Powers exercised by the Financial Ombudsman Service

A. The Financial Ombudsman Service Limited makes and amends the voluntary jurisdiction rules and fixes and varies the standard terms for voluntary jurisdiction participants as set out in Annexes A and H to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(1) section 227 (Voluntary jurisdiction);
(2) paragraph 8 (Guidance) of Schedule 17;
(3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
(4) paragraph 22 (Consultation) of Schedule 17.

B. The making and amendment of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited, as set out in Annexes A and H, are subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:

(1) the following sections of the Act:

   (a) section 137A (The FCA’s general rules);
   (b) section 137B (FCA general rules: clients’ money, right to rescind etc);
   (c) section 137R (Financial promotion rules);
   (d) section 137T (General supplementary powers);
   (e) section 138C (Evidential provisions);
   (f) section 139A (Power of the FCA to give guidance);
   (g) section 213 (The compensation scheme);
   (h) section 214 (General);
   (i) section 226 (Compulsory jurisdiction);
   (j) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
   (k) paragraph 13 (Authority’s procedural rules) of Schedule 17; and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

E. The Financial Conduct Authority approves the voluntary jurisdiction rules made and amended, and the standard terms fixed and varied, by the Financial Ombudsman Service Limited in this instrument.
Commencement

F. This instrument comes into force on 6 April 2016.

Amendments to the Handbook

G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

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</thead>
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<tr>
<td>Glossary of definitions</td>
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<td>Senior Management Arrangements, Systems and Controls sourcebook (SYSC)</td>
<td>Annex B</td>
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<tr>
<td>Training and Competence sourcebook (TC)</td>
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<tr>
<td>Collective Investment Schemes sourcebook (COLL)</td>
<td>Annex I</td>
</tr>
</tbody>
</table>

Amendments to material outside the Handbook

H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex J to this instrument.

Citation

I. This instrument may be cited as the Peer-to-Peer Lending Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited
16 March 2016

By order of the Board of the Financial Conduct Authority
17 March 2016
Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

**advising on investments (except P2P agreements)**

the regulated activity, specified in article 53(1) of the Regulated Activities Order (Advising on investments), which is in summary: advising a person if the advice is:

(1) given to the person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor; and

(2) advice on the merits of their doing any of the following (whether as principal or agent):

(a) buying, selling, subscribing for or underwriting a particular investment which is a security or relevant investment (that is, any designated investment (other than a P2P agreement), funeral plan contract, pure protection contract, general insurance contract or right to or interests in a funeral plan contract); or

(b) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

**advising on P2P agreements**

the regulated activity, specified in article 53(2) of the Regulated Activities Order (Advising on investments), which is in summary: advising a person if the advice is:

(1) given to the person in their capacity as a lender or potential lender under a relevant P2P agreement or in their capacity as an agent for a lender or potential lender under a relevant P2P agreement; and

(2) advice on the merits of their doing any of the following (whether as principal or agent):

(a) entering into a relevant P2P agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law; or

(b) providing instructions to a P2P platform operator with a view to entering into a relevant P2P agreement as a lender
or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve:

(i) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or

(ii) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or

(iii) specifying the parameters of the terms of the agreement by other means; or

(c) enforcing or exercising the lender’s rights under a relevant P2P agreement; or

(d) assigning rights under a relevant P2P agreement.

In this definition “relevant P2P agreement” means an article 36H agreement (within the meaning of article 36H of the Regulated Activities Order) which has been, or may be, entered into with the facilitation of a person carrying on an activity of the kind specified by article 36H(1) or 36H(2D) of the Regulated Activities Order.

*innovative finance component* a qualifying investment as prescribed in regulation 8A of the ISA Regulations.

*innovative finance ISA* an individual savings account which includes an innovative finance component.

*innovative finance ISA business* a firm’s activities, in its capacity as an ISA manager, in connection with an ISA which contains only an innovative finance component and is not designated investment business.

*P2P platform operator* a person carrying on an activity of the kind specified by article 36H(1) or 36H(2D) of the Regulated Activities Order.

Amend the following definitions as shown.

*adviser charge* any form of charge payable by or on behalf of a retail client to a firm in relation to the provision of a personal recommendation by the firm in respect of a retail investment product or P2P agreement (or any related service provided by the firm) which:

(a) is agreed between that firm and the retail client in accordance
with the *rules* on adviser charging and remuneration (*COBS* 6.1A); and

(b) *is not a consultancy charge.*

(advising on investments) (1) (except in *SUP 10A* (Approved Persons) and *APER*) the regulated activity activities, specified in article 53 articles 53(1) and 53(2) of the *Regulated Activities Order* (Advising on investments), which is in summary: advising a person if the advice is:

(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, and advising on investments (except *P2P agreements*); and

(b) advice on the merits of his doing any of the following (whether as principal or agent): advising on *P2P agreements*.

(ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

(2) (in *SUP 10A* (Approved Persons) and *APER*) the regulated activity activities specified in article 53 articles 53(1) and 53(2) (Advising on investments) of the *Regulated Activities Order*. For these purposes, advising on investments includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the *Regulated Activities Order*.

(advising on investments (except *P2P agreements*) except other than in respect of *pension transfers and pension opt-outs*).

any of the following regulated activities:

(a) advising on investments (except *P2P agreements*) in respect of *pension transfers and pension opt-outs* (article 53 53(1));
outs
(b) …

borrower
(1) …
(2) in relation to a P2P agreement other than a credit agreement or a regulated mortgage contract:
(a) an individual who receives credit under a P2P agreement and under which the lender provides credit to the individual of less than or equal to £25,000 or the agreement is not entered into by the individual for the purposes of a business carried on by the individual; or
(b) an individual to whom the rights and duties of a borrower under a P2P agreement have passed by assignment or operation of law, where the agreement is for the provision of credit of less than or equal to £25,000 or is not, and was not when entered into, wholly or predominantly for the purposes of a business carried on or intended to be carried on by the individual or a former borrower.

(3) …
cash deposit ISA a cash component of an ISA which does not include the qualifying investments prescribed in paragraphs 8(2)(c), (d), (e) or (f) or paragraph 8A(2) of the ISA Regulations.
category B3 firm a category B firm:
(a) whose permission includes only insurance mediation activity in relation to non-investment insurance contracts, home finance mediation activity, assisting in the administration and performance of contracts of insurances, arranging transactions in life policies and other insurance contracts, advising on investments (except P2P agreements) and receiving and transmitting, on behalf of investors, orders in relation to securities and units in collective investment schemes, advising on P2P agreements; and
(b) …
client money …
(2A) (in FEES, CASS 6, CASS 7, CASS 7A and CASS 10 and, in so far as it relates to matters covered by CASS 6, CASS 7, COBS or GENPRU and IPRU(INV) 11) subject to the client money rules, money of any currency:
(bb) that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its innovative finance ISA business; or

...

controlled activity ...

(i) advising on investments (except P2P agreements) (paragraph 7(1));

(ia) advising on P2P agreements (paragraph 7(2));

...

controlled investment (in accordance with section 21(10) of the Act (Restrictions on financial promotion) and article 4 of the Financial Promotion Order (Definitions of controlled activities and controlled investments)) an investment specified in Part II of Schedule 1 to the Financial Promotion Order (Controlled investments) (having regard to the effect of paragraph 4C (10) and paragraph 7(4) of that Schedule).

designated investment (1) a security or a contractually-based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that is, any of the following investments, specified in Part III of the Regulated Activities Order (Specified Investments), a P2P agreement, and a long-term care insurance contract which is a pure protection contract:

(a) ...

...

