

Chapter 2

Conduct of business obligations

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

Interpretation

2.3.-1

R

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

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

Application

2.3.-1A

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This section does not apply to:

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

2.3.-1B

G

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

2.3.-1C **G** This section does not apply to the provision of *independent advice* or *restricted advice* on a *retail investment product* in the course of *MiFID*, *equivalent third country* or *optional exemption business*. A firm providing such a service should refer instead to **■ COBS 2.3A** (Inducements relating to MiFID, equivalent third country or optional exemption business) and **■ COBS 6.1A** (Adviser charging and remuneration).

Rule on inducements

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

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

pension transfer, pension conversion or pension opt-out or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client; or

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

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

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

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

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

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

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

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

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

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

Guidance on inducements

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

2.3.4 **G** [deleted]

2.3.4A **G** A *UCITS management company* is subject to specific *rules* on inducements and research in ■ COBS 18.5B when *executing orders for financial instruments* for, or on behalf of, the *UCITS* it manages (see ■ COBS 18.5B.6R and ■ COBS 18 Annex 1).

- 2.3.5 **G** For the purposes of this section, a non-monetary benefit would include the direction or referral by a *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 **G** [deleted]
- 2.3.6A **G** ■ 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, pension transfers, pension conversions, pension opt-outs 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 **G** 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 **G** [deleted]
- Paying commission on non-advised sales of packaged products**
- 2.3.9 **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*.
- 2.3.10 **E**
- (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** G (1) If a *firm* enters into an arrangement with another firm under which it makes or receives a payment of *commission* in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and commission (see ■ COBS 6.4) and, where applicable, the *rule* on inducements in ■ COBS 2.3.1R (2)(b), unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.

Providing credit and other benefits to firms that give personal recommendations on retail investment products or P2P agreements

2.3.11A G The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a *retail investment product* or *P2P agreement* to a *retail client*.

- 2.3.12** E
- (1) This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to *retail clients* on *retail investment products* or *P2P agreements*, except where the relevant transaction is between *persons* who are in the same *immediate group*.
- (2) A *retail investment product* provider or *operator of an electronic system in relation to lending* should not take any step which would result in it:
- (a) having a direct or indirect holding of the capital or *voting power* of a firm in (1); or
 - (b) providing *credit* to a *firm* in (1) (other than continuing to facilitate the payment of an *adviser charge* or *consultancy charge* where it is no longer payable by the *retail client*, as described in ■ COBS 6.1A.5 G or ■ COBS 6.1C.6 G);
- unless all the conditions in (4) are satisfied. A *retail investment product* provider or *operator of an electronic system in relation to lending* should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).
- (3) A *firm* in (1) should not take any step which would result in a *retail investment product* provider or *operator of an electronic system in relation to lending* having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.
- (4) The conditions referred to in (2) and (3) are that:
- (a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product* provider or *operator of an electronic system in relation to lending* would, taking into account all relevant circumstances, be willing to acquire the holding or provide credit;
 - (b) the *firm* (or, if applicable, each of the *firms*) taking the step has reliable written evidence that (a) is satisfied;

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

2.3.12A G 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 G 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 G

- (1) In relation to the sale of *retail investment products*, the table on reasonable non-monetary benefits (■ COBS 2.3.15 G) indicates the kind of benefits which are capable of enhancing the quality of the service provided to a *client* and, depending on the circumstances, are capable of being paid or received without breaching the *client's best interests rule*. However, in each case, it will be a question of fact whether these conditions are satisfied.
- (2) The *guidance* in the table on reasonable non-monetary benefits is not relevant to non-monetary benefits which may be given by a *retail investment product provider* or its *associate* to its own *representatives*. The *guidance* in this provision does not apply directly to non-monetary benefits provided by a *firm* to another *firm* that is

in the same *immediate group*. In this situation, the *rules on commission equivalent* (■ COBS 6.4.3 R), the requirements on a *retail investment product* provider making a *personal recommendation* in respect of its own *retail investment products* (■ COBS 6.1A.9 R) or the requirements on a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* produced by the *firm* (■ COBS 6.1C.8 R) will apply.

2.3.15 G This table belongs to ■ COBS 2.3.14 G.

Gifts, Hospitality and Promotional Competition Prizes	
1	A <i>retail investment product</i> provider giving and a <i>firm</i> receiving gifts, hospitality and promotional competition prizes of a reasonable value.
Promotion	
2	A <i>retail investment product</i> provider assisting another <i>firm</i> to promote its <i>retail investment products</i> so that the quality of its service to <i>clients</i> is enhanced. Such assistance should not be of a kind or value that is likely to impair the recipient <i>firm's</i> ability to pay due regard to the interests of its <i>clients</i> , and to give advice on, and recommend, <i>retail investment products</i> available from the recipient <i>firm's</i> whole <i>range</i> or <i>ranges</i> .
Joint marketing exercises	
3	A <i>retail investment product</i> provider providing generic product literature (that is, letter heading, leaflets, forms and envelopes) that is suitable for use and distribution by or on behalf of another <i>firm</i> if: <ul style="list-style-type: none"> (a) the literature enhances the quality of the service to the <i>client</i> and is not primarily of promotional benefit to the <i>retail investment product</i> provider; and (b) the total costs (for example, packaging, posting, mailing lists) of distributing such literature to its <i>client</i> are borne by the recipient <i>firm</i>.
4	A <i>retail investment product</i> provider supplying another <i>firm</i> with 'freepost' envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.
5	A <i>retail investment product</i> provider supplying product specific literature (for example, <i>key features documents</i> , minimum information) to another <i>firm</i> if: <ul style="list-style-type: none"> (a) the literature does not contain the name of any other <i>firm</i>; or (b) if the name of the recipient <i>firm</i> is included, the literature enhances the quality of the service to the <i>client</i> and is not primarily of promotional benefit to the recipient <i>firm</i>.
6	A <i>retail investment product</i> provider supplying draft articles, news items and <i>financial promotions</i> for publication in another <i>firm's</i> magazine, only if in each case any costs paid by the <i>product provider</i> for placing the articles and <i>financial promotions</i> are not more than market rate, and exclude distribution costs.
Seminars and conferences	
7	A <i>retail investment product</i> provider taking part in a seminar organised by another <i>firm</i> or a third party and paying toward the cost of the seminar, if: <ul style="list-style-type: none"> (a) its participation is for a genuine business purpose; and

- (b) the contribution is reasonable and proportionate to its participation and by reference to the time and sessions at the seminar when its staff play an active role.
- Technical services and information technology
- 8 A *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, pension transfers, pension conversions, pension opt-outs* or *P2P agreements*, and to which ■ COBS 6.1A (Adviser charging and remuneration) applies; or
- (2) is a *retail investment product* provider, a *platform service provider* or a *firm* which is an *operator of an electronic system in relation to lending* to which ■ COBS 6.1B (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) applies.

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

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.