

CP12/7^{***}

Financial Services Authority

Financial Services Compensation Scheme: changes to the Compensation sourcebook

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 26 June 2012 and by 26 April 2012 on the change to disclosure requirements for deposit takers.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/library/policy/cp/2012/12-07.shtml

Alternatively, please send comments in writing to:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

CBA	Cost benefit analysis
COMP	Compensation sourcebook (part of the FSA Handbook)
CP	Consultation paper
DGSD	Deposit Guarantee Schemes Directive
EEA	European Economic Area
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
ICD	Investor Compensation Directive
PRA	Prudential Regulation Authority

1

Overview

Introduction

- 1.1 The Financial Services Compensation Scheme (FSCS) is the UK's statutory compensation scheme of last resort for customers of authorised financial institutions. It may pay compensation to eligible customers of a financial services firm if that firm is unable, or likely to be unable, to pay claims against it. The FSCS is funded by levies on authorised firms.
- 1.2 This Consultation Paper (CP) proposes changes to some of the rules in our Compensation sourcebook (COMP) that govern the operation of the FSCS. This follows the commitment in our Business Plan 2010/11 to review COMP, as part of our work programme of ensuring the appropriate degree of protection for consumers. We had delayed consulting in order to issue a single CP including changes as a result of proposed amendments to the Deposit Guarantee Schemes Directive (DGSD), which we expect to affect COMP. But, given the continuing delay to the DGSD, we believe we should no longer delay our proposals. We aim to publish an initial consultation paper in the first half of 2012 on the funding arrangements of the FSCS as part of the FSCS Funding Model Review.
- 1.3 We have made many of the proposed changes for deposits already. We now want to realise the benefits for the other sectors FSCS covers. As a package these measures should lead to significant benefits, enabling the FSCS to take a more streamlined approach and so pay claimants more quickly and more efficiently.
- 1.4 Our proposed rule changes will help the FSCS when the value of a claimant's investment is uncertain. We propose to give the FSCS some additional flexibility in appropriate circumstances to pay full compensation where, under present rules, consumers would have to wait an excessively long time to receive full compensation.
- 1.5 In other cases the cost to the FSCS of assessing a claim may exceed the compensation due. We believe the proportionate approach is to give the FSCS the ability (similar to the approach for deposits) to pay compensation without a full investigation if the costs of investigation are disproportionate to the benefits. The FSCS would also need to be satisfied

that this was reasonably in the interests of levy payers. We propose that the FSCS should be able to take this approach to defaults that occurred before or after the rule change comes into effect.

- 1.6** We also propose to make a number of other changes to streamline FSCS's claims handling including simplifying eligibility criteria. As a package we think these changes will particularly benefit claimants where a firm's failure has led to a loss of client money. The changes include removing the requirement for an application form, giving the FSCS the option of taking an automatic assignment of a claimant's rights against the failed firm, and paying compensation for a shortfall in client money to a firm that has taken over the business of the failed firm.
- 1.7** In the CP we also discuss the need to ensure that, within our existing framework for protecting policyholders, our rules would be workable in practice in the event of an insurer, in particular a life insurer, failing. The current rules have been in place since the FSCS was set up in 2001. But there is limited experience of how our rules might operate in practice. There have been few examples of life insurers failing in the past and, while there have been some significant failures of general insurers, this was before the FSCS was set up.
- 1.8** We are not proposing new rules or guidance in relation to insurers. But we hope that feedback will inform any future consideration of the desirability of changing the existing rules.

Timing

- 1.9** For most of the proposals, the consultation will close on 26 June 2012. However, to give firms sufficient time to update their communications, we have reduced the usual consultation period from three to one month for one change: the removal of the FSCS's telephone number from the information deposit-takers must give depositors.
- 1.10** Consultation on this proposal will close on 26 April. Subject to the outcome of the consultation, we plan to make the rules for this change in May. We plan to provide feedback on all of the other proposals by the end of September.

Structure of this CP

- 1.11** Chapter 2 – Delivering compensation, outlines our proposed package of measures to enable the FSCS to take a more streamlined approach to handling claims. Chapter 3 – Insurance protection, discusses ideas on insurance.

Who should read this document

- 1.12** This paper will be of interest to firms, consumers, consumer representative bodies and advice agencies.

Equality and diversity considerations

- 1.13 We have assessed the likely equality and diversity impacts of the proposals and do not think that the proposals give rise to any concerns. However, any comments from respondents would be welcome.

CONSUMERS

Our proposed package of measures to enable the FSCS to handle claims in a more streamlined way should benefit consumers, especially those who have suffered a loss of client money because of the failure of a financial services firm. Our discussion for feedback in relation to insurance will also be of interest to consumers.

2

Delivering compensation

Introduction

2.1 This chapter sets out proposals to change our rules to enable the FSCS to handle claims more speedily and efficiently. We also propose a minor change to our disclosure requirements for deposit takers. The proposals concern:

- quantification of compensation;
- other measures:
 - simplification of eligibility criteria;
 - application forms;
 - assignment of rights;
 - client money shortfalls;
 - removing duplication of declarations of default;
 - settlement of claims;
 - clarification of deposits protected by the FSCS; and
 - disclosure requirements for deposit takers.

2.2 We have made many of these changes for deposits already. We now want to realise the benefits for the other sectors covered by the FSCS. As a package, the proposed changes will have significant benefits for the speed of the FSCS's operations and hence levy payers and claimants, especially where a firm's failure has led to a loss of client money.

Quantification of compensation

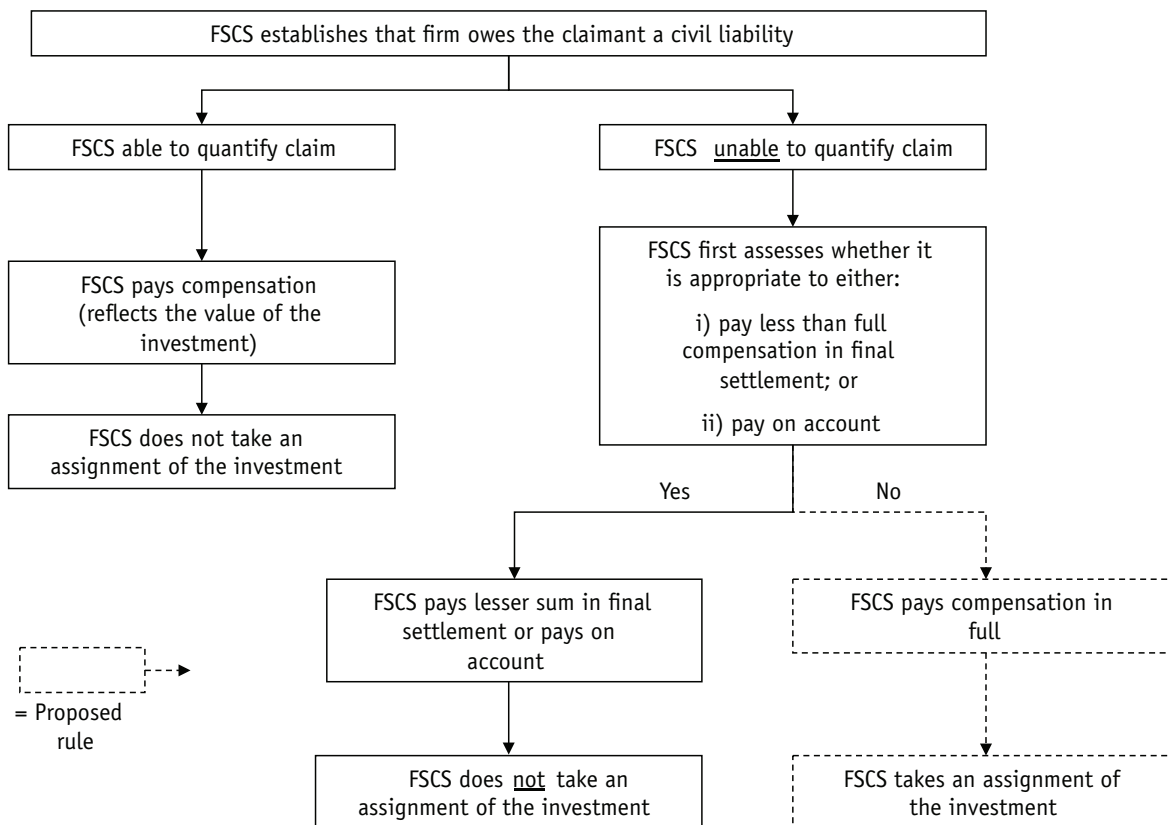
- 2.3 Under our rules, the FSCS must assess compensation on the basis of legal liability.¹ The FSCS must be satisfied that the claim could be established before a court and seeks to compensate the claimant for their loss, taking into account benefits the claimant has received or retained.
- 2.4 Our rules currently provide for situations where the underlying value of the investment is uncertain, for example because it is illiquid. The FSCS can either pay less than full compensation in final settlement of a person's claim or postpone payment of full compensation and make a payment on account.² These approaches reflect the fact that the investment has some residual value, but the exact value is currently unclear.
- 2.5 But in some cases it could be years after the contractual maturity date, or other date at which the claimants might have expected to access their investments, before claimants receive full compensation. This could lead to uncertainty and detriment for some types of claimants who, for example, are relying on the income or lump sum benefit from their investment.
- 2.6 Where an investment has some remaining value, the FSCS does not currently have the flexibility to pay full compensation, take an assignment of the investor's rights against the firm and of the investment itself, and seek to recover the amount it has paid the claimant.
- 2.7 Instances where this might become an issue are likely to be rare, but there have been recent cases involving complex structured investment products where our current rules did not assist the FSCS in handling claims. There may be similar cases in future.
- 2.8 We propose to build on the existing approaches open to the FSCS where the residual value of the investment is unclear by giving the FSCS some additional flexibility in certain circumstances to pay full compensation earlier. We propose to apply this rule change to defaults that occur on or after the date the rule change comes into effect.

