

Consultation on transposition of UCITS IV Directive

Memorandum from the Financial Ombudsman Service

18 March 2011

The Financial Ombudsman Service:

- supports the overall objectives behind the directive; but
- has significant concerns about some issues relating to jurisdiction.

The ombudsman service was established under the Financial Services and Markets Act 2000. It is an impartial body that provides an informal alternative to the courts, resolving complaints by individual consumers who remain dissatisfied after complaining to:

- a retail financial services business regulated by the Financial Services Authority;
- a consumer credit business licensed by the Office of Fair Trading; or
- National Savings & Investments.

Last year we handled more than 925,000 consumer enquiries and resolved more than 166,000 cases. The service is free to consumers, and is funded by the financial businesses it covers. We are the largest ombudsman scheme in the world.

The jurisdiction issues concern complaints against management companies, arising from the possibility that a branch in one member state will in future be able to manage a UCITS authorised in another member state. They arise from paragraphs 3.74 to 3.84 in chapter 3 and are relevant to questions 3H, 3I, and 3J.

The current position is that the ombudsman service's compulsory jurisdiction covers services provided from a branch in the UK irrespective of:

- whether the financial business is UK or foreign owned;
- the identity of the home state regulator; and
- whether the consumer is in the UK or abroad.

This is a straightforward principle, which can be readily explained to the large numbers of consumers who contact us. It is also consistent with the approach favoured by the European Commission and incorporated in the rules of FIN-NET, the Europe-wide network of financial ombudsmen.

The consultation paper considered four possible scenarios:

- 1 UCITS scheme authorised by the FSA, operated by a UK branch of a non-UK management company.
- 2 UCITS scheme authorised by the FSA, operated by a non-UK management company, using a cross-border services passport from outside the UK.
- 3 A UCITS authorised in another member state, operated by a UK management company using a cross-border services passport.
- 4 UCITS authorised in another member state, managed by a UK management company through a branch established in that member state.

The managers in scenarios 1 and 3 are both within our current jurisdiction – and we have no concerns about those.

Our concerns relate to the managers covered by scenarios 2 and 4.

- Scenario 2 would give us jurisdiction over a branch outside the UK and wholly regulated outside the UK.
- Scenario 4 would give us jurisdiction over a branch outside the UK, managing a UCITS authorised outside the UK, just because the manager's home-state regulator is the FSA.

Scenario 2 has significant potential to mislead investors, who might take comfort from the (theoretical) possibility of redress through the ombudsman service if anything went wrong. We do not believe that (in practice) it would be reasonably practicable to make such a branch either cooperate with our investigation or to pay any compensation we awarded.

Scenario 2 also has potentially adverse economic consequences, as it is unlikely to be practicable to make such branches contribute to the costs of the ombudsman service, so the cost of investigating any cases would be likely to fall on the other financial businesses that pay the cost of the ombudsman service.

Scenario 4 has the potential for significant unintended economic consequences. If the precedent of extending the ombudsman service's jurisdiction to EEA branches of UK managers were established in this context, it would be more difficult to resist pressure to extend that jurisdiction to the EEA branches of UK banks and UK insurers.

Both scenarios 2 and 4 would create additional complexity and costs by removing the current straightforward territorial scope of the ombudsman service's jurisdiction – which is more-readily explainable to consumers and is also FIN-NET compatible.

Accordingly, we believe that the ombudsman service should:

- continue to have jurisdiction in scenarios 1 and 3; but
- not be given jurisdiction in scenarios 2 and 4.

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* The Treasury may recall, for example, criticism by the European Parliament that branches of Equitable Life in Germany were not covered by the UK arrangements.