

**DISPUTE RESOLUTION: MiFID 2 COMPLAINTS (VOLUNTARY JURISDICTION)
(FINANCIAL OMBUDSMAN SERVICE) INSTRUMENT 2017**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited adopts the changes to the Glossary made by the Financial Conduct Authority in the Glossary (MiFID 2) Instrument 2017 as set out in Annex A to this instrument and makes (and amends) the voluntary jurisdiction rules, fixes (and varies) the standard terms for Voluntary Jurisdiction participants, and gives the guidance relating to the voluntary jurisdiction set out in Annex B to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17; and
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making (and amending) of the voluntary jurisdiction rules and the fixing (and varying) of the standard terms is subject to the approval of the Financial Conduct Authority.

Approval by the Financial Conduct Authority

- C. The Financial Conduct Authority approves the voluntary jurisdiction rules to be made (and amended) and the standard terms to be fixed (and varied) by the Financial Ombudsman Service Limited in the form set out in this instrument.

Commencement

- D. This instrument comes into force on 3 January 2018.

Amendments to the Handbook

- E. The Dispute Resolution: Complaints sourcebook (DISP) incorporates the changes to the Glossary in Annex A and is amended in accordance with Annex B to this instrument, for the purposes of the Voluntary Jurisdiction of the Financial Ombudsman Service.

Citation

- F. This instrument may be cited as the Dispute Resolution: MiFID 2 Complaints (Voluntary Jurisdiction) (Financial Ombudsman Service) Instrument 2017.

By order of the Board of the Financial Ombudsman Service Limited
12 December 2017

By order of the Board of the Financial Conduct Authority
7 December 2017

Annex A

**Amendments to the Glossary of definitions made by the
Glossary (MiFID 2) Instrument 2017**

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

Amend the following as shown.

- | | |
|--|---|
| <i>advising on investments (except P2P agreements)</i> | <p>the <i>regulated activity</i>, specified in article 53(1) of the <i>Regulated Activities Order</i> (Advising on investments), which is in summary: advising a <i>person</i> if the advice is:</p> <p>...</p> <p>(2) advice on the merits of their doing any of the following (whether as principal or agent):</p> <p style="padding-left: 40px;">(a) <i>buying, selling</i>, subscribing for or underwriting a particular <i>investment</i> which is a <i>security, <u>structured deposit</u> or relevant investment</i> (that is, any <i>designated investment</i> (other than a <i>P2P agreement</i>), <i>funeral plan contract, pure protection contract, general insurance contract</i> or right to or interests in a <i>funeral plan contract or <u>structured deposit</u></i>); or</p> <p>...</p> |
| <i>ancillary service</i> | <p>(1) (except in <i>CONC</i>) any of the services listed in Section B of Annex I to <i>MiFID</i>, that is:</p> <p style="padding-left: 40px;">(a) safekeeping and administration of <i>financial instruments</i> for the account of <i>clients</i>, including custodianship and related services such as cash/collateral management <u>but excluding maintaining securities accounts at the top tier level, ('central maintenance service')</u> referred to in point 2 of Section A of the Annex to <i>CSDR</i>;</p> <p>...</p> <p>...</p> |
| <i>arranging (bringing about) deals in investments</i> | <p>the <i>regulated activity</i>, specified in article 25(1) of the <i>Regulated Activities Order</i>, which is in summary: making arrangements for another <i>person</i> (whether as <i>principal</i> or agent) to <i>buy, sell</i>, subscribe for or underwrite a particular <i>investment</i> which is:</p> <p>...</p> <p style="padding-left: 40px;">(e) <i>rights to or interests in investments</i> in (b), (c) or (d) ; <u>or</u></p> |