(l) rights to or interests in investments in (a) to (k) (article 89) but not including rights to or interests in rights under a long-term care insurance contract which is a pure protection contract;

(2) a P2P agreement; and

(3) a long-term care insurance contract which is a pure protection contract.

designated investment business any of the following activities, specified in Part II of the Regulated Activities Order (Specified Activities), which is carried on by way of business:

...
(m) advising on investments (except P2P agreements) (article 53(1)), but only in relation to designated investments (other than P2P agreements); for the purposes of the permission regime, this includes:

(i) advising on investments (except pension transfers and pension opt-outs) (except pension transfers and pension opt-outs);

(ii) advising on investments (except P2P agreements) in respect of pensions transfers and pension opt-outs;

(ma) advising on conversion or transfer of pension benefits (article 53E);

(mb) advising on conversion or transfer of pension benefits (article 53E);

... insurance mediation activity any of the following regulated activities carried on in relation to a contract of insurance or rights to or interests in a life policy:

... (e) advising on investments (except P2P agreements) (article 53(1));

...

lender (A) ...

(B) in the FCA Handbook:

(a) ...

...

(c) in relation to a P2P agreement other than a credit agreement or a regulated mortgage contract:

(i) the a person providing credit under the a P2P agreement; or

(ii) a person who by assignment or operation of law has assumed the rights of a person who provided credit under a P2P agreement.

marketing (1) (in COLL) (in relation to marketing units in a regulated collective investment scheme in a particular country or territory):
(b) giving advice on investments (except P2P agreements) to, or arranging (bringing about) a deal in an investment for a person in that country or territory to become a holder in that regulated collective investment scheme.

(2) …

P2P agreement

(a) (in relation to a borrower) in accordance with article 36H of the Regulated Activities Order, an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning of article 60L of the Regulated Activities Order) and in relation to which the borrower is an individual and either:

(i) the lender provides credit (within that meaning) of less than or equal to £25,000; or

(ii) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(b) (in relation to a lender) in accordance with article 36H of the Regulated Activities Order, an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning of
article 60L of the Regulated Activities Order) and in relation to which either the lender is an individual, or if the lender is not an individual, the borrower is an individual and either:

(i) the lender provides credit (within that meaning) of less than or equal to £25,000; or

(ii) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(in relation to a lender) in accordance with article 36H of the Regulated Activities Order, an agreement by which one person provides another person with credit (within the meaning of article 60L of the Regulated Activities Order) and in relation to which either:

(i) the lender is an individual or was an individual at the time the agreement was entered into; or

(ii) if the lender is not an individual or was not an individual at the time the agreement was entered into, either condition (A) or (B) is satisfied, or was satisfied at the time the agreement was entered into:

(A) the lender provides credit (within that meaning) of less than or equal to £25,000; or

(B) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

provided, in either case, that the operator of the electronic system in relation to lending which facilitates the agreement does not provide credit (within that meaning), assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.

personal investment firm a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, IFPRU investment firm, BIPRU firm, building society, collective portfolio management firm, credit union, energy market participant, ICVC, insurer, media firm, oil market participant, service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission) or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):
(c) a firm:

(ii) for which the most substantial part of its gross income (including commissions) from the designated investment business included in its Part 4A permission is derived from one or more of the following activities (based, for a firm given a Part 4A permission after commencement, on the business plan submitted as part of the firm’s application for permission or, for a firm authorised under section 25 of the Financial Services Act 1986, on the firm’s financial year preceding its authorisation under the Act):

(A) advising on investments (except P2P agreements), arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments, in relation to packaged products;

(B) managing investments for retail clients:

(C) advising on P2P agreements.

personal recommendation (except in CONRED) a recommendation that is advice on investments, advice on conversion or transfer of pension benefits, or advice on a home finance transaction and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

For the purposes of this definition, references in the Handbook to making personal recommendations on, or in relation to, P2P agreements should be understood as referring to making personal recommendations involving advice on P2P agreements.

[Note: article 52 of the MiFID implementing Directive]

(in CONRED) a recommendation which is advice on investments and:

(a) where given on or before 31 October 2007, was given to a specific person; or

(b) where given on or after 1 November 2007, was presented as suitable for the person to whom the recommendation was made, or was based on a consideration of the circumstances of that person, other than a recommendation issued exclusively through distribution channels or to the public.
For the purposes of this definition, references in the Handbook to making personal recommendations on, or in relation to, P2P agreements should be understood as referring to making personal recommendations involving advice on P2P agreements.

regulated activity

(A) ...

(B) in the FCA Handbook:

...

(p) advising on investments (except P2P agreements) (article 53(1)); for the purposes of the permission regime, this includes:

(i) advising on investments (except pension transfers and pension opt-outs) (except pension transfers and pension opt-outs); and

(ii) advising on investments (except P2P agreements) in respect of pensions transfers and pension opt-outs;

(pa) advising on P2P agreements (article 53(2));

(pb) advising on regulated mortgage contracts (article 53A);

(pc) advising on a home reversion plan (article 53B);

(pd) advising on a home purchase plan (article 53C);

(pe) advising on a regulated sale and rent back agreement (article 53D);

(pe) advising on regulated credit agreements for the acquisition of land (article 53DA);

(pf) advising on conversion or transfer of pension benefits (article 53E);

...

transaction-specific advice

advice on investments (except P2P agreements):

...
### 1 Application and purpose

... 

#### 1 Annex

#### Detailed application of SYSC

1

... 

<table>
<thead>
<tr>
<th>Part 3</th>
<th>Tables summarising the application of the common platform requirements to different types of firm</th>
</tr>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Provision SYSC 4</th>
<th>COLUMN A Application to a common platform firm other than to a UCITS investment firm</th>
<th>COLUMN A+ Application to a UCITS management company</th>
<th>COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF</th>
<th>COLUMN B Application to all other firms apart from insurers, managing agents the Society, and full-scope UK AIFMs of unauthorised AIFs</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 4.4.1AR [FCA]</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule applies this section only to: ... (2) activities carried on by a <em>firm</em> whose principal purpose is to carry on activities other</td>
</tr>
</tbody>
</table>

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|   |   |   | than regulated activities and which is:  
|   |   |   | …  
|   |   |   | (e) a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity (except advising on P2P agreements);  
|   |   |   | …  

…

4 General organisational requirements

…

4.4 Apportionment of responsibilities

Application

4.4.1A R This section applies to:

(1) …

(2) activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:

…

(e) a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity (except advising on P2P agreements):

…

…
Annex C

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Competence

2.1 Assessing and maintaining competence

... Supervisors

2.1.4 G Firms should ensure that those supervising employees carrying on an activity in TC Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge and experience to act as a competent supervisor and assessor. In particular firms should consider whether it is appropriate to require those supervising employees not assessed as competent to attain an appropriate qualification as well except where the employee is giving advice on retail investment products or advising on P2P agreements, see TC 2.1.5R.

2.1.5 R Where an employee has not been assessed as competent to do so and:

(1) giving advice on retail investment products to retail clients and has not been assessed as competent to do so, the firm must ensure that the individual supervising and assessing that employee has attained an appropriate qualification; or

(2) giving advice on P2P agreements to retail clients, the firm must ensure that the individual supervising and assessing that employee has attained an appropriate qualification for giving advice on retail investment products to retail clients.

... Knowledge and competence requirements when advising on P2P agreements

2.1.5G R TC 2.1.5HR applies to a firm advising on P2P agreements.

2.1.5H R A firm must not, for the purposes of TC 2.1.1R, assess an employee as competent to carry on activity 9A in TC Appendix 1 until the employee has attained each module of an appropriate qualification for giving advice on retail investment products to retail clients.

2.1.5I G An employee who only carries on activity 9A in TC Appendix 1 is not a retail investment adviser. As such, the rules in this section applicable to retail investment advisers are not relevant to employees who only advise on
**P2P agreements.**

Qualification requirements before starting activities

2.1.6 R A firm must ensure that an employee does not carry on an activity in TC Appendix 1 (other than an overseeing activity) for which there is a qualification requirement without first attaining the relevant regulatory module of:

1. (in respect of activities other than advising on P2P agreements (activity 9A in TC Appendix 1)) an appropriate qualification; or

2. (in respect of advising on P2P agreements (activity 9A in TC Appendix 1)) an appropriate qualification for giving advice on retail investment products to retail clients.

Exemption from appropriate qualification requirements

2.1.9 R ...

2. The conditions are that a firm should be satisfied that an employee:

...

but (b) and (c) do not apply to an employee who is benefiting from the "30-day rule" exemption in SUP 10A.10.8R, unless the employee benefits from that rule because he is advising retail clients on retail investment products, is providing advice on P2P agreements to retail clients or is a broker fund adviser.

