

Chapter 2

Conduct of business obligations

2.1

Acting honestly, fairly and professionally

The client's best interests rule

- 2.1.1R
- (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).

(2) This *rule* applies:

(a) in relation to *designated investment business* carried on for a *retail client*;

(b) in relation to *MiFID*, *equivalent third country* or *optional exemption business*, for any *client*; and

(c) in relation to *insurance distribution*, for any *client*.

(3) For a *management company*, this *rule* applies in relation to any *UCITS* scheme the *firm* manages.

[Note: article 24(1) of *MiFID*, article 17(1) of the *IDD* and article 14(1)(a) and (b) of the *UCITS Directive*]
- Business with eligible counterparties
- 2.1.1AR

In relation to its *eligible counterparty business*, a *firm* must act honestly, fairly and professionally, taking into account the nature of the *eligible counterparty* and its business.

[Note: article 30(1) of *MiFID*]
- Exclusion of liability
- 2.1.2R

A *firm* must not, in any communication relating to *designated investment business* seek to:

(1) exclude or restrict; or

(2) rely on any exclusion or restriction of;

any duty or liability it may have to a *client* under the *regulatory system*.
- 2.1.3G

(1) In order to comply with the *client's best interests rule*, a *firm* should not, in any communication to a *retail client* relating to *designated investment business*:

(a) seek to exclude or restrict; or
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(b) rely on any exclusion or restriction of;
any duty or liability it may have to a *client* other than under the *regulatory system*, unless it is honest, fair and professional for it to do so.

(2) The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

AIFMs’ best interests rules

2.1.4

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A full-scope UK AIFM must, for all AIFs it manages:

- (1) act honestly, fairly and with due skill care and diligence in conducting their activities;
- (2) act in the best interests of the AIF it manages or the investors of the AIF it manages and the integrity of the market;
- (3) treat all investors fairly; and
- (4) not allow any investor in an AIF to obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's *instrument constituting the fund*.

[Note: article 12(1)(a), (b) and (f) and article 12(1) last paragraph of AIFMD]

Subordinate measures for alternative investment fund managers

2.1.5

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Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the relevant provisions of Article 12(1) of AIFMD.

2.2

Information disclosure before providing services (other than MiFID and insurance distribution)

Application

- 2.2.-1R
- (1) [deleted]

(2) This section applies in relation to *designated investment business* (other than *MiFID, equivalent third country or optional exemption business or insurance distribution activities*), carried on for a *retail client*:

(a) in relation to a *derivative, a warrant, a non-readily realisable security, a non-mass market investment, a P2P agreement, or stock lending activity*, but as regards the matters in ■ COBS 2.2.1R (1)(b) only; and

(b) in relation to a *retail investment product*, but as regards the matters in ■ COBS 2.2.1R (1)(a) and ■ (d) only.

(3) Where a *rule* in this section applies to a *firm* carrying on *designated investment business* in relation to a *non-mass market investment* the *rule* also applies to:

(a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and

(b) *Gibraltar-based firm* to the extent that the *rule* does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.
- 2.2.-1AG

■ COBS 2.2A (Information disclosure before providing services (MiFID and insurance distribution)) contains the information disclosure requirements applying to a *firm* carrying on *MiFID, equivalent third country or optional exemption business and insurance distribution activities*.
- Information disclosure before providing services
- 2.2.1R

(1) A *firm* must provide appropriate information in a comprehensible form to a *client* about:

(a) the *firm* and its services;

(b) *designated investments* and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those *designated investments* or in respect of particular investment strategies;

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		<div><div>(c) execution venues; and</div><div>(d) costs and associated charges;</div><div>so that the <i>client</i> is reasonably able to understand the nature and risks of the service and of the specific type of <i>designated investment</i> that is being offered and, consequently, to take investment decisions on an informed basis.</div></div>
		<div><div>(2) That information may be provided in a standardised format.</div><div>(3) [deleted]</div><div>(4) [deleted]</div></div>
2.2.2	G	<div><div>A <i>firm</i> to which the rule on providing appropriate information (■ COBS 2.2.1 R) applies should also consider the <i>rules</i> on disclosing information about a <i>firm</i>, its services, costs and associated charges and <i>designated investments</i> in ■ COBS 6.1 and ■ COBS 14.</div></div>
2.2.3	R	<div><div><div>Disclosure of commitment to the Financial Reporting Council's Stewardship Code</div><div>A <i>firm</i>, other than a <i>venture capital firm</i>, which is <i>managing investments</i> for a <i>professional client</i> that is not a natural person must disclose clearly on its website, or if it does not have a website in another accessible form:</div><div><div>(1) the nature of its commitment to the Financial Reporting Council's Stewardship Code; or</div><div>(2) where it does not commit to the Code, its alternative investment strategy.</div></div></div></div>

2.2A

Information disclosure before providing services (MiFID and insurance distribution provisions)

Application

2.2A.1

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This section applies to a *firm*:

in relation to its *MiFID*, *equivalent third country* or *optional exemption business*;

carrying on *insurance distribution activities* in relation to:
(a) an *insurance-based investment product* for any *client*; and/or
(b) any other *life policy* for a *retail client* but as regards the matters in ■ COBS 2.2A.2R(1)(a) and (d) only.

Information disclosure in good time

2.2A.2

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(1) A *firm* must provide appropriate information in good time to a *client* with regard to:
(a) the *firm* and its services;
(b) (for *financial instruments*) the *financial instruments*, proposed investment strategies and execution venues;
(c) (for *insurance-based investment products*) the distribution of *insurance-based investment products* including at least appropriate guidance on, and warnings of, the risks associated with the *insurance-based investment product* or in respect of particular investment strategies proposed; and
(d) all costs and related charges.
[Note: article 24(4) of *MiFID* and article 29(1)(b) of the *IDD*]

(2) That information may be provided in a standardised format.

2.2A.2A

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For an *insurance-based investment product*, a *firm* must provide the information in good time prior to the conclusion of the contract.
[Note: first paragraph of article 29(1) of the *IDD*]

2.2A.3

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(1) A *firm* must provide the information required by this section in a comprehensible form in such a manner that a *client* is reasonably able to understand the nature and risks of the *investment service* and of

the specific type of *financial instrument* or *life policy* that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[Note: article 24(5) of *MiFID* and last paragraph of article 29(1) the *IDD*]

Related rules

2.2A.4

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A *firm* to which the *rule* on providing appropriate information (■ COBS 2.2A.2R) applies should also consider the *rules* on disclosing information about a *firm*, its services, costs and associated charges, *financial instruments* and *life policies* ■ COBS 6.1ZA, ■ COBS 9A.3, ■ COBS 14.3 and ■ COBS 14.3A.

Disclosure of commitment to the Financial Reporting Council’s Stewardship Code

2.2A.5

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A *firm* must comply with the *rule* in ■ COBS 2.2.3R (Disclosure of commitment to the Financial Reporting Council’s Stewardship Code).

2.2B SRD requirements

Application: Who?

- 2.2B.1 R
- This section applies to:
- (1) a UK MiFID investment firm that provides portfolio management services to investors;

(2) a third country investment firm that provides portfolio management services to investors;

(3) a UK UCITS management company;

(4) an ICVC that is a UCITS scheme without a separate management company; and

(5) a full-scope UK AIFM.
- [Note: article 2(f) of SRD]

Application: What?

- 2.2B.2 R
- This section applies to the extent that the *firm* is investing (or has invested) on behalf of investors in *shares* traded on a *regulated market*.
- 2.2B.3 G
- The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the *United Kingdom*.

Application: Where?

- 2.2B.4 R
- (1) This section applies in relation to activities carried on by a *firm* from an establishment in the *United Kingdom*.

(2) [deleted]

Engagement policy and disclosure of information

- 2.2B.5 R
- A *firm* must either:
- (1) (a) develop and publicly disclose an *engagement policy* that meets the requirements of ■ COBS 2.2B.6R (an “engagement policy”); and

(b) publicly disclose on an annual basis how its *engagement policy* has been implemented in a way that meets the requirements of ■ COBS 2.2B.7R; or

(2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[Note: article 3g(1) and (1)(a) of *SRD*]

2.2B.6

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The *engagement policy* must describe how the *firm*:

- (1) integrates shareholder engagement in its investment strategy;
- (2) monitors investee companies on relevant matters, including:
 - (a) strategy;
 - (b) financial and non-financial performance and risk;
 - (c) capital structure; and
 - (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
- (4) exercises voting rights and other rights attached to *shares*;
- (5) cooperates with other shareholders;
- (6) communicates with relevant stakeholders of the investee companies; and
- (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[Note: article 3g(1)(a) of *SRD*]

2.2B.7

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- (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and reporting on the use of the services of *proxy advisors*.
- (2)
 - (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
 - (b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[Note: article 3g(1)(b) of *SRD*]

2.2B.8

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The applicable disclosures or information referred to in ■ COBS 2.2B.5R to ■ COBS 2.2B.7R must be made available free of charge on the *firm's* website.

