Chapter 2
Conduct of business obligations
2.1 Acting honestly, fairly and professionally

The client’s best interests rule

2.1.1 R (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 or EEA 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

2.1.1A R 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

2.1.2 R 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.

2.1.3 G (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
(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 A full-scope UK AIFM and an incoming EEA AIFM branch 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 Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules 
supplementing the relevant provisions of Article 12(1) of AIFMD.
COBS 2 : Conduct of business

Section 2.2 : Information disclosure before providing services (other than MiFID and insurance distribution)

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

Application

2.2.-1  R

(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 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.

2.2.-1A  G

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

2.2.1  R

(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;

(c) execution venues; and

(d) costs and associated charges;

so that the client is reasonably able to understand the nature and risks of the service and of the specific type of designated investment that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.
(3) [deleted]

(4) [deleted]

2.2.2 **G** A *firm* to which the rule on providing appropriate information (■ COBS 2.2.1 R) applies should also consider the rules on disclosing information about a *firm*, its services, costs and associated charges and designated investments in ■ COBS 6.1 and ■ COBS 14.

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

2.2.3 **R** A *firm*, other than a venture capital *firm*, which is managing investments for a professional client that is not a natural person must disclose clearly on its website, or if it does not have a website in another accessible form:

1. the nature of its commitment to the Financial Reporting Council’s Stewardship Code; or

2. where it does not commit to the Code, its alternative investment strategy.
Application

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

(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.

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]

(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 G 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 R 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 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 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 The defined term regulated market has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the EEA.

Application: Where?

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

(2) This section also applies in relation to activities carried on by a UK firm from an establishment in another EEA State.

Engagement policy and disclosure of information

2.2B.5 A firm must either:

(1) 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 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 (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 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

(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 support the firm’s engagement activities if applicable, particularly at the time of the general meeting of the investee companies;
   (f) 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 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

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

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.

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.
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).

2.3.1 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 or EEA 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 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 or EEA 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
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.

[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 and EEA 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 and EEA 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

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 UCITS it manages (see ■ COBS 18.5B.6R and ■ COBS 18 Annex 1).
2.3.5 For the purposes of this section, a non-monetary benefit would include the direction or referral by a firm of an actual or potential item of designated investment business to another person, whether on its own initiative or on the instructions of an associate.

2.3.6 [deleted]

2.3.6A ■ 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 firm to pay or receive commissions, fees or other benefits:

(1) relating to the provision of a personal recommendation on retail investment products or P2P agreements; or

(2) for giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme.

2.3.7 The fact that a fee, commission or non-monetary benefit is paid or provided to or by an appointed representative does not prevent the application of the rule on inducements.

2.3.8 [deleted]

Paying commission on non-advised sales of packaged products

2.3.9 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.

2.3.10 (1) If a firm is required to disclose commission (see ■ COBS 6.4) 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 the rule on inducements (■ COBS 2.3.1 R).
2.3.11  (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  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  (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;
Section 2.3: Inducements relating to business other than MiFID, equivalent third country or optional exemption business...

(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 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 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 (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.

This table belongs to § COBS 2.3.14 G.

<table>
<thead>
<tr>
<th>Gifts, Hospitality and Promotional Competition Prizes</th>
</tr>
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<tbody>
<tr>
<td>1 A retail investment product provider giving and a firm receiving gifts, hospitality and promotional competition prizes of a reasonable value.</td>
</tr>
<tr>
<td>2 Promotion</td>
</tr>
<tr>
<td>A retail investment product provider assisting another firm to promote its retail investment products so that the quality of its service to clients is enhanced. Such assistance should not be of a kind or value that is likely to impair the recipient firm’s ability to pay regard to the interests of its clients, and to give advice on, and recommend, retail investment products available from the recipient firm’s whole range or ranges.</td>
</tr>
<tr>
<td>Joint marketing exercises</td>
</tr>
<tr>
<td>3 A retail investment product 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 firm if:</td>
</tr>
<tr>
<td>(a) the literature enhances the quality of the service to the client and is not primarily of promotional benefit to the retail investment product provider; and</td>
</tr>
<tr>
<td>(b) the total costs (for example, packaging, posting, mailing lists) of distributing such literature to its client are borne by the recipient firm.</td>
</tr>
<tr>
<td>4 A retail investment product provider supplying another firm with ‘freepost’ envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.</td>
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<tr>
<td>5 A retail investment product provider supplying product specific literature (for example, key features documents, minimum information) to another firm if:</td>
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<tr>
<td>(a) the literature does not contain the name of any other firm; or</td>
</tr>
<tr>
<td>(b) if the name of the recipient firm is included, the literature enhances the quality of the service to the client and is not primarily of promotional benefit to the recipient firm.</td>
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<tr>
<td>6 A retail investment product provider supplying draft articles, news items and financial promotions for publication in another firm’s magazine, only if in each case any costs paid by the product provider for placing the articles and financial promotions are not more than market rate, and exclude distribution costs.</td>
</tr>
<tr>
<td>Seminars and conferences</td>
</tr>
<tr>
<td>7 A retail investment product provider taking part in a seminar organised by another firm or a third party and paying toward the cost of the seminar, if:</td>
</tr>
<tr>
<td>(a) its participation is for a genuine business purpose; and</td>
</tr>
</tbody>
</table>
(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 retail investment product provider supplying a ‘freephone’ link to which it is connected.

