Policy Statement

PS11/9

Financial Services Authority

Platforms

Delivering the RDR and other issues for platforms and nominee-related services

Financial Services Authority

August 2011

Contents

This Policy Statement reports on the main issues arising from Consultation Paper 10/29 (*Delivering the RDR and other issues for platforms and nominee-related services*) and publishes final rules.

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Acronyms used in this paper

AFM	Authorised Fund Manager
CBA	Cost benefit analysis
CIS	Collective Investment Scheme
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
CP	Consultation Paper
DP	Discussion Paper
EU	European Union
FSMA	Financial Services and Markets Act 2000
ISA	Individual Savings Account
IT	Information Technology
LLIFs	Limited Licence Investment Firms
PS	Policy Statement
RDR	Retail Distribution Review
SIPP	Self-Invested Personal Pension
SLD	Securities Law Directive

1 Overview

Introduction

1.1 In CP10/29 (*Platforms: Delivering the RDR and other issues for platforms and nominee-related services*), we consulted on proposals that took into account feedback on the options set out in Discussion Paper (DP) 10/2 (*Platforms: Delivering the RDR and other issues*). The proposals were designed to regulate platforms in a way that would achieve the objectives of the Retail Distribution Review (RDR) and also covered issues on re-registration, capital adequacy, and providing information and voting rights after the point of sale.

1.2 We received 135 responses to the CP, and also held discussions with trade bodies and individual firms on the more complex or controversial issues. In line with our approach in the CP, our approach has been to adopt solutions that meet the RDR objectives and achieve good outcomes for consumers, while recognising the industry's concerns wherever possible.

1.3 The FSA Board has now made rules and guidance in relation to the proposals we consulted on in CP10/29. Some of these proposals received a large degree of support, although we have made amendments to recognise the concerns of industry, where appropriate. The most controversial issues were payments by providers to platforms, and cash rebates by platforms to consumers: the position on these is set out below.

Payments by providers to platforms and cash rebates to clients

1.4 Chapter 3 of CP10/29 dealt with these two issues. On the first issue, our preferred option during consultation was to address any conflicts of interest arising from these payments by enhanced disclosure, but not to ban these payments. On the second issue, we consulted on draft rules that would have banned these payments with effect from 31 December 2012, when the RDR rules come into force.

1.5 We said in CP10/29 that the arguments on these issues are both complex and finely balanced. This was confirmed by the wide range of comments we received in response to consultation.

1.6 Some respondents focused on the individual client's experience. They argued strongly that payments of these kinds were contrary to the spirit and general direction of travel of the RDR. Retail clients needed clarity as to how much they were paying, and to whom, when they sought investment advice. It was undesirable in principle to make or receive payments that were not clearly and explicitly related to the provision of a particular service. At best, such payments – even where disclosed – could be confusing to clients. At worst, they created the possibility of conflicts of interest which clients and their advisers might find difficult to engage with, precisely because of the opaque nature of these payments.

1.7 Other respondents questioned the need for regulation in these areas, noting the differences between payments to platforms and cash rebates, and the payment for advice through commission. They also drew attention to the possible disruption to individual firms and to the market as a whole that might result from banning these payments.

1.8 The crucial issue is what is in the interests of consumers. We considered these arguments carefully before reaching our decision. We have decided that it would be desirable, in principle, to ban payments by product providers to platforms and to ban cash rebates to consumers. However, we accept that there could be possible unintended consequences which might arise that are not yet fully understood. So, although this is our intention, we have not yet made rules to introduce a ban of either kind of payment.

1.9 In order to inform our decision on the appropriate timescale for making any rules, we plan to carry out further work, including careful consideration of the impact on consumers, business model analysis of the platforms market and research into the way consumers engage with this market. We will also consider the timetable for consultation on any proposed rule changes and whether transitional arrangements would be appropriate.

1.10 We understand that the introduction of any future changes will have an impact on firms' business models, and that they will need time to adapt their systems. So we will give further details of the work described above as soon as we are able to do so. What we can say at this stage is that any rule changes we make in this area will not come into force before 31 December 2012.

Structure of this PS

1.11 The PS chapters provide a summary of responses to CP10/29, together with our response to the issues raised and the rules we have now made:

- Chapter 2 – Defining a platform and distributing products through a platform, which covers the definition of platform service and what we expect of advisers when using a platform.
- Chapter 3 – Payments to platforms and consumers, on how platforms are paid and the Adviser Charging-related issue of rebating product charges to consumers.

- Chapter 4 – Re-registration and capital adequacy, on re-registration of a client's investments by a platform or other nominee company to another platform or nominee company, and the capital adequacy requirements for firms providing platform services.
- Chapter 5 – Investing in authorised funds through platforms and other types of nominee company, and requirements to ensure that relevant fund information and voting rights are passed to the end investor.
- Chapter 6 – cost benefit analysis (CBA).

1.12 The final rules are contained in Appendix 1.

Equality and diversity

1.13 As stated in CP10/29, we have assessed the equality issues that arise in our proposals. We continue to believe these proposals, as amended by the final rules, do not give rise to discrimination and are of low relevance to the equality agenda.

Who should read this PS?

1.14 The PS will be of particular interest to platform service providers, product providers, advisory firms and any other firms that provide services to, or receive services from, platforms. It will also be of interest to anyone who operates a nominee company which holds assets on behalf of investors, and managers of collective investment schemes.

CONSUMERS

Consumers and consumer bodies will be interested in the new rules on the facilitation of Adviser Charging by platforms and the other changes in relation to re-registration and the passing on of important information and voting rights to consumers who have invested in funds through platforms and other nominee arrangements.

2

Defining a platform and distributing products through a platform

Defining a platform

2.1 In CP 10/29 we set out our proposals for the definition of 'platform service' and 'platform service provider' to replace the defined term of '*fund supermarket service*' in the Handbook. These proposed terms also appear in some of the new rules.

2.2 We asked:

> **Q1:** Do you have any comments to make with regard to our definitions of a platform service and platform service provider?

2.3 The majority of respondents broadly agreed with our proposals for the definition of a platform service. However, many of these respondents felt that further clarity was required regarding the scope of the definition and the types of firms or activities it is intended to cover. Questions were raised about whether this included wealth managers, execution-only brokers, third party administrators, single product platforms, white labelled platforms, operators of Individual Savings Accounts (ISAs) and self-invested personal pensions (SIPPs), collective investment scheme (CIS) operators and authorised fund managers (AFMs).

2.4 Several respondents disagreed with our view that the primary function of a platform was providing administration services. These respondents felt that the distribution function of a platform should also be included. Some respondents were concerned that, by not reflecting the full range of services provided by platforms, in particular their role in supporting distribution, the definition raised concerns about the potential tax implications for platforms by way of VAT.

2.5 Several firms expressed concerns regarding the development of, and the possibility of, regulatory arbitrage as a result of the exclusion of life companies and private client wealth managers and advisers from the definition.

2.6 A minority of respondents felt that defining a platform service, and then using this definition to apply specific rules to platform operators, would create loopholes allowing firms to circumvent the rules. These respondents favoured an approach in which we made rules that applied when firms carried out particular activities.

Our response

We have gone ahead with our proposal to introduce a definition for a platform service. This is largely the same definition as we consulted on in CP10/29, but in the light of the comments we received, we have identified a minor drafting change that needed to be made in relation to the definition of a platform service. This change is described below.

Our definition of a platform service does not include a description of its primary or core function(s), because we do not consider it necessary to include such a description. Furthermore, we recognise that activities differ among platform models and that the core function of a platform service may evolve over time. The final definition of a platform service does not require platforms to specify which of their functions is predominant.

We recognise that some firms seek clarity on the application and scope of the definition. With regard to private client investment managers we would reiterate what we said in CP10/29: we are not looking to include in our definition of a platform service the administration services generally provided by private client investment managers and advisers, where this is not appropriate. To achieve this, we have excluded from the definition which we consulted on, and which we have now made, those services that are solely paid for by adviser charges and also those services that are ancillary to managing investments for a retail client.

Several respondents highlighted that the definition applied to those execution-only dealing services which also included a custody service for the assets purchased. While we recognise that these firms may not commonly be referred to as fund supermarkets and wrap platforms, the services provided by such execution-only brokers are similar to the services provided by execution-only wraps and fund supermarkets. Each deals in investments as an agent for the client and may undertake or arrange custody of investments and consolidated reporting for their clients. Given this similarity, we believe the definition should include these execution-only services. It is worth noting that most of the rules we are making relate to situations where advice is given and only COBS 6.1E applies to the execution-only services themselves. COBS 6.1E.1R requires the disclosure to a retail or professional client of any fees or commission a platform arranges to accept from a third party. The guidance in COBS 6.1E.2G says that if a platform service provider accepts such a fee or commission, it should pay due regard to its obligations under Principles 6 and 7 and the client's best interests rule, and ensure that it presents its retail investment products without bias. We have updated the cost benefit analysis (CBA) in Chapter 6 to reflect this point, and do not consider this requirement disproportionate for such firms.

Some respondents queried whether the definition inadvertently included firms which undertake services, such as custodian activities, on behalf of other firms. We would like to clarify that our definition does not capture these types of firms. We have amended part (b) of the definition to make this clear. This amendment also takes into account the point that a number of respondents made about the role a platform service plays in distributing retail investment products.

