

**PRA RULEBOOK: CRR FIRMS: NON CRR FIRMS: NON AUTHORISED PERSONS:
DORMANT ACCOUNT SCHEME INSTRUMENT 2015**

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 213 (The compensation scheme);
 - (2) section 214 (General); and
 - (3) section 219 (Scheme manager’s power to require information)
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook CRR Firms: Non CRR Firms: Non Authorised Persons: Dormant Account Scheme Instrument 2015

- D. The PRA makes the rules in the Annex to this instrument.

Commencement

- E. This instrument comes into force on 3 July 2015.

Citation

- F. This instrument may be cited as the PRA Rulebook: CRR Firms Non CRR Firms Non Authorised Persons: Dormant Account Scheme Instrument 2015

By order of the Board of the Prudential Regulation Authority
30 March 2015

Annex

In this Annex, the text is all new and is not underlined.

Part

DORMANT ACCOUNT SCHEME

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1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

- (1) the *FSCS*;
- (2) a *dormant account fund operator*;
- (3) *UK banks*;
- (4) *building societies*; and
- (5) an *overseas firm* that:
 - (a) is not an *incoming firm*; and
 - (b) has a *Part 4A permission* that includes *accepting deposits*.

1.2 In this Part, the following definitions shall apply:

base costs

means *management expenses* which are not attributable to any particular *class*.

base costs levy

means a levy, forming part of the *management expenses levy*, to meet the *base costs* in the financial year of the *compensation scheme* to which the levy relates.

claim

means a valid claim made in respect of a civil liability owed by a *dormant account operator* to the claimant.

class

means one of the classes to which *FSCS* allocates levies in accordance with the rules of the *compensation scheme*.

class J

means the *class* which includes *DAS members*.

class J tariff base

means *dormant accounts* multiplied by 0.2 as at *31 December*.

compensation date

means the date on which a *dormant account operator* is determined to be *in default*.

compensation scheme

means the Financial Services Compensation Scheme established under section 213 of *FSMA*.

DAS base costs levy

means a *base costs levy* imposed by the *FSCS* on *DAS members*.

DAS compensation costs

means the costs incurred in paying compensation under the *dormant account scheme* (including the costs of paying interest, principal and other costs of borrowing to pay such costs).

DAS compensation costs levy

means a levy imposed by the *FSCS* on *DAS members* to meet *DAS compensation costs*.

DAS levy

means a *DAS compensation costs levy* or a *DAS management expenses levy*.

DAS management expenses levy

a levy imposed by the *FSCS* on *DAS members* to meet *management expenses* and which is made up of one or more of a *DAS base costs levy* and a *DAS specific costs levy*.

DAS member

means:

- (1) a *dormant account fund operator* for claims against which the *dormant account scheme* provides cover;
- (2) a *UK bank*;
- (3) a *building society*; or
- (4) an overseas firm that is not an *incoming firm* and has a *part 4A permission* that includes *accepting deposits*.

DAS specific costs

means *management expenses* attributable to the *dormant account scheme* other than *base costs*.

DAS specific costs levy

means a levy, forming part of the *DAS management expenses levy*, to meet the *DAS specific costs* in the financial year of the *dormant account scheme* to which the levy relates.

DGS compensation costs

has the meaning given in the Depositor Protection Part.

dormant account

has the meaning given in section 10 of the Dormant Bank and Building Society Accounts Act 2008.

depositor

has the meaning given in the Depositor Protection Part.

DGS member

has the meaning given in the Depositor Protection Part.

DGS specific costs

has the meaning given in the Depositor Protection Part.

dormant account fund operator

a person with a Part 4A permission for operating a dormant account fund.

dormant account scheme

means the *compensation scheme* for compensating persons in respect of *protected dormant accounts*.

eligible claimant

means a claimant whose *dormant account*.

- (1) was transferred to a *dormant account fund operator* which accepted the liability to repay it; and
- (2) would be an *eligible deposit* if it were held by a *DGS member*.

eligible deposit

has the meaning given in the Depositor Protection Part.

in default

describes the status of a *dormant account fund operator* following a determination made under 3.3.

legacy costs

has the meaning given in the Depositor Protection Part.

management expenses

has the meaning given in the Depositor Protection Part.

micro, small and medium-sized enterprises

has the meaning given in the Depositor Protection Part.

money laundering

has the meaning given in the Depositor Protection Part.

money purchase benefits

has the meaning given in the Depositor Protection Part.

occupational pension scheme

has the meaning given in the Depositor Protection Part.

operating a dormant account fund

means any of the *regulated activities* specified in:

- (1) article 63N(1)(a) of the *Regulated Activities Order* (meeting of repayment claims); or
- (2) article 63N(1)(b) of the *Regulated Activities Order* (managing dormant account funds (including the investment of such funds)).

personal pension scheme

has the meaning given in the Depositor Protection Part.

protected dormant account

means a *dormant account* which is covered by the *dormant account scheme*.

protected dormant account claim

means a *claim* in respect of a *protected dormant account*.

small self-administered scheme

has the meaning given in the Depositor Protection Part.

stakeholder pension scheme

has the meaning given in the Depositor Protection Part.

tariff statement

means the statement required under 23.2.

