

**CONDUCT OF BUSINESS SOURCEBOOK (USE OF DEALING COMMISSION)  
(AMENDMENT NO 2) INSTRUMENT 2014**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 138C (Evidential provisions); and
  - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 2 June 2014.

**Amendments to the FCA Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Conduct of Business Sourcebook (Use of Dealing Commission) (Amendment No 2) Instrument 2014.

By order of the Board of the Financial Conduct Authority  
1 May 2014

## Annex A

### Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

*corporate access service* a service of arranging or bringing about contact between an *investment manager* and an *issuer* or potential *issuer*.

## Annex B

## Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 11.6 Use of dealing commission

...

Use of dealing commission to purchase goods or services

- 11.6.3 R (1) ~~An~~ Subject to (3), an investment manager must not accept ~~goods or services~~ any good or service in addition to the *execution* of its *customer orders* if it:
- ...
- (c) is offered ~~goods or services~~ that good or service in return for the *charges* referred to in (b).
- (2) ~~This prohibition does not apply if the investment manager has reasonable grounds to be satisfied that goods or services received in return for the charges:~~
- (a) (i) ~~are related to the execution of trades on behalf of the investment manager's customers; or~~
- (ii) ~~comprise the provision of research; and~~
- (b) ~~will reasonably assist the investment manager in the provision of its services to its customers on whose behalf the orders are being executed and do not, and are not likely to, impair compliance with the duty of the investment manager to act in the best interests of its customers. [deleted]~~
- (3) The prohibition under (1) does not apply where:
- (a) the investment manager has reasonable grounds to be satisfied that the good or service received in return for the charges in (1)(b) will reasonably assist the investment manager in the provision of its services to its customers, on whose behalf the relevant customer orders are being executed;
- (b) the investment manager's receipt of that good or service in return for the charges in (1)(b) does not, and is not likely to, impair compliance with the duty of the investment manager to act in the best interests of its customers; and

- (c) that good or service either:
  - (i) is directly related to the *execution* of trades on behalf of the *investment manager's customers*; or
  - (ii) amounts to the provision of substantive research.

11.6.4 E (1) ~~Where the goods or services relate to the *execution* of trades, an *investment manager* should have reasonable grounds to be satisfied that the requirements of the *rule on use of dealing commission (COBS 11.6.3R)* are met if the goods or services are Under COBS 11.6.3R(3)(c)(i), for a good or service to be directly related to the *execution* of trades on behalf of the *investment manager's customers* it must be:~~

...

- (2) Compliance with (1) may be relied upon as tending to establish compliance with ~~the *rule on use of dealing commission (COBS 11.6.3R(3)(c)(i))*~~.
- (3) Contravention of (1) may be relied on as tending to establish a contravention of COBS 11.6.3R(3)(c)(i).

11.6.5 E (1) ~~Where the goods or services relate to the provision of research, an *investment manager* will have reasonable grounds to be satisfied that the requirements of the *rule on use of dealing commission (COBS 11.6.3R)* are met if the research Under COBS 11.6.3R(3)(c)(ii), for a good or service to amount to the provision of substantive research the relevant research must:~~

- (a) is *be* capable of adding value to the investment or trading decisions by providing new insights that inform the *investment manager* when making such decisions about its *customers' portfolios*;
  - (b) whatever form its output takes, ~~represents~~ *represent* original thought, in the critical and careful consideration and assessment of new and existing facts, and ~~does~~ must not merely repeat or repackage what has been presented before;
  - (c) ~~has~~ *have* intellectual rigour and ~~does~~ must not merely state what is commonplace or self-evident; and
  - (d) ~~involves analysis or manipulation of data to reach~~ *present the *investment manager* with meaningful conclusions based on analysis or manipulation of data.*
- (2) Compliance with (1) may be relied upon as tending to establish compliance with ~~the *rule on use of dealing commission (COBS 11.6.3R(3)(c)(ii))*~~.

