

**ADVISING ON INVESTMENTS (ARTICLE 53(1) OF THE REGULATED
ACTIVITIES ORDER) (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137R (Financial promotion rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 213 (The compensation scheme);
 - (f) section 214 (General);
 - (g) section 226 (Compulsory Jurisdiction rules);
 - (h) section 247 (Trust scheme rules);
 - (i) section 261I (Contractual scheme rules); and
 - (j) paragraph 13(4) of Schedule 17 (FCA’s rules);
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other rule and guidance-making powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 3 January 2018, immediately after the Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017.

Amendments to the Handbook

- D. 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).

| (1) | (2) |
|---|---------|
| Glossary of definitions | Annex A |
| Training and Competence (TC) | Annex B |
| Conduct of Business sourcebook (COBS) | Annex C |
| Insurance: Conduct of Business sourcebook (ICOBS) | Annex D |
| Supervision manual (SUP) | Annex E |
| Dispute Resolution: Complaints (DISP) | Annex F |

| (1) | (2) |
|---|---------|
| Compensation (COMP) | Annex G |
| Collective Investment Schemes (COLL) | Annex H |
| The Perimeter Guidance manual (PERG) | Annex I |
| The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) | Annex J |

Notes

- E. In this instrument, the notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Advising on Investments (Article 53(1) of the Regulated Activities Order) (Consequential Amendments) Instrument 2017.

By order of the Board
7 December 2017

Annex A

Amendments to the Glossary of definitions

In this annex, underlining indicates new text and striking through indicates deleted text, unless indicated otherwise.

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

business of advising the business of a *firm* in providing:

- (1) *advice on P2P agreements*;
- (2) in relation to *advising on investments (except P2P agreements)*:
 - (a) *personal recommendations*;
 - (b) *non-personal recommendation advice*.

non-personal recommendation advice

- (1) advice given to a *person* which is the *regulated activity* specified in article 53(1) of the *Regulated Activities Order* and which is not a *personal recommendation*.
- (2) for the purposes of (1), article 53(1A) of the *Regulated Activities Order* is to be disregarded.

Amend the following definitions as shown.

advising on investments

- (1) (except in *SUP 10A (Approved Persons)*, ~~and *APER* and *CONRED 2*~~) the *regulated activities*, specified in articles 53(1) to (1D) and article 53(2) of the *Regulated Activities Order (Advising on investments)*, which are:

...
- (2) (in *SUP 10A (Approved Persons)* and *APER*) the *regulated activities* specified in articles 53(1) to (1D) and article 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*.
- (3) (in *CONRED 2*) has the meaning in force on 1 April 2013.

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, exchanging, redeeming, holding or underwriting a particular *investment* which is a *security, structured deposit* or *relevant investment* (that is, any *designated investment* (other than a *P2P agreement*), *funeral plan contract, pure protection contract, general insurance contract, right to or interests in a funeral plan contract* or *structured deposit*); or
 - (b) exercising or not exercising any right conferred by such an *investment* to buy, sell, subscribe for or underwrite, exchange or redeem such an *investment*;

but excluding the provision of *non-personal recommendation advice* where the *person* providing that advice is appropriately authorised (see article 53(1A) to (1D) of the *Regulated Activities Order*).

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(1) to (1D));
- (b) ...

designated investment business

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

...

- (m) *advising on investments (except P2P agreements)* (article 53(1) to (1D)), but only in relation to *designated investments* (other

than *P2P agreements*); for the purposes of the *permission* regime, this includes:

...

...

*insurance
mediation activity*

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

...

(e) *advising on investments (except P2P agreements)* (article 53(1) to (1D));

...

*personal
recommendation*

(1) (except in CONRED and in relation to advising on investments (except P2P agreements)):

a recommendation that is ~~*advice on investments*~~ *advice on P2P agreements*, *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 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 9 of the MiFID Org Regulation]~~

...

