

## Chapter 18

# Specialist Regimes



## Research and inducements for collective portfolio managers

1	Application	
1.1	G	<p>This section applies to:</p> <ul style="list-style-type: none"> <li>(1) a <i>small authorised UK AIFM</i> and a <i>residual CIS operator</i>, in accordance with COBS 18.5.2R;</li> <li>(2) a <i>full-scope UK AIFM</i>, in accordance with COBS 18.5A.3R;</li> <li>(3) a <i>UCITS management company</i>, in accordance with COBS 18.5B.2R.</li> </ul>
1.2	G	<p>In accordance with COBS 18.5.3CR and COBS 18.5A.7R, this section does not apply in relation to an <i>AIF</i> or <i>CIS</i> which in accordance with its core investment policy:</p> <ul style="list-style-type: none"> <li>(1) does not generally invest in <i>financial instruments</i> that can be: <ul style="list-style-type: none"> <li>(a) registered in a <i>financial instruments</i> account opened in the books of a <i>depository</i>; or</li> <li>(b) physically delivered to the <i>depository</i>; or</li> </ul> </li> <li>(2) generally invests in <i>issuers</i> or <i>non-listed companies</i> to potentially acquire <i>control</i> over such companies either individually or jointly with other <i>funds</i>.</li> </ul>
2	Rule on research and inducement	
2.1	R	<p>When <i>executing</i> orders, or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i>, a <i>firm</i> must not:</p> <ul style="list-style-type: none"> <li>(1) accept and retain any fees, commissions or monetary benefits; or</li> <li>(2) accept any non-monetary benefits,</li> </ul> <p>where these are paid or provided by any third party or a <i>person</i> acting on behalf of a third party.</p>
2.2	R	<p>A <i>firm</i> must:</p> <ul style="list-style-type: none"> <li>(1) return to the <i>fund</i> as soon as reasonably possible after receipt any fees, commissions or any monetary benefits paid or provided by any third party or a <i>person</i> acting on behalf of a third party in relation to the services provided to that <i>fund</i>; and</li> <li>(2) inform the investors in the <i>fund</i> about the fees, commissions or any monetary benefits transferred to them (see paragraph 2.4G).</li> </ul>
2.3	R	<p>Paragraph 2.1R does not apply to:</p> <ul style="list-style-type: none"> <li>(1) minor non-monetary benefits that are: <ul style="list-style-type: none"> <li>(a) capable of enhancing the quality of service provided to the <i>fund</i> (see paragraph 3.1R); and</li> <li>(b) of a scale and nature such that they could not be judged to impair the <i>firm's</i> compliance with its duty to act honestly, fairly and professionally in the best interests of the <i>fund</i>; and</li> </ul> </li> </ul>

		(2)	research if the requirements of COBS 2.3B (Inducements and research) as modified by paragraph 4 are met.
2.4	G		A <i>firm</i> may inform investors in the <i>fund</i> about the fees, commissions or monetary benefits transferred to them through:
		(1)	the periodic reporting statements provided to <i>participants</i> in an <i>unregulated collective investment scheme</i> in accordance with COBS 18.5.11R for a <i>small authorised UK AIFM</i> or a <i>residual CIS operator</i> ; or
		(2)	the annual reports provided on request to investors, for a <i>small authorised UK AIFM</i> in relation to an <i>authorised AIF</i> , a <i>full-scope UK AIFM</i> , or a <i>UCITS management company</i> .
3	Acceptable minor non-monetary benefits		
3.1	R		A <i>firm</i> must not accept a non-monetary benefit unless it is a minor non-monetary benefit which is reasonable, proportionate and of a scale that is unlikely to influence the <i>firm's</i> behaviour in any way that is detrimental to the interests of the <i>fund</i> , and which consists of:
		(1)	information or documentation relating to a <i>financial instrument</i> that is generic in nature; or
		(2)	written material from a third party that:
		(a)	is either:
		(i)	commissioned and paid for by a corporate <i>issuer</i> or potential <i>issuer</i> to promote a new issuance by the company; or
		(ii)	produced on an ongoing basis, where the third party is contractually engaged and paid by the <i>issuer</i> ;
		(b)	clearly discloses the relationship between the third party and the <i>issuer</i> ; and
		(c)	is made available at the same time to any <i>firm</i> wishing to receive it, or to the general public; or
		(3)	participation in conferences, seminars and other training events on the benefits and features of a specific <i>financial instrument</i> ; or
		(4)	hospitality of a reasonable de minimis value, such as food and drink during a business meeting or another training event mentioned under (3); or
		(5)	research relating to an issue of <i>shares</i> , <i>debentures</i> , <i>warrants</i> or <i>certificates representing certain securities</i> by an <i>issuer</i> , which is:
		(a)	produced by a <i>person</i> that is providing underwriting or placing services to the <i>issuer</i> on that issue;
		(b)	made available to prospective investors in the issue; and
		(c)	disseminated before the issue is completed; or
		(6)	free sample <i>research</i> provided for a limited trial period where:
		(a)	the trial period lasts no longer than three months;
		(b)	the trial period is not commenced with a provider within 12 <i>months</i> from the termination of an arrangement for the provision of <i>research</i> (including a previous trial period) with that provider;
		(c)	the research provider offering the free trial has no existing relationship with the recipient <i>firm</i> for the provision of <i>research</i> or <i>execution</i> services; and

