

Chapter 6

Information about the firm, its
services and remuneration

6.1 Information about the firm and compensation information

Application

- 6.1.1 **R** (1) This section applies to a *firm* that carries on *designated investment business* for:
- (a) a *retail client*; and
 - (b) in the case of *MiFID* or *equivalent third country business*, a *client*.
- (2) If expressly provided, this section also applies to *ancillary services* not covered by (1), but only in the course of *MiFID* or *equivalent third country business* carried on with or for a *client*.

- 6.1.2 **R** 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 **G** 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 **R** A *firm* 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) in the case of *MiFID* or *equivalent third country business*, the languages in which the *client* may communicate with the *firm*, and receive documents and other information from the *firm*;
 - (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) in the case of *MiFID* or *equivalent third country business*, the contact address of the *competent authority* that has authorised the *firm*;
 - (6) if the *firm* is acting through an *appointed representative* or, where applicable, a *tied agent*, a statement of this fact specifying the *EEA*

State in which that *appointed representative* or *tied agent* is registered;

- (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*.

[Note: article 30(1) of the *MiFID implementing Directive*]

6.1.5

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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

R

- (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 *retail 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.

[Note: articles 30(2) and (3) of the *MiFID implementing Directive*]

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

6.1.7

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- (1) A *firm* that holds *designated investments* or *client money* for a *retail 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 *retail 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 *retail 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 depository 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 *retail 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.

(4) A *firm* within (1) that holds *client designated investments* or *client money* for a *professional client* must provide that *client* with the information in paragraphs (1)(d) and (2)(a) and (b).

[Note: articles 29(3), 30(1)(g) and 32 of the *MiFID implementing Directive*]

6.1.7A **G** *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 **G** [deleted]

Information about costs and associated charges

6.1.9 **R** A *firm* must provide a *retail 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* or *ancillary services*, 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.

[Note: article 33 of the *MiFID implementing Directive*]

6.1.10 **G** 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 **R**

- (1) A *firm* must provide a *client* with the information required by this section in good time before the provision of *designated investment business* or *ancillary services* unless otherwise provided by this *rule*.
- (2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* or *ancillary services* 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 *retail client*, as if that *client* were a *consumer*.

[Note: article 29(2), 29(3) and 29(5) of the *MiFID implementing Directive*]

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.

[Note: article 29(4) of the *MiFID implementing Directive*]

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*.

[Note: article 29(6) of the *MiFID implementing Directive*]

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.

[Note: recital 50 to the *MiFID implementing Directive*]

- (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* carrying on *MiFID business* must make available to a *client*, who has used or intends to use those 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

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Firms are reminded of the general record-keeping requirements in ■ SYSC 3.2 and ■ SYSC 9.



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** *Guidance on the regulated activity of advising in relation to a new or existing investment can be found in ■ PERG 8.24 to ■ PERG 8.29. Although the guidance in ■ PERG 8.29.7 G relates to advising on investments (except P2P agreements) under article 53(1) of the Regulated Activities Order, exactly the same answers apply to a personal recommendation because the examples given relate to the relationship between a firm and a particular client and advice given to that specific client. A firm wishing to know when it will be giving advice but not making a personal recommendation should refer to ■ PERG 13.3. The guidance in ■ PERG 8.24 to ■ PERG 8.29 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

6.1A.4 **R** Except as specified in ■ COBS 6.1A.4A R, ■ COBS 6.1A.4AB R, ■ COBS 6.1A.4AC G and ■ COBS 6.1A.4B R, a *firm* must:

- (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 relation to the *personal recommendation* or any other related service, 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*.

6.1A.4A **R** 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 R 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*.

6.1A.4AA **G** (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).

6.1A.4AB **R**

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.

6.1A.4AC **G**

- (1) 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

6.1A.4B **R**

If a *retail client* chooses to become a *client* of a *firm* and that *firm* or its *associate* enters into an arrangement in ■ COBS 6.1A.4AR (2), the *firm* must:

- (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).

6.1A.5 **G**

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*.

Related and other services

6.1A.6 **R**

'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

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'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

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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.

6.1A.8

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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

6.1A.9

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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).

6.1A.10

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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*.

6.1A.10A G

- (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.
- 6.1A.16** **G** **Calculation of the cost of adviser services to a client**.....
- 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.
- 6.1A.17** **R** **Initial information for clients on the cost of adviser services**.....
- 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).
- 6.1A.18** **G** 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.
- 6.1A.19** **G** 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.

