# Chapter 11A

# Underwriting and placing

## 11A.2 Prohibition of future service restrictions

**11A.2.1** R Unless exempted in ■ COBS 11A.2.2R, a *firm* must not enter into an agreement in writing with a *client* that contains a *future service restriction*.

**11A.2.2** R ■ COBS 11A.2.1R does not apply to *future service restrictions* that:

(1) are included in an agreement in writing for the *firm* to provide a bridging loan; and

(2) only involve the *firm* providing the *primary market and M&A services* to which the bridging loan relates.

**11A.2.3** R For the purposes of ■ COBS 11A2.2R, "bridging loan" means a loan provided to a client for the purpose of providing short-term financing, and with the commercial intention that it be replaced with another form of financing (such as a *debenture* issue or a *share* issue).



**11A.2.4** G A loan could be considered a bridging loan for the purposes of ■ COBS 11A.2.3 when, for example:

(1) it is expressly documented that the intention of both parties is that the loan offers a temporary solution until the client is able to obtain longer-term financing from the capital markets or other future financing;

(2) it has a short term, typically of less than four years from signing, or the client is otherwise discouraged from retaining the loan as longer term financing, for example by stepping up the interest rates after an initial short period; and

(3) the terms provide that the proceeds from the future financing are used as mandatory pre-payment on the loan.

**11A.2.5** G (1) Agreements for the provision of a specified or certain *primary market and M&A service* by the *firm* to the *client* are not prohibited by ■ COBS 11A.2.1R, even where that service will take place in the future.

(2) ■ COBS 11A.2.1R prohibits *future service restrictions* related to *primary market and M&A services* which may be required in the future but which, at the date of the agreement, are not yet specified or certain. *Future service restrictions* are prohibited because they prevent a *client*

from freely deciding, as and when the need for *primary market and M&A services* arises, which *firm* to appoint to provide those services.

**11A.2.6** G

(1) The *future service restrictions* prohibited by ■ COBS 11A.2.1R relate to services that will be provided in the future.

(2) An example of restrictions that would therefore not be caught are those which relate to the recuperation of *fees* for work already undertaken by a *firm* in relation to a particular service or transaction when the *client* decides to use another financial institution for the same service or transaction ('tailgunner clauses').

**11A.2.7** G

(1) *Future service restrictions* bind the *client* to use the *firm* (or an *affiliated company*).

(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 providers, but which do not prevent the *client* from selecting the other providers,

are not *future service restrictions*. In these cases, the *client* is not obliged to use the *firm* (or an *affiliated company*).