

Consultation response

CP12/30 Complaints against the regulators

5th February 2013

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **CP12/30 Complaints against the regulators**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive summary

In general AFME members support the approach to the complaint scheme set out by the regulators in the Draft Complaints Scheme. Where members have comments or observations these are set out in the sections of this response document below.

1. Introduction

No comments on this section.

2. Scope and coverage of the proposed complaints scheme

Q1: Please let us know what you think of the coverage of the proposed Scheme.

Whilst recognising that it is inappropriate for a person to complain about the performance of the regulators' legislative functions members believe that the scope of the scheme in section 3.1 should be extended or clarified to include:

- where guidance issued by a regulator is inappropriate;
- where a regulator has exercised judgement or used discretion in a manner which had/will have unintended/disproportionate consequences on a firm;
- where a regulator has exercised judgment in an unreasonable manner; and,
- where a regulator has used discretion or applied powers (as allowed by legislation) in an unreasonable manner.

3. Investigation of complaints by the regulators themselves

No comments on this section.

4. Cooperation between regulators

Q2: Please tell us what you think about the operational aspects of the proposed Scheme.

No comments on this section.

5. Transitional arrangements

Q3: Please tell us what you think about the proposed Transitional arrangements.

No comments on this section.

6. The Complaints Commissioner

Q4: Please tell us what you think about the proposed arrangements for the appointment and tenure of the Complaints Commissioner.

No comments on this section.

Q5: Do you agree with our proposed arrangements for administrative and other support for the Complaints Commissioner?

Members understand and accept that the Complaints Commissioner should have an agreed annual budget within which it operates. However, members believe that specific

arrangements should be put in place to ensure that budgetary constraints do not limit the investigation of a legitimate complaint.

Members assume that the proposed budget will come out from the fees paid by firms but please confirm if this is not the case.

Q6: Do you agree with our proposed arrangements for reporting on the results of investigations?

No comments on this section.

7. Compensatory payments on an *ex gratia* basis by the regulators

Q7: Please tell us what you think of the proposed approach to making compensatory payments on an *ex gratia* basis to those whose complaints are upheld.

In principle members support the concept of ex-gratia payments as set out in the scheme. However, members note that under the Financial Services Act 2012 the PRA and FCA are required to forward all monies received by way of penalties imposed by them (less enforcement costs) to HM Treasury. It seems inappropriate to members that payments made in response to a valid complaint against a regulator should be provided for out the fees paid by the regulated community.

Consequently members believe that where an ex-gratia payment is warranted under the scheme the funding for such payments should not come from the relevant regulator but rather from central funds under the control of HM Treasury.

8. Publication of the proposed complaints scheme

It is not clear how firms and consumers will be made aware of any changes to the complaints scheme if it is not Handbook material and therefore not consulted upon.

9. Annex 1 – Cost Benefit analysis

The regulators are moving towards a model that involves more judgement, earlier intervention and less guidance (in the case of the PRA) and the regulators have publicly acknowledge that they will get things wrong. This will inevitably lead to more challenge of the regulators and more complaints about the regulators. This higher volume should have been reflected in the cost benefit analysis.

It was also not clear whether the costs of the scheme will be apportioned across fee blocks and according to coverage of the regulators. For example would a small firm have to pay for complaints raised against the FPC or PRA when it is highly unlikely to ever engage itself with those agencies?

10. Annex 1 – Compatibility statement

No comments on this section

11. Appendix 1 - Draft Complaints Scheme

No comments on this section other than those set out above in respect of section 3.1 (Scope).