- 6.1A.20** **G** 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.

6.1A.21 **G** [deleted]

Ongoing payment of adviser charges

6.1A.22 **R** 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 **G** 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 **R** 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 **R** 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 **R**
- (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 **G** 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 **G** 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 **G** 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

R

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

R

- (1) This section applies to:
- (a) a *firm* which is a *retail investment product* provider;
 - (b) in relation to ■ COBS 6.1B.9 R, ■ COBS 6.1B.10 G and ■ COBS 6.1B.11 G, a *platform service provider*; and
 - (c) a *firm* which is an *operator of an electronic system in relation to lending*;

in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product* or *P2P agreement* and also where a *retail investment product* transaction is executed by a *platform service provider* and no *personal recommendation* has been made.

- (2) This section does not apply to a *retail investment product* provider in circumstances where a *firm* gives advice or provides services to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1B.1A

G

Guidance on the regulated activity of advising in relation to a new or existing *investment* can be found in ■ PERG 8.24 to ■ PERG 8.29. Although the *guidance* in ■ PERG 8.29.7 G relates to *advising on investments (except P2P agreements)* under article 53(1) of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to ■ PERG 13.3. The *guidance* in ■ PERG 8.24 to ■ PERG 8.29 does not apply to the *regulated activity of advising on P2P agreements*.

6.1B.1B

G

In this section, ■ COBS 6.1B.5AR and ■ COBS 6.1B.7AR are not relevant in circumstances where a *retail client* receives a *personal recommendation* in relation to a *P2P agreement*.

6.1B.2 **R** This section does not apply to a *firm* when a *retail client* receives *basic advice* in accordance with the *basic advice rules*.

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

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

Application - Where?

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

Requirement not to offer commissions

6.1B.5 **R** Except as specified in **■ COBS 6.1B.5A 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*, or to any other third party for the benefit of that *firm*, in relation to a *personal recommendation* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.

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

- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in **■ COBS 6.1B.5 R** if:
 - (a) the *personal recommendation* was made on or before 30 December 2012;
 - (b) the offer and payment was permitted by the *rules* in force on 30 December 2012;
 - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
 - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
 - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

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

6.1B.6 **G** [deleted]

Distinguishing product and P2P platform charges from adviser charges

6.1B.7 **R** A *firm* must:

- (1) take reasonable steps to ensure that its *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* are not structured so that they could mislead or conceal from a *retail client* the distinction between those charges and any *adviser charges* payable in respect of its *retail investment products* or investments in *P2P agreements* made through the system of which it is the *operator of an electronic system in relation to lending*;
- (2) not include in any marketing materials in respect of its *retail investment products*, the service it offers as an *operator of an electronic system in relation to lending* or facilities for collecting *adviser charges* any statements about the appropriateness of levels of *adviser charges* that a *firm* could charge in making *personal recommendations* or providing related services in relation to its *retail investment products* or investments through the system in relation to which it is the *operator of an electronic system in relation to lending* ; and
- (3) not defer, discount or rebate *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable, including by maintaining *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1B.7A R or ■ COBS 6.1E.10R (2), is payable to the *retail client*.

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

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

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

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

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

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

Requirements on firms facilitating the payment of adviser charges

6.1B.9 **R** ■ COBS 6.1B.7 R does not prevent a *firm* from offering a promotional discount to a *retail client* in the form of extra *units* or additional investment, but a *firm* that offers to facilitate, directly or through a third party, the payment of *adviser charges*, including by means of a *platform service* must:

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

charge from the *retail client* (including paying any *adviser charges* to the *firm* that it cannot recover from the *retail client*).

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



6.1C Consultancy charging and remuneration

Application - Who? What?

- 6.1C.1 **R**
- (1) This section applies to a *firm* that gives advice, or provides services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
 - (2) Without prejudice to (1), this section does not apply to a *firm* that makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*.

Application - Where?

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

Interpretation

- 6.1C.3 **R**
- 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 **G**
- COBS 6.1C.1 (Application - Who? What?) and ■ COBS 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* (■ COBS 6.1A).

6.1C.5 **R** Except as specified in ■ COBS 6.1C.5A R, ■ COBS 6.1C.5B R and ■ COBS 6.1C.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*.

6.1C.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 6.1C.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

6.1C.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 6.1C.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 G

(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 R

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

6.1C.12 G

A *firm* can use a standard charging structure.

