 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) proportionate; and

(3) not biased (■ COBS 6.2B.18EU).

6.2B.23 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 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 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 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 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 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 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 Article 24(4)(a) of Directive 2014/65/EU 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 firm 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 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 (\(\text{COBS 4.2.1R}\)) that it provides restricted advice on relevant products.

6.2B.31 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 (\(\text{COBS 9.6.17 R (2)}\)).

6.2B.32 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 (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 (1) A firm must provide the information required by \(\text{COBS 6.2B.33R}\) 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 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 EU

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”.

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Record keeping

6.2B.40 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 (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.
6.4 Disclosure of charges, remuneration and commission

Application

6.4.1 R
This section applies to a firm when it sells or arranges the sale of a packaged product to a retail client and the firm's services to sell or arrange are not in connection with the provision of a personal recommendation.

6.4.2 G
Under the territorial application rules in COBS 1, the rules in this section apply to:

(1) a UK firm's business carried on from an establishment in an EEA State other than the United Kingdom for a retail client in the United Kingdom unless, if the office from which the activity is carried on were a separate person, the activity:
   (a) would fall within the overseas persons exclusion in article 72 of the Regulated Activities Order; or
   (b) would not be regarded as carried on in the United Kingdom.

(2) a firm's business carried on from an establishment in the United Kingdom carried on for a client in an other EEA state.

Disclosure of commission (or equivalent) for packaged products

6.4.3 R
(1) If a firm sells or arranges the sale of a packaged product to a retail client, and subsequently if the retail client requests it, the firm must disclose to the client in cash terms:
   (a) any commission receivable by it or any of its associates in connection with the transaction;
   (b) if the firm is also the product provider, any commission or commission equivalent payable in connection with the transaction; and
   (c) if the firm or any of its associates is in the same immediate group as the product provider, any commission equivalent in connection with the transaction.

(2) Disclosure "in cash terms" in relation to commission does not include the value of any indirect benefits listed in the table at COBS 2.3.15 G.

(3) In determining the amount to be disclosed as commission equivalent, a firm must put a proper value on the cash payments, benefits and
services provided to its representatives in connection with the transaction.

(4) This rule does not apply if:
(a) the firm is acting as an investment manager; or
(b) the retail client is not present in the EEA at the time of the transaction; or
(c) the firm provides the client with a key features document, a key investor information document, an EEA key investor information document or a NURS-KII document, in accordance with COBS 14, provided that the firm discloses to the client the actual amount or value of commission or equivalent within five business days of effecting the transaction.

(5) If the terms of a packaged product are varied in a way that results in a material increase in commission or commission equivalent, a firm must disclose to a retail client in writing any consequent increase in commission or equivalent receivable by it in relation to that transaction.

6.4.4 Where a firm is required to disclose the value of commission equivalent, the value will be at least as high as the amount of any commission.

6.4.4A If the firm or its associate is the pure protection contract insurer, it may comply with COBS 6.4.3R (1)(b) and (c) by disclosing to the consumer an indicative adviser charge as an alternative to a commission equivalent.

6.4.4B The indicative adviser charge must be at least reasonably representative of the cost of the services associated with making the personal recommendation in relation to the pure protection contract.

6.4.4C An indicative adviser charge is likely to be reasonably representative of the cost of the services associated with making the personal recommendation if:

(1) the total expected costs associated with making a personal recommendation and distributing the pure protection contract will:
   (a) be recovered through indicative adviser charges; and
   (b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the pure protection contract);

(2) indicative adviser charges are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the firm’s established payback period; and

(3) the personal recommendation and any related services were to be provided by an unconnected firm, the level of the indicative adviser charge would be appropriate in the context of the service being provided by an unconnected firm.
(1) In 6.4.4CG(1), the total costs associated with making a personal recommendation and distributing the pure protection contract include attributable indirect costs of the firm’s (or group’s) wider business such as firm or group overheads.

(2) In 6.4.4CG(2), the firm’s established payback period is the period of time in which the cash outflows associated with an investment made by the firm (or group) are expected to be recovered from the cash inflows generated by the adviser charges.

(1) A firm must make the disclosure required by the rule on disclosure of commission or equivalent (6.4.3 R) as close as practicable to the time that it sells or arranges the sale of a packaged product.

(2) The firm must make the disclosure:
   (a) in a durable medium; or
   (b) when a retail client does not make a written application to enter into a transaction, orally. In these circumstances, the firm must give written confirmation as soon as possible after the date of the transaction, and in any event within five business days.

(1) When determining the value of cash payments, benefits and services under the rule on disclosure of commission equivalent (6.4.3 R), a firm should follow the provisions of 6.4.3 R.

(2) Compliance with this evidential provision may be relied on as tending to establish compliance with 6.4.3 R; and

(3) Contravention of this evidential provision may be relied on as tending to establish contravention of 6.4.3 R.

Guidance on disclosure requirements for packaged products

A firm must not enter into an arrangement to pay commission other than to the firm responsible for a sale, unless:

(1) the firm responsible for the sale has passed on its right to receive the commission to the recipient; or

(2) [deleted]

(3) the commission is paid following the sale of a packaged product by the firm in response to a financial promotion communicated by that firm to a client of the recipient firm; or

(4) the arrangement is with a firm in the same immediate group.

