

Memorandum of Understanding between the Financial Conduct Authority and the Financial Services Compensation Scheme

Purpose and Scope

1 The Financial Services Compensation Scheme (the Scheme) exists, under the Financial Services & Markets Act 2000 (FSMA), to provide protection for eligible customers of financial services firms. The Scheme protects consumers that incur financial losses when firms authorised under FSMA are unable, or likely to be unable, to pay claims against them relating to deposits, life and general insurance policies, investment business, advice and arranging of mortgage business and insurance broking. The Scheme is administered by Financial Services Compensation Scheme Ltd (FSCS).

2 The firms concerned are authorised by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) or, in some cases, authorised by the FCA only. As set out below, the FCA and the PRA can each set some of the rules relating to the Scheme and to its operator, the FSCS.

3 The arrangements for co-ordination and co-operation between the FCA and the FSCS are well defined, effective, and efficient. This Memorandum of Understanding (MoU) sets out the framework agreed between the FCA and the FSCS. It has been agreed in fulfilment of section 217A(2) of the Financial Services and Markets Act 2000 (FSMA), as amended, which places the FSCS and the FCA under a duty to co-operate and to maintain a memorandum describing compliance with that duty.

Roles and responsibilities of the FCA

4 The FCA is responsible for

- (i) regulating standards of conduct in retail and wholesale markets;
- (ii) supervising trading infrastructures that support those markets;
- (iii) the prudential supervision of firms that are not PRA-regulated; and
- (iv) the functions of the UK Listing Authority (UKLA).

It has a single strategic objective to ensure that the markets for financial services function well. Three operational objectives support this: securing an appropriate degree of protection for consumers (including wholesale consumers); protecting and enhancing the integrity of the UK

financial system; and promoting effective competition in the interests of consumers in the markets for financial services.

The FCA is also responsible under FSMA for the authorisation of firms.

5 As set out in secondary legislation, FSMA (FSCS) Order 2012, the FCA is responsible for writing the rules for the arrangements that provide protection in relation to all types of financial activity covered by the FSCS, excluding deposits and insurance provision, which is the PRA's responsibility.

6 The FCA and PRA are jointly responsible, under FSMA, for ensuring that the FSCS is capable of discharging its functions.

7 The directors of the board of the FSCS are appointed by the FCA and the PRA. Under FSMA, the FCA and the PRA will jointly seek the approval of HM Treasury in the case of the chairman's appointment. The directors are appointed on terms that secure their independence from the FCA and the PRA. The FCA and the PRA will engage the FSCS on appointments to its board.

Roles and responsibilities of the FSCS

8 The FSCS is established, as required by FSMA, as a limited company. As scheme manager, the FSCS is responsible for compensation arrangements for FCA-regulated activities under rules made by the FCA. It also administers the scheme protecting deposit and insurance provision in accordance with rules made by the PRA.

9 The FSCS, as scheme manager, is independent from, but accountable to, both the FCA and the PRA for the effective operation of the scheme. The day-to-day operation of the Scheme is the responsibility of the FSCS and its board.

10 FSCS is responsible for establishing and implementing procedures to enable FSCS to perform its relevant functions, raising levies for management expenses and compensation costs, for the use of its resources in an efficient and economic way and for reporting to the FCA, as described in this MoU, on the discharge of its functions.

Information sharing: general

11 The FCA and FSCS undertake to share information to allow them to fulfil their respective responsibilities.

12 The FSCS will keep the FCA informed in relation to issues concerning the interpretation of rules, the eligibility of claims, and its contingency and scenario planning, where appropriate. This may include copies of any legal agreements or other information that could materially affect the funding needs or the ability of the FSCS to deliver on its responsibilities.

13 The FCA agrees to keep the FSCS informed of any regulatory or market developments that may affect the planning or operation of the FSCS - both in general terms and in relation to the likelihood of a specific firm failing.

14 The FSCS will keep the FCA informed on the effectiveness of the rules for the compensation scheme.

Confidentiality

15 The FSCS and the FCA will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other party.

16 Where one party has received information from the other, it will seek consent before passing the information to a third party, unless it is shared with relevant governmental or regulatory organisations, such as the Bank of England, Her Majesty's Treasury, or the PRA.

17 Some relevant information may be received from third parties. Each body's ability to share such information with the other may in some instances be constrained by legal obligations. Both parties will seek to ensure that these instances are minimised.

