

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

R

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.