6.1C.13 G

(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 R

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 G

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 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 **R** 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 **G** 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 **R**

- (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 **G** 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

6.1C.20 **R**

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

6.1C.20A **R**

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

6.1C.21 **R**

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** **R** 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** **R** This section does not apply if the employer is outside the *United Kingdom*.

Interpretation

- 6.1D.3** **R** 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** **R** (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 G 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 R 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 R 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 R 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*.

Distinguishing product charges from consultancy charges.....

6.1D.7 R 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 G 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 R 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 G 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 G 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

behalf of the employee or from the premium in the case of a *life policy*.

6.1D.10 **G** 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

6.1D.11 **R** A *firm* must, in good time, provide an employee with sufficient information on the total *consultancy charge* payable by the employee.

6.1D.12 **G** 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.

6.1D.13 **G** 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** This section does not apply if the *retail client* is outside the *United Kingdom*.

- 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

- (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

6.1E.6

R

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*.

6.1E.7

R

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

6.1E.8

R

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

6.1F.1 **R** 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 **G** 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 *rule on inducements* (**COBS 2.3.1 R**).



6.1G Re-registration of title to retail investment products

- 6.1G.1** **R** 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** **R** 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.

6.2A Describing advice services

Application - Who? What?

- 6.2A.1 **R** (1) This section applies to a *firm* that either:
- (a) makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*; or
 - (b) provides *basic advice* to a *retail client*.
- (2) 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).

6.2A.1A **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.

6.2A.1B **G** *P2P agreements* are not *retail investment products*. This section does not apply to a *firm* when it is *advising on P2P agreements*.

Application - Where?

6.2A.2 **R** This section does not apply if the *retail client* is outside the *United Kingdom*.

Firms holding themselves out as independent

- 6.2A.3 **R** (1) A *firm* must not hold itself out to a *retail client* as acting independently unless the only *personal recommendations* in relation to *retail investment products* it offers to that *retail client* are:
- (a) based on a comprehensive and fair analysis of the relevant market; and
 - (b) unbiased and unrestricted.
- (2) Paragraph (1) does not apply to *group personal pension schemes* if a *firm* discloses information to a *client* in accordance with the *rule on group personal pension schemes* (■ COBS 6.1C.20AR).

- 6.2A.4** **G**
- (1) A *firm* that provides both *independent advice* and *restricted advice* should not hold itself out as acting independently for its business as a whole.
 - (1A) 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 *retail investment 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 for *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* that it provides *restricted advice* for *retail investment products*.
 - (2) A *firm* whose relevant market is relatively narrow should not hold itself out as acting independently in a broader sense. For example, a *firm* "Greenfield", which specialises in ethical and socially responsible investments could not hold itself out as "Greenfield Independent Financial Advisers". "Greenfield - providing independent advice on ethical products" may be acceptable.
 - (3) A *firm* that provides *basic advice* on *stakeholder products* may still use the facilities and stationery it uses for other business in accordance with the *rule* on basic advice on stakeholder products: other issues (■ COBS 9.6.17 R (2)).

- 6.2A.4A** **R**
- In complying with ■ COBS 6.2A.3 R, a *firm* which:
- (1) holds itself out to a *retail client* as acting independently; and
 - (2) relies upon a single *platform service* to facilitate the majority of its *personal recommendations* in relation to *retail investment products*;

must take reasonable steps to ensure that, as appropriate, the *platform service provider* bases its selection of *retail investment products* on a comprehensive, fair and unbiased analysis of the relevant market.

- 6.2A.4B** **G**
- When a *firm* considers whether a *platform service provider's* selection of *retail investment products* is based on an unbiased analysis of the relevant market, a *firm* should take into account any fees, commission or non-monetary benefits the *platform service provider* receives in relation to those *retail investment products*.

Describing the breadth of a firm's advice service.....

- 6.2A.5** **R**
- A *firm* must disclose in writing to a *retail client*, in good time before the provision of its services in respect of a *personal recommendation* or *basic advice* in relation a *retail investment product*, whether its advice will be:
- (1) *independent advice*; or
 - (2) *restricted advice*.

