

Chapter 2

Arch cru Consumer Redress Scheme

2.4 Consumer redress scheme: identifying scheme cases and inviting consumers to request a review

Deadlines to complete the steps in this section

2.4.1

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- (1) By 29 April 2013, a *firm* must take the first and second steps set out in this section and send a *redress determination* in the form set out in ■ CONRED 2 Annex 1 R to any *customer* in ■ CONRED 2.1.3 R who falls outside the subject matter of the scheme.
- (2) A *firm* must, by the deadlines set out in ■ CONRED 2.4.5 R, take the third step set out in this section.

First step: identify cases within subject matter of scheme

2.4.2

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The first step is to identify all cases within the subject matter of the scheme; ie, where each of the following conditions is satisfied ("scheme cases")

- (1) the *firm* made a *personal recommendation* to a *consumer* to invest in an Arch cru fund specified above at ■ CONRED 2.1.1R (2) and after that recommendation the *consumer* did so invest;
- (2) the suitability requirements (specified at paragraph 5.1R of ■ CONRED 2 Annex 13 R) applied to the recommendation;
- (3) the law applicable to the obligations of the *firm* arising in connection with the *personal recommendation* is that of a UK territory (that is, England, Wales, Scotland or Northern Ireland) (see ■ CONRED 2.4.7 R);
- (4) if the applicable law in (3) is that of England, Wales or Northern Ireland, the *consumer's* investment in Arch cru funds was on or after 13 December 2006;
- (5) if the applicable law in (3) is that of Scotland:
 - (a) the *consumer's* investment in the Arch cru fund was on or after 13 December 2007; or
 - (b) where the *consumer's* investment in the Arch cru fund was before 13 December 2007, the *consumer* did not know, and could not with reasonable diligence have known, before 13 December 2007, that he had suffered loss;

- (6) the *consumer* has not, prior to 1 April 2013, accepted an offer of redress from the *firm* or other *person* in full and final settlement of all potential claims arising out of the recommendation in (1); and
- (7) the *consumer* has not, prior to 1 April 2013, asked the *Financial Ombudsman Service* to deal with a complaint against the *firm* arising out of the recommendation in (1).

2.4.3 **E** The adoption by a *firm* of any date earlier than the date of suspension (13 March 2009) as the date when the *consumer* knew, or could with reasonable diligence have known, that he had suffered loss, may be relied upon as tending to show contravention of ■ CONRED 2.4.2 R.

Second step: send initial letters to consumers

2.4.4 **R** The second step is, for all scheme cases, to send to the *consumer* a letter in the form set out in ■ CONRED 2 Annex 2 R inviting the *consumer* to opt-in to the scheme.

Third step: send follow-up letters to consumers

2.4.5 **R** The third step is to do the following:

- (1) for all scheme cases where the *firm* has not received an opt-in, by 27 May 2013, the *firm* should send the *consumer* an opt-in reminder (in the form set out in ■ CONRED 2 Annex 3 R) by 3 June 2013 (unless the *firm* has received an opt-in in the interim);
- (2) for all scheme cases where the *firm* has not received, by 24 June 2013, an opt-in or (where applicable) by (1), the *firm* should send the *consumer* an opt-in reminder letter (in the form set out in ■ CONRED 2 Annex 4 R) by 1 July 2013 (unless the *firm* has received an opt-in in the interim); and
- (3) for all scheme cases where the *firm* has not received, by 22 July 2013 an opt-in or, where applicable by (1) or (2), the *firm* should send the *consumer* a letter in the form set out in ■ CONRED 2 Annex 5 R by 29 July 2013 (unless the *firm* has received an opt-in in the interim when it must follow the steps in ■ CONRED 2.5.1R (2)).

2.4.6 **R** For the purpose of ■ CONRED 2.4.5 R:

- (1) an 'opt-in' is an indication from, or on behalf of, a *consumer* that he wishes the *firm* to carry out a case review (as detailed in ■ CONRED 2.5); and
- (2) if a *firm* receives a *complaint* relating to the subject matter of the scheme from a *consumer* on or after 1 April 2013 and before 23 July 2013 it must treat the *complaint* as an 'opt in' to the scheme.

Applicable law

2.4.7

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For the purposes of ■ CONRED 2.4.2R (3), the applicable law is:

- (1) where, in connection with the *personal recommendation*:
 - (a) the *consumer* has agreed to the *firm's terms of business*; and
 - (b) these include a clause providing for the application of the law of a particular UK territory (that is, England, Wales, Scotland or Northern Ireland);
that UK territory; or
- (2) if (1) does not apply: where the *firm* and the *consumer* are habitually resident in the same UK territory, and the *personal recommendation* is made there, that UK territory; or
- (3) if neither (1) nor (2) applies: where the conditions in ■ CONRED 2.4.8 R apply, the UK territory in which the *consumer* is habitually resident; or
- (4) if none of (1), (2) or (3) applies: the UK territory in which the *firm* made the *personal recommendation*.

2.4.8

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The conditions referred to in ■ CONRED 2.4.7R (3) are that:

- (1) in the UK territory in which the *consumer* has his habitual residence, either:
 - (a) the contract under which the *personal recommendation* was provided was preceded by a specific invitation addressed to the *consumer*, or by advertising, and the consumer took all the steps necessary to engage the *firm*; or
 - (b) the *firm* or its agent received the *consumer's* order; and
- (2) the *personal recommendation* was provided at least in part in that UK territory.

Reporting requirement: opted-in scheme cases

2.4.9

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By 29 July 2013, a *firm* must report to the FCA by email to archcrureview@fca.org.uk ; or (if the email is encrypted) archcrureviewpgrp@fca.org.uk with the following information:

- (1) the total number of scheme cases (cases falling within ■ CONRED 2.4.2 R);
- (2) the total number of investments in Arch cru funds resulting from the *regulated activities* for a *customer* in ■ CONRED 2.1.3 R which fall outside the subject matter of the scheme (see ■ CONRED 2.1.5 R and ■ CONRED 2.4.2 R), with a summary explanation of the reason why in each case; and
- (3) the total number of opted-in scheme cases.

[Note: for details of how to obtain an encryption key see *guidance* above at ■ CONRED 2.3.2 G]