		(d)	the recipient <i>firm</i> keeps records of the dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in (a) to (c) above.
		(7)	<i>research</i> on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the shares of the company at the end of each <i>month</i> to 31 October for the preceding 24 <i>months</i> . For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (i.e., 31 October). For these purposes, <i>firms</i> may reasonably rely on the assessment of a third party that the <i>research</i> is on a company with a market capitalisation below £200m;
		(8)	third party <i>research</i> that is received by a <i>firm</i> providing investment services or ancillary services to clients where it relates to fixed income, currency or commodity instruments;
		(9)	<i>research</i> received from a research provider where the research provider is not engaged in <i>execution</i> services and is not part of a financial services group that includes an <i>investment firm</i> that offers <i>execution</i> or brokerage services;
		(10)	written material that is made openly available from a third party to any <i>firm</i> wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a <i>firm</i> or a member of the public in order to access that material; or
		(11)	corporate access services which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with paragraph 3.1 R(7).
3.2	G		An acceptable minor non-monetary benefit consisting of information or documentation relating to a <i>financial instrument</i> that is generic in nature may include material provided by a third party that:
		(1)	consists of:
		(a)	short term market commentary on the latest economic statistics; or
		(b)	company results or information on upcoming releases or events;
		(2)	contains only a brief unsubstantiated summary of the third party's own opinion on such information; and
		(3)	does not include any substantive analysis (for example, where the third party simply reiterates a view based on an existing recommendation or substantive research).
3.3	G		A non-monetary benefit that involves a third party allocating valuable resources to the <i>firm</i> is not a minor non-monetary benefit.
3.4	G		In relation to paragraph 3.1R(8) above, since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account <i>research</i> services.
4			Inducements and research

4.1	R	A <i>firm</i> must comply with COBS 2.3B, as modified by this section, when <i>executing orders</i> , or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i> .
		General modifications
4.2	R	The application provision in COBS 2.3B.1R (Application) and associated <i>guidance</i> in COBS 2.3B.2G do not apply.
4.3	R	Where COBS 2.3B applies to a <i>firm</i> , the following modifications apply:
		(1) in COBS 2.3B.3R:
		(a) the reference to “providing <i>investment services</i> or <i>ancillary services</i> to <i>clients</i> ” is to be construed as a reference to “ <i>executing orders</i> , or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i> ”; and
		(b) the reference to “COBS 2.3A.5R, COBS 2.3A.15R or COBS 2.3A.16R” is to be construed as a reference to COBS 18 Annex 1 2.1R ;
		(2) in COBS 2.3B.4R(1)(a), the reference to “third party research in respect of <i>investment services</i> rendered to its <i>clients</i> ” is to be construed as a reference to “third party <i>research</i> in respect of <i>scheme management activity</i> or, for an AIFM, AIFM <i>investment management functions</i> ”;
		(3) in COBS 2.3B.11R(3)(b)(ii), the reference to “the <i>firm’s</i> policy for using third party <i>research</i> established under COBS 2.3B.12R” is to be construed as a reference to “the <i>firm’s</i> written statement made in accordance with COBS 18 Annex 1 4.8R”;
		(4) in COBS 2.3B.22G:
		(a) the reference to “COBS 2.3A.19R or COBS 2.3A” is to be construed as a reference to “COBS 18 Annex 1 3.1R or COBS 18 Annex 1 3.2G”; and
		(b) the reference to “COBS 2.3A.15R or COBS 2.3A” is to be construed as a reference to “COBS 18 Annex 1 2.1R”; and
		(5) in COBS 2.3B.24G, the reference to COBS 11.2A is to be construed as a reference to:
		(a) COBS 11.2 for <i>small authorised UK AIFMs</i> , <i>residual CIS operators</i> , and <i>full-scope UK AIFMs</i> ; and
		(b) COBS 11.2B for <i>UCITS management companies</i> .
4.4	R	COBS 2.3B.8R(1) and the reference to “agreeing the <i>research charge</i> with its <i>clients</i> ” in COBS 2.3B.4R(2)(a) only apply if the <i>fund</i> has its own <i>governing body</i> which is independent of the <i>firm</i> .
4.5	G	(1) An example of a <i>fund</i> that has its own <i>governing body</i> which is independent of the <i>firm</i> is a <i>fund</i> that is a <i>body corporate</i> where the <i>firm</i> is not a <i>director</i> of the <i>fund</i> .
		(2) An example of a <i>fund</i> that does not have its own <i>governing body</i> which is independent of the <i>firm</i> is a <i>fund</i> that is a <i>body corporate</i> where the <i>firm</i> is the sole <i>director</i> of the <i>fund</i> .
4.6	G	In accordance with COBS 18.5.3R(1), COBS 18.5A.5R and COBS 18.5B.4R(1), references to <i>client</i> are to be construed as references to any <i>fund</i> in respect of which the <i>firm</i> is acting or intends to act.
		Disapplication of disclosure provisions
4.7	R	The following provisions do not apply and references to them in COBS 2.3B are to be ignored:

