

RETAIL DISTRIBUTION REVIEW (PLATFORMS) 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 156 (General supplementary powers);
 - (d) 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 modules of the FSA’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
Conduct of Business sourcebook (COBS)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C

Citation

- E. This instrument may be cited as the Retail Distribution Review (Platforms) Instrument 2011.

By order of the Board
28 July 2011

Annex A

Amendments to the Glossary of definitions

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

intermediate unitholder a firm whose name is entered in the register of a non-UCITS retail scheme or a UCITS scheme, or which holds units in a non-UCITS retail scheme or a UCITS scheme indirectly through a third party acting as a nominee, and which:

- (a) is not the beneficial owner of the relevant unit; and
- (b) does not manage investments on behalf of the relevant beneficial owner of the unit; or
- (c) does not act as a depositary of a collective investment scheme or on behalf of such a depositary in connection with its role in holding property subject to the scheme.

For the purposes of this definition, 'register' has the meaning set out in paragraph (3) of the Glossary definition of 'register'.

platform service a service which:

- (a) involves arranging and safeguarding and administering assets; and
- (b) distributes retail investment products which are offered to retail clients by more than one product provider;

but is neither:

- (c) solely paid for by adviser charges; nor
- (d) ancillary to the activity of managing investments for the retail client.

platform service provider a firm providing a platform service.

Delete the following definition.

~~*funds supermarket service* a service consisting of the provision by a firm of regulated activities for a customer which consists of arranging (bringing about) deals in~~

~~investments and safeguarding and administering investments with particular reference to regulated collective investment schemes where:~~

- ~~(a) the schemes are managed by other firms;~~
- ~~(b) the customer's units are held under arrangements in which their legal title is held by a nominee company; and~~
- ~~(c) the service relates to schemes offered by several product providers, at least one of whom is not an affiliated company of another provider.~~

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1A Adviser charging and remuneration

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Requirement to be paid through adviser charges

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6.1A.8 G Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:

- (1) a share of the *retail investment product* charges or platform service provider's charges, or *retail investment product* provider's or platform service provider's revenues or profits (~~except if the firm providing the personal recommendation is the retail investment product provider~~); and
- (2) a commission set and payable by a *retail investment product* provider in any jurisdiction.

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

Application – Who? What?

- 6.1B.1 R (1) This section applies to:
- (a) a *firm* which is a *retail investment product* provider; and
 - (b) in relation to COBS 6.1B.9R, COBS 6.1B.10G and COBS 6.1B.11G, a platform service provider;
- in circumstances where a *retail client* receives a *personal recommendation* in relation to ~~the firm's~~ a *retail investment product*.
- (2) This section does not apply to a *retail investment product* provider in circumstances where a *firm* gives advice or provides services to an employer in connection with a *group personal pension scheme* or

group stakeholder pension scheme.

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Requirement not to offer commissions

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- 6.1B.6 G The requirement not to offer or pay commission does not prevent a *firm* from making a payment to a third party in respect of administration or other charges incurred, for example a payment to a ~~fund supermarket~~ platform service provider or a third party administrator.

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Requirements on firms facilitating the payment of adviser charges

- 6.1B.9 R A *firm* that offers to facilitate, directly or through a third party, the payment of *adviser charges* from a *retail client's retail investment product* or otherwise by means of a platform service must:
- (1) obtain and validate instructions from a *retail client* in relation to an *adviser charge*;
 - (2) offer sufficient flexibility in terms of the *adviser charges* it facilitates; and
 - (3) not pay out or advance *adviser charges* to the *firm* to which the *adviser charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *adviser charge* from the *retail client* (including paying any *adviser charges* to the *firm* that it cannot recover from the *retail client*).

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After COBS 6.1D insert the following new sections. The text is not underlined.

6.1E Platform service providers

Platform service providers: fees and commission

- 6.1E.1 R (1) If, in relation to a *retail investment product*, a *platform service provider* arranges to accept a fee or commission paid by a third party or a *person* acting on behalf of a third party, it must clearly disclose the amount of that fee or commission to the *professional client* or *retail client* in a *durable medium* in good time before the provision of *designated investment business*.

- (2) In the event that it is not possible to make the disclosure in (1) in good time before the provision of *designated investment business*, the disclosure must be made as soon as practicable thereafter.

- 6.1E.2 G If a *platform service provider* accepts a fee or commission referred to in COBS 6.1E.1R, it should pay due regard to its obligations under *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and the *client's best interests rule*, and ensure that it presents *retail investment products* to *professional clients* and *retail clients* without bias.

