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2009/47: Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009

United Kingdom: Financial Services Authority

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**FINANCIAL SERVICES COMPENSATION SCHEME (BANKING
COMPENSATION REFORM) INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the powers and related provisions in 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 157(1) (Guidance);
 - (d) section 213 (The compensation scheme);
 - (e) section 214 (General); and
 - (f) section 215 (Rights of the scheme in relevant person’s 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 referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex C comes into force on 1 August 2009;
 - (2) Part 2 of Annex C comes into force on 1 January 2010; and
 - (2) the remainder of this instrument comes into force on 31 December 2010.

Amendments to the Handbook

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Compensation sourcebook (COMP)	Annex C

Citation

- E. This instrument may be cited as the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009.

By order of the Board
23 July 2009

Annex A**Amendments to the Glossary of definitions**

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

single customer view

a single, consistent view of an *eligible claimant's* aggregate *protected deposits* with the relevant *firm* which contains the information required by *COMP 17.2.4R*, but excluding from that view those accounts where the *eligible claimant* is a beneficiary rather than the account holder or if the account is not active as defined in *COMP 17.2.3R(2)*.

Annex B

Amendments to the Fees manual (FEES)

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

6.5 Compensation costs

...

- 6.5.15 R ~~Where a *participant firm* can identify that a *protected deposit* was made by a *person* who is not an *eligible claimant*, it may exclude the amount of that deposit from the tariff base, provided that it notifies the *FSCS* of the amount of the deposit so excluded and provides the *FSCS* with such information about the deposit as the *FSCS* may reasonably require. [deleted]~~

...

6 Annex 3 Financial Services Compensation Scheme – classes and sub-classes

This table belongs to *FEES* 6.5.7R and *FEES* TP 2.5.2R

Class A	Deposit
...	
Tariff base	<p><i>Protected deposits</i> as at 31 December. <u>Except where paragraph (4) says otherwise, <i>protected deposits</i> must be adjusted as follows.</u></p> <p>(1) <u>Only include a <i>protected deposit</i> to the extent that an <i>eligible claimant</i> would have a claim in respect of it.</u></p> <p>(2) <u>Exclude any amount in respect of which the <i>FSCS</i> would not pay compensation due to the maximum payment limits in <i>COMP</i> 10.2.</u></p> <p>(3) <u>The tariff base calculation is made on the basis of the information that the <i>firm</i> would have to include in the <i>single customer views</i> it has to be able to produce under <i>COMP</i> 17 (Systems requirements for firms that accept deposits). The information must be of the extent and standard required if the <i>firm</i> was preparing the <i>single customer views</i> as at the valuation date for the tariff base (31 December).</u></p> <p>(4) (a) <u>If this paragraph applies, the adjustments in (1) to (3) do not apply and the calculation is based on <i>protected deposits</i>.</u></p> <p>(b) <u>This paragraph applies with respect to a <i>protected deposit</i> to the extent that, under <i>COMP</i> 17, the <i>firm</i> does not have to identify an <i>eligible claimant</i> with respect to that <i>protected deposit</i> because the account is held by the account holder on behalf of others.</u></p>

...

Notes	
...	
(3)	<p>The question of whether a <i>person</i> is an <i>eligible claimant</i> or not, or whether a <i>contract of insurance</i> is a <i>protected contract</i> or not, or whether business is compensatable business or not, must be judged at whichever of the following dates the <i>firm</i> chooses:</p> <p>(a) (for a <i>person</i> who has become a new <i>client</i> during the period by reference to which the <i>firm's</i> tariff base is being calculated) the date on which the person becomes a client;</p> <p>(b) (for a <i>person</i> who has ceased to be a <i>client</i> during that period) the date on which the <i>person</i> ceases to be a <i>client</i>; or</p> <p>(c) (in any other case) the date to which the most recent information supplied by the <i>firm</i> under <i>FEES</i> 6.5.13R is prepared.</p> <p><u>However this does not apply for the purpose of calculating the tariff base for class A (Deposits) so far as it relates to <i>protected deposits</i>.</u></p>

Annex C

Amendments to the Compensation sourcebook (COMP)

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

Part 1: Comes into force on 1 August 2009

1.1.4 G *Firms* will be particularly interested in *FEES* 6, which deals with levies and *COMP* 16 which deals with disclosure requirements for *firms* that *accept deposits*.

