

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 3)
INSTRUMENT 2011**

Powers exercised

- A. The Financial Services 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 138 (General rule-making power);
 - (b) section 145 (Financial promotion rules);
 - (c) section 149 (Evidential provisions);
 - (d) section 156 (General supplementary powers); and
 - (e) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 3) Instrument 2011.

By order of the Board
22 September 2011

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1A Adviser charging and remuneration

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Requirement to be paid through adviser charges

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

- (1) only be remunerated for the *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*; 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* or any other related service, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

6.1A.4A R A firm and its associates may:

- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in COBS 6.1A.4R if:
 - (a) the *personal recommendation* was made on or before 30 December 2012;
 - (b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;
 - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
 - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and

- (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to that *firm* or its *associate*.

Re-registration of commission when a retail client moves to a new adviser

- 6.1A.4B R If a *retail client* chooses to become a *client* of a *firm* and that *firm* or its *associate* enters into an arrangement in COBS 6.1A.4AR(2), the *firm* must:
- (1) before the arrangement is entered into, disclose to the *retail client* that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;
 - (2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the *retail client* with an ongoing service; and
 - (3) as soon as reasonably practicable after it makes the disclosure in (1):
 - (a) disclose to the *retail client*, as a cash amount or percentage of funds under management, the amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
 - (b) provide the *retail client* with a description of the ongoing service it will provide to the *retail client* in accordance with (2).

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Ongoing payment of adviser charges

- 6.1A.22 R A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:
- (1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and:
 - (a) the *firm* has disclosed that service along with the *adviser charge*; ~~or~~ and
 - (b) the *retail client* is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the *retail client* to give any reason; or
 - (2) the *adviser charge* relates to a *retail investment product* for which an instruction from the *retail client* for regular payments is in place and

the *firm* has disclosed that no ongoing *personal recommendations* or services will be provided.

6.1A.22A G To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (COBS 6.1.A.22R(1)(b)) a *firm* should:

- (1) ensure that any notice period of the *retail client's* right of cancellation is reasonable;
- (2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the *firm* up to the date of cancellation of the ongoing service; and
- (3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* to which the ongoing service relates.

6.1A.22B R If a *retail client* exercises his right to cancel an ongoing service, the *firm* must clearly disclose to the *retail client* whether charges for other services provided by the *firm*, such as *custody* services, will continue to be payable by the *retail client*.

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6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

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6.1B.5 R 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* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.

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

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

before 30 December 2012;

- (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
- (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

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6.1C Consultancy charging and remuneration

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Requirement to be paid through consultancy charges

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- 6.1C.5 R Except as specified in COBS 6.1C.5AR and COBS 6.1C.5BR, A *firm* must:
- (1) only be remunerated for giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* by *consultancy charges* or by a fee payable by the employer;
 - (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 that advice, or those services, regardless of whether it intends to refund the payments or pass the benefits on to the *group personal pension scheme* or *group stakeholder pension scheme*; and
 - (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *consultancy charges* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *consultancy charges* are recovered from the relevant *group personal pension scheme* or *group stakeholder pension scheme*.
- 6.1C.5A R A *firm* and its *associates* may:
- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in COBS 6.1C.5R if:

- (a) the employer's part of the relevant scheme was established on or before 30 December 2012; and
- (b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the rules in force on 30 December 2012; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit in (1) is transferred to that *firm* or its *associate*.

Re-registration of commission when an employer moves to a new adviser

- 6.1C.5B** **R** If an employer chooses to appoint a *firm* to provide advice or services in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* and that *firm* or its *associate* enters into an arrangement in *COBS 6.1C.5AR(2)*, the *firm* must:
- (1) before the arrangement is entered into, disclose to the employer that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;
 - (2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the employer with an ongoing service; and
 - (3) as soon as reasonably practicable after it makes the disclosure in (1):
 - (a) disclose to the employer the basis and amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
 - (b) provide the employer with a description of the ongoing service it will provide to the employer in accordance with (2).

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6.1D **Product provider requirements relating to consultancy charging and remuneration**

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Requirement not to offer commission, provide factoring or offer credit to a third party

- 6.1D.4** **R** (1) Except as specified in *COBS 6.1D.6AR*, 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*, *employee benefit consultant* or third party in relation to the sale or purchase of:

- (a) a group personal pension scheme or group stakeholder pension scheme ...
- (b) an investment ...

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6.1D.6A R A firm and its associates may:

- (1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in COBS 6.1D.4R if:
 - (a) the employer’s part of the relevant scheme was established on or before 30 December 2012; and
 - (b) the offer or payment was permitted by the rules in force on 30 December 2012; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another firm or its associate.

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TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
	...				
2.2	...				
2.2B-1	COBS 6.1C (Consultancy charging and remuneration) and COBS 6.1D (Product provider requirements	R	COBS 6.1C (Consultancy charging and remuneration) and COBS 6.1D (Product provider requirements relating to consultancy charging and remuneration) do not prohibit a firm or its associates from offering or	From 31 December 2012	31 December 2012

	relating to consultancy charging and remuneration)		<p>paying a commission, remuneration or benefit to another <i>firm</i>, an <i>employee benefit consultant</i> or another third party for the benefit of that <i>firm</i>, <i>employee benefit consultant</i> or third party in relation to a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> if:</p> <p>(1) the employer's part of the relevant scheme was established on or before; and</p> <p>(2) the relevant offer or payment was permitted by the <i>rules</i> in force on;</p> <p>30 December 2012.</p>		
...					