[Note: article 3g(2) of *SRD*]

Transparency of asset managers**2.2B.9****R**

- (1) This rule applies where a *firm* invests on behalf of an *SRD institutional investor*, whether on a discretionary client-by-client basis or through a collective investment undertaking.
- (2) The *firm* must disclose to the relevant *SRD institutional investor*, on an annual basis, how its investment strategy and the implementation of it:
 - (a) complies with the arrangement referred to in (1); and
 - (b) contributes to the medium- to long-term performance of the assets of the *SRD institutional investor* or of the *fund*.
- (3) The disclosure must include reporting on:
 - (a) the key material medium- to long-term risks associated with the investments;
 - (b) portfolio composition;
 - (c) turnover and turnover costs;
 - (d) the use of *proxy advisors* for the purpose of engagement activities;
 - (e) the *firm's* policy on securities lending and how that policy is applied to supports the *firm's* engagement activities if applicable, particularly at the time of the general meeting of the investee companies;
 - (e) whether and, if so, how, the *firm* makes investment decisions based on evaluation of medium- to long-term performance of an investee company, including non-financial performance; and
 - (g) whether and, if so, which conflicts of interests have arisen in connection with engagement activities and how the *firm* has dealt with these conflicts.

[Note: article 3i(1) of *SRD*]

2.2B.10**G**

A *firm* may provide the disclosure in ■ COBS 2.2B.9R by making the relevant information publicly available.

2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business and insurance-based investment products

Interpretation

2.3.-1

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In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:

- (1) giving advice or assistance to an employer on the operation of such a scheme;
- (2) taking, or helping the employer to take, the steps that must be taken to enable an employee to become a member of such a *scheme*; and
- (3) giving advice to an employee, pursuant to an agreement between the employer and the adviser, about the benefits that are, or might be, available to the employee as an actual or potential member of such a scheme.

Application

2.3.-1A

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This section does not apply to:

- (1) giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* where that scheme is a *qualifying scheme*;
- (2) a *firm* in relation to *MiFID, equivalent third country or optional exemption business* (but see ■ **COBS 2.3A** (Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products)); or
- (3) a *firm* carrying on an *insurance distribution activity* in relation to an *insurance-based investment product*.

2.3.-1B

G

The rules governing fees, commissions and non-monetary benefits which may be paid or provided in respect of *qualifying schemes* are found in ■ **COBS 19.6**.

2.3.-1C

G

This section does not apply to the provision of *independent advice* or *restricted advice* on a *retail investment product* in the course of *MiFID*, *equivalent third country* or *optional exemption business*. A *firm* providing such a service should refer instead to ■ COBS 2.3A (Inducements relating to MiFID, equivalent third country or optional exemption business) and ■ COBS 6.1A (Adviser charging and remuneration).

Rule on inducements

2.3.1

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A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* carried on for a *client* other than:

- (1) a fee, commission or non-monetary benefit paid or provided to or by the *client* or a *person* on behalf of the *client*; or
- (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
 - (a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the *firm's* duty to act in the best interests of the *client*; and
 - (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;
 - (i) this requirement only applies to business other than the carrying on by a *UK UCITS management company* of the *collective portfolio management* activities of investment management and administration for the relevant *scheme* if it includes:
 - (A) giving a *personal recommendation* in relation to a *retail investment product*, *pension transfer*, *pension conversion*, *pension opt-out* or *P2P agreement*; or
 - (B) giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*;
 - (ii) where this requirement applies to business other than the carrying on by a *UK UCITS management company* of the *collective portfolio management* activities of investment management and administration for the relevant *scheme*, a *firm* is not required to make a disclosure to the *client* in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in ■ COBS 2.3.15 G as though that table were part of this *rule* for this purpose only;
 - (iii) this requirement does not apply to a *firm* giving *basic advice*; and
 - (c) in relation to the carrying on by a *UK UCITS management company* or *EEA UCITS management company* of the *collective portfolio management* activities of investment management and administration for the relevant *scheme* or when carrying on a

regulated activity in relation to a retail investment product or a pension transfer, pension conversion or pension opt-out or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client; or

- (3) proper fees which enable or are necessary for the provision of *designated investment business*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the best interests of its *clients*; or

- (4) an *employer or trustee funded pension advice charge*.

[Note: articles 29(1) and 29(2) of the *UCITS implementing Directive*]

2.3.1A R ■ COBS 2.3.1 R applies to a *UK UCITS management company* when providing *collective portfolio management services*, as if references to a *client*, were references to any *UCITS* it manages

[Note: article 29(1) of the *UCITS implementing Directive*]

2.3.2 R A *firm* will satisfy the disclosure obligation under this section if it:

- (1) discloses the essential arrangements relating to the fee, commission or non-monetary benefit in summary form;
- (2) undertakes to the *client* that further details will be disclosed on request; and
- (3) honours the undertaking in (2).

[Note: article 29(2) of the *UCITS implementing Directive*]

2.3.2A R ■ COBS 2.3.2 R applies to a *UK UCITS management company* when providing *collective portfolio management services*, as if references to a *client* were references to a *Unitholder* of the *scheme*.

[Note: article 29(2) of the *UCITS implementing Directive*]

Guidance on inducements

2.3.3 G The obligation of a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* includes both the *client's best interests rule* and the duties under *Principles* 1 (integrity), 2 (skill, care and diligence) and 6 (customers' interests).

2.3.4 G [deleted]

2.3.4A G A *UCITS management company* is subject to specific *rules* on inducements and research in ■ COBS 18.5B when executing orders for *financial instruments*

			for, or on behalf of, the <i>UCITS</i> it manages (see ■ COBS 18.5B.6R and ■ COBS 18 Annex 1).
2.3.5	G		For the purposes of this section, a non-monetary benefit would include the direction or referral by a <i>firm</i> of an actual or potential item of <i>designated investment business</i> to another <i>person</i> , whether on its own initiative or on the instructions of an <i>associate</i> .
2.3.6	G		[deleted]
2.3.6A	G		<p>■ COBS 6.1A (Adviser charging and remuneration), ■ COBS 6.1B (Retail investment product provider and operator of an electronic system in relation to lending and platform service provider requirements relating to adviser charging and remuneration), ■ COBS 6.1C (Consultancy charging and remuneration) and ■ COBS 6.1D (Product provider requirements relating to consultancy charging and remuneration) set out specific requirements as to when it is acceptable for a <i>firm</i> to pay or receive commissions, fees or other benefits:</p> <ol style="list-style-type: none"> (1) relating to the provision of a <i>personal recommendation on retail investment products, pension transfers, pension conversions, pension opt-outs or P2P agreements</i>; or (2) for giving advice, or providing services, to an employer in connection with a <i>group personal pension scheme or group stakeholder pension scheme</i>.
2.3.7	G		The fact that a fee, commission or non-monetary benefit is paid or provided to or by an <i>appointed representative</i> does not prevent the application of the <i>rule</i> on inducements.
2.3.8	G		[deleted]
			Paying commission on non-advised sales of packaged products
2.3.9	G		The following <i>guidance</i> and <i>evidential provisions</i> provide examples of arrangements the <i>FCA</i> believes will breach the <i>client's best interests rule</i> if a <i>firm</i> sells or <i>arranges</i> the sale of a <i>packaged product</i> for a <i>retail client</i> .
2.3.10	E		<ol style="list-style-type: none"> (1) If a <i>firm</i> is required to disclose <i>commission</i> (see ■ COBS 6.4) to a <i>client</i> in relation to the sale of a <i>packaged product</i> (other than in relation to arrangements between firms that are in the same <i>immediate group</i>) the firm should not enter into any of the following: <ol style="list-style-type: none"> (a) volume overrides, if <i>commission</i> paid in respect of several transactions is more than a simple multiple of the <i>commission</i> payable in respect of one transaction of the same kind; and (b) an agreement to indemnify the payment of <i>commission</i> on terms that would or might confer an additional financial benefit on the recipient in the event of the <i>commission</i> becoming repayable.