(3) (in relation to advising on investments (except P2P agreements)) a recommendation:

(a) made to a person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor;

(b) which constitutes a recommendation to them to do any of the following (whether as principal or agent):

- (i) buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment which is a security, a structured deposit or a relevant investment (that is, any designated investment (other than a P2P agreement), funeral plan contract, pure protection contract, general insurance contract, right to or interests in a funeral plan contract or structured deposit); or
 - (ii) exercise or not exercise any right conferred by such a relevant investment to buy, sell, subscribe for, exchange or redeem such an investment;
- (c) that is:
- (i) presented as suitable for the person to whom it is made; or
 - (ii) based on a consideration of the circumstances of that person; and
- (d) that is not issued exclusively to the public.

[Note: article 9 of the MiFID Org Regulation and article 53(1C) and 53(1D) of the Regulated Activities Order]

Annex B

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~~ personal recommendations on retail investment products or advising on *P2P* agreements, see *TC* 2.1.5R.

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

- (1) gives ~~advice~~ personal recommendations on retail investment products to retail clients, 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~~ personal recommendations on retail investment products to retail clients.

...

Knowledge and competence requirements when 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~~ personal recommendations on retail investment products to retail clients.

...

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:
- ...
- (2) (in respect of *advising on P2P agreements* (activity 9A in *TC* Appendix 1)) an appropriate qualification for giving ~~advic~~
personal recommendations on retail investment products to retail clients.
- 2.1.7 R A *firm* must ensure that an *employee* does not carry on any of the following activities without first attaining each module of an appropriate qualification:
- ...
- (1A) ~~advising~~ giving personal recommendations on and dealing in securities which are not *stakeholder pension schemes, personal pension schemes* or *broker funds*;
- (1B) ~~advising~~ giving personal recommendations on and dealing in *derivatives*;
- ...
- ...

Exemption from appropriate qualification requirements

- 2.1.9 R ...
- (2) The conditions are that a *firm* should be satisfied that an *employee*:
- (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
- (b) has not previously been required to comply fully with the relevant qualification requirements in *TC* 2.1.1R; and
- (c) has passed the relevant regulatory module of an appropriate qualification;
- but (b) and (c) do not apply to an *employee* who is benefiting from the "30-day rule" exemption in *SUP* 10A.10.8R or the "14-day rule" exemption in *SYSC* 5.2.28AR, unless the *employee* benefits from that rule because he is ~~advising~~ giving personal

recommendations to 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 giving personal recommendations on retail investment products, if that advice is given to retail clients; or~~

...

...

App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

App
1.1.1R

| Activity | Products/Sectors | Is there an appropriate qualification requirement? |
|---|---|--|
| <i>Designated investment business carried on for a retail client</i> | | |
| ... | | |
| <p><u>Advising or giving personal recommendations (as relevant)</u></p> | <p>2. Securities <u>Giving personal recommendations on securities</u> which are not <i>stakeholder pension schemes, personal pension schemes or broker funds</i></p> | <p>Yes</p> |
| | <p>3. Derivatives <u>Giving personal recommendations on derivatives</u></p> | <p>Yes</p> |
| | <p>4. Retail investment products <u>Giving personal recommendations on retail investment products</u> which are not <i>broker funds</i></p> | <p>Yes</p> |

| | | | |
|--|-----|---|-----|
| | 5. | <u>Giving personal recommendations on Friendly Society life policies</u> where the <i>employee</i> is not reasonably expected to receive a remuneration of greater than £1000 a year in respect of such sales | No |
| | 6. | <u>Giving personal recommendations on Friendly Society tax-exempt policies</u> (other than <i>Holloway sickness policies</i> where the <i>Holloway policy special application conditions</i> are met) | Yes |
| | 7. | Long-term care insurance contracts <u>Giving personal recommendations on long-term care insurance contracts</u> | Yes |
| | 8. | Investments <u>Giving personal recommendations on investments</u> in the course of <i>corporate finance business</i> | Yes |
| | 9. | <i>Advising on syndicate participation at Lloyd's</i> | Yes |
| | 9A | <i>Advising on P2P agreements</i> | Yes |
| ... | | | |
| Advising <u>Giving personal recommendations and dealing</u> | 12. | Securities <u>Giving personal recommendations on and dealing in securities</u> which are | Yes |

