

# **Policy Statement on Financial Advice Market Review Implementation Part II and Consultation on Retiring FG12/15 and FG14/1**

**Policy Statement**

PS17/25

December 2017



## This relates to

In this Policy Statement (PS) we report on the main issues arising from Consultation Paper 17/28 *Financial Advice Market Review Implementation Part II* and publish the final rules.

We are also using this PS to outline our proposals and rationale for retiring two pieces of non-Handbook Guidance which, we expect for most firms, will be superseded by new requirements coming into force on 3 January 2018, including under the Markets in Financial Instruments Directive (Directive 2014/65/EU) (MiFID II). We are seeking responses to our proposals by 19 January 2018.

### Please send any comments or queries to:

Advice and Distribution Team  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

### Telephone:

020 70661410

### Email:

cp17-28@fca.org.uk

### How to navigate this document onscreen



returns you to the contents list



takes you to helpful abbreviations

## Contents

<b>1</b>	Overview	3
<b>2</b>	Handbook changes arising from amendments to the Regulated Activities Order	7
<b>3</b>	Advice Unit Guidance	14
<b>4</b>	Insistent clients	19
<b>5</b>	Consultation: retiring guidance which will be superseded by MiFID II	22
<b>6</b>	Feedback on the cost benefit analysis	24
<b>Annex 1</b>	List of non-confidential respondents	26
<b>Annex 2</b>	Abbreviations in this document	27
<b>Appendix 1</b>	Made rules (legal instrument)	
<b>Appendix 2</b>	Made rules (legal instrument)	

# 1 Overview

## Introduction

---

- 1.1** In August 2017, we published proposals<sup>1</sup> developed to implement recommendations made by the Financial Advice Market Review (FAMR), specifically:
- Handbook changes arising from recent amendments to the definition of advice on investments in the Regulated Activities Order (the RAO amendment)
  - Guidance arising from experiences of the FCA's Advice Unit
  - Guidance on personal recommendations
- 1.2** We also proposed new Guidance on insistent clients designed to address concerns raised by firms.
- 1.3** In this Policy Statement (PS), we summarise the feedback we received in relation to the Handbook changes, the Guidance developed by the Advice Unit and the Guidance on insistent clients, and we indicate where we have adjusted our approach to take respondents' views into account. We are also publishing final Handbook rules and Guidance and non-Handbook guidance which will take effect from 3 January 2018.
- 1.4** Many of the comments received on the Advice Unit's Guidance were accompanied by queries relating to the future work of the Advice Unit. There is a short update on this in Chapter 3.
- 1.5** We will publish our new Guidance on personal recommendations in a separate PS early in the new year. Stakeholders responded positively to the draft Perimeter Guidance (PERG) published on personal recommendations and have asked for more help on further areas where they feel there is still uncertainty. We want to ensure that the new Guidance assists firms in developing services that help consumers make their own investment decisions and we have decided to consider further how we can best address stakeholders' concerns.

## Additional consultation

---

- 1.6** We are also using this PS to consult on retiring two pieces of non-Handbook Guidance on inducements and conflicts of interest (FG14/1), and on independent and restricted advice (FG12/15). We expect for most firms, this guidance will be superseded by new requirements coming into force on 3 January 2018, including those implementing the Markets in Financial Instruments Directive (Directive 2014/65/EU) (MiFID II). We are asking for any views on our proposed approach by 19 January 2018.

---

<sup>1</sup> [www.fca.org.uk/publication/consultation/cp17-28.pdf](http://www.fca.org.uk/publication/consultation/cp17-28.pdf)

## Who does this affect?

---

**1.7** Our PS will be relevant to:

- financial advisers
- consumers and organisations representing consumers
- providers of retail investment products (RIPs), particularly those with direct-to-consumer distribution channels
- trade and professional bodies that represent financial advisers, product providers, and other firms involved in the distribution of RIPs
- compliance consultants and other firms that assist stakeholders
- discretionary investment managers
- qualification providers and Accredited Bodies
- any authorised firm which provides information regarding RIPs to consumers
- authorised or unauthorised firms which are currently providing or developing automated advice services

## Is this of interest to consumers?

---

**1.8** Most of the technical detail of these changes is unlikely to be of direct interest to consumers. However, our Handbook changes affecting firms that benefit from the RAO amendment are designed to ensure a clear and consistent approach to consumer protection and redress. We hope that the new guidance outlined in this paper will help firms expand the range of services that they provide to consumers.

**1.9** The Guidance on insistent clients in Chapter 4 might be of interest to consumers, particularly those who are required to take regulated advice in respect of the transfer of a defined benefits pension.

## Context

---

**1.10** FAMR was launched jointly by the FCA and the Treasury in August 2015 to identify ways to make the UK's financial advice market work better for consumers.

- 1.11** The final FAMR report<sup>2</sup>, published in March 2016, set out 28 recommendations intended to tackle the barriers to consumers accessing advice in markets for retail investments, protection, and retirement income planning.
- 1.12** The FAMR recommendations included the following measures –
- The Treasury should consult on amending the definition of regulated advice in the RAO so that it only includes advice involving a personal recommendation. This was designed to reduce uncertainty for firms providing 'guidance'.<sup>3</sup> The Treasury has since announced that it will amend the RAO so that, from January 2018, most authorised firms will not be advising on investments except where they provide a personal recommendation.<sup>4</sup> This PS sets out changes to our rules necessary to reflect this change.
  - FCA should consult on new Guidance on what constitutes a personal recommendation, to give greater confidence to firms offering services that help consumers when making their own investment decisions. As noted above, we plan to publish this material early in the new year.
  - FCA should set up a dedicated team to help firms developing mass-market automated advice models bring them to market more quickly. In response, we set up the Advice Unit in May 2016, providing regulatory feedback and support to firms developing automated advice models. We also committed to publish tools based on the experience of the Advice Unit. As part of this commitment, we have included new Guidance based on feedback given to firms by the Advice Unit.

## Summary of feedback and our response

---

- 1.13** In general, respondents to CP17/28 were supportive of our proposals, and as such we will be proceeding largely on the basis on which we consulted with the exception of the PERG material on personal recommendations, which we intend to consider further. We have set out further detail on each individual issue in the chapters that follow.

