

## Chapter 6

Information about the firm, its  
services and remuneration

## 6.1 Information about the firm and compensation information (non-MiFID provisions)

### Application

- 6.1.1 **R** (1) This section applies to a *firm* that carries on *designated investment business*, other than *MiFID*, *equivalent third country* or *optional exemption business*, for a *retail client*.
- (2) [deleted]

- 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 *client* with the following general information, if relevant:
- (1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;
  - (2) [deleted]
  - (3) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;
  - (4) a statement of the fact that the *firm* is authorised and the name of the *competent authority* that has authorised it;
  - (5) [deleted]
  - (6) if the *firm* is acting through an *appointed representative*, a statement of this fact
  - (7) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rules* on reporting to *clients* on the provision of services (**COBS 16**);

- (8) (a) in the case of a *common platform firm*, a description, which may be provided in summary form, of the *conflicts of interest policy*;
- (b) other than in the case of a *common platform firm*, when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;
- (9) in the case of a *common platform firm*, at any time that the *client* requests it, further details of the *conflicts of interest policy*.

**6.1.5** G 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 *client*, the *firm* must provide the *client* with such of the following information as is applicable:
  - (a) information on the method and frequency of valuation of the *designated investments* in the *client* portfolio;
  - (b) details of any delegation of the discretionary management of all or part of the *designated investments* or funds in the *client* portfolio;
  - (c) a specification of any benchmark against which the performance of the *client* portfolio will be compared;
  - (d) the types of *designated investments* that may be included in the *client* portfolio and types of transaction that may be carried out in those *designated investments*, including any limits; and
  - (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

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

**6.1.7** R

- (1) A *firm* that holds *designated investments* or *client money* for a *client* subject to the *custody chapter* or the *client money chapter* must provide that *client* with the following information:
  - (a) if applicable,
    - (i) that the *designated investments* or *client money* of that *client* may be held by a third party on behalf of the *firm*;
    - (ii) the responsibility of the *firm* under the applicable national law for any acts or omissions of the third party; and
    - (iii) the consequences for the *client* of the insolvency of the third party;

- (b) if applicable, that the *designated investments* belonging to the *client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
  - (c) if it is not possible under national law for *designated investments* belonging to a *client* held with a third party to be separately identifiable from the proprietary *designated investments* of that third party or of the *firm*, that fact and a prominent warning of the resulting risks;
  - (d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of a *EEA State*, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;
  - (e) a summary description of the steps which it takes to ensure the protection of any *designated investments* belonging to the *client* or *client money* it holds, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the *firm* by virtue of its activities in an *EEA State*.
- (2) A *firm* that holds *designated investments* or *client money* for a *client* must inform the client:
- (a) if applicable, about the existence and the terms of any security interest or lien which the *firm* has or may have over the *client's designated investments* or *client money*, or any right of set-off it holds in relation to the *client's designated investments* or *client money*; and
  - (b) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.
- (3) A *firm* within (1) must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a *client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.

(4) [deleted]

**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 *client* with information on costs and associated charges including, if applicable:

- (1) the total price to be paid by the *client* in connection with the *designated investment* or the *designated investment business*, including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;
- (2) if any part of the total price referred to (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;
- (3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *designated investment* or the *designated investment business* may arise for the *client* that are not paid via the *firm* or imposed by it; and
- (4) the arrangements for payment or other performance.

**6.1.10** **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* unless otherwise provided by this *rule*.
- (2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* if:
  - (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and
  - (b) in any case where the *rule* on voice telephony communications (**■ COBS 5.1.12 R**) does not otherwise apply, the *firm* complies with

that *rule* in relation to the *client*, as if that *client* were a *consumer*.

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

**Medium of disclosure**

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

**Keeping the client up to date**

- 6.1.14 **R**
- (1) A *firm* must notify a *client* in good time about any material change to the information provided under this section which is relevant to a service that the *firm* is providing to that *client*.
  - (2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

**Existing clients**

- 6.1.15 **G**
- (1) A *firm* need not treat each of several transactions in respect of the same type of *financial instrument* as a new or different service and so does not need to comply with the disclosure *rules* in this chapter in relation to each transaction.
  - (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

**Compensation information**

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

- (2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the *EEA State* pursuant to article 2 (3) of the *Investor Compensation Directive*.
- (3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.
- (4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *EEA State*.

