

**COMPENSATION SOURCEBOOK
(ACCELERATED COMPENSATION FOR DEPOSITORS)
INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme);
 - (5) section 214 (General); and
 - (6) section 215 (Rights of the scheme in relevant person’s insolvency).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force immediately and applies in respect of defaults before, on or after 29 October 2008.

Amendments to the Handbook

- D. The Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Compensation Sourcebook (Accelerated Compensation for Depositors) Instrument 2008.

By order of the Board
29 October 2008

Annex

Amendments to the Compensation sourcebook (COMP)

Amend the following text as shown (underlining indicates new text and striking through indicates deleted text):

- 7.2.3A R If the *FSCS*, in relation to a claim for a *protected deposit*, ~~takes an assignment of rights from the claimant under COMP 7.2.1R and subsequently makes recoveries through those rights from the relevant person or any third party in respect of that *protected deposit*~~, the *FSCS* must:

...

After COMP 14 insert the following new chapter. The text is all new and is not underlined.

15 Special situations

15.1 Accelerated compensation for depositors

Purpose

- 15.1.1 G When a *relevant person* is *in default* with claims against it for *protected deposits*, it may be desirable for the *FSCS* to make accelerated payments of compensation, for the protection of consumers and to maintain market confidence.
- 15.1.2 G To facilitate an accelerated payment of compensation, this section provides additional and alternative powers for the *FSCS*. These powers include the ability for the *FSCS* to pay compensation to *eligible claimants* without an application, to provide compensation by a variety of means and subject to conditions including by making a payment directly into an account maintained by another *authorised person*, to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government and/or to be subrogated automatically to the claimant's rights against the *relevant person* and/or any third party.

Application

- 15.1.3 R This section applies in respect of compensation for *claims* for *protected deposits*.
- 15.1.4 R Before using any power in this section, the *FSCS* must determine that using that power:
- (1) would be beneficial to the generality of *eligible claimants* with *protected deposits* made with a *relevant person in default* in respect

of whom the power is to be used; and

- (2) is unlikely to result in any additional cost to the *FSCS* which would require the imposition of increased levies on *participant firms*, over and above those required if the power was not exercised, or any additional cost is likely to be justified by the benefits.

15.1.5 R The *FSCS*'s powers in this section may be used:

- (1) separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this sourcebook;
- (2) in respect of a *relevant person in default* irrespective of when the default occurred;
- (3) in relation to all or any part of a *protected deposit* or class of *protected deposits* made with the *relevant person*; and/or
- (4) (where the *FSCS* uses its powers to administer the payment of compensation on behalf of, or to pay compensation or make a payment on account or an advance and recover from, a Non-UK Scheme or Other Funder (see *COMP* 15.1.14R)) in respect of all or part of any *protected deposit* which is compensatable by and/or recoverable from the Non-UK Scheme or Other Funder, and the *FSCS* may make different provision for those parts of a *protected deposit* (and references to paying compensation shall be treated as referring to making a payment, making a payment on account or making an advance as appropriate).

15.1.6 R The *FSCS* may determine that the exercise of any power in this section is subject to such incidental, consequential or supplemental conditions as the *FSCS* considers appropriate.

Determinations by the *FSCS*

- 15.1.7 R
- (1) Any power conferred on the *FSCS* to make determinations under this section is exercisable in writing.
 - (2) An instrument by which the *FSCS* makes the determination must specify the provision under which it is made, the date and time from which it takes effect and the *relevant person* and *protected deposits*, parts of *protected deposits* and/or classes of *protected deposits* in respect of which it applies.
 - (3) The *FSCS* must take appropriate steps to publish the determination as soon as possible after it is made.
 - (4) Failure to comply with any requirement in this *rule* does not affect the validity of the determination.
 - (5) A determination by the *FSCS* under this section may be amended,

remade or revoked at any time and subject to the same conditions.

Verification of determinations

- 15.1.8 R (1) The production of a copy of a determination purporting to be made by the *FSCS* under this section:
- (a) on which is endorsed a certificate, signed by a member of the *FSCS*'s staff authorised by it for that purpose; and
 - (b) which contains the required statements;
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are:
- (a) that the determination was made by the *FSCS*; and
 - (b) that the copy is a true copy of the determination.
- (3) A certificate purporting to be signed as mentioned in (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A *person* who wishes in any legal proceedings to rely on a determination may require the *FSCS* to endorse a copy of the determination with a certificate of the kind mentioned in (1).