How will the FSCS apply the rule in practice?

- 2.9 The effect of the proposal is summarised in Diagram 1. The FSCS would try to pay compensation in the normal way for the loss the investor has suffered. If this was not possible because of difficulties in establishing the underlying value of the investment, the FSCS must first conclude for a class of claim that it would not be appropriate to pay a lesser sum in final settlement or make a payment on account. Only then would it be able to pay compensation without taking the residual investment into account under our proposal. Where the FSCS pays compensation under the proposed rule, it will take an assignment of the investment from the investor.

1 This results from COMP 12.2.1R and the Glossary definition of a claim as a valid claim in respect of a civil liability owed by a 'relevant person' to the claimant.

2 COMP 11.2.4R. Where the FSCS does this, it will not take an assignment of the investment from the investor but would seek an assignment of his/her rights to pursue other potential third parties.

Diagram 1: FSCS process for applying the new rule

- 2.10** The rule includes guidance on the types of claimant and other factors the FSCS may take into account in considering whether to pay full compensation. The factors include whether the amount of claimants' overall claims is likely to be assessed within a reasonable timeframe, the circumstances of the claimants or the claims, and the nature of the products to which the claim relates. The FSCS would seek an assignment of the claimants' rights to pursue other potential third parties (e.g. a provider or distributor or the personal indemnity insurer of the firm in default).
- 2.11** Time may be relevant where, for example, the claimant has purchased a fixed term product, but the extent of the value remaining will not be known before the product's maturity date.
- 2.12** In considering whether to use the new rule, the FSCS will consider the position of classes of claimants, or claims. Relevant factors the FSCS may consider include the extent to which claimants will soon retire or whether claimants took out the product for a specific purpose (e.g. university fees).
- 2.13** It will be for the FSCS to determine the class of claimant or claim concerned. All claims could relate to the same type of product but the FSCS could, for example, take the view that the rule will only be exercised for amounts above a certain value or from claimants with certain common circumstances or claims.

Q1: Do you agree (i) with our proposal to give the FSCS more flexibility in quantifying claims, and (ii) that we should not extend the change to defaults that occur before the rule change comes into effect?

Other measures

Simplification of eligibility criteria

- 2.14** Our existing rules include a number of exclusions from cover by the FSCS because its protection is aimed at private individuals and small businesses. Similar exclusions exist in the relevant EU legislation. These are, however, difficult to explain and add to the complexity of the FSCS's processing of claims if a firm fails.
- 2.15** We propose to simplify the eligibility criteria for all sectors in order to speed up the FSCS's handling of claims, as we have done for deposits.³ This would mean that the FSCS would no longer need to carry out individual assessment of the eligibility status of most claimants.
- 2.16** The change would extend eligibility to:
- directors and managers of the firm in default;
 - close relatives of these directors and managers⁴;
 - auditors of the firm in default or of any body corporate in the same group as the firm or any actuary appointed under SUP 4 in our Supervision sourcebook by a friendly society or insurance undertaking;
 - persons who have contributed to the default; and
 - persons holding 5% or more of the capital of the firm.

Q2: Do you agree with our proposal to simplify eligibility criteria?

Application forms

- 2.17** One of the qualifying conditions for the FSCS paying compensation⁵ is that the claimant has made an application for compensation. In the case of deposits, to help the FSCS make accelerated payments of compensation, our rules allow the FSCS to pay compensation without having received an application form.

³ CP09/3 *Financial Services Compensation Scheme reform: Fast payout for depositors and raising consumer awareness* (January 2009) and PS9/11 *Banking and compensation reform*, including feedback on CP08/23, CP09/3, CP09/11 and CP09/16 (July 2009).

⁴ As defined in Article 3(1) of the Regulated Activities Order and Article 2(1) of the Financial Promotion Order (in relation to any person), a) his spouse or civil partner; b) his children and step-children, parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and, c) the spouse or civil partner of any person within b).

⁵ This does not apply to insurance claims.

2.18 The FSCS generally needs to obtain information from the claimant before it can assess their claim. To do this the FSCS asks claimants to fill out an application form. However, the current rules mean that the FSCS **must** obtain an application form even where this serves no purpose because it already holds all the information it needs to consider the claim. This might occur where there is a shortfall in client money and the FSCS already has all the information it needs, for example, having received it from the insolvency practitioner. Shortfalls in client money can affect a large number of consumers, all of whom the FSCS would need to contact under the current rules.

2.19 We propose to change the rules so that the FSCS may pay compensation without having received an application form. This will remove an unnecessary administrative procedure in cases where obtaining an application form serves no useful purpose. Where further information is required, the FSCS expects to use application forms or a similar process as now.

Q3: Do you agree with our proposal to remove the requirement for the FSCS to obtain an application form?

Assignment of rights

2.20 One of the qualifying conditions for the FSCS paying compensation is that the claimant may be required to assign their rights against the firm or against any third parties to the FSCS. This enables the FSCS to claim as a creditor in the insolvency of the firm or pursue any third parties who may also be responsible for the claimants' loss. Our rules contain safeguards for claimants so that if, for example, the FSCS obtains recoveries in excess of the amount of compensation it has paid the claimant, it must pay these to the claimant.

2.21 However, the process of obtaining deeds of assignment from *each* claimant can slow up the settlement of claims and is administratively burdensome. To address this, we propose that the FSCS should have the option of taking an automatic assignment of the claimant's rights against the failed firm or third parties. Examples where the FSCS may choose to exercise this option include failures where there is a shortfall in client money. In taking this approach the FSCS will have to seek to ensure that a claimant does not suffer disadvantage compared with the position if the rights had not been assigned.

2.22 We have already made this change for deposits and propose applying it to all other sectors protected by the FSCS with the exception of insurance.⁶

Q4: Do you agree with our proposal for FSCS to have the option of taking an automatic assignment of rights?

⁶ In Chapter 3 we discuss ideas on insurance, including automatic assignment of rights. Assignment in relation to insurance contracts involves issues that do not arise in other sectors.

Client money shortfalls

- 2.23** Where a firm is in default, its business may be transferred to another firm. If there is a shortfall in client money held by the firm in default, the FSCS is required⁷ to pay compensation to the firm's individual clients of whom there may be a large number who have each lost a small amount of money. This is because under our rules the FSCS can pay compensation only to the claimant or as directed by the claimant.⁸
- 2.24** We propose to amend our rules⁹ so that in any cases involving client money, the FSCS is able to pay compensation for a shortfall instead to the firm taking over the business. This is provided that the firm is willing to accept this payment and the FSCS can be satisfied that this would not result in the FSCS paying out more compensation than it would otherwise. This is an operational change to assist the FSCS.
- 2.25** This also assists continuity of operations for clients of investment firms, insurance broking firms or other firms that hold client money.
- 2.26** This change, together with the other changes we propose, should lead to significant benefits for claimants where a firm's failure has led to a loss of client money. The FSCS will be able to pay compensation to claimants more quickly because it will not need to carry out individual assessments of most claimants for which the insolvency practitioners holds the information the FSCS requires, receive application forms, take individual assignments of rights or approach individual claimants to make payments for shortfalls in client money but could pay it to the firm taking on the business.

Q5: Do you agree with our proposal regarding compensation for shortfalls in client money?

