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12 COMPLAINTS AND REDRESS

12.1 FCA Dispute Resolution (DISP): Complaints Sourcebook

The FCA DISP sourcebook sets out the rules on the handling of complaints, principally focused on eligible complainants (see 12.3 below). DISP provides for the establishment of an independent alternative (to the courts) dispute resolution scheme, the Financial Ombudsman Service (FOS), once the Firm's own complaints procedures have been exhausted.

Handling requirement rules are set out in [DISP 1.1A](#) and apply solely to MiFID complaints about MiFID investment firms from Retail Clients, Professional Clients and (in relation to Eligible Counterparty business) Eligible Counterparties, all of whom may or may not also be eligible complainants.

Any complaints received should be referred to the Firm's Compliance Officer, Gillian Gallacher, without delay.

12.2 Low-Impact Issues

If a client or prospective client raises low-impact issues, which the Firm or its ARs have the ability to resolve to the client's satisfaction at the point they are raised, the Firm or AR may take appropriate action to resolve the issues without seeking prior approval/instruction from the Firm's Compliance Officer. Once resolved, details of the issues raised, the resolution and acceptance of the resolution by the client must be logged at AR level and notified to the Compliance Officer without unreasonable delay.

A summary communication setting out the issues and resolutions should also be sent to the client within 5 working days of the issues being raised, along with a copy of the Firm's complaints management policy and the complaints leaflet.

If the client raises further issues, before any additional action is taken the situation must be discussed with the Compliance Officer without delay and their instructions followed.

12.3 Definition of Eligible Complainant

In the context of regulated activities undertaken by the Firm and its ARs, the Firm is not able to deal with Retail Clients. A Retail Client is one that does not meet the MiFID definition of Professional Client. Retail Clients will therefore include 'natural persons' acting wholly or predominantly outside their trade, craft, business or profession, such as high net worth individuals or a director of a corporate client where the regulated activities are being conducted in a personal capacity.

Eligible complainants also include 'micro-enterprises', which are enterprises that employ fewer than 10 persons and have a turnover or annual balance sheet that does not exceed €2 million. In this definition, an enterprise means any person engaged in an economic activity, irrespective of legal form and includes in particular, self-employed persons and family businesses engaged in craft or other activities and partnerships, or associations regularly engaged in an economic activity.

In addition, the definition of eligible complainant includes:

- A charity which has an annual income of less than £6.5 million.
- A trustee of a trust which has a net asset value of less than £5 million.
- A small business, which is:

- Not a micro-enterprise, has an annual turnover of less than £6.5m (or its equivalent in any other currency) and
- Has less than 50 persons or
- A balance sheet total of less than £5m (or its equivalent in any other currency).
- A guarantor, which is a natural or legal person but not a consumer, and has given a guarantee or security in respect of an obligation or liability of a person which was a micro-enterprise or small business as at the date that the guarantee or security was given.

[DISP 2.7.6](#) also outlines the type of relationships between a complainant and a respondent that would determine whether the activities being complained about involved an eligible complainant or not.

[DISP 2.7.9. R](#) contains a number of exceptions where clients would not be considered eligible complainants. The exceptions include a complainant that was Professional Client or an Eligible Counterparty in relation to the Firm/AR and activity in question at the time of the act or omission by the Firm or AR, which is the subject of the complaint.

As such, it is considered unlikely that the Firm and its ARs will deal with such eligible complainants, but it is possible, especially following the extension of the FOS remit from 1 April 2019. Therefore, whether a client meets the definition of an eligible complainant should be examined on a case-by-case basis **at the outset**. Should a client fail to meet the MiFID Professional Client definition and falls within the definition of an eligible complainant, upfront disclosures regarding FOS rights and all the complaints-handling rules in [DISP 1.1A](#), inter alia, will apply.

In the unlikely event that the Firm or its ARs deal with an eligible complainant, or if there is any doubt about the eligibility of a client, guidance should be sought immediately from the Firm's Compliance Officer regarding the procedures to be followed.

12.4 Definition of a MiFID Complaint

[DISP1.1A.3 G](#) defines a MiFID complaint as, amongst other things, a complaint about:

- The provision of investment services or ancillary services to a client by an investment firm.
- The activities permitted by Article 6(3) of the UCITS Directive when carried on by a collective portfolio management investment firm.
- The activities permitted by Article 6(4) of the AIFMD when carried on by a collective portfolio management investment firm.

In essence, a complaint is any expression of dissatisfaction from a client, or prospective client, about the provision of an investment or ancillary service or product.

12.5 Awareness

At the request of clients and prospective clients, or when acknowledging a complaint, the Firm and its ARs, when the AR is subject to instructions from the Firm's Compliance Officer, should provide clients with a copy of the Firm's complaints management policy and a tailored copy of the document titled 'Not happy? Here's what to do'.

