

FUTURE SERVICE RESTRICTIONS INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in 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 138D (Action for damages); and
 - (d) section 139A (Power of the FCA to give guidance); and
 - (2) in relation to the Glossary of definitions, the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- 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 *[date]*.

Amendments to the 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 Future Service Restrictions Instrument 2017.

By order of the Board
[date] 2017

Annex

Amendments to the Glossary of definitions

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

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

~~corporate finance services~~ ~~services provided by a firm to a client which constitute corporate finance business.~~

future service restriction any contractual provision in an written agreement for primary market services and/or related services between a firm and a UK client which, in addition to the ~~products or~~ services to which the agreement relates, ~~grants the firm or an affiliated company~~;

1) grants the firm or an affiliated company the right to provide any future primary market ~~corporate finance~~ services to the UK client, regardless of any third party offers; or

2) ~~prevents the right to provide future corporate finance services to the client before the UK client from is able to accept seeking~~ any offer from a third party to provide future primary market services before first offering the firm or an affiliated company the right to provide those services.

primary market services services provided by a firm to a UK client relating to equity capital market, debt capital market and merger and acquisition services.

related services services provided by a firm to a UK client relating to corporate broking, lending and NOMAD /Sponsor services.

UK client [●]

Amend the following definitions as shown.

bridging loan (1) *an MCD exempt bridging loan*; or

(1A) (in COBS 18.3 (Corporate finance business)) a loan or loan facility ~~with a term of twelve months or less~~ that is provided with an expectation on the condition that it will be replaced or that any lending will be refinanced with another form of longer-term financing ~~(such as a debt security issue or a share issue)~~; or

(2) (other than in (1) and (1A)) *a regulated mortgage contract* ~~which has a term of twelve months or less.~~

Annex

Amendments to the Conduct of Business sourcebook (COBS)

After COBS 18.3.4G, insert the following provisions. The text is new and is not underlined.

Prohibition of future service restrictions, ~~exclusivity provisions~~

- 18.3.5R Unless exempted in COBS 18.3.6R, a *firm* must not enter into a written agreement for primary market services and/or related services arrangements with a UK client that contains a *future service restriction*.
- 18.3.6 R COBS 18.3.5R does not apply to *future service restrictions* that:
- (1) are included in agreements arrangements for the *firm* to provide a *bridging loan*; and
 - (2) only involve the *firm* providing the corporate finance primary market services relating to the replacement or refinancing of all or part of to which the bridging loan relates.
- 18.3.7 G (1) ~~Agreements for the provision of a specified corporate finance service by the firm to are not prohibited by COBS 18.3.5R, even where that service will take place in the future. Provisions appointing a firm to provide primary market services that, as at the date of the agreement, are envisaged may be provided, including services to be provided in the future, are not prohibited by COBS 18.3.5R.~~
- (2) COBS 18.3.5R prohibits *future service restrictions* related to ~~corporate finance primary market services that~~ which may be ~~provided~~ required in the future but which, at the date of the agreement, are not yet ~~envisaged~~ certain. *Future service restrictions* are prohibited because they prevent a *client* from freely deciding, as and when the future need for ~~corporate finance primary market services~~ arises, which *firm* to appoint to provide those services.
- 18.3.8 G ~~(1)~~—The *future service restrictions* prohibited by COBS 18.3.5R apply relate only to the provision of future services. ~~(2) An example of restrictions that would therefore not be caught are those which relate to but not the payment recuperation of fees for work already undertaken or agreed to be undertaken by a firm in relation to a particular service or transaction, including when the client decides to use another financial institution for the same or a similar service or transaction ('tailgunner clauses').~~
- 18.3.9 G (1) *Future service restrictions* bind the *client* to use the *firm* and restrict the client's access to more competitive offers from third parties.
- (2) Provisions in an agreement that only give a *firm* the right or opportunity to:
 - (a) pitch for future business; or
 - (b) be considered in good faith ~~alongside other providers~~ for future business; or

- (c) match quotations from other financial institutions, provided that the *client* is not prevented from using additional *firms* to also provide such services,
are not *future service restrictions*. ~~In these cases, the client is not obliged to use the *firm*.~~