6.1F Using a platform service for arranging and advising

Client's best interests rule and using a platform service

- 6.1F.1 R A *firm* (other than a *platform service provider*) which:
- (1) *arranges* for a *retail client* to buy a *retail investment product* or makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*; and
 - (2) uses a *platform service* for that purpose;
- must ensure that it uses a *platform service* which presents its *retail investment products* without bias.
- 6.1F.2 G When selecting and using a *platform service* for the purpose described in COBS 6.1F.1R, a *firm* should be mindful of its duty to comply with the *client's best interests rule* and the *rule* on inducements (COBS 2.3.1R).

6.1G Re-registration of title to retail investment products

- 6.1G.1 R If a *client* requests a *firm* (F) to transfer the title to a *retail investment product* which is held by F directly, or indirectly through a third party, on that *client's* behalf to another *person* (P), and F may lawfully transfer the title to that *retail investment product* to P, F must execute the *client's* request within a reasonable time.
- 6.1G.2 R A *firm* acting as a *registrar* should carry out a request by F for the re-registration of ownership of a *retail investment product* to P within a reasonable time.

Amend the following as shown.

6.2A Describing advice services

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Firms holding themselves out as independent

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6.2A.4A R In complying with COBS 6.2A.3R, a firm which:

- (1) holds itself out to a retail client as acting independently; and
- (2) relies upon a single platform service to facilitate the majority of its personal recommendations in relation to retail investment products;

must take reasonable steps to ensure that, as appropriate, the platform service provider bases its selection of retail investment products on a comprehensive, fair and unbiased analysis of the relevant market.

6.2A.4B G When a firm considers whether a platform service provider's selection of retail investment products is based on an unbiased analysis of the relevant market, a firm should take into account any fees, commission or non-monetary benefits the platform service provider receives in relation to those retail investment products.

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13.1 The obligation to prepare product information

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Exceptions

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13.1.4 R A single document prepared for more than one key features scheme or simplified prospectus scheme may combine more than one key features document, simplified prospectus or EEA simplified prospectus or any combination of them, if the schemes are offered through a ~~fund~~ supermarket service platform service and the document clearly describes the difference between the schemes.

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14.2 Providing product information to clients

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Exception to the provision rules: aggregated scheme documents

- 14.2.11 R A *firm* may provide a single *document*, which describes more than one *key features scheme* or *simplified prospectus scheme*, or any combination of those *schemes*, if:
- (1) the *schemes* are offered through a ~~*funds supermarket service platform service*~~;
 - (2) the *document* clearly describes the difference between the relevant *schemes*; and
 - (3) (in the case of a *simplified prospectus scheme*) the *firm* also offers a copy of the relevant prospectus to the *client*.

After COBS 14.3 insert the following new section. The text is not underlined.

14.4 Provision of information by an intermediate unitholder

Provision of information to the beneficial owner

- 14.4.1 R (1) An *intermediate unitholder* which receives a copy of the short report referred to in *COLL 4.5.13R* from an *authorised fund manager*, must notify the beneficial owner of the *unit* or, if relevant, a *person* acting on that beneficial owner's behalf, that a copy of the short report is available from the *intermediate unitholder* free of charge upon request.
- (2) The notification in (1) must be in writing and made no more than three *months* after the end of the *month* in which the short report was received by the *intermediate unitholder*.
- 14.4.2 R If the notification in *COBS 14.4.1R* is sent by means of an *electronic communication*, the *electronic communication* must contain either a copy of the report or a hyperlink to the section of a website under the control of the *intermediate unitholder* where the relevant short report may be read in full. If the *electronic communication* contains a hyperlink, the short report must remain accessible to the beneficial owner via that section of the website until the *authorised fund manager* sends the *intermediate unitholder* a subsequent annual short report in relation to the relevant *unit*.
- 14.4.3 G The notification in *COBS 14.4.1R* may include one or more short reports and may be made at the same time as other *Handbook* notifications, for example, a *periodic statement*. If the notification in *COBS 14.4.1R* is made at the same time as any other communication, the notification should be clearly and separately identifiable as such and presented in a prominent manner. An *intermediate unitholder* may make the notification in *COBS 14.4.1R* by

sending a copy of the short report to the beneficial owner of the *unit* or, if relevant, a *person* acting on that beneficial owner's behalf.

