

## Chapter 6

Information about the firm, its  
services and remuneration

6.1 B 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?

- 6.1 B.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*.
- 6.1 B.1 A

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■ PERG 8.30B (Personal recommendations) describes what is meant by a *personal recommendation* in the context of the definition of the *regulated activity of advising on investments (except P2P agreements)*. That *guidance* is also relevant to the meaning of *personal recommendation* in this section in relation to a *retail investment product*. The *guidance* in ■ PERG 8.24 to ■ PERG 8.30B does not apply to the *regulated activity of advising on P2P agreements*.
- 6.1 B.1 B

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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*.
- 6.1 B.2

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

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

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

### Application - Where?

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

### Requirement not to offer commissions

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

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

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

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

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

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

		<p>(e) the <i>retail client</i> enters into the transaction in respect of which the <i>personal recommendation</i> was given within a reasonable time of the <i>personal recommendation</i> being given; and</p> <p>(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 <i>firm</i> or its <i>associate</i>.</p>
6.1B.5B	G	A <i>firm</i> may continue paying commission, remuneration or benefits of any kind to another <i>firm</i> in relation to a <i>personal recommendation</i> made by that other <i>firm</i> in circumstances where that other <i>firm</i> 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]
		<b>Distinguishing product and P2P platform charges from adviser charges</b> .....
6.1B.7	R	<p>A <i>firm</i> must:</p> <p>(1) take reasonable steps to ensure that its <i>retail investment product</i> charges or its charges as an <i>operator of an electronic system in relation to lending</i> are not structured so that they could mislead or conceal from a <i>retail client</i> the distinction between those charges and any <i>adviser charges</i> payable in respect of its <i>retail investment products</i> or investments in <i>P2P agreements</i> made through the system of which it is the <i>operator of an electronic system in relation to lending</i>;</p> <p>(2) not include in any marketing materials in respect of its <i>retail investment products</i>, the service it offers as an <i>operator of an electronic system in relation to lending</i> or facilities for collecting <i>adviser charges</i> any statements about the appropriateness of levels of <i>adviser charges</i> that a <i>firm</i> could charge in making <i>personal recommendations</i> or providing related services in relation to its <i>retail investment products</i> or investments through the system in relation to which it is the <i>operator of an electronic system in relation to lending</i> ; and</p> <p>(3) not defer, discount or rebate <i>retail investment product</i> charges or its charges as an <i>operator of an electronic system in relation to lending</i> in a way that offsets or may appear to offset any <i>adviser charges</i> or <i>platform charges</i> that are payable, including by maintaining <i>retail investment product</i> charges or its charges as an <i>operator of an electronic system in relation to lending</i> 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 <i>retail client</i>.</p>
6.1B.7A	R	A <i>retail investment product</i> provider may maintain <i>retail investment product</i> charges at a level such that a cash rebate is payable to the <i>retail client</i> 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**).