Removing duplication of declarations of default

- 2.27** Before the FSCS can pay compensation to consumers the firm must be in default. In the case of claims within the scope of the Investor Compensation Directive (ICD) or the DGSD, the FSA or the court will trigger the default.¹⁰
- 2.28** For claims outside the scope of the ICD or the DGSD, for example mis-selling investments, the FSCS, not the FSA, may determine the firm to be in default provided the conditions set out in our rules are met. This means that where there are ICD and/or DGSD claims and also other claims against a firm, the FSA must determine the firm to be in default for the ICD and/or DGSD claims or there must be a court ruling and the FSCS must also determine the firm to be in default for the other claims. This involves unnecessary duplication.

⁷ Subject to the normal conditions for payment being met.

⁸ COMP 11.2.1R.

⁹ COMP 11.2.3AR(4).

¹⁰ COMP 6.3.1R(2).

2.29 We propose to amend our rules so that once the FSA has determined a firm to be in default for the purpose of a claim under the ICD or DGSD or there has been a court ruling, the FSCS does not also need to declare the firm in default for the purpose of other types of claim.

Q6: Do you agree with our proposal to remove duplication in relation to declarations of default?

Settlement of claims

2.30 The FSCS must assess each claim on the basis of the extent of any legal liability owed by the firm. The FSCS must also establish whether the claimant is eligible to make a claim to the FSCS (including whether the consumer is eligible and whether the claim is valid) and must quantify the claim. But in some cases, where the claims are small, the cost to the FSCS of precise assessment (particularly calculating the compensation owed) may exceed the compensation due.

2.31 We believe the proportionate approach is to give the FSCS the ability (similar to the approach for deposits) to pay compensation without investigating the eligibility of the claimant and/or the validity and/or amount of the claim if the costs of investigation are disproportionate to the benefits. The FSCS would also need to be satisfied that this was reasonable in the interests of firms.¹¹

Q7: Do you agree with our proposal to enable the FSCS, in certain cases, to pay compensation without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of the claim?

2.32 We also propose that the new rule should apply to claims arising out of firms' acts or omissions before or after the rule change takes effect and to defaults occurring before or after the rule change takes effect. Some levy payers may take the view that it is unfair to apply the proposed rule to defaults that occur before the rule is made because, for example, it may increase the costs of compensation. However, the proposed rule will, in fact, allow the FSCS to operate more efficiently with savings passed on as lower management expenses. We also note that there is considerable uncertainty about the amount and timing of FSCS compensation payments which suggests that firms cannot hold clear expectations about the timing and amount of future FSCS levies.

Q8: Do you agree with our proposal for the rule to apply to acts or omissions and defaults before or after the rule change comes into effect?

¹¹ This is a different issue from the case where it is difficult to quantify the residual value of a claimant's investment which we discuss in paragraphs 2.3 to 2.13 above.

Clarification of deposits protected by the FSCS

- 2.33** The FSCS can protect a deposit if it was made with an establishment of a firm in the UK or a branch of a UK firm that is a credit institution established in another EEA Member State.¹² This includes a deposit that has been transferred to another firm under a transfer of banking business after the failure of the firm with which the deposit was originally made.
- 2.34** We propose to clarify the rules so that it is clear that the FSCS covers these deposits.

Q9: Do you agree with our proposal to clarify the deposits that the FSCS can protect?

Disclosure requirements for deposit takers

- 2.35** From the start of 2010 deposit takers were required to make a regular disclosure to existing depositors about compensation arrangements. The wording for firms that participate in the FSCS is prescribed in the Handbook (COMP 16) and includes the FSCS's telephone number. This has created confusion amongst many consumers who call the FSCS's number believing it is their bank, building society or credit union. We propose to amend the wording in COMP 16.3.1 and remove the FSCS's phone number and only refer to the FSCS website. We propose that firms include their own phone number instead.
- 2.36** Deposit takers are required to make the disclosure on a six-monthly basis, or where the firm communicates with depositors less frequently, at least annually. We are seeking to have the rules in place by the end of May in order to allow firms sufficient time to update their communications before making their next communication. Any responses on this proposal need to be received by **26 April**.

Q10: Do you agree with the proposed clarification to the COMP 16 disclosures?

Cost benefit analysis

- 2.37** Section 155 of FSMA requires us to perform a CBA of our proposed requirements and to publish the results, unless we consider that the proposals will not give rise to any costs or to an increase in costs of minimal significance.
- 2.38** In the following paragraphs we assess the costs and benefits of the proposals discussed in the main text of the consultation paper:
- quantification of compensation;
 - simplification of eligibility criteria;

¹² COMP5.3.1R(1)(a) and (b).

- application forms;
- assignment of rights;
- client money shortfalls;
- removing duplication of declaration of default;
- settlement of claims;
- clarification of deposits protected by the FSCS; and
- disclosure requirements for deposit takers.

2.39 We have made many of these changes for deposits already.¹³ The proposed changes generally apply to the other sectors the FSCS covers.

Direct costs to the FSA/FSCS

2.40 There will be no incremental costs to the FSA as a result of the proposals. In relation to quantification of compensation, the FSCS might face higher administration costs from having to monitor the investment after it has been assigned to them until it is repaid in due course. However, this increase in cost is expected to be minimal.

Compliance cost to firms

2.41 The only proposal that is expected to have direct impact on the size of the compensation cost is the extension of the eligibility criteria. Given this proposal will increase the number of claimants eligible for compensation if a firm fails, it will increase compensation costs. In effect this increase in compensation costs is a transfer from levy payers (the financial firms that contribute to the funding of the FSCS) to the customers of the failed firm. Over time, the firms that pay the levies may pass them on to their customers (for example, via higher charges).

2.42 There is no reliable or meaningful data to estimate the size of the transfer. The size will depend on the characteristics of the failed firm such as the number of claimants that are now eligible for compensation as a result of this new rule. The largest group of individuals are likely to be the directors and managers of the firm and their close relatives.

2.43 Higher compensation costs might also arise from giving the FSCS the option to pay compensation without having to investigate fully or at all the eligibility of claimants and/or the validity and/or amount of the claim. This might arise either from the FSCS paying compensation to claimants who were not eligible or higher compensation than if the FSCS had fully assessed the claim. We expect that the probability of such an event occurring is very low, as the FSCS will have to investigate to a reasonable level that the costs of

¹³ We made a number of the changes without consultation (Compensation Sourcebook (Accelerated Compensation for Depositors) Instrument 2008. We consulted on other changes in CP09/3 *Financial Services Compensation scheme reform: Fast payout for depositors and raising consumer awareness* (January 2009).

investigating the claim are disproportionate to the benefits and also that this is reasonably in the interests of firms, rather than checking cases individually.

- 2.44** We are not able to estimate meaningfully the higher compensation costs of applying the rule to defaults that have occurred before the rule change comes into effect. However, it is expected that the rule will only be used in instances where the cost of checking a claim exceeds the compensation cost or is too high in relation to the compensation cost.
- 2.45** The other changes will allow the FSCS to:
- pay compensation without taking into account the value of the residual investment;
 - pay compensation without an application form;
 - obtain automatic assignment of the claimant's rights against the failed firm;
 - pay compensation on a clients' account shortfall directly to the firm which takes over the business; and
 - not have to declare that a firm has defaulted if the FSA or a court has already determined this.
- 2.46** These changes will not change the amount of compensation to claimants and therefore will not increase the FSCS compensation that is paid by firms. The proposals will only have implications on when the compensation is paid.¹⁴ In instances when the FSCS decides to use these new rules, firms will have to pay levies earlier than under the current rules. Earlier payment of levies could mean that compensation claims from defaults in a particular funding class are higher and could therefore lead to the annual levy threshold for that class being reached sooner which could trigger cross-subsidy from other classes. However, we do not think that this would occur in practice, except in an extreme case, as since 2008 cross-subsidy has been triggered only once, in 2011.
- 2.47** Additionally, earlier payment of levies by firms could impose an opportunity cost on them. The size of the opportunity cost will depend on:
- how much earlier a firm has to pay the FSCS levy; and
 - whether the firm has funds available to pay the levy or has to borrow.
- 2.48** Firms that already have the funds to pay the levy will have to bear the cost of losing the return that they would have earned otherwise on the capital. We estimate this forgone return to be around 3%.¹⁵ Firms that do not have the funds to pay the levy will have to borrow. We estimate that the cost of debt is around 6.6%.¹⁶

¹⁴ The change relating to declarations of default is not expected to affect when compensation is paid.

¹⁵ We estimate the forgone return as 3% based on the return on 20 year gilts.

¹⁶ This figure is based on figures we used in CP 11/09. The cost of debt is estimated by calculating the average of the daily IBOXX Banks Sterling Bond index redemption yields, adjusted to a ten year term using data for a period from January 1998 to December 2010. As this figure has been estimated on the basis of an index comprised of bonds issued by banks, the cost of debt could be higher for smaller firms.

- 2.49 We expect the costs to firms from the change to deposit-takers' disclosure requirements to be of minimal significance.