| | | | |
|---|---|---|-----|
| | | not stakeholder pension schemes, personal pension schemes or broker funds | |
| | 13. | <u>Derivatives Giving personal recommendations on and dealing in derivatives</u> | Yes |
| ... | | | |
| Non-investment <i>insurance business</i> carried on for a <i>consumer</i> | | | |
| <u>Advising Giving personal recommendations</u> | 24. | Non-investment insurance contracts <u>Giving personal recommendations on non-investment insurance contracts</u> | No |
| ... | | | |
| Notes: | | | |
| 1. | In the Appendix the heading and types of business specified in the headings are to be read in conjunction with the paragraphs appearing beneath them. | | |
| 2. | Thus, for example, paragraph 24, consistent with the heading above it, refers only to advice on <u>personal recommendations given in relation to non-investment insurance contracts given to a consumer.</u> | | |
| 2A. | ... | | |
| ... | | | |

...

App 4.1 Appropriate Qualification tablesApp
4.1.1E

Part 1: Activities

TC App 4.1 is relevant to TC 2.1.10E (selecting an appropriate qualification).

Part 1: Activities

Note: ...

Part 1A: The Retail Distribution Review activities (RDR activities)

| Activity Number | RDR Activity |
|-----------------|---|
| 2 | Advising <u>Giving personal recommendations</u> on securities which are not stakeholder pension schemes, personal pension schemes or broker funds |
| 3 | Advising <u>Giving personal recommendations</u> on derivatives |
| 4 and 6 | (4) Advising <u>Giving personal recommendations</u> on retail investment products which are not broker funds and (6) advising <u>giving personal recommendations</u> on friendly society tax-exempt policies (other than Holloway sickness policies <u>Holloway sickness policies</u> where the Holloway policy special application conditions <u>Holloway policy special application conditions</u> are met) |
| 12 | Advising <u>Giving personal recommendations</u> on and dealing in securities which are not stakeholder pension schemes, personal pension schemes or broker funds |
| 13 | Advising <u>Giving personal recommendations</u> on and dealing in derivatives |

Extent to which the qualification meets the qualification requirement in relation to RDR activities

4.1.1AE ...

Part 1B: The non-Retail Distribution Review activities (non-RDR activities)

| Activity Number | Non-RDR Activity (non-overseeing activity) |
|-----------------|---|
| 7 | Advising <u>Giving personal recommendations</u> on long-term care insurance contracts |
| 8 | Advising <u>Giving personal recommendations</u> on investments in the course of corporate finance business |
| ... | |

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 General application

...

1 Application (see COBS 1.1.2R)

Annex

1

Part 1: What?

Modifications to the general application of COBS according to activities

| | | | |
|----------|---|---|---|
| ... | | | |
| 6 | Use of third party processors in life insurance mediation activities | | |
| 6.1 | R | If a <i>firm</i> (or its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>) outsources <i>insurance mediation activities</i> to a <i>third party processor</i> : | |
| | | ... | |
| | | (2) | any <i>COBS rule</i> requiring the <i>third party processor's</i> identity to be disclosed to <i>clients</i> must be applied as a requirement to disclose the <i>firm's</i> identity; |
| | | unless the <i>third party processor</i> is <i>advising on investments</i> <u><i>giving personal recommendations in relation to advising on investments (except P2P agreements)</i></u> . | |
| ... | | | |

...

2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client's best interests rule

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).

(2) This *rule* applies ~~in relation to *designated investment business* carried on:~~

- (a) in relation to *designated investment business* carried on for a *retail client*; and
- (b) in relation to *MiFID, equivalent third country or optional exemption business*, for any ~~other~~ *client*.

...