A disclosure made under this section should indicate the timing of any payment. For example, if a firm exchanges its right to future commission payments for a lump sum, whether by way of a loan or other commercial arrangement, it should disclose the amount of commission receivable by it that has been exchanged for the lump sum.
The rules in this section build on the disclosure of fees, commission and non-monetary benefits made under the rules on inducements (COBS 2.3.1 R, COBS 2.3A.5R, COBS 2.3A.6R, COBS 2.3A.15R and COBS 2.3A.16R).

If the precise rate or value of commission or equivalent is not known in advance, the firm should estimate the rate likely to apply to the representative in respect of the transaction.

Commission or equivalent disclosure statements: content and wording

A firm should consider including the following in its written statement of commission:

1. Amounts or values of commission rounded as appropriate to help the client understand the document (for example, large amounts might be rounded to three significant figures).
2. The names of the firms involved in paying and receiving commission or commission equivalent.
3. A plain language description of whether remuneration takes the form of commission or commission equivalent. Commission equivalent could, for example, be described as "remuneration and services received from XYZ Ltd".
4. The timing of payments and period over which they are paid.
5. For payments relating to the client’s fund, examples of how much money might be taken, such as:
   a. where the commission or equivalent is on an increasing basis, the amount to be taken in the first and tenth year in which it is paid; or
   b. where the commission or equivalent is a percentage of the fund, the amount that would be taken if the fund was worth a certain value and the amount that would be taken if the fund was worth twice that value.
Services and costs disclosure document described in COBS 6.3.7G(1) [deleted]
Combined initial disclosure document described in COBS 6.3, ICOBS 4.5 and MCOB 4.4A.20G [deleted]
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Calculating commission equivalent

This table forms part of COBS 6.4.6 E.

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<tbody>
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<td>This table sets out the basis on which the firm should determine the value of cash payments, benefits and services to be disclosed as commission equivalent. Benefits and services, as set out in parts B and C below, need be included only if their value is such that they could not be provided to a firm as a non-monetary benefit listed in the table in COBS 2.3.15 G. The result of the calculation should be that the amounts disclosed as commission equivalent are, as far as possible, the same as the amounts and value of commission which would be paid in a corresponding sale.</td>
</tr>
<tr>
<td><strong>Part A: Cash payments</strong></td>
</tr>
<tr>
<td>1. These cover all payments by a firm to a representative, appointed representative or, where applicable, a tied agent, or a firm in the same immediate group in relation to a transaction in a packaged product. This includes bonus payments, manager’s overrides, extra earnings from other transactions and other payments conditional on amounts of new business.</td>
</tr>
<tr>
<td>2. In determining the amounts to be included in the calculation, a firm should have regard to the following:</td>
</tr>
<tr>
<td>(a) when the precise rate of commission equivalent is not known in advance (for example, if retrospective volume overrides apply), the firm should estimate the rate likely to apply to the representative in question. When an identical commission equivalent scale applies to all representatives (although they might earn differing percentages of it), the same average amount of commission equivalent (and the value of other benefits and services) in respect of identical transactions may be disclosed, regardless of the percentage of the scale paid to each individual representative. Averaging should not be used for appointed representatives, or, where applicable, tied agents.</td>
</tr>
<tr>
<td>(b) all credits to an account from which periodic withdrawals may be made should be included.</td>
</tr>
<tr>
<td>(c) when a payment is made before the firm receives the premium or the investment monies to which it relates (for example, indemnity commission equivalent), it should be included as being received at the time of payment. Firms that wish to explain this arrangement to their clients are free to do so, provided this does not detract from the required disclosure.</td>
</tr>
<tr>
<td>(d) when the firm arranges for a third party to make a payment to a representative in exchange for the income stream to which the representative is entitled, or to make a loan to the representative on the security or expectation of future payments from the firm, this should be treated as if it were a payment from the firm at the time of the transaction.</td>
</tr>
<tr>
<td>(e) when a firm provides, or arranges for a third party to provide, a loan to a representative, on the security of, or in the expectation of, future payments from the firm, the amounts to be included are the payments to the representative on which the provision of the loan is based, as if they were received at the time the transaction was effected, irrespective of their actual timing.</td>
</tr>
<tr>
<td>(f) when an agent is employed and remunerated by the firm’s appointed representative, or, where applicable, tied agent, the payments to be included should be those made by the firm to the appointed representat-</td>
</tr>
</tbody>
</table>
Calculating commission equivalent

**Part B: Benefits**

3. Benefits include the cost to the firm of all non-monetary benefits provided by it to a representative. A benefit should be included whether or not the representative is liable to income tax on it and whether it is chargeable to tax. Examples of benefits include the use of a car, attendance at conferences, subsidised loans, contributions to pension schemes, national insurance contributions, and the value of share option (taking into account any discount on issue and assuming that the shares in question grow at a reasonable rate in line with other investments).