	(f) <u>a structured deposit.</u>
<i>auction regulation bidding</i>	the <i>regulated activity of bidding in emissions auctions</i> where it is carried on by ÷
	(a) a <i>firm</i> that is exempt from <i>MiFID</i> under article 2(1)(i); or (j)
	(b) a <i>MiFID investment firm</i> (other than a <i>UCITS investment firm</i>) on behalf of its <i>clients</i> in relation to a <i>two-day emissions spot</i> .
<i>complaint</i>	...
	(2) (in <i>SUP 10</i> and <i>DISP</i> , except <i>DISP 1.1</i> and the <i>complaints handling rules</i> and the <i>complaints record rule</i> in relation to <i>MiFID business</i> (<u>in relation to <i>collective portfolio management</i></u>) in the <u><i>consumer awareness rules</i></u> , the <u><i>complaints handling rules</i></u> and the <u><i>complaints record rule</i></u> , and in <i>CREDS 9</i>) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a <i>person</i> about the provision of, or failure to provide, a financial service or a <i>redress determination</i> , which:
	...
	(3) (in <i>DISP 1.1</i> , the <i>complaints awareness rules</i> only and (in relation to <i>collective portfolio management</i>) and in the <i>consumer awareness rules</i>, the <i>complaints handling rules</i> and the <i>complaints record rule</i> only in relation to <i>MiFID business</i> and <i>collective portfolio management</i>) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a <i>person</i> about the provision of, or failure to provide, a financial service or a <i>redress determination</i>, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
<i>consumer</i>	...
	(7) (in the definitions of <i>cross-border dispute</i> , <i>domestic dispute</i> , <i>sales contract</i> and <i>service contract</i> , and in <u><i>DISP 1.1A.42R</i></u> , <i>DISP 2.7.3R</i> and <i>DISP 2.7.9AR</i>) has the meaning in regulation 3 of the <i>ADR Regulations</i> , which is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession.
	[Note: article 4(1) of the <i>ADR Directive</i>]
	...
<i>customer</i>	(A) ...
	(B) in the <i>FCA Handbook</i> :

	(1)	(except in relation to <i>ICOBS</i> , a <i>credit-related regulated activity</i> , <i>MCOB 3A</i> , an <i>MCD credit agreement</i> and <u><i>CASS 5</i> and <i>PRIN</i> in relation to <i>MiFID</i> or <i>equivalent third country business</i></u>) a <i>client</i> who is not an <i>eligible counterparty</i> for the relevant purposes.
	...	
	(6)	<u>(for the purposes of <i>PRIN</i> in relation to <i>MiFID</i> or <i>equivalent third country business</i>) has the meaning given in <i>COBS 3.2</i>.</u>
<i>dealing in investments as agent</i>		the <i>regulated activity</i> , specified in article 21 of the <i>Regulated Activities Order</i> (Dealing in investments as agent), which is in summary: <i>buying, selling, subscribing for or underwriting designated investments</i> (other than <i>P2P agreements</i>), <i>pure protection contracts</i> or <i>general insurance contracts</i> <u>or <i>structured deposits</i></u> as agent.
<i>final response</i>	...	
	(3)	(in <i>DISP</i>) <u>either:</u>
		(a) <u>in relation to a <i>MiFID</i> complaint</u> , a response in accordance with <i>DISP 1.1A.29EU</i> , <i>DISP 1.1A.30EU</i> and <i>DISP 1.1A.31R</i> ; or
		(b) <u>in relation to all other <i>complaints</i></u> , has the meaning given in <i>DISP 1.6.2R(1)</i> .
<i>firm</i>	...	
	(8)	(in <i>SYSC 18</i> with the exception of the guidance <u><i>guidance</i></u> in <i>SYSC 18.3.9G</i>):
	...	
	(9)	(in <i>FEES 4</i>) includes a <i>recognised investment exchange</i> <u>and a <i>data reporting services provider</i> (other than an <i>incoming data reporting services provider</i>)</u> in accordance with <i>FEES 4.1.1AR</i> .
<i>investment firm</i>	(1)	any person <u><i>person</i></u> whose regular occupation or business is the provision of one or more <i>investment services</i> to third parties and/or the performance of one or more investment activities on a professional basis.
		[Note: article 4(1)(1) of <i>MiFID</i>]
	...	
<i>investment service</i>		any of the following involving the provision of a service in relation to a

financial instrument:

...

(h) operation of ~~multilateral trading facilities~~ an MTF; and

(i) operation of an OTF.

...

making arrangements with a view to transactions in investments

the *regulated activity*, specified in article 25(2) of the *Regulated Activities Order* (Arranging deals in investments), which is in summary: making arrangements with a view to a *person* who participates in the arrangements *buying, selling*, subscribing for or underwriting any of the following *investments* (whether as *principal* or agent):

...