- 14.4.4 R (1) Except where *COBS* 14.4.1R and *COBS* 14.4.8R apply, an *intermediate unitholder* which receives any document or written notification required by *COLL* to be sent by an *authorised fund manager* or *depository* to a *unitholder* must send that notification to the beneficial owner of the *unit* or, if relevant, a person acting on that beneficial owner's behalf:
- (2) Paragraph (1) does not apply to:
- (a) information about a merger proposal provided under *COLL* 7.7.10R (Information to be given to unitholders) in circumstances where a meeting of *unitholders* will not be convened to vote on that proposal; and
- (b) information provided under *COLL* 11.3.13R (Obligations to unitholders of a master UCITS).
- (3) The notification in (1) must be in writing and be sent as soon as reasonably practicable after the *intermediate unitholder* has received the notification from the *authorised fund manager* or *depository*.
- 14.4.5 R If the notification in *COBS* 14.4.4R is sent by means of an *electronic communication* it must contain:
- (1) either a copy of the notification from the *authorised fund manager* or *depository* or a hyperlink to the section of a website which is under the control of the *intermediate unitholder* where the notification from the *authorised fund manager* or the *depository* may be read in full; and
- (2) a summary of the content of the notification from the *authorised fund manager* or *depository* together with sufficient information to enable the beneficial owner to understand the subject matter of that notification and its possible consequences.
- 14.4.6 R If the *electronic communication* in *COBS* 14.4.5R contains a hyperlink:
- (1) in the case of the notification made to the *intermediate unitholder* by the *authorised fund manager* or *depository* under *COLL* 7.2.1R(2A), the notification must be accessible continuously to the beneficial owner by means of the website until the suspension of dealing in *units* has ceased; and
- (2) in the case of all other notifications required under *COBS* 14.4.4R, the notification from the *authorised fund manager* or *depository* must be

accessible continuously by means of the website for such period of time as the beneficial owner may reasonably need to inspect it.

- 14.4.7 R If a *firm* is acting on behalf of the beneficial owner of a *unit* and it receives a notification from an *intermediate unitholder* under COBS 14.4.1R or COBS 14.4.4R, it must send that notification to the beneficial owner of the *unit* as soon as reasonably practicable.

Voting rights

- 14.4.8 R (1) An *intermediate unitholder* which receives a notification under COLL 4.4.5R (Notice of general meetings) from an *authorised fund manager* or *depository* must notify the beneficial owner of the *unit* or, if relevant, a *person* acting on that beneficial owner's behalf.
- (2) The notification in (1) must be made as soon as reasonably practicable but, in any event, before the effective date of any change to be made as a result of a resolution passed at the meeting.
- (3) The notification in (1) must:
- (a) explain that the *unit* is held by the *intermediate unitholder* or, if relevant, through a third party acting as nominee;
 - (b) if applicable, explain that voting rights are not available to the beneficial owner;
 - (c) contain a summary of the subject matter of the notification from the *authorised fund manager* or *depository* together with an explanation of the consequences of a vote for and of a vote against the proposal; and
 - (d) contain a summary of the *intermediate unitholder's* policy in relation to the exercise or facilitation of voting rights which must include, if relevant, whether the *intermediate unitholder* intends to exercise the relevant voting rights without consideration of the views of any of the beneficial owners.
- 14.4.9 R A *firm* must not make a specific charge for the provision of the notifications in COBS 14.4.1R, COBS 14.4.4R, COBS 14.4.7R and COBS 14.4.8R.

Information requests by authorised fund managers for liquidity management purposes

- 14.4.10 R If an *intermediate unitholder* receives a reasonable request from an *authorised fund manager* for information relating to the beneficial owners of the *units* of a *scheme* that it operates which the *authorised fund manager*

reasonably needs for the purposes of liquidity management, the *intermediate unitholder* must provide that information to the *authorised fund manager* as soon as is reasonably practicable.

- 14.4.11 G Examples of information which may be reasonably requested by an *authorised fund manager* include:
- (1) a breakdown of the total number of *units* held by the *intermediate unitholder* in each *scheme* to indicate the number of *units* attributable to individual beneficial owners; and
 - (2) information about the types of distribution channel which have been used to sell the *units* to the relevant beneficial owners.
- 14.4.12 G In determining whether a request from an *authorised fund manager* is reasonable, an *intermediate unitholder* may take into account the frequency with which such requests have been received from that *authorised fund manager*.

Amend the following as shown

18.5 Operators of collective investment scheme

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Application or modification of general COBS rules for operators

18.5.2 R

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Table: Application of conduct of business rules

Application of conduct of business rules

Chapter, section or rule	Description	Modifications
...		
5.2	E-Commerce	
<u>6.1G.2</u>	<u>Re-registration requests: firms acting as registrars</u>	
11.2	Best execution	In the case of an

		<i>unregulated collective investment scheme, COBS 18.5.4R (Modification of best execution) applies instead of COBS 11.2 in the circumstances set out in COBS 18.5.4R.</i>
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Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Payments out of scheme property: guidance

- 6.7.5G
- (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with *COLL* 4.2.5R(13) and *COLL* 4.2.5R(14) (Table: contents of the prospectus).
 - (2) An *authorised fund manager* should consider whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
 - (3) *COLL* 6.4.7R(2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes* of *unit* that relates solely to the payments that may be taken out of *scheme property*.
 - (4) Payments to third parties as referred to in *COLL* 6.7.4R(4) include ~~payment~~ payments to ~~providers of fund supermarket services~~ platform service providers and other similar platform services.