Wider market impacts

- 2.50 It is unlikely that the proposals will have any indirect impacts on the market. Extending eligibility to certain claimants might substantially change newly eligible claimants' behaviour in a way that is detrimental to the firm. However, the probability of distortions in behaviour is limited as there are countervailing factors that would constrain their willingness to engage in such behaviour. For example, directors and managers would still be open to action through the courts in regard to any liability they may have for the firm's failure.

Benefits

- 2.51 The proposals are expected to benefit both the FSCS and consumers. All the proposals are expected to give the FSCS the flexibility to deal with claims quicker and with lower administration costs. Lower administration costs are expected to be transferred to levy payers through lower management expense levies. Consumers will benefit from receiving more timely compensation.

Benefits to the FSCS

- 2.52 The FSCS will have the option not to take into account the residual value of an investment and pay full compensation earlier than currently. It will allow the FSCS to save both on the number of payments they make and the funds the FSCS spends on getting experts' advice.
- In terms of payments, the FSCS is expected to have to make one compensation payment to each claimant, rather than two. The FSCS estimates the cost of an outsourcer to process a second compensation payment to range from 20% to 100% of the cost of administering the first payment. In the case of a significant investment failure, the FSCS's outsourcing costs average around £460 per claimant.
 - In terms of the advice received, the FSCS might still need to obtain expert advice to establish that the residual value was uncertain, but in most cases the cost is expected to be lower than putting an exact value on the investment.
- 2.53 In relation to the option for the FSCS to pay compensation without having to investigate fully or at all the eligibility of claimants and/or the validity and/or amount of the claim, benefits arise from removing the requirement to undertake individual assessments. It will save time and resources associated with assessing each individual claimant and claim. These cost-savings could be substantial, for example the FSCS indicate that in the case of a significant investment failure outsourcing costs average around £460 per claimant. This will include assessing eligibility. These efficiency savings would be passed on to the relevant firms in the form of lower management expense levies.

Benefits to consumers

- 2.54** The proposals will benefit claimants who receive FSCS compensation earlier than they would under the current rules. Under the current rules the claimant could receive compensation only if an application form¹⁷ has been submitted and eligibility has been assessed. The FSCS indicate that the average delay for consumers returning their application forms is around 60 days. After that, in the case of a significant investment failure, it can take up to 100 days for the FSCS to process each individual claim. Therefore, simplifying the eligibility criteria and allowing the FSCS to process claims without an application form is expected to speed up compensation payments.
- 2.55** The same is expected in cases where the FSCS exercises the option of paying compensation without checking the eligibility of the claimant and/or the validity and the amount of the claim.
- 2.56** Simplifying eligibility and so speeding up compensation payments would be particularly important for policyholders of life insurance, who in the case of a life insurer default, may not receive income benefits over the period of time taken to assess eligibility. This would be particularly detrimental for policyholders where income benefits from the life insurer are their only source of income.
- 2.57** Furthermore, under the current rules in some cases when an investment firm fails claimants would have received full compensation only once it was possible to estimate the residual value of their investment. This could take up to 20 years, depending on the particular case. Allowing the FSCS to pay full compensation without having to take account of the residual value of an investment will speed up compensation payments to investors in these cases.
- 2.58** The proposed change to deposit takers' disclosure requirements will benefit consumers by ensuring that they are clear on the contact details for their firm and for the FSCS.

Clarification of deposits protected by FSCS

- 2.59** This change does not give rise to an increase in costs to firms as it simply clarifies the current requirements.

Compatibility statement

- 2.60** This section sets out an assessment of the compatibility of the FSA's proposals on delivery of compensation with the FSA's regulatory objectives under section 2(2) of FSMA. The FSA is required to complete a compatibility statement under section 155(2)(c) of FSMA.
- 2.61** We consider our proposals to be compatible with our general duties under section 2 of FSMA and with the statutory objectives set out in sections 3 to 6. Our proposals are designed to meet our statutory objective of consumer protection and will enable the FSCS to handle claims more speedily without increasing costs to firms.

¹⁷ Application forms are not required in the case of insurance.

- 2.62** Section 2(3) of FSMA requires that, in carrying out our general functions, we must have regard to a number of specific matters and in particular to the principles of good regulation. We have had regard to the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, would be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

3

Insurance protection

Introduction

- 3.1** The current COMP rules have been in place since the FSCS was set up in 2001. But there is limited experience of how our rules might operate in practice. There have been few examples of life insurers failing in the past and, while there have been some significant failures of general insurers, this was before the FSCS was set up.¹⁸
- 3.2** This chapter discusses some issues relevant to insurance, rather than proposing new rules or guidance. But we hope that feedback will inform any future consideration of the desirability of changing elements of the existing approach, bearing in mind the need to ensure that, within our existing framework for protecting policyholders, our rules would be workable in practice.

Existing framework

- 3.3** The existing framework places particular emphasis on the importance of continuity for policyholders of life insurers. It does this by requiring FSCS to seek to secure continuity in the first instance, rather than pay compensation. This is likely to involve a transfer of the business of the failed insurer to another insurer.¹⁹
- 3.4** Continuity may be important because, in general, life insurance policyholders may find it more difficult and expensive to obtain alternative cover from another insurer (for example, because they are older or could be in poorer health than when they took out the original policy). It is continuity of life insurance to which most of the discussion in this chapter relates.
- 3.5** For general insurance, the FSCS can seek to secure continuity of cover, rather than paying compensation, but is not required to do so. The discussion in this chapter of automatic

¹⁸ The last case of a life insurer going into administration or liquidation was Oak Life Assurance Company in September 1993.

¹⁹ This is provided that it is practicable to do this and that any additional cost is likely to be justified by the benefits.

assigning policyholders' rights to the FSCS in the event that it does pay compensation is also relevant to general insurance.

- 3.6 For both life and general insurance²⁰, the benefits protected by the FSCS are limited to 90% of the contractual benefits where the FSCS pays compensation and at least 90% where the FSCS secures continuity of insurance.

(i) Incentives for policyholders when a life insurer has (or may) failed

- 3.7 If a life insurer becomes insolvent and a liquidator or administrator is appointed, premiums on existing policies remain payable by policyholders at the rate set in their insurance contract. We are concerned that policyholders may be unwilling to continue to pay premiums at 100% when the FSCS protection is 90% and either stop paying premiums, or surrender their policies, without considering the consequences.
- 3.8 Stopping premiums or surrendering policies may lead individual policyholders to lose valuable benefits, putting themselves at risk, and may make it more difficult to secure continuity of insurance for policyholders as a whole. We do not have insights from a life insurer failing to know whether policyholders would act in this way. But we do think that a company losing business is unlikely to be attractive for another company to acquire.
- 3.9 We have been considering how it might be possible to address these concerns but have not identified one clear-cut solution and would welcome views on the possibilities below.

Increasing FSCS protection

- 3.10 One possibility might be to increase FSCS protection from 90% to 100% for benefits attributable to life insurance premiums paid after the appointment of a liquidator or administrator to a life insurer or the occurrence of another insolvency event until the FSCS secures continuity or pays compensation. This enhanced protection might remove the incentive for policyholders to stop paying premiums, or surrender their policies without first considering the consequences.

Maintain the current position

- 3.11 We could consider maintaining the current position. Life insurance policies are generally long-term investments, unlike deposits, and this may reduce the risk of policyholders acting without first considering whether this is in their interests. However, many consumers may find the policies and benefits difficult to assess, so may be tempted to act instinctively to terminate policies.

²⁰ The limit is 100% for certain classes of compulsory general insurance.

Disclosure

- 3.12 We have considered whether additional disclosure might affect policyholder behaviour. However, it is not necessarily clear that further disclosures would be effective at point of sale. Disclosures at the time of default may be more effective, but it is difficult to tell in advance if they would help manage the risks we have identified.
- 3.13 Should a life insurer fail, the FSA and/or the FSCS would provide information about the insurer and about the nature and level of FSCS protection.

Cost benefit analysis

- 3.14 This section looks at the potential costs and benefits of increasing FSCS cover to 100% for benefits attributable to life insurance premiums paid after the appointment of a liquidator or administrator to a life insurer or the occurrence of another insolvency event.

Compliance costs to firms and the FSCS

- 3.15 This would increase the FSCS's compensation costs. Any increase in compensation costs is a transfer from levy payers (the financial services firms that contribute to the funding of the FSCS) to the policyholders of the failed firm. Over time, the firms that pay the levies may pass them on to their consumers (via higher premiums in the case of insurers). The size of the transfer from levy payers to policyholders of the failed firm will depend on the particular circumstances of the firm failure, in particular, the number of policyholders of the insurer that has failed and the value of their policies.
- 3.16 Also, there may be additional administration costs to the FSCS as a result of the FSCS having to pay out compensation at two levels, 90% and 100%, rather than one.

