

## PEER-TO-PEER LENDING INSTRUMENT 2016

### 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:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Training and Competence sourcebook (TC)	Annex C
Fees manual (FEES)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Client Assets sourcebook (CASS)	Annex F
Supervision manual (SUP)	Annex G
Dispute Resolution: Complaints sourcebook (DISP)	Annex H
Collective Investment Schemes sourcebook (COLL)	Annex I

## 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*.

<i>innovative finance component</i>	a qualifying investment as prescribed in regulation 8A of the <i>ISA Regulations</i> .
<i>innovative finance ISA</i>	an <i>individual savings account</i> which includes an <i>innovative finance component</i> .
<i>innovative finance ISA business</i>	a <i>firm's</i> activities, in its capacity as an <i>ISA manager</i> , in connection with an <i>ISA</i> which contains only an <i>innovative finance component</i> and is not <i>designated investment business</i> .
<i>P2P platform operator</i>	a <i>person</i> carrying on an activity of the kind specified by article 36H(1) or 36H(2D) of the <i>Regulated Activities Order</i> .

Amend the following definitions as shown.

<i>adviser charge</i>	any form of charge payable by or on behalf of a <i>retail client</i> to a <i>firm</i> in relation to the provision of a <i>personal recommendation</i> by the <i>firm</i> in respect of a <i>retail investment product</i> or <u><i>P2P agreement</i></u> (or any related service provided by the <i>firm</i> ) which: <ul style="list-style-type: none"><li>(a) is agreed between that <i>firm</i> and the <i>retail client</i> in accordance</li></ul>
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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~~ are:

(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.

(i) ~~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~~

(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 pension transfers and pension opt-outs)*

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

*advising on 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));

<i>outs</i>	(b) ...
<i>borrower</i>	<p>(1) ...</p> <p>(2) in relation to a <i>P2P agreement</i> other than a <i>credit agreement</i> or a <i>regulated mortgage contract</i>;</p> <p style="padding-left: 40px;">(a) an <i>individual</i> who receives <i>credit</i> under a <i>P2P agreement</i> and under which the <i>lender</i> provides <i>credit</i> to the <i>individual</i> of less than or equal to £25,000 or the agreement is not entered into by the <i>individual</i> for the purposes of a business carried on by the <i>individual</i>; <u>or</u></p> <p style="padding-left: 40px;">(b) <u>an <i>individual</i> to whom the rights and duties of a <i>borrower</i> under a <i>P2P agreement</i> have passed by <i>assignment</i> or <i>operation of law</i>, where the agreement is for the provision of <i>credit</i> 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 <i>individual</i> or a former <i>borrower</i>.</u></p> <p>(3) ...</p>
<i>cash deposit ISA</i>	a <i>cash component</i> of an <i>ISA</i> which does not include the <i>qualifying investments</i> prescribed in paragraphs 8(2)(c), (d), (e) or (f) <u>or paragraph 8A(2) of the <i>ISA Regulations</i>.</u>
<i>category B3 firm</i>	<p>a <i>category B firm</i>:</p> <p>(a) whose <i>permission</i> includes only <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i>, <i>home finance mediation activity</i>, <i>assisting in the administration and performance of <del>a</del> contracts of insurances</i>, <i>arranging transactions in life policies</i> and other insurance contracts, <i>advising on investments (except <u>P2P agreements</u>)</i> and receiving and transmitting, on behalf of investors, orders in relation to <i>securities</i> and <i>units in collective investment schemes</i>, <u><i>advising on P2P agreements</i></u>; and</p> <p>(b) ...</p>
<i>client money</i>	<p>...</p> <p>(2A) (in <i>FEES</i>, <i>CASS 6</i>, <i>CASS 7</i>, <i>CASS 7A</i> and <i>CASS 10</i> and, in so far as it relates to matters covered by <i>CASS 6</i>, <i>CASS 7</i>, <i>COBS</i> or <i>GENPRU</i> and <i>IPRU(INV) 11</i>) subject to the <i>client money rules</i>, <i>money</i> of any currency:</p> <p>...</p>

- (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 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) *advising on P2P agreements* (article 53(2));

(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 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):



- (a) ...
- (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*.~~

(in relation to a *borrower*) 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:

- (i) 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;
- (ii) the *borrower* is an *individual*; and
- (iii) either condition (A) or (B) is satisfied:
  - (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*.

