

Chapter 2

Conduct of business obligations

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

Application

- 2.3A.1** **R** This section applies to a *firm*:
- (1) in relation to its *MiFID, equivalent third country or optional exemption business*; and
 - (2) carrying on *insurance distribution activities* in relation to an *insurance-based investment product*.

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** **G** A *firm* which makes a *personal recommendation* to a *retail client* in the *United Kingdom* in relation to:
- (a) a *retail investment product* in the course of carrying on *MiFID, equivalent third country or optional exemption business* with or for that *client*; or
 - (b) an *insurance-based investment product*, is also required to comply with the *rules* in **COBS 6.1A** (Adviser charging and remuneration).

- 2.3A.3** **G** **COBS 6.1A** provides, amongst other things, that a *firm* must only be remunerated for a *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*.

- 2.3A.4** **G** Where:
- (1) the *firm*:
 - (a) is a *retail investment product provider* or a *platform service provider*; and
 - (b) carries on *MiFID, equivalent third country or optional exemption business*, or carries on *insurance distribution activities*, in relation to those activities; and

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

Rules on inducements

2.3A.5

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- (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

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

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

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

2.3A.7

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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

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- (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

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

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

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

- (2) *restricted advice* combined with:
 - (a) an offer to the *client*, at least on an annual basis, to assess the continuing suitability of the *financial instruments* or *insurance-based investment products* in which the *client* has invested; or
 - (b) another ongoing service that is likely to be of value to the *client* such as advice about the suggested optimal asset allocation of the *client*; or
- (3) access, at a competitive price, to a wide range of *financial instruments* or *insurance-based investment products* that are likely to meet the needs of the *client*, including an appropriate number of *financial instruments* or *insurance-based investment products* from third party product providers having no close links with the *firm*, together with either the provision of added-value tools, such as objective information tools helping the *client* to take investment decisions or enabling the *client* to monitor, model and adjust the range of *financial instruments* or *insurance-based investment products* in which they have invested, or providing periodic reports of the performance and costs and charges associated with the *financial instruments* or *insurance-based investment products*.

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

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

2.3A.9A R

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

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

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

(4) For the purposes of (1) to (3):

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

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

2.3A.9B **R** [deleted]

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

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

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

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

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

- 2.3A.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* in:
- (1) (for *MiFID, equivalent third country or optional exemption business*) **COBS 6.1ZA.11R** and **COBS 6.1ZA.12R** and article 50 of the *MiFID Org Regulation* (see **COBS 6.1ZA.14UK**); and
 - (2) (for *insurance-based investment products*) **COBS 6.1ZA.11R** to **COBS 6.1ZA.13R** and **COBS 6.1ZA.15AR**.

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

- 2.3A.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

2.3A.16

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- (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*.

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

2.3A.17

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

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

2.3A.18 **G**

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

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

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

[Note: recital 75 to *MiFID*]

Acceptable minor non-monetary benefits

2.3A.19 **R**

An acceptable minor non-monetary benefit is one which:

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

- (d) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under paragraph (c);
- (e) research relating to an issue of *shares, debentures, warrants or certificates representing certain securities* by an *issuer*, which is:
 - (i) produced:
 - (A) prior to the issue being completed; and
 - (B) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and
 - (ii) made available to prospective investors in the issue;
- (f) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
 - (i) it is received during a trial period that lasts no longer than three *months*;
 - (ii) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
 - (iii) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and
 - (iv) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (i) to (iii) were satisfied for each such trial period;
- (g) [deleted]
- (h) third party research that is received by a *firm* providing *investment services or ancillary services* to *clients* where it relates to fixed income, currency or commodity instruments;
- (i) research received from a research provider where the research provider is not engaged in execution services and is not part of a financial services group that includes an *investment firm* that offers execution or brokerage services;
- (j) written material that is made openly available from a third party to any firm wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a firm or a member of the public in order to access that material;
- (k) *corporate access services* which relate to listed or unlisted companies with a market capitalisation below £200m; or
- (l) short-term trading commentary that does not contain substantive analysis, and bespoke trade advisory services intrinsically linked to the execution of a transaction in *financial instruments*.

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

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

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

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

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

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

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

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

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

2.3A.22A **G** In relation to ■ COBS 2.3A.19R 5(h), since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account research services.

Paying commission on non-advised sales of packaged products.

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

2.3A.24 **E** (1) If a *firm* is required to disclose commission (see ■ COBS 6.4 (Disclosure of charges, remuneration and commission)) to a *client* in relation to the sale of a *packaged product* (other than in relation to arrangements between *firms* that are in the same *immediate group*) the *firm* should not enter into any of the following:

- (a) volume overrides, if commission paid in respect of several transactions is more than a simple multiple of the commission payable in respect of one transaction of the same kind; and
- (b) an agreement to indemnify the payment of commission on terms that would or might confer an additional financial benefit on the recipient in the event of the commission becoming repayable.

(2) Contravention of (1) may be relied upon as tending to establish contravention of ■ COBS 2.3A.5R.

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

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

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

2.3A.27 E This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to *retail clients* on *retail investment products*, except where the relevant transaction is between *persons* who are in the same *immediate group*.

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

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

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

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

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

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

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

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

2.3A.28 G Where a *retail investment product* provider, or its *associate*, provides *credit* to a *retail client* of a firm making *personal recommendations* in relation to *retail investment products*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products* may need to consider the examples in ■ COBS 2.3A.27E as if it had provided the *credit* to the *firm*.

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

Guidance on inducements

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

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

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

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

Record keeping: inducements

2.3A.32

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

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

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

2.3A.33

G

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

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

2.3A.34

R

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

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

2.3A.35

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