3. The relevant activities are:

(a) advising on investments (except P2P agreements) which are retail investment products, if that advice is given to retail clients; or

(aa) advising on P2P agreements, if that advice is given to retail clients; or

(b) the activity of a broker fund adviser; or

...

Selecting an appropriate qualification

2.1.10 E (1) This rule applies for the purposes of TC 2.1.1R, TC 2.1.5R, TC 2.1.5HR, TC 2.1.6R, TC 2.1.7R, TC 2.1.9R, TC 2.2A.1R, TC 2.2A.3R and TC 2.2A.6R.
### App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

#### App 1.1.1

<table>
<thead>
<tr>
<th>Activity</th>
<th>Products/Sectors</th>
<th>Is there an appropriate qualification requirement?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Designated investment business carried on for a retail client</strong>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Advising</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>9A. Advising on P2P agreements</td>
<td>Yes</td>
<td>...</td>
</tr>
</tbody>
</table>

**Notes:**

... 

2A. In relation to activity number 9A, see TC 2.1.5HR and TC 2.1.6R(2). There is no qualification for this activity in the list of qualifications set out in TC Appendix 4E. However, the effect of TC 2.1.5HR is that an employee advising on P2P agreements must be qualified to the same standard as if that employee were providing investment advice to retail clients on retail investment products.

... 

### App 4.1 Appropriate Qualification tables

#### App 4.1.1 Part 1: Activities

**Note:** The activity numbers in this table relate to the activities in TC App 1.1.1R. These tables do not cover activities 1, 5, 13A, 13B, 13C, 20A, 21B,
23A, 23B, 23C, 23D, 23E, 24, 25 or 26 as these activities do not have a qualification requirement. In relation to *advising on P2P agreements* (activity 9A), see *TC 2.1.5HR* and *TC 2.1.6R*(2).

...
### Annex D

**Amendments to the Fees manual (FEES)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

### 4 Periodic fees

...

#### 4 Annex FCA Activity groups, tariff bases and valuation dates

**1AR**

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Fee payer falls in the activity group if</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td><strong>A.13 Advisors, arrangers, dealers or brokers</strong></td>
<td>...</td>
</tr>
<tr>
<td>(2)</td>
<td>its permission:</td>
</tr>
<tr>
<td>(a)</td>
<td>includes one or more of the following:</td>
</tr>
<tr>
<td>(i)</td>
<td>in relation to one or more designated investments:</td>
</tr>
<tr>
<td>...</td>
<td>advising on investments (except P2P agreements) (except pension transfers and pension opt-outs);</td>
</tr>
<tr>
<td>(ii)</td>
<td>advising on P2P agreements;</td>
</tr>
<tr>
<td>(b)</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>
Annex E

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Conduct of business obligations

…

2.3 Inducements

…

Rule on inducements

2.3.1 A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than:

(1) …

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, if:

(a) …

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(i) this requirement only applies to business other than MiFID or equivalent third country business if it includes:

(A) giving a personal recommendation in relation to a retail investment product, or P2P agreement; or

(B) giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme;

…
(c) in relation to MiFID or equivalent third country business or when carrying on a regulated activity in relation to a retail investment product, or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client; or

Guidance on inducements

2.3.6A  

COBS 6.1A (Adviser charging and remuneration), COBS 6.1B (Retail investment product provider and operator of an electronic system in relation to lending and platform service provider requirements relating to adviser charging and remuneration), COBS 6.1C (Consultancy charging and remuneration) and COBS 6.1D (Product provider requirements relating to consultancy charging and remuneration) set out specific requirements as to when it is acceptable for a firm to pay or receive commissions, fees or other benefits:

(1) relating to the provision of a personal recommendation on retail investment products or P2P agreements; or

(2) …

Providing credit and other benefits to firms that advise on retail investment products or P2P agreements

2.3.11A  
The following guidance and evidential provisions provide examples of arrangements the FCA believes will breach the client's best interests rule in relation to a personal recommendation of a retail investment product or P2P agreement to a retail client.

2.3.12  

(1) This evidential provision applies in relation to a holding in, or the provision of credit to, a firm which holds itself out as making personal recommendations to retail clients on retail investment products or P2P agreements, except where the relevant transaction is between persons who are in the same immediate group.

(2) A retail investment product provider or operator of an electronic system in relation to lending should not take any step which would result in it:

…
unless all the conditions in (4) are satisfied. A retail investment product provider or operator of an electronic system in relation to lending should also take reasonable steps to ensure that its associates do not take any step which would result in it having a holding as in (a) or providing credit as in (b).

(3) A firm in (1) should not take any step which would result in a retail investment product provider or operator of an electronic system in relation to lending having a holding as in (2)(a) or providing credit as in (2)(b), unless all the conditions in (4) are satisfied.

(4) The conditions referred to in (2) and (3) are that:

(a) the holding is acquired, or credit is provided, on commercial terms, that is terms objectively comparable to those on which an independent person unconnected to a retail investment product provider or operator of an electronic system in relation to lending would, taking into account all relevant circumstances, be willing to acquire the holding or provide credit;

(c) there are no arrangements, in connection with the holding or credit, relating to the channelling of business from the firm in (1) to the retail investment product provider or operator of an electronic system in relation to lending; and

(d) the retail investment product provider or operator of an electronic system in relation to lending is not able, and none of its associates is able, because of the holding or credit, to exercise any influence over the personal recommendations made in relation to retail investment products or P2P agreements given by the firm or the advice given, or services provided to, an employer in connection with a group personal pension scheme or group stakeholder pension scheme.

(5) In this evidential provision, in applying (2) and (3) any holding of, or credit provided by, a retail investment product provider’s or operator of an electronic system in relation to lending’s associate is to be regarded as held by, or provided by, that retail investment product provider or operator of an electronic system in relation to lending.

2.3.12A G Where a retail investment product provider or operator of an electronic system in relation to lending, or its associate, provides credit to a retail client of a firm making personal recommendations in relation to retail
investment products or P2P agreements or giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme, this may create an indirect benefit for the firm and, to the extent that this is relevant, the provider of retail investment products or operator of an electronic system in relation to lending may need to consider the examples in COBS 2.3.12E as if it had provided the credit to the firm.

4 Communicating with clients, including financial promotions

4.5 Communicating with retail clients

Innovative finance ISA

4.5.9 Examples of information about relevant risks (COBS 4.5.2R) that a firm should give a retail client in relation to an innovative finance ISA include:

(1) an explanation of the tax consequences if:

(a) the innovative finance component is a P2P agreement that is not repaid; and

(b) an operator of an electronic system in relation to lending which facilitates a P2P agreement fails;

(2) the procedure for, timing and tax consequences of:

(a) withdrawing a P2P agreement from the innovative finance ISA; and

(b) a request for transfer of all or part of the innovative finance components in the innovative finance ISA; and

(3) a warning, as relevant, that it may, or will, not be possible to sell or trade P2P agreements at market value on a secondary market.

4.5.10 Operators of electronic systems in relation to lending and firms which advise on P2P agreements should also have regard to the guidance in COBS 14.3.7AG and COBS 14.3.7BG regarding the types of information they should provide to clients to explain the specific nature and risks of P2P agreements.

6 Information about the firm, its services and remuneration
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.

6.1A.1A G Guidance on the regulated activity of advising in relation to a new or existing investment can be found in PERG 8.24 to PERG 8.29. Although the guidance in PERG 8.29.7G relates to advising on investments (except P2P agreements) under article 53 of the Regulated Activities Order, exactly the same answers apply to a personal recommendation because the examples given relate to the relationship between a firm and a particular client and advice given to that specific client. A firm wishing to know when it will be giving advice but not making a personal recommendation should refer to PERG 13.3. The guidance in PERG 8.24 to PERG 8.29 does not apply to the regulated activity of advising on P2P agreements.

