

PAYMENT OPTIONALITY (INVESTMENT RESEARCH) INSTRUMENT 2024

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 247 (Trust scheme rules); and
 - (e) section 261I (Contractual scheme rules); and
 - (2) regulation 6 (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 August 2024.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Payment Optionality (Investment Research) Instrument 2024.

By order of the Board
25 July 2024

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

2 Conduct of business obligations

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

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Acceptable minor non-monetary benefits

2.3A.19 R An acceptable minor non-monetary benefit is one which:

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(5) consists of:

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(g) ~~research on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the *shares* of the company at the end of each *month* to 31 October for the preceding 24 *months*. For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (i.e. 31 October). For these purposes, *firms* may reasonably rely on the assessment of a third party that the research is on a company with a market capitalisation below £200m; [deleted]~~

...

(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; ~~or~~

(k) *corporate access services* which relate to listed or unlisted companies with a market capitalisation below £200m ~~in~~ accordance with *COBS 2.3A.19R5(g)*; ~~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.

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2.3B Inducements and research

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Receiving third party research without it constituting an inducement

- 2.3B.3 R 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~~ one 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; or
 - (3) joint payments for third-party *research* and execution services, provided that the *firm* meets the requirements in *COBS 2.3B.25R* to *COBS 2.3B.33G* relating to the operation of such joint payments.

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Research for the purposes of research payment accounts and joint payments for research and execution services

- 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)*; and must use the separately identifiable *research* charge of joint payments for *research* and execution services under *COBS 2.3B.3R(3)* only to pay for *research*.

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- 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 or

joint payments for research and execution services, include:

...

- (10) direct *money* payments; ~~and~~
- (11) administration of a *research* payment account; and
- (12) administration of:
 - (a) an account for joint payments for research and execution services; or
 - (b) a research provider payment allocation structure.

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)~~, (2) or (3), that would compromise its ability to meet its best execution obligations as applicable under COBS 11.2A.

2.3B.25 R The requirements referred to in COBS 2.3B.3R(3) for the operation of joint payments for third-party research and execution services are:

- (1) the firm must have a written policy on joint payments that:
 - (a) describes the firm's approach to joint payments, and how the firm will ensure compliance with the requirements in COBS 2.3B.25R(2) to COBS 2.3B.33G; and
 - (b) specifies how the firm's governance, decision-making and controls in respect of third-party research purchased using joint payments operate, including how these are maintained separately from those for trade execution;
- (2) the firm must establish arrangements which stipulate the methodology for how the research costs will be calculated and identified separately within total charges for such joint payments;
- (3) the firm must have a research provider payment allocation structure for the allocation of payments between different research providers, including:
 - (a) third-party providers of research and execution services; and
 - (b) research providers not engaged in execution services and not part of a financial services group that includes an investment firm which offers execution or brokerage services;
- (4) the firm is fully responsible for:

- (a) the administration of accounts for purchasing *research* from joint payments;
 - (b) ensuring that the operation of such accounts do not interfere with the compliance of the *firm's* obligations under this chapter; and
 - (c) ensuring timely payments to *research* providers;
- (5) the *firm* must set a budget for the purchase of *research* using joint payments:
- (a) based on the expected amount needed for third-party *research* in respect of *investment services* rendered to its *clients*, and not linked to the expected volumes or values of transactions executed on behalf of *clients*; and
 - (b) at least annually, and at a level of aggregation that is:
 - (i) appropriate to its investment process, *investment products*, *investment services*, and *clients*; and
 - (ii) does not compromise its ability to meet the requirements of *COBS* 2.3B.25R(6) and (8).
- (6) the *firm* must allocate the costs of *research* purchased using joint payments fairly between *clients*;
- (7) the *firm* must periodically, but at least annually:
- (a) assess the value, quality and use of *research* purchased using joint payments and its contribution to the investment decision-making process; and
 - (b) ensure that the amount of *research* charges to *clients* is reasonable compared with those for comparable services; and
- (8) the *firm* must disclose to its *clients* the items listed in *COBS* 2.3B.30R.
- 2.3B.26 R If the amount of *research* charges to *clients* exceeds the budget set out under *COBS* 2.3B.25R(5), or the budget is increased, the *firm's* policy must set out:
- (1) the relevant actions to be taken in such circumstances; and
 - (2) the information to be disclosed to *clients*.
- 2.3B.27 G For the purposes of *COBS* 2.3B.25R(6), the *firm* should determine a cost allocation level appropriate to its business model. The specific cost of individual investment *research* items need not be discretely attributable to

individual clients. The approach should be reasonable and its outcome fair across all clients, such that relative costs incurred are commensurate with relative benefits received. This includes:

- (1) across:
 - (a) clients with which the firm has different payment arrangements for the purchase of research;
 - (b) clients that are managed according to similar investment strategies; and
 - (c) different clients or groups of clients that benefit from the same research; or
- (2) across other allocation levels provided that these are appropriate to a firm's investment process, investment products, investment services, and clients.