The definition of a platform service does not include product providers such as life companies. Life companies are distinguished from platforms in that life companies are product providers, whereas platforms essentially provide a service. In addition, it should be noted that many of the RDR rules already apply to life companies.

We can also clarify that the activities of authorised fund managers are not caught by our definition of a platform service. They are excluded, as they are providing a product not a service, and are not caught by part (b) of the definition, because they are not distributing the retail investment products of more than one product provider.

Similarly SIPP operators do not fall within the definition, because a SIPP is itself a retail investment product and is therefore not caught by the definition.

However, some ISA managers are likely to be caught by the definition: this is because an ISA is not itself a retail investment product, and so ISA managers are providing a service, not a product. This will mean that those ISA managers that distribute funds of more than one product provider will need to consider carefully whether they fall within the definition. Often, the service being provided looks very similar to that provided by a fund supermarket – a wide choice of funds is offered to a retail client from a number of different product providers. Being caught by the definition means a platform service provider must present its products without bias and must disclose to the client any fees or commission it arranges to accept from a third party. We consider these to be reasonable requirements, and we have updated the CBA to reflect that the definition captures some ISA managers.

As part of our further work, we will consider whether the definition excludes firms which give a similar outcome to a retail client as platform services, and the possible consequences of these firms being excluded.

Adviser Charging

2.7 In recent years we have seen a significant increase in business transacted through platforms, and we expect this trend to continue, as adviser firms use cash accounts held on platforms to facilitate payment of their adviser charge. In order for the RDR rules on facilitation to be consistent across the industry, in CP10/29 we proposed extending the Adviser Charging rules to ensure that platforms which facilitate the collection of adviser charges do so to the same standards as product providers. We also proposed providing greater clarity in the Handbook by making clear that payments from platforms to adviser firms in relation to personal recommendations will be banned as a result of the RDR.

2.8 We asked:

> **Q2:** Do you agree with our proposal to read across our rules on product providers to platforms in relation to facilitation of payment of adviser charges?

2.9 Only a very small number of respondents disagreed with our analysis in this area, with the majority agreeing, and some respondents – typically the adviser community – not expressing a preference. Support for the proposal came from across the market. The prevalent view was that it was important for the client and the industry for there to be consistent standards across all firms that facilitate the payment of adviser charges. Some firms requested more detail on what was required by 'obtain and validate' a client's instruction, contained in COBS 6.1B.9R(1), for example, whether this required a wet signature. Some firms also questioned whether the amount of the charges being taken would be clear to the client, if the adviser charge was taken from the cash account. And they suggested that payment of the charge in this way might result in units in the client's investments being cancelled to ensure there was sufficient money in the cash account to pay the adviser charges. Some respondents questioned what should happen if clients on an adviser-only platform decide that they no longer want to receive an ongoing advisory service.

Our response

We continue to think that it is important to apply our rules in this area across the industry, to ensure consistency. We have made the proposed amendment to COBS 6.1B.9R to ensure platforms face the same requirements as product providers if they facilitate payment of adviser charges. Some firms have asked for further clarity on how this rule would apply in practice. The basic requirement means that the firm facilitating the payment of the adviser charge must be satisfied that the client has agreed to the payment of the adviser charge and how this should be carried out. So, for example, a copy of a form signed by the client and provided to the product provider by the adviser may meet the requirement and avoid the need for the firm facilitating payment to contact the client directly, so long as there is no reason to doubt the validity of the information. Our rules do not explicitly state the need for a wet signature, although obviously this is one method a firm can use to validate the instructions from a client. Firms should also bear in mind the rules on reliance on others found in COBS 2.4.

We consider that the payment of adviser charges from a cash account on a platform is potentially a good way of increasing transparency of adviser charges for a client. Platforms should be mindful of their duty to comply with Principle 7 when facilitating adviser charges for a client.

With regard to how the cash account is funded, we would reiterate what we said in CP10/29. The adviser should take into account individual client circumstances when agreeing with the client how their adviser charge should be funded. If a method such as unit cancellation is not in their client's best interests, then we would not expect this method to be used as a matter of course, unless the client is fully aware of the implications of this and wishes to proceed. Furthermore, as part of our ongoing supervisory work, we may look at how adviser charges for that adviser are being paid across their clients, to ascertain whether we feel unit cancellation is being used to suit the adviser, rather than the client.

COBS 6.1A.22R makes clear that an ongoing adviser charge can only be paid for an ongoing service or where the product is a regular payment product. If the client is paying an ongoing charge for an ongoing service, and decides they no longer require the services of their adviser, it is the adviser's responsibility to ensure that they no longer charge the client. However, if a client requests a platform to stop paying the adviser charge, and holds a cash account on the platform, the platform will need to carefully consider its contractual obligations to that client. We recognise that not all platforms enable the underlying client to use the platform directly and insist on the transactions being completed through an adviser, often with good reason. However, the platform will need to consider what to do in a situation where the client no longer wants to deal with that adviser. If the client does not require an ongoing service from the outset, this may raise questions about whether the adviser should place a client on a platform when providing advice.

The use of platforms by adviser firms

2.10 In CP10/29 we proposed introducing rules which would require all advisers, not just those providing independent advice, to use only those platforms which presented the products available in an unbiased manner. We also proposed a rule requiring independent advisers, if using a single platform to facilitate the majority of their personal recommendations, to take reasonable steps to ensure the platform aligned its offering of products with the independence rules. For example, the adviser should consider whether a platform only offers products that pay a rebate to a platform when deciding which platforms to use for their clients. We also provided some examples of good and poor practice for independent adviser firms using a platform.

2.11 We asked:

> **Q3:** Do you agree with the rules and guidance we have proposed in relation to the standards we expect from an adviser when using a platform and providing advice?

> **Q4:** Do you have any comments on the proposed guidance on the use of platforms and the independence rule?

2.12 A large majority of respondents who commented on the proposal agreed with the rules and guidance contained in CP10/29 in relation to this issue, with very few firms disagreeing. Some firms questioned whether it was reasonable for an adviser to know how a platform operated, with the proposed rules making the adviser firm responsible for ensuring they use a platform that does not show bias in how it presents products. Some adviser firms also wanted clarity on what information they should be seeking from platforms to ensure they met the proposed rules. They made the point that some platforms are not always forthcoming with the information the adviser requires, particularly around the size of the rebate the platform receives from the product provider.

2.13 Some respondents supported the approach we had set out in paragraph 2.11 of CP10/29. This was that an independent firm may be able to use a single platform for the majority of its clients, but that the firm would need to ensure that the platform in question did not hinder the firm's compliance with the independence requirements. Others expressed concerns that CP10/29 gave the green light for independent adviser firms to use a single platform firm, and had reservations over whether this would be sufficient in the current platform market to meet the independence requirements.

2.14 Most respondents who commented on the examples of good and poor practice in the use of platforms in Annex 5 of CP10/29 welcomed the additional guidance that this provided to firms, although some firms expressed concern over certain aspects of the Annex.

Our response

It is important to bear in mind that, when advice is being given, it is the adviser who is giving that advice and dealing with the client, not the platform. It remains important for the adviser to take responsibility for that advice. The adviser needs to take into account whether being on a platform is in each individual client's best interests and ensure any personal recommendation to invest via a platform is suitable. It is important to stress that this will not always be the case. If being on the platform gives the client a materially worse outcome than being off it, (for example, the costs are significantly higher on the platform), the adviser should clearly not be recommending using a platform for that client. We expect an independent adviser to be able to demonstrate why using a particular platform is suitable for an individual client, and this involves not just looking at one platform over another, but also looking off platform when appropriate to do so.

Firms also need to ensure that use of a particular platform will allow them to meet the independence standards, if they wish to hold themselves out as independent. Clearly, using a platform which presents its products in a biased manner is likely to affect an independent adviser's ability to ensure it meets our independence requirements. We recognise that we are not imposing any requirements on platforms to provide advisers with the information they request. However, we would suggest that, if an adviser firm is not able to obtain the necessary information from a platform, it would be unlikely to decide to use that platform for its clients, as it would not be able to assess whether that platform presented its products without bias. So it will be in the platform service provider's own interests to provide advisers with the relevant information. Furthermore, our proposed rule COBS 6.1E.1R requires the platform service provider to clearly disclose the fee/commission it arranges to accept from third parties such as fund managers.

Regarding the use of a single platform by an independent firm, we would be concerned if some firms took CP10/29 as a green light to make extensive use of a single platform, without thinking through the implications of this approach. Firstly, as we say above (and in CP10/29), it is important to bear in mind that using a platform will not be the right solution for every client, and using a platform needs to be in the best interests of the client, not the adviser. We also made the point that some platforms are developing their proposition to ensure that use of their platform is in line with the independence rules. We think an independent firm faces significant challenges in complying with COBS 6.2A.4AR and COBS 6.2A.4BG if they exclusively or extensively use a platform that only features products which pay the platform a rebate.

With that in mind, we continue to recognise that one of the key benefits that a platform provides for an adviser is being able to see its client's holdings in one place. Clearly, the more platforms that an adviser firm uses the more this benefit will be diluted. We therefore still believe that an independent firm may in theory be able to use a single platform for the majority of its clients, but that it needs to consider very carefully its choice of platform and the impact this has on the firm's ability to meet the independence rules. In practice, and in the current platform market, which is changing on a frequent basis, we feel an adviser with a wide range of clients should not take the view that a single platform will be the right solution for the majority of its clients. So it is for the adviser to judge which, and how many, platforms it needs to use to ensure that its clients' needs are met, while achieving the benefits platforms can offer both advisers and clients. We have updated the examples of good and bad practice in Annex 3 in the light of the comments received on this issue.