9 A retail investment product provider supplying another firm with any of the following:

(a) quotations and projections relating to its retail investment products and, in relation to specific investment transactions (or for the purpose of any scheme for review of past business), advice on the completion of forms or other documents;

(b) access to data processing facilities, or access to data, that is related to the retail investment product provider’s business;

(c) access to third party electronic dealing or quotation systems that are related to the retail investment product provider’s business; and

(d) software that gives information about the retail investment product provider’s retail investment products or which is appropriate to its business (for example, for use in a scheme for review of past business or for producing projections or technical product information).

10 A retail investment product provider paying cash amounts or giving other assistance to a firm not in the same immediate group for the development of software or other computer facilities necessary to operate software supplied by the retail investment product provider, but only to the extent that by doing so it will generate equivalent cost savings to itself or clients.

11 A retail investment product provider supplying another firm with information about sources of mortgage finance.

12 A retail investment product provider supplying another firm with generic technical information in writing, not necessarily related to the product provider’s business, when this information states clearly and prominently that it is produced by the product provider or (if different) supplying firm.

Training

13 A retail investment product provider providing another firm with training facilities of any kind (for example, lectures, venue, written material and software).

Travel and accommodation expenses

14 A retail investment product provider reimbursing another firm’s reasonable travel and accommodation expenses when the other firm:

(a) participates in market research conducted by or for the retail investment product provider;

(b) attends an annual national event of a United Kingdom trade association, hosted or co-hosted by the retail investment product 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 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).

Record keeping: inducements

2.3.17 R

(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 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.

Relationship with the adviser charging, product provider and platform service provider rules in COBS 6.1A, COBS 6.1B and COBS 6.1E

2.3A.2 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 ■ 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 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.9AEU); 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 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 (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 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

8(1) An inducement or inducement scheme shall be considered to have a detrimental impact on the quality of the relevant service to the customer 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 customer.

8(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 customer, insurance intermediaries and insurance undertakings shall 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 customer, and any organisational measures taken by the insurance intermediary or insurance undertaking carrying out distribution activities to prevent the risk of detrimental impact.

They shall, in particular, consider the following criteria:

(a) whether the inducement or inducement scheme could provide an incentive to the insurance intermediary or insurance undertaking to offer or recommend a particular insurance product or a particular service to the customer despite the fact that the insurance intermediary or insurance undertaking would be able to offer a different insurance product or service which would better meet the customer’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 regulations, the quality of services provided to customers and customer satisfaction;

(c) the value of the inducement paid or received in relation to the value of the product and the services provided;

(d) whether the inducement is entirely or mainly paid at the moment of the conclusion of the insurance contract or extends over the whole term of that contract;

(e) the existence of an appropriate mechanism for reclaiming the inducement in case the product lapses or is surrendered at an early stage or in case the interests of the customer 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.

2(2)`inducement’ means any fee, commission, or any non-monetary benefit provided by or to such an intermediary or undertaking in connection with the distribution of an insurance-based investment product, to or by any party except the customer involved in the transaction in question or a person acting on behalf of that customer;

2(3)`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 COBS 2.3A.9AEU applies as if it was a rule to firms in relation to insurance distribution activities to which the IDD Regulation does not apply.

