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# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2 U.K.

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

##### *Consumer protection and competition*

#### 43 Provisions about consumer protection and competition U.K.

After section 234B of FSMA 2000 insert—

#### “PART 16A U.K.

##### CONSUMER PROTECTION AND COMPETITION

##### *Super-complaints and references to FCA*

#### **234C Complaints by consumer bodies**

- (1) A designated consumer body may make a complaint to the FCA that a feature, or combination of features, of a market in the United Kingdom for financial services is, or appears to be, significantly damaging the interests of consumers.
- (2) “Designated consumer body” means a body designated by the Treasury by order.
- (3) The Treasury—
  - (a) may designate a body only if it appears to them to represent the interests of consumers of any description, and
  - (b) must publish in such manner as they think fit (and may from time to time vary) criteria to be applied by them in determining whether to make or revoke a designation.

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- (4) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.
- (5) In this section—
- (a) “market in the United Kingdom” has the meaning given in section 140A;
  - (b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.

### **234D Reference by scheme operator or regulated person**

- (1) A relevant person may make a reference to the FCA where it appears to that person that either the first set of conditions or the second set of conditions are satisfied.
- (2) Each of the following is a “relevant person”—
  - (a) the scheme operator;
  - (b) a regulated person.
- (3) The first set of conditions is—
  - (a) that there may have been—
    - (i) in the case of a reference by the scheme operator, a regular failure by one or more regulated persons to comply with requirements applicable to the carrying on by them of any activity, or
    - (ii) in the case of a reference by a regulated person, a regular failure by that person to comply with requirements applicable to the carrying on by that person of any activity, and
  - (b) that as a result consumers have suffered, or may suffer, loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings.
- (4) The reference to the failure by a regulated person (“R”) to comply with a requirement applicable to the carrying on by R of any activity includes anything done, or omitted to be done, by R in carrying on the activity—
  - (a) which is a breach of a duty or other obligation, prohibition or restriction, or
  - (b) which otherwise gives rise to the availability of remedy or relief in legal proceedings.
- (5) It does not matter whether—
  - (a) the duty or other obligation, prohibition or restriction, or
  - (b) the remedy or relief,
 arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.
- (6) The second set of conditions is—

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- (a) in the case of a reference by the scheme operator, that one or more regulated persons have, on a regular basis, acted or failed to act, in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant,
  - (b) in the case of a reference by a regulated person, that the regulated person has, on a regular basis, acted or failed to act in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant, and
  - (c) in either case, that—
    - (i) if the complaint would fall within the compulsory jurisdiction or the consumer credit jurisdiction, the ombudsman would be likely to make an award under section 229(2)(a) or give a direction under section 229(2)(b), or
    - (ii) if voluntary jurisdiction rules made for the purposes of section 227 provide for the making of an award against a respondent or the giving of a direction that a respondent take certain steps in relation to a complainant, and the complaint would fall within the voluntary jurisdiction, the ombudsman would be likely to make such an award or give such a direction.
- (7) “Consumers” has the meaning given in section 1G.
- (8) “Regulated person” means—
- (a) an authorised person;
  - (b) an electronic money issuer, as defined in section 1H(8);
  - (c) a payment service provider, as defined in section 1H(8).

### **234E Response by FCA**

- (1) The FCA must within 90 days after the day on which it receives a complaint under section 234C or a reference under section 234D publish a response stating how it proposes to deal with the complaint or reference, and in particular—
- (a) whether it has decided to take any action, or to take no action, and
  - (b) if it has decided to take action, what action it proposes to take.
- (2) The response must—
- (a) include a copy of the complaint or reference, and
  - (b) state the FCA's reasons for its proposals.
- (3) The Treasury may by order amend subsection (1) by substituting any period for the period for the time being specified there.

### **234F Section 234E: exceptions**

- (1) This section applies where the FCA has received a reference under section 234D from a person who is a relevant person as a result of subsection (2) (b) of that section.
- (2) The duty to respond in section 234E does not apply if the FCA considers that the reference is frivolous, vexatious or has been made in bad faith.

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- (3) The FCA must within 90 days after the day on which it receives the reference inform the person who made it—
  - (a) that the duty to respond under section 234E does not apply by virtue of this section, and
  - (b) of its reasons for reaching the conclusion in paragraph (a).
- (4) The Treasury may by order amend subsection (3) by substituting any period for the period for the time being specified there.

### **234G Guidance**

- (1) The guidance given by the FCA under section 139A—
  - (a) must include guidance about the presentation of a reasoned case for a complaint under section 234C or a reference under section 234D, and
  - (b) may include guidance about such other matters as appears to the FCA to be appropriate for the purposes of section 234C or 234D.
- (2) Guidance given under this section is to be taken to be general guidance as defined in section 139B(5).

### *Competition*

### **234H Power of FCA to make request to Office of Fair Trading**

- (1) The FCA may ask the Office of Fair Trading (“the OFT”) to consider whether a feature, or combination of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom.
- (2) The OFT must, within 90 days after the day on which it receives the request, publish a response stating how it proposes to deal with the request and in particular—
  - (a) whether it has decided to take any action, or to take no action, in response to the request, and
  - (b) if it has decided to take action, what action it proposes to take.
- (3) The response must state the OFT's reasons for its proposals.
- (4) The Treasury may by order amend subsection (2) by substituting any period for the period for the time being specified there.
- (5) In this section—
  - (a) “market in the United Kingdom” has the meaning given in section 140A(1);
  - (b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.”

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**Commencement Information**

- I1** S. 43 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), **Sch. Pt. 3**
- I2** S. 43 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), **Sch. Pt. 2**
- I3** S. 43 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, **Sch.**

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