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

**Record keeping: information about the firm and compensation information**

6.1.17

G

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



**6.1ZA Information about the firm and compensation information (MiFID provisions)**

**Application**

- 6.1ZA.1** **R** (1) Subject to (2), this section applies to a *firm* in relation to its *MiFID*, *equivalent third country or optional exemption business*.
- (2) ■ COBS 6.1ZA.16R does not apply to a *firm* in respect of its *MiFID optional exemption business*.

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

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

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

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

[Note: ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices. See [https://www.esma.europa.eu/sites/default/files/library/2016-574\\_en\\_guidelines\\_on\\_cross-selling\\_practices.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf)]

**Information about a firm and its services**

- 6.1ZA.5** **EU** 47(1) Investment firms shall provide clients or potential clients with the following general information, where relevant:
- (a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;
  - (b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;
  - (c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;
  - (d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;
  - (e) where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;



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

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

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

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

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

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

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

**6.1ZA.7** G A *firm* disclosing details of its authorisation should refer to the appropriate form of words set out in ■ GEN 4 Annex 1R or ■ GEN 4 Annex 1AR as appropriate.

**Information about a firm’s portfolio management service**.....

**6.1ZA.8** EU 47(2) When providing the service of portfolio management, investment firms shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm’s performance.

47(3) Where investment firms propose to provide portfolio management services to a client or potential client, they shall provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:

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

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

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

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

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

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

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

**Information concerning safeguarding of financial instruments belonging to clients and client money**

6.1ZA.9 EU

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

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

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

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

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

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

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

[Note: article 49 of the *MiFID Org Regulation*]

6.1ZA.10 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).

**Information about costs and associated charges**

- 6.1ZA.11** **G** ■ COBS 2.2A.2R requires a *firm* to provide a *client* with information about all costs and related charges. That information must include:
- (1) information relating to both *investment services* and *ancillary services*;
  - (2) where relevant, the cost of any *investment advice*;
  - (3) the cost of the *financial instrument* recommended or marketed to the *client*;
  - (4) information on how the *client* may pay; and
  - (5) details of any third party payments.

[Note: article 24(4)(c) of *MiFID*]

- 6.1ZA.12** **R**
- (1) A *firm* must aggregate the information about costs and charges required by ■ COBS 2.2A.2R and ■ COBS 6.1ZA.11R, where those costs and charges are not caused by the occurrence of underlying market risk. This is to allow the *client* to understand the overall cost, and the cumulative effect on the return, of the investment.
  - (2) A *firm* must provide the *client* with an itemised breakdown of the costs and charges information required by (1) and ■ COBS 6.1ZA.11R when requested by the *client*.
  - (3) The information must, where applicable, be provided to the *client* on a regular basis, and at least annually, during the life of the investment.

[Note: article 24(4) of *MiFID*]

- 6.1ZA.13** **R**
- (1) A *firm* must provide the information required by ■ COBS 6.1ZA.11R and ■ COBS 6.1ZA.12R in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* that is being offered and, consequently, to take investment decisions on an informed basis.
  - (2) That information may be provided in a standardised format.

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

- 6.1ZA.14** **EU**
- 50(1) For the purposes of providing information to clients on all costs and charges pursuant to Article 24(4) of Directive 2014/65/EU, investment firms shall comply with the detailed requirements in paragraphs 2 to 10.
- Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the

investment service provided, the financial instruments concerned embed a derivative.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.50(2) For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following:

- (a) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and
- (b) all costs and associated charges associated with the manufacturing and managing of the financial instruments.

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

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

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

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

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

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

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

50(8) Where calculating costs and charges on an ex-ante basis, investment firms shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the investment firm shall make

reasonable estimations of these costs. Investment firms shall review ex-ante assumptions based on the ex-post experience and shall make adjustment to these assumptions, where necessary.

50(9) Investment firms shall provide annual ex-post information about all costs and charges related to both the financial instrument(s) and investment and ancillary service(s) where they have recommended or marketed the financial instrument(s) or where they have provided the client with the KID/ KIID in relation to the financial instrument(s) and they have or have had an ongoing relationship with the client during the year. Such information shall be based on costs incurred and shall be provided on a personalised basis.