- (2) Contravention of (1) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).
- 2.3.11** G (1) If a *firm* enters into an arrangement with another firm under which it makes or receives a payment of *commission* in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and commission (see ■ COBS 6.4) and, where applicable, the *rule* on inducements in ■ COBS 2.3.1R (2)(b), unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.
- Providing credit and other benefits to firms that give personal recommendations on retail investment products or P2P agreements**
- 2.3.11A** G The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a *retail investment product* or *P2P agreement* to a *retail client*.
- 2.3.12** E (1) This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to *retail clients* on *retail investment products* or *P2P agreements*, except where the relevant transaction is between *persons* who are in the same *immediate group*.
- (2) A *retail investment product* provider or *operator of an electronic system in relation to lending* should not take any step which would result in it:
- (a) having a direct or indirect holding of the capital or *voting power* of a firm in (1); or
 - (b) providing *credit* to a *firm* in (1) (other than continuing to facilitate the payment of an *adviser charge* or *consultancy charge* where it is no longer payable by the *retail client*, as described in ■ COBS 6.1A.5 G or ■ COBS 6.1C.6 G);
- unless all the conditions in (4) are satisfied. A *retail investment product* provider or *operator of an electronic system in relation to lending* should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).
- (3) A *firm* in (1) should not take any step which would result in a *retail investment product* provider or *operator of an electronic system in relation to lending* having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.
- (4) The conditions referred to in (2) and (3) are that:
- (a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product* provider or *operator of an electronic system in relation to*

- lending* would, taking into account all relevant circumstances, be willing to acquire the holding or provide credit;
- (b) the *firm* (or, if applicable, each of the *firms*) taking the step has reliable written evidence that (a) is satisfied;
 - (c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product* provider or *operator of an electronic system in relation to lending* ; and
 - (d) the *retail investment product* provider or *operator of an electronic system in relation to lending* is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products* or *P2P agreements* given by the *firm* or the advice given, or services provided to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- (5) In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product* provider's or *operator of an electronic system in relation to lending's* associate is to be regarded as held by, or provided by, that *retail investment product* provider or *operator of an electronic system in relation to lending*. .
- (6) [deleted]
- (7) Contravention of (2) or (3) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).

2.3.12A

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Where a *retail investment product* provider or *operator of an electronic system in relation to lending*, or its *associate*, provides *credit* to a *retail client* of a *firm* making *personal recommendations* in relation to *retail investment products* or *P2P agreements* or giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products* or *operator of an electronic system in relation to lending* may need to consider the examples in ■ COBS 2.3.12E as if it had provided the *credit* to the *firm*.

2.3.13

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In considering the compliance of arrangements between members of the same *immediate group* with the *rule* on inducements (■ COBS 2.3.1 R), *firms* may wish to consider the *evidential provisions* in ■ COBS 2.3.10 E and ■ COBS 2.3.12 E, to the extent that these are relevant.

Reasonable non-monetary benefits

2.3.14

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(1) In relation to the sale of *retail investment products*, the table on reasonable non-monetary benefits (■ COBS 2.3.15 G) indicates the kind of benefits which are capable of enhancing the quality of the service provided to a *client* and, depending on the circumstances, are capable of being paid or received without breaching the *client's best interests rule*. However, in each case, it will be a question of fact whether these conditions are satisfied.

- (2) The *guidance* in the table on reasonable non-monetary benefits is not relevant to non-monetary benefits which may be given by a *retail investment product* provider or its *associate* to its own *representatives*. The *guidance* in this provision does not apply directly to non-monetary benefits provided by a *firm* to another *firm* that is in the same *immediate group*. In this situation, the *rules* on *commission equivalent* (■ COBS 6.4.3 R), the requirements on a *retail investment product* provider making a *personal recommendation* in respect of its own *retail investment products* (■ COBS 6.1A.9 R) or the requirements on a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* produced by the *firm* (■ COBS 6.1C.8 R) will apply.

2.3.15 G This table belongs to ■ COBS 2.3.14 G.

Gifts, Hospitality and Promotional Competition Prizes	
1	<i>A retail investment product</i> provider giving and a <i>firm</i> receiving gifts, hospitality and promotional competition prizes of a reasonable value. Promotion
2	<i>A retail investment product</i> provider assisting another <i>firm</i> to promote its <i>retail investment products</i> so that the quality of its service to <i>clients</i> is enhanced. Such assistance should not be of a kind or value that is likely to impair the recipient <i>firm's</i> ability to pay due regard to the interests of its <i>clients</i> , and to give advice on, and recommend, <i>retail investment products</i> available from the recipient <i>firm's</i> whole <i>range</i> or <i>ranges</i> . Joint marketing exercises
3	<i>A retail investment product</i> provider providing generic product literature (that is, letter heading, leaflets, forms and envelopes) that is suitable for use and distribution by or on behalf of another <i>firm</i> if: (a) the literature enhances the quality of the service to the <i>client</i> and is not primarily of promotional benefit to the <i>retail investment product</i> provider; and (b) the total costs (for example, packaging, posting, mailing lists) of distributing such literature to its <i>client</i> are borne by the recipient <i>firm</i> .
4	<i>A retail investment product</i> provider supplying another <i>firm</i> with 'freepost' envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.
5	<i>A retail investment product</i> provider supplying product specific literature (for example, <i>key features documents</i> , minimum information) to another <i>firm</i> if: (a) the literature does not contain the name of any other <i>firm</i> ; or (b) if the name of the recipient <i>firm</i> is included, the literature enhances the quality of the service to the <i>client</i> and is not primarily of promotional benefit to the recipient <i>firm</i> .
6	<i>A retail investment product</i> provider supplying draft articles, news items and <i>financial promotions</i> for publication in another <i>firm's</i> magazine, only if in each case any costs paid by the <i>product provider</i> for placing the articles and <i>financial promotions</i> are not more than market rate, and exclude distribution costs.

	Seminars and conferences
7	<p>A <i>retail investment product</i> provider taking part in a seminar organised by another <i>firm</i> or a third party and paying toward the cost of the seminar, if:</p> <ul style="list-style-type: none"> (a) its participation is for a genuine business purpose; and (b) the contribution is reasonable and proportionate to its participation and by reference to the time and sessions at the seminar when its staff play an active role.
	Technical services and information technology
8	A <i>retail investment product</i> provider supplying a 'freephone' link to which it is connected.
9	<p>A <i>retail investment product</i> provider supplying another <i>firm</i> with any of the following:</p> <ul style="list-style-type: none"> (a) quotations and <i>projections</i> relating to its <i>retail investment products</i> and, in relation to specific <i>investment</i> transactions (or for the purpose of any scheme for review of past business), advice on the completion of forms or other <i>documents</i>; (b) access to data processing facilities, or access to data, that is related to the <i>retail investment product</i> provider's business; (c) access to third party electronic dealing or quotation systems that are related to the <i>retail investment product</i> provider's business; and (d) software that gives information about the <i>retail investment product</i> provider's <i>retail investment products</i> or which is appropriate to its business (for example, for use in a scheme for review of past business or for producing <i>projections</i> or technical product information).
10	A <i>retail investment product</i> provider paying cash amounts or giving other assistance to a <i>firm</i> not in the same <i>immediate group</i> for the development of software or other computer facilities necessary to operate software supplied by the <i>retail investment product</i> provider, but only to the extent that by doing so it will generate equivalent cost savings to itself or <i>clients</i> .
11	A <i>retail investment product</i> provider supplying another <i>firm</i> with information about sources of mortgage finance.
12	A <i>retail investment product</i> provider supplying another <i>firm</i> with generic technical information in writing, not necessarily related to the <i>product provider's</i> business, when this information states clearly and prominently that it is produced by the <i>product provider</i> or (if different) supplying <i>firm</i> .
	Training
13	A <i>retail investment product</i> provider providing another <i>firm</i> with training facilities of any kind (for example, lectures, venue, written material and software).
	Travel and accommodation expenses
14	<p>A <i>retail investment product</i> provider reimbursing another <i>firm's</i> reasonable travel and accommodation expenses when the other <i>firm</i>:</p> <ul style="list-style-type: none"> (a) participates in market research conducted by or for the <i>retail investment product</i> provider; (b) attends an annual national event of a <i>United Kingdom</i> trade association, hosted or co-hosted by the <i>retail investment product</i> provider;

- (c) participates in the *retail investment product* provider's training facilities (see 13);
- (d) visits the *retail investment product* provider's *United Kingdom* office in order to:
 - (i) receive information about the *retail investment product* provider's administrative systems; or
 - (ii) attend a meeting with the *retail investment product* provider and an existing or prospective *client* of the receiving *firm*.

2.3.16 G In interpreting the table of reasonable non-monetary benefits, *retail investment product* providers should be aware that where a benefit is made available to one *firm* and not another, this is more likely to impair compliance with the *client's best interests rule* and that, where any benefits of substantial size or value (such as adviser training programmes or significant software) are made available to *firms* that are subject to the *rules* on adviser charging and remuneration (■ **COBS 6.1A**) or consultancy charging and remuneration (■ **COBS 6.1C**), these benefits should be made available equally across those *firms* if they are provided at all.

2.3.16A G In interpreting the table of reasonable non-monetary benefits, a *firm* that provides a *personal recommendation* in relation to a *retail investment product* to a *retail client* or gives advice, or provides a service, to an employer in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* should be aware that acceptance of benefits on which the *firm* will have to rely for a period of time is more likely to impair compliance with the *client's best interests rule*. For example, accepting services which provide access to another *firm's* systems or software on which the *firm* will need to rely to gain access to the *firm's client* data in the future, would be likely to conflict with the *rule* on inducements (■ **COBS 2.3.1R**).