## Equality and diversity

---

- 1.14** We have considered the equality and diversity issues that may arise from the proposals in this PS. We do not believe that the proposals in this PS adversely impact groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

---

<sup>2</sup> [www.fca.org.uk/publication/corporate/famr-final-report.pdf](http://www.fca.org.uk/publication/corporate/famr-final-report.pdf)

<sup>3</sup> Following on from the terms we used in CP17/28, in this policy statement we use 'guidance' (with a lower case 'g') to mean any regulated advice within Article 53(1) of the Regulated Activities Order before its amendment which does not amount to a personal recommendation when it is carried out by a firm which benefits from the RAO amendment.

<sup>4</sup> The perimeter remains the same for firms that are not authorised and the change does not extend the range of activities that they can carry out.



## What do you need to do next?

---

- 1.15** The amendment to the RAO takes effect from 3 January 2018. Affected firms should consider how the Handbook changes outlined in Chapter 2 impact them.
- 1.16** As noted above, we will publish new Guidance on personal recommendations in the new year. In the meantime, authorised firms that wish to make use of the RAO amendment can find an explanation of the amendment to the Article 53(1) activity in a technical note that we published in February 2017.<sup>5</sup>
- 1.17** Firms or individuals who have previously used the guidance in FG12/15<sup>6</sup> ('*Retail Distribution Review: Independent and Restricted Advice*') and FG14/1<sup>7</sup> ('*Supervising retail investment advice: inducements and conflicts of interests*') may wish to review Chapter 5 of this PS. In Chapter 5, we explain that we are proposing to retire this Guidance because we expect that for most firms, this Guidance will be superseded by requirements coming into force on 3 January 2018, including those implementing MiFID II. By 19 January 2018, we are seeking views from firms or individuals who believe that this guidance will remain relevant for them after 3 January 2018 and/or whether firms and individuals would find additional Guidance on the matters covered in FG12/15 and FG14/1 useful.

## What will we do?

---

- 1.18** On 3 January 2018 the following changes will take effect:
- Handbook changes arising from the RAO amendment (see Chapter 2)
  - Guidance arising from experiences of the FCA's Advice Unit will be added to our existing non-Handbook Guidance FG17/8<sup>8</sup> (see Chapter 3)
  - FG12/10 on Simplified Advice<sup>9</sup> will be retired (as we explained in our response to GC17/4)
- 1.19** Early in the new year we will publish a PS summarising feedback on the draft PERG guidance on personal recommendations and any amendments to the material consulted on in CP CP17/28. At this point, we will also retire FG15/1 Retail Investment Advice.<sup>10</sup>
- 1.20** The consultation on FG12/15 and FG14/1 ends on 19 January 2018 and we will announce the outcome once we have considered stakeholders' responses.
- 1.21** In order to help firms navigate the FCA's non-Handbook Guidance in this area, we have set out relevant resources on our website.<sup>11</sup>

---

5 [www.fca.org.uk/firms/financial-advice-market-review-famr/changes-regulated-activities-order](http://www.fca.org.uk/firms/financial-advice-market-review-famr/changes-regulated-activities-order)

6 [www.fca.org.uk/publication/finalised-guidance/fg12-15.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg12-15.pdf)

7 [www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf)

8 [www.fca.org.uk/publication/finalised-guidance/fg-17-08.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg-17-08.pdf)

9 [www.fca.org.uk/publication/finalised-guidance/fg12-10.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg12-10.pdf)

10 [www.fca.org.uk/publication/finalised-guidance/fg15-01.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg15-01.pdf)

11 [www.fca.org.uk/publications/finalised-guidance/fg17-8-streamlined-advice-consolidated-guidance](http://www.fca.org.uk/publications/finalised-guidance/fg17-8-streamlined-advice-consolidated-guidance)

## 2 Handbook changes arising from amendments to the Regulated Activities Order

- 2.1** Regulated advice currently consists of two elements for the purposes of Article 53(1) of the (Regulated Activities Order) RAO:
- advice which constitutes a personal recommendation
  - any other regulated advice within Article 53(1) which does not amount to a personal recommendation
- 2.2** Firms that responded to the FAMR Call for Input told us that they want to provide support to customers when making their own investment decisions. However, they are put off from doing so because they find the boundary between providing unregulated assistance and giving regulated advice is unclear.
- 2.3** To help these firms, FAMR recommended that the Treasury should amend the definition of regulated advice in the RAO. In line with this recommendation the Treasury laid an order before Parliament on 30 March 2017 that amends the RAO so that - in broad terms - from 3 January 2018 most authorised firms will only be providing regulated advice to the extent that they provide a personal recommendation.
- 2.4** In this PS, we use the term "guidance" to refer to an activity carried on by a firm that benefits from the RAO amendment that does not involve the provision of a personal recommendation and so does not constitute regulated financial advice for such a firm.
- 2.5** In CP17/28 we proposed that in most cases firms providing guidance should have the same regulatory obligations as firms carrying on other unregulated activities, such as the provision of factual information to customers. However, in a few areas we proposed a modified application of these rules. We summarise below the responses to these proposals.

### Complaints handling and access to the Financial Ombudsman Service

---

- 2.6** We proposed in CP17/28 that customers<sup>12</sup> of a firm that makes use of the RAO amendment to provide guidance should be able to refer complaints about this activity to the Financial Ombudsman Service. We also proposed that such customers should be protected by our complaint handling rules in the Dispute Resolution (DISP) sourcebook.
- 2.7** All of the respondents who answered this question agreed with our proposal. However, some respondents provided additional feedback, which we have outlined below.

---

12 Customers who are 'eligible complainants' for the purposes of our rules (see DISP 2.7).

- 2.8** In the CP, we noted that where a client does not receive a personal recommendation, the firm would not be subject to the same regulatory requirements that apply to the provision of a personal recommendation. It was suggested that we introduce a rule to make it clear that the Financial Ombudsman Service would only consider a firm's obligations in respect of guidance if a personal recommendation had not been given.
- 2.9** We were also encouraged to work with the new Single Financial Guidance Body to draw public attention to the risks in dealing with firms not on the FCA's register.
- 2.10** One respondent also asked us to consider introducing this rule on a trial basis with a limited number of firms first.