**Part C: Services**

4. Services include benefits which are not indirect benefits within the table in COBS 2.3.15 G.

5. The following services should be included:

   (a) office accommodation and equipment, including telephone, photocopying and fax;
   (b) loans where a commercial rate of interest is not charged, including commission equivalent advances overdue for repayment;
   (c) general stationery and mailing or distribution costs;
   (d) computer hardware and software (except software which specifically relates to the firm's packaged product, such as software used for producing illustrations, projection and product information);
   (e) clerical and administrative support;
   (f) business insurance cover, including professional indemnity and fidelity guarantee;
   (g) recruitment;
   (h) compliance monitoring;
   (i) client services;
   (j) business planning services;
   (k) line management.

6. To put a value on these services, the following costs should be included:

   (a) all overheads attributable to a particular cost item (for example, the cost of a compliance official);
   (b) salary costs pro rata if individuals are only engaged part-time on relevant business;
   (c) rent and associated premises costs at an appropriately reduced rate if the premises are also used for other business activities;
   (d) only that proportion of the cost of lead generation promotions attributable to the generation of relevant business (but including the placing of any financial promotion, and its mailing or provision of access to third party clients);
   (e) only the marginal additional compliance costs of ensuring that representatives and their support and training material comply with relevant rules;
   (f) the commercial value of a service which is the use of an asset owned by the firm (for example in the case of a property, its full market rent);
   (g) in respect of appointed representative, or, where applicable tied agent, the costs of any promotion in a newspaper or elsewhere and the provision of representative-specific literature in connection with a financial promotion.
Calculating commission equivalent

(h) in respect of a firm in the same immediate group and connected appointed representatives or, where applicable, tied agents, where the name of the company is included in the financial promotion, the costs of any promotion in a newspaper or elsewhere and the provision of literature specific to the representative in connection with a financial promotion.

7. The following costs should be excluded:
   (a) the cost of corporate awareness advertising;
   (b) training costs;
   (c) costs of developing and maintaining computer systems for the provision of projections of benefits, client-specific key features documents or other product information; or other product information;
   (d) costs of compensating clients;
   (e) the costs of head office and branch level management and support, other than payments to managers falling under Part 1, for representatives, if these services could also be provided to a firm not in the same immediate group, for example, broker consultants and 'inspectors'.

Part D: Calculation methodology

8. Estimating commission equivalent

The cost of benefits and services should normally be based on the most recent relevant experience of the firm, except if the firm has grounds to believe that the commission equivalent for the period concerned will be higher or lower than that implied by the experience or no such experience is available. In such a case, the estimate should be based on and evidenced by business plans which the firm is satisfied are achievable.

9. Firms that receive or expect to receive:
   (a) commission in respect of packaged products which are not its own products or the products of a product provider who is in the same immediate group; and
   (b) commission equivalent in respect of its own products;

must ensure that the costs and benefits attributed to these products do not exceed the amounts that can be financed from that commission.

Construction of commission equivalent scales

10. The total costs of cash payments, benefits and services should be assessed and the normal approach is to split them into new business costs and after sale servicing costs. The costs of each of these functions should be assessed directly in relation to the work carried out by the representatives.

11. (a) The total commission equivalent costs identified in 10 should be spread across the business using a new business commission equivalent scale and a servicing commission equivalent scale respectively.
    (b) The commission equivalent scales should distinguish between products for which the commission equivalent of representatives is likely to be different.

12. If the representative's commission equivalent includes a cash payment related to volume and/or value of the transactions sold (which payment must be in accordance with the client's best interest rule), the following method would be appropriate:
   (a) The payment scales should be grossed up by new business uplift factors or servicing uplift factors as appropriate to reflect the cost of benefits and services. The grossed up scales represent the new business and servicing commission equivalent scales, and are applied to each contract to derive the commission equivalent to be disclosed.
Calculating commission equivalent

(b) If servicing costs are expected to be incurred in any year in which no servicing payments are to be made on a contract, disclosure should still be made, for example by using a technique similar to that described in 14.

13. (a) When a representative receives a salary, or other payment unrelated to volume or sales:

(i) this should be amalgamated with the cost of benefits and services; and

(ii) the total costs should be apportioned over individual transactions in a way that reflects the value of a contract to a firm or the firm’s immediate group.

(b) If a firm is a distributor for a product provider within the same immediate group, the firm must apportion total costs over individual transactions in a way that reflects the value of the contract to the firm’s immediate group.

14. If a representative agrees to forgo part of his or her normal payment to improve the terms of the contract, the disclosure may be reduced in such a way that fairly reflects the overall effect of the amount foregone.

15. The firm should review the commission equivalent scales if at any time it becomes aware that the commission equivalent figures have become misleading. A review should take place at least annually.

Payments to associates

16. If a firm pays commission equivalent to another firm in the same immediate group, or an appointed representative or, where applicable tied agent, which is an associate of the firm, it should ensure that the calculation of the sum to be disclosed is the higher of:

(a) all payments, benefits and services provided to the firm or appointed representative or tied agent, from whatever source, plus an additional allowance for profit of 15% - unless the firm can demonstrate that another figure (higher or lower) is more appropriate; and

(b) the cash payments actually paid by the firm, plus the value of services provided.