

SMALL AND MEDIUM SIZED BUSINESS (FINANCE PLATFORMS)
INSTRUMENT 2016

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes and amends the rules and fixes and varies the standard terms for Voluntary Jurisdiction participants as set out in Annexes A and D to this instrument 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 8 (Guidance) of Schedule 17;
 - (3) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (4) paragraph 15 (Fees) of Schedule 17;
 - (5) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (6) paragraph 22 (Consultation) of Schedule 17.
- B. The making and amendment of the rules and the fixing and variation of the standard terms in Annexes A and D by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) sections 210 (statement of policy) and 211 (statement of policy: procedure) of the Act, as applied and modified by regulation 40 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/1946);
 - (2) section 226 (Compulsory jurisdiction) of the Act, as applied and modified by regulation 14(1) of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/1946);
 - (3) paragraph 13(1) and (3) (FCA’s rules) of Schedule 17 to the Act, and paragraph 13(4) of that Schedule, as applied and modified by regulation 14(1) of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/1946); and
 - (4) regulation 17 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/1946).
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents and approves the rules made and amended and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited in Annexes A and D to this instrument.

Commencement

- F. This instrument comes into force on 1 October 2016.

Amendments to the Handbook

- G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

| (1) | (2) |
|--|---------|
| Glossary of definitions | Annex A |
| Supervision manual (SUP) | Annex B |
| Decision Procedure and Penalties Manual (DEPP) | Annex C |
| Dispute Resolution: Complaints sourcebook (DISP) | Annex D |

Amendments to the material outside the Handbook

- H. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

Citation

- I. This instrument may be cited as the Small and Medium Sized Business (Finance Platforms) Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited
21 September 2016

By order of the Board of the Financial Conduct Authority
22 September 2016

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

| | |
|------------------------------------|--|
| <i>designated finance platform</i> | a <i>finance platform</i> designated as such for the purposes of regulation 9 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> . |
| <i>finance application</i> | (in accordance with regulation 2 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>) a request in any form for a <i>finance facility</i> , whether such request is made for a new facility or for the renewal or extension of an existing facility, where: <ul style="list-style-type: none">(a) the request is supported by sufficient information to enable the recipient to make an informed decision as to whether to provide the requested <i>finance facility</i>; or(b) the recipient has responded by requesting further specific information to enable it to make an informed decision as to whether to provide the requested <i>finance facility</i>. |
| <i>finance facility</i> | (in accordance with regulation 2 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>) a facility which provides access to finance which is denominated in sterling and is a loan agreement, an overdraft agreement, a credit card account, an invoice discounting or factoring agreement, a hire purchase agreement or a finance leasing agreement. |
| <i>finance platform</i> | (in accordance with section 7(2) of the <i>Small Business, Enterprise and Employment Act</i>) a person that provides a service for the exchange of information between <i>finance providers</i> and businesses that require finance. |
| <i>specified information</i> | (in accordance with regulation 2 of, and the Schedule to, the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>): <ul style="list-style-type: none">(a) the name of the small or medium sized business;(b) the postal address, email address and telephone number of the business;(c) the amount of finance requested by the business (other than in relation to a request for a credit card account, unless the business has requested a credit card account with a specified limit); |

- (d) the type of finance requested by the business (where a specific type of finance has been requested by the business);
- (e) the legal structure of the business (limited company, limited partnership, partnership, sole trader, or other);
- (f) the period in years and months for which the business has been trading and receiving income; and
- (g) the date by which the business requires finance or, if such date is not known, the date by which the business has requested finance.

Small and Medium Sized Business (Finance Platforms) Regulations the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/1946).

Amend the following text as shown.