#### Our response:

Based on feedback from respondents, we intend to proceed with the approach outlined in CP17/28.

The Financial Services and Markets Act 2000 requires the Financial Ombudsman Service to determine complaints on the basis of what is fair and reasonable in all the circumstances of the case. In doing so, it will take into account, amongst other things, relevant law and regulations, regulators' rules, guidance and standards. We do not believe that a new rule needs to be introduced to clarify which of our rules the ombudsman should take into account when deciding what is fair and reasonable in a complaint about the provision of guidance. We explained the likely position in CP17/28, including that where a customer does not receive a personal recommendation, firms would not be subject to regulatory standards that apply when offering such advice.

Regarding firms that are not on the FCA register, the RAO amendment only applies to authorised firms. Firms that we have not authorised will still not be able to offer guidance. We will work closely with the Single Financial Guidance Body once it is set up.

As we noted in the CP, we do not expect that this proposal will cause significantly more cases to be brought to the Financial Ombudsman Service, as guidance is currently subject to the compulsory jurisdiction of the Financial Ombudsman Service. A trial with a limited number of firms is unlikely to offer a sufficiently meaningful number of complaints about guidance for us to make any observations or judgements.

A pilot would also mean that, for a time at least, consumers would be treated differently depending on the nature of the firm that gives them guidance i.e. whether or not the firm is in the pilot. The key reason we have proposed to extend DISP to all consumers receiving guidance from firms making use of the RAO amendment was to ensure that consumers are treated consistently.



So, we will not introduce this on a pilot basis. However, under recommendation 28 of the FAMR final report, we and the Treasury will review the impacts of FAMR in 2019.<sup>13</sup>

---

## Investor compensation

---

- 2.11** In CP17/28, we proposed that consumers should have access to the Financial Services Compensation Scheme (FSCS) in respect of guidance provided by a firm making use of the RAO amendment. Broadly speaking, consumers can make a claim to the FSCS where an authorised or formerly authorised firm owes a civil liability to that consumer which it is unable or likely to be unable to meet, usually because it is insolvent.
- 2.12** The FSCS may pay compensation to an eligible claimant<sup>14</sup> if it is satisfied that, amongst other things, the claim is in connection with protected investment business or protected non-investment insurance business. Very broadly, our proposals will require that where guidance is given by a firm making use of the RAO amendment, the FSCS must treat that guidance as being in connection with such business.<sup>15</sup> We believe that this approach will provide FSCS cover where, for example, misleading guidance is offered to customers (or potential customers) with a view to the firm selling an investment product.
- 2.13** The vast majority of respondents supported this approach, however, several responses, stressed that FSCS funding for claims relating to guidance should not fall disproportionately upon advice firms.
- 2.14** Respondents also said our consultation proposals appeared to suggest that consumers would be able to take a claim to the FSCS where losses arose from investment risk. The response noted that guidance could meet all our regulatory requirements; however, an investor who relied on the guidance might nevertheless incur losses.

### Our response:

As set out in CP17/28, we believe that any costs falling on the FSCS as a result of firm failures relating to guidance are likely to be minimal.

The FSCS may pay compensation to an eligible claimant if it is satisfied that, amongst other things, the claim relates to activity conducted in connection with protected investment business or protected non-investment insurance business. Under our proposal, where a consumer makes a claim relating to guidance given by a firm that was conducting such business, we would require that the FSCS must treat the guidance as in connection with that business.

---

<sup>13</sup> [www.fca.org.uk/publication/corporate/famr-final-report.pdf](http://www.fca.org.uk/publication/corporate/famr-final-report.pdf)

<sup>14</sup> [www.handbook.fca.org.uk/handbook/COMP/4/?view=chapter](http://www.handbook.fca.org.uk/handbook/COMP/4/?view=chapter)

<sup>15</sup> Provided that the guidance was in relation to a relevant investment, and the firm giving the guidance had, or should have had, permission to carry on that business (or in the case of appointed representatives was exempt).



We believe that the circumstances under which a firm would offer guidance that was not 'in connection with' designated investment business or protected non-investment insurance business would be very rare. Consequently, we believe that this is unlikely to represent a significant expansion in the scope of FSCS protection as compared to the status quo.

No respondents suggested any circumstances under which our approach would lead to an increased number of claims compared with allowing consumers to only have recourse to the FSCS to the same extent as for other unregulated activities. So these changes are unlikely to create a significantly increased risk of costs falling on any particular FSCS funding class.

Any claims relating to guidance will fall either on firms carrying out designated investment business or non-investment insurance business, depending on which activity the FSCS finds the guidance was in connection with. The levy might fall on one of the classes which covers provision activities (e.g. managing investments) or intermediation activities (e.g. advising on or arranging an investment), depending on which activity the FSCS determined the guidance to be in connection with. It is important to note that FSCS funding classes are based on the activity being carried out, not on the 'type' of firm, so firms can be levied in more than one class depending on the activities they carry out. The relevant FSCS funding classes cover a range of regulated activities as well as giving advice, so it is not likely that any levy would fall entirely or disproportionately on advisers.

Losses arising entirely from investment risk will not be in scope of FSCS protection because the FSCS only pays compensation where a failed firm owes the claimant a civil liability.

Having taken into account the consultation responses we intend to proceed with the same approach on which we consulted.

Firms should also be aware that we have recently published CP17/36: *Reviewing the funding of the Financial Services Compensation Scheme (FSCS)* which proposes changes to the funding of the FSCS.<sup>16</sup>

---

## Training and Competence

- 2.15** The FCA's Training and Competence (TC) sourcebook currently applies to employees who advise on investments which fall within the current scope of Article 53(1) of the RAO.
- 2.16** In CP17/28, we proposed that TC should not apply to staff that only provide guidance on retail investments. It will only apply to staff providing personal recommendations on

---

<sup>16</sup> [www.fca.org.uk/publications/consultation-papers/cp17-36-reviewing-funding-financial-services-compensation-scheme](http://www.fca.org.uk/publications/consultation-papers/cp17-36-reviewing-funding-financial-services-compensation-scheme)

the relevant investments. We proposed making this change for all staff at authorised firms irrespective of whether they are able to make use of the RAO amendment.