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

Requirement to be paid through adviser charges

6.1A.4 R Except as specified in COBS 6.1A.4AR, COBS 6.1A.4ABR, COBS 6.1A.4ACG and COBS 6.1A.4BR, a firm must:

(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.

Related and other services

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

6.1A.7 G …

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; and

(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 retail investment product provider or operator of an electronic system in relation to lending 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 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 services associated with making the personal recommendation (and related services).
Requirement to use a 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. ...

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 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 or 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.7AR 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. ...

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.

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:

... 

(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:

... 

(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.

Disclosure of total adviser charges payable

6.1A.24 R ... 

(2) A disclosure under (1) must:

... 

(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.

... 

6.1B 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; and
(b) in relation to \textit{COBS} 6.1B.9R, \textit{COBS} 6.1B.10G and \textit{COBS} 6.1B.11G, 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.

...  

6.1B.1A G \textit{Guidance} on the regulated activity of advising in relation to a new or existing investment can be found in \textit{PERG} 8.24 to \textit{PERG} 8.29. Although the guidance in \textit{PERG} 8.29.7G relates to advising on investments (except P2P agreements) under article 53(1) of the Regulated Activities Order, exactly the same answers apply to a personal recommendation because the examples given relate to the relationship between a firm and a particular client and advice given to that specific client. A firm wishing to know when it will be giving advice but not making a personal recommendation should refer to \textit{PERG} 13.3. The guidance in \textit{PERG} 8.24 to \textit{PERG} 8.29 does not apply to the regulated activity of advising on P2P agreements.

6.1B.1B G In this section, \textit{COBS} 6.1B.5AR and \textit{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.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.

...  

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.7AR or COBS 6.1E.10R(2), is payable to the retail client.

Requirements on firms facilitating the payment of adviser charges

6.1B.11 G COBS 6.1B.9R(3) does not prevent a firm, if this is in the retail client's best interests, from entering into an agreement with another firm which is providing a personal recommendation to a retail client, or with a retail client of such a firm, to provide it with credit separately in accordance with the rules on providing credit and other benefits to firms that advise on retail investment products or P2P agreements (COBS 2.3.12E and COBS 2.3.12AG).

6.2A Describing advice services

Application – Who? What?

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

9 Suitability (including basic advice)
9.1 Application and purpose provisions

Making personal recommendations

9.1.1 R This chapter applies to a firm which makes a personal recommendation in relation to a designated investment (other than a P2P agreement).

Managing investments

9.1.3 R …

9.1.3A G This chapter does not apply to a firm which manages investments when that firm takes a decision to trade for a client and that decision relates to a P2P agreement. This is because the regulated activity of managing investments does not extend to the management of assets where those assets are P2P agreements.

14 Providing product information to clients

14.3 Information about designated investments

Application

14.3.1 R This section applies to a firm in relation to:

(1) …

(2) the following regulated activities when carried on for a retail client:

(a) making a personal recommendation about a designated investment (other than a P2P agreement); or

…

P2P agreements

14.3.7A G Examples of information a firm should provide to explain the specific nature and risks of a P2P agreement include:

…
(3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the firm operator of the electronic system in relation to lending considers the borrower eligible for a P2P agreement;

…

(8) an explanation of the firm's operator of the electronic system in relation to lending's procedure for dealing with a loan in late payment or default;

(9) the procedure for a lender to access their money before the term of the P2P agreement has expired; and

(10) an explanation of what would happen if the firm operator of the electronic system in relation to lending fails, including confirmation that there is no recourse to the Financial Services Compensation Scheme.

14.3.7B  G  The guidance in COBS 14.3.7AG is relevant both to firms which are operators of electronic systems in relation to lending and firms advising on P2P agreements.

14.3.7C  G  Firms providing information to clients, and communicating information, about an innovative finance ISA should also have regard to the guidance in COBS 4.5.9G.
Annex F

Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7 Client money rules

... 

7.10 Application and purpose

7.10.1 R This chapter applies to a firm that receives money from or holds money for, or on behalf of, a client in the course of, or in connection with, its:

... 

(2) designated investment business; and/or

(3) stocks and shares ISA business; and/or

(4) innovative finance ISA business;

...
Annex G

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

10A  FCA Approved Persons

10A.1  Application

…

Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries.

10A.1.18  R  The descriptions of FCA significant-influence functions, other than the FCA required functions, and, if the firm is a MiFID investment firm, the FCA governing functions do not extend to activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:

…

(5)  a firm with permission to carry on insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity (except advising on P2P agreements).

…

10A.10  Customer-dealing functions

…

Customer function (CF 30)

…

10A.10.9  G  The FCA would expect an individual from overseas to be accompanied on a visit to a customer. TC 2.1.9R(2) provides that the firm will have to be satisfied that the individual has at least three years of up-to-date, relevant experience obtained outside the United Kingdom. However, the remaining provisions of TC 2.1.9R(2) are disapplied in these circumstances (except for an individual who gives advice to retail clients on retail investment products, gives advice on P2P agreements to retail clients or is a broker fund adviser). The effect of this is that such individuals need not attain the relevant regulatory module of an appropriate qualification (see TC 2.1.9R(2)).
Frequently asked questions

How does the customer function relate to the training and competence requirements?

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<td>2 - 9 9A</td>
<td>customer function (CF 30)</td>
<td>10A.10.4R</td>
</tr>
</tbody>
</table>

...

12 Appointed representatives

12.2 Introduction

Business for which an appointed representative is exempt

12.2.7 G (1) The Appointed Representatives Regulations are made by the Treasury under section sections 39(1), (1C) and (1E) of the Act. These regulations describe, among other things, the business for which an appointed representative may be exempt or to which sections 20(1) and (1A) and 23(1A) of the Act may not apply, which is business which comprises any of:

(i) advising on investments (except P2P agreements) (article 53(1) of the Regulated Activities Order) (that is in summary, on any designated investment (other than a P2P agreement), funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan);

(ii) advising on P2P agreements (article 53(2) of the Regulated Activities Order);
12.5  Contracts: required terms

Required contract terms for all appointed representatives

12.5.2  G  ...

(2) Under the Appointed Representative Regulations, an appointed representative is treated as representing other counterparties if, broadly, it:

…

(c) gives advice (within article 53(1) of the Regulated Activities Order (Advising on investments)) on the merits of entering into investment transactions with other counterparties;

…

(ia) facilitates a person assuming the rights of the lender under an article 36H agreement (within the meaning of the Regulated Activities Order) by assignment or operation of law on behalf of other counterparties;

(j) carries on any of the other activities specified in article 36H(3) of the Regulated Activities Order on behalf of other counterparties in the course of, or in connection with, facilitation mentioned in (i) or (ia) by the appointed representative or its principal;

(ja) gives advice (within article 53(2) of the Regulated Activities Order) on the merits of:

(i) a person entering into a ‘relevant article 36H agreement’ (within the meaning of the Appointed Representatives Regulations) as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law; or

(ii) a person providing instructions to a P2P platform operator with a view to entering into a ‘relevant article 36H agreement’ as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the
instructions involve:

(A) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or

(B) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or

(C) specifying the parameters of the terms of the agreement by other means; or

(iii) a person enforcing or exercising the lender’s rights under a ‘relevant article 36H agreement’; or

(iv) a person assigning rights under a ‘relevant article 36H agreement’;

on behalf of other counterparties:

…

…

16 Reporting requirements

16.1 Application

…

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17)

<table>
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<th>(2) Categories of firm to which section applies</th>
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<tr>
<td>SUP 16.4 and SUP 16.5</td>
<td>All categories of firm except: Entire sections</td>
<td></td>
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<tr>
<td>…</td>
<td>…</td>
<td></td>
</tr>
<tr>
<td>(ia) a firm with permission only to advise on P2P agreements (unless that activity is carried on exclusively with or for</td>
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</tbody>
</table>
(k) a firm falling within a combination of (i), (ia), (j) and (ja).