The Firm and its ARs should ensure details of the complaints-handling process are always easily accessible, e.g. by displaying the details in contractual documents or on websites.

12.6 Complaints Handling

If anyone at the Firm, at one of its AR firms, or anyone at a former AR of the Firm receives a complaint, the following procedures must be followed:

1. Any complaint received, whether verbally or in writing, must be notified to the Compliance Officer without delay.
2. Clients must be able to complain free of charge.
3. The complaint must be acknowledged in writing within 5 working days of its receipt either by the Compliance Officer or, on the instruction of the Compliance Officer, by the AR. A copy of 'Not happy? Here's what to do.' and the Firm's complaints management policy must be provided alongside the complaint acknowledgement.
4. Any further correspondence received from the complainant by anyone other than the Compliance Officer must forward this correspondence to the Compliance Officer without delay.
5. Unless directly involved in the nature of the complaint matter itself, the Compliance Officer will fairly, consistently and promptly:
 - a. Add the complaint to the complaints log and create a file on Dropbox for related correspondence/documentation.
 - b. Inquire into the facts surrounding any complaint.
 - c. Establish the complainant's demands.
 - d. Gather and investigate all relevant evidence and information, including but not necessarily limited to emails, agreements, and testimony.
 - e. Make reasonable effort to keep the complainant updated with the progress of their complaint.
 - f. Attempt to resolve the complaint as quickly as possible, but in any case, issue a final decision within 4-8 weeks of its receipt.
 - g. Within the response the following must be provided: a clear explanation of the Firm's position; its reasons for it taking this stance; where appropriate, the level of redress being offered and how this was calculated; and the options left to the complainant should they wish to maintain the complaint.
 - h. When a response within expected time limits is not possible, the complainant should be informed about the reason(s) for the delay and provided with an indication of the expected timeframe in which the Firm will be able to respond.

The Compliance Officer will ensure that complaints are investigated competently, diligently and impartially. Additional information should be obtained as necessary.

The Compliance Officer will appoint a deputy (either a partner or compliance manager) to investigate any complaint where the Compliance Officer is the subject matter of the complaint.

When investigating complaints, the Compliance Officer will consider whether there are any signs of recurring or systemic problems. Where signs are identified the Compliance Officer will identify the steps the Firm or its AR need to take to remedy these.

The Compliance Officer will maintain a file of all complaints received, resolutions to complaints and any subsequent correspondence.

12.7 Record-Keeping

In accordance with [DISP1.9](#), and on the legal basis of the Firm's legitimate interests in being able to defend against claims and respond to relevant requests for information from competent authorities, the Firm will

keep records of each complaint received (as set out above) for at least 5 years from the date the complaint was received.

These records will be kept by the Compliance Officer.

12.8 Complaints Reporting

The Compliance Officer will provide information on complaints and complaints handling to the FCA:

- In response to ad hoc requests from the FCA.
- As part of the Firm's regular reporting cycle through RegData – 6-monthly complaints return ([DISP 1 Ann1R](#)).
- Where required under SUP 15.

In addition, where required by applicable law or regulation, the Compliance Officer will also provide information relating to complaints and its handling of complaints to an alternative dispute resolution provider.

12.9 Complaints Oversight Officer

In accordance with [DISP 1.3.7](#), Gillian Gallacher has been nominated as the Complaints Oversight Officer for the Firm and will have responsibility for oversight of the Firm's complaints handling.

12.10 Financial Services Compensation Scheme

As the Firm is not permitted to deal with Retail Clients, it is normally unlikely to deal directly with any eligible claimants under the Financial Services Compensation Scheme (FSCS) (as defined by FCA rules at COMP 4.2) or 'protected investment business claims' (as defined by COMP 5.5). FSCS costs are only in scope where income arises which is attributable to both an eligible claimant and a 'protected claim'.

Investment funds for which the Firm provides investment management activities on behalf of fund advisory ARs are not eligible claimants in their own right. Other non-fund advisory clients are unlikely to satisfy the definition of eligible claimant as these are normally of a size or nature excluded under COMP 4.2.2, and/or no eligible income (as defined by FEES 6) arises from these activities.

Although the Firm has ordinarily been exempt from annual contributions to the FSCS and its costs, rules introduced in April 2018 require the Firm to 'look through' funds under management and identify if any of the underlying investors would in themselves be eligible claimants if the fund falls under the scope of COMP 5.5.3. This includes authorised funds, but excludes non-UK domiciled funds, or funds that are a body corporate. If a fund remains in scope then FSCS costs in relation to any income attributable to eligible claimants will need to be calculated and where appropriate, passed onto the relevant ARs on an annual basis.

On an ongoing basis, the Compliance Officer will review this in relation to its clients, including ARs, on a case-by-case basis considering the above.