- (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~~ 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);
    - ~~(pb)~~ *advising on a home reversion plan* (article 53B);
    - (pc)
    - ~~(pe)~~ *advising on a home purchase plan* (article 53C);
    - (pd)
    - ~~(pd)~~ *advising on a regulated sale and rent back agreement* (article 53D);
    - (pe)
    - ~~(pe)~~ *advising on regulated credit agreements for the acquisition of land* (article 53DA);
    - (pf)
    - ~~(pf)~~ *advising on conversion or transfer of pension benefits* (article 53E);
    - (pg)
  - ...
- transaction-specific advice*
- advice on investments (except P2P agreements):*
  - ...

**Annex B**

**Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)**

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

**1 Application and purpose**

...

**1 Annex Detailed application of SYSC**

**1**

...

<b>Part 3</b>	<b>Tables summarising the application of the common platform requirements to different types of firm</b>		
...			

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

				<p>than <i>regulated activities</i> and which is:</p> <p>...</p> <p>(e) a <i>firm</i> with <i>permission</i> to carry on <i>insurance mediation activity</i> in relation to non-investment insurance contracts but no other <i>regulated activity</i> (<u>except <i>advising on P2P agreements</i></u>);</p> <p>...</p>
...				

...

## 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* ~~is~~ has not been assessed as competent to do so and:

(1) ~~giving gives~~ gives 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) gives 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 R

Activity	Products/Sectors	Is there an appropriate qualification requirement?
<i>Designated investment business carried on for a retail client</i>		
...		
Advising	...	
	<u>9A.</u>	<u>Advising on P2P agreements</u> <u>Yes</u>
...		
<b>Notes:</b>		
...		
<u>2A.</u>	<u>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 <i>employee advising on P2P agreements</i> must be qualified to the same standard as if that <i>employee</i> were providing investment advice to <i>retail clients on retail investment products</i>.</u>	
...		

...

**App 4.1 Appropriate Qualification tables**

App 4.1.1 E **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).

...

**TP 8 Transitional provisions relating to time limits for attaining qualifications**

...

8.4 R *An employee who is advising on P2P agreements as at 6 April 2016 will, for the purposes of TC 2.2A.1R, be regarded as starting to carry on that activity on that date.*

**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**

<p>Part 1</p> <p>This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i>.</p>	
Activity group	Fee payer falls in the activity group if
...	
<b>A.13 Advisors, arrangers, dealers or brokers</b>	<p>...</p> <p>(2) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p><u>(i)</u> in relation to one or more <i>designated investments</i>:</p> <p>...</p> <p><i>advising on investments (except P2P agreements) (except pension transfers and pension opt-outs);</i></p> <p>...</p> <p><i>advising on syndicate participation at Lloyd's;</i></p> <p><u>(ii)</u> <i>advising on P2P agreements;</i></p> <p>(b) ...</p>
...	

## 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 R 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 G *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 G 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 E (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 G 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 G *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~~ *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~~ *53(1)* of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to *PERG 13.3*. The *guidance* in *PERG 8.24 to PERG 8.29* does not apply to the *regulated activity* of *advising on P2P agreements*.

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

...

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

...

Guidance on the requirement to be paid through adviser charges

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:

A

- (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:

...

- (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 *COBS* 6.1B.9R, *COBS* 6.1B.10G and *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 *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 53(1) of the *Regulated Activities Order*, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to *PERG* 13.3. The guidance in PERG 8.24 to PERG 8.29 does not apply to the regulated activity of advising on P2P agreements.

6.1B.1B G In this section, COBS 6.1B.5AR and COBS 6.1B.7AR are not relevant in circumstances where a retail client receives a personal recommendation in relation to a P2P agreement.

...

6.1B.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)*).

...

## 10A Frequently asked questions

### Annex

#### 1G

...

How does the customer function relate to the training and competence requirements?			
Activity	Products/sectors in TC Appendix 1	FCA controlled function	SUP
Advising only,	2 - 9 <u>9A</u>	<i>customer function</i> (CF 30)	10A.10.4R
...			

## 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~~ 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);

- (ia) *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~~ 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)

(1) Section (s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:	Entire sections
	...	
	(ia)	<u>a firm with permission only to advise on P2P agreements (unless that activity is carried on exclusively with or for</u>

		<i>professional clients</i> );	
	...		
	(k)	a <i>firm</i> falling within a combination of (i), <u>(ia)</u> , (j) and (ja).	