- 2.17** Firms must still comply with the requirements of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC), in particular the high-level competent employee rules. These rules require firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.<sup>17</sup>
- 2.18** Most respondents supported this approach; however, some did not agree with the proposal on the basis that it would result in employees being permitted to provide guidance without an appropriate level of either technical skill or experience. Some felt it may reduce expectations around qualifications.
- 2.19** It was also argued that as the SYSC requirements are principle based compared to the specific requirements of TC, they will be subject to lower standards of supervision and that the FCA will be less well placed to enforce against them.

#### Our response:

We will proceed to make the changes to our TC sourcebook as proposed.

We believe that our proposals are proportionate and consistent. Firms that employ staff that provide guidance or information to clients, should still ensure that they employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

We have also finalised our approach to the ESMA Guidelines for the Assessment of Knowledge and Competence and this is included in our recent PS on Markets in Financial Instruments Directive (Directive 2014/65/EU) (MiFID II) implementation.<sup>18</sup>

These guidelines for MiFID investment firms specify the characteristics and criteria for the assessment of knowledge and competence when giving investment advice or providing information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm.

Our approach is consistent with the FAMR recommendations, our risk-based approach to regulation, and our implementation of the ESMA guidelines.

<sup>17</sup> See SYSC 3.1, SYSC 5.1 and Article 21(1) of the MiFID Org Regulation.

<sup>18</sup> [www.fca.org.uk/publications/policy-statements/ps17-14-mifid-ii-implementation](http://www.fca.org.uk/publications/policy-statements/ps17-14-mifid-ii-implementation)

## Inducements

---

- 2.20** In our consultation on the implementation of MiFID II (CP16/29<sup>19</sup>), we proposed:
- amending the adviser charging rules in COBS 6.1A to prevent firms which provide personal recommendations on retail investment products from soliciting or accepting inducements<sup>20</sup> in connection with a firm's wider advice business;
  - a similar change to COBS 6.1B which would have banned retail investment product providers, operators of electronic systems in relation to lending, and platform service providers from offering or paying inducements to other firms or third parties in connection with that firm's wider advice business or related services, subject to certain exceptions; and,
  - extending the MiFID ban on accepting inducements in COBS 2.3A which applies where a firm provides investment advice to retail clients by bringing it into line with our proposal on adviser charges.
- 2.21** Respondents to CP16/29 supported the proposals; however, because the MiFID II consultation was published before the completion of Treasury's consultation on the RAO amendment, we used CP17/28 to ask whether we needed to reconsider this approach in light of the RAO amendment.
- 2.22** Nearly all responses supported our approach outlined in CP17/28. Those with concerns argued that our approach could impact attendance at conferences and other industry events which would negatively affect the sharing of best practice and other developments.

### Our response:

The aim of our consultation was to consider whether anything new needed to be taken into consideration for our approach to inducements as a result of the RAO amendment. The concerns raised were not new concerns and had been considered as part of CP16/29.

In light of this and the positive feedback from the majority of stakeholders, we intend to implement our proposal on the basis set out in CP17/28.

---

## Other rules

---

- 2.23** We proposed a number of consequential amendments to our rules to reflect the RAO amendment, and we requested comment on the proposals relating to the client's best interest rule in COBS 2.1, and the client communication rules in COBS 4, making it clear that these requirements continue to apply to firms in relation to MiFID business.

---

<sup>19</sup> [www.fca.org.uk/publication/consultation/cp16-29.pdf](http://www.fca.org.uk/publication/consultation/cp16-29.pdf)

<sup>20</sup> Other than certain acceptable minor non-monetary benefits.

- 2.24** We also proposed a minor change to the Collective Investment Schemes sourcebook (COLL) to ensure that the scope of investment advice which a UCITS management company can carry on remains unchanged. Respondents universally agreed with these changes and no concerns were raised.
- 2.25** We proposed some guidance in the Supervision sourcebook (SUP) to set out our views on how the RAO amendment interacts with the regime for appointed representatives.

#### **Our response:**

We propose to proceed broadly on the basis of the proposals set out in CP17/28. To address respondents' questions, we have added further guidance to SUP to clarify our views of the position of appointed representatives.

We have also made some further minor changes to the consultation text in the interests of clarity and to reflect the revised timetable for the new PERG guidance.

---

## 3 Advice Unit Guidance

- 3.1** FAMR recommended that the FCA set up a dedicated team to help firms seeking to deliver lower cost advice to consumers through mass-market automated models.
- 3.2** We set up our Advice Unit in May 2016, and it has engaged with a wide range of firms, providing regulatory feedback on questions firms have raised about our rules and perceived regulatory barriers. The remit of the Advice Unit has recently been expanded to include automated guidance services and to cover additional sectors.
- 3.3** Having provided feedback to several firms on their advice services, we identified common areas of uncertainty with our rules and felt it would be helpful for us to provide Guidance for all firms. The Advice Unit's feedback relates to automated propositions; however, elements of this Guidance might be relevant for advice or discretionary investment management firms more broadly.

### General comments

---

- 3.4** The majority of respondents supported our proposals and there were no significant objections. Some respondents specifically commented that they found this approach to setting out Guidance to be 'useful' and 'welcome'.
- 3.5** In a number of areas respondents asked us to be more prescriptive or provide further Guidance beyond the scope of the consultation. For instance, in relation to case study 2 (which dealt with automated advice services where non-QCF<sup>21</sup> level 4 qualified staff was providing assistance to clients) we were asked if we could comment on the extent to which a product provider has a duty of care towards an insistent client. We were also asked if the Advice Unit could share similar case studies to help firms understand the boundary for firms offering non-advised services. Finally, it was suggested that the FCA continue working with trade bodies to understand firms' challenges working within the regulatory framework.

#### Our response:

The purpose of our guidance is to share with all firms feedback issued to individual firms through the Advice Unit where we consider it has general application. The questions and answers are purposefully focused so we are able to provide additional context and limit ambiguity. If firms have issues which go beyond the scope of this Guidance, they can request feedback from the Advice Unit where they feel more clarification is required on the application of our existing rules and guidance to new business models.<sup>22</sup>

---

21 QCF stands for the Qualifications and Credit Framework.

22 In order to seek regulatory feedback from the FCA's Advice Unit, the firm will need to meet the Advice Unit's eligibility criteria and be accepted into the Advice Unit.