Effect of this section on other provisions in this sourcebook etc

- 15.1.9 R Other provisions in this sourcebook and *FEES* 6 are modified to the extent necessary to give full effect to the powers provided for in this section.
- 15.1.10 R Other than as expressly provided for, nothing in this section is to be taken as limiting or modifying the rights or obligations of or powers conferred on the *FSCS* elsewhere in this sourcebook or in *FEES* 6.

Payment of compensation without an application

- 15.1.11 R The *FSCS* may pay compensation to an *eligible claimant* without having received an application and/or an assignment of the whole or any part of the claimant's rights against the *relevant person* and/or any third party (and *COMP* 3.2.1R(1) and *COMP* 7.2.1R are modified accordingly).

Early compensation for term or notice accounts

- 15.1.12 R If a *protected deposit* was not due and payable on or before the date that the *relevant person* was determined to be *in default*, the *FSCS* may nevertheless treat that date as the *quantification date* for that *deposit* and pay compensation on the basis that the principal sum (including any interest attributable up to that date) is due and payable on that date either (as determined by the *FSCS*):

- (1) with the consent of the *eligible claimant* (express or implied, including by conduct); or
- (2) without that consent, but in this case the amount that the *eligible claimant* is entitled to claim from the *FSCS* is the lesser of:
 - (a) the amount which the *FSCS* quantifies as being the value of that *claim* as at the *quantification date*; and
 - (b) the amount that would have been payable at the date the *deposit* was due and payable;

and *COMP 12.3.1R* is modified accordingly.

Form and method of paying compensation

- 15.1.13 R The *FSCS* may pay compensation in any form and by any method (or any combination of them) that it determines is appropriate including, without limitation:
- (1) by paying the compensation (on such terms as the *FSCS* considers appropriate) to an *authorised person* with *permission to accept deposits* which agrees to become liable to the claimant in a like sum;
 - (2) by paying compensation directly into an existing deposit account of (or for the benefit of) the claimant, or as otherwise identified by (or on behalf of) the claimant, with an *authorised person* (but before doing so the *FSCS* must take such steps as it considers appropriate to verify the existence of such an account and to give notice to the claimant of its intention to exercise this power); and/or
 - (3) (where two or more *persons* have a joint beneficial *claim*) by accepting communications from and/or paying compensation to any one of those *persons* where this is in accordance with the terms and conditions for communications and withdrawals of the *protected deposit*.

Payment of compensation to which claimant is entitled from another scheme etc

- 15.1.14 R If the *FSCS* is satisfied that:
- (1) a claimant is or is likely at some future date to become entitled to receive a payment of compensation in respect of his actual, contingent or future rights against a *relevant person in default*:
 - (a) under a scheme which is maintained by an *EEA State* or any other state or *person* comparable to the *compensation scheme* (in this section, a “Non-UK Scheme”); and/or
 - (b) as a result of a guarantee given or arrangements made by the Government of the *United Kingdom*, an *EEA State*, any other

government or any other authority (in this section, an “Other Funder”); and

- (2) the *FSCS* has received prior funding in respect of, or is satisfied that it will be able to recover, the amount of that payment from the Non-UK Scheme or Other Funder;

the *FSCS* may, irrespective of whether or not the *relevant person* is in default under the laws or regulations of any other *EEA State* or any other state or law-country:

- (3) make a payment in respect of all or part of that compensation (whether or not yet due or payable) from the Non-UK Scheme or Other Funder, with or without the Non-UK Scheme or Other Funder’s prior agreement;
- (4) make a payment on account of, or advance to the claimant, the whole or part of the amount in (3) on such terms as the *FSCS* considers appropriate;
- (5) (having been satisfied as to the total amount to be paid or advanced to the claimant) ascertain the proportion of any such payment or advance attributable to the Non-UK Scheme or Other Funder at any time, whether before or after making the payment or advance;
- (6) (to the extent that prior funding has not been provided by the Non-UK Scheme or Other Funder) recover from the Non-UK Scheme or Other Funder the whole or any part of the amount of compensation paid or monies paid on account or advanced in respect of potential compensation which is or is likely to be payable to a claimant by the Non-UK Scheme or Other Funder, in accordance with *COMP* 15.1.17R to *COMP* 15.1.20R; and/or
- (7) take such other steps in connection with such payment or advance by the *FSCS* or to facilitate the payment of compensation that is due or may become due from the Non-UK Scheme or Other Funder as the *FSCS* considers appropriate;

and references to payment of compensation, payment on account or advance to the claimant include taking such action for the claimant’s benefit or on the claimant’s behalf.