3

Payments to platforms and consumers

3.1 This chapter outlines the views of respondents to CP10/29 on our proposals on:

- payments from product providers to platforms; and
- payments from product providers to clients.

3.2 We also set out our response to these views and how we have decided to proceed.

Payments from product providers to platforms

3.3 DP10/2, *Platforms: Delivering the RDR and other issues for discussion* was published in March 2010. In that paper, we discussed the issues that we had identified on the remuneration of platforms, and in particular whether platforms should be required to explicitly and directly charge clients for their services, or whether they should also be allowed to accept payments from product providers. Our preferred option at that stage of our work was for a ban on payments from fund managers or other product providers, so that product charges and platform charges were separated.

3.4 In CP10/29 we proposed that we should not ban such payments, but instead address potential conflicts of interest through improved disclosure requirements. We also noted that at least part of the activities that platforms carried out constituted an administration service to providers, in the sense that the platforms carried out tasks that product providers would otherwise have to undertake themselves. Where this was the case, it seemed reasonable that platforms should be able to charge for these services.

3.5 So we proposed in CP10/29 that platforms would still be able to charge fund managers or other product providers a fee for providing administration services, but recognised that there were risks with this approach that needed to be mitigated. We considered that this mitigation could be provided by proposed rules to require platforms to tell clients how much they will receive in fees or commission, and to ban firms that give advice from using a platform service that presents retail investment products in a biased manner.

3.6 We asked:

> **Q5:** Do you agree with our proposals for platform remuneration? If not, please explain why, setting out the effects of our proposal and what should be done instead, and why.

Responses to consultation

3.7 Respondents who expressed a view were roughly evenly split on the question of whether platforms should continue to be permitted to receive payments from product providers and other platforms. Those respondents who favoured our proposal said that the existing bundled structure enabled products to be delivered cheaply to the majority of investors. Those who were opposed drew attention to the conflicts of interest that could arise: one said that our proposal created a risk that advisers and distributors will turn themselves into platforms in order to be able to receive 'commission-like' payments.

3.8 There was a general consensus in favour of our proposals for greater disclosure, although some respondents noted that the history of commission showed that disclosure was not necessarily a sufficient solution to situations where conflicts of interests could exist. Others suggested that we should prescribe a common format for this disclosure to enable consumers to make comparisons between platforms.

3.9 A number of respondents commented on our view that platforms provided administration services to providers. Some denied that this was the case and, whilst others accepted this, they noted that this was only part of what platforms did – they also acted as distributors of products, and might also be viewed as providing administration services to advisers. One respondent said that the FSA should make rules to enable firms to readily determine what platforms can and cannot pay or be paid for. Several respondents were concerned that, in defining the activities of platforms as administration, we had created a risk that platform charges would thereby become subject to VAT.

Our response

One of the proposals in DP10/2 was to ban payments to platforms due to the possible consumer detriment we identified with these payments. In CP10/29 we still expressed concerns with these payments but felt that we could address these through other mechanisms without needing to ban the payments altogether. We noted comments in the responses to DP10/02 that these payments were primarily for administration services. However, having considered the responses to CP10/29, our view is that we would like to move towards a situation in which firms could not make payments to platforms. We note that a number of firms felt that these payments were to the benefit of consumers and we would cause consumer detriment by banning them. Whilst we see that such payments could potentially be used to a consumer's advantage, we note that the one consumer body that responded to CP10/29 felt these payments would result in detriment to consumers. We agree with the Consumer Panel view that these payments hinder transparency and clarity of relationships and charges for consumers. We also agree that these payments could lead to product bias remaining in the market and may restrict consumer access to a wide range of investments.

We note the arguments put to us that these payments are not predominantly for administration, but instead for distribution. We received this view from a number of different firms, and we agree there is a least an element of this payment that is used for distribution. We need to consider the objectives of the RDR when deciding the way forward. The RDR will improve clarity for consumers on what services they are receiving and how much these services cost, and ensure that payments for distribution do not distort consumer outcomes. We believe that such payments can create a conflict of interest, which may result in consumer detriment, and that they result in a marketplace in which consumers cannot easily make price comparisons between different platforms, and between the products which are available on these.

However, we cannot simply move to introduce such a prohibition now. Before consulting on introducing a ban, we need to consider how such a move would impact on platforms' existing business models, and how long they might need to adapt to this change. Importantly, we will also need to consider how such changes would affect consumers, including looking at the different ways in which they interact with platforms when making both advised and non-advised purchases. We also need to consider, as a priority, when would be the right time to make this change to our rules in this area, and the associated change to the rules on cash rebates to clients discussed below.

We also need to consider the legal and practical issues. This would include considering how we might amend our rules, taking account of current EU Directives in this area, and how these might change in future.

In order to help us conclude on these issues, we plan to undertake further research into the platforms market, including business model analysis and an examination of how platforms interact with consumers (not advisers). We will announce further details of what this work will involve shortly. Since the outcome of this work will be relevant to the timing of the introduction of any ban, we will want to consider the results of this before undertaking consultation on draft rules.

This means that we are not yet in a position to set out a detailed timetable for our future work on this issue. However, we appreciate that the industry needs certainty about what systems changes it may need to make. So what we can say at this point is that any rule banning payments to platforms will not come into force until after 31 December 2012, when the RDR rules come into force, as we recognise that firms need sufficient time to prepare for the change.

Cash rebates from product providers to clients

3.10 We proposed in DP10/2 that rebates from product providers to clients should no longer be permitted when advice is being provided. In CP10/29 we maintained this view, and we consulted on draft rules which would have had the effect of banning the rebates of product charges in cash to retail clients for all advised sales of retail investment products. Our proposal did not prevent a firm rebating part of their fund charges to clients in the form of additional units.

3.11 We said in CP10/29 that: 'We note that a number of respondents feel that rebating to clients is needed to help pay the adviser charge. However, the RDR will no longer allow product providers to determine the amount of adviser charge payable. Instead, this is a matter to be agreed between the adviser and their client, with a product provider acting, if they so wish, as a facilitator for paying the charge after the agreement is reached.' We went on to say that: 'Like commission payments today, rebates would be set by the product provider and have the potential to create bias in the same way. We do not want to see a situation develop where advisers set their charge dependent on what rebate is available to be paid into the client's cash account, from which the adviser will then take their charge, as we feel this would undermine the objectives of the RDR. Accordingly, we propose for this reason to ban cash rebates to consumers.'

3.12 We asked:

Q6: Do you agree with our proposal to ban the rebating of product charges in cash to retail clients across all retail investment products when advice is being provided?

Responses to consultation

3.13 Around three-quarters of the respondents to the consultation disagreed with our proposal. The remainder agreed with our proposal, and those who did so generally shared the analysis of the issue we set out in CP10/29.

3.14 Those respondents who disagreed with us made various points. Several said that banning cash rebates was simply unnecessary. They argued that cash rebates existed now, and caused no obvious consumer detriment. They rejected the analogy with commission, and said that cash rebates could not create bias in the same way. However, a small number of respondents argued that cash rebates were needed precisely in order to create a fund from which payment for advice could be made. It was argued that, without this, advisers might have a bias in favour of life insurance products as against collective investments, because it would be easier to facilitate the payment of ongoing adviser charges from these products.

3.15 Several respondents said that to prohibit cash rebates for advised business whilst continuing to allow them for non-advised business would be undesirable, and could possibly create a perverse incentive for firms to direct business down the non-advised route.

3.16 A number of those who disagreed made the point that clients generally monitored their cash accounts and would be clear that any rebate was a payment to them, not to their adviser. In any case, it was argued, any detriment that existed could be remedied by improved disclosure, without the need for a ban.

3.17 We also heard arguments that the ban would create a difference of treatment between non-advised sales, where commission would still be permissible, and advised sales. This would create difficulties for providers, who would not necessarily know whether advice had been given on any particular sale.

3.18 Many of those who disagreed with our proposal also took issue with our comment that, although we proposed to ban cash rebates, it would still be possible for firms to provide rebates in other forms, for example, by providing the client with extra units. It was argued that doing this could create particular problems for platforms, which would need to allocate such units between large numbers of individual clients. This could require the creation of expensive new IT systems, would require increased reporting of what might be a large number of small value transactions, and would create problems of what to do with 'orphan units' credited after the original fund had been sold by the client.

3.19 Having received these responses, we put some supplementary questions to a number of platform operators and fund managers who had responded to our original consultation, in order to better understand the consequences of our proposal. We asked, in particular, whether firms would react to a ban by adopting a business model that made use of rebates in units, or was based on the sale of products that carried no form of rebate, or offered both options. We received a varied response to this, with some firms favouring each of the different options.

3.20 We also asked these firms whether they thought there was any way to mitigate the perceived adverse effects of such a ban, short of allowing cash rebates to be paid without restrictions. One suggestion that was put to us was that, because many of the cash rebates which are currently paid through platforms are for very small sums (e.g. less than £5), payments below a certain level should be permitted. Another suggestion was a 'segregated' cash account operated according to the instructions of the client that is separate from the account used to pay for adviser charges. Here again we received varying views, with some firms saying they would like to be able to make use of such mechanisms, and others saying not.