Compulsory Jurisdiction the jurisdiction of the *Financial Ombudsman Service* to which *firms, payment service providers, electronic money issuers and , designated credit reference agencies* (as a result of the *Small and Medium Sized Business (Credit Information) Regulations*) and designated finance platforms (as a result of the *Small and Medium Sized Business (Finance Platforms) Regulations*) (and certain other persons as a result of the *Ombudsman Transitional Order* or section 226(2)(b) and (c) of the *Act*) are compulsorily subject.

designated bank a person designated as such for the purposes of regulation 9 of the *Small and Medium Sized Business (Credit Information) Regulations* or regulation 9 of the Small and Medium Sized Business (Finance Platforms) Regulations.

respondent

- (1) (in *DISP*, *FEES* 5, *CREDS* 9 and *GEN* 7) a *firm* (except an *AIFM* qualifier or a *UCITS* qualifier), *payment service provider, electronic money issuer, CBTL firm, designated credit reference agency, designated finance platform, or VJ participant* covered by the *Compulsory Jurisdiction*, or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP* 2 and 3 and *FEES* 5) includes, as a result of section 226 of the *Act*, including as applied and modified by the *Small and Medium Sized Business (Credit Information) Regulations* and the *Small and Medium Sized Business (Finance Platforms)*

Regulations:

...

(f) [not used]

(g) a person who was formerly a designated finance platform in respect of a complaint about an act or omission which occurred at the time when it was a designated finance platform, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

Annex B

Amendments to the Supervision Manual (SUP)

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

5 Reports by skilled persons

5.1 Application and purpose

...

5.1.2A G (1) This chapter also applies, as guidance, to a *designated bank* ~~or a~~ *designated credit reference agency* or a designated finance platform:

(a) in relation to its activities under the *Small and Medium Sized Business (Credit Information) Regulations* or in relation to its activities under the *Small and Medium Sized Business (Finance Platforms) Regulations*, as the case may be;

...

(2) Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 11 of the Act which includes the provisions concerning skilled persons in relation to activities of a *designated bank* or a *designated credit reference agency* under those Regulations. Regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* has the same effect in relation to a *designated bank* under those Regulations or a *designated finance platform*.

(3) In relation to a *designated bank* or a *designated credit reference agency*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Credit Information) Regulations*. In relation to a *designated finance platform* or a *designated bank*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Finance Platforms) Regulations*.

(4) The application of section 166 by regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* or by regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* does not include the *persons* set out in section 166(11) and therefore any reference to those *persons* in this chapter does not apply in relation to a *designated bank* ~~or a~~ *designated credit reference agency* or a designated finance platform.

(5) In relation to an appointment under section 166A as applied by the *Small and Medium Sized Business (Credit Information) Regulations*

or the *Small and Medium Sized Business (Finance Platforms) Regulations*, any reference in this chapter to a breach of rules concerning collecting and keeping up-to-date information is a reference to contravention of the requirement under regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations* or under regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations*, as the case may be.

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

Insert the following new table at the end of DEPP 2 Annex 1G. All the text is new and is not underlined.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

| The Small and Medium Sized Business (Finance Platforms) Regulations 2015 | Description | Handbook reference | Decision maker |
|---|---|---------------------------|-----------------------|
| Regulations 36 and 37 | when the <i>FCA</i> is proposing or deciding to publish a statement (under regulation 25), or impose a financial penalty (under regulation 26), or impose a limitation or restriction (under regulation 27), or exercise the power to require restitution (under regulation 29(2)). | | <i>RDC</i> |

Amend the following as shown.

Sch 3 Fees and other required payments

...

| | |
|----------|---|
| Sch 3.2G | <p>The <i>FCA</i>'s power to impose financial penalties is contained in:</p> <p>...</p> <p>the <i>Payment Accounts Regulations</i></p> <p><u>the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i></u></p> |
|----------|---|

Sch 4 Powers Exercised

Sch 4.1G

The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the statements of policy in *DEPP*:

...

Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the *Payment Services Regulations*, by paragraph 3 of the Schedule to the *Cross-Border Payments in Euro Regulations*, by article 23(4) of the *MCD Order*, regulation 43 of the *Small and Medium Sized Business (Credit Information) Regulations* ~~and~~, by regulation 36(6) of the *Payment Accounts Regulations* and by regulation 40 of the *Small and Medium Sized Business (Finance Platforms) Regulations*)

...

Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the *Payment Services Regulations*, by paragraph 5 of the Schedule to the *Cross-Border Payments in Euro Regulations*, by article 24(2) of the *MCD Order*, by regulation 44 of the *Small and Medium Sized Business (Credit Information) Regulations* ~~and~~, by paragraph 4 of Schedule 7 of the *Payment Accounts Regulations* and by regulation 41 of the *Small and Medium Sized Business (Finance Platforms) Regulations*)

...