2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business

...

2.3.11 G ...

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

...

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business

...

Inducements relating to the provision of independent advice, restricted advice and portfolio management services to retail clients in the United Kingdom

2.3A.1 R (1) ... 5

(2) The *firm* must not accept any fees, commission, monetary or non-monetary benefits which are paid or provided by:

- (a) any third party; or
- (b) a *person* acting on behalf of a third party,

in relation to the provision of the relevant service to the *client*.

(2A) Where the *firm* provides *independent advice* or *restricted advice*, the rule in (2) applies in connection with:

- (a) the *firm's business of advising*; or
- (b) any other related service, where 'related service' has the same meaning as in COBS 6.1A.6R.

...

...

4. Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.1 R This chapter applies to a *firm*:

(1) communicating with a *client* in relation to its *designated investment business* (other than *MiFID, equivalent third country or optional exemption business*);

(1A) communicating with a *client* in relation to its *MiFID, equivalent third country or optional exemption business*;

...

(3) when a *MiFID investment firm* or a *credit institution* is communicating in connection with selling, or advising *clients* in relation to, *structured deposits* as specified by COBS 1.1.1AAR.

...

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

4.2.1 R (1) A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.

(2) This *rule* applies in relation to:

(a) a communication by the *firm* to a *customer* in relation to *designated investment business* which is not *MiFID, equivalent third country or optional exemption business*, other than a *third party prospectus*;

(aa) a communication to an *eligible counterparty* that is in relation to *MiFID or equivalent third country business*, other than a *third party prospectus*;

(ab) a communication by the *firm* to a *customer* in relation to *MiFID, equivalent third country or optional exemption business*, other than a *third party prospectus*;

...

...

...

6 Information about the firm, its services and remuneration

...

6.1A Adviser charging and remuneration

Application – Who? What?

...

6.1A.1 G *Guidance on the regulated activity of ~~advising in relation to a new or existing investment~~ advising on investments (except P2P agreements) under article 53(1) of the *Regulated Activities Order* can be found in PERG 8.24 to PERG 8.29. Although the ~~guidance in PERG 8.29.7G relates to advising on investments (except P2P agreements) under article 53(1) of the Regulated Activities Order~~, exactly the same answers apply to a *personal recommendation* because the examples given relate to the relationship between a *firm* and a particular *client* and advice given to that specific *client*. A *firm* wishing to know when it will be giving advice but not making a *personal recommendation* should refer to PERG 13.3. The ~~guidance~~ guidance in PERG 8.24 to PERG 8.29 does not apply to the *regulated activity of advising on 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*, *COBS 6.1A.4BR* and *COBS 6.1A.5AR(1)*, a *firm* must:

- (1) ...; and
- (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in ~~relation to the *personal recommendation*~~ connection with the *firm's business of advising* or any other related ~~service~~ services, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and
- (3) ...

...

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

...

Requirement not to offer commissions

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

(2) ...

...

Requirements on firms facilitating the payment of adviser charges

...

6.1B.1 G COBS 6.1B.9R(3) does not prevent a *firm*, if this is in the *retail client's* best interests, from entering into an agreement with another *firm* which is providing a *personal recommendation* to a *retail client*, or with a *retail client* of such a *firm*, to provide it with *credit* separately in accordance with the *rules and guidance* on providing credit and other benefits to *firms* that ~~advise~~ provide *personal recommendations* on *retail investment products* or *P2P agreements* (see COBS 2.3.12E, COBS 2.3.12AG, COBS 2.3A.27E and COBS 2.3A.28G).

...

16 Reporting information to clients (non-MiFID provisions)

...

16.6 Communications to clients – life insurance, long term care insurance and income withdrawals

...