Our response

We have carefully considered these objections to our proposals, and we do not feel that any of these should prevent us from proceeding with a ban on cash rebates to consumers. We are not concerned purely with the situation as it is today and whether there is a specific market failure in this area. We need to consider the RDR rules, which come into force at the end of 2012, and how these will impact the market. Payments which are currently made as commission to the adviser will not be allowed to be paid post-2012, so provider firms will need to consider what happens with that payment. We do not feel that it would be desirable, once the RDR rules are in force, for providers to simply pay existing commission into a client's account, which is then used to pay the adviser charge, as we believe this has the potential to distort the market.

Also, we do not accept the argument that there is an analogy between the payment of cash rebates and the facilitation of advice by product providers, much less that cash rebates are positively necessary to provide a fund to pay for advice. We felt it was telling that some firms argued that a cash rebate was necessary to fund the adviser charge, as this is precisely the behaviour we would be concerned about. We also note that firms providing a cash rebate would be unable to vary the payment depending on the amount of the adviser charge, as it would simply be an amount of money determined by the product provider which the adviser could use to fund the adviser charge. This is not dissimilar to how commission works currently. Facilitation of the payment of adviser charges involves the payment of an agreed sum from the provider to the adviser firm to cover the cost of advice. And it can only take place when the client, adviser and provider all agree to this. Rebates involve a payment to the client of a fixed amount in circumstances in which the provider will not be aware, because he will not have been told, what the cost of advice will be. Allowing product providers to continue to pay a standard sum of money in all circumstances would be inconsistent with the aim of the RDR to move away from a world where cash flows from product providers can influence distribution.

Nor do we accept that the payment of rebates in additional units would be impossible. Whilst it might present some practical challenges, these should not be completely unfamiliar, since platforms will currently have to deal with situations in which clients, for example, choose to receive dividends in units rather than cash. Whilst some firms might choose not to offer or hold such rebates, a number of respondents said that they would be able to operate such arrangements. We would repeat the point made in CP10/29 that, by allowing unit rebates, we would not expect firms to take the existing adviser commission built into products and simply rebate it back to the client in additional units. It is also important to repeat that the intention behind unit rebates is to allow fund managers a route through which they can vary the level of charges, or for platforms to pass on to clients the discount they have negotiated from the fund manager. However, we note that this rarely happens in practice in the market today, even with cash rebates allowed in their current form. If a fund supermarket negotiates a better price from the fund manager, we note that the fund supermarket is the one that benefits from this, as it is rarely passed on to the client. Furthermore, we note that fund managers do not generally vary their level of charges to the client when a platform is not involved.

So, having considered these responses, we have decided that we would ultimately like to move to a position where cash rebates are banned. But we do not propose to make such a rule now.

A number of respondents to the consultation noted that a ban on cash rebates would require significant and expensive systems changes for both product providers and platforms. Whilst we do not consider that this is a reason to pull back from the idea of a ban, we note that there will be an interaction between this and the proposal to ban payments by providers to platforms, which we have mentioned above. We consider that it would be best to hold off on introducing the ban on cash rebates to clients until we are ready to announce our detailed plans on payments by providers to platforms.[1] We expect to make both changes simultaneously. As mentioned above, the further research that we propose to undertake will inform the decision on the timetable for work, and any rule changes we make in this area would not come into force until after 31 December 2012.

1 One area that we believe merits further consideration is the difference between the treatment of rebates for advised and non-advised sales, and we will look at this further.

4

Re-registration and capital adequacy

4.1 This chapter outlines the views of the respondents to CP10/29 on our proposals for re-registration and recalls that our approach on capital adequacy was set out in that CP.

4.2 We also set out our responses to these views and how we have decided to proceed.

Re-registration

4.3 In the Consultation Paper, we reminded readers of our objective, first set out in DP10/2, of ensuring that investments could be re-registered in specie. We set out our intention to introduce a rule to make it compulsory for platform firms to allow assets to be re-registered off their platforms, with implementation of this standard by 31 December 2012. We made clear that our intention was to apply this rule to all firms that hold assets on behalf of clients via nominee companies. And we described our intention to introduce the notion of timely transfer by requiring that transfers be carried out within a reasonable time.

4.4 We asked two questions regarding our re-registration proposals:

> **Q7:** Do you agree with our proposal to extend the scope of ensuring that all firms acting as nominee companies offer re-registration in specie?

> **Q8:** Do you agree with our proposal that re-registration should be carried out in a reasonable time and do you have any feedback as to what might be reasonable for particular wrappers and assets?

4.5 Regarding the first question, only two respondents disagreed with the proposal to extend our re-registration *in specie* requirement to cover all firms acting as nominee companies. A number of firms suggested that further rules were needed to ensure that all parties involved with re-registration (including fund managers) play their part. One firm wanted the rule to focus on re-registration accuracy as well as timeliness.

4.6 Following analysis of the responses, it was highlighted to us that the rule COBS 6.1G.1R as proposed did not apply as intended. As stated above, our intention is to apply the rule to platform firms and other firms that hold investment products on behalf of retail investors, usually, but not always, via a nominee account. The defined term 'nominee company' does not include all of these types of firms. We have therefore amended the drafting of the rule to reflect this.

4.7 Regarding the second question, there was complete agreement that re-registration should take place within a reasonable time. Many respondents suggested maximum re-registration periods ranging from a few working days to several weeks. A few firms suggested much longer re-registration periods as reasonable (three to six months). There was widespread support among firms for the industry initiative by the Tax Incentivised Savings Association (TISA) to set service level agreements (SLAs) and to automate the process. A number said that they consider TISA's re-registration SLA timescales to be achievable. But a number argued that setting any sort of prescriptive rule should be avoided at this stage, and that reasonable time periods should be expected to vary depending on the complexity of assets being re-registered.

Our response

We welcome the support for our proposal that *in specie* re-registration standards should apply to all nominee companies. We note the additional comments made by some respondents as described in the preceding paragraph, but we do not propose to write additional rules at this stage. If our post-implementation review work suggests that fund managers or other parties are causing unnecessary delays, or that timeliness is being achieved at the price of accuracy, we will consider further rules at that stage. We may also consider widening the scope of the requirement to cover other investments in the future.

Given the TISA initiative, which we support, we do not think it is appropriate for us to set prescriptive rules regarding timescales for re-registration at this stage. We will use the results of our post-implementation review work to assess the industry's progress and to determine whether prescriptive rules are needed.

Other issues on re-registration

4.8 In responding to the questions above, firms raised a number of other matters:

- Many firms argued that our proposal to ban cash rebates is likely to result in a larger number of share classes, to reflect the differing deals struck by platforms with an investment manager for a particular fund. The respondents argued that this is likely to slow the re-registration process and involve additional cost. We do not agree that our proposed ban on cash rebates will necessarily lead to a proliferation of share classes. By allowing unit reinvestment, we do not see the need for fund managers to offer different platforms different share classes. If a platform wants to offer their client a better deal, they can do so through additional unit allocation. If a fund manager wants to offer better terms to a platform, this has nothing to do with the proposed ban on cash rebates – currently, different fund supermarkets obtain different terms from fund managers and do not pay this back to the client in cash, and therefore our proposed ban on cash rebates does not impact this relationship, as there is no cash being paid back to the client.
- Some firms commented on the need for *in specie* re-registration processes to have sufficient capacity to be able to handle bulk transfers from one platform to another within similar timescales to those for single client transfers. We expect firms to make appropriate arrangements to enable bulk transfers to be completed within a reasonable period of time, although we accept that timescales might need to be a little longer than those for single client transfers. We will discuss firms' plans for bulk transfer timescales as part of our post-implementation work.
- One firm suggested that the FSA should work with the life industry and tax authorities to enable insurance bonds to be portable between product providers. We have no plans to do this at this time.
- A number of firms wanted assurance that a firm would not be required to accept funds that it did not already support. We can assure firms that there is no such obligation.

4.9 COBS 6.1G.2R requires firms which act as registrar to carry out requests for re-registration of ownership of a retail investment product within a reasonable period of time. This includes operators of unauthorised funds, which maintain a register of unitholders. Therefore, in order to reflect this, we have amended the table in COBS 18 which sets out the specialist regime for operators of collective investment schemes. COBS 6.1G.2R will not apply if the register of units is not maintained by the scheme operator.

Capital adequacy for Limited Licence Investment Firms (LLIFs) operating as platforms

4.10 We did not consult on any additional proposals in CP10/29. Our approach to LLIFs operating as platforms, taking into account the feedback we received to DP10/2, is set out in paragraphs 4.13 to 4.18 of the CP.

5

Investing in authorised funds through nominees

5.1 As explained more fully in CP10/29, we are aware of the potential for consumer detriment where platform operators and other nominee companies do not forward important information to investors in authorised funds. Such information includes the short-form fund reports and accounts, notifications of changes affecting the fund, notices of suspension of dealing and notice that the fund is to be terminated. If fund changes are notified in advance, but the information is not passed on in a timely manner, it may leave investors little time to consider the effect on their investments or to seek professional advice before the change takes effect.

5.2 We do not think it is right that investors who access authorised funds through a platform operator, or another type of nominee company, should receive less information (or receive it in a less timely way) than if they were holding units in the funds directly.