We intend to provide more Guidance as we develop our understanding of the challenges facing firms through our Advice Unit interaction.<sup>23</sup>

We are also developing other tools for firms, such as sign-posting links to relevant existing rules and guidance, which we hope will provide further clarity and help promote effective competition.

## Specific case study comments

- 3.6** Where respondents have asked for amendments to our Guidance we have summarised this below along with our response. We did not receive significant comments on every case study. We propose to publish the Guidance consulted upon in CP17/28 including case studies 4, 5 and 6, which are not addressed in detail below.

### Case Study 1 – Clients with uncertain investment needs

- 3.7** Our first case study dealt with challenges for advice firms when dealing with clients who do not have a clear 'purpose' for the basis of the investment and therefore are unable to be specific about the purpose and time period of their investment.
- 3.8** One respondent argued that a client's investment time horizon and attitude to risk (made up of risk tolerance and risk capacity) are more important than identifying a specific investment objective when assessing suitability and that for a specific transaction it is possible to justify suitability with reference only to investment time horizon and attitude to risk.
- 3.9** Other respondents asked us to be more prescriptive on what information it is necessary to collect about a customer's financial objectives when they do not articulate a specific goal.

### Our response:

Our rules require that a firm needs to obtain such information as is necessary to determine that a personal recommendation is suitable for the relevant client. Details of the information that firms must obtain when making a personal recommendation are set out in COBS 9.2A.<sup>24</sup> This includes information about a client's investment objectives (including the length of time for which they wish to hold the investment) and attitude to risk. Our rules do not specify that any aspect of this information is more important than another.

In our proposed Guidance we said that:

*'to offer a personal recommendation to a client a firm must obtain such information as is necessary to have a reasonable basis for determining (giving due consideration to the nature and extent of the service) that the*

<sup>23</sup> From 30 June 2017 the Advice Unit expanded its scope to accept applications from firms in the mortgages, general insurance and debt sectors as well as firms that want to provide guidance instead of regulated advice. We will publish further tools reflecting our interaction with these additional sectors in due course.

<sup>24</sup> From 3 January 2018, see COBS 9A.2.1R and Article 25(2) of MiFID. COBS 9.2.1R(1) makes similar provision in respect of investment products not subject to the MiFID II requirements.

*firm's recommendation meets the client's investment objectives, including the client's risk tolerance.'*

This is simply a reflection of the new requirements under MiFID II (see article 54(2) of the MiFID Org Regulation and COBS 9A.2.4EU).

We recognise that a client might express their objectives in broad terms. However, if some possible interpretations of a broad objective could make the personal recommendation unsuitable, then the firm would need to gather further information to support its investment advice.

We do not intend to prescribe how, or what, information should be gathered, as the necessary information is likely to depend on the particular circumstances. However, firms might wish to consider the Guidance we have already set out in FG17/8.<sup>25</sup>

### Case Study 2 – Assisting a client with an automated advice process

**3.10** Our second case study involved a firm considering an automated advice service with non-QCF level 4 qualified staff providing assistance to clients (but not providing a personal recommendation).

**3.11** One respondent suggested that we should require interaction between non-CF30<sup>26</sup> staff and clients relating to an automated advice process to be signed off by a QCF level 4 qualified individual.

#### Our response:

We agree that it is important for firms to have appropriate controls when using non-CF30 staff in support of an automated advice process. Our rules require that such staff have the knowledge and competence commensurate with their role and responsibilities. Firms must also have robust risk management controls to ensure that staff do not provide personal recommendations to clients and that they are capable of recognising when a client should be referred to someone qualified to give a personal recommendation. However, we do not believe that it would be proportionate or necessary for us to prescribe the specific controls that firms should have in place when operating this kind of model.

### Case Study 3 – A firm's regulatory responsibility when providing a personal recommendation

**3.12** The third case study involved a firm offering automated advised and non-advised services side-by-side. We were asked whether we would regard a firm as having provided a personal recommendation where the client has opted not to proceed with the advised service, but has instead chosen to execute the recommended transaction through the non-advised service.

<sup>25</sup> [www.fca.org.uk/publication/finalised-guidance/fg-17-08.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg-17-08.pdf)

<sup>26</sup> Please see [www.fca.org.uk/firms/approved-persons/controlled-functions](http://www.fca.org.uk/firms/approved-persons/controlled-functions) for more information on individuals performing 'Controlled Functions'.



- 3.13** Respondents felt this case study provided useful clarification in light of the approaching changes to the RAO definition of advice. One respondent expressed some concern that it may create an expectation that our requirements on adviser charging may apply to firms offering discretionary investment management services.
- 3.14** We were also asked to provide clarity on whether the firm in the scenario had provided a personal recommendation even though the client may then choose to use a non-advised service to purchase the same investment(s) that has been recommended.

#### Our response:

Our view is that the case study and our answer both relate to a firm providing a personal recommendation and do not relate to firms managing investments.<sup>27</sup>

Our view is also that a recommendation to a client to buy a particular financial product which is presented as suitable or based on a consideration of the client's circumstances, will be a personal recommendation whether the client goes on to buy that product or not. Where a firm gives a personal recommendation it must comply with the applicable FCA rules.

### Additional tools and resources

- 3.15** The Advice Unit publishes tools and resources to assist all firms developing automated advice or guidance propositions, based on our experiences with individual firms. The finalised guidance in this paper is an example of this work.
- 3.16** FAMR suggested that other tools could include:<sup>28</sup>
1. Best practice methodologies – for testing and evaluating automated advice models;
  2. An Authorisations Guide – guidance for firms looking to deliver automated advice models; and
  3. Standardised scenario testing – for firms to use to gauge the effectiveness of their models.
- 3.17** In practice, our focus has been on answering regulatory questions from firms, as this is what firms have found most helpful. However, for firms at a more advanced stage in developing their model, we have also sought, where relevant, to understand their approaches to testing. At present, our experience of firms' testing plans has been relatively bespoke. We do not therefore consider that we could add more useful guidance beyond that already included in FG17/8. Therefore, at present we are not taking forward bullet points 1) and 3). However, we will keep this under review.