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

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

- (a) the illustration shows the effect of the overall costs and charges on the return of the investment;
- (b) the illustration shows any anticipated spikes or fluctuations in the costs; and
- (c) the illustration is accompanied by a description of the illustration.

[Note: article 50 of the *MiFID Org Regulation*]

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

**Information about costs and charges of different services or products**

**6.1ZA.16** R

- (1) This *rule* applies to a *firm* that offers an *investment service* with another service or product or as part of a package or as a condition of the same agreement or package.
- (2) The *firm* must inform the *client* whether it is possible to buy the different components separately and must provide information on the costs and charges of each component.
- (3) If the agreement or package is offered to a *retail client*, the *firm* must:
  - (a) inform that *retail client* if the risks resulting from the agreement or package are likely to be different from the risks associated with the components when taken separately; and
  - (b) provide that *retail client* with an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

[Note: article 24(11) of *MiFID*]

**Timing of disclosure**

6.1ZA.17 **EU** 46(2) Investment firms shall, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

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

6.1ZA.18 **G** The following provisions of *COBS* reproduce the information requirements contained in Articles 47 to 50 of the *MiFID Org Regulation*: ■ COBS 6.1ZA.5EU, ■ COBS 6.1ZA.8EU, ■ COBS 6.1ZA.9EU, ■ COBS 6.1ZA.2.14EU, and ■ COBS 14.3A.5EU.

**Medium of disclosure**

6.1ZA.19 **EU** 46(3) The information referred to in paragraphs 1 and 2 shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

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

**Keeping the client up to date**

6.1ZA.20 **EU** 46(4) Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

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

**Existing clients**

6.1ZA.21 **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 69 to the *MiFID Org Regulation*]

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

**Compensation information**

6.1ZA.22 **R** (1) A *firm* must make available to a *client*, who has used or intends to use a *firm's* services, information necessary for the identification of the *compensation scheme* or any other investor-compensation scheme of which the *firm* is a member (including, if relevant, membership through a *branch*) or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.

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

- (3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.
- (4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *EEA State*.

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

**Record keeping: information about the firm and compensation information**  
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6.1ZA.23 **G** *Firms* are reminded of the general record-keeping requirements in ■ 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 on investments (except P2P agreements) under article 53(1) of the Regulated Activities Order can be found in ■ PERG 8.24 to ■ PERG 8.29. 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, ■ COBS 6.1A.4B R and ■ COBS 6.1A.5AR(1), 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 connection with the *firm's business of advising* or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product* or *P2P agreement* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

**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*.

**Acceptable minor non-monetary benefits**

**6.1A.5A** **R**

- (1) For the purposes of ■ COBS 6.1A.4R(2), a *firm* or its *associate* may solicit or accept minor non-monetary benefits which meet the requirements of:
  - (a) ■ COBS 2.3A.15R, in relation to the provision of *investment services*; or
  - (b) ■ COBS 6.1A.5AR(2), in relation to other business.
- (2) An acceptable minor non-monetary benefit is one which:

- (a) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way;
- (b) is capable of enhancing the quality of service provided to the *client*;
- (c) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;
- (d) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and
- (e) consists of:
  - (i) information or documentation relating to a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;
  - (ii) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;
  - (iii) participation in conferences, seminars and other training events on the benefits and features of a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*; and
  - (iv) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under (iii).
  - (v) research relating to an issue of *shares, debentures, warrants or certificates representing certain securities* by an *issuer*, which is:
    - (A) produced:
      - (1) prior to the issue being completed; and
      - (2) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and
    - (B) made available to prospective investors in the issue; or
  - (vi) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
    - (A) it is received during a trial period that lasts no longer than three *months*;
    - (B) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
    - (C) the trial period is not commenced with the research provider within 12 *months* from the termination of an

arrangement for the provision of research (including any previous trial period) with the research provider; and

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

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

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

**Related and other services**

**6.1A.6** 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** G '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** G 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** G 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** R 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** G 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.

**Calculation of the cost of adviser services to a client**

**6.1A.16** **G** In order to meet its responsibilities under the *client's best interests rule* and *Principle 6* (Customers' interests), a *firm* should consider whether the *personal recommendation* or any other related service is likely to be of value to the *retail client* when the total charges the *retail client* is likely to be required to pay are taken into account.