18 The FSCS and the FCA will liaise, where relevant, on responding to enquiries from the public including Freedom of Information requests made to the FCA. The FSCS and FCA will also liaise concerning requests made by individuals for access to data held about them under the Data Protection Act. In all cases, one will consult the other or seek consent if appropriate, before releasing information originally belonging to the other.

Policy making

19 The FCA will seek advice from the FSCS in relation to domestic or international policy making initiatives that might have a material effect on the FSCS's ability to administer those schemes effectively now or in the future.

20 The FCA and FSCS agree to allow reasonable time, where appropriate, for each other to provide considered comments on material statements/text before they are made public. This does not include announcements in relation to defaults.

Funding, Levying and Treasury management

21 As set out under FSMA, the FCA and PRA will determine an agreed limit on the FSCS's management expenses for each financial year, based on FCA having responsibility in relation to all activities other than deposits and insurance provision. The resulting limit is set before the end of the preceding financial year. In order for the FCA and PRA to be able to consult on the limit, the FSCS will provide to each of them its proposed management expenses and annual plan for review and discussion. This will be in accordance with an agreed reporting timetable and format. The FCA, the PRA and the FSCS will co-ordinate the consultation on the management expenses limit and the FSCS's budget.

22 The FSCS will advise the FCA and the PRA if circumstances change so that it is or may become unable to deliver its responsibilities within the current management expenses limit. The FSCS will not incur expenditure in excess of its agreed budget unless there is an exceptional and unavoidable cause (such as an unforeseen rise in claims volumes) about which it will quickly inform the FCA and the PRA.

23 The FSCS will determine the Scheme levies in accordance with the FCA's and PRA's rules so that it has sufficient funds to cover its management expenses and pay out valid claims. Proposed levies will usually be announced by FSCS around the beginning of each financial year. Interim levies may be necessary where matters are not fully known in time for the main annual levy announcement. The FCA and PRA will discuss, in advance, with each other and with the FSCS, whether the levy has or may have any significant effect on the market, a particular sector or individual firms and, where this the case, what (if any) action might be reasonably practicable and appropriate to address that impact.

24 The FSCS will publish a statement of its policy on raising compensation cost levies, having taken into account the views of the FCA and stakeholders. If the FSCS amends the statement, it will follow the same process. The statement will include the policy on:

- (1) raising annual compensation cost levies;
- (2) raising interim compensation cost levies;
- (3) estimating expected compensation costs;
- (4) holding funds to meet expected compensation costs and refunding recoveries and other surpluses;
- (5) raising compensation cost levies that are to be allocated to the retail pool;
- (6) borrowing, including borrowing from commercial sources, borrowing from the National Loans Fund, borrowing for short term liquidity purposes and borrowing for longer-term funding purposes.

25 The board of the FSCS is responsible for its treasury management policies, which cover the handling of cash balances and other invested funds. It will keep the FCA informed of these policies.

Co-ordination between the FCA and the PRA

26 As set out in the MoU between the FCA and the PRA, the CEOs along with the CEO of the FSCS will meet regularly to advise the boards in relation to their oversight of the FSCS and to ensure that any operational matters of mutual interest are addressed effectively.

Reporting to the FCA

27 As required under FSMA, the board of the FSCS will report to the PRA and FCA on the discharge of its functions on an annual basis and will prepare and publish an Annual Report to support this. The report will be made within four months of the end of the financial year being reported on. The FSCS agrees to give reasonable time to allow the FCA to provide considered comments on drafts of its Annual Report and accounts.

28 The Annual Report will include:

- a statement regarding its finances as provided in the rules made by the FCA; and

- a statement or summary of transactions of each scheme class of the FCA during the year.

29 In addition, if reasonably requested by the FCA, the FSCS will provide the FCA with interim reports, at such other intervals as may be agreed, in an agreed form that may include a commentary on the FSCS's performance against its management plans and its budget together with information about its Scheme activities including the number of claims by type of business received, decisions taken and compensation costs.

30 The FSCS will also provide the FCA with final reports produced by the National Audit Office prior to publication.

Disaster Recovery

31 The FSCS will keep the FCA informed about its disaster recovery arrangements that it would adopt in the event that its premises cannot be occupied. The FSCS will also notify the FCA as soon as possible if there is an event that leads to the arrangements being invoked.

Review of MOU

32 The Chief Executives of the FCA and the FSCS will review the operation of the MoU and the effectiveness of co-operation and co-ordination on an annual basis.