...

## 16.12 Integrated Regulatory Reporting

...

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

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date
...				
RAG 3	<p>...</p> <ul style="list-style-type: none"> <li>advising on investments <u>(except P2P agreements)</u> (excluding retail investment activities)</li> <li><u>advising on P2P agreements (when carried on exclusively with or for professional clients)</u></li> </ul> <p>...</p>	...	...	...
...				

RAG 7	<ul style="list-style-type: none"> <li>• retail investment activities</li> <li>• <u>advising on P2P agreements (except when carried on exclusively with or for professional clients)</u></li> <li>• advising on pensions transfers &amp; opt-outs</li> <li>• arranging (bringing about deals) in retail investments</li> </ul>	...	...	...
...				

...

16.12.22A R ...

Description of data item	Firms' prudential category and applicable data item (note 1)
...	
Note 26	This item only applies to firms that provide advice on retail investment products and P2P agreements.
...	

...

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~~ *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 G Activities set out in Annex 1 of the CRD

Table 1: CRD activities		Part II RAO Activities	Part III RAO Investments
...			
8.	Participation in share issues and the provision of services relating to such issues	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 89
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, <del>53</del> <u>53(1)</u> , 64	Article 76-80, 83-85, 89



...			
11.	Portfolio management and advice	Article 14, 21, 25, 37, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89
...			
...			

App  
3.9.5

G Services set out in Annex I to MiFID

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

6.	Services related to underwriting	Article 25, <del>53</del> <u>53(1)</u> , 64	Article 76-81, 83-85, 89
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.	Article 14, 21, 25, 25D, 37, <del>53</del> <u>53(1)</u> , 64	Article 83 and 84
...			

App  
3.9.5A

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

<b>Table 2ZA: AIFMD activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
...			
3.	Investment advice (Note 2).	Articles <del>53</del> <u>53(1)</u> , 64	Articles 76 to 81, 83 to 85, 89
...			
...			

App  
3.9.6

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

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

...

App  
3.9.7

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

<b>Table 2B: Insurance Mediation Directive activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
1.	Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance	Articles 25, <del>53</del> <u>53(1)</u> and 64	Articles 75, 89 (see Note 1)
2.	Concluding contracts of insurance	Articles 21, 25, <del>53</del> <u>53(1)</u> and 64	Articles 75, 89
...			

...

## 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 ~~1~~ 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 ~~1~~ 6 April 2016

This table belongs to *DISP 2.5.1 R*

The activities which were covered by the *Compulsory Jurisdiction* (at ~~1~~ 6 April 2016) were:

...

The activities which (at ~~1~~ 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~~ 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 G 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 G 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~~ Subject to the condition in (4A), 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*

*products* in any other manner provided the *person* has the appropriate *permission*.

...

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.

...

- (1) ... 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*:

...

- (d) *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 2G Regulated activities and the permission regime**

...

Table 1: Regulated Activities (excluding PRA-only activities) [see note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the

	<b>regulated activity (in the corresponding section of column one) may be carried on</b>
...	
<b>Designated investment business [see notes 1A, 1B and 1C to Table 1]</b>	
<p>...</p> <p>(j) <i>advising on investments (except P2P agreements)</i> (article 53 53(1) [see note 1B to Table 1] [also see Section of Table 1 headed 'Regulated mortgage activity']</p> <p>...</p> <p>(ja) <i>advising on conversion or transfer of pension benefits</i> (article 53E) is contained in the permission of <i>advising on pension transfers and pension opt-outs</i> [see note 4 to Table 1] <i>advising on P2P agreements</i> (article 53(2)) [see note 9 to Table 1]</p> <p>(jb) <i>advising on conversion or transfer of pension benefits</i> (article 53E) is contained in the permission of <i>advising on pension transfers and pension opt-outs</i> [see note 4 to Table 1]</p> <p>...</p>	
<b>Insurance mediation activity [see note 5A to Table 1]</b>	
<p>...</p> <p>(pf) <i>advising on investments (except P2P agreements)</i> (article 53 53(1))</p> <p>...</p>	