...

1.1.8 G *COMP* 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of *COMP* ~~2-14~~ to 16 cover who is eligible, the amount of compensation and how it might be paid, and ~~the ways in which the activities of the *FSCS* are to be financed~~ disclosure requirements for *firms* that *accept deposits*.

...

4.3.1 R A *person* is eligible to claim compensation in respect of a *protected deposit* 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*.

...

Part 2: Comes into force on 1 January 2010

16.1.2 G The purpose of this chapter is to set out the information about compensation these *firms* must disclose, how frequently that information should be disclosed and the methods of communication which should be used.

...

After *COMP* 16.2 insert the following new section. The text is not underlined.

16.3 UK domestic firms, non-EEA firms and incoming EEA firms

UK domestic firms and non-EEA firms

- 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 ask at your local branch, refer to the FSCS website www.FSCS.org.uk or call [insert FSCS phone number].”

- 16.3.2 G A *UK domestic firm* that discloses the information required to be disclosed by *COMP* 16.3.1R to *persons* that hold *protected deposits* through an overseas *branch* may do so in the local language.

Incoming EEA firms that accept deposits through UK branches and have not obtained top-up cover

- 16.3.3 R An *incoming EEA firm* that *accepts deposits* through a *UK branch* and has not obtained *top-up cover* must disclose the following information to any *protected deposit* holder with that *branch* who is or is likely to be eligible to claim for compensation from the *firm’s Home State* compensation scheme.

“Important information about compensation arrangements

We are part of [insert name of *firm*] which is based in [insert name of *Home State*]. Most depositors are covered by [insert name of *Home State* compensation scheme] which is also based in [insert name of *Home State*].

This means that if our bank is unable to meet its financial obligations, our eligible UK depositors would be entitled to claim up to £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] from the [insert name of *Home State* compensation scheme]. [State any significant conditions that compensation is subject to e.g. if paid on a per account or per depositor basis, and if set-off applies].

For further information about the [insert name of *Home State* compensation scheme] (including the amounts covered and eligibility to claim) please contact your branch or refer to [insert contact details of the *Home State* compensation scheme].”

Incoming EEA firms that accept deposits through UK branches and have obtained top-up cover

- 16.3.4 R An *incoming EEA firm* that *accepts deposits* through a *UK branch* and has obtained *top-up cover* 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 part of [insert name of *firm*] which is based in [insert name of *Home State*]. Most depositors are covered by [insert name of *Home State* compensation scheme] compensation scheme which is also based in [insert name of *Home State*]. In addition, for depositors with our UK branch we have joined the UK compensation scheme, the Financial Services Compensation Scheme (FSCS).

This means that if our bank is unable to meet its financial obligations, eligible depositors with our UK branch could claim up to £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] from the [insert name of *Home State* compensation scheme] and if they have more saved with us, they could also claim for the remainder up to [insert *FSCS* maximum payment for *protected deposits*] from the FSCS.

This is because the [insert name of *Home State* compensation scheme] is only responsible for paying the first part of the compensation up to £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] and the FSCS is only responsible for paying the second part of compensation – being above £ [insert *Home State* compensation scheme maximum payment for *protected deposits*] and up to [insert *FSCS* maximum payment for *protected deposits*].

The FSCS will also try to help depositors with our UK branch, for example, to get in touch with the [insert name of *Home State* compensation scheme] compensation scheme and to understand the

process involved.

For further information on how compensation would apply to you please contact:

- [insert name of *firm*] by dropping into one of our branches, at [insert website link] or by calling [insert phone number].

General information is also available from:

- the FSCS by calling [insert FSCS phone number] or at <http://www.fscs.org.uk/>.
- [insert name of *Home State* compensation scheme] compensation scheme by contacting [insert relevant phone number and website link].

