

**ADVISING ON INVESTMENTS (ARTICLE 53(1) OF THE REGULATED
ACTIVITIES ORDER) (CONSEQUENTIAL AMENDMENTS) (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 Advising on Investments (Article 53(1) of the Regulated Activities Order) (Consequential Amendments) 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 by the Financial Ombudsman Service Limited are subject to the approval of the Financial Conduct Authority.

Approval of 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, immediately after the Dispute Resolution: MiFID 2 complaints (Voluntary Jurisdiction) (Financial Ombudsman Service) Instrument 2017.

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 Advising on Investments (Article 53(1) of the Regulated Activities Order) (Consequential Amendments) (Financial Ombudsman Service) Instrument 2017.

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

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

Annex A

Amendments to the Glossary of definitions made by the FCA in the Advising on Investments (Article 53(1) of the Regulated Activities Order) (Consequential Amendments) Instrument 2017

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

Adopt the following new definition. The text is not underlined.

- non-personal recommendation advice*
- (1) advice given to a *person* which is the *regulated activity* specified in article 53(1) of the *Regulated Activities Order* and which is not a *personal recommendation*.
 - (2) for the purposes of (1), article 53(1A) of the *Regulated Activities Order* is to be disregarded.

Adopt the amendments to the following definitions as shown.

- advising on investments*
- (1) (except in *SUP 10A* (Approved Persons), ~~and *APER* and *CONRED 2*~~) the *regulated activities*, specified in articles 53(1) to (1D) and article 53(2) of the *Regulated Activities Order* (Advising on investments), which are:
 ...
 - (2) (in *SUP 10A* (Approved Persons) and *APER*) the *regulated activities* specified in articles 53(1) to (1D) and article 53(2) (Advising on investments) of the *Regulated Activities Order*. For these purposes, *advising on investments* includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the *Regulated Activities Order*.
 - (3) (in *CONRED 2*) has the meaning in force on 1 April 2013.

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:

- (1) given to the *person* in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor; and
- (2) advice on the merits of their doing any of the following

(whether as principal or agent):

- (a) buying, selling, subscribing for, exchanging, redeeming, holding 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, right to or interests in a funeral plan contract or structured deposit*); or
- (b) exercising or not exercising any right conferred by such an *investment to buy, sell, subscribe for or underwrite, exchange or redeem* such an *investment*,

but excluding the provision of non-personal recommendation advice where the person providing that advice is appropriately authorised (see article 53(1A) to (1D) of the Regulated Activities Order).

*personal
recommendation*

- (1) (except in CONRED and in relation to advising on investments (except P2P agreements)):

a recommendation that is ~~*advice on investments*~~ *advice on P2P agreements, advice on conversion or transfer of pension benefits, or advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

A recommendation is not a personal recommendation if it is issued exclusively to the public.

For the purposes of this definition, references in the *Handbook* to making *personal recommendations* on, or in relation to, *P2P agreements* should be understood as referring to making *personal recommendations* involving *advice on P2P agreements*.

~~[Note: article 9 of the MiFID Org Regulation]~~

...

- (3) (in relation to advising on investments (except P2P agreements)) a recommendation:
 - (a) made to a person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor;
 - (b) which constitutes a recommendation to them to do any of the following (whether as principal or agent):

- (i) buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment which is a security, a structured deposit or a relevant investment (that is, any designated investment (other than a P2P agreement), funeral plan contract, pure protection contract, general insurance contract, right to or interests in a funeral plan contract or structured deposit); or
 - (ii) exercise or not exercise any right conferred by such a relevant investment to buy, sell, subscribe for, exchange or redeem such an investment;
- (c) that is:
- (i) presented as suitable for the person to whom it is made; or
 - (ii) based on a consideration of the circumstances of that person; and
- (d) that is not issued exclusively to the public.

[Note: article 9 of the MiFID Org Regulation and article 53(1C) and 53(1D) of the Regulated Activities Order]

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 Annex 1G Regulated Activities for the Voluntary Jurisdiction at 3 January 2018

This table belongs to *DISP 2.5.1R*

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

(1) for *firms*:

...

(k) giving non-personal recommendation advice;

...

...