Wider market impacts

- 3.17 We do not consider that this would give rise to wider market impacts, such as moral hazard. For example, we do not consider that it would change the incentives of policyholders when investigating with which life insurer to take out a policy. This is because the increased level of FSCS protection would apply in narrow circumstances, applying only to part of the benefits protected by the FSCS.

Benefits to policyholders

- 3.18 It may mitigate the potential risk that policyholders of a failed life insurer stop paying their premiums or surrender their policies without first considering how this might affect their personal position. However, we do not know how material this risk is in practice nor do we know how effective this might be at changing policyholder behaviour. We have identified three factors that will limit the effectiveness of this possible approach:

- a) policyholders may not be able to assess how surrendering their policy or stopping paying their premiums will affect their personal position, at least not without seeking professional advice;
- b) given the low level of consumer awareness of FSCS compensation limits²¹, increasing FSCS protection is unlikely to incentivise policyholders to change their behaviour; and
- c) increasing FSCS protection for some, but not all, benefits²² may cause confusion amongst policyholders. Again, this could mean that there would be little or no impact on policyholder behaviour.

Q11: What might be the strengths and weaknesses of increasing FSCS protection for benefits attributable to premiums paid after the appointment of a liquidator or administrator?

Q12: Do you have any comments on maintaining the current FSCS protection for life insurance?

Q13: Do you have any comments on any other possibilities we could consider for FSCS protection for life insurance?

(ii) Impact on policyholders who receive benefits payable in the form of income

- 3.19** The 90% protection provided by the FSCS includes annuities and other benefits payable in the form of income. But in the event of a failure, there is a risk of payments stopping while the insurer, or its outsourcers, changes systems to enable payments to be made at 90%. We understand from discussions with external stakeholders that payments might stop for periods that might range from weeks to 9 to 24 months, depending on the insurer. This reflects the multitude and complexity of systems used by insurers. Where an insurer uses outsourcers to make payments, the insurer's contract with its outsourcers may not entitle the insurer to require their outsourcers to change their systems in a particular timescale. However, we do not regard the potential delay in payments to be acceptable.
- 3.20** One possible way to address this might be to enable the FSCS to fund benefits payable in the form of income at 100%, if this is necessary to ensure continuity of payment, until systems can be changed to pay benefits at 90%. This could apply to:

²¹ CP11/29 Deposit protection: raising consumer awareness, December 2011
www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/cp/cp11_29.pdf

²² That is, this would only raise FSCS protection to 100% for benefits attributable to premiums paid after the appointment of a liquidator or administrator or the occurrence of another insolvency event until continuity had been secured. FSCS protection for benefits attributable to premiums paid earlier would remain protected at 90%.

- pension annuities;
- purchased life annuities (ie non-pension annuities);
- regular withdrawals from investment life policies; and
- income payments from income protection ('PHI') policies.

- 3.21** In this case, we do not consider that we should require the FSCS to seek to recover the overpayment from policyholders as this would introduce significant operational complexities, and uncertainty for policyholders. However, we would require the FSCS, with the firm and insolvency practitioner, to endeavour to achieve the payout at 90% as soon as possible.
- 3.22** This could be a practical solution to a problem that external stakeholders have confirmed may well arise.

Cost benefit analysis

Compliance costs to firms and the FSCS

- 3.23** Raising the compensation limit as discussed above would increase FSCS compensation costs. Any increase in compensation costs would be a transfer from levy payers to the policyholders of the failed firm, as set out in paragraph 3.15 above. The size of the transfer would again depend on the particular circumstances of the firm and also on the length of time taken to change the computer systems.
- 3.24** We would not expect an increase in the FSCS's administration costs and so there would be no increase in the FSCS management expenses levy. We would not expect there to be any wider market impacts.

Benefits to policyholders

- 3.25** The main benefit would be to mitigate the detriment to policyholders of not receiving income benefits over the period of time it takes to change systems. This detriment is likely to be most acute for those policyholders who depend on these benefits as their only source of income.

Q14: What might be the strengths and weaknesses of enabling the FSCS to pay income benefits at 100% until systems can be changed?

Q15: Do you have any comments on other possible approaches we should consider for income benefits?

Speed of FSCS claims handing and other issues

- 3.26** We have identified two ways in which we think we could improve the operational efficiency of the FSCS in the event an insurer fails. In relation to assignments, we made this change²³ without consultation in 2008 for deposit claims to facilitate a faster payment of deposit compensation.²⁴ As we explain in Chapter 2, we are consulting on a rule change to extend this to other sectors.

(iii) Flexibility in verifying scope – life insurance

- 3.27** One of the conditions for life insurance contracts to be protected by the FSCS is that the policyholder must have been habitually resident in the EEA, the Channel Islands or the Isle of Man when the contract began. Where the policyholder is not an individual then the establishment to which the risk relates must be in the EEA, the Channel Islands or the Isle of Man.
- 3.28** Should a life insurer fail, the process of checking the residence of policyholders or the establishment to which the risk relates would mean that it would not be possible for income benefits to continue to be paid without interruption. It would also reduce the benefits that might result from simplification of eligibility criteria.²⁵
- 3.29** One approach might be to give the FSCS some discretion in verifying that a life insurance contract is a protected contract of insurance, for example, when it is not readily apparent that a contract falls outside the FSCS's scope and the costs and delay involved in verifying the position are likely to be disproportionate or disadvantageous to policyholders as a whole.

Q16: What might be the strengths and weaknesses of giving the FSCS some flexibility in verifying that a life insurance contract falls within the FSCS's scope?

(iv) Automatic assignment of policyholders' rights to the FSCS – life and general insurance

- 3.30** If the FSCS is unable to secure continuity of life insurance and instead pays compensation, it generally expects to take an assignment of the policyholder's rights against the insurer and against any third parties. This means that the FSCS takes over (is 'subrogated to') the policyholder's rights and can claim as a creditor in the liquidation and seek to recover the amount which it has paid the policyholder. Similarly the FSCS will take an assignment of the policyholder's rights in the case of the failure of a general insurer.

²³ Compensation Sourcebook (Accelerated Compensation for Depositors) Instrument 2008 (FSA 2008/62). Handbook Notice 82, 30 October 2008. COMP 15.1.17R.

²⁴ Landsbanki Islands hf undertook retail business through its UK branch under the name 'Icesave'. The branch had 'topped up' into the SCS. The UK branch had over 200,000 savers with around 300,000 accounts. The rule change was not restricted to Landsbanki.

²⁵ See Chapter 2.

- 3.31** Taking assignments of policyholders' rights involves the FSCS obtaining individual deeds of assignment from each policyholder of whom there may be many hundreds of thousands, depending on the size of the insurer. This would be a significant administrative task.
- 3.32** One approach might be to enable the FSCS to determine that payment of compensation means that the FSCS is automatically subrogated to all or any part of the rights of the claimant against the insurer and any third parties, or such rights are so transferred to the FSCS.
- 3.33** The FSCS may also have a role in paying benefits that fall due to be paid while the FSCS is securing continuity of insurance and in securing continuity. We might extend automatic transfer or assignment of rights to these situations as well.

Q17: What might be the strengths and weaknesses of automatically transferring or assigning rights to the FSCS?

Cost benefit analysis

Speed of FSCS claims handling

Compliance costs to firms and the FSCS

- 3.34** Giving the FSCS flexibility in verifying whether a life insurance contract is within the scope of the FSCS would create a risk that some policyholders receive protection who were not entitled to it. This would increase the amount of the FSCS's compensation costs. The FSA does not have information to assess the size of this risk. For example, we do not know the number of policyholders not entitled to FSCS protection as a result of being resident outside the EEA and/or where their risks are outside the EEA. Again, any increase in compensation costs would be a transfer from levy payers to the policyholders of the failed firm.
- 3.35** We do not expect these possible approaches to increasing the speed of FSCS claims handling would have wider market impacts or change the behaviour of policyholders or firms.

Benefits to policyholders

- 3.36** These possible approaches would remove the potential detriment to consumers of delayed compensation. They would also reduce the FSCS's costs of investigating and processing claims with the potential efficiency savings passed on to firms in the form of a reduced FSCS management expenses levy.

(vi) Payment of recoveries to policyholders (life insurance)

3.37 When the FSCS takes an assignment of the policyholder's rights against the insurer and the FSCS subsequently makes recoveries through those rights, the FSCS must pay those recoveries to the policyholder (the claimant):

- to the extent that the amount recovered exceeds the amount which the FSCS has paid the policyholder as compensation; or
- in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that a failure to pay any sums recovered to the policyholder would leave a policyholder who had promptly accepted an offer of compensation at a disadvantage (compared with a policyholder who had delayed accepting an offer of compensation).