- (3) Contravention of (1) may be relied on as tending to establish a contravention of COBS 11.6.3R(3)(c)(ii).
- 11.6.6 G An example of ~~goods or services~~ a good or service relating to the *execution* of trades that the *FCA* does not regard as meeting the requirements of the *rule* on use of dealing commission (*COBS 11.6.3R*) is post-trade analytics. These would not meet the evidential criteria for a good or service to be directly related to the *execution* of trades under *COBS 11.6.4E(1)*.
- 11.6.7 G Examples of goods or services that relate to the provision of research that the *FCA* does not regard as meeting the requirements of the *rule* on use of dealing commission (*COBS 11.6.3R*) include price feeds or historical price data that have not been analysed or manipulated in order to present the *investment manager* with ~~to reach~~ meaningful conclusions. These would not meet the evidential criteria for a good or service to amount to the provision of substantive research under *COBS 11.6.5E(1)*.
- 11.6.8 G Examples of goods or services that relate to the *execution* of trades or the provision of research that the *FCA* does not regard as meeting the requirements of either evidential provisions *COBS 11.6.4E(1)* or *COBS 11.6.5E(1)* include:
- ...
- (4) ...
- (4A) *corporate access services*;
- ...
- 11.6.8A G (1) An *investment manager* intending to pass on to its *customers* any *charges* under the exemption at *COBS 11.6.3R(3)* should have regard to its duties under the *client's best interests rule*. For example, this means that:
- (a) an *investment manager* should not pass on a *charge* to a *customer* under the exemption at *COBS 11.6.3R(3)* that is greater than the cost charged by the broker or relevant *person* specifically for the relevant good or service falling under *COBS 11.6.3R(3)*;
- (b) if an *investment manager* intends to pass on a *charge* to a *customer* under the exemption at *COBS 11.6.3R(3)*, and the relevant good or service being offered in return for a *broker's* or other *person's charges* is not distinctly priced, the *investment manager* should make a fair assessment of the *charge* that it would be permitted to pass onto its *customer* under that *rule*. In making this determination, the *investment manager* may need to consider whether it can carry out a fact-based analysis of the unpriced good or service. For example, it may be appropriate to use other comparable

priced goods or services (whether produced internally or procured from another *person*) or an estimate of the cost of providing a comparable good or service internally as an indication of a fair *charge* to pass onto a *customer* for the relevant good or service; and

(c) where the *investment manager* is in a position to negotiate or itself dictate the price of a good or service it receives that is to be charged to a *customer* under the exemption at COBS 11.6.3R(3), it should act honestly, fairly and professionally in accordance with the best interests of its *customer*.

(2) (a) Where a good or service received by an *investment manager* comprises the provision of substantive research together with elements that are not substantive research (see COBS 11.6.7G and COBS 11.6.8G), COBS 11.6.3R(3) only applies for those elements that amount to the provision of substantive research. This means that the *investment manager* should disaggregate any such good or service received, to ensure that it only passes on *charges* under the exemption at COBS 11.6.3R(3) for the substantive research elements that it receives.

(b) In disaggregating elements under (a), it may be useful for an *investment manager* to consider the amount that it would be willing, in good faith, to pay for those elements of a good or service that cannot be charged to a *customer* under COBS 11.6.3R. Such an exercise can assist the *investment manager*, when determining the charges to be passed on to the *customer* under the exemption at COBS 11.6.3R(3) for the substantive research elements, to ensure that the *customer* will not subsidise the other elements that benefit the *investment manager*.

(c) The guidance under (a) and (b) is equally relevant to situations where:

(i) the good or service to be disaggregated is priced as a whole but the elements to be disaggregated are not distinctly priced; and

(ii) the overall good or service that is to be disaggregated is not distinctly priced.

(d) The considerations in (1) are equally relevant for any disaggregated good or service.

11.6.9 G The reference to substantive research in the *rule* on use of dealing commission (COBS 11.6.3R) is not confined to *investment research* as defined in the *Glossary*. ~~The FCA's view is that~~ Substantive research can potentially be or include, for example, the goods or services encompassed by *investment research*, but this is not part of the criteria under COBS

~~11.6.5E provided that they are directly relevant to and are used to assist in the management of investments on behalf of customers.~~ In addition, any goods or services that relate to the provision of research that the FCA regards as not acceptable under ~~COBS 11.6.6G or COBS 11.7.6R~~ 11.6.7G or COBS 11.6.8G should be viewed as not meeting the requirements of ~~COBS 11.6.3R(2)~~ 11.6.3R(3), notwithstanding that their content might qualify as *investment research*.

11.6.10 G This section applies only to arrangements under which an *investment manager* receives from brokers or other *persons* ~~goods or services~~ a good or service that ~~relate~~ directly relates to the *execution* of trades or amounts to the provision of substantive research. It has no application in relation to *execution* and research generated internally by an *investment manager* itself.

...

11.6.12 R An *investment manager* that enters into arrangements under this section must make adequate prior disclosure to *customers* concerning the receipt of goods or services that directly relate to the *execution* of trades or amount to the provision of substantive research. This prior disclosure should form part of the summary form disclosure under the *rule* on inducements (*COBS* 2.3.1R).

...

11.6.14 G (1) The prior disclosure required by this section should include an adequate disclosure of the *firm's* policy relating to the receipt of goods or services that directly relate to the *execution* of trades or amount to the provision of substantive research in accordance with the *rule* on use of dealing commission (*COBS* 11.6.3R).

...

...

11.6.16 R Adequate prior and periodic disclosure under this section must include details of the goods or services that directly relate to the *execution* of trades and, wherever appropriate, separately identify the details of the goods or services that ~~are attributable~~ amount to the provision of substantive research.

...

11.6.20 G Firms are also reminded of the general record keeping requirements in SYSC 3.2 and SYSC 9 (as applicable). An *investment manager* should keep appropriate records of the basis on which it concludes that a particular good or service may be received under the exemption at COBS 11.6.3(3) in return for the charges in COBS 11.6.3(1)(b).