16.12 Integrated Regulatory Reporting

16.12.4 Table of applicable rules containing data items, frequency and submission periods

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<th>Regulated Activities</th>
<th>Provisions containing:</th>
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<td></td>
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<td>reporting frequency/period</td>
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</table>

RAG 3

- advising on investments (except P2P agreements) (excluding retail investment activities)
- advising on P2P agreements (when carried on exclusively with or for professional clients)

…
### RAG 7

- retail investment activities
- advising on P2P agreements (except when carried on exclusively with or for professional clients)
- advising on pensions transfers & opt-outs
- arranging (bringing about deals) in retail investments

### Notes

16.12.22A R ...  

<table>
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<th>Description of data item</th>
<th>Firms’ prudential category and applicable data item (note 1)</th>
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<tr>
<td>Note 26</td>
<td>This item only applies to firms that provide advice on retail investment products and P2P agreements.</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

### 16 Annex 18BG

Notes for Completion of the Retail Mediation Activities Return ('RMAR')

...  

Scope
6. The following firms are required to complete the sections of the RMAR applicable to the activities they undertake as set out in SUP 16.12:

…

(c) personal investment firms; and

(d) other investment firms that have retail customers clients (defined as retail investment firms), and have permission to carry on the following activities in relation to retail investment products: …

…

Retail investment products are defined as:

(a) …

…

whether or not any of (a) to (h) are held within an ISA or a CTF; and

(e) other investment firms that have permission to advise on P2P agreements and do not carry on that activity exclusively with or for professional clients.

For the purposes of completing the RMAR in relation to the activity of advising on P2P agreements only, ‘retail investments’ and ‘retail investment products’ should be understood as including P2P agreements, and references to retail investment advising and retail investment activity should be understood as including advice on P2P agreements.

The practical effect of the retail customer client limitation in the definition of retail investment firms is to exclude from the requirements firms that carry on retail investment activities exclusively with or for professional customers clients or eligible counterparties.

…

Section F: the threshold conditions

Sub-heading: close links

This section relates to threshold condition 3. Firms should consult COND 2.3, as well as Chapter 11 of the Supervision Manual (‘SUP’).

Sole traders, and firms which have permission to carry on retail investment activities only, firms with permission only to advise on P2P agreements (unless that activity is carried on exclusively with or for professional clients) or firms which have permission to carry on only one, or only both of:
• insurance mediation activity; or

• home finance activity;

and are not subject to the requirements of SUP 16.4 or SUP 16.5 (requirement to submit annual controllers report; or annual close links reports), will submit these reports in RMAR section F instead.

Appendix 3  Guidance on passporting issues

App 3.9  Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.4  Activities set out in Annex 1 of the CRD

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<td>8. Participation in share issues and the provision of services relating to such issues</td>
<td>Article 14, 21, 25, 53 53(1), 64</td>
<td>Article 76-81, 89</td>
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<tr>
<td>9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings</td>
<td>Article 14, 21, 25, 53 53(1), 64</td>
<td>Article 76-80, 83-85, 89</td>
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11. Portfolio management and advice | Article 14, 21, 25, 37, §3 53(1), 64 | Article 76-81, 83-85, 89

<table>
<thead>
<tr>
<th>Table 2: MiFID investment services and activities</th>
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<th>Part III RAO Investments</th>
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<td><strong>A MiFID investment services and activities</strong></td>
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<tr>
<td>...</td>
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<tr>
<td>5. Investment advice</td>
<td>Article §3 53(1)</td>
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<tr>
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<tr>
<td>Ancillary services</td>
<td>Part II RAO Investments</td>
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<td>...</td>
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<td></td>
</tr>
<tr>
<td>3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings</td>
<td>Article 14, 21, 25, §3 53(1), 64</td>
<td>Article 76-80, 83-85, 89</td>
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<tr>
<td>4. Foreign exchange services where these are connected with the provision of investment services</td>
<td>Article 14, 21, 25, §3 53(1), 64</td>
<td>Article 83-85, 89</td>
</tr>
<tr>
<td>5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments</td>
<td>Article §3 53(1), 64</td>
<td>Article 76-81, 83-85, 89</td>
</tr>
</tbody>
</table>
### 6. Services related to underwriting

<table>
<thead>
<tr>
<th>Activity</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 25, 53, 53(1), 64</td>
<td>Article 76-81, 83-85, 89</td>
<td></td>
</tr>
</tbody>
</table>

### 7. Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10—where these are connected to the provision of investment or ancillary services.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 14, 21, 25, 25D, 37, 53, 53(1), 64</td>
<td>Article 83 and 84</td>
<td></td>
</tr>
</tbody>
</table>

---

### App G Activities set out in article 6(2) to (4) of AIFMD

#### 3.9.5A

<table>
<thead>
<tr>
<th>Table 2ZA: AIFMD activities</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Investment advice (Note 2).</td>
<td>Articles 53, 53(1), 64</td>
<td>Articles 76 to 81, 83 to 85, 89</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### App G Activities set out in Article 6(2) and (3) of the UCITS Directive

#### 3.9.6

<table>
<thead>
<tr>
<th>Table 2A: UCITS Directive activities</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Investment advice concerning one or more of the instruments listed in Section C of Annex I to MiFID</td>
<td>Articles 53, 53(1), 64</td>
<td>Articles 76-81, 83-85, 89</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
App 3.9.7

G Activities set out in Article 2(3) of the IMD

<table>
<thead>
<tr>
<th>Table 2B: Insurance Mediation Directive activities</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance</td>
<td>Articles 25, §353(1) and 64</td>
<td>Articles 75, 89 (see Note 1)</td>
</tr>
<tr>
<td>2. Concluding contracts of insurance</td>
<td>Articles 21, 25, §353(1) and 64</td>
<td>Articles 75, 89</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
Annex H

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Jurisdiction of the Financial Ombudsman Service

...  

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The Ombudsman can consider a complaint under the Voluntary Jurisdiction if:

...

(2) it relates to an act or omission by a VJ participant in carrying on one or more of the following activities:

...

(c) activities which (at 4 6 April 2016) would be covered by the Compulsory Jurisdiction, if they were carried on from an establishment in the United Kingdom (these activities are listed in DISP 2 Annex 1G);

...

2 Annex 1G Regulated activities for the Voluntary Jurisdiction at 4 6 April 2016

This table belongs to DISP 2.5.1 R

The activities which were covered by the Compulsory Jurisdiction (at 4 6 April 2016) were:

...

The activities which (at 4 6 April 2016) were regulated activities were, in accordance with section 22 of the Act (The classes of activity and categories of investment), any of the following activities specified in Part II of the Regulated Activities Order:

...

(26) advising on investments (except P2P agreements) (article 53(1)):
(26A) *advising on P2P agreements* (article 53(2));

...
Annex I

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6 Operating duties and responsibilities

…

6.9 Independence, names and UCITS business restrictions

…

Restrictions of business for UCITS management companies

6.9.9 R A UCITS management company must not engage in any activities other than:

…

(5) advising on investments (except P2P agreements) where:

…

…
Annex J

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction to the Perimeter Guidance manual

...

1.2 Introduction

...

1.2.3A G Except in PERG 2 and PERG 7, where PERG uses the defined term of advising on investments, this term refers only to the regulated activity (in article 53(1) of the Regulated Activities Order) of advising on investments (except P2P agreements) and related text should be read and construed accordingly.

...

2 Authorisation and regulated activities

...

2.3 The business element

...

2.3.2 G There is power in the Act for the Treasury to change the meaning of the business element by including or excluding certain things. ...

...

(2) Except as stated in PERG 2.3.2G(2A) and PERG 2.3.2G(3), the business element is not to be regarded as satisfied for any of the regulated activities carried on in relation to securities or contractually based investments (or for those regulated activities carried on in relation to 'any property') unless a person carries on the business of engaging in one or more of the activities. This also applies to the regulated activities of advising on P2P agreements, advising on a home finance transaction and arranging a home finance transaction. This is a narrower test than that of carrying on regulated activities by way of business (as required by section 22 of the Act), as it requires the regulated activities to represent the carrying on of a business in their own right.
2.6 Specified investments: a broad outline

Rights under a credit agreement and an article 36H agreement

2.6.30 In accordance with article 60B(3) of the Regulated Activities Order, a credit agreement is an agreement between an individual ("A") and any other person ("B") under which B provides A with credit of any amount. In accordance with article 36H(10) of the Regulated Activities Order, rights under an article 36H agreement are also specified investments. The definition of an article 36H agreement is set out in PERG 2.7.7HG. In addition and in accordance with article 53(5) of the Regulated Activities Order, rights under a ‘relevant article 36H agreement’ (within the meaning of that Order) are also specified investments.