3.38 The requirement for the FSCS to pay recoveries to policyholders applies only where the FSCS has paid compensation. Although this is not stated expressly, the effect of FSMA and our rules is that compensation does not currently include cases where the FSCS has:

- paid benefits which fell due to be paid while the FSCS was seeking to secure continuity of insurance; or
- secured continuity of insurance by a transfer of the business to another insurer or the issue of substitute policies.

3.39 We are considering whether this is an appropriate policy outcome. Where the FSCS has paid compensation, we consider that it may remain appropriate for the FSCS to pay recoveries to policyholders of life insurers, as it does to other claimants. This is a potentially significant and costly burden as the FSCS may need to administer payments to policyholders for many years after the FSCS has paid compensation. However, in practice we think the circumstances in which the FSCS would pay recoveries to policyholders are likely to be rare given the 90% unlimited protection.²⁶ In addition, if the amount recovered over and above 90% was small, policyholders might receive little extra once the FSCS deducted the costs of recovery and distribution.

3.40 There are a number of reasons why it may not be appropriate for the FSCS to pay any recoveries where it has secured continuity of insurance or paid benefits falling due:

- we are mindful of not adding to the complexity of the FSCS's operations unless this is justified;
- policyholders receiving payment of benefits falling due are receiving benefits earlier than other policyholders who are waiting for compensation to be paid;
- to the extent that recoveries over 90% are due to investment performance after the policyholder received his benefits, it seems reasonable that the policyholder should not be entitled to these recoveries; and

²⁶ Particularly in comparison with any recoveries over and above the deposits or investments limits of £85,000 and £50,000 respectively.

- where the FSCS has secured continuity of insurance at 90% or more, policyholders are likely to be in a better position than a policyholder who has received a payment of compensation. (Compensation may be insufficient to enable the policyholder to buy equivalent cover due, for example, to issues such as increased age and possibly worse health.)

3.41 On balance, it may be appropriate to maintain the current position but to clarify the rules so that they set out the position explicitly.

Q18: What might be the strengths and weaknesses of maintaining the current position on recoveries but clarifying our rules?

Q19: Do you have any comments on our high level CBA relating to the ideas on insurance in this Chapter?

Q20: Could you provide any additional data to help our cost benefit analysis as we would like to gather more information to help our consideration of the issues discussed.

Annex 1

List of questions

- Q1:** Do you agree (i) with our proposal to give the FSCS more flexibility in quantifying claims, and (ii) that we should not extend the change to defaults that occur before the rule change comes into effect?
- Q2:** Do you agree with our proposal to simplify eligibility criteria?
- Q3:** Do you agree with our proposal to remove the requirement for the FSCS to obtain an application form?
- Q4:** Do you agree with our proposal for FSCS to have the option of taking an automatic assignment of rights?
- Q5:** Do you agree with our proposal regarding compensation for shortfalls in client money?
- Q6:** Do you agree with our proposal to remove duplication in relation to declarations of default?
- Q7:** Do you agree with our proposal to enable the FSCS, in certain cases, to pay compensation without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of the claim?

- Q8:** Do you agree with our proposal for the rule to apply to acts or omissions or defaults before it comes into effect?
- Q9:** Do you agree with our proposal to clarify the deposits which the FSCS can protect?
- Q10:** Do you agree with the proposed clarification to the COMP 16 disclosures?
- Q11:** What might be the strengths and weaknesses of increasing FSCS protection for benefits attributable to premiums paid after the appointment of a liquidator or administrator?
- Q12:** Do you have any comments on maintaining the current FSCS protection for life insurance?
- Q13:** Do you have any comments on any other possibilities we could consider for FSCS protection for life insurance?
- Q14:** What might be the strengths and weaknesses of enabling the FSCS to pay income benefits at 100% until systems can be changed?
- Q15:** Do you have any comments on other possible approaches we should consider for income benefits?
- Q16:** What might be the strengths and weaknesses of giving the FSCS some flexibility in verifying that a life insurance contract falls within the FSCS's scope?
- Q17:** What might be the strengths and weaknesses of automatically transferring or assigning rights to the FSCS?
- Q18:** What might be the strengths and weaknesses of maintaining the current position on recoveries but clarifying our rules?

- Q19:** Do you have any comments on our high level CBA relating to the ideas on insurance in this Chapter?
- Q20:** Could you provide any additional data to help our cost benefit analysis as we would like to gather more information to help our consideration of the issues discussed.

Appendix 1

Draft Handbook text

COMPENSATION SOURCEBOOK (AMENDMENT NO X) INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 213 (The compensation scheme);
 - (d) section 214 (General); and
 - (e) section 215 (Rights of the scheme in insolvency); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook .
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Compensation sourcebook (COMP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Compensation Sourcebook (Amendment No X) Instrument 2012.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

client money

...

- (4) (in *UPRU* and *COMP*) client money for the purposes of the relevant *client money rules*.

Annex B

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

3.2.1 R The *FSCS* may pay compensation to an *eligible claimant*, subject to *COMP* 11 (Payment of compensation), if it is satisfied that:

- (1) an *eligible claimant* has, ~~for claims other than claims under a protected contract of insurance,~~ made an application for compensation (but see *COMP* 3.2.1AR);

...

Treating a person as having claimed

3.2.1A R The *FSCS* may treat *persons* who are or may be entitled to claim compensation as if they had done so.

...

Claims on behalf of another person

3.2.2 R ...

...

4.2.2 R Table *COMP* 4.2.2R Persons not eligible to claim unless *COMP* 4.3 applies (see *COMP* 4.2.1R)

This table belongs to *COMP* 4.2.1R

...	
(7)	<i>Directors and managers of the relevant person in default.</i> However, this exclusion does not apply if:
	(a) both of the following apply:
	(i) the <i>relevant person in default</i> is a mutual association which is not a large mutual association; and
	(ii) the <i>directors and managers</i> do not receive a salary or other remuneration of services performed by them for the <i>relevant person in default</i>, or
	(b) the <i>relevant person in default</i> is a credit union. [deleted]

(8)	<i>Close relatives of persons excluded by (7) above [deleted]</i>
(9)	...
(10)	<i>Persons holding 5% or more of the capital of the relevant person in default, or of any body corporate in the same group [deleted]</i>
(11)	<i>The auditors of the relevant person in default, or of any body corporate in the same group as the relevant person in default, or any actuary appointed under SUP 4 (Actuaries) by a friendly society or insurance undertaking in default [deleted]</i>
(12)	<i>Persons who, in the opinion of the FSCS, are responsible for, or have contributed to, the relevant persons's default [deleted]</i>
...	

...

4.3.1 R A person is eligible to claim compensation in respect of a *protected deposit* or a *protected dormant account* if, at the date on which the *relevant person* is determined to be *in default*:

- (1) he came within category ~~(8)~~ or (14) of *COMP* 4.2.2R; or
- (2) he came within any of categories (1)-(3), ~~(7)~~ or ~~(10)~~-~~(12)~~ of *COMP* 4.2.2R, and was not a *large company*, *large mutual association*, or a *credit institution*.
- (3) ...

Long term insurance

4.3.2 R A person other than one which comes within any of categories ~~(7)~~-~~(12)~~ and category (9) or (15) of *COMP* 4.2.2R is eligible to claim compensation in respect of a *long term insurance* contract.

...

5.3.1A R A protected deposit continues to be a protected deposit if, under a transfer of banking business, it is transferred to:

- (1) an establishment of a relevant person in the United Kingdom; or
- (2) a branch of a UK firm which is a credit institution established in another EEA State under an EEA right.

...

6.3.1 R A *relevant person* is *in default* if:

- (1) ...
- (2) (in relation to an *ICD claim* or *DGD claim*):
- (a) the *FSA* has determined it to be *in default* under *COMP* 6.3.2R; or
- (b) a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *participant firm*, if that is earlier than (a); and

if a relevant person is in default in relation to an *ICD claim* or a *DGD claim* it shall be deemed to be *in default* in relation to any other type of *protected claim*.

...

7 **Assignment or subrogation of rights**

...

- 7.1.3 G The *FSCS* may (and in some cases must) make an offer of compensation conditional on the assignment of rights to it by a claimant. The *FSCS* may also be subrogated automatically to the claimant's rights. The purpose of this chapter is to make provision for and set out the consequences of an assignment or subrogation of the claimant's rights.

...

- 7.2.1 R The *FSCS*:
- (1) must or if the *FSCS* is subrogated automatically to the claimant's rights may make any payment of compensation to a claimant, in respect of a *protected deposit*, conditional on the claimant, in so far as able to do so, assigning the whole of his rights; and

...

...