Application of guidance on reasonable non-monetary benefits

2.3.16B R The *guidance* on reasonable non-monetary benefits in ■ **COBS 2.3.14G** to ■ **COBS 2.3.16AG** does not apply to a *firm* which:

- (1) makes *personal recommendations* to *retail clients* in relation to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*, and to which ■ **COBS 6.1A** (Adviser charging and remuneration) applies; or
- (2) is a *retail investment product* provider, a *platform service provider* or a *firm* which is an *operator of an electronic system in relation to lending* to which ■ **COBS 6.1B** (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) applies.

2.3.16C G However, ■ **COBS 6.1A** and ■ **COBS 6.1B** do permit minor non-monetary benefits which meet the relevant requirements set out in ■ **COBS 6.1A.5AR(2)**.

2.3.17

R

Record keeping: inducements

- (1) A *firm* must make a record of the information disclosed to the *client* in accordance with ■ COBS 2.3.1R (2)(b) and must keep that record for at least five years from the date on which it was given.
- (2) A *firm* must also make a record of each benefit given to another *firm* which does not have to be disclosed to the *client* in accordance with ■ COBS 2.3.1R (2)(b)(ii), and must keep that record for at least five years from the date on which it was given.

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products

Application

- 2.3A.1** **R** This section applies to a *firm*:
- (1) in relation to its *MiFID, equivalent third country or optional exemption business*; and
 - (2) carrying on *insurance distribution activities* in relation to an *insurance-based investment product*.
- 2.3A.2** **G** **Relationship with the adviser charging, product provider and platform service provider rules in COBS 6.1A, COBS 6.1B and COBS 6.1E**
- A *firm* which makes a *personal recommendation* to a *retail client* in the *United Kingdom* in relation to:
- (a) a *retail investment product* in the course of carrying on *MiFID, equivalent third country or optional exemption business* with or for that *client*; or
 - (b) an *insurance-based investment product*, is also required to comply with the *rules* in ■ **COBS 6.1A** (Adviser charging and remuneration).
- 2.3A.3** **G** ■ **COBS 6.1A** provides, amongst other things, that a *firm* must only be remunerated for a *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*.
- 2.3A.4** **G** Where:
- (1) the *firm*:
 - (a) is a *retail investment product provider* or a *platform service provider*; and
 - (b) carries on *MiFID, equivalent third country or optional exemption business*, or carries on *insurance distribution activities*, in relation to those activities; and

- (2) the *client* is a *retail client* in the *United Kingdom*,
the *firm* is required to comply with the *rules* in this section and in ■ COBS 6.1B (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) and, where relevant, ■ COBS 6.1E (Platform services: platform charges using a platform service for advising).

Rules on inducements

2.3A.5

R

- (1) Except where ■ COBS 2.3A.6R applies, a *firm* must not:
- (a) pay to or accept from any party (other than the *client* or a *person* on behalf of the *client*) any fee or commission; or
 - (b) provide to or receive from any party (other than the *client* or a *person* on behalf of the *client*) any non-monetary benefit.
- (2) (1)(a) and (b) only apply in relation to fees, commissions or non-monetary benefits paid or accepted, or provided or received, in connection with:
- (a) the provision of an *investment service* or an *ancillary service*; or
 - (b) the distribution of an *insurance-based investment product* or an ancillary service.

[Note: article 24(9) of *MiFID*, articles 22(3), 29(2) and 29(3) of the *IDD*]

2.3A.6

R

- (1) ■ COBS 2.3A.5R does not apply to:
- (a) a fee, commission or non-monetary benefit which:
 - (i) is designed to enhance the quality of the relevant service to the *client* (see ■ COBS 2.3A.8R and, also for an *insurance-based investment product*, ■ COBS 2.3A.9AR); and
 - (ii) does not impair compliance with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*;
 - (b) a payment or benefit which enables or is necessary for the provision of an *investment service*, or the distribution of an *insurance-based investment product*, by the *firm*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees and which, by its nature, cannot give rise to conflicts with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*; or
 - (c) (in relation to *MiFID*, *equivalent third country* or *optional exemption business*) third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R).
- (2) Where a *firm* pays, provides, accepts or receives, a fee, commission or non-monetary benefit which falls within (1)(a), the *firm* must clearly disclose to the *client*:
- (a) the existence and nature of the payment or benefit; and
 - (b) the amount of the payment or benefit or, where the amount cannot be ascertained, the method for calculating that amount.

- (3) That information must be disclosed:
 - (a) prior to the provision of the relevant service; and
 - (b) in a manner that is comprehensive, accurate and understandable (see also ■ COBS 2.3A.10R (Disclosure of payments or benefits received from, or paid to, third parties)).
- (4) Where applicable, a *firm* must inform a *client* of the mechanisms for transferring to the *client* the fee, commission, monetary or non-monetary benefit received in relation to the provision of the relevant service.

[Note: article 24(9) of *MiFID*, article 22(3) and 29(3) of the *IDD*]

2.3A.7

E

A *firm* which fails to comply with ■ COBS 2.3A.5R is to be regarded as not fulfilling its obligations in relation to:

- (1) conflicts of interest (see ■ SYSC 3.3 (for *insurers* and *managing agents*) and ■ SYSC 10 (for other *firms*)); and
- (2) acting honestly, fairly and professionally in accordance with the best interests of its *clients* (see ■ COBS 2.1.1R).

[Note: article 24(9) of *MiFID*, article 29(2) and 29(3) of the *IDD*]

Fees, commissions or non-monetary benefits which are designed to enhance the quality of a service

2.3A.8

R

- (1) For the purposes of ■ COBS 2.3A.6R(1)(a)(i), a fee, commission or non-monetary benefit is designed to enhance the quality of the relevant service to a *client* only if :
 - (a) it is justified by the provision of an additional or higher level service to the *client* and is proportional to the level of inducements received;
 - (b) it does not directly benefit the recipient *firm*, its *shareholders* or *employees* without tangible benefit to the *client*;
 - (c) it is justified by the provision of an ongoing benefit to the *client* in relation to an ongoing inducement; and
 - (d) the provision of the service by the *firm* to the *client* is not biased or distorted as a result of the fee, commission or non-monetary benefit.
- (2) A *firm* must fulfil these conditions on an ongoing basis as long as the *firm* continues to pay or receive the fee, commission or non-monetary benefit.

[Note: article 11(2) and (3) of the *MiFID Delegated Directive*]

2.3A.9

R

A fee, commission or non-monetary benefit may be justified for the purposes of ■ COBS 2.3A.8R(1)(a) where, for example, the *firm* provides:

- (1) *restricted advice* on, and access to, a wide range of suitable *financial instruments* or *insurance-based investment products* including an

appropriate number of *financial instruments* or *insurance-based investment products* from third party product providers having no close links with the *firm*; or

(2) *restricted advice* combined with:

- (a) an offer to the *client*, at least on an annual basis, to assess the continuing suitability of the *financial instruments* or *insurance-based investment products* in which the *client* has invested; or
- (b) another ongoing service that is likely to be of value to the *client* such as advice about the suggested optimal asset allocation of the *client*; or

(3) access, at a competitive price, to a wide range of *financial instruments* or *insurance-based investment products* that are likely to meet the needs of the *client*, including an appropriate number of *financial instruments* or *insurance-based investment products* from third party product providers having no close links with the *firm*, together with either the provision of added-value tools, such as objective information tools helping the *client* to take investment decisions or enabling the *client* to monitor, model and adjust the range of *financial instruments* or *insurance-based investment products* in which they have invested, or providing periodic reports of the performance and costs and charges associated with the *financial instruments* or *insurance-based investment products*.

[Note: article 11(2) of the *MiFID Delegated Directive*]

Additional requirements for the assessment of inducements: insurance-based investment products

2.3A.9A



- (1) An inducement or inducement scheme will have a detrimental impact on the quality of the relevant service to the *client* where it is of such a nature and scale that it provides an incentive to carry out *insurance distribution activities* in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the *client*.
- (2) For the purposes of assessing whether an inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the *client*, an *insurance intermediary* or an *insurer* must perform an overall analysis taking into account all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the *client*, and any organisational measures taken by the *firm* carrying out *insurance distribution activities* to prevent the risk of detrimental impact.
- (3) A *firm* must, in particular, consider the following criteria:
 - (a) whether the inducement or inducement scheme could provide an incentive to the *firm* to offer or recommend a particular *insurance-based investment product* or a particular service to the *client* despite the fact that the *firm* would be able to offer a different *insurance-based investment product* or service which would better meet the *client's* needs;
 - (b) whether the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria or

whether it takes into account appropriate qualitative criteria, reflecting compliance with applicable legal requirements, the quality of services provided to *clients* and *client* satisfaction;

- (c) the value of the inducement paid or received in relation to the value of the *insurance-based investment product* and the services provided;
- (d) whether the inducement is entirely or mainly paid at the moment of the conclusion of the *policy* or extends over the whole term of that contract;
- (e) the existence of an appropriate mechanism for reclaiming the inducement in case the *insurance-based investment product* lapses or is surrendered at an early stage or in case the interests of the *client* have been harmed;
- (f) the existence of any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales.