5.3 In CP10/29 we consulted on proposals to align the communications received by investors through platforms and other nominee companies with those received by direct investors. We also proposed that voting rights be passed to the end investors as a matter of course.

5.4 We also consulted on requiring nominee companies to provide aggregated, anonymised information to authorised fund managers (AFMs) to enable them to manage fund liquidity more effectively.

Definition of intermediate unitholder

5.5 Although CP10/29 largely focused on platform operators, we acknowledged that these concerns arise wherever units in authorised funds are held by a nominee on behalf of retail clients; for example, ISA or SIPP providers. In order to ensure that our new rules include all types of nominee companies, we proposed a new Handbook Glossary definition of ‘intermediate unitholder’, which is a firm that is named on the unitholder register but is not the beneficial owner of the units.

5.6 We asked:

> **Q9:** Do you agree that the new definition 'intermediate unitholder' incorporates all relevant firms?

Responses to CP10/29

5.7 Of the respondents who answered this question, the majority agreed that all relevant firms were included. A small number of respondents commented that nominee companies are usually corporate entities which are not directly authorised by the FSA, and the proposed drafting of the rule did not take account of this. Several respondents interpreted the definition to include firms that manage investments on a discretionary basis, and commented that such firms should be excluded.

Our response

We have noted the comments on the structure of nominee companies and have redrafted the definition accordingly. It is not our intention to include discretionary investment managers in the scope of these rules, since investors who use the services of such managers do not need to receive the information in order to make decisions. Section (b) of the proposed definition refers to firms which manage investments. The Glossary defines managing investments as 'the regulated activity, specified in article 37 of the *Regulated Activities Order* (Managing investments), which is in summary: managing assets belonging to another *person* in circumstances which involve the exercise of discretion, if: (a) the assets consist of or include any *security*…' Discretionary investment managers do not fall within the definition of intermediate unitholder.

Provision of information to underlying investors

5.8 In Chapter 5 of CP10/29 we explained how the rules in the Collective Investment Schemes sourcebook (COLL) require AFMs to provide certain information to unitholders. We acknowledged that investors' increased use of platforms and other business models (such as ISA managers or SIPP providers), which use a nominee company to hold the units, has increased the importance of making sure that our rules reflect all of the various methods through which investors access products. There is currently no requirement for nominees to pass this information to the end investor who is the beneficial owner of the units.

5.9 We asked:

> **Q10:** Do you agree with our proposal to introduce a requirement

for intermediate unitholders to pass on information provided by authorised fund managers to end investors?

Responses to CP10/29

5.10 The majority of respondents to CP10/29 broadly agreed that investors using platforms should have access to the same (or similar) information as direct investors. A small number of respondents suggested that investors who access funds through platforms are not interested in receiving such information, but there seemed to be some misunderstanding about what this information included (one respondent referred to it as 'junk mail', although the draft rules clearly listed the information that should be passed on).

5.11 Many respondents did, however, point out a number of operational barriers to our proposals and suggested modifications. They said they might face difficulties in providing information by a PDF attachment to an email, as opposed to a link contained within an email, for example, because of mailbox sizes or firewalls (especially where investors provide a work email address).

5.12 A large number of respondents suggested that we should instead allow investors to choose whether or not to receive the information. Intermediate unitholders would inform investors of the types of information that might be provided and allow them either to opt in or opt out of receiving that information and voting rights. One respondent provided a draft of the opt-out document it would provide to investors in such cases.

5.13 Some respondents suggested that the rules should enable all information to be sent to advisers rather than to the end investor.

5.14 A small number of respondents referred to the new regime for the Key Investor Information (KII) document and commented that it would be unnecessary for any further information to be provided. One respondent suggested that the proposals in CP10/29 were 'out of step' with the KII rules.

Our response

We do not accept the claims of some respondents that such information is not of value to investors. Nor do we think that a disclosure-based approach, permitting an opt-in or opt-out, would necessarily provide the best outcome for investors. It is our view that, currently, many platforms and other nominees do not make it sufficiently clear to investors what their policies are on passing on information provided by AFMs, nor do they explain what this information relates to or its importance.

In terms of the information to be provided, we are proceeding with the amendments largely as proposed in CP10/29. That is, intermediate unitholders must, in a timely manner, forward to end investors certain documents and written notifications they receive from an authorised fund manager or depositary, so that those investors are informed about changes to their investment as and when they are announced.

However, we recognise the cost involved to the industry in implementing the proposals set out in CP10/29. We have given much thought to how we could provide an appropriate level of protection for investors whilst giving due consideration to the concerns raised by respondents to the consultation.

In response to feedback regarding the method of electronic communication, we note the possible operational difficulties faced by firms when transmitting attachments in an email. We have amended the proposed rules to allow firms to send an email or other type of secure message that includes hyperlinks to the relevant area, e.g., a 'Funds Literature Library', provided it is hosted on a website that is under the control of the intermediate unitholder. Where a firm includes a link to a website, the body of the email or secure message must include a summary of the content of the notification from the authorised fund manager or depositary and sufficient information to enable the beneficial owner to understand the subject matter of the notification and its possible consequences. Where a firm cannot electronically notify investors, it must make a postal notification.

Short-form fund reports are a useful tool for investors, providing a snapshot of the fund, including its top holdings, its asset or geographical allocation, and a commentary from the fund manager on its performance and strategy. Under recent changes to implement the UCITS IV Directive, the short report will also be used by AFMs of UCITS schemes to notify investors of any changes to the synthetic risk and reward indicator (SRRI) published in the fund's KII document. So we believe it is essential for consumer protection that short reports are made easily available.

However, feedback from respondents to CP10/29 suggested that because of the number of short reports produced by AFMs, platforms and other nominees might incur substantial costs if we required all reports to be forwarded to the end investor as soon as they are published.

So, we have amended our proposals to allow notification on a quarterly basis of short-form fund reports published in that period. Firms may still choose to send more frequent notifications or the actual reports if they so choose.

Our requirement for this information to be sent no more than three months after the end of the month in which the intermediate unitholder receives the short report seeks to achieve a balance between investors receiving a number of notifications spread throughout the year and the need for investors to receive information on a reasonably frequent basis.

We have included guidance which explains that firms may include such notifications in other regulatory mailings, such as six-monthly statements or provision of contract notes, as this may prevent the need to carry out additional mailings. Furthermore, advisers may tend to contact clients shortly after statements are likely to be received so that they can assess any required action. Including notifications of short reports with statements will enable the adviser to talk through the contents with the investor if required.

We are retaining the rule which states that intermediate unitholders cannot make a specific charge for provision of short reports or notifications.

However, we do not agree that the information should automatically be provided to advisers instead of directly to the investor. Intermediate unitholders may choose to send such information to advisers, but that must be in addition to sending it to the investor.

The KII is a pre-sale document so it must be provided to investors before units in a UCITS scheme are purchased. The proposals in CP10/29 address the need for post-sale information to be provided to investors on a continuing basis throughout the life of their investment. Therefore, we do not believe that our proposals are out of step with the KII rules.

Amendments to the Collective Investment Schemes sourcebook

5.15 The rules we are introducing for intermediate unitholders to provide notifications of short-form reports require less than is currently required for direct unitholders by AFMs in the Collective Investment Schemes sourcebook (COLL). Additionally, the rules in COLL do not currently permit the use of signposting in electronic communications. We will conduct some analysis of the rules to identify where we are able to align the rules, subject to the requirements of the UCITS Directive, and aim to consult on this in due course.

Provision of voting rights to underlying investors

Our proposals

5.16 We also consulted on introducing a requirement for intermediate unitholders to facilitate the exercising of voting rights by the end investor. We did not prescribe how firms should manage this in practice, instead allowing some flexibility for firms to identify the most appropriate method for their client base. This was in line with the current direction of the proposed Securities Law Directive (SLD). The SLD aims to regulate the legal framework governing, amongst other things, the processing of rights flowing from securities held in securities accounts.

5.17 We asked:

Q11: Do you agree that we are allowing an appropriate level of flexibility by requiring intermediate unitholders to have appropriate systems and controls to either exercise voting rights on the instruction of investors, or to facilitate investors' exercising of rights?

Responses to CP10/29

5.18 Respondents were concerned about the operational difficulties of providing voting rights to end investors. The rules in COLL currently require AFMs to give two weeks' notice of an extraordinary general meeting (EGM), and this gives nominees a short window of time in which to turn around mailings and co-ordinate responses before the vote occurs. Many respondents shared the view that end investors do not engage with the voting process, and that requiring the facilitation of voting rights would be unduly burdensome given the level of investor interest.

5.19 As stated in paragraph 5.13, a large number of respondents suggested that allowing investors to opt in to receiving voting rights, or to opt out, would be a more acceptable solution. Respondents claimed that there was little or no investor engagement in this process.

5.20 A small number of respondents were concerned that, since the text of the SLD has not yet been finalised, firms might need to implement a process to meet these requirements, and then amend that process or introduce a new one when the SLD is implemented in national law.

Our response

It is difficult to know whether the perceived lack of investor engagement is due to a lack of interest on the part of the investor or the lack of information provided to investors about the process and how it might affect them. To maintain an appropriate level of consumer protection, we believe we should ensure that all investors are kept informed about any events that could change the purpose, the cost or the risk profile of their investment.

