

CONDUCT OF BUSINESS (BINARY OPTIONS) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137D (FCA general rules: product intervention);
 - (3) section 137R (Financial promotion rules);
 - (4) section 137T (General supplementary powers); and
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- C. The Financial Conduct Authority also makes the prohibitions contained within this instrument in the exercise of the power under article 42 (product intervention by competent authorities) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

Commencement

- D. This instrument comes into force on 2 April 2019.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Conduct of Business (Binary Options) Instrument 2019.

By order of the Board
28 March 2019

[*Editor's note:* when the UK leaves the EU, the rules in this instrument are intended to continue to apply to the same firms after Exit as were covered by the rules before Exit. In particular, the rules will automatically apply to temporary permission firms and to supervised run-off firms covered by the financial services contracts regime. They will also apply to contractual run-off firms under the financial services contracts regime. We will consider whether to amend the instrument to provide further guidance or other clarifications about this but do not expect to re-consult on that.]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

22 **Restrictions on the distribution of certain ~~regulatory capital instruments~~ complex investment products**

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Insert the following new section after COBS 22.3 (Restrictions on the retail distribution of contingent convertible instruments and CoCo funds). The text is not underlined.

22.4 **Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature**

Application

- 22.4.1 R This section applies to:
- (1) *MiFID investment firms*, with the exception of *collective portfolio management investment firms*; and
 - (2) *branches of third country investment firms*,
- in relation to the marketing, distribution or sale of *investments* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* in or from the *United Kingdom* to a *retail client*.
- 22.4.2 G *Firms* are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.
- 22.4.3 G For the avoidance of doubt, in *COBS 22.4.1R*, “marketing” includes *communicating* and/or *approving financial promotions*, and “distribution or

sale” includes *dealing* in relation to *investments* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order*.

Prohibitions

- 22.4.4 R (1) A *firm* must not:
- (a) sell an *investment* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* to a *retail client*; or
 - (b) distribute an *investment* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* to a *retail client*; or
 - (c) market an *investment* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* if the marketing is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.
- (2) “Marketing” includes, but is not limited to, *communicating* and/or *approving financial promotions*.