- (4) For the purposes of (1) to (3):
 - (a) ‘inducement’ means any fee, commission, or any non-monetary benefit provided by or to an *insurance intermediary* or *insurer* in connection with the distribution of an *insurance-based investment product*, to or by any party except the *client* involved in the transaction in question or a *person* acting on behalf of that *client*;
 - (b) ‘inducement scheme’ means a set of rules governing the payment of inducements, including the conditions under which the inducements are paid.

[Note: articles 2(2), 2(3) and 8 of the *IDD Regulation*]

2.3A.9B R [deleted]

Disclosure of payments or benefits received from, or paid to, third parties

- 2.3A.10 R
- (1) Prior to the provision of the relevant service, the *firm* must disclose to the *client* the information set out in ■ COBS 2.3A.6R(2) and, where applicable, ■ COBS 2.3A.6R(4).
 - (2) For these purposes, minor non-monetary benefits may be described in a generic way, but other non-monetary benefits received or paid by the *firm* in connection with a service provided to the *client* must be priced and disclosed separately.

[Note: article 11(5)(a) of the *MiFID Delegated Directive*]

2.3A.11 R Where a *firm* is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead discloses to the *client* the method of calculating the relevant amount, the *firm* must also inform the *client* of the exact amount of the payment or benefit received or paid on an ex-post basis.

[Note: article 11(5)(b) of the *MiFID Delegated Directive*]

- 2.3A.12R
- (1) Where inducements are received by the *firm* on an ongoing basis in relation to an *investment service* provided or in relation to the distribution of an *insurance-based investment product* to a *client*, the *firm* must inform, at least annually, that *client* about the actual amount of payments or benefits received.

(2) For these purposes, minor non-monetary benefits may be described in a generic way.

[Note: article 11(5)(c) of the *MiFID Delegated Directive*]

- 2.3A.13R
- In implementing the requirements of ■ COBS 2.3A.10R to ■ COBS 2.3A.12R, a *firm* must take into account the costs and charges *rules* in:

(1) (for *MiFID, equivalent third country or optional exemption business*) ■ COBS 6.1ZA.11R and ■ COBS 6.1ZA.12R and article 50 of the *MiFID Org Regulation* (see ■ COBS 6.1ZA.14UK); and

(2) (for *insurance-based investment products*) ■ COBS 6.1ZA.11R to ■ COBS 6.1ZA.13R and ■ COBS 6.1ZA.15AR.

[Note: article 11(5) of the *MiFID Delegated Directive*]

- 2.3A.14R
- Each *firm* involved in a distribution channel which provides an *investment service*, an *ancillary service* or distributes an *insurance-based investment product* must comply with its obligations to make disclosures to its *clients*.

[Note: article 11(5) of the *MiFID Delegated Directive*]

Inducements relating to the provision of independent advice, restricted advice and portfolio management services to retail clients in the United Kingdom

- 2.3A.15R
- (1) This *rule* applies where a *firm* provides a *retail client* in the *United Kingdom* with:

(a) *independent advice*; or

(b) *restricted advice*; or

(c) *portfolio management services*.

(2) The *firm* must not accept any fees, commission, monetary or non-monetary benefits which are paid or provided by:

(a) any third party; or

(b) a *person* acting on behalf of a third party,

in relation to the provision of the relevant service to the *client*.

(2A) Where the *firm* provides *independent advice* or *restricted advice*, the *rule* in (2) applies in connection with:

- (a) the *firm's business of advising*; or
 - (b) any other related service, where 'related service' has the same meaning as in ■ COBS 6.1A.6R.
- (3) Paragraph (2) does not apply to:
- (a) acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R in relation to the provision of *investment services* and ■ COBS 6.1A.5AR in relation to the distribution of an *insurance-based investment product*); or
 - (b) third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R).

[Note: see articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) of the *MiFID Delegated Directive*]

Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients

2.3A.16

R

- (1) This *rule* applies where a *firm* provides *independent advice* or *portfolio management services* to:
 - (a) a *retail client* outside the *United Kingdom*; or
 - (b) (for *investment services*) a *professional client*.
- (2) In relation to the provision of the relevant service to the *client*, the *firm* must not:
 - (a) accept and retain any fees, commission or monetary benefits; or
 - (b) accept any non-monetary benefits other than acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R and, in relation to the distribution of an *insurance-based investment product*, ■ COBS 6.1A.5AR) or third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R),

where these are paid or provided by any third party or a *person* acting on behalf of a third party.
- (3) With regard to paragraph (2), the *firm* must:
 - (a) return to the *client* as soon as reasonably possible after receipt any fees, commission or any monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the services provided to that *client*;
 - (b) transfer in full to the *client* all fees, commission or monetary benefits received from third parties in relation to the services provided to the *client*;
 - (c) establish and implement a policy to ensure that any fees, commission or any monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the provision of the services to the *client* are allocated and transferred to that *client*; and
 - (d) inform the *client* about the fees, commission or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the *client*.

2.3A.17

G

[Note: articles 24(7)(b) and 24(8) of *MiFID*; article 12(1) and (2) of the *MiFID Delegated Directive*]

■ SYSC 4.1 (General requirements) sets out further organisational requirements relating to *firms*.

Fees, commission, and non-monetary benefits paid or provided by a person on behalf of the client

2.3A.18

G

Fees, commission or non-monetary benefits paid or provided by a *person* on behalf of the *client* are acceptable only if that *person* is aware that such payments have been made on that *client's* behalf and the amount and frequency of any payment is agreed between the *client* and the *firm* and not determined by a third party. This could be the case where:

- (1) a *client* pays a *firm's* invoice directly or it is paid by an independent third party who has no connection with the *firm* regarding the *investment service* provided to the *client* and is acting only on the instructions of the *client*; or
- (2) cases where the *client* negotiates a fee for a service provided by a *firm* and pays that fee.

This would generally be the case for accountants or lawyers acting under a clear payment instruction from the *client* or where a *person* is acting as a mere conduit for the payment.

[Note: recital 75 to *MiFID*]

Acceptable minor non-monetary benefits

2.3A.19

R

An acceptable minor non-monetary benefit is one which:

- (1) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way (where applicable, in accordance with ■ COBS 2.3A.10R);
- (2) is capable of enhancing the quality of service provided to the *client*;
- (3) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;
- (4) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and
- (5) consists of:
 - (a) information or documentation relating to a *financial instrument* or an *investment service*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;
 - (b) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such

material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;

- (c) participation in conferences, seminars and other training events on the benefits and features of a specific *financial instrument* or an *investment service*;
- (d) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under paragraph (c);
- (e) research relating to an issue of *shares, debentures, warrants or certificates representing certain securities* by an *issuer*, which is:
 - (i) produced:
 - (A) prior to the issue being completed; and
 - (B) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and
 - (ii) made available to prospective investors in the issue;
- (f) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
 - (i) it is received during a trial period that lasts no longer than three *months*;
 - (ii) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
 - (iii) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and
 - (iv) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (i) to (iii) were satisfied for each such trial period;
- (g) research 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 *month* to 31 October for the preceding 24 *months*. 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, *firms* may reasonably rely on the assessment of a third party that the research is on a company with a market capitalisation below £200m;
- (h) third party research that is received by a *firm* providing *investment services* or *ancillary services* to *clients* where it relates to fixed income, currency or commodity instruments;
- (i) research received from a research provider where the research provider is not engaged in execution services and is not part of a

financial services group that includes an *investment firm* that offers execution or brokerage services;

- (j) written material that is made openly available from a third party to any firm 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 firm or a member of the public in order to access that material; or
- (k) *corporate access services* which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with ■ COBS 2.3A.19R 5(g).

[Note: articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) and (3) of the *MiFID Delegated Directive* and article 72(3) of the *MiFID Org Regulation*]

2.3A.20 G ■ COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a *client*. Those conditions are also likely to be relevant to *firms* considering whether a non-monetary benefit is capable of enhancing the quality of the service to a *client* for the purposes of the *rule* on acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R(2)).

[Note: articles 24(7) and (8) of *MiFID* refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the *client*]

2.3A.21 G A non-monetary benefit that involves a third party allocating valuable resources to the *firm* is not a minor non-monetary benefit and accordingly is considered to impair compliance with the *firm's* duty to act in the *client's* best interest.