Content and wording of disclosure

- 6.2A.6 **R** (1) A *firm* must include the term “independent advice” or “restricted advice” or both, as relevant, in the disclosure.
- (2) If a *firm* provides *independent advice* in respect of a relevant market that does not include all *retail investment products*, a *firm* must include in the disclosure an explanation of that market, including the types of *retail investment products* which constitute that market.
- (3) If a *firm* provides *restricted advice*, its disclosure must explain the nature of the restriction.
- (4) If a *firm* provides both *independent advice* and *restricted advice*, the disclosure must clearly explain the different nature of the *independent advice* and *restricted advice* services.

Medium of disclosure

- 6.2A.7 **R** A *firm* must provide the disclosure information required by the *rule* on describing the breadth of a *firm's* advice service (■ COBS 6.2A.5 R) in a *durable medium* or through a website (if it does not constitute a *durable medium*) provided the *website conditions* are satisfied.

- 6.2A.8 **G** [deleted]

Additional oral disclosure for firms providing restricted advice

- 6.2A.9 **R** If a *firm* provides *restricted advice* and engages in spoken interaction with the *retail client*, a *firm* must disclose orally in good time before the provision of its services in respect of a *personal recommendation* that it provides *restricted advice* and the nature of that restriction.

- 6.2A.10 **G** Examples of statements which would comply with ■ COBS 6.2A.9 R 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”.

Guidance on what constitutes a relevant market

- 6.2A.11 **G** A relevant market should comprise all *retail investment products* which are capable of meeting the investment needs and objectives of a *retail client*.

- 6.2A.12 **G** A relevant market can be limited by the investment needs and objectives of the *retail client*. For example, ethical and socially responsible investments or

Islamic financial products could both be relevant markets. However, a *firm* would be expected to consider all *retail investment products* within those investment parameters.

6.2A.13 **G** For a *firm* not specialising in a particular market, the relevant market will generally include all *retail investment products*.

Guidance on providing unbiased and unrestricted advice

6.2A.14 **G** A *personal recommendation* on a *retail investment product* that invests in a number of underlying *investments* would not of itself meet the requirements for providing unbiased and unrestricted advice even if the *retail investment product* invests in a wide range of underlying *investments*.

6.2A.15 **G** In order to satisfy the *rule* on *firms* holding themselves out as independent (■ COBS 6.2A.3 R) a *firm* should ensure that it is not bound by any form of agreement with a *retail investment product* provider that restricts the *personal recommendation* the *firm* can provide or imposes any obligation that may limit the *firm's* ability to provide a *personal recommendation* which is unbiased and unrestricted.

6.2A.16 **G** A *firm* may be owned by, or own in whole or part, or be financed by or provide finance to, a *retail investment product* provider without contravening the 'unbiased, unrestricted' requirement provided the *firm* ensures that that ownership or finance does not prevent the *firm* from providing a *personal recommendation* which is unbiased and unrestricted.

6.2A.17 **G** In providing unrestricted advice a *firm* should consider relevant financial products other than *retail investment products* which are capable of meeting the investment needs and objectives of a *retail client*, examples of which could include national savings and investments products and *cash deposit ISAs*.

Guidance on using panels and/or third parties to provide a comprehensive and fair analysis of the market

6.2A.18 **G** A *firm* may provide a *personal recommendation* on a comprehensive and fair analysis basis required by the *rule* on *firms* holding themselves out as independent (■ COBS 6.2A.3 R) by using 'panels'. 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 a comprehensive and fair analysis, is reviewed regularly, and that the use of the panel does not materially disadvantage any *retail client*.

6.2A.19 **G** When using a panel a *firm* may exclude a certain type or class of *retail investment product* from the panel if, after review, there is a valid reason consistent with the *client's best interests rule*, for doing so.

6.2A.20 **G** If a *firm* chooses to use a third party to conduct a fair and comprehensive analysis of its relevant market, the *firm* is responsible for ensuring the criteria used by the third party are sufficient to meet the requirement. For

example, criteria which selected *retail investment product* providers on the basis of payment of a fee (or facilitation of *adviser charges*), whilst excluding those not paying a fee (or such a facilitation) would not meet the comprehensive and fair analysis requirement.

Record keeping

- 6.2A.21 **G** *Firms* are reminded of the general record keeping requirements in ■ SYSC 3.2 and ■ SYSC 9. A *firm* should keep appropriate records of the disclosures required by this section.