We note the concerns raised in response to the consultation regarding the challenging timeframes in which intermediate unitholders would be expected to process voting rights and also regarding the requirements of the SLD. We know that, because of the RDR, many firms are already facing significant system and other operational developments. We do not want to place an additional burden on firms, which may then need to carry out further development to comply fully with the SLD when it is implemented.

So, we are amending the proposals in CP10/29 and, rather than requiring intermediate unitholders to facilitate or exercise voting rights, instead firms may continue with the approach they currently adopt in relation to voting rights but with some amendments. Where an intermediate unitholder receives notification from an AFM or a depositary of a forthcoming EGM, the intermediate unitholder must in turn inform all end investors in that fund of the proposals. Such notifications must include:

- an explanation that the intermediate unitholder holds the unit as nominee (or through a third party acting as nominee;
- if applicable, an explanation that voting rights are not available to the beneficial owner;
- a summary of the subject matter of the notification from the AFM or depositary together with an explanation of the consequences of a vote for or against the proposal; and
- a summary of the intermediate unitholder's policy for exercising voting rights, e.g., whether the firm will abstain or allow the investor to vote, 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.

Notifications should also prompt investors to seek professional advice in order to consider the ongoing suitability of the investment, if the change is approved.

These rules will be reviewed and amended as necessary as part of the implementation of the SLD in 2013.

Provision of aggregated information to product providers

5.21 Finally, we consulted on introducing a requirement for intermediate unitholders to provide aggregated information on the underlying investor base to AFMs at their request.

5.22 AFMs have told us that the increasing shift to platforms means that they are distanced from the end investor and are unable to identify trends in investor behaviour. This can make it harder for them to manage liquidity in the fund. During the financial crisis, a small number of funds were required to suspend dealing due to large numbers of net redemptions. This aggregated information is intended to help AFMs meet their responsibilities for managing the fund, and they do not need to be able to identify any individual investor from the data provided.

5.23 We asked:

Q12: Do you agree with our proposal to require intermediate unitholders to provide aggregate information when requested by authorised fund managers?

Responses to CP10/29

5.24 Most respondents supported this proposal, although a number of platforms that responded to this question said they already provide such information to AFMs.

5.25 Several respondents suggested we could provide an exhaustive list of the types of information that an AFM could request of an intermediate unitholder. Respondents also suggested that, to avoid making the rule unduly burdensome, especially for smaller firms, we should specify a minimum level for the percentage of units held in a fund, below which an intermediate unitholder would not be required to report the information. This would ensure that a firm holding less than, say, 0.5% of the total units in issue of a fund would not need to comply.

Our response

We are pleased to note that a number of platform service providers already provide useful information to AFMs. These proposals are intended to ensure that this practice is consistent across all firms acting as intermediate unitholders.

We have decided not to produce an exhaustive list of the types of information an AFM can request. This is because different information may be required depending on the type of fund, i.e., an equity fund manager may not need the same information as a bond fund manager, and information needs may develop over time. We expect that industry participants would be able to work together to ensure some consistency or standards for the request and provision of this information.

We do not think setting a minimum reporting level for the fund is necessary. AFMs are unlikely to request information from intermediate unitholders with only a small representation in the fund, as small holdings are unlikely to affect its liquidity profile materially.

6

Cost benefit analysis

6.1 This chapter outlines the views of the respondents to CP10/29 on our cost benefit analysis (CBA). We also set out our responses to these views, how we have taken these into account, and provide an account of the changes to the CBA with respect to the one published in CP10/29.

Feedback on the CBA in CP10/29

6.2 We received 43 responses on the CBA published in CP10/29. There was general agreement on the issues we identified. However, the majority of respondents had comments on specific parts of the CBA. The comments included feedback on the analysis of incremental compliance costs, indirect costs and benefits. We discuss these in more detail below.

Incremental compliance costs

6.3 Some respondents pointed out that our incremental compliance cost survey did not include the vast majority of firms undertaking traditional agency stockbroking business. In their view this was a particular issue, because the proposed definition of 'platform service provider' would apply to similar firms, and this had the potential to considerably increase the estimate of compliance costs. More specifically, this point was made with regard to the cost estimates of the proposals on the provision of information: extrapolating costs for other nominee companies on the basis of the responses of platform service providers was deemed to be unreliable.

6.4 Many respondents argued that a ban of cash rebates would prove to be costly to implement, whilst delivering no corresponding benefits in terms of consumer protection.

6.5 Some respondents pointed out that the proposals on the provision of information contributed to a large share of the overall costs, but there might be no corresponding benefit as, in their experience, many investors were not interested in receiving all of the information.

6.6 One respondent argued that the FSA would incur additional costs to supervise the new rules on disclosure appropriately.

6.7 Finally, one respondent disagreed with our conclusion that advisers would not incur any material cost as a result of the proposals discussed in CP10/29.

Indirect costs

6.8 Most comments on indirect costs focused on the impact of a ban of cash rebates on the number of share classes that will be created post-RDR. A few respondents argued that operational complexities would mean that unit rebates were not feasible, with the result that fund managers would need to create platform-specific share classes. There would be knock-on impacts on re-registration if different share classes were available on different platforms.

6.9 Some respondents were also sceptical that unit rebates would promote price competition, as they would increase consumer confusion.

Benefits

6.10 Overall, little feedback was provided specifically on benefits. However, some respondents expressed confidence that the relevant benefits had been identified.

6.11 Some other respondents argued that, with regard to the provision of information proposals and the banning of cash rebates, no robust evidence of the benefits had been provided.

Our response

Following feedback from the consultation, we agreed with the suggestion that stockbroking firms needed to be specifically surveyed in order to gather more precise information on the compliance costs of the provision of information proposals, and to understand the extent to which they are different to the estimates derived from platforms. We have therefore carried out such a survey and used it to update our compliance cost estimates.

We have also updated our compliance costs estimates in relation to:

- disclosure of payments from product providers;
- the unbiased presentation of products for those stockbroking firms that provide execution-only trading services; and
- equity ISA managers that offer products from different product providers, as they will come within our definition of ‘platform service provider’.

We also acknowledge that the decision on banning cash rebates is not a straightforward one to make and that there are complications around it. As explained in Chapter 1, we are not implementing this proposal at the present time, and therefore most of the concerns raised in this respect, including the danger of a proliferation of share classes, do not arise.

With regard to the proposals on the provision of information and voting rights, we have updated our estimates to reflect the additional research we carried out, and reiterate the results of our previous survey, which highlighted that advisers would like to receive more information from platforms. We are also providing new estimates to take into account the changes in policy that we have introduced following the feedback we received.

With regard to costs for the FSA, we have acknowledged that the RDR will require additional resources to ensure appropriate supervision of the new rules, including the disclosure rules. However, we have taken into account these resources in the CBA in CP09/18. We do not consider that resources additional to those identified in that CBA will be necessary.

Finally, we reiterate that, on the basis of the work carried out for CP10/29, we do not believe that advisers will incur costs additional to those they will incur to comply with other RDR requirements. The usual due diligence process will apply to advisers whether or not their clients invest through a platform, and therefore we would expect advisers to go through very similar processes when they are using a platform compared with investing directly.

With regard to benefits, we welcome the feedback that most of the relevant ones have been identified.

Changes made to the cost benefit analysis in CP10/29

6.12 As part of this PS we are publishing final rules. We have made two significant changes to the final rules with respect to the draft rules published in CP10/29. Firstly, we are not proceeding with a ban of cash rebates. Secondly, we have amended our proposals on the provision of information and voting rights. Sections 156(6)b and 157 of FSMA require us to publish details of the significant changes together with a cost benefit analysis (CBA).

6.13 In addition to the above changes, due to final rules differing from their draft form, this CBA also addresses those areas where respondents thought that the CBA in CP10/29 did not represent the true costs and benefits associated with the proposals. However, we do not repeat those parts of the analysis that have not changed. Therefore, this chapter should be read together with the CBA published in CP10/29.

Methodology

6.14 In the light of the feedback received and the changes in policy, we have conducted additional research, to supplement the analysis conducted for CP10/29.

6.15 More specifically, we have conducted a number of workshops with industry participants (platform service providers, fund managers and stockbrokers). We have also issued follow-up surveys to gather additional information on the costs of a ban of *cash* rebates, as opposed to an outright ban of rebates to consumers (for the survey conducted for CP10/29 an outright ban was considered). However, given that we are not proceeding with the rule on banning cash rebates, we do not report the costs associated with the proposal here.

6.16 We have also conducted a survey to gather information on the costs that would be incurred by other intermediate unitholders as well as platform operators to comply with the amended rules on the provision of information and voting rights.

6.17 With respect to intermediate unitholders, we invited all members of the Association of Private Client Investment Managers and Stockbrokers (APCIMS) to participate. Overall, we have received 15 responses. In addition, we invited all platform operators to submit updated information on costs. Approximately half of them have done so.

Incremental compliance costs

6.18 The changes made with regard to the provision of information and voting rights require a new estimation of compliance costs and analysis of the benefits. Furthermore, we provide below updated estimates of the costs stemming from COBS 6.1E.1R about the disclosure of fees or commission from third parties and the associated guidance, at COBS 6.1E.2G, about presenting products without bias.

Changes to provision of information proposals

6.19 On the basis of the survey of other intermediate unitholders, we have revised down our estimate of one-off costs and revised up our estimate of ongoing costs to comply with the proposals as presented in CP10/29. At the time we estimated one-off costs for intermediate unitholders to be £60.2m and ongoing costs to be £21.2m. Our revised estimates are £15.1m one-off and £32.4m ongoing.