[Note: recital 30 to the *MiFID Delegated Directive*]

2.3A.22 G For the purposes of ■ COBS 2.3A.19R(4) and ■ (5)(a), non-substantive material or services consisting of short term market commentary on the latest economic statistics or company results or information on upcoming releases or events which are provided by a third party and which:

- (1) contain only a brief unsubstantiated summary of the third party's own opinion on the information; and
- (2) do not include any substantive analysis (e.g. where the third party simply reiterates a view based on an existing recommendation or substantive research),

can be deemed to be information relating to a *financial instrument* or *investment service* of a scale and nature such that it constitutes an acceptable minor non-monetary benefit.

[Note: recital 29 to the *MiFID Delegated Directive*]

2.3A.22A G In relation to ■ COBS 2.3A.19R 5(h), 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 research services.

Paying commission on non-advised sales of packaged products

2.3A.23 **G** The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* if a *firm* sells or *arranges* the sale of a *packaged product* for a *retail client*.

2.3A.24 **E**

- (1) If a *firm* is required to disclose commission (see **■ COBS 6.4** (Disclosure of charges, remuneration and commission)) to a *client* in relation to the sale of a *packaged product* (other than in relation to arrangements between *firms* that are in the same *immediate group*) the *firm* should not enter into any of the following:
 - (a) volume overrides, if commission paid in respect of several transactions is more than a simple multiple of the commission payable in respect of one transaction of the same kind; and
 - (b) an agreement to indemnify the payment of commission on terms that would or might confer an additional financial benefit on the recipient in the event of the commission becoming repayable.
- (2) Contravention of (1) may be relied upon as tending to establish contravention of **■ COBS 2.3A.5R**.

2.3A.25 **G** If a *firm* enters into an arrangement with another *firm* under which it makes or receives a payment of commission in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and commission (see **■ COBS 6.4**) and, where applicable, the *rules* on inducements in **■ COBS 2.3A.6R(2)** and **■ (3)**, unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.

Providing credit and other benefits to firms that advise retail clients on retail investment products

2.3A.26 **G** The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a *retail investment product* to a *retail client*.

2.3A.27 **E**

This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to *retail clients* on *retail investment products*, except where the relevant transaction is between *persons* who are in the same *immediate group*.

A *retail investment product* provider should not take any step which would result in it:

- (a) having a direct or indirect holding of the capital or *voting power* of a *firm* in (1); or

- (b) providing *credit* to a *firm* in (1) (other than continuing to facilitate the payment of an *adviser charge* or *consultancy charge* where it is no longer payable by the *retail client*, as described in ■ COBS 6.1A.5G or ■ COBS 6.1C.6G);

unless all the conditions in (4) are satisfied. A *retail investment product* provider should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).

A *firm* in (1) should not take any step which would result in a *retail investment product* provider having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.

The conditions referred to in (2) and (3) are that:

- (a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product* provider would, taking into account all relevant circumstances, be willing to acquire the holding or provide *credit*;
- (b) the *firm* (or, if applicable, each of the *firms*) taking the step has reliable written evidence that (a) is satisfied;
- (c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product* provider; and
- (d) the *retail investment product* provider is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products* given by the *firm*.

In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product* provider's *associate* is to be regarded as held by, or provided by, that *retail investment product* provider.

Contravention of (2) or (3) may be relied upon as tending to establish contravention of ■ COBS 2.3A.15R.

2.3A.28

G

Where a *retail investment product* provider, or its *associate*, provides *credit* to a *retail client* of a *firm* making *personal recommendations* in relation to *retail investment products*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products* may need to consider the examples in ■ COBS 2.3A.27E as if it had provided the *credit* to the *firm*.

2.3A.29

G

In considering the compliance of arrangements between members of the same *immediate group* with ■ COBS 2.3A.15R, *firms* may wish to consider the *evidential provisions* in ■ COBS 2.3A.24E and ■ COBS 2.3A.27E, to the extent that these are relevant.

Guidance on inducements

2.3A.30 **G** A *firm* which fails to comply with the rules on inducements will not meet its obligations in relation to conflicts of interest (see ■ SYSC 10) or the obligation to act honestly, professionally and fairly in accordance with the best interests of its *clients*.

[Note: article 24(9) of *MiFID*]

2.3A.31 **G** A *firm* is unlikely to meet its obligations relating to best execution (see ■ COBS 11.2A), inducements (in this section), and conflicts of interest (see ■ SYSC 10) where it receives payment, remuneration or commission from third parties (including those entities to whom or which it directs orders for execution) in relation to the execution of *client* orders. *Firms* should also have regard to the *FSA's* Guidance on the practice of 'Payment for Order Flow'.

[Note: for the *FSA's* Guidance on the practice of 'Payment for Order Flow' see: <http://www.fca.org.uk/publication/finalised-guidance/fg12-13.pdf>]

Record keeping: inducements

2.3A.32 **R** A *firm* must hold evidence that any fees, commission or non-monetary benefits paid or received by the *firm* are designed to enhance the quality of the relevant service to the *client* by:

- (1) keeping an internal list of all fees, commission and non-monetary benefits received by the *firm* from a third party in relation to the provision of the service; and
- (2) recording how the fees, commission and non-monetary benefits paid or received by the *firm*, or that the *firm* intends to use, enhance the quality of the services provided to the relevant *clients* and the steps taken in order not to impair the *firm's* compliance with the duty to act honestly, fairly and professionally in the best interests of the *client*.

[Note: article 11(4) of the *MiFID Delegated Directive*]

2.3A.33 **G** In relation to the *MiFID business* of a *firm*, article 72 and Annex 1 of the *MiFID Org Regulation* also make provision for the keeping of records on inducements.

[Note: article 72 and Annex 1 of the *MiFID Org Regulation*]

2.3A.34 **R** In relation to the *equivalent business of a third country investment firm* and *MiFID optional exemption business*, information disclosed to the *client* in accordance with ■ COBS 2.3A.6R(2), ■ (3) and ■ (4) and ■ COBS 2.3A.10R to ■ COBS 2.3A.12R must be retained in a medium that allows the storage of information in a way accessible for future reference by the *FCA*, and in such a form and manner that:

- (1) the *FCA* is able to access it readily and to reconstitute each key stage of the processing of each transaction;

- (2) it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
- (3) it is not possible for the records otherwise to be manipulated or altered;
- (4) it can be exploited through information technology or any other efficient method of exploitation when analysis of the data cannot be easily carried out due to the volume and nature of the data; and
- (5) the *firm's* arrangements comply with the record keeping requirements irrespective of the technology used.

2.3A.35

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In relation to the distribution of an *insurance-based investment product*, a *firm* should refer to ■ SYSC 3 (for insurers and managing agents) and ■ SYSC 9 (for other *firms*) for its obligations in relation to record keeping.

2.3B Inducements and research

Application

2.3B.1 **R** This section applies to a *firm* carrying on *MiFID*, *equivalent third country* or *optional exemption business*.

2.3B.2 **G**

- (1) A *firm* providing *independent advice*, *restricted advice* or *portfolio management services* to *retail clients* in the *United Kingdom*, or which provides *independent advice* or *portfolio management services* to *retail clients* outside the *United Kingdom* or to *professional clients* is prohibited from receiving inducements (other than acceptable minor non-monetary benefits) in relation to those services under ■ COBS 2.3A.15R and ■ COBS 2.3A.16R. Compliance with ■ COBS 2.3B allows such a *firm* to receive third party *research* without breaching that prohibition.
- (2) In addition, ■ COBS 2.3B enables *investment firms* other than those in (1) to receive *research* without subjecting it to an assessment under the inducements rule in ■ COBS 2.3A, as *research* acquired in accordance with this section will not constitute an inducement.

Receiving third party research without it constituting an inducement

2.3B.3 **R** Third party *research* that is received by a *firm* providing *investment services* or *ancillary services* to *clients* will not be an inducement under ■ COBS 2.3A.5R, ■ COBS 2.3A.15R or ■ COBS 2.3A.16R if it is received in return for either of the following:

- (1) direct payments by the *firm* out of its own resources; or
- (2) payments from a separate *research* payment account controlled by the *firm*, provided that the *firm* meets the requirements in ■ COBS 2.3B.4R relating to the operation of the account.