Income withdrawals

16.6.8 R At intervals no longer than 12 *months* from the date of an election by a *retail client* to make *income withdrawals* or one-off, ad-hoc or regular *uncrystallised funds pension lump sum payments payments*, the relevant *operator* of a *personal pension scheme* or *stakeholder pension scheme* must:

- (1) ...; and
- (2) inform the *retail client* how to obtain a *personal recommendation relating to advice on investments (except P2P agreements)* in respect of ~~his income withdrawals~~ *the client's income withdrawals*, and that it would be in ~~his~~ *the client's* best interests to do so.

...

22 Restrictions on the distribution of certain regulatory capital instruments

...

22.2 Restrictions on the retail distribution of mutual society shares

...

Further requirements for non-advised, non-MiFID sales

22.2.3 R (1) The requirements in (2) and (3) must be met if:

- (a) ...
- (b) the *retail client* is not otherwise receiving ~~advice~~ *a personal recommendation* on the *mutual society share* from the *firm* or another *person*.

...

...

Annex D**Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)**

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

4 Information about the firm, its services and remuneration**4.1 General requirements for insurance intermediaries**

...

Scope of service

4.1.6 R ...

- (2) A *firm* that does not ~~advise~~ advise on the basis of a fair analysis of the market must inform its *customer* that ~~he has~~ they have the right to request the name of each *insurance undertaking* with which the *firm* may and does conduct business. A *firm* must comply with such a request.

[**Note:** article 12(1) of the *Insurance Mediation Directive*]

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Annex E

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

...

10A Frequently asked questions

**Annex
1G**

...

31 ...

...

| 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 <u>or giving</u> <u>personal recommendations</u> (as relevant) | 2-9A | <i>customer function</i> (CF 30) | 10A.10.4 R |
| Undertaking an activity | 10-11 | | |
| Advising <u>Giving</u> <u>personal recommendations</u> and dealing | 12-13 | | |
| ... | | | |

...

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 sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

...

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

...

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

The permission that the firm needs

- 12.4.1A G The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the *Act* is that the *regulated activities* covered by an *appointed representative's* appointment need to:

- (1) fall within the scope of the *principal's permission*; or
- (2) be excluded from being *regulated activities* when carried on by the *principal*, for example because:
 - (a) they fall within article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party); ~~or~~
 - (b) ~~because~~ they constitute *CBTL business* and the *principal* is a *CBTL firm*; or
 - (c) the *principal* is appropriately authorised (see article 53(1A) of the *Regulated Activities Order*).

...

- 12.4.1C G Where the *principal* is appropriately authorised for the purposes of article 53(1A) of the *Regulated Activities Order* (and so does not need *permission* to provide *non-personal recommendation advice*), the terms of the *appointed representative's* appointment will still need to cover their

business in carrying on non-personal recommendation advice. This is because an appointed representative providing non-personal recommendation advice will only be exempt from the general prohibition if the principal has accepted responsibility in writing for the appointed representative in carrying on such business. An appointed representative is not exempt from the general prohibition simply because the principal is appropriately authorised for the purposes of article 53(1A) of the Regulated Activities Order.

...

App 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

...

Services set out in Annex I to MiFID

App
3.9.5G

| Table 2: <i>MiFID investment services and activities</i> | | Part II RAO <u>Investments Activities</u> | Part III RAO Investments |
|---|---|--|----------------------------------|
| ... | | | |
| | Ancillary services | | |
| ... | | | |
| 5. | Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments | Article 53(1), 64 (<u>see Note 4</u>) | Article 76-81, 82B, 83-85, 89 |
| ... | | | |
| ... | | | |
| <p><u>Note 4: A firm which provides investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments does not need permission under article 53(1) of the Regulated Activities Order if it is appropriately authorised (see article 53(1) to (1D) of the Regulated Activities Order).</u></p> | | | |

...

Annex F

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

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

(8) giving non-personal recommendation advice;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

...

Annex G

Amendments to the Compensation sourcebook (COMP)

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

5 Protected claims

...

5.5 Protected investment business

...