2.7 Activities: a broad outline

Effecting or carrying out contracts of insurance as principal

2.7.4 In addition, certain other activities carried on in relation to rights under contracts of insurance are regulated activities. These are where the activity is carried on in relation to:

(2) rights under any contract of insurance, where the regulated activities concerned are:

(d) advising on investments (except P2P agreements) (see PERG 2.7.15G); and

Operating an electronic system in relation to lending

2.7.7H G …
(2) To be caught, all of the following conditions must be met:

…

(b) A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to:

(i) receive payments in respect of interest and or capital or both due under the article 36H agreement from C; and

(ii) make payments in respect of interest and or capital or both due under the article 36H agreement to B; and

…

…

(4) An article 36H agreement is an agreement by which one person provides another person with credit and either of the following conditions is satisfied, or was satisfied at the time the agreement was entered into:

…

(4A) It is a condition to be an article 36H agreement that A does not provide credit, assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.

…

(6A) A person operating an electronic system in relation to lending (A) also carries on a regulated activity where they operate an electronic system:

(a) that enables A to facilitate a person (B) assuming the rights of the lender under an article 36H agreement by assignment or operation of law; and

(b) that meets all of the conditions in PERG 2.7.7HG(2), where C is the borrower under the agreement in (a).

(7) The following activities are also caught by operating an electronic system in relation to lending if carried on by the operator in the course of, or in connection with, the activity in (1) or (6A):

(a) presenting or offering article 36H agreements to B and or C with a view to B becoming the lender under the article 36H agreement and or C becoming the borrower under the
article 36H agreement; or

(b) furnishing information relevant to the financial standing of a person to assist a potential lender to determine whether to provide credit to that person under an article 36H agreement; or

(c) Taking steps to procure the payment of a debt due under an article 36H agreement; or

(d) performing duties, or exercising or enforcing taking steps to perform duties or exercise or enforce rights under an article 36H agreement on behalf of the lender; or

(e) taking steps with a view to ascertaining whether a credit information agency holds information relevant to the financial standing of an individual; or

(f) taking steps with a view to ascertaining the contents of such information; or

(g) taking steps with a view to securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information; or

(h) taking steps with a view to securing that a credit information agency which holds such information stops holding the information, or does not provide it to any other person; or

(i) giving advice in relation to the taking of any of the steps in (e) to (h).

Providing basic advice on stakeholder products

2.7.14A G This activity covers advice in the form of a recommendation given to a retail consumer. The recommendation must relate to a stakeholder product and certain conditions must be met. These conditions are based on the need for the adviser to make an assessment of the consumer’s needs based on the answers that the consumer provides to a series of pre-scripted questions. A fuller description of the activity is given in PERG 2.7.14BG and explains what is meant by “retail customer”. This activity is separate to the regulated activity of advising on investments (except P2P agreements) (see PERG 2.7.15G (Advising on investments)). The existence of this separate advising activity does not prevent a person from giving advice on stakeholder products in circumstances that do not satisfy the conditions set out in PERG 2.7.14BG. But such advice is likely to amount to advising on investments (except P2P agreements) unless the stakeholder product is a deposit. Neither does the existence of the activity prevent a person from selling stakeholder
... 

Advising on investments

2.7.14C G There are two regulated activities which constitute advising on investments in article 53 of the Regulated Activities Order. These are:

(1) advising on investments (except P2P agreements) (in article 53(1) of the Regulated Activities Order); and

(2) advising on P2P agreements (in article 53(2) of the Regulated Activities Order).

Advising on investments

2.7.15 G The regulated activity of advising on investments (except P2P agreements) under article 53 53(1) of the Regulated Activities Order applies to advice on securities or relevant investments. … However, the context in which something is communicated may affect its character; for example, if a person gives information on share price against the background that, when he does so, that will be a good time to sell, then this will constitute advising on investments (except P2P agreements).

2.7.16 G … Further guidance on the meaning of advising on investments (except P2P agreements) is in PERG 8.24 (Advising on investments).

2.7.16A G In certain circumstances, the activity of advising on investments (except P2P agreements) can also amount to providing basic advice on a stakeholder product (see PERG 2.7.14AG (Providing basic advice on stakeholder products)).

2.7.16AA G The regulated activity of advising on P2P agreements under article 53(2) of the Regulated Activities Order applies to advice given to a person in their capacity as a lender or potential lender under a relevant article 36H agreement (defined in article 53(4) of the Regulated Activities Order), or as an agent for a lender or potential lender under such an agreement, where that advice is on the merits of their doing any of the following (whether as principal or agent):

(1) entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law; or

(2) providing instructions to a P2P platform operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve:
(a) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or

(b) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or

(c) specifying the parameters of the terms of the agreement by other means; or

(3) enforcing or exercising the lender’s rights under a relevant article 36H agreement; or

(4) assigning rights under a relevant article 36H agreement.

2.8 Exclusions applicable to particular regulated activities

Arranging deals in investments and arranging a home finance transaction

2.8.6A G The exclusions in the Regulated Activities Order that relate to the various arranging activities are as follows.

... This will require something more than the mere giving of advice (although giving such advice may be the regulated activity of advising on investments (except P2P agreements) or advising on home finance transactions).

... Operating an electronic system in relation to lending

2.8.6D G (1) An activity of a kind specified below is excluded from the regulated activity of operating an electronic system in relation to lending:

... managing investments; and

(e) advising on investments (except P2P agreements).

(1A) The regulated activity of advising on P2P agreements does not apply where such advice is given in relation to a relevant article 36H
agreement (defined in article 53(4) of the Regulated Activities Order) which has been facilitated by the person giving the advice in the course of carrying on an activity specified by article 36H of the Regulated Activities Order and is given by:

(a) an authorised person with permission to carry on the regulated activity of operating an electronic system in relation to lending; or

(b) an appointed representative in relation to the regulated activity of operating an electronic system in relation to lending; or

(c) an exempt person in relation to the regulated activity of operating an electronic system in relation to lending; or

(d) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to the regulated activity of operating an electronic system in relation to lending.

Debt adjusting, debt counselling, debt collecting and debt administration

2.8.7D

G The regulated activity of advising on P2P agreements does not apply in so far as the advice is given in the course of carrying on an activity of a kind specified by:

(1) article 39F of the Regulated Activities Order (debt collecting); or

(2) article 39G of the Regulated Activities Order (debt administration);

by a person carrying on that activity not in contravention of the general prohibition.

2 Annex

Regulated activities and the permission regime

Table 1: Regulated Activities (excluding PRA-only activities) [see note 1 to Table 1]

<table>
<thead>
<tr>
<th>Regulated activity</th>
<th>Specified investment in relation to which the</th>
</tr>
</thead>
</table>

...
regulated activity (in the corresponding section of column one) may be carried on

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
</tr>
</thead>
</table>

Designated investment business [see notes 1A, 1B and 1C to Table 1]

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
</tr>
</thead>
</table>

(j) advising on investments (except P2P agreements) (article 53(1) [see note 1B to Table 1] [also see Section of Table 1 headed ‘Regulated mortgage activity’]

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
</tr>
</thead>
</table>

(ja) advising on conversion or transfer of pension benefits (article 53E) is contained in the permission of advising on pension transfers and pension opt-outs [see note 4 to Table 1]

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
</tr>
</thead>
</table>

advising on P2P agreements (article 53(2)) [see note 9 to Table 1]

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
</tr>
</thead>
</table>

(jb) advising on conversion or transfer of pension benefits (article 53E) is contained in the permission of advising on pension transfers and pension opt-outs [see note 4 to Table 1]

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
</tr>
</thead>
</table>

Insurance mediation activity [see note 5A to Table 1]

<table>
<thead>
<tr>
<th>...</th>
<th>...</th>
</tr>
</thead>
</table>

(pf) advising on investments (except P2P agreements) (article 53(1))

| ... | ... |
Notes to Table 1

... 