<sup>27</sup> Please see COBS 6.1A.1R in relation to the application and scope of the Adviser Charging and Remuneration rules.

<sup>28</sup> Financial Advice Market Review – Final Report, recommendation 9 (pg.40)



- 3.18** We are working on a guide to authorisation and will publish this on our website once available.

## 4 Insistent clients

- 4.1** In CP17/28 we proposed introducing Handbook Guidance for firms dealing with insistent clients, based on the content of a factsheet that we published in 2016.<sup>29</sup>
- 4.2** This term 'insistent client' has been used to describe an individual who has received a personal recommendation and chooses to do something other than follow that recommendation. The Handbook does not currently define an insistent client nor contain any provision specific to processing a transaction on behalf of an insistent client.
- 4.3** We published the factsheet because we were aware that firms have differing views on how to deal with insistent clients and that some firms have been unwilling to transact with an insistent client. Furthermore, in the context of pensions freedoms, we were also aware that many pension providers are unwilling to accept a transfer where there has not been a positive recommendation to transfer.
- 4.4** To increase confidence for advisers and providers, we proposed new Handbook Guidance based on the factsheet.<sup>30</sup> The factsheet used the example of pension transfers (involving safeguarded benefits) as this has been an area where firms have experienced particular challenges. However, we proposed that our Handbook Guidance would apply wherever a personal recommendation is given<sup>31</sup>, not just for the transfer and conversion of safeguarded benefits.
- 4.5** We consulted in CP17/16 on the addition of rules and guidance to supplement this general approach when advice relates to pension transfers.

### Consultation responses

---

- 4.6** Nearly all respondents supported our proposal. A few expressed reservations and asked for clarification on a number of points, which we have summarised below.
- 4.7** Some respondents argued that the new Guidance creates an additional requirement and potential liability for firms in relation to the information expected to be communicated to insistent clients. Some also suggested that this could even extend to cases where the customer transacts subsequently with another firm. Other responses argued more generally that firms dealing with insistent clients would run the risk of incurring liability with the Financial Ombudsman Service for facilitating an unsuitable transaction or otherwise failing in their overall duty of care to the client.
- 4.8** We were also asked to clarify how the Guidance operates:

---

29 [www.fca.org.uk/firms/pension-reforms-insistent-clients](http://www.fca.org.uk/firms/pension-reforms-insistent-clients)

30 [www.fca.org.uk/firms/pension-reforms-insistent-clients](http://www.fca.org.uk/firms/pension-reforms-insistent-clients)

31 We proposed reinserting the Guidance into COBS 9, which will not apply to MiFID business.



- where a personal recommendation has not been made, for example where a firm has only previously provided a discretionary management service to a client but facilitates a transaction;
- where a client makes a transaction through an execution only account with a firm from whom they also receive an advisory or discretionary service;
- where time has elapsed between a personal recommendation and a client subsequently seeking to transact against that recommendation;
- in relation to record keeping requirements, in particular in relation to how firms should obtain a client's acknowledgement for these purposes;
- for vertically integrated firms; and,
- for transactions that might be regarded as below a certain 'materiality threshold', for example a minor change to a pension contribution rate.

**4.9** We were also asked to give examples of when it would be acceptable to act on behalf of an insistent client without following the Guidance.

#### Our response:

We do not agree that the insistent client Guidance imposes new requirements or liabilities on firms. The Guidance is designed to set out how firms may comply with certain existing obligations in the FCA Handbook when dealing with insistent clients. Guidance is not binding and need not be followed to achieve compliance with a particular rule or requirement but it indicates a possible means of compliance. It is open to firms to deal with clients in other ways that are consistent with our rules and Principles. We have made some minor changes to the text to make this clear.

We can also clarify the following:

- The Guidance is being inserted into COBS 9 (Suitability (including basic advice) (non-MiFID provisions)) and only applies where a personal recommendation has been given in the circumstances set out in COBS 9.5A.2G. So, it would not apply to a firm that provides only a discretionary management service and no personal recommendation has been given.
- If a firm offers a client a personal recommendation and then the client makes an execution only transaction against the recommendation through the firm, then it is up to the firm to determine whether this Guidance is relevant. If there is a clear separation between the advice and execution only channels then the Guidance may be less relevant although a firm always needs to consider the client's best interests rule. Where time has elapsed between advice and any transaction, the relevance of the Guidance will depend on the nature of the firm's relationship with the client and the manner in which the client seeks to transact. As noted above, the Guidance is less likely to be relevant

where there is a clear separation between channels, although a firm always needs to consider the client's best interests rule.

- The record keeping element of the Guidance is designed so that firms have a record that the advice process was followed correctly and that any risks were explained. It is up to the firm to decide the precise extent and nature of records it keeps and whether and how it obtains acknowledgement from the client. We have also suggested that firms should refer to the record keeping requirements of COBS 9.5 and SYSC 9.1.
  - The Guidance applies equally to vertically integrated firms and other firms.
  - The Guidance does not introduce a materiality threshold.
  - We do not propose to give examples of when firms might choose not to use this Guidance. As noted above, this Guidance is not binding and it is open to firms to deal with clients in other ways that are consistent with our rules and the Principles.
-

## 5 Consultation: retiring guidance which will be superseded by MiFID II

- 5.1** In this chapter we are consulting on proposals to retire FCA non-Handbook Guidance which we believe will be superseded by MiFID II from 3 January 2018.