Advising without a personal recommendation

5.5.4 **R** The FSCS must treat a *claim* relating to advice in relation to a *designated investment* that falls outside article 53(1) of the *Regulated Activities Order* by virtue of article 53(1A) of that Order as being ‘in connection with *protected investment business*’ for the purposes of COMP 5.2.1R(3) where the *relevant person* giving the advice, at the time the act or omission giving rise to the *claim* took place:

- (1) had, or required, *permission* to carry on; or
- (2) (in the case of an *appointed representative*) was exempt from the *general prohibition* in respect of,

an activity that was *designated investment business*.

...

5.7 Protected non-investment insurance mediation

...

Advising without a personal recommendation

5.7.5 **R** The FSCS must treat a *claim* relating to advice on a *relevant general insurance contract* or a *pure protection contract* (which is not a *long-term insurance contract* or a *reinsurance contract*) that falls outside article 53(1) of the *Regulated Activities Order* by virtue of article 53(1A) of that Order as being ‘in connection with *protected non-investment insurance business*’ for the purposes of COMP 5.2.1R(5) where the *relevant person* giving the advice, at the time the act or omission giving rise to the *claim* took place:

- (1) had, or required, *permission* to carry on; or
- (2) (in the case of an *appointed representative*) was exempt from the *general prohibition* in respect of,

an activity that was *non-investment insurance business*.

Annex H

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*~~ investment advice concerning *financial instruments* where:

(a) the *firm* has *permission* for the activity in (4); and

(b) ~~each of the instruments are *financial instruments*; and~~

...

Annex I

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.7 Activities: a broad outline

...

Advising on investments

[Note: The guidance in this section relating to the regulated activity of advising on investments (except P2P agreements) does not take into account the amendments to article 53(1) of the Regulated Activities Order made by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (SI 2017/500) and paragraph 2 of Schedule 3 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701) which came into force on 3 January 2018.]

2.7.14C G ...

...

7 Periodical publications, news services and broadcasts: applications for certification

...

7.3 Does the activity require authorisation?

[Note: Insofar as the guidance in this section relates to the regulated activity of advising on investments (except P2P agreements), it does not take into account the amendments made to article 53(1) of the Regulated Activities Order made by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (SI 2017/500) and paragraph 2 of Schedule 3 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701) which came into force on 3 January 2018.]

7.3.1 G ...

...

7.4 Does the article 54 exclusion apply?

[Note: Insofar as the *guidance* in this section relates to the *regulated activity of advising on investments (except P2P agreements)*, it does not take into account the amendments to article 53(1) of the *Regulated Activities Order* made by the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (SI 2017/500)* and paragraph 2 of Schedule 3 to the *Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701)* which came into force on 3 January 2018.]

7.4.1 G ...

...

8 Financial promotion and related activities

...

8.24 Advising on investments

[Note: The *guidance* in *PERG 8.24* to *PERG 8.29* on the *regulated activity of advising on investments (except P2P agreements)* does not take into account the amendments to article 53(1) of the *Regulated Activities Order* made by the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (SI 2017/500)* and paragraph 2 of Schedule 3 to the *Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701)* which came into force on 3 January 2018.]

8.24.1 G ...

Annex J

Amendments to the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)

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

| | | | | |
|---------------|------|--|--|--|
| ... | | | | |
| Notes: | | | | |
| | ... | | | |
| | (17) | <p>For regulated activities other than designated investment business, <u>MiFID, equivalent third country or optional exemption business</u>, a firm must take reasonable steps to communicate information in a way that is clear, fair and not misleading (e.g. ICOB 2.2.3R and MCOB 3A.2.1R(1)). In doing so, it may be reasonable for a distributor to rely on information produced by a provider unless the distributor is, or ought to be, aware of grounds to question its compliance. For designated investment business, <u>MiFID, equivalent third country or optional exemption business</u>, a firm must ensure that any communication to a client is fair, clear and not misleading regardless of whether it has been produced by a provider (COBS 4.2.1R). The standard for designated investment business is an absolute standard, which does not permit reliance unless an exemption applies. (Paragraph 1.23(1))</p> | | |