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

2.3A.10 (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 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.12 R

(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.13 R

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 set out:

(1) (for MiFID, equivalent third country or optional exemption business) in article 24(4)(c) of MiFID and article 50 of the MiFID Org Regulation (see COBS 6.1ZA.11R to COBS 6.1ZA.13R and COBS 6.1ZA.14EU); and

(2) (for insurance-based investment products) in 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.14 R

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.15 R

(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

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

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.

Acceptable minor non-monetary benefits

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 article 11(5)(a) of the MiFID Delegated Directive (see § 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; or

(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.

[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]
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]

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 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.

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 section COBS 2.3A.15R.

2.3A.28 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 section COBS 2.3A.27E as if it had provided the credit to the firm.

2.3A.29 In considering the compliance of arrangements between members of the same immediate group with section COBS 2.3A.15R, firms may wish to consider the evidential provisions in section COBS 2.3A.24E and section COBS 2.3A.27E, to the extent that these are relevant.

Guidance on inducements

2.3A.30 A firm which fails to comply with the rules on inducements will not meet its obligations in relation to conflicts of interest (see section 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 A firm is unlikely to meet its obligations relating to best execution (see section COBS 11.2A), inducements (in this section), and conflicts of interest (see section 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’.


Record keeping: inducements

2.3A.32 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]
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]

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.

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 This section applies to a firm carrying on MiFID, equivalent third country or optional exemption business.

2.3B.2 (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 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 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 \textsection COBS 2.3B.7R, \textsection COBS 2.3B.8R(2) and \textsection 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 \textbf{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 \textbf{G} In accordance with Principle 7 (communications with clients), a firm should inform clients in the annual information in \textsection COBS 2.3B.5R(2) that they are entitled to request the information set out in \textsection COBS 2.3B.20R(1).

2.3B.7 \textbf{R} A firm must ensure that:

   (1) the total amount of research charges collected from clients under \textsection COBS 2.3B.4R(1) does not exceed the research budget established under \textsection COBS 2.3B.4R(2) (and, where relevant, amended under \textsection 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]
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**.

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.

An **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.

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]
(1) A firm using a research payment account must establish a written policy that sets out how the firm will:
(a) comply with all elements of COBS 2.3B.4R(4); and
(b) address the extent to which research purchased through the research payment account may benefit clients’ portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the firm will take to allocate such costs fairly to the various clients’ portfolios.

(2) A firm must provide the policy established under (1) to their clients.

[Note: article 13(8) of the MiFID Delegated Directive]

A firm should retain control over the overall spending for research, the collection of client research charges and the determination of payments.

[Note: recital (28) to the MiFID Delegated Directive]

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 firm may wish to consider setting a budget for a group of clients who would benefit from the same research, for example because they have portfolios that are managed according to similar investment strategies. It may be appropriate to operate a dedicated research payment account for such a group.

Where a firm charges a client under COBS 2.3B.4R(1), that charge should be for an amount of money owed to the firm. Therefore, provided it is collected by the firm only when that charge becomes due and payable, that money will not be client money held by the firm for the client who owed that charge (see CASS 7.11.25R).

Other operational arrangements for research payment accounts

If a firm 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 commission, the firm must still indicate a separately identifiable research charge and ensure that the arrangements comply fully with the conditions in COBS 2.3B.4R and COBS 2.3B.5R.

[Note: article 13(3) of the MiFID Delegated Directive]

A firm should ensure that the cost of research funded by client charges is not:

(1) linked to the volume or value of services or benefits that are not research; or

(2) used to cover anything other than research, such as charges for execution.

[Note: recital 27 to the MiFID Delegated Directive]
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]

(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

(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

Application

2.3C.1 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 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. an incoming EEA AIFM branch; or
8. an OPS firm.

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

2.3C.2 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 A firm providing both execution and research services must price and supply them separately.
2.3C.4 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 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 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 RTS 22.

Agent as client

2.4.3 (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

R2.4.4

(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 or authorised in another EEA State; 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]

R2.4.5

(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) or equivalent requirements in another EEA State 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, or equivalent requirements in another EEA State in performing that assessment.

Reliance on other insurance distributors

G2.4.5A

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 equivalent requirements in another EEA State; 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 or equivalent requirements in another EEA State,

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 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 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 Firms are reminded that they must ensure that their appointed representatives comply with this section COBS 2.5.