**Initial information for clients on the cost of adviser services**

**6.1A.17** **R** 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 on investments (except P2P agreements) under article 53(1) of the Regulated Activities Order can be found in ■ PERG 8.24 to ■ PERG 8.29. 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** (1) Except as specified in **■ COBS 6.1B.5AR**, a *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, or to any other third party for the benefit of that *firm*, in connection with that *firm's business of advising* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.

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

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

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

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

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

- (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

**6.1B.5B** 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 and guidance* on providing *credit* and other benefits to *firms* that provide *personal recommendations* on *retail investment products* or *P2P agreements* (see **■ COBS 2.3.12 E**, **■ COBS 2.3.12A G**), **■ COBS 2.3A.27E** and **■ COBS 2.3A.28G**).



## 6.1 C 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 (**R** 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 *rules on inducements* (**COBS 2.3.1 R**, **COBS 2.3A.5R** and **COBS 2.3A.15R**).





**6.1G Re-registration of title to retail investment products**

- 6.1G.1** **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.

## 6.2B Describing advice services

### Application

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

**Introduction**

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

**Interpretation of rules and guidance: relevant products**

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

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

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

**Interpretation of EU provisions: MiFID business**

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

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

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

**Interpretation of EU provisions: non-MiFID business**

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

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

*financial instruments* issued or provided by entities not being closely linked with the *firm*; and

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

**Interpretation: non-independent advice and restricted advice**

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

**Firms holding themselves out as independent**

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

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

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

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

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

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

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

**Requirements for firms providing focused independent advice**

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

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

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

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

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

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

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

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

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

**Sufficient range**

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

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

(2) the investment objectives of the client (■ COBS 6.2B.11R(1)); and

(3) the firm's close links and relationships with product providers and issuers (■ COBS 6.2B.11R(2)).

6.2B.18 EU

53(1) Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with Article 24(7)(a) of Directive 2014/65/EU. The selection process shall include the following elements:

- (a) the number and variety of financial instruments considered is proportionate to the scope of investment advice services offered by the independent investment adviser;
- (b) the number and variety of financial instruments considered is adequately representative of financial instruments available on the market;
- (c) the quantity of financial instruments issued by the investment firm itself or by entities closely linked to the investment firm itself is proportionate to the total amount of financial instruments considered; and
- (d) the criteria for selecting the various financial instruments shall include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and shall ensure that the selection of the instruments that may be recommended is not biased.

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

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

6.2B.19 G

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

[Note: recital 73 to MiFID]

- (2) Notwithstanding (1), since the assessment conducted by the *firm* must be such as to ensure the *client's* investment objectives can be suitably met, a *firm* providing *independent advice* should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of ■ COBS 6.2B.15EU) on which it provides advice. When the *client* is a *retail client* in the *United Kingdom*, this means being in a position to advise on all types of *financial instrument*, *structured deposit* and other *retail investment products*.
- (3) For example, a *firm* providing *independent advice* on *personal pension schemes* should be in a position to consider all *personal pension schemes*. What will constitute a sufficient range of *personal pension schemes* to be considered before providing a *client* with a *personal recommendation* will, however, depend upon the investment objectives of that *client*.
- (4) A *firm* not specialising in a particular market would generally be expected to be in a position to consider all relevant product types which would be capable of meeting the investment objectives of its *clients*.
- (5) If a *firm* that provides focused *independent advice* is not able to recommend a *financial instrument* that would meet the investment objectives of a *client*, the *firm* should not provide that *client* with a *personal recommendation*. For example, if a *firm* providing *independent advice* on *shares* considered that a *client's* investment

objectives would be better met by way of investment in an accumulation product, it should not provide that *client* with a *personal recommendation*.

**Guidance on the independence standard**

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

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

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

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

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

**Use of platforms**

**6.2B.24** **R** A *firm* which:

- (1) holds itself out to a *retail client* in the *United Kingdom* as acting independently; and
- (2) relies upon a single *platform service* to facilitate the majority of its *personal recommendations*,

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

**6.2B.25** **G** When a *firm* considers whether a *platform service provider's* selection of relevant products enables it to satisfy the requirements of ■ COBS 6.2B.11R, a



*firm* should take into account any fees, commission or non-monetary benefits the *platform service provider* receives in relation to those relevant products.