[Note: article 13(1)(a) and (b)(excl. (i) – (iv)) of the *MiFID Delegated Directive*]

Conditions relating to the operation of the research payment account

2.3B.4 **R** The requirements referred to in ■ COBS 2.3B.3R(2) for the operation of a *research* payment account are:

- (1) the *research* payment account must only be funded by a specific *research* charge to *clients*, which must:
 - (a) only be based on a *research* budget set by the *firm* for the purpose of establishing the amount needed for third party *research* in respect of *investment services* rendered to its *clients*; and
 - (b) not be linked to the volume or value of transactions executed on behalf of *clients*;
- (2) (a) the *firm* must set and regularly assess a *research* budget as an internal administrative measure as part of establishing a *research* payment account and agreeing the *research* charge with its *clients*; and
 - (b) the *research* budget must comply with ■ COBS 2.3B.7R, ■ COBS 2.3B.8R(2) and ■ COBS 2.3B.11R;
- (3) the *firm* must be fully responsible for the *research* payment account; and
- (4) the *firm* must regularly assess the quality of the *research* purchased, based on robust quality criteria, and its ability to contribute to better investment decisions for the *clients* who pay the *research* charge.

[Note: article 13(1)(b)(i-iv) and (2)(a) and (b) of the *MiFID Delegated Directive*]

2.3B.5

R

A *firm* using a *research* payment account must provide the following information to *clients*:

- (1) before the provision of an *investment service* or *ancillary service* to *clients*, information about the budgeted amount for *research* and the amount of the estimated *research* charge for each of them; and
- (2) annual information on the total costs that each of them has incurred for third party *research*.

[Note: article 13(1) second subparagraph of the *MiFID Delegated Directive*]

2.3B.6

G

In accordance with *Principle 7* (communications with clients), a *firm* should inform *clients* in the annual information in ■ COBS 2.3B.5R(2) that they are entitled to request the information set out in ■ COBS 2.3B.20R(1).

2.3B.7

R

A *firm* must ensure that:

- (1) the total amount of *research* charges collected from *clients* under ■ COBS 2.3B.4R(1) does not exceed the *research* budget established under ■ COBS 2.3B.4R(2) (and, where relevant, amended under ■ COBS 2.3B.8R(2)); and
- (2) the *research* budget and *research* payment account are not used to fund research generated internally by the *firm* itself.

[Note: article 13(4) and (6) of the *MiFID Delegated Directive*]

- 2.3B.8** R
- (1) A *firm* must agree with *clients*, in the *firm's* investment management agreement or general terms of business:
 - (a) the *research* charge as budgeted by the *firm*; and
 - (b) the frequency with which the specific *research* charge will be deducted from the resources of the *client* over the year.
 - (2) A *firm* must not increase its *research* budget unless it has provided, in advance, clear information to relevant *clients* about such intended increases.
 - (3) If there is a surplus in a *research* payment account at the end of a period, the *firm* must have a process to:
 - (a) rebate those funds to relevant *clients*; or
 - (b) offset it against the *research* budget and charge for relevant *clients* calculated for the following period.

[Note: article 13(5) of the *MiFID Delegated Directive*]
 - (4) In calculating a rebate or offset as set out in (3), a *firm* must take reasonable steps to maintain a fair allocation of costs between *clients*.

2.3B.9 G Information on increases in the *research* budget under ■ **COBS 2.3B.8R(2)** should be provided to relevant *clients* in good time before such increases are to take effect.

2.3B.10 G A *firm* that operates arrangements for collecting *research* charges by deducting charges from those *clients'* resources should ensure that those arrangements comply with ■ **CASS 8** (Mandates), as applicable.

Governance and oversight of research payment accounts

- 2.3B.11** R For the purposes of ■ **COBS 2.3B.4R(2)**, a *firm* must ensure that:
- (1) the *research* budget is managed solely by the *firm* and is based on a reasonable assessment of the need for third party *research*;
 - (2) the allocation of the *research* budget to purchase third party *research* is subject to appropriate controls and *senior management* oversight to ensure it is managed and used in the best interests of the *firm's* *clients*; and
 - (3) the controls under (2) include a clear audit trail of:
 - (a) payments made to *research* providers; and
 - (b) how the amounts paid were determined with reference to:
 - (i) the quality criteria required by ■ **COBS 2.3B.4R(4)**; and
 - (ii) the *firm's* policy for using third party *research* established under ■ **COBS 2.3B.12R**.

[Note: article 13(6) of the *MiFID Delegated Directive*]

2.3B.12	R	<p>(1) A <i>firm</i> using a <i>research</i> payment account must establish a written policy that sets out how the <i>firm</i> will:</p> <ul style="list-style-type: none"> (a) comply with all elements of ■ COBS 2.3B.4R(4); and (b) address the extent to which <i>research</i> purchased through the <i>research</i> payment account may benefit <i>clients'</i> portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the <i>firm</i> will take to allocate such costs fairly to the various <i>clients'</i> portfolios. <p>(2) A <i>firm</i> must provide the policy established under (1) to their <i>clients</i>.</p> <p>[Note: article 13(8) of the <i>MiFID Delegated Directive</i>]</p>
2.3B.13	G	<p>A <i>firm</i> should retain control over the overall spending for <i>research</i>, the collection of <i>client research</i> charges and the determination of payments.</p> <p>[Note: recital (28) to the <i>MiFID Delegated Directive</i>]</p>
2.3B.14	G	<p>In setting a budget under ■ COBS 2.3B.4R(2), and in light of the obligation to fairly allocate costs under ■ COBS 2.3B.12R(1)(b), a <i>firm</i> may wish to consider setting a budget for a group of <i>clients</i> who would benefit from the same <i>research</i>, for example because they have portfolios that are managed according to similar investment strategies. It may be appropriate to operate a dedicated <i>research</i> payment account for such a group.</p>
2.3B.15	G	<p>Where a <i>firm</i> charges a <i>client</i> under ■ COBS 2.3B.4R(1), that charge should be for an amount of <i>money</i> owed to the <i>firm</i>. Therefore, provided it is collected by the <i>firm</i> only when that charge becomes due and payable, that <i>money</i> will not be <i>client money</i> held by the <i>firm</i> for the <i>client</i> who owed that charge (see ■ CASS 7.11.25R).</p>
2.3B.16	R	<p>Other operational arrangements for research payment accounts</p> <p>.....</p> <p>If a <i>firm</i> uses an operational arrangement for the collection of the charge under ■ COBS 2.3B.4R(1) where that charge is not collected separately but alongside a transaction <i>commission</i>, the <i>firm</i> must still indicate a separately identifiable <i>research</i> charge and ensure that the arrangements comply fully with the conditions in ■ COBS 2.3B.4R and ■ COBS 2.3B.5R.</p> <p>[Note: article 13(3) of the <i>MiFID Delegated Directive</i>]</p>
2.3B.17	G	<p>A <i>firm</i> should ensure that the cost of <i>research</i> funded by <i>client</i> charges is not:</p> <ul style="list-style-type: none"> (1) linked to the volume or value of services or benefits that are not <i>research</i>; or (2) used to cover anything other than <i>research</i>, such as charges for execution. <p>[Note: recital 27 to the <i>MiFID Delegated Directive</i>]</p>

2.3B.18 **R** For the purposes of ■ COBS 2.3B.3R and ■ COBS 2.3B.4R, a *firm* may delegate the administration of the *research* payment account to a third party, provided that the arrangement facilitates payments to *research* providers, in the name of the *firm*, for the purchase of third party *research*, without any undue delay and in accordance with the *firm's* instruction.

[Note: article 13(7) of the *MiFID Delegated Directive*]

2.3B.19 **G**

- (1) In order that a *firm* retains sufficient control, and is responsible for, a *research* payment account when relying on a third party to administer it, the *firm* should consider whether its arrangements with that third party will ensure that:
 - (a) the *firm* can collect *client research* charges relating to a specific *research* budget into a separate *research* payment account for that budget, as cleared funds, without undue delay (and, in any event, no later than 30 days after deduction from the *client's* account);
 - (b) the *firm* retains sole, full and absolute discretion over the use of the account and the making of payments or rebates;
 - (c) *research* payment account monies are ring-fenced and separately identifiable from the assets of the third party or, where the third party administrator is a *bank*, are held on deposit for the *firm*; and
 - (d) the third party provider has, or its creditors on insolvency have, no right of access or recourse to the *research* payment account for its own benefit, for example to offset other fees owed by the *firm* or for use as collateral.
- (2) The *firm* remains fully responsible for discharging all of its obligations to its *clients* set out in ■ COBS 2.3B regardless of any arrangements it makes with third parties, and should ensure it acts in the best interests of its *clients* when deducting *research* charges from their accounts and procuring *research*.

Disclosure on request of payments made from a research payment account

2.3B.20 **R**

- (1) Where a *firm* operates a *research* payment account, it must provide on request to its *clients* a summary of:
 - (a) the providers paid from this account;
 - (b) the total amount they were paid over a defined period;
 - (c) the benefits and services received by the *firm*; and
 - (d) how the total amount spent from the account compares to the budget set by the *firm* for that period, noting any rebate or carry-over if residual funds remain in the account.
- (2) A *firm* must also be able to provide the information in paragraph (1) to the *FCA* on request for all *research* payment accounts.