Incoming EEA firms: conversion of home state compensation scheme limit to sterling

- 16.3.5 G When an incoming *EEA firm* inserts the *Home State* compensation scheme maximum payment for *protected deposits* in the disclosure required by this section, that amount should be converted into pounds sterling and the exchange rate noted in a footnote. The exchange rate used should be updated regularly.

Frequency of communication

- 16.3.6 R (1) A *firm* must provide the information required to be disclosed by this section on at least a 6 monthly basis.
- (2) If a *firm* normally communicates with a *protected deposit* holder less frequently than every 6 months (1) does not apply and the *firm* must provide the information required to be disclosed by this section on at least an annual basis.

- 16.3.7 G The *FSA* considers monthly, quarterly or 6 monthly account statements to be a means of communication for these purposes.

Method of communication

- 16.3.8 R (1) If the recipient receives paper statements, the information required to be disclosed by this section must be prominently displayed in the relevant paper statement.
- (2) If the recipient uses internet banking, the information required to be disclosed by this section must be communicated by electronic means in a way that brings it to the attention of the recipient.
- (3) If the recipient does not receive paper statements or use internet banking the information required to be disclosed by this section must be communicated in a way that brings it to the attention of the recipient.

- 16.3.9 G The *FSA* considers that if information required to be disclosed by this section is communicated by letter/leaflet sent through the post, email or a pop up box on the *firm*'s internet website the requirement to communicate in a way that brings the information to the attention of the recipient will have been satisfied.

Trading name disclosure

- 16.3.10 R Where a *firm* operates under more than one trading name, the *firm* must, in any communication to a *protected deposit* holder who is or is likely to be eligible to claim for compensation from the *compensation scheme* or other *Home State* compensation scheme and generally in its *UK branches* and on its website, prominently disclose the trading names under which it operates and explain the impact this has on any *protected deposit* holder's entitlement to compensation from the *compensation scheme* and any relevant *Home State* or *Host State* compensation scheme.

Further disclosure

- 16.3.11 G A *firm* should ensure that all communications to consumers about compensation for *protected deposits* are clear, fair and not misleading.
- 16.2.12 G A *firm* should also consider its obligations under the Credit Institutions (Protection of Depositors) Regulations 1995.

Part 3 Comes into force on 31 December 2010

All references in *COMP* (other than in *COMP* 12.2.1R and the heading in respect of *COMP* 12.2.4R) to "overall net *claim*" are amended to "overall *claim*".

Amend the following as shown.

- 1.1.4 G *Firms* will be particularly interested in *FEES* 6, which deals with levies ~~and~~, *COMP* 16 which deals with disclosure requirements for *firms* that *accept deposits* and *COMP* 17 which deals with systems and information requirements for *firms* that *accept deposits*.

...

- 1.1.8 G *COMP* 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of *COMP* 2 to ~~46~~ 17 cover who is eligible, the amount of compensation and how it might be paid, ~~and~~ disclosure requirements for *firms* that *accept deposits* and systems and information requirements for *firms* that *accept deposits*.

...

- 12.2.1 R The amount of compensation payable to the claimant in respect of:
- (1) any type of *protected claim* other than a *claim for a protected deposit* is the amount of his overall net *claim* against the *relevant person* at the *quantification date*; and
 - (2) any claim for a protected deposit is the amount of his overall gross claim against the relevant person at the quantification date;
- and any reference in COMP to overall claim means “overall net claim” or “overall gross claim” as appropriate.

...

Overall gross claim

- 12.2.6A R A claimant’s overall gross claim is the sum of the claims for protected deposits that he has against a relevant person in default.

Payments to the claimant

- 12.2.7 R ...

Time for calculation of compensation due to the claimant

- 12.2.8 R ...

Amounts paid by the Society

- 12.2.9 R ...

...

- 12.3.1 R (1) For a *protected deposit claim*, the *quantification date* is the date the *relevant person* is determined to be *in default*, ~~or the date the protected deposit was due and payable, if later.~~
- (2) If a protected deposit was not due and payable on or before the date that the relevant person was determined to be in default, the FSCS must nevertheless treat that date as the quantification date for that deposit and pay compensation comprising:
- (a) the principal sum on the basis that it is due and payable on that date;
 - (b) interest or premium accrued to that date; and
 - (c) unaccrued interest or premium attributable to or arising in respect of the period to that date.

