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.

advising on investments (except P2P agreements)
the regulated activity, specified in article 53(1) of the Regulated Activities Order (Advising on investments), which is in summary: advising a person if the advice is:

…

(2) advice on the merits of their doing any of the following (whether as principal or agent):

   (a) buying, selling, subscribing for or underwriting a particular investment which is a security, structured deposit or relevant investment (that is, any designated investment (other than a P2P agreement), funeral plan contract, pure protection contract, general insurance contract or, right to or interests in a funeral plan contract or structured deposit); or

…

ancillary service (1) (except in CONC) any of the services listed in Section B of Annex I to MiFID, that is:

   (a) safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management but excluding maintaining securities accounts at the top tier level, (‘central maintenance service’) referred to in point 2 of Section A of the Annex to CSDR;

…

arranging (bringing about) deals in investments
the regulated activity, specified in article 25(1) of the Regulated Activities Order, which is in summary: making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is:

…

(e) rights to or interests in investments in (b), (c) or (d); or
(f) a structured deposit.

**Auction regulation**

the regulated activity of bidding in emissions auctions where it is carried on by:

(a) a firm that is exempt from MiFID under article 2(1)(i); or

(b) a MiFID investment firm (other than a UCITS investment firm) on behalf of its clients in relation to a two-day emissions spot.

**Complaint**

(2) (in SUP 10 and DISP, except DISP 1.1 and the complaints handling rules and the complaints record rule in relation to MiFID business (in relation to collective portfolio management) in the consumer awareness rules, the complaints handling rules and the complaints record rule, and in CREDS 9) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination, which:

...

(3) (in DISP 1.1, the complaints awareness rules only and (in relation to collective portfolio management) and in the consumer awareness rules, the complaints handling rules and the complaints record rule only in relation to MiFID business and collective portfolio management) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

**Consumer**

(7) (in the definitions of cross-border dispute, domestic dispute, sales contract and service contract, and in DISP 1.1A.42R, DISP 2.7.3R and DISP 2.7.9AR) has the meaning in regulation 3 of the ADR Regulations, 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 ADR Directive]

...

**Customer**

(A) ... 

(B) in the FCA Handbook:
(1) (except in relation to ICOBS, a credit-related regulated activity, MCOB 3A, an MCD credit agreement and CASS 5 and PRIN in relation to MiFID or equivalent third country business) a client who is not an eligible counterparty for the relevant purposes.

(6) (for the purposes of PRIN in relation to MiFID or equivalent third country business) has the meaning given in COBS 3.2.

dealing in investments as agent the regulated activity, specified in article 21 of the Regulated Activities Order (Dealing in investments as agent), which is in summary: buying, selling, subscribing for or underwriting designated investments (other than P2P agreements), pure protection contracts or general insurance contracts or structured deposits as agent.

final response ... 

(3) (in DISP) either:

(a) in relation to a MiFID complaint, a response in accordance with DISP 1.1A.29EU, DISP 1.1A.30EU and DISP 1.1A.31R; or

(b) in relation to all other complaints, has the meaning given in DISP 1.6.2R(1).

firm ... 

(8) (in SYSC 18 with the exception of the guidance guidance in SYSC 18.3.9G):

(9) (in FEES 4) includes a recognised investment exchange and a data reporting services provider (other than an incoming data reporting services provider) in accordance with FEES 4.1.1AR.

investment firm (1) any person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

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

investment service 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

... 


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

(e) 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]

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);