- 7.2.3 R (1) Before taking assignment of rights from the claimant under *COMP* 7.2.1R, the *FSCS* must inform the claimant that if, after taking assignment of rights, the *FSCS* decides not to pursue recoveries using those rights it will, if the claimant so requests in writing, reassign the assigned rights to the claimant. The *FSCS* must comply with such a request in such circumstances.
- (2) [deleted] [Editor's Note: The text of this sub-paragraph has been moved to new *COMP* 7.4.1R.]
- (3) [deleted]

Specific provisions relating to claims for protected deposits

- 7.2.3A R [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.5.1R]*
- 7.2.3B R [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.5.2R]*
- 7.2.3C G [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.5.3G]*
- 7.2.3D G [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.5.4G]*

Provisions relating to other classes of protected claim

- 7.2.3E R [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.6.1R]*
- 7.2.4 R [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.6.2R]*
- 7.2.4A R [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.6.3R]*
- 7.2.5 R [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.6.4R]*
- 7.2.6 G [deleted] *[Editor's Note: The text of this provision has been moved to new COMP 7.6.6G]*

...

After COMP 7.2 insert the following new sections.

[Editor's Note: Some of the text of the new sections has been moved, with or without amendment, from existing COMP provisions; where this is the case, the previous provision number is shown above the new number, and underlining indicates new text added to, and striking through indicates deletions from, the text of the previous provision. New provisions and headings are shown underlined.]

7.3 Automatic subrogation

7.3.1 R The FSCS's powers in this section apply to all *claims* except those under *protected contracts of insurance*.

~~15.1.5~~
7.3.2 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*~~ *protected claim* or class of *protected claim* made with respect to 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) (for the purposes of this section the terms “Non-UK Scheme” and “Other Funder” have the same meaning as in *COMP 15.1.14R*.)

15.1.6
7.3.3 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
7.3.4 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*~~ *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 claims*, parts of *protected deposits claims* and/or classes of *protected deposits claims* 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. Such publication must be accompanied by a statement explaining the effect of *COMP 7.3.11R*.
 - (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
7.3.5 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~~
7.3.6 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~~
7.3.7 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.

Rights and obligations against relevant persons and third parties

~~15.1.17~~
7.3.8 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 claim* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* with ~~permission to accept deposits~~ an appropriate permission 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~~ 7.3.9R).

~~15.1.18~~ 7.3.9 R The *FSCS* may alternatively or additionally make the actions in *COMP* ~~15.1.17R(1)~~ 7.3.8R(1) and *COMP* ~~15.1.17R(2)~~ 7.3.8R(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.

~~15.1.20~~ 7.3.10 R (1) The *FSCS* may determine that:

- (a) if the claimant does not assign or transfer his rights under ~~COMP 15.1.18R~~ 7.3.8R;
- (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~~ COMP 7.3.8R or COMP 7.3.9R or 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.

7.3.11 R If the FSCS decides not to pursue recoveries arising out of a determination made by the FSCS under COMP 7.3.8R and a claimant wishes to pursue those recoveries himself and so requests in writing, the FSCS must comply with that request and the relevant determination shall have no effect with respect to that claimant's rights.

7.4 Duty on FSCS to pursue recoveries

~~7.2.3R(2)~~ R If the FSCS takes assignment or transfer of rights from the claimant under COMP 7.2.1R or is otherwise subrogated to the rights of the claimant, it must pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue.
7.4.1

7.5 Recoveries: protected deposits

~~7.2.3A~~ R If the FSCS, in relation to a claim for a protected deposit, makes recoveries from the relevant person or any third party in respect of that protected deposit the FSCS must:
7.5.1

- (1) retain from those recoveries a sum equal to the "FSCS retention sum"; and
- (2) as soon as reasonably possible after it makes the recoveries, pay to the claimant, or as directed by the claimant, a sum equal to the "top up payment".

~~7.2.3B~~ R The FSCS must calculate "FSCS retention sum" and the "top up payment" as follows:
7.5.2

- (1) calculate the "recovery ratio" of;
 - (a) the amount recovered by the FSCS through rights assigned or transferred under COMP 7.2.1R or otherwise subrogated (taking into account any deduction from that amount the FSCS may make to cover part or all of its reasonable costs of recovery and of distribution, if any); to

- (b) the claimant's overall *claim* for *protected deposits* against the *relevant person in default* less any liability of a *Home State* deposit guarantee scheme;
- (2) subtract the sum paid by the *FSCS* as compensation and any amount paid or payable by a *Home State* compensation scheme to the claimant from the total value of the claimant's overall *claim* for *protected deposits*, to give the "compensation shortfall";
- (3) apply the recovery ratio to the sum paid by the *FSCS* as compensation to the claimant, to give the "FSCS retention sum"; and
- (4) apply the recovery ratio to the compensation shortfall, to give the "top up payment".
- 7.2.3C G (1) For example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £96,000 (after the costs of recovery and of distribution), then:
- 7.5.3
- (a) the recovery ratio would be 80% ($£96,000 \div £120,000$);
- (b) the compensation shortfall would be £35,000 ($£120,000 - £85,000$);
- (c) the FSCS retention sum would be £68,000 ($80\% \times £85,000$);
- (d) the top up payment would be £28,000 (80% of £35,000);
- (e) the total payment to the claimant would be £113,000 (£85,000 of compensation plus £28,000 of top up payment); and
- (f) the total outlay by the *FSCS*, net of the FSCS retention sum, would be £17,000 ($20\% \times £85,000$).
- (2) In the example above, the amount recovered exceeds the amount of compensation. However, *COMP 7.2.1R* also applies where the amount recovered is less than the amount of compensation. Therefore, for example, if the claimant's overall *claim* for *protected deposits* against a *relevant person* was for £120,000, and the *FSCS* paid compensation of £85,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £24,000 (after the costs of recovery and of distribution), then:
- (a) the recovery ratio would be 20% ($£24,000 \div £120,000$);
- (b) the compensation shortfall would be £35,000 ($£120,000 -$

£85,000);

- (c) the FSCS retention sum would be £17,000 (20% x £85,000);
- (d) the top up payment would be £7,000 (20% of £35,000);
- (e) the total payment to the claimant would be £92,000 (£85,000 of compensation plus £7,000 of top up payment); and
- (f) the total outlay by the *FSCS*, net of the FSCS retention sum, would be £68,000 (80% x £85,000).

~~7.2.3D~~ 7.5.4 G In order to prevent a claimant suffering disadvantage arising solely from his prompt acceptance of the *FSCS's* offer of compensation compared with what might have been the position had he delayed his acceptance, the *FSCS* shall apply the rule in *COMP* 12.2.7R(2).

7.6 Recoveries: claims other than for protected deposits

~~7.2.3E~~ 7.6.1 R If the *FSCS* makes recoveries ~~through rights assigned under *COMP* 7.2.1R~~ in relation to a *claim* that is not for a *protected deposit*, it may deduct from any recoveries paid over to the claimant under *COMP* ~~7.2.4R~~ 7.6.2R part or all of its reasonable costs of recovery and distribution (if any).

~~7.2.4~~ 7.6.2 R Unless compensation was paid under *COMP* 9.2.3R or the *claim* was for a *protected deposit*, if a claimant ~~agrees to assign~~ assigns or transfers his rights to the *FSCS* or a claimant's rights and claims are otherwise subrogated to the *FSCS* and the *FSCS* subsequently makes recoveries through those rights or claims, those recoveries must be paid to the claimant

- (1) to the extent that the amount recovered exceeds the amount of compensation (excluding interest paid under *COMP* 11.2.7R) received by the claimant in relation to the *protected claim*; or
- (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation at a disadvantage relative to a claimant who had delayed accepting an offer of compensation (see *COMP* ~~7.2.5R~~ 7.6.4R); or
- (3) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant whose rights and claims had been subrogated to the *FSCS* at a disadvantage relative to a claimant whose rights and claims had not been subrogated to the *FSCS* (see *COMP* 7.6.5R).