**FG14/1<sup>32</sup>, 'Supervising retail investment advice: inducements and conflicts of interests'**

- 5.2** When it was published in 2014, we stated that this Guidance was relevant to all providers of retail investment products to be sold by advisers and any advisory firm providing personal recommendations in relation to retail investment products. We also said other firms might find the guidance helpful. In broad terms, FG14/1 considers the various types of reasonable non-monetary benefits which are set out in COBS 2.3.15G. MiFID II will introduce new rules from 3 January 2018 (see COBS 2.3A) and the guidance on reasonable non-monetary benefits will not apply to firms subject to these new rules. This means that the guidance in FG14/1 will not be relevant to retail investment product providers and related advisers who are subject to the new MiFID II rules.
- 5.3** In addition, from 3 January 2018 the table of reasonable non-monetary benefits (currently set out in COBS 2.3.16B) will not apply to firms that are subject to the rules in COBS 6.1A (Adviser charging and remuneration) or COBS 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). So there are likely to be very few firms for whom FG14/1 will remain relevant.
- 5.4** We have directly transposed MiFID II requirements on inducements into the FCA's Handbook, and these are set out in COBS 2.3A (which will be effective from 3 January 2018). As well as requirements, COBS 2.3A also provides guidance on a number of related matters. Currently, ESMA does not intend to publish further materials aimed at assisting firms on understanding how to comply with these requirements.
- FG12/15<sup>33</sup>, 'Retail Distribution Review: Independent and Restricted Advice'**
- 5.5** This Guidance covers standards for firms describing themselves as 'independent' or 'restricted' advisers. New independence requirements will be brought in as part of MiFID II on 3 January 2018 which means that the guidance which we provided on this topic in FG12/15 will no longer be relevant. Some of these requirements are contained in the MiFID Org Regulation, but for other firms they are directly transposed into the FCA Handbook (these are set out in COBS 6.2B). Amongst other issues, the rules specify what firms need to do to describe their services as 'independent' or 'restricted'; what range of products they must consider in order to qualify as providing independent advice; and, the requirements on firms which are providing both independent and restricted advice. The rules also specify how and when firms communicate their services (whether independent or restricted) to their clients.

32 [www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf)

33 [www.fca.org.uk/publication/finalised-guidance/fg12-15.pdf](http://www.fca.org.uk/publication/finalised-guidance/fg12-15.pdf)

**Q1: Do you agree that we should retire FG12/15 and FG14/1?**

- 5.6** We do not propose to introduce new Guidance at this time. However, we would be interested in stakeholders' views on whether this would be helpful.
- 5.7** **Responses will be due 6 weeks after publication of this PS, by 19 January 2018.**  
Please submit your view to us via email to [cp17-28@fca.org.uk](mailto:cp17-28@fca.org.uk), or in writing to – Advice and Distribution Team, The Financial Conduct Authority, 25 The North Colonnade, London, E14 5HS

## 6 Feedback on the cost benefit analysis

### Handbook changes arising for the amendment of Article 53(1) RAO

- 6.1** The RAO amendment will be brought about by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2017. The overall effect of this Statutory Instrument is already addressed in the Impact Assessment prepared by the Treasury which accompanies it.
- 6.2** Since the RAO amendment will mean that the provision of guidance will cease to be a regulated activity for the majority of authorised firms, the counterfactual against which we assessed our proposals for CBA purposes are the requirements that apply to an authorised firm which provides information about an investment to a consumer.
- 6.3** The provision of information is not a regulated activity but, broadly speaking, where information is provided by an authorised firm, the FCA's Principle for Business and certain rules apply. Given the similarities and overlaps between the provision of information and guidance, we believe that this was the most appropriate baseline against which to assess our proposals.
- 6.4** We chose to follow this counterfactual for most of the policies we proposed. We believe that where we proposed changes which would create additional requirements (in DISP and COMP), our changes provided regulatory consistency given that in many cases guidance is likely to be provided to customers in circumstances where they would in any event have been able to make use of the protections afforded by the DISP and COMP rules. We therefore estimated that our proposals would have negligible costs or benefits.
- 6.5** We expressed the view that our proposals should result in an overall beneficial effect for both firms and consumers, as they provide a more consistent and better functioning framework for the provision of guidance compared to the requirements that would apply had we made merely consequential amendments.
- 6.6** The responses to CP17/28 do not challenge this view and no comments were made regarding the CBA.
- 6.7** Separately, we will also be preparing a Business Impact Target (BIT) assessment for these proposals in line with the Small Business, Enterprise, and Employment Act 2015.
- 6.8** For the purposes of the BIT assessment, we are required to calculate costs and savings for affected firms, including an estimate of the costs associated with familiarisation and gap analysis.
- 6.9** For the purposes of this assessment, we have started from an assumption that a firm with at least one permission (other than the advising permission) that constitutes designated investment business could offer guidance through the RAO amendment, and thus incur familiarisation and gap analysis costs. This would give a total population of c. 18,000 firms. Our proposals for inducements only affect those firms which also make a personal recommendation. This would give a population of c. 16,000 affected by the inducements proposal.



- 6.10** Based on these populations of firms the BIT assessment is likely to estimate that the cost of familiarisation and gap analysis is c. £180 per firm, which is c. £3.2 million in total.
- 6.11** The BIT assessment is also likely to estimate a saving for firms of c. £27.1 million, because, under our new approach, firms must ensure staff providing guidance comply with SYSC requirements, rather than TC requirements, as would be the case if we made only consequential amendments. This estimate is based on savings from exam registration fees and study material as well as time needed to prepare for qualifications. Overall, this results in a net benefit of c. £23.9 million.



## Annex 1

### List of non-confidential respondents

The Association of British Insurers

Aviva Plc

Brewin Dolphin Ltd

Chartered Banker Institute

Chartered Institute for Securities & Investment

Financial Services Consumer Panel

Hargreaves Lansdown

The Investment Association

LEBC Group

LV=

Matthew Rodhouse (Independent)

The Pensions Advisory Service

Pensions and Lifetime Savings Association

Personal Finance Society

Personal Investment Management & Financial Advice Association (PIMFA)

R2 Finance

Richard Jacobs Pension and Trustee Services Ltd

Simply Biz Group

The Society of Pension Professionals

Workplace Solutions (UKWPS)

## Annex 2

### Abbreviations in this document

<b>CBA</b>	Cost Benefit Analysis
<b>COBS</b>	Conduct of Business Sourcebook
<b>COLL</b>	Collective Investment Schemes Sourcebook
<b>CP</b>	Consultation Paper
<b>DISP</b>	Dispute Resolution Sourcebook
<b>FAMR</b>	Financial Advice Market Review
<b>FCA</b>	Financial Conduct Authority
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FG</b>	Final Guidance
<b>GC</b>	Guidance Consultation
<b>MiFID II</b>	Markets in Financial Instruments Directive (Directive 2014/65/EU)
<b>PERG</b>	Perimeter Guidance Manual
<b>PRIN</b>	Principles for Business Sourcebook
<b>RAO</b>	Regulated Activities Order
<b>RIP</b>	Retail Investment Product
<b>SYSC</b>	Senior Management Arrangements, System and Controls Sourcebook
<b>TC</b>	Training and Competence Sourcebook

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS



# Appendix 1

## Made rules (legal instrument)

Conduct of Business Sourcebook (Insistent Clients) Instrument 2017 (2017/66)

**CONDUCT OF BUSINESS SOURCEBOOK (INSISTENT CLIENTS)  
INSTRUMENT 2017**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) and related provisions of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force in on 3 January 2018.