		(1)	COBS 2.3B.5R;
		(2)	COBS 2.3B.6G;
		(3)	COBS 2.3B.8R(2);
		(4)	COBS 2.3B.9G;
		(5)	COBS 2.3B.12R; and
		(6)	COBS 2.3B.20R.
		Disapplication and modification of provisions relating to joint payments for research	
4.7A	R	The following provisions also do not apply and references to them in COBS 2.3B are to be ignored:	
		(1)	COBS 2.3B.3R(3);
		(2)	COBS 2.3B.23G(12);
		(3)	COBS 2.3B.25R;
		(4)	COBS 2.3B.26R;
		(5)	COBS 2.3B.27G;
		(6)	COBS 2.3B.28R;
		(7)	COBS 2.3B.29R;
		(8)	COBS 2.3B.30R;
		(9)	COBS 2.3B.31R;
		(10)	COBS 2.3B.32G; and
		(11)	COBS 2.3B.33G.
4.7B	R	Where COBS 2.3B applies to a <i>firm</i> , the following modifications apply:	
		(1)	in COBS 2.3B.21R, the words 'and must use the separately identifiable <i>research</i> charge of joint payments for <i>research</i> and execution services under COBS 2.3B.3R(3) only to pay for <i>research</i> ' are omitted; and
		(2)	in COBS 2.3B.23G, the words 'or joint payments for <i>research</i> and execution services' are omitted.
		Prior disclosure of the research account to investors	
4.8	R	A <i>firm</i> using a <i>research</i> payment account must set out in writing:	
		(1)	how the <i>firm</i> will comply with the elements of COBS 2.3B.4R(4);
		(2)	how <i>research</i> purchased through the <i>research</i> payment account may benefit the <i>fund</i> , taking into account its investment objective, policy and strategy;
		(3)	the approach the <i>firm</i> will take to allocate the costs of research fairly among the <i>funds</i> it manages;
		(4)	the manner in which, and the frequency at which, the <i>research</i> charge will be deducted from the assets of the <i>fund</i> ; and
		(5)	a statement as to where up-to-date information on the matters covered in COBS 18 Annex 1 4.11R can be obtained.
4.9	R	An <i>authorised fund manager</i> of an <i>authorised fund</i> must publish the information in paragraph 4.8 in the <i>fund's prospectus</i> .	
4.10	G	(1)	A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in paragraph 4.8 with the information to be made available about <i>AIFs</i> in accordance with FUND 3.2.2R(9) (Prior disclosure of information to investors).
		(2)	A <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or a <i>residual CIS operator</i> may wish to publish the information in paragraph 4.8 with the information to be made available about <i>AIFs</i>

			in accordance with COBS 18.5.5R (Scheme documents for an unauthorised <i>fund</i> ).
4.11	R	(1)	A <i>firm</i> using a <i>research</i> payment account must publish:
		(a)	the budgeted amount for <i>research</i> ; and
		(b)	the amount of the estimated <i>research</i> charge for each <i>fund</i> .
		(2)	a <i>firm</i> must not increase its <i>research</i> budget or <i>research</i> charge unless it has provided clear information about the increase in good time before it is to take effect.
		(3)	The information in (1) and (2) must be made available to investors and potential investors in the <i>fund</i> .
		Periodic disclosure of the research payment account to investors	
4.12	R		A <i>firm</i> using a <i>research</i> payment account must, for each <i>fund</i> it manages, provide information to investors on the total costs the <i>fund</i> has incurred for third-party <i>research</i> in the most recent annual accounting period.
4.13	R		An <i>authorised fund manager</i> of an <i>authorised fund</i> must publish the information in paragraph 4.12 in the annual long report of the <i>authorised fund</i> .
4.13	G		A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in paragraph 4.12 with the information to be made available about <i>AIFs</i> in accordance with FUND 3.3 (Annual report of an <i>AIF</i> ).
4.14	R		A <i>firm</i> using a <i>research</i> payment account must, on request, make available a summary of the following information to investors for the most recent annual accounting period:
		(1)	the providers paid from the account;
		(2)	the total amount each provider was paid;
		(3)	the benefits and services received by the <i>firm</i> ; and
		(4)	how the total amount spent from the account compares to the budget set by the <i>firm</i> , noting any rebate or carry-over if residual monies are held in the account.