Systems and controls

- 6.2A.22 **G**
- (1) *Firms* are reminded of the systems and controls requirements in SYSC.
 - (2) A *firm* providing *restricted advice* should take reasonable care to establish and maintain appropriate systems and controls to ensure that if there is no *retail investment product* in the *firm's* range of products which meets the investment needs and objectives of the *retail client*, no *personal recommendation* should be made.
 - (3) A *firm* specialising in a relevant 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 *retail investment product* outside the relevant market which would meet the investment needs and objectives of the *retail 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 *simplified prospectus*, a *key investor information document* or *EEA key investor information 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 G 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 R 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 R 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 G 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*.

- 6.4.4D** **G**
- (1) In **■ COBS 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 **■ COBS 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*.

- 6.4.5** **R**
- (1) A *firm* must make the disclosure required by the *rule* on disclosure of *commission* or *equivalent* (**■ COBS 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*.

- 6.4.6** **E**
- (1) When determining the value of cash payments, benefits and services under the *rule* on disclosure of *commission equivalent* (**■ COBS 6.4.3 R**), a *firm* should follow the provisions of **■ COBS 6 Annex 6**.
 - (2) Compliance with this *evidential provision* may be relied on as tending to establish compliance with **■ COBS 6.4.3 R**; and
 - (3) Contravention of this *evidential provision* may be relied on as tending to establish contravention of **■ COBS 6.4.3 R**.

Guidance on disclosure requirements for packaged products.

- 6.4.7** **R**
- 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*.

- 6.4.8** **G**
- 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.

6.4.9 **G** The *rules* in this section build on the disclosure of fees, commissions and non-monetary benefits made under the *rule* on inducements (■ COBS 2.3.1 R).

6.4.10 **G** 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.

6.4.11 **G** **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).

Commission or equivalent disclosure statements: content and wording

- (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]**

[deleted]

[deleted]

[deleted]

Calculating commission equivalent

This table forms part of ■ COBS 6.4.6 E.

Calculating commission equivalent

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.

Part A: Cash payments

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.
2. In determining the amounts to be included in the calculation, a *firm* should have regard to the following:
 - (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*.
 - (b) all credits to an account from which periodic withdrawals may be made should be included.
 - (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 the *clients* are free to do so, provided this does not detract from the required disclosure.
 - (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.
 - (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.
 - (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-*

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ive or tied agent, not those made by the *appointed representative* or *tied agent* to its own agent.

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*;

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	(h) in respect of a <i>firm</i> in the same <i>immediate group</i> and connected <i>appointed representatives</i> or, where applicable, <i>tied agents</i> , where the name of the company is included in the <i>financial promotion</i> , the costs of any promotion in a newspaper or elsewhere and the provision of literature specific to the <i>representative</i> in connection with a <i>financial promotion</i> .
7.	The following costs should be excluded: <ul style="list-style-type: none"> (a) the cost of corporate awareness advertising; (b) training costs; (c) costs of developing and maintaining computer systems for the provision of <i>projections</i> of benefits, <i>client-specific key features documents</i>, <i>simplified prospectuses</i> or other product information; (d) costs of compensating <i>clients</i>; (e) the costs of head office and branch level management and support, other than payments to <i>managers</i> falling under Part 1, for <i>representatives</i>, if these services could also be provided to a <i>firm</i> not in the same <i>immediate group</i>, 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 <i>firm</i> , except if the <i>firm</i> has grounds to believe that the <i>commission equivalent</i> 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 <i>firm</i> is satisfied are achievable.
9.	<i>Firms</i> that receive or expect to receive: <ul style="list-style-type: none"> (a) <i>commission</i> in respect of <i>packaged products</i> which are not its own products or the products of a <i>product provider</i> who is in the same <i>immediate group</i>; and (b) <i>commission equivalent</i> 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 <i>commission</i> . 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 <i>representatives</i> .
11.	<ul style="list-style-type: none"> (a) The total <i>commission equivalent</i> costs identified in 10 should be spread across the business using a new business <i>commission equivalent</i> scale and a servicing <i>commission equivalent</i> scale respectively. (b) The <i>commission equivalent</i> scales should distinguish between products for which the <i>commission equivalent</i> of <i>representatives</i> is likely to be different.
12.	If the <i>representative's commission equivalent</i> includes a cash payment related to volume and/or value of the transactions sold (which payment must be in accordance with the <i>client's best interest rule</i>), the following method would be appropriate: <ul style="list-style-type: none"> (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 <i>commission equivalent</i> scales, and are applied to each contract to derive the <i>commission equivalent</i> to be disclosed.

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- (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.