**Amendments to the Handbook**

- C. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Conduct of Business Sourcebook (Insistent Clients) Instrument 2017.

By order of the Board  
7 December 2017

## Annex

### Amendments to the Conduct of Business sourcebook (COBS)

After COBS 9.5 (Record keeping and retention periods for suitability records), insert the following new section, 9.5A. The text is not underlined.

#### **9.5A Additional guidance for firms with insistent clients**

##### Purpose

9.5A.1 G The *guidance* in this section is relevant where a *client* of a *firm* becomes an insistent *client*. The purpose of the *guidance* is to set out how a *firm*, when dealing with an insistent *client*, can comply with its obligations under:

- (1) the *Principles* (see *PRIN* 2);
- (2) the *client's best interests rule* (see *COBS* 2.1.1R);
- (3) the *fair, clear and not misleading rule* (see *COBS* 4.2.1R);
- (4) the *rules* on suitability in this chapter (*COBS* 9 (Suitability (including basic advice))); and
- (5) the *rules* on record-keeping (see *COBS* 9.5 (Record keeping and retention periods for suitability reports) and *SYSC* 9 (General rules on record-keeping)).

##### Who is an insistent client?

9.5A.2 G In this section, a *client* should be considered an insistent *client* where:

- (1) the *firm* has given the *client* a *personal recommendation*;
- (2) the *client* decides to enter into a transaction which is different from that recommended by the *firm* in the *personal recommendation*; and
- (3) the *client* wishes the *firm* to facilitate that transaction.

##### Information to be communicated to an insistent client

9.5A.3 G (1) Where a *firm* proceeds to execute a transaction for an insistent *client* which is not in accordance with the *personal recommendation* given by the *firm*, the *firm* should communicate to the insistent *client*, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent *client* so that the *client* is able to understand, the information set out in (2).

(2) The information which the *firm* should communicate to the insistent

*client* is:

- (a) that the *firm* has not recommended the transaction and that it will not be in accordance with the *firm's personal recommendation*;
- (b) the reasons why the transaction will not be in accordance with the *firm's personal recommendation*;
- (c) the risks of the transaction proposed by the insistent *client*; and
- (d) the reasons why the *firm* did not recommend that transaction to the *client*.

#### Acknowledgement from the insistent client

- 9.5A.4 G (1) The *firm* should obtain from the insistent *client* an acknowledgement that:
- (i) the transaction is not in accordance with the *firm's personal recommendation*; and
  - (ii) the transaction is being carried out at the request of the *client*.
- (2) Where possible, the acknowledgment should be in the *client's* own words.

#### Further personal recommendations given to an insistent client

- 9.5A.5 G Where a *firm* gives a further *personal recommendation* in relation to the transaction proposed by the insistent *client*, the *firm* should make clear to the *client* that this *personal recommendation* is distinct from, but does not affect the conclusions of, the initial *personal recommendation*.

#### Record keeping

- 9.5A.6 G (1) A *firm* dealing with an insistent *client* should retain a record of:
- (a) the advice and transaction process followed, including the communications with the *client*; and
  - (b) the acknowledgment from the *client* referred to in COBS 9.5A.4G.
- 9.5A.7 G A *firm* dealing with an insistent *client* should also refer to the record keeping requirements in COBS 9.5 (Record keeping and retention periods for suitability records) and SYSC 9.1 (General rules on record-keeping).

## Appendix 2

### Made rules (legal instrument)

Advising on Investments (Article 53(1) of the Regulated Activities Order)  
(Consequential Amendments) Instrument 2017 (2017/67)



**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 ~~advice~~ 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>		
...		
Advising <u>or giving personal recommendations</u> (as relevant)	2. <del>Securities</del> <u>Giving personal recommendations on securities</u> which are not <i>stakeholder pension schemes, personal pension schemes or broker funds</i>	Yes
	3. <del>Derivatives</del> <u>Giving personal recommendations on derivatives</u>	Yes
	4. <del>Retail investment products</del> <u>Giving personal recommendations on retail investment products</u> which are not <i>broker funds</i>	Yes

	5.	<u>Giving personal recommendations on Friendly Society life policies</u> where the employee 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 Holloway sickness policies where the Holloway policy special application conditions are met)	Yes
	7.	<del>Long-term care insurance contracts</del> <u>Giving personal recommendations on long-term care insurance contracts</u>	Yes
	8.	<del>Investments</del> <u>Giving personal recommendations on investments</u> in the course of corporate finance business	Yes
	9.	<u>Advising on syndicate participation at Lloyd's</u>	Yes
	9A	<u>Advising on P2P agreements</u>	Yes
...			
<del>Advising</del> <u>Giving personal recommendations and dealing</u>	12.	<del>Securities</del> <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 consumer			
<u>Advising Giving personal recommendations</u>	24.	<del>Non-investment insurance contracts</del> <u>Giving personal recommendations on non-investment insurance contracts</u>	No
...			
<b>Notes:</b>			
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 <del>advice on</del> <u>personal recommendations given in relation to non-investment insurance contracts</u> given to a consumer.		
2A.	...		
...			

...

## App 4.1 Appropriate Qualification tables

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

...			
<b>6</b>	<b>Use of third party processors in life insurance mediation activities</b>		
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 <del><i>advising on investments</i></del> <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.*
- A

...

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).
- 1

...

## 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*]

...

## 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 <del>only</del> <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		
<del>Advising</del> <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 <del>Investments</del> <u>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
...			
...			
<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>			

...

## 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>		