6.20 It is likely that other intermediate unitholders would have relied more heavily than platform service providers on manual processes, thereby reducing one-off costs while at the same time increasing ongoing costs.

6.21 The overall costs of the proposals described in CP10/29 (including costs incurred by platforms) are revised to be £23.5m one-off and £44.8m ongoing. However, as explained in Chapter 5, we have amended our proposals to leave more flexibility to firms on how to provide information and voting rights to end investors.

6.22 On the basis of the results of the survey we estimate that the compliance costs associated with the rules made in this Policy Statement would be £20.1m one-off and £39m ongoing. These figures represent a 15% and 13% reduction respectively. The costs are summarised in Table 1 below.

Table 1: Compliance costs of provision of information (£m)[2]

		One-off costs	Ongoing costs
Proposals in CP10/29	Platform operators	8.5	12.4
	Other intermediate unitholders	15.1	32.4
	Total	**23.5**	**44.8**
Rules in this PS	Platform operators	8.1	11.1
	Other intermediate unitholders	12.1	28.0
	Total	**20.2**	**39.1**

6.23 We are also clarifying that, where an intermediate unitholder chooses to send links to a website in order to comply with the new requirements, the documents must remain on the website for as long as the investor may need to access them. It is our understanding that many of the firms that will be subject to these requirements currently make such information available on their websites. As such, clarifying that the information should remain on the website for as long as it is valid should not impact materially on their costs.

Updated compliance costs due to the disclosure of remuneration and unbiased presentation of products

6.24 As we explained in Chapter 2, it is our view that there is no meaningful difference in the services provided by execution-only stockbrokers, equity ISA managers, and wraps and fund supermarkets. Stockbroking firms that provide execution-only trading services and equity ISA managers that offer funds from different product providers will therefore come within our definition of 'platform service provider' and be required to comply with the rules regarding the disclosure of third party remuneration and unbiased presentation of products.

6.25 On the basis of our discussions with the industry, we have updated the CBA to take account of the additional firms that will be captured by the definition.

6.26 In order to estimate the compliance costs for these firms, we relied on the information originally provided to us by wraps and fund supermarkets. and cross-checked it with information held by the FSA that had been used in previous CBA exercises.

2 Totals may not match exactly due to rounding.

6.27 On this basis we estimate that for these firms the one-off costs will be £3.3m and the ongoing costs will be £3.9m in total. To comply with existing rules, firms will already have to disclose the information if requested to do so. We would therefore not expect them to have to devote a high level of resources to meet the new requirements.[3]

Overall compliance costs

6.28 Given that we are not implementing the ban of cash rebates and that some estimates have been revised, the overall compliance costs associated with the rules made in this Policy Statement differ from those published in CP10/29.

6.29 The revised compliance costs are summarised in Tables 2 and 3 below.

Table 2: Total compliance costs (£m) by type of firm

	One-off costs	Ongoing costs
Platform operators*	40.4	20.4
Fund managers	2.9	0
Other intermediate unitholders	12.1	28.0
Total	**55.4**	**48.4**

* includes execution-only stockbrokers and equity ISA managers impacted

Table 3: Total compliance costs (£m) by rule[4]

	One-off costs	Ongoing costs
RDR related rules	27.8	7.3
Re-registration rules	7.4	2.1
Provision of information rules	20.1	39.0
Total	**55.4**	**48.4**

Indirect costs and benefits

6.30 Our assessment of the indirect costs and benefits of the rules made in this Policy Statement is not dissimilar to the one contained in the CBA of CP10/29.

6.31 The change in the proposals on the provision of information and voting rights would not reduce the benefits materially. This is because, as some firms have noted, end investors will still have access to the relevant information and we did not identify any indirect costs associated with the proposals.

3 We have also cross-checked our estimates with those we published in CP06/19 on the introduction of changes to COBS. In that case we estimated that the costs of complying with the inducement rules contained in MiFID were £700,000 one-off and of minimal significance on an ongoing basis.

4 Totals may not match exactly due to rounding.

6.32 The fact that we are not proceeding with a ban on cash rebates reduces the likelihood that negative impacts on the competitive process will materialise. Fund managers will continue to be able to offer discounts to end investors, and platform operators will be able to use their buyer power to do so, thereby enabling price competition to take place. On the other hand, the risk that non-compliant advisers could expropriate the rebates offered to consumers, by altering their adviser charges to coincide with the highest rebates on offer, would increase somewhat.

Annex 1

List of non-confidential respondents to CP10/29

ABC Financial Services

AC Wealth Management

AIFA

AJ Bell

Alan Boswell & Company Limited

Alliance Trust Savings Limited

Altus

APCIMS

Artemis Investment Management LLP

Ascentric / Royal London Group

Association of British Insurers

Association of Financial Mutuals

Association of Independment Financial Advisers

Association of International Life Offices

Association of Investment Companies

Association of Member-Directed Pension Schemes

Aviva (UK) Life

AWD Chase de Vere Limited

AXA Sunlife

Axim Financial Planning Limited

Baillie Gifford & Co

Black Rock Investment Management UK Limited

British Bankers Assocation

Canada Life Limited

Capital Life and Pentions Regulated Services Limited

Carrick Financial Management Limited

Charles Stanley & Co Limited

Church's Financial Planning Limited

City & Trust Financial Limited

Clocktower Fund Management Limited

Cofunds Limited

County Capital Wealth Management Limited

Cyberifa Limited

DarwinRowe

ea Consulting Group

Elementary Financial

Epoch Wealth Management

Ernst & Young LLP

Ethos Financial Management Limited

Eversheds LLP

Executive Advisory Services Limited

F & C

Facts and Figures: Chartered Financial Planners

Family Equity Plan Limited

Financial Management Bureau

Financial Services Consumer Panel

Finch Financial

Four Square Advice Limited

Friends Provident

Fundsmith LLP

GLS Wealth Management

Grangewood Financial Management

Gresham Financial Planning LLP

Harvesting (UK) Limited

HC Wealth Management

HelenK Financial Advice Limited

HSBC Bank Plc

ICAEW

In2 Consulting Limited

Independent Financial Advisers Limited

Independent Financial Services (UK) Limited

Informed Choice Limited

International Financial Data Serviced UK Limited

Invesco Perpetual

Investment & Life Assurance Group Limited

Investment Management Association

Jelf Financial Planning Limited

JM Glendinning L & P Limited

JP Morgan Asset Management

Jupiter Unit Trust Managers Limited

Kingdom Investments

Liontrust Fund Partners LLP

M & G Limited

Magnus Financial Management Ltd

Margetts Fund Management Limited

Mike Watson IFA

Milford & Dormor Solicitors

Minerva Fund Managers Limited

Moore Stephen CFP

Navigant Consulting (Europe) Limited

Novia Financial Plc

Nucleus Financial Group Limited

Page Russell

Parnell Fisher Child

Partners Wealth Management LLP

Pershing Limited

Plutus Wealth

Proposito Financial Planning

Protection & Investment Limited

Provest Financial Management

Prudential

QS Financial Planning Solutions Limited

Querns Asset Managers LLP

Raymond James Investment Serviced Limited

Rensburg Sheppards Investment Management Limited

RM Wealth Management

Roger Heath Associates

Russell Investments Limited

Schroders Investment Management Limited

Scottish Widows on behalf of Lloyds Banking Group

SEI Investments (Europe) Limited

Seven Investment Management

SG Wealth Management Limted

Skerritt Consultants Limited

St. James's Place Wealth Management

Thames River Capital

The Association of Independent Discount and Non-Advisory Brokers (AIDB)

The Capita Group Plc

The Private Office

The Share Centre Limited

The UK Platform Group

Threesixty services LLP

TISA

Transact - Integrated Financial Arrangements Plc

Transact - Platform Service Providers Group

True Potential LLP

Vinny Thompson

Ware & Kay Financial Services Limited

Wealthtime Limited

Willow Financial Management

Zurich Financial Services

Annex 2

Compatibility statement

1. In CP10/29 we published a compatibility statement for the rules that we proposed at the time. Since then, we have made two significant changes to the final rules. Firstly, we are not proceeding with a ban of cash rebates. Secondly, we have amended our proposals on the provision of information and voting rights.

2. The first change results from industry feedback and our assessment that additional work is needed before we could move towards a ban on cash rebates and the ban on payments from product providers to platform service providers. This will ensure that any disruption for the industry is minimised.

3. Changes to the rules on the provision of information and voting rights have been made so that firms can comply with the new rules in a more cost-effective way, without reducing the level of consumer protection. This implies that equivalent benefits will be achieved at a lower cost.

4. The above changes imply that, with regard to *market confidence*, the risk that adviser remuneration can be influenced by product providers increases slightly. On the other hand, with regard to *the need to minimise the adverse effects on competition* and *the desirability of facilitating competition*, the absence of a ban on cash rebates decreases the risk that negative effects on competition materialise, due to the difficulty of passing on price reductions to end investors.