~~7.2.4A~~ R For the purpose of *COMP* ~~7.2.4R~~ 7.6.2R compensation received by *eligible claimants* in relation to *Lloyd's policies* may include payments made from

- 7.6.3 the *Central Fund*.
- 7.2.5 7.6.4 R Except for a *claim* for a *protected deposit*, the *FSCS* must endeavour to ensure that a claimant will not suffer disadvantage arising solely from his prompt acceptance of the *FSCS's* offer of compensation compared with what might have been the position had he delayed his acceptance.
- 7.6.5 R Except for a *claim* for a *protected deposit*, the *FSCS* must endeavour to ensure that a claimant will not suffer disadvantage arising solely from the subrogation of his rights and claims to the *FSCS* compared with the position had the subrogation not taken place.
- 7.2.6 7.6.6 G As an example of the circumstances which ~~*COMP 7.2.5R*~~ is *COMP 7.6.4R* and *COMP 7.6.5R* are designed to address, take two claimants, A and B.
- (1) Both A and B have a *protected investment business claim* of £60,000 against a *relevant person in default*. The *FSCS* offers both claimants £50,000 compensation (the maximum amount payable for such claims *COMP 10.2.3R*). A accepts immediately, and assigns his rights against the *relevant person* to the *FSCS*, but B delays accepting the *FSCS's* offer of compensation.
 - (2) In this example, the liquidator is able to recover assets from the *relevant person in default* and makes a payment of 50p in the pound to all the *relevant person's* creditors. If the liquidator made the payment before any offer of compensation from the *FSCS* had been accepted, A and B would both receive £30,000 each from the liquidator, leaving both with a loss of £30,000 to be met by the *FSCS*. Both *claims* would be met in full.
 - (3) However, if the payment were made by the liquidator after A had accepted the *FSCS's* offer of compensation and assigned his rights to the *FSCS*, but before B accepted the *FSCS* offer of compensation, A would be disadvantaged relative to B even though he has received £50,000 compensation from the *FSCS*. A would be disadvantaged relative to B because he promptly accepted the *FSCS's* offer and assigned his rights to the *FSCS*. Because A has assigned his rights to the *FSCS*, any payment from the liquidator will be made to the *FSCS* rather than A. In this case the *FSCS* has paid A more than £30,000, so the £30,000 from the liquidator that would have been payable to A will be payable in full to the *FSCS* and not to A.
 - (4) B is able to exercise his rights against the liquidator because he delayed accepting the *FSCS's* offer and receives £30,000 from the liquidator. B can then make a *claim* for the remaining £30,000 to the *FSCS* which the *FSCS* can pay in full (see *COMP 10.2.2G*). B therefore suffers no loss whereas A is left with a loss of £10,000, being the difference between his *claim* of £60,000 and the compensation paid by the *FSCS* of £50,000.

Amend the following as shown.

[Editor's Note: Some of the text of the new provisions shown below has been moved, with or without amendment, from existing COMP provisions; where this is the case, the previous provision number is shown underneath the new number, and underlining indicates new text added to, and striking through indicates deletions from, the text of the previous provision. New provisions and headings are shown underlined.]

Form and method of paying compensation

- ~~15.1.13~~ 11.2.3A 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*; ~~and/or~~
 - (4) by paying compensation to a *firm*, which makes a *claim* on behalf of its *clients*, if the *FSCS* is satisfied that:
 - (a) the business of a *relevant person in default* has been transferred to the *firm*;
 - (b) each *client* has a *claim* against the *relevant person in default* arising out of a *shortfall* in *client money* held by the *relevant person in default*;
 - (c) the *clients* in respect of which compensation is to be paid satisfy the conditions set out in *COMP* 3.2.2R(1); and
 - (d) the *firm* has agreed, on such terms as the *FSCS* thinks fit, to pay, or credit the accounts of, without deduction, each *client*, that part of the compensation due to him.

...

Paying full compensation in return for rights

- 11.2.9 **R** Where the *FSCS* considers that the conditions in *COMP* 11.2.4R are satisfied but, in relation to a class of *claim*, in order to provide fair compensation for the generality of such *claims* it would be appropriate to take the approach in (1) and (2) rather than pay an appropriate lesser sum in final settlement or make a payment on account, it may for that class of *claim*:
- (1) receive whether by assignment, transfer or operation of law the whole or any part of a claimant's rights against the *relevant person*, or against any third party, or both on such terms as the *FSCS* thinks fit; and
- (2) disregard the value of the rights so received in determining the claimant's overall *claim*.
- 11.2.10 **G** Factors that the *FSCS* may take into account when considering taking the approach in *COMP* 11.2.9R(1) and (2) include whether the amount of claimants' overall *claims* are likely to be assessed within a reasonable time frame, the circumstances of the claimants, the circumstances of the *claims* and the nature of the products to which the *claims* relate.

...

Settlement of claims

- ~~15.1.21~~
12.2.10 **R** (1) The *FSCS* may pay compensation without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of ~~that~~ the *claim* notwithstanding any provision in this sourcebook or *FEES* 6 to the contrary, if in the opinion of the *FSCS*:
- (a) the costs of investigating the merits of the *claim* are reasonably likely to ~~exceed the amount of the *claim*~~ be disproportionate to the likely benefit of such investigation; and
- (b) (as a result or otherwise) it is reasonably in the interests of *participant firms* to do so.
- ... (2) This *rule* does not apply with respect to *claims* for *protected deposits* that are excluded by Article 2 of the *Deposit Guarantee Directive*.
- (3) This *rule* does not apply with respect to *claims* in connection with *protected investment business* that are excluded by Article 3 of the *Investor Compensation Directive*.

...

15 ~~Deposit payout~~ Protected deposits: Payments from other schemes

...

- 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*, the FSCS with the power to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government, to be subrogated automatically to the claimant's rights against the *relevant person* and/or any third party, and/or to settle claims. This section operates separately from Part XVA of the Act.~~

...

- 15.1.5 R ~~[deleted]~~ *[Editor's Note: The text of this provision has been moved to new COMP 7.3.2R]*

- 15.1.6 R ~~[deleted]~~ *[Editor's Note: The text of this provision has been moved to new COMP 7.3.3R]*

~~Determinations by the FSCS~~

- 15.1.7 R ~~[deleted]~~ *[Editor's Note: The text of this provision has been moved to new COMP 7.3.4R]*

~~Verification of determinations~~

- 15.1.8 R ~~[deleted]~~ *[Editor's Note: The text of this provision has been moved to new COMP 7.3.5R]*

~~Effect of this section on other provisions in this sourcebook etc~~

- 15.1.9 R ~~[deleted]~~ *[Editor's Note: The text of this provision has been moved to new COMP 7.3.6R]*

- 15.1.10 R ~~[deleted]~~ *[Editor's Note: The text of this provision has been moved to new COMP 7.3.7R]*

~~Payment of compensation without an application~~

- 15.1.11 R ~~The FSCS may treat an *eligible claimant* as if the *eligible claimant* had made a *claim* under the *compensation scheme* and 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). [deleted]~~

~~Early compensation for term or notice accounts~~

- 15.1.12 R ~~[deleted]~~

~~Form and method of paying compensation~~

- 15.1.13 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 11.2.3AR]

...

Rights and obligations against the relevant person and third parties

- 15.1.17 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.8R]

- 15.1.18 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.9R]

- 15.1.19 R The FSCS may determine in accordance with COMP 7.3.4R 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)~~ 7.3.8R(3) in the name of, and on behalf of, the claimant against the *relevant person* and/or any third party.

- 15.1.20 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 7.3.10R]

~~Settlement of claims~~

- 15.1.21 R ~~[deleted]~~ [Editor's Note: The text of this provision has been moved to new COMP 12.2.10R]

...

- 16.3.1 R A *firm* that is a *UK domestic firm* or a *non-EEA firm* must disclose the following information to any *protected deposit* holder with that *firm* who is or is likely to be an *eligible claimant*.

“Important information about compensation arrangements

We are covered by the Financial Services Compensation Scheme (FSCS). The FSCS can pay compensation to depositors if a [bank/building society/credit union - delete as appropriate] is unable to meet its financial obligations. Most depositors - including most individuals and small businesses - are covered by the scheme.

In respect of deposits, an eligible depositor is entitled to claim up to [insert FSCS maximum payment for *protected deposits*]. For joint accounts each account holder is treated as having a claim in respect of their share so, for a joint account held by two eligible depositors, the maximum amount that could be claimed would be [insert FSCS maximum payment for *protected deposits*] each (making a total of [insert FSCS maximum payment for

protected deposits x 2]). The [insert *FSCS* maximum payment for *protected deposits*] limit relates to the **combined** amount in all the eligible depositor's accounts with the [bank/building society/credit union - delete as appropriate], including their share of any joint account, and not to each separate account.

For further information about the scheme (including the amounts covered and eligibility to claim) please [~~insert as appropriate one or more of the following:~~] call us on [insert *firm's* phone number] / ~~contact your firm representative / ask at your local branch,~~ or refer to the *FSCS* website www.FSCS.org.uk or call [insert *FSCS* phone number]."

....

TP1.1 Transitional Provisions Table

...

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...					
28	<u>Amendments introduced by the Compensation Sourcebook (Amendment No X) Instrument 2012</u>	R	The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was <i>in default</i> before [date]. Notwithstanding the above: (a) to the extent that the provisions changed apply to <i>protected deposits</i> , all the changes in (2); and (a) the changes to <u>COMP 12.2.10R</u> ; apply irrespective	From [date] indefinitely	From [date]

			<u>of when the default occurred.</u> <u>This transitional provision has no effect in relation to the changes to COMP 16.3.1R.</u>		
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