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Part 1

The rules and guidance in this Annex are made by the Financial Conduct Authority in relation to the Compulsory Jurisdiction of the ombudsman scheme, and by the Financial Ombudsman Service (with the approval of the Financial Conduct Authority) in relation to the Voluntary Jurisdiction of the ombudsman scheme.

INTRO 1 Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, CBTL firms, designated credit reference agencies, designated finance platforms* and *VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, CBTL firms, designated credit reference agencies, designated finance platforms* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

1 Treating complainants fairly

1.1 Purpose and application

...

Background

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) *persons carrying on regulated activities (firms), providing payment services (payment service providers), providing electronic money issuance services (electronic money issuers) carrying on CBTL business (CBTL firms), ~~or~~ providing credit information under the Small and Medium Sized Business (Credit Information) Regulations (designated credit reference agencies), or providing specified information under the Small and Medium Sized Business (Finance*

Platforms) Regulations (designated finance platforms) and which are covered by the Compulsory Jurisdiction; and

...

...

Application to designated finance platforms

1.1.10K R This chapter (except the *complaints record rule*, the *complaints reporting rules*, and the *complaints data publication rules*) applies to a *designated finance platform* in respect of *complaints from eligible complainants concerning activities carried on from an establishment maintained by it or its agent in the United Kingdom.*

1.1.10L G Although *designated finance platforms* are not required to comply with the *complaints record rule*, they must retain records in accordance with regulation 21 of the *Small and Medium Sized Business (Finance Platforms) Regulations* and these can be used to assist the *Financial Ombudsman Service* should this be necessary.

...

Exemptions for firms, payment service providers, electronic money issuers and designated credit reference agencies and designated finance platforms

1.1.12 R (1) *A firm, payment service provider, electronic money issuer, or designated credit reference agency or designated finance platform falling within the Compulsory Jurisdiction which does not conduct business with eligible complainants and has no reasonable likelihood of doing so, can, by written notification to the FCA, claim exemption from the rules relating to the funding of the Financial Ombudsman Service, and from the remainder of this chapter.*

...

...

1 Annex Application of DISP 1 to type of respondent / complaint
2G

...

| Type of respondent/ complaint | DISP 1.2 Consumer awareness rules | DISP 1.3 Complaints handling rules | DISP 1.4 - 1.8 Complaints resolution rules etc. | DISP 1.9 Complaints record rule | DISP 1.10 Complaints reporting rules | DISP 1.10A Complaints data publication rules |
|-------------------------------|-----------------------------------|------------------------------------|---|---------------------------------|--------------------------------------|--|
| ... | | | | | | |

| | | | | | | |
|--|--|--|--|-----------------------|-----------------------|-----------------------|
| <i>designated credit reference agency in relation to complaints about providing credit information</i> | ... | ... | ... | ... | ... | ... |
| <i>designated finance platform in relation to complaints about providing specified information</i> | <u>Applies for eligible complainants</u> | <u>Applies for eligible complainants</u> | <u>Applies for eligible complainants</u> | <u>Does not apply</u> | <u>Does not apply</u> | <u>Does not apply</u> |
| ... | ... | ... | ... | ... | ... | ... |

...

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* two jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services*, issuance of *electronic money*, *CBTL business* and covers:

...

- (c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 11 of the *Regulated Activities Amendment Order*; ~~and~~

- (d) certain *complaints* against *designated credit reference agencies* under the *Small and Medium Sized Business (Credit Information) Regulations*; and

- (e) certain complaints against designated finance platforms under the Small and Medium Sized Business (Finance Platforms) Regulations;

...

...

2.3 To which activities does the Compulsory Jurisdiction apply?

...

2.3.2D R ...

Activities by designated finance platforms

2.3.2E R The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a designated finance platform in carrying on:

- (1) the activity of providing specified information under the Small and Medium Sized Business (Finance Platforms) Regulations; or
- (2) any ancillary activities, including advice, carried on by the designated finance platform in connection with the activity in (1).

General

2.3.3 G *Complaints about acts or omissions include those in respect of activities for which the firm, payment service provider, electronic money issuer, CBTL firm or designated credit reference agency or designated finance platform is responsible (including business of any appointed representative or agent for which the firm, payment institution, electronic money institution or designated credit reference agency or designated finance platform has accepted responsibility).*

...