...

15 Special situations Deposit payout

15.1 Accelerated compensation for depositors

15.1.1 G When a *relevant person* is *in default* with *claims* against it for *protected deposits* it ~~may~~ is likely to be desirable for the *FSCS* to make accelerated payments of compensation, for the protection of consumers and to maintain market confidence.

15.1.2 G To facilitate an accelerated payment of compensation, this section provides additional and alternative powers for the *FSCS*. These powers include the ability for the *FSCS* to pay compensation to *eligible claimants* without an application, to provide compensation by a variety of means and subject to conditions including by making a payment directly into an account maintained by another *authorised person*, to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government ~~and/or~~, to be subrogated automatically to the claimant's rights against the *relevant party* and/or any third party, and/or to settle claims.

...

15.1.4 R ~~Before using any power in this section, the *FSCS* must determine that using that power:~~

- ~~(1) would be beneficial to the generality of *eligible claimants* with *protected deposits* with a *relevant person in default* in respect of whom the power is to be used; and~~
- ~~(2) is unlikely to result in any additional cost to the *FSCS* which would require the imposition of increased levies on *participant firms*, over and above those required if the power was not exercised, or any additional cost is likely to be justified by the benefits. [deleted]~~

...

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

- ~~(1) with the consent of the *eligible claimant* (express or implied, including by conduct); or~~
- ~~(2) without that consent, but in this case the amount that the *eligible claimant* is entitled to claim from the *FSCS* is the lesser of:

 - ~~(a) the amount which the *FSCS* quantifies as being the value of that *claim* as at the *quantification date*; and~~
 - ~~(b) the amount that would have been payable at the date the *deposit* was due and payable;~~~~

and ~~COMP 12.3.1R is modified accordingly. [deleted]~~

...

Settlement of claims

- 15.1.21 R (1) The FSCS may pay compensation without fully or at all investigating the eligibility and/or amount of that *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*; and
 - (b) 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*.

...

After COMP 16 insert the following new chapter. The text is all new and is not underlined.

17 Systems and information requirements for firms that accept deposits

17.1 Application and purpose

- 17.1.1 R (1) This chapter applies to:
- (a) a *UK domestic firm* that *accepts deposits*;
 - (b) a *non-EEA firm* that *accepts deposits* in the *United Kingdom*; and
 - (c) an *incoming EEA firm* that *accepts deposits* through a *UK branch* and has obtained *top-up cover*.
- (2) Notwithstanding (1), this chapter does not apply to a *firm* which does not conduct business that could give rise to a *claim* for a *protected deposit* by an *eligible claimant* and has no reasonable likelihood of doing so.
- 17.1.2 G The purpose of this chapter is to set out the core systems and information requirements these *firms* must have in place to facilitate a fast compensation payout to *eligible claimants* holding *protected deposits* with them.

17.2 Core systems and information requirements

- 17.2.1 R (1) A *firm* must be able to identify which accounts are held by *eligible claimants* and which accounts (including client accounts and trust accounts) are held on behalf of beneficiaries who are or who may be

eligible claimants.

