

**updating the scope
of our voluntary jurisdiction**
a consultation paper

May 2013



ombudsman

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- A. draft rules instrument - Dispute Resolution: Complaints (Amendment No. 6) Instrument 2013

responses

We welcome your feedback on these changes to the scope of our voluntary jurisdiction, as set out in the Dispute Resolution: Complaints sourcebook. Please send your views and comments – to reach us by 29 May 2013 – to dafydd.evans@financial-ombudsman.org.uk.

Or write to:

Dafydd Evans
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

We may want to publish the responses we receive to this consultation paper. In the interests of transparency, we encourage *non*-confidential responses.

If you do send us a confidential response, it would be helpful if you could tell us why you consider the information confidential. We cannot guarantee that confidentiality can always be maintained. We will not regard an automatic confidentiality disclaimer generated by your IT system, of itself, as binding.

We are subject to the Freedom of Information Act 2000, so information provided in response to this consultation may be subject to publication, disclosure, or release to other parties.

introduction

This consultation sets out the amendments that we propose to make to the scope of our voluntary jurisdiction, as set out in the Dispute Resolution: Complaints sourcebook (DISP) of the Financial Conduct Authority Handbook.

background

The territorial scope of our voluntary jurisdiction is wider than the territorial scope of our compulsory jurisdiction and our consumer credit jurisdiction.

So we have included within our voluntary jurisdiction activities which, if they had been carried on elsewhere, would have been covered by the compulsory jurisdiction or consumer credit jurisdiction.

This is to minimise confusion for consumers and financial businesses, and for operational simplicity.

In its consultation paper 13/09, issued on 19 March 2013, the Financial Services Authority proposed to extend the scope of our compulsory jurisdiction in relation to alternative investment fund managers, as part of the implementation of the European Union Alternative Investment Fund Managers Directive – which must be implemented in the UK by 22 July 2013.

This consultation paper proposes a parallel extension of our voluntary jurisdiction. We have taken the opportunity to tidy up the wording relating to activities also covered by the compulsory jurisdiction and the consumer credit jurisdiction.

proposed amendments

The rules at DISP 2.5.1R specify the activities covered by the voluntary jurisdiction. We propose to revise this so that it reads –

”...

- (c) activities which (at ~~30 April 2011~~ 22 July 2013) ~~were regulated activities or would be regulated activities~~ covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP2* Annex 1G);
- (d) activities which would be covered by the *Consumer Credit Jurisdiction* ~~consumer credit activities~~ if they were carried on from an establishment in the *United Kingdom*;

...

- ~~(l) activities which (at 1 November 2009) were payment services or would be payment services if they were carried on from an establishment in the *United Kingdom*; [deleted]~~
- ~~(m) issuance of *electronic money*; [deleted]~~

...”

The deletion of (l) and (m) does not narrow the scope of the voluntary jurisdiction, as these activities are covered by the revised wording of (c).

We also propose to add to DISP 2 Annex 1 G –

2.1 G The activities which were covered by the *Compulsory Jurisdiction* (at 22 July 2013) were:

- (1) for firms:
 - (a) regulated activities (other than auction regulation bidding);
 - (b) payment services;
 - (c) consumer credit activities;
 - (d) lending money secured by a charge on land;
 - (e) lending money (excluding restricted credit where that is not a consumer credit activity);
 - (f) paying money by a plastic card (excluding a store card where that is not a consumer credit activity);
 - (g) providing ancillary banking services;
or any ancillary activities, including advice, carried on by the firm in connection with them.
- (2) for payment service providers:
 - (a) payment services;
 - (b) consumer credit activities;or any ancillary activities, including advice, carried on by the payment service provider in connection with them.
- (3) for electronic money issuers:
 - (a) issuance of electronic money; or
 - (b) consumer credit activities;or any ancillary activities, including advice, carried on by the electronic money issuer in connection with them

2.2 G The activities which (at ~~30 April 2011~~^{22 July 2013}) were *regulated activities* for the ~~*Voluntary Jurisdiction*~~ were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*.

...