Notes to Table 1
...
<p>Note 1A:</p> <p><i>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.</i></p>
...
<p>Note 4:</p> <p>For the purposes of the <i>permission</i> regime, the activity in (j)(ii) of <i>advising on pension transfers and pension opt-outs</i> includes the following two <i>regulated activities</i>: (1) <i>advising on investments (except P2P agreements)</i> where it is carried on in respect of the following <i>specified investments</i>: ...</p>
...
<p>Note 9:</p> <p>...</p> <p>For the purposes of <i>operating an electronic system in relation to lending</i>, rights under a <i>credit agreement</i> include rights under an article 36H agreement within the meaning of article 36H (4) of the <i>Regulated Activities Order</i>.</p> <p><u>For the purposes of <i>advising on P2P agreements</i>, rights under a <i>credit agreement</i> include rights under a relevant article 36H agreement within the meaning of article 53(4) of the <i>Regulated Activities Order</i>.</u></p>
...

...

**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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 53(1). In particular:

(1) advice would come within article 53 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 53(1).

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

Recommendation	Regulated under article 53 53(1) or not?
...	

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

5.8.6 G For the purposes of article 53 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 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 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 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?

Type of activity	Is it a regulated activity?	Rationale
MARKETING AND EFFECTING INTRODUCTIONS		
...		

<p>Recommending a broker/<i>insurance undertaking</i> and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)</p>	<p>Yes, but article 72C may be available.</p>	<p>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 <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). Generally, this will not amount to advice under article <del>53</del> <u>53(1)</u> unless there is an implied recommendation of a particular <i>policy</i> (see <i>PERG</i> 5.8.4G), in which case article 72C would not be available.</p>
<p>...</p>		
<p>PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE</p>		
<p>...</p>		
<p>Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several <i>policies</i> which suit the answers given)</p>	<p>Yes. Subject to article 72C exclusion where available.</p>	<p>This will constitute <i>arranging</i> although article 72C may be of application (see <i>PERG</i> 5.6.5G to <i>PERG</i> 5.6.9G). If there is no express or implied recommendation of a particular <i>policy</i>, this activity will not amount to advice under article <del>53</del> <u>53(1)</u> (see <i>PERG</i> 5.8.15G to <i>PERG</i> 5.8.19G).</p>
<p>Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies</p>	<p>Possibly. Article 72C available.</p>	<p>This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments</i> (<u>except</u></p>

		<i>P2P agreements</i> ) (see <i>PERG 5.8.8G</i> (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments (except P2P agreements)</i> , article 72C may be of application (see <i>PERG 5.6.5G</i> to <i>PERG 5.6.9G</i> ), and where information is provided by a professional in the course of a profession, article 67 may apply (see <i>PERG 5.11.9G</i> to <i>PERG 5.11.12G</i> ).
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article <del>53</del> <u>53(1)</u> (see <i>PERG 5.8.4G</i> to <i>PERG 5.8.5G</i> ).
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article <del>53</del> <u>53(1)</u> (see <i>PERG 5.8.4G</i> to <i>PERG 5.8.5G</i> ).
...		

...

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

...

7.3.1-A G Under article 53(2) of the *Regulated Activities Order* (Advising on investments), advising a *person* is a specified kind of activity if:

- (1) 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
- (2) 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.

...

Carrying on the regulated activity by way of business

...

- 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 ~~53~~ 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 ~~53~~ 53(1) of the *Regulated Activities Order*, a *security* or *relevant investment* is any one of the following:

...

- 8.25.2 G Article ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 53(1) does not apply where the advice is given to *persons* who receive it as:  
...
- 8.27.3 G Article ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 ~~53~~ 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 53(1) of the *Regulated Activities Order*. This table belongs to *PERG* 8.29.1G to *PERG* 8.29.6G.

Recommendation	Regulated under article 53 53(1) or not?
...	

### 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 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 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 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 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 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 ~~53~~ 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 ~~53~~ 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**  
**Annex**  
**3G**      **Table summarising regulatory position of pension scheme trustees and service providers**

Potential regulated activity	When will such regulated activities be carried on?
...	
<i>Advising on investments (except P2P agreements)</i> (article <del>53</del> <u>53(1)</u> of the <i>Regulated Activities Order</i> )	...

**13**      **Guidance on the scope of MiFID and CRD IV**

...

**13**  
**Annex**  
**2G**      **Table 1 - MiFID Investment services and activities and the Part 4A permission regime**

MiFID Investment Services and Activities	Part 4A permission	Comments
...		

A5- Investment advice	Advising on investments ( <u>except P2P agreements</u> ) (article <del>53</del> <u>53(1)</u> RAO)	...
...		