[Note: article 13(2) of the *MiFID Delegated Directive*]

Research for the purposes of research payment accounts

- 2.3B.21** **R** A *firm* must only use monies in a *research* payment account established under ■ COBS 2.3B.3R(2) to pay for *research* or to pay a rebate to *clients* in accordance with ■ COBS 2.3B.8R(3)(a).
- 2.3B.22** **G** A *firm* should also consider whether the goods or services it is looking to receive are acceptable minor non-monetary benefits under ■ COBS 2.3A.19R or ■ COBS 2.3A.22G, which can be received without breaching the inducements rules under ■ COBS 2.3A.15R or ■ COBS 2.3A.16R.
- 2.3B.23** **G** Examples of goods or services that the *FCA* does not regard as *research*, and as a result could not be paid for from *research* payment accounts, include:
- (1) post-trade analytics;
 - (2) price feeds or historical price data that have not been analysed or manipulated in order to present the *firm* with meaningful conclusions;
 - (3) services relating to the valuation or performance measurement of portfolios;
 - (4) seminar fees;
 - (5) *corporate access services*;
 - (6) subscriptions for publications;
 - (7) travel, accommodation or entertainment costs;
 - (8) order and execution management systems;
 - (9) membership fees to professional associations;
 - (10) direct *money* payments; and
 - (11) administration of a *research* payment account.
- 2.3B.24** **G** A *firm* should not enter into any arrangements relating to the receipt of, and payment for, third party *research*, whether acquired in accordance with ■ COBS 2.3B.3R(1) or ■ (2), that would compromise its ability to meet its best execution obligations as applicable under ■ COBS 11.2A.

2.3C Research and execution services

2

Application

2.3C.1

R

This section applies to an *investment firm* providing execution services to:

- (1) a *firm* carrying on *MiFID*, equivalent third country or optional exemption business; or
- (2) an *investment firm* authorised under the UK provisions which implemented *MiFID* that is not within (1); or
- (3) a *UCITS management company*; or
- (4) a *full-scope UK AIFM*; or
- (5) a *small authorised UK AIFM*; or
- (6) a *residual CIS operator*; or
- (7) [deleted]
- (8) an *OPS firm*.

Requirement on a firm that executes orders and provides research to price and supply services separately

2.3C.2

R

A *firm* providing execution services must:

- (1) identify separate charges for its execution services that only reflect the cost of executing the transaction;
- (2) subject each other benefit or service (other than an acceptable minor non-monetary benefit in ■ COBS 2.3A.19R) which it provides to *persons* listed in ■ COBS 2.3C.1R(1) to ■ (6) to a separately identifiable charge; and
- (3) ensure that the supply of, and charges for, other benefits or services under (2) is not influenced or conditioned by levels of payment for execution services.

[Note: article 13(9) of the *MiFID Delegated Directive*]

2.3C.3

R

A *firm* providing both execution and *research* services must price and supply them separately.

2.3C.4

G

Compliance with ■ COBS 2.3C.2R is intended to enable a *firm* subject to ■ COBS 2.3A.15R and ■ COBS 2.3A.16R to comply with its obligation not to accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the provision of the service to *clients*.
[Note: recital 26 to the *MiFID Delegated Directive*]

2.4 Agent as client and reliance on others

2.4.1 **R** This section applies to a *firm* that is conducting *designated investment business* or *ancillary activities* or, in the case of *MiFID*, *equivalent third country* or *optional exemption business*, other *ancillary services*.

2.4.2 **G** This section is not relevant to, nor does it affect:

- (1) the question of who is the *firm's* counterparty for prudential purposes; or
- (2) any obligation a *firm* may owe to any other *person* under the general law; or
- (3) any obligation imposed on a *firm* by article 26 of *MiFIR* or MiFID RTS 22.

Agent as client

2.4.3 **R**

- (1) If a *firm* (F) is aware that a *person* (C1) with or for whom it is providing services is acting as agent for another person (C2) in relation to those services, C1, and not C2, is the *client* of F in respect of that business.
- (2) Paragraph (1) does not apply if:
 - (a) F has agreed with C1 in writing to treat C2 as its *client*; or
 - (b) C1 is neither a *firm* nor an *overseas financial services institution* and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.

If this is the case, C2 is the *client* of F in respect of that business and C1 is not.
- (3) If there is an agreement under (2)(a) in relation to more than one C2 represented by C1, F may discharge any requirement to notify, obtain consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1 a single communication expressed to cover each C2, except that the following will be required for each C2:
 - (a) separate risk warnings required under this sourcebook;
 - (b) separate confirmations under the requirements on occasional reporting (■ COBS 16.2 or ■ COBS 16A.3); and
 - (c) separate *periodic statements*.

Reliance on other investment firms: MiFID and equivalent business

2.4.4

R

- (1) This rule applies if a *firm* (F1), in the course of performing *MiFID* or *equivalent third country business*, receives an instruction to provide an *investment* or *ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:
- (a) a *MiFID investment firm* or a *third country investment firm*; or
 - (b) an *investment firm* that is:
 - (i) a *firm* ; and
 - (ii) subject to equivalent relevant requirements.
- (2) F1 may rely upon:
- (a) any information about C transmitted to it by F2; and
 - (b) any recommendations in respect of the service or transaction that have been provided to C by F2.
- (3) F2 will remain responsible for:
- (a) the completeness and accuracy of any information about C transmitted by it to F1; and
 - (b) the suitability for C of any advice or recommendations provided to C.
- (4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the *regulatory system*.

[Note: article 26 of *MiFID*]

2.4.5

G

- (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under ■ COBS 9A or ■ COBS 10A, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in ■ COBS 9A (excluding the *basic advice rules*) in performing that assessment.
- (2) If F1 is required to perform an appropriateness assessment under ■ COBS 10A, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in ■ COBS 10A.2 in performing that assessment.

Reliance on other insurance distributors

2.4.5A

R

Where a *firm* carrying on *insurance distribution activities* in relation to an *insurance-based investment product* is required to perform an appropriateness assessment under ■ COBS 10A, it may rely upon:

- (1) a suitability assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing suitability in ■ COBS 9A; or
- (2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in ■ COBS 10A.2,

in performing that assessment.

[Note: article 30(2) of the IDD]

Reliance on others: other situations

- 2.4.6** **R** (1) This *rule* applies if the applicable *rule* on reliance on other *investment firms* or *insurance distributors* (■ COBS 2.4.4 R and ■ COBS 2.4.5AR) does not apply.
- (2) A *firm* will be taken to be in compliance with any *rule* in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another *person*.
- 2.4.7** **E** (1) In relying on ■ COBS 2.4.6 R, a *firm* should take reasonable steps to establish that the other *person* providing written information is not connected with the *firm* and is competent to provide the information.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with ■ COBS 2.4.6 R.
- (3) Contravention of (1) may be relied upon as tending to establish contravention of ■ COBS 2.4.6 R.
- 2.4.8** **G** It will generally be reasonable (in accordance with ■ COBS 2.4.6R (2)) for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.
- 2.4.9** **R** Any information that a *rule* in COBS or CASS requires to be sent to a *client* may be sent to another *person* on the instruction of the *client* so long as the recipient is not connected to the *firm*.
- 2.4.10** **R** In the case of business that is not *MiFID* or *equivalent third country business*, if a *rule* in COBS or CASS requires information to be sent to a *client*, a *firm* need not send that information so long as it takes reasonable steps to establish that it has been or will be supplied by another *person*.

2.5 Optional additional products

Restriction on marketing or providing an optional product for which a fee is payable

2.5.1

R

- (1) A *firm* must not enter into an agreement with a *client* under which a charge is, or may become, payable for an optional additional product unless the *client* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *client* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *client* has actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *client* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
 - (a) a contravention of (1) or (2) will take place with respect to the product; or
 - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *client* is not to be regarded as an active election for the purposes of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.
- (6) A charge includes a financial consideration of any kind, whether payable to the *firm* or any other *person*.
- (7) An optional additional product is a good, service or right of any description, whether or not financial in nature, that a *client* may obtain (or not, as the case may be) at his or her election in connection with, or alongside, a *designated investment*.
- (8) If the *client* is required to obtain the additional product as a condition of the transaction related to the *designated investment*, then that product is an optional additional product if the *client* is given a choice:
 - (a) as to the seller or supplier of that product; or
 - (b) which specific product to obtain.

- (9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or another *person*.
- (10) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *client* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.
- (b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).
- (c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.
- (11) A *client* may make an active election for the purposes of this rule through an intermediary in the sales process and through a *person* acting on behalf of the *firm*.

- 2.5.2 G An example of an omission by a *client* which is not to be regarded as an active election is the failure by the *client* to change a default option such as a pre-ticked box on a website.
- 2.5.3 G *Firms* are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.
- 2.5.4 G *Firms* are reminded that they must ensure that their *appointed representatives* comply with this section ■ COBS 2.5.