- (2) The information required by (1) must be electronically stored.
- 17.2.2 R Where eligibility of a customer to bring a *claim* for compensation from the *compensation scheme* is likely to change from time to time, a *firm* must at least annually take reasonable steps to check whether or not the customer is eligible.
- 17.2.3 R (1) A *firm* must be able to provide to the *FSCS* a *single customer view* for each *eligible claimant*, except where the *eligible claimant* is the beneficiary of an account held on his behalf by another *person* or if the account is not active, within 72 hours of a request by the *FSCS*.
- (2) An account is not active if it:
- (a) is a dormant account as defined in the Dormant Bank and Building Society Accounts Act 2008; or
- (b) is an account for which the *firm* has received formal notice of a legal dispute or competing claims to the proceeds of the account; or
- (c) appears on the ‘Consolidated list of financial sanctions targets in the United Kingdom’ that is maintained by HM Treasury.
- (3) A *firm* must be able to provide the information required by (1) by electronic transmission and in a format which is readily transferable to and compatible with the *FSCS*’s system.
- 17.2.4 R A *firm* must ensure that each *single customer view* contains all the information set out in *COMP 17.2.7R*.
- 17.2.5 R A *firm* must ensure that in relation to accounts which are held by *eligible claimants*, the system which produces the *single customer view* must:
- (1) be capable of automatically identifying the amount of compensation payable to each *eligible claimant*; and
- (2) include a check facility which allows the *firm* to identify if any portion of an *eligible claimant*’s *deposit* is over the maximum payment for a *protected deposit* set out in *COMP 10.2.3R*.
- 17.2.6 R A *firm* must take reasonable steps to ensure the accuracy of the data it holds in order to satisfy the requirements of this section.
- 17.2.7 R (1) If a *firm* operates less than 5,000 accounts held by *eligible claimants*, *COMP 17.2.1R(2)*, *COMP 17.2.3(2)* and *COMP 17.2.5R* do not apply.
- (2) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive years as at 31 December of each year, the *firm* must immediately give the *FSA* notice of that

event.

- (3) If a *firm* hitherto within (1) operates 5,000 or more accounts held by *eligible claimants* for two consecutive accounts years as at 31 December of each year, *COMP 17.2.1R(2)*, *COMP 17.2.3R(2)* and *COMP 17.2.5R* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.
- (4) If a *firm* operates 5,000 or more accounts held by *eligible claimants* on 31 December 2009 *COMP 17.2.1R(2)*, *COMP 17.2.3R(2)* and *COMP 17.2.5R* apply and continue to apply even if the *firm* operates less than 5,000 accounts held by *eligible claimants* at a future date.

Table - Minimum information firms must include in each single customer view

17.2.8 R This table belongs to *COMP 17.2.4R*

Field identifier	Field descriptor
Customer details	
Single customer view record number	Unique customer identifier
Title	Title
Customer 1 st Forename	1 st Forename
Customer 2 nd Forename	2 nd Forename
Customer 3 rd Forename	3 rd Forename
Customer Surname	Surname
Previous Name	Any former name of account holder
National Insurance number	National Insurance number
Contact details	
Single customer view record number	Unique customer identifier
House number	House number/Premise name
Street	Street
Locality	Locality
County	County
Postcode	Postcode
Country	Country
Details of account(s)	

Single customer view record number	Unique customer identifier
Account title	Surname or company name, first name, any other account initials or middle name identifier
Account number	Unique number for this account
Product type	Type of product or service – instant access/term
Account holder indicator	This field applies to joint or multiple accounts. It must identify whether the customer is the primary account holder or secondary account holder (or other such status).
Account status code	Active accounts only to be included
Account balance	At end of business on date of request from <i>FSCS</i>
Aggregate balance	
Single customer view record number	Unique customer identifier
Aggregate balance across all accounts	At end of business on date of request from <i>FSCS</i>
Compensatable amount	At end of business on date of request from <i>FSCS</i> which shows the amount to be compensated subject to the limit check that must be performed by the <i>firm</i> pursuant to <i>COMP 17.2.5R</i> (this could be lower than the aggregate balance across all accounts if this exceeds the maximum payment for a <i>protected deposit</i> set out in <i>COMP 10.2.3R</i>).

17.2.9 R Where an *eligible claimant* holds more than one account, the section of the *single customer view* which sets out “Details of account(s)” must be replicated for each account held.

17.2.10 G The amount(s) inserted into each *single customer view* as the account balance(s) and aggregate balances across all accounts should be the total of principal plus any interest or premium attributable up to the *quantification date*.

...

Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>COMP</i>	...			

14.4.6R				
<u>COMP</u> <u>17.2.7R(2)</u>	<u>The firm has operated 5,000 or more accounts held by eligible claimants for two consecutive years, having previously operated less than 5,000</u>	<u>See Matter to be notified</u>	<u>See Matter to be notified</u>	<u>Immediately</u>