Note 1A:

Funeral plan contracts are contractually based investments. Accordingly, the following are regulated activities when carried on in relation to a funeral plan contract: (a) arranging (bringing about) deals in investments, (b) making arrangements with a view to transactions in investments, (c) managing investments, (d) safeguarding and administering investments, (e) advising on investments (except P2P agreements), (f) sending dematerialised instructions and (g) causing dematerialised instructions to be sent (as well as agreeing to carry on each of the activities listed in (a) to (g)). However, they are not designated investment business.

... 

Note 4:

For the purposes of the permission regime, the activity in (j)(ii) of advising on pension transfers and pension opt-outs includes the following two regulated activities: (1) advising on investments (except P2P agreements) where it is carried on in respect of the following specified investments: ...

... 

Note 9:

...

For the purposes of operating an electronic system in relation to lending, rights under a credit agreement include rights under an article 36H agreement within the meaning of article 36H (4) of the Regulated Activities Order.

For the purposes of advising on P2P agreements, rights under a credit agreement include rights under a relevant article 36H agreement within the meaning of article 53(4) of the Regulated Activities Order.

...

5 Guidance on insurance mediation activities

...

5.2 Introduction
Approach to implementation of the IMD

5.2.8 G It follows that each of the regulated activities below potentially apply to any contract of insurance:

(5) advising on investments (except P2P agreements) (article §3 53(1) (Advising on investments));

5.3 Contracts of insurance

Specified investments

5.3.9 G For an activity to be a regulated activity, it must be carried on in relation to 'specified investments'…

'Relevant investments' is the term used in articles 21 (Dealing in investments as agent), 25 (Arranging deals in investments) and §3 53(1) (Advising on investments (except P2P agreements)) of the Regulated Activities Order to help define the types of investment to which the activities in each of these articles relate.

5.8 The regulated activities: advising on contracts of insurance

5.8.1 G Article §3 53(1) of the Regulated Activities Order (Advising on Investments (except P2P agreements)) makes advising on contracts of insurance a regulated activity. …

5.8.2 G For advice to fall within article §3 53(1), it must: …

Advice must relate to a particular contract of insurance

5.8.4 G Advice about contracts of insurance will come within the regulated activity in article §3 53(1) of the Regulated Activities Order only if it relates to a particular contract of insurance. So, generic or general advice will not fall
under article §§ 53(1). In particular:

(1) advice would come within article §§ 53(1) if it took the form of a recommendation that a person should buy the ABC Insurers motor insurance;

(3) the table in PERG 5.8.5G identifies several typical recommendations and indicates whether they will be regarded as advice under article §§ 53(1).

5.8.5 G Typical recommendations and whether they will be regulated as advice on contracts of insurance under article §§ 53(1) of the Regulated Activities Order. This table belongs to PERG 5.8.4G.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Regulated under article §§ 53(1) or not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

Advice given to a person in his capacity as an investor or potential investor

5.8.6 G For the purposes of article §§ 53(1), advice must be given to a person in his capacity as an investor or potential investor (which, in the context of contracts of insurance, will mean as policyholder or potential policyholder). So, article §§ 53(1) will not apply where advice is given to persons who receive it as:

5.8.7 G Advice will still be covered by article §§ 53(1) even though it may not be given to any particular policyholder (for example, advice given in a periodical publication or on a website).

Advice or information

5.8.10 G In the case of article §§ 53(1), information relating to buying or selling contracts of insurance may often involve one or more of the following:

5.8.11 G In the FCA's opinion, however, such information is likely to take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. Examples of situations where information provided by a person (P) might take the form of advice are given below.

(2) P may, as a result of going through the sales process, discuss the merits of one contract of insurance over another, resulting in advice to enter into a particular one. In contrast, advice on how to complete an application form, without an explicit or implicit recommendation on the merits of buying or selling the contract of insurance whilst...
'advice' in the general sense of the word, is not, in the view of the 
FCA, advice within the meaning of article 53 53(1). …

Advice must relate to the merits (of buying or selling a contract of insurance)

5.8.12 G Advice under article 53 53(1) relates to the advantages and disadvantages of buying, selling, subscribing for or underwriting a particular contract of insurance. …

…

5.8.14 G Generally speaking, advice on the merits of using a particular insurance undertaking, broker or adviser in their capacity as such, does not amount to advice for the purpose of article 53 53(1). …

…

Medium used to give advice

5.8.20 G With the exception of:

…

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article 53 53(1).

…

5.10 Renewals

5.10.1 G It must be emphasised that activities which concern invitations to renew policies and the subsequent effecting of renewal of policies are likely to fall within insurance mediation activity. …Where it contains a recommendation to renew existing cover this is likely to constitute advising on investments (except P2P agreements) (under article 53 53(1) of the Regulated Activities Order). …

…

5.15 Illustrative tables

…

5.15.4 G Types of activity – are they regulated activities and, if so, why?

<table>
<thead>
<tr>
<th>Type of activity</th>
<th>Is it a regulated activity?</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARKETING AND EFFECTING INTRODUCTIONS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Recommending a broker/insurance undertaking and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)

| Yes, but article 72C may be available. | This will constitute making arrangements under article 25(2). But, the exclusion in article 72C will apply if all the intermediary does is supply information to the customer and the conditions of article 72C are otherwise met (see [PERG 5.6.5G](https://www.fca.org.uk/publication/operating-manual) to [PERG 5.6.9G](https://www.fca.org.uk/publication/operating-manual)). Generally, this will not amount to advice under article 53(1) unless there is an implied recommendation of a particular policy (see [PERG 5.8.4G](https://www.fca.org.uk/publication/operating-manual)), in which case article 72C would not be available. |

## PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE

| Yes. Subject to article 72C exclusion where available. | This will constitute *arranging* although article 72C may be of application (see [PERG 5.6.5G](https://www.fca.org.uk/publication/operating-manual) to [PERG 5.6.9G](https://www.fca.org.uk/publication/operating-manual)). If there is no express or implied recommendation of a particular policy, this activity will not amount to advice under article 53(1) (see [PERG 5.8.15G](https://www.fca.org.uk/publication/operating-manual) to [PERG 5.8.19G](https://www.fca.org.uk/publication/operating-manual)). |

| Possibly. Article 72C available. | This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve *advising on investments* (except... |
P2P agreements) (see PERG 5.8.8G (Advice or information)). Where the explanation is provided to the potential policyholder, and does not involve advising on investments (except P2P agreements), article 72C may be of application (see PERG 5.6.5G to PERG 5.6.9G), and where information is provided by a professional in the course of a profession, article 67 may apply (see PERG 5.11.9G to PERG 5.11.12G).

Advising that a customer take out a particular policy

| Yes. | This amounts to advice on the merits of a particular policy under article 53(1) (see PERG 5.8.4G to PERG 5.8.5G). |

Advising that a customer does not take out a particular policy

| Yes. | This amounts to advice on the merits of a particular policy under article 53(1) (see PERG 5.8.4G to PERG 5.8.5G). |

Periodical publications, news services and broadcasts: applications for certification

7.1 Application and purpose

Application

7.1.1 G This chapter applies to anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about securities, relevant investments, P2P agreements or home finance transactions…
7.3 Does the activity require authorisation?

Advising on investments and advising on home finance transactions

7.3.1 Under article 53(1) of the Regulated Activities Order (Advising on investments), advising a person is a specified kind of activity if:

- the advice is given to the person in their capacity as a lender or potential lender under a relevant article 36H agreement (defined in article 53(4) of the Regulated Activities Order) or as an agent for a lender or potential lender under such an agreement; and

- it is advice on the merits of their doing any of the following (whether as principal or agent):
  
  (a) entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law; or
  
  (b) providing instructions to a P2P platform operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve:

     (i) accepting particular parameters for the terms of the agreement presented by a P2P platform operator; or

     (ii) choosing between options governing the parameters of the terms of the agreement presented by a P2P platform operator; or

     (iii) specifying the parameters of the terms of the agreement by other means; or

  
  (c) enforcing or exercising the lender's rights under a relevant article 36H agreement; or

  
  (d) assigning rights under a relevant article 36H agreement.