5. We are therefore satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

Annex 3

Using platform-based investments and the independence rule (COBS 6.2.15R[1])

Introduction

1. In Chapter 6 of Discussion Paper 07/2[2] (and the follow-up Feedback Statement 08/1[3]), we set out our position in relation to platforms and the independence rule. We also provided a summary for smaller firms in a factsheet.[4] Our position has not changed. However, we have received requests from the industry for further explanation of our position on platforms and independence[5], and the circumstances in which firms can use one platform. This annex is in response to these requests and provides additional clarification and good and poor practice examples.[6] Whilst this annex relates to the current COBS rules, the good and poor examples set out in this document are also relevant to the independence rules introduced by the RDR post-2012.

1 With the implementation of the RDR (31.12.12), this rule will be replaced by COBS 6.2A.3R.
2 www.fsa.gov.uk/pages/Library/Policy/DP/2007/07_02.shtml
3 www.fsa.gov.uk/pages/Library/Policy/DP/2008/fs08_01.shtml
4 ww.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/factsheet_wraps.pdf (page 6).
5 For the purposes of this annex, all references to firms and advisers are to those firms and advisers holding themselves out as being independent.
6 Unless stated otherwise these examples are fictional. The good and poor practice examples are examples only and firms can use other approaches to meet our rules and Principles.

The independence rule

2. Currently the independence rule states that a firm must not hold itself out to a client as acting independently unless it intends to provide personal recommendations on packaged products from the whole market (or the whole of a sector of the market).[7]

3. Packaged products include (but are not limited to) collective investment schemes (CISs), such as open ended investment companies (OEICs); investment bonds; personal pensions, and self-invested personal pensions (SIPPs).

4. At present, platforms generally have access to a very wide (or even whole of market) range of CIS funds but usually a much more limited range of other packaged products such as investment bonds, personal pensions and SIPPs.[8] Hence, in practice, the whole of market rule can be harder to meet in relation to these products when using platforms.

5. Firms should also be mindful of their duty to comply with the suitability requirements[9] and the client's best interests[10] rule when making a personal recommendation to a client. To meet the independence rule, firms will need to be able to identify clients for whom a particular platform-based service is not suitable, and advise them 'off-platform'.

Using one platform for *all* clients

6. We think that it is likely to be very rare, if possible at all, that a firm could use one platform for all clients and meet the independence rule. A firm that wished to do so would have to find a platform that offered a range of products that covered the whole of the packaged product market (or the whole of a sector of that market). Furthermore, it would need to keep this range under continual review to ensure that it did not change to the extent that it remained whole of market.

7. Platforms themselves are under no regulatory requirement to offer any particular products, or to consider whether or not their offering is whole of the market. Given that there are costs to platforms and/or to product providers[11] in including products within their ranges, platforms' offerings are likely, in most cases, to amount to something less than whole of market coverage.

8. We would expect firms not to make a recommendation to purchase a product through a platform if an investment off platform would be in the client's best interests or if none of the investment selections that are available to the firm is suitable for the client.

7 And offers the client the opportunity of paying a fee for the provision of such advice.
8 Currently, some platforms do not have access to the wider range of products covered by the retail investment products definition from 31.12.12.
9 Principles 6 and 9, COBS 9.2R.
10 COBS 2.1.1R.
11 Under the fund supermarket model.

Using one platform for the *majority* of clients

9. This is a much more likely scenario than the one above, because the independent adviser firm is considering off-platform solutions where this is suitable for all or part of a client's portfolio, or using another platform if this is in the client's best interests. So even where the majority of a firm's clients have similar needs, there are probably going to be outlier clients and hence the potential need for recommending products off-platform. The platform adopted would need to be competitive in terms of charges and features for this to be an appropriate approach.

Good practice

An independent firm takes on most of its clients as a result of referrals from existing clients. So it tends to deal with a defined category of clients but nevertheless remains mindful of the products available across the market. Hence, when a client has a particular individual need, then they are able to recommend a product off-platform that is suitable for this client and is in their best interests. For example, if the platform-based SIPP does not offer the option of individual commercial property purchase (or SIPPs available through the platform are uncompetitive in this respect) then the firm recommends another SIPP where it is suitable for the client to invest in an individual commercial property.

Poor practice

The firm uses a single platform but has not assessed for which clients the platform-based services are – and are not – suitable. They use the platform routinely for all clients without adequate consideration of the clients' needs and personal circumstances. This risks unsuitable advice for some clients; for example, where the platform has a fixed fee and the client's investment level is very low (and hence the flat fee has a disproportionate impact on the overall costs), or where it would have been in the client's best interests to have been recommended a particular investment that is not available on the platform.

Using one platform for some of their clients

10. A firm may want to use a single platform to offer a platform-based service to a segment of their client bank. Here the firm has identified a defined category of clients and wishes to provide platform-based services to these clients. Clients for whom this service is not suitable should be handled differently (for example, using off-platform investments). To ensure that recommendations are suitable, the firm would need to consider the individual needs and circumstances of clients *within* the defined segment of the client bank and identify outlier clients for whom the platform-based services would not be appropriate.

Good practice

The firm has decided it wants to provide a 'premier service' to its more wealthy clients (which it has defined as having over a certain level of investable assets). It undertook appropriate due diligence on the platform to adopt and considered which clients this approach would be suitable for, and which it would not. Although this service, and the platform used to underpin it proved to be suitable for most clients within its defined segment proved to be suitable for this service, and the platform used to underpin it, it did not adopt a 'one-size-fits-all' approach and continued to recommend products off-platform on those occasions where the platform-based solution was not suitable for the individual client's needs and circumstances.

Poor practice

The firm adopted a particular platform to support the ongoing services it planned to offer to clients. However, it recommended platform-based investments with ongoing services to all clients irrespective of their individual needs and circumstances. This use of a single platform would be unlikely to be in the best interests of this wide range of clients. The firm did not have a clear idea of when providing ongoing advice was in the client's best interests, and when it was not. In addition, the firm's management did not put in place any controls (for example, guidance) on the recommendation of the platform-based services. Hence, the firm risked recommending unnecessarily expensive platform-based services when, for example, a lower cost transactional service might have been in the best interests of some clients.

Using more than one platform

11. Where a firm has a diverse range of clients, it may be in the firm's interests – as well as the clients' best interests – to use more than one platform. The firm may want to offer different levels of service to different categories of client. We have set out before[12] how clear segmentation of the client bank and effective matching of firm services and platform selection (following good due diligence) can be a beneficial approach. Clearly, as with the other scenarios above, it will be necessary to consider each client individually and ensure that any outlier clients are handled appropriately.

12 For example, in Chapter 4 of Discussion Paper 07/2.

Good practice

The firm had a broad range of clients, from those with simple pensions and small investment needs to those with significant sums to invest. The firm developed a range of services to meet the needs of the different clients it dealt with and undertook appropriate due diligence on platforms to ensure it adopted the right ones for itself and its clients. It based the client segmentation on investable assets and, at the higher end, it adopted a platform with a wide range of products and services. For the next category of clients, it adopted a lower cost platform and a simpler service appropriate for these clients. It also felt that it had some clients whose needs were simple and did not require routine ongoing services (but offered advice on a reactive basis). It worked on a transactional basis for these clients. It typically used a platform with no additional costs for CIS sales to these clients, but did not use a platform when recommending investment bonds and pensions.

It set out clearly which clients the services were most likely to be suitable for and it had processes in place to ensure that each client was considered individually and handled differently to the standard services where this was in the client's best interests. In addition, its business monitoring was based on ensuring the right outcomes were achieved for individual clients.

Poor practice

Individual advisers within the firm adopted different platforms from each other. There was no consistent approach for providing services for clients. There was no clear understanding by advisers, or the compliance officer, about when their platform-based services were suitable and not suitable. This risked unsuitable advice, given the lack of understanding about the suitability issues. Finally, there was the potential for costs for clients to be higher than would have been the case had the firm used platforms in a more focused and economic way.

Summary

12. The outcome we are seeking is not about ensuring an artificial spread of investments to meet the independence rule, it is about being mindful of the range of product and investment options across the whole market in order that firms can provide suitable advice to their clients. In this context, it is important for firms to be clear about which clients the overall solution – the platform, the products, funds and adviser services – are suitable for, and in their best interests, and which are not. For further information on this, see the findings of our thematic project on investment advice and platforms, and the good and poor practice report.[13]

13 www.fsa.gov.uk/pages/Library/Other_publications/platform_thematic_review/index.shtml

Appendix 1

Made Handbook text

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

…

Requirement to be paid through adviser charges

…

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.

…

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.

…

Requirement not to offer commissions

…

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~~ <u>*platform service provider*</u> or a third party administrator.

...

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* <u>or otherwise by means of a *platform service*</u> 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*).

…

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 take reasonable steps to 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 and in an efficient manner.

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

…

Firms holding themselves out as independent

…

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*.

…

13.1 The obligation to prepare product information

…

Exceptions

…

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 ~~*funds supermarket service*~~ *platform service* and the *document* clearly describes the difference between the *schemes*.

…

14.2 Providing product information to clients

…

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 *depositary* 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 *depositary*.

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 *depositary* 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 *depositary* may be read in full; and

(2) a summary of the content of the notification from the *authorised fund manager* or *depositary* 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 *depositary* 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 *depositary* 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 *depositary* 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 *depositary* 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

...

Application or modification of general COBS rules for operators

18.5.2 R

...

Table: Application of conduct of business rules

Application of conduct of business rules

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

		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.
...		

...

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~~ <u>payments</u> to ~~providers of *fund supermarket services*~~ <u>*platform service providers*</u> and other similar platform services.

PUB REF: 002691

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