2.3B.28 R Where a firm delegates the administration of a research provider payment allocation structure or joint payments research account, it retains responsibility for complying with the requirements for its administration under this chapter. The firm must ensure that the reconciliation and reporting for such accounts and structures is undertaken with an appropriate frequency and timeliness, and continue to monitor and manage risks from unspent surplus amounts and research provider concentrations of these surplus amounts.

2.3B.29 R Research services must not be treated as an execution factor under COBS 11.2A.2R.

2.3B.30 R For the purposes of COBS 2.3B.25R(8), the firm must disclose to relevant clients:

- (1) the firm's use of joint payments for research, including, where relevant, how the use of joint payments is combined with the use of other payments permitted under COBS 2.3B.3R;
- (2) the key features of the firm's policy on joint payments in COBS 2.3B.25R(1), or the policy itself, having regard to the information needs of its clients. This information must be communicated to them in a way which is clear, fair and not misleading;
- (3) the expected annual costs to the client, provided as part of ex ante disclosures on costs and charges, and based on the most appropriate of either:
 - (a) the budget-setting and cost allocation procedures set out in COBS 2.3B.25R(5), COBS 2.3B.25R(6) and COBS 2.3B.27G; or

- (b) the actual costs for prior annual periods disclosed under COBS 2.3B.30(5);
 - (4) the most significant of the items in (a) and (b), at a level of aggregation appropriate to the firm's investment processes, investment products, investment services and clients:
 - (a) benefits and services received from research providers (measured by total amounts paid); and
 - (b) types of research providers from which such services are purchased;
 - (5) the total costs incurred by the client, disclosed on an annual basis, reflecting the total payments made for research purchased using joint payments over that period, and provided as part of ex post reporting on costs and charges; and
 - (6) where relevant, the disclosures set out in COBS 2.3B.26R(2).
- 2.3B.31 **R** For the purposes of the disclosures in COBS 2.3B.25R(8), firms must make the disclosures in:
- (1) COBS 2.3B.30R(1) to (4) before providing an investment service or ancillary service, and thereafter upon request, and at least annually;
 - (2) COBS 2.3B.30R(5) as part of the firm's costs and charges disclosures, separately identifying joint payment research charges in such disclosures; and
 - (3) COBS 2.3B.30R(6) as soon as reasonably practicable, and in any case in the firm's next periodic disclosure to clients on costs and charges.
- 2.3B.32 **G** For the purposes of disclosing the types of research providers from which services are purchased under COBS 2.3B.30R(4)(b), a firm may provide a breakdown (measured by total amounts paid) according to the research provider types specified in COBS 2.3B.25R(3).
- 2.3B.33 **G** For the purposes of ensuring that research charges to clients are reasonable under COBS 2.3B.25R(7)(b), a firm may benchmark prices paid for research services purchased using joint payments against relevant comparators.

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18 **Specialist Regimes**

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18 Annex 1 **Research and inducements for collective portfolio managers**

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4		Inducements and research
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		Disapplication of disclosure provisions
4.7	R	The following provisions do not apply and references to them in <i>COBS</i> 2.3B are to be ignored:
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		(6) ...
		<u>Disapplication and modification of provisions relating to joint payments for research</u>
<u>4.7A</u>	R	The following provisions also do not apply and references to them in <i>COBS</i> 2.3B are to be ignored:
		(1) <u><i>COBS</i> 2.3B.3R(3);</u>
		(2) <u><i>COBS</i> 2.3B.23G(12);</u>
		(3) <u><i>COBS</i> 2.3B.25R;</u>
		(4) <u><i>COBS</i> 2.3B.26R;</u>
		(5) <u><i>COBS</i> 2.3B.27G;</u>
		(6) <u><i>COBS</i> 2.3B.28R;</u>
		(7) <u><i>COBS</i> 2.3B.29R;</u>
		(8) <u><i>COBS</i> 2.3B.30R;</u>
		(9) <u><i>COBS</i> 2.3B.31R;</u>
		(10) <u><i>COBS</i> 2.3B.32G; and</u>
		(11) <u><i>COBS</i> 2.3B.33G.</u>
<u>4.7B</u>	R	Where <i>COBS</i> 2.3B applies to a <i>firm</i> , the following modifications apply:
		(1) <u>in <i>COBS</i> 2.3B.21R, the words ‘and must use the separately identifiable <i>research</i> charge of joint payments for <i>research</i> and execution services under <i>COBS</i> 2.3B.3R(3) only to pay for <i>research</i>’ are omitted; and</u>

		(2)	<u>in COBS 2.3B.23G, the words ‘or joint payments for <i>research</i> and <i>execution services</i>’ are omitted.</u>
...			