2.5 To which activities does the Voluntary Jurisdiction apply?

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

...

- (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 ~~6 April~~ 1 October 2016) 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*);

...

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

- 2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, ~~or~~ of a *designated credit reference agency* or of a *designated finance platform* carried on from an establishment in the *United Kingdom*.

...

...

2.7 Is the complainant eligible?

...

Eligible complainants

...

- 2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(11B) the complainant is a *person* about whom *specified information* was provided to a *person* in relation to a *finance application*;

...

...

Exceptions

- 2.7.9 R The following are not *eligible complainants*:
- (1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *CBTL firm*, *designated credit reference agency*, *designated finance platform* or *VJ participant* whose *complaint*

relates in any way to an activity which:

...

- (ab) the firm, payment service provider, electronic money issuer, CBTL firm, ~~or~~ designated credit reference agency or designated finance platform itself is entitled to carry on under the *Payment Services Regulations*, the *Electronic Money Regulations*, the *MCD Order* ~~or~~ the Small and Medium Sized Business (Credit Information) Regulations or the Small and Medium Sized Business (Finance Platforms) Regulations; or

...

...

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at ~~6 April~~ 1 October 2016

...

The activities which were covered by the *Compulsory Jurisdiction* (~~at 6 April~~ 1 October 2016) were:

...

- (5) for *designated credit reference agencies*:

...

- (6) for designated finance platforms:

- (a) providing specified information under the *Small and Medium Sized Business (Finance Platforms) Regulations*; or
- (b) any ancillary activities, including advice, carried on by the *designated finance platform* in connection with the activity in paragraph (a).

...

Annex E

Amendments to the Enforcement Guide (EG)

In this Annex, all the text is new and not underlined.

Insert the following new provisions after EG 19.32 (The Payment Accounts Regulations 2015).

19.33 The Small and Medium Sized Business (Finance Platforms) Regulations 2015

19.33.1 The *Small and Medium Sized Business (Finance Platforms) Regulations* were made under the *Small Business, Enterprise and Employment Act*. The *Small and Medium Sized Business (Finance Platforms) Regulations* require *designated banks* to provide *specified information* about rejected loan applications made by small and medium sized business customers (with their consent) to *designated finance platforms* which must then provide such information to *finance providers* on request. The Treasury is the body that has the power to designate a bank or *finance platform* and may revoke such a designation.

19.33.2 As the provision of credit data on companies is not a *regulated activity* under the *Act*, the Regulations create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the *Act*. The *FCA's* approach to taking enforcement action under the Regulations will reflect its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers.

Information gathering and investigation powers

19.33.3 Regulation 23 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies many of the provisions of the *Act* in relation to the *FCA's* investigation and information-gathering powers in respect of *designated banks* and *designated finance platforms*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating any breaches of the *Small and Medium Sized Business (Finance Platforms) Regulations*.

19.33.4 For example, the *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The *FCA's* policy in regulatory investigations under the Regulations is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Small and Medium Sized Business (Finance Platforms) Regulations

- 19.33.5 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Finance Platforms) Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* or *DEPP 3.4*. For decisions made by *executive procedures*, the procedure to be followed will be those described in *DEPP 4*.
- 19.33.6 Regulation 43 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies to the procedural provisions of Part 9 of the *Act*, in respect of matters that can be referred to the *Tribunal*, and regulation 41 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies to Part 26 of the *Act* to *warning* and *decision notices* given under the *Small and Medium Sized Business (Finance Platforms) Regulations*.
- Public censures, imposition of penalties and the impositions of restrictions under the *Small and Medium Sized Business (Finance Platforms) Regulations*
- 19.33.7 When determining whether to take action to impose a penalty or to issue a public censure under the *Small and Medium Sized Business (Finance Platforms) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6.5*, *DEPP 6.5A*, *DEPP 6.5D* and *DEPP 6.7*.
- 19.33.8 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving breaches of the *Small and Medium Sized Business (Finance Platforms) Regulations* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA*'s settlement process and the settlement discount scheme.
- 19.33.9 When determining whether to take action to impose a restriction under regulation 27 of the *Small and Medium Sized Business (Finance Platforms) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6A.2* and *6A.4*. When determining the length of the period of restriction, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6A.3*.
- 19.33.10 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.