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Dear Dr Munn,

CALL FOR EVIDENCE: EU PROPOSALS ON ALTERNATIVE DISPUTE RESOLUTION

This is the Financial Services Consumer Panel's response to the call for evidence on Alternative Dispute Resolution.

The Panel has for some time been concerned about the fragmentation of cross-border ADR and has previously responded to the European Commission's consultations¹ on ADR in financial services. In that response we stated that this should be a priority area for action by the Commission so that rights to provide financial services cross border are accompanied by obligations and mechanisms to deal with complaints from consumers when problems arise.

We are broadly supportive of the recent proposals, although we do have some comments to make on specific aspects of the Regulation and Directive. Generally, we would be concerned if any of the proposals were to erode the protections already available to consumers in the UK, particularly through the operation of the Financial Ombudsman Service, which is more rigorous in its operation than would be required in some of the proposals.

Principle of Transparency

The Panel believes that there should be a presumption of transparency, unless there are robust and convincing reasons otherwise, in publishing information about complaints and dispute resolution processes. The FOS has already made important progress in this direction in its publication of firm-specific complaints data, and wishes to move further by publishing all ombudsman decisions. Article 7.2 of the draft Directive outlines the information which should be published in the form of annual activity reports, which is much less detailed than that which the FOS already supplies and wishes to supply in future. We would welcome confirmation that the

¹ [Response to the Consultation Paper on use of Alternative Dispute resolution as a means to resolve dispute related to commercial transactions and practices in the European Union](#), Financial Services Consumer Panel, March 2011
[Response to DG Markt consultation document: Alternative Dispute Resolution in the area of financial services](#), Financial Services Consumer Panel, February 2009

provisions of the Directive, and also the confidentiality requirements of the proposed Online Dispute Resolution (ODR) services would not prevent such publication.

Participation

The Panel supports the compulsory jurisdiction rules within which FOS operates, and notes that the Directive does not require that traders must participate in an ADR scheme. The Directive needs to be amended to make clear that Member States may retain compulsory jurisdiction rules in sectors such as financial services.

However, provisions elsewhere, such as in the revised MiFID Directive² require Member States to ensure that bodies are established with a view to settling disputes out of court, to cooperate in resolving cross-border disputes, and we see this as an important step forward. We would therefore welcome a broader EU obligation on ADR in financial services.

90 day resolution period

Article 8(d) requires that disputes should be resolved within a 90 day period, from the date when the entity has received the complaint, with the possibility of exception for complex cases. Although we would support the timely resolution of cases, we do support the exception for complex cases, as we believe that 90 days may be insufficient time to investigate and collect evidence in some situations. This should be subject to some guidance in the Directive on the definition of 'complex cases' to prevent abuse. It is also necessary to specify exactly when the 90 day period begins, as cases may be referred inappropriately to the ADR body in the first instance, recorded, unresolved by the parties involved, and returned to the ADR body for final resolution. In such a case it would be inappropriate to start the 90 day time limit at the point of first contact.

Governance

We note the proposal that the 'collegial body' of an ADR must have an equal number of traders and consumers (Article 6). If 'collegial body' in this case could be interpreted as the governing body then we would prefer a less prescriptive requirement that at least half of the governing body must be independent, including representatives of consumers.

If, however, 'collegial body' means the body that adjudicates on consumer complaints, we would like to see a similar requirement. While we understand that what is proposed may not affect rulings by FOS, since they are not taken by a collegial body, this may not be the case for ADR bodies in other member states. In any event, some clarification of the definition of 'collegial body' in the Directive may be helpful.

Complaints by traders against consumers

We see no practical purpose in the provisions in the draft Directive which would apply it to complaints submitted by traders against consumers. In cases where, for

² COM(2011) 656 final: [Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments](#), Article 80.

example, consumers have failed to pay for goods or services, there are other mechanisms in place to address this, and such a provision would serve only to open the possibility of a 'spoiling' counter claim against the consumer, discouraging them from taking part in the ADR process.

We would be happy to discuss any of these points in further detail.

Yours sincerely

Adam Phillips
Chair, Financial Services Consumer Panel