15.1.15 R In determining the proportion of any such payment or advance attributable to the *FSCS*, a Non-UK Scheme or Other Funder, the *FSCS* may use any methodology or approach it considers appropriate if (and to the extent that) it considers that the cost of ascertaining the proportion by reference to each claimant would exceed or be disproportionate to the benefit of doing so.

15.1.16 R If the *FSCS* has made a payment or advance attributable to a Non-UK Scheme or Other Funder, and has acquired a right of recovery against the *relevant person* or any third party in respect of that amount, the *FSCS* may

determine that the whole or any part of any recoveries which it makes shall be held by it for the benefit of and/or shared amongst the *FSCS*, that Non-UK Scheme, that Other Funder and/or any other *person* which has provided prior funding in respect of a payment or advance attributable to any such body (and *COMP 7.2.3AR* is modified accordingly).

Rights and obligations against the relevant person and third parties

15.1.17 R The *FSCS* may determine that:

- (1) the payment of compensation by the *FSCS*; and/or
- (2) the following actions by the *FSCS* (under *COMP 15.1.14R*):
 - (a) administering the payment of compensation on behalf of; and/or
 - (b) paying and/or making a payment on account of compensation from;

a Non-UK Scheme or Other Funder;

shall have all or any of the following effects:

- (3) the *FSCS* shall immediately and automatically be subrogated, subject to such conditions as the *FSCS* determines are appropriate, to all or any part (as determined by the *FSCS*) of the rights and claims in the *United Kingdom* and elsewhere of the claimant against the *relevant person* and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the *relevant person* or third party is acting) in respect of or arising out of the *claim* in respect of which the payment of or on account of compensation was made;
- (4) the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the claimant or in both names against the *relevant person* and/or any third party;
- (5) the subrogated rights and claims conferred on the *FSCS* shall be rights of recovery and claims against the *relevant person* and/or any third party which are equivalent (including as to amount and priority and whether or not the *relevant person* is insolvent) to and not exceed the rights and claims that the claimant would have had; and/or
- (6) such rights and/or obligations (as determined by the *FSCS*) as between the *relevant person* and the claimant arising out of the *protected deposit* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* with *permission to accept deposits* and the claimant provided that the

authorised person has consented (but the transferred rights and/or obligations shall be treated as existing between the *relevant person* and the *FSCS* to the extent of any subrogation, transfer or assignment for the purposes of (3) to (5) and *COMP* 15.1.18R).

- 15.1.18 R The *FSCS* may alternatively or additionally make the actions in *COMP* 15.1.17R(1) and (2) conditional on the claimant assigning or transferring the whole or any part of all such rights as he may have against the *relevant person* and/or any third party (including, for the avoidance of any doubt, any Non-UK Scheme or Other Funder) on such terms as the *FSCS* determines are appropriate.
- 15.1.19 R The *FSCS* may determine that the making of an advance by the *FSCS* to the claimant (under *COMP* 15.1.14R(4)) shall have the effect that the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce the rights and claims of the claimant referred to in *COMP* 15.1.17R(3) in the name of, and on behalf of, the claimant against the *relevant person* and/or any third party.
- 15.1.20 R (1) The *FSCS* may determine that:
- (a) if the claimant does not assign or transfer his rights under *COMP* 15.1.18R;
 - (b) if it is impractical to obtain such an assignment or transfer; and/or
 - (c) if it is otherwise necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under *COMP* 15.1.17R to *COMP* 15.1.19R;
- that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom*, another *EEA State* or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.
- (2) The execution of any deed or document under (1) shall be as effective as if made in writing by the claimant or by his agent lawfully authorised in writing or by will.