**Use of panels**

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

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

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

**Requirements for firms providing both independent and restricted advice**

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

(a)in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with Article 24(4)(a) of Directive 2014/65/EU and the relevant implementing measures;

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

(c)the investment firms has adequate organisational requirements and controls in place to ensure that both types of advice services and advisers are clearly separated from each other and that clients are not likely to be confused about the type of advice that they are receiving and are given the type of advice that is appropriate for them. The investment firm shall not allow a natural person to provide both independent and non-independent advice.

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

**6.2B.30** **G** A *firm* that offers an unlimited range of *regulated mortgage contracts*, or gives advice in relation to *contracts of insurance* on the basis of a fair analysis, but offers *restricted advice* on relevant products should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it offers an unlimited range of *regulated mortgage contracts* or

gives advice in relation to *contracts of insurance* on the basis of a fair analysis provided it makes clear in accordance with the *fair, clear and not misleading rule* (■ COBS 4.2.1R) that it provides *restricted advice* on relevant products.

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

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

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

**Disclosing the nature of advice provided**

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

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

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

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

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

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

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

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

investment advice on an independent basis, the prohibition to receive and retain inducements.

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

**6.2B.36** **EU**

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

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

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

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

**Medium of disclosure**

**6.2B.37** **G**

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

**Additional oral disclosure for firms providing restricted advice**

**6.2B.38** **R**

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

**6.2B.39** **G**

Examples of statements which would comply with ■ COBS 6.2B.38R include:

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

**Record keeping**

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

**Systems and controls**

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

## 6.4 Disclosure of charges, remuneration and commission

### Application

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

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

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

### Disclosure of commission (or equivalent) for packaged products

- 6.4.3 **R**
- (1) If a *firm* sells or *arranges* the sale of a *packaged product* to a *retail client*, and subsequently if the *retail client* requests it, the *firm* must disclose to the *client* in cash terms:
    - (a) any *commission* receivable by it or any of its *associates* in connection with the transaction;
    - (b) if the *firm* is also the *product provider*, any *commission* or *commission equivalent* payable in connection with the transaction; and
    - (c) if the *firm* or any of its *associates* is in the same *immediate group* as the *product provider*, any *commission equivalent* in connection with the transaction.
  - (2) Disclosure "in cash terms" in relation to *commission* does not include the value of any indirect benefits listed in the table at ■ COBS 2.3.15 G.
  - (3) In determining the amount to be disclosed as *commission equivalent*, a *firm* must put a proper value on the cash payments, benefits and

services provided to its *representatives* in connection with the transaction.

- (4) This *rule* does not apply if:
- (a) the *firm* is acting as an *investment manager*; or
  - (b) the *retail client* is not present in the *EEA* at the time of the transaction; or
  - (c) the *firm* provides the *client* with a *key features document*, a *key investor information document*, an *EEA key investor information document* or a *NURS-KII document*, in accordance with ■ COBS 14, provided that the *firm* discloses to the *client* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.
- (5) If the terms of a *packaged product* are varied in a way that results in a material increase in *commission* or *commission equivalent*, a *firm* must disclose to a *retail client* in writing any consequent increase in *commission* or *equivalent* receivable by it in relation to that transaction.

**6.4.4** 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, commission and non-monetary benefits made under the rules on inducements (■ COBS 2.3.1 R, ■ COBS 2.3A.5R, ■ COBS 2.3A.6R, ■ COBS 2.3A.15R and ■ COBS 2.3A.16R).

**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).
- (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 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]





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## 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-*

Calculating commission equivalent

*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"> <li>(a) the cost of corporate awareness advertising;</li> <li>(b) training costs;</li> <li>(c) costs of developing and maintaining computer systems for the provision of <i>projections</i> of benefits, <i>client-specific key features documents</i> or other product information; or other product information;</li> <li>(d) costs of compensating <i>clients</i>;</li> <li>(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'.</li> </ul>
	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"> <li>(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</li> <li>(b) <i>commission equivalent</i> in respect of its own products;</li> </ul> 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"> <li>(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.</li> <li>(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.</li> </ul>
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"> <li>(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.</li> </ul>



Calculating commission equivalent

13. (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.
- (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.