

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 4)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 145 (Financial promotion rules);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- 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 Annex A to this instrument.

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 4) Instrument 2012.

By order of the Board
23 February 2012

Annex A

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

Application – Who? What?

6.1A.1 R ...

6.1A.1A G Guidance on the regulated activity of advising in relation to a new or existing investment can be found in PERG 8.24 to PERG 8.29. Although the guidance in PERG 8.29.7G relates to advising on investments under article 53 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.

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Requirement to be paid through adviser charges

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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*.

6.1A.4AA G (1) A *firm* may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a *retail investment product* which was made by the *retail client* following a *personal recommendation* made, or a transaction executed, on or before 30 December 2012. This is the case even if the *firm* makes a *personal recommendation* to the same *retail client* after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre 31 December 2012 *personal recommendation* or transaction, rather than the new *personal recommendation*. Of course this is dependent upon the terms of the contract contemplating the continued receipt of such payments.

- (2) Examples of circumstances where a commission, remuneration or benefit is clearly linked to the retention of an investment in a *retail investment product* and can therefore continue to be accepted include (in each case where the terms of the contract contemplate a continued payment of the kind referred to in (1)):

- (a) no change is made to the *retail client's* investment in the relevant *retail investment product*;
- (b) the *retail client's* investment in, or regular contribution to, the relevant *retail investment product* is reduced; the *firm* may continue to accept the payment associated with the reduced investment amount;
- (c) the *retail client's* investment in the relevant *retail investment product* is transferred from accumulation *units* to income *units* or vice versa;
- (d) the *retail client* transfers all or part of his investment between funds within a *life policy*.

- (3) If a *firm* makes a *personal recommendation* to a *retail client* and wishes to:

- (a) receive remuneration for that *personal recommendation* in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by (1); or
- (b) be paid additional amounts for any actions which are linked to a new amount invested by the *retail client* in the relevant *retail investment product*;

it should only be paid those additional amounts for that *personal recommendation* or for those actions by *adviser charges*.

- (4) A firm may offset against any adviser charges which are payable by the retail client any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in (1).

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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 ...

6.1B.1A G Guidance on the regulated activity of advising in relation to a new or existing investment can be found in PERG 8.24 to PERG 8.29. Although the guidance in PERG 8.29.7G relates to advising on investments under article 53 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.

...

Requirement not to offer commissions

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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*.

6.1B.5B G A *firm* may continue paying commission, remuneration or benefits of any kind to another *firm* in relation to a *personal recommendation* made by that other *firm* in circumstances where that other *firm* may accept that commission, remuneration or benefit of any kind (see COBS 6.1A.4AR and COBS 6.1A.4AAG).

Annex B

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

8.29 Advice must relate to the merits (of buying or selling a particular investment)

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8.29.7 G Typical recommendations and whether they will be regulated as *advising on investments* under article 53 of the *Regulated Activities Order*. This table belongs to PERG 8.29.1G to PERG 8.29.6G.

<u>Recommendation</u>	<u>Regulated under article 53 or not?</u>
<u>I recommend that you take out the ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of a particular <i>investment</i> which the <i>client</i> could buy.</u>
<u>I recommend that you do not take out the ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> away from a particular <i>investment</i> which the <i>client</i> could have bought.</u>
<u>I recommend that you take out either the ABC investment or the DEF investment.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of more than one particular <i>investment</i> which the <i>client</i> could buy.</u>
<u>I recommend that you sell your ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of a particular <i>investment</i> which the <i>client</i> could sell.</u>
<u>I recommend that you do not sell your ABC investment.</u>	<u>Yes. This is advice which steers the <i>client</i> away from a particular <i>investment</i> which the <i>client</i> could have sold.</u>
<u>I recommend that you transfer ownership of your ABC investment to your spouse.</u>	<u>Advising the <i>client</i> to gift an <i>investment</i> to another person will not be advice because it does not involve advice on <u>buying, selling, subscribing for or underwriting an investment.</u></u>
<u>I recommend that you increase the regular payments you are making to your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.</u>
<u>I recommend that you decrease the regular payments you are making to</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund but advises</u>

<u>your GHI fund*.</u>	<u>against the <i>client</i> buying as many as he intended.</u>
<u>I recommend that you keep making the same regular payments to your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.</u>
<u>I recommend that you stop making the regular payments you are making to the GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> away from buying <i>units</i> in a particular fund which the <i>client</i> could have bought.</u>
<u>I recommend that you pay a lump sum into your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of acquiring further <i>units</i> in a particular fund.</u>
<u>I recommend that you do not pay a lump sum into your GHI fund*.</u>	<u>Yes. This is advice which steers the <i>client</i> away from buying <i>units</i> in a particular fund which the <i>client</i> could have bought.</u>
<u>I recommend that you move part of your investment in the JKL <i>investment</i> from fund X into fund Y*.</u>	<u>Yes. This is advice which steers the <i>client</i> in the direction of selling <i>units</i> in a particular fund and buying <i>units</i> in another specific fund. Where the two funds are sub-funds of the same main fund it is still advice. The terms ‘bought’ and ‘sold’ are given a wide meaning and include any acquisition or disposal for valuable consideration.</u>
<u>I recommend that you move all of your investment in JKL <i>investment</i> from fund X into fund Y*.</u>	<u>Yes, for the same reason.</u>
<u>I recommend that you move your MNO <i>investment</i> from platform X and re-register it on platform Y.</u>	<u>This is unlikely to be advice because normally it will not involve buying and selling the <i>investment</i> held on the platform.</u>
<u>A <i>client</i> decides of his own accord to increase, decrease or temporarily suspend his regular payments or the payments are increased automatically into an <i>investment</i> without advice being given.</u>	<u>No. No advice is being given.</u>
<u>The <i>firm</i> is providing discretionary management services under a mandate and makes changes to a <i>client’s investment</i> without providing</u>	<u>No. No advice is being given.</u>

<u>advice.</u>	
<u>Dividends are re-invested into an investment without advice being given.</u>	<u>No. No advice is being given.</u>
<u>* The same answer would apply where the fund is a <i>life policy</i> as rights under a <i>contract of insurance</i> are regulated <i>investments</i> under the <i>Act</i>. The position under a <i>personal pension scheme</i> is similar, as explained in more detail in <i>PERG 12.3</i>.</u>	