(g) general insurance contract; or

(h) a structured deposit.

managing investments

the *regulated activity* specified in article 37 of the *Regulated Activities Order* (Managing investments), which is in summary: managing assets belonging to another *person* in circumstances which involve the exercise of discretion, if:

(a) the assets consist of or include any security, structured deposit or contractually based investment (that is, any *designated investment* (other than a *P2P agreement*), funeral plan contract, structured deposit or right to or interest in a funeral plan contract); or

...

MiFID

~~The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).~~

See also MiFID Regulation and MIFID implementing Directive Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the Insurance Mediation Directive and AIFMD.

operating a multilateral trading facility

...

In this definition “MiFID instrument” means any investment:

(a) of the kind specified by articles 76, 77, 78, 79, 80, 81, 82B, 83, 84 or 85 of the *Regulated Activities Order*; or

(b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a);

- that is a *financial instrument*.
- regulated activity* in the *FCA Handbook*: (in accordance with section 22 of the *Act* (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary:
- ...
- (gg) ...
- (gga) operating an organised trading facility (article 25DA);
- (gh) ...
- senior personnel*
- (1) those *persons* who effectively direct the business of the *firm*, ~~or CBTL firm~~, recognised investment exchange or data reporting services provider which could include a ~~firm's or CBTL firm's or~~ the membership of the governing body and other ~~persons~~ individuals who effectively direct the business of the ~~person firm or CBTL firm~~.
- (2) (in relation to a *management company*) and in accordance with article 3(4) of the *UCITS implementing Directive*) the *person* or *persons* who effectively conduct the business of the *management company*.
- structured deposit* ~~a deposit paid on terms under which any interest or premium will be paid, or is at risk, according to a formula which involves the performance of:~~
- (a) ~~an index (or combination of indices) (other than money market indices);~~
- (b) ~~a stock (or combination of stocks); or~~
- (c) ~~a commodity (or combination of commodities).~~
- (in accordance with article 3 of the *Regulated Activities Order*) a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR; or
- (b) a financial instrument or combination of financial instruments;
or
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or

(d) a foreign exchange rate or combination of foreign exchange rates.

[Note: article 4(1)(43) of *MiFID*]

*summary
resolution
communication*

either:

(1) in relation to a *MiFID complaint*, a response in accordance with *DISP* 1.1A.24EU, *DISP* 1.1A.25EU and *DISP* 1.1A.26R;
or

(2) in relation to all other *complaints*, has the meaning given in *DISP* 1.5.4R.

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2 Jurisdiction of the Financial Ombudsman Service

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R ...

(1) ...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~13 December 2017~~ 3 January 2018) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction as at ~~13 December 2017~~ 3 January 2018

This table belongs to *DISP 2.5.1R*

The activities which were covered by the *Compulsory Jurisdiction* (~~13 December 2017~~ 3 January 2018) were:

...

(7) for investment firms authorised under MiFID:

(a) providing investment services;

(b) providing ancillary services;

(c) selling structured deposits to clients; and

(d) advising clients on structured deposits;

(and, in the case of investment services and ancillary services, this includes any acts which are preparatory to the provision of an investment service or ancillary service which are an integral part of such a service).

(8) for a CRD credit institution:

- (a) providing investment services;
- (b) selling structured deposits to clients; and
- (c) advising clients on structured deposits;

(and, in the case of investment services, this includes any acts which are preparatory to the provision of an investment service which are an integral part of such a service).

(9) for a collective portfolio management investment firm:

- (a) when providing the activities permitted by article 6(3) of the UCITS Directive; and
- (b) when providing the activities permitted by article 6(4) of the AIFMD;

(and, in the case of such activities, this includes any acts which are preparatory to the provision of an investment service which are an integral part of such a service).

The activities which (at ~~13 December 2017~~ 3 January 2018) were *regulated activities* were, in accordance with section 22 of the Act (~~The classes of activity and categories of investment~~ Regulated activities), any of the following activities specified in Part II of the *Regulated Activities Order* (with the addition of auction regulation bidding):

...

...

4 Standard terms

...

4.2 Standard terms

...

Application of DISP 1 to DISP 3

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

- (1) *DISP 1* (Treating complainants fairly), except:

...

- (d) *DISP 1.1A* (Complaints handling requirements for MiFID)

complaints);

...

...