(21A) acting as the depositary of an authorised contractual scheme (article 51(1)(b));

(22) acting as the depositary or sole director of an open-ended

- investment company*(article 51(1)(c));
- (22A) *managing a UCITS*(article 51ZA);
- (22B) *acting as a trustee or depositary of a UCITS*(article 51ZB);
- (22C) *managing an AIF*(article 51ZC);
- (22D) *acting as a trustee or depositary of an AIF*(article 51ZD);
- (22E) *establishing, operating or winding up a collective investment scheme*(article 51ZE);
- ...
- (38C) *meeting of repayment claims*(article 63N(1)(a));
- (38D) *managing dormant account funds (including the investment of such funds)*(article 63N(1)(b));
- (...) *providing information in relation to a regulated benchmark*(article 63O(1)(a));
- (...) *administering a regulated benchmark*(article 63O(1)(b));
- ...

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (21A), (22), (22A) to (22E), and (23), is carried on in relation to property of any kind

Annex A contains the draft rules instrument to implement this proposal.

**DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 6)
INSTRUMENT 2013**

powers exercised by the Financial Ombudsman Service

- A The Financial Ombudsman Service Limited makes this instrument amending the standard terms for Voluntary Jurisdiction participants in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making of these rules and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority (FCA).

commencement

- C. This instrument comes into force on 22 July 2013.

amendments to the FCA handbook

- D. The Dispute Resolution: Complaints sourcebook (DISP) is amended by the Board of the Financial Ombudsman Service Limited in accordance with the Annex to this instrument.

citation

- E. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 6) Instrument 2013.

By order of the Board of the Financial Ombudsman Service Limited
19 June 2013

amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

- (1) ...
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
 - (a) ...
 - (b) ...
 - (c) activities which (at ~~30 April 2011~~ 22 July 2013) were regulated activities ~~or would be regulated activities~~ covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP2 Annex 1G*);
 - (d) activities which would be ~~consumer credit activities~~ covered by the *Consumer Credit Jurisdiction* if they were carried on from an establishment in the *United Kingdom*;
 - ...
 - (l) activities which (at 1 November 2009) were ~~payment services~~ or would be ~~payment services~~ if they were carried on from an establishment in the ~~United Kingdom~~; [deleted]
 - (m) issuance of ~~electronic money~~; [deleted]
 -

2 Annex 1 Regulated activities for the Voluntary Jurisdiction at ~~30 April 2011~~ 22 July 2013

2.1 G The activities which were covered by the *Compulsory Jurisdiction* (at 22 July 2013) were:

- (1) for firms:
 - (a) regulated activities (other than *auction regulated bidding*);
 - (b) payment services;

- (c) consumer credit activities;
 - (d) lending money secured by a charge on land;
 - (e) lending money (excluding restricted credit where that is not a consumer credit activity);
 - (f) paying money by a plastic card (excluding a store card where that is not a consumer credit activity);
 - (g) providing ancillary banking services;
or any ancillary activities, including advice, carried on by the firm in connection with them.
- (2) for payment service providers:
- (a) payment services;
 - (b) consumer credit activities;
or any ancillary activities, including advice, carried on by the payment service provider in connection with them.
- (3) for electronic money issuers:
- (a) issuance of electronic money; or
 - (b) consumer credit activities;
or any ancillary activities, including advice, carried on by the electronic money issuer in connection with them

2.2 G

The activities which (at ~~30 April 2011~~ 22 July 2013) were *regulated activities* for ~~the Voluntary Jurisdiction~~ were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*.

...

- (21A) acting as the depositary of an authorised contractual scheme (article 51(1)(b));
- (22) acting as the depositary or sole director of an open-ended investment company (article 51(1)(c));
- (22A) managing a UCITS (article 51ZA);
- (22B) acting as a trustee or depositary of a UCITS (article 51ZB);
- (22C) managing an AIF (article 51ZC);
- (22D) acting as a trustee or depositary of an AIF (article 51ZD);
- (22E) establishing, operating or winding up a collective investment scheme (article 51ZE);

...

(38C) meeting of repayment claims (article 63N(1)(a));

(38D) managing dormant account funds (including the investment of such funds) (article 63N(1)(b));

(...) providing information in relation to a regulated benchmark (article 63O(1)(a));

(...) administering a regulated benchmark (article 63O(1)(b));

...

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (21A), (22), (22A) to (22E), and (23), is carried on in relation to property of any kind.