...
7.3.4 G … For example, a newspaper may reply to readers’ letters to generate goodwill or to generate a supply of further material that it can publish or a website that is ‘free’ to the user will be sponsored or paid for by advertising. In such cases, if advice on securities, relevant investments, P2P agreements or home finance transactions is given, then, in the FCA’s view, the business of advising on investments or advising on a home finance transaction is being carried on. …

Carrying on the regulated activity in the United Kingdom

7.3.7 G … The effect of this is that, where the principal purpose of an overseas periodical publication is to offer advice on securities or relevant investments or P2P agreements and home finance transactions, the exclusion for an overseas person who provides advice to persons in the United Kingdom as a result of a legitimate approach will not apply to the advice concerning home finance transactions.

7.4 Does the article 54 exclusion apply?

The formats

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:

(1) to advise on securities or relevant investments or P2P agreements or home finance transactions or amounts to carry on advising on conversion or transfer of pension benefits; or

(2) to lead or enable persons:

(a) …

(aa) to enter into a relevant article 36H agreement (within the meaning of article 53(4) of the Regulated Activities Order) as a lender, to assume the rights of a lender under such an agreement by assignment or operation of law, or to assign rights under such an agreement; or
The principal purpose test

7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:

(1) to give advice on securities, relevant investments, P2P agreements or home finance transactions (see PERG 7.3.1G); or

(2) to lead or enable persons to:

   (a) …

   (aa) enter into a relevant article 36H agreement (within the meaning of article 53(4) of the Regulated Activities Order) as a lender, to assume the rights of a lender under such an agreement by assignment or operation of law, or to assign rights under such an agreement; or

   …

7.4.9 G For the second disqualifying purpose, the focus switches to assessing whether the principal purpose of a publication or service is to lead a person to engage in a relevant transaction or enable him to do so. …

   …

In the FCA’s view, material will not lead or enable a person to engage in a relevant transaction where the material is intended merely to raise people’s awareness of matters relating to securities, relevant investments, P2P agreements or home finance transaction.

8 Financial promotion and related activities

8.23 Regulated activities

8.23.5 G As explained in PERG 1.2.3AG, where the guidance that follows uses the defined term advising on investments, this term should be read as referring only to the regulated activity (in article 53(1) of the Regulated Activities Order) of advising on investments (except P2P agreements). Related text should be construed accordingly.
8.24 Advising on investments

8.24.1 G Under article §3 53(1) of the Regulated Activities Order, advising on investments (except P2P agreements) covers advice which:

…

…

8.25 Advice must relate to an investment which is a security or contractually based investment

8.25.1 G For the purposes of article §3 53(1) of the Regulated Activities Order, a security or relevant investment is any one of the following:

…

8.25.2 G Article §3 53(1) does not apply to advice given on any of the following:

…

8.26 The investment must be a particular investment

8.26.1 G For the purposes of article §3 53(1), advice must relate to a particular investment – generic or general advice is not covered. Generic or general advice may, however, be a financial promotion (see PERG 8.4).

8.26.2 G Generic advice will not be caught by article §3 53(1). Examples of generic advice may include:

…

8.26.3 G In the FCA’s view, guiding a person through a decision tree should not, of itself, involve advice within the meaning of article §3 53(1) (it should be generic advice). For example, helping a person to understand what the questions or options are and how to determine which option applies to his particular circumstances. But a recommendation that the person concerned should, if the results of using the decision tree so indicate, buy a stakeholder personal pension from a particular provider (or any other particular investment) would be advice for the purpose of article §3 53(1). An unauthorised person guiding another through a decision tree needs to make it clear that the decision tree aids generic decisions and that the person doing the guiding is not recommending any particular investment.

…

8.27 Advice to be given to persons in their capacity as investors (on the merits of their investing as principal or agent)
8.27.1 G For the purposes of article §3 53(1), advice must be given to or directed at someone who either holds investments or is a prospective investor (or their agent). Where the investment is a risk-only contract of insurance such as house contents insurance, the policyholder or prospective policyholder is regarded as an investor.

8.27.2 G Article §3 53(1) does not apply where the advice is given to persons who receive it as:

…

8.27.3 G Article §3 53(1) does not apply to advice given to a person (such as an independent financial adviser) who is acting as an agent for an investor if it does not relate to a transaction into which the person is to enter as agent for the investor.

8.27.4 G Article §3 53(1) does apply where the recipient is someone who invests on behalf of other persons (whether as a principal or agent), such as:

…

8.27.5 G Advice will still be covered by article §3 53(1) even though it may not be given to or directed at a particular investor (for example, advice given in a periodical publication or on a website). The expression ‘investor’ has a broad meaning and will include institutional or professional investors.

8.29 Advice must relate to the merits (of buying or selling a particular investment)

…

8.29.3 G Neither does advice on the merits of using a particular stockbroker or investment manager in his capacity as such amount to advice for the purpose of article §3 53(1). This is because it is not advice on the merits of buying or selling an investment.

…

8.29.5 G Without an explicit or implicit recommendation on the merits of buying or selling an investment, advice will not be covered by article §3 53(1) if it is advice on:

…

8.29.6 G Advice as to what might happen to the price or value of an investment if certain events were to take place, however, may be covered by article §3 53(1) in some circumstances.
8.29.7 G Typical recommendations and whether they will be regulated as advising on investments (except P2P agreements) under article 53(1) of the Regulated Activities Order. This table belongs to PERG 8.29.1G to PERG 8.29.6G.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Regulated under article 53(1) or not?</th>
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<td>...</td>
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</table>

8.30 Medium used to give advice or information

8.30.1 G With the exception of periodicals, broadcasts and other news or information services (see PERG 8.31.2G), the medium used to give advice should make no difference to whether or not it is caught by article 53(1).

...  

8.30.3 G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problems. The provider of the service will be giving advice for the purpose of article 53(1) only if the service results in something more than a generic recommendation, as with a paper version.

...  

8.30.5 G ... These signals are liable, as a general rule, to be advice for the purposes of article 53(1) (as well as financial promotions) given by the person responsible for the provision of the software. …

8.31 Exclusions for advising on investments

...  

8.31.2 G As respects article 53(1), the main exclusion relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54: Advice given in newspapers etc). The exclusion applies if the principal purpose of any of these is not to give advice covered in article 53(1) or to lead or enable persons to acquire or dispose of securities or contractually based investments. This is explained in greater detail, together with the provisions on the granting of certificates, in PERG 7.

...  

10 Guidance on activities related to pension schemes

...  

10.4 Pension scheme service providers other than trustees
Q39. I give advice to the members of a pension scheme. Is this likely to be regulated advice and mean that I must be authorised or exempt?

It is likely to be regulated advice under article §3 53(1) of the Regulated Activities Order if the advice concerns a personal pension scheme but probably not if it concerns an OPS that is not a stakeholder pension scheme. …

… In addition to advice that may fall under article §3 53(1) of the Regulated Activities Order, giving advice to members of a pension scheme could amount to advising on conversion or transfer of pension benefits where the advice relates to rights or interests under a pension scheme which provides safeguarded benefits (see PERG 2.7.16FG). …

10 Table summarising regulatory position of pension scheme trustees and service providers

<table>
<thead>
<tr>
<th>Potential regulated activity</th>
<th>When will such regulated activities be carried on?</th>
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<td>…</td>
<td></td>
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<tr>
<td>Advising on investments (except P2P agreements) (article §3 53(1) of the Regulated Activities Order)</td>
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13 Guidance on the scope of MiFID and CRD IV

…

13 Table 1 - MiFID Investment services and activities and the Part 4A permission regime

<table>
<thead>
<tr>
<th>MiFID Investment Services and Activities</th>
<th>Part 4A permission</th>
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<td>Advising on investments (except P2P agreements) (article 53 53(1) RAO)</td>
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