2 ELIGIBILITY

2.1 This Chapter applies only to the *FSCS*.

2.2 A *dormant account* is a *protected dormant account* only if:

- (1) the liability for it has been transferred to a *dormant account fund operator*;
- (2) it is not an *eligible deposit*; and
- (3) it would be an *eligible deposit* if it were held by a *DGS member*.

3 DORMANT ACCOUNT FUND OPERATORS IN DEFAULT

3.1 This Chapter applies only to the *FSCS*.

- 3.2 The FSCS shall pay compensation in respect of a *protected dormant account* if it is satisfied that the *protected dormant account* is a *dormant account* of a *dormant account fund operator* who is *in default*.
- 3.3 A *dormant account fund operator* is *in default* if the FSCS has determined it to be *in default* under 3.4 or 3.5.
- 3.4 The FSCS may determine a *dormant account fund operator* to be *in default* when it is, in the opinion of the FSCS or the PRA:
- (1) unable to satisfy *protected dormant account claims* against it; or
 - (2) likely to be unable to satisfy *protected dormant account claims* against it.
- 3.5 The FSCS may determine a *dormant account fund operator* to be *in default* if it is satisfied that a *protected dormant account claim* exists, and the *dormant account fund operator* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):
- (1) the passing of a resolution for a creditors' voluntary winding up;
 - (2) a determination by the *dormant account fund operator's* home state regulator that the *dormant account fund operator* appears unable to meet *claims* against it and has no early prospect of being able to do so;
 - (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager;
 - (3) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the administration of a company or partnership, or the bankruptcy of an individual;
 - (4) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or of an individual voluntary arrangement.
- 3.6 For the purposes of sections 219(1A)(b) and (d) of *FSMA* whether a *dormant account fund operator* is unable or likely to be unable to satisfy *claims* shall be determined by reference to whether it is *in default*.

4 THE QUALIFYING CONDITIONS FOR PAYING COMPENSATION

- 4.1 This Chapter applies only to the FSCS.
- 4.2 The FSCS may, subject to Chapter 5, pay compensation to an *eligible claimant* if it is satisfied that:
- (1) an *eligible claimant* has made an application for compensation;
 - (2) the claim is a *protected dormant account claim* against a *dormant account fund operator* who is *in default*, and
 - (3) where the FSCS so requires, the claimant has assigned the whole or any part of his rights against the *dormant account fund operator* or against any third party to the FSCS, on such terms as the FSCS thinks fit.

5 LIMITS ON COMPENSATION PAYABLE

- 5.1 This Chapter applies only to the *FSCS*.
- 5.2 The maximum compensation sum payable for the aggregate *protected dormant accounts* of each *eligible claimant* is the same sum as the maximum compensation sum payable for aggregate *eligible deposits* of each *depositor* under Depositor Protection 4.2 but without reference to the cases in which additional compensation may be payable under Depositor Protection 4.3.
- 5.3 In the event of a default of a *dormant account fund operator*, the *FSCS* will pay compensation in accordance with 5.2 on the basis of the authorisation of the *DGS member* who was liable for the *eligible deposit* immediately prior to the liability being transferred to the *dormant account fund operator* (and the relevant authorisation of the *DGS member* is the authorisation that was in place at the time that the liability was transferred).

6 PAYING COMPENSATION

- 6.1 This Chapter applies only to the *FSCS*.
- 6.2 The *FSCS* may treat *persons* who are or who may be entitled to claim compensation in respect of a *protected dormant account* as if they had done so.
- 6.3 The *FSCS* may also pay compensation (and any recovery or other amount payable by the *FSCS* to the claimant) to a *person* who makes a *protected dormant account claim* on behalf of another *person* if the *FSCS* is satisfied that the *person* on whose behalf the *claim* is made:
- (1) is or would have been an *eligible claimant*, and
 - (2) would have been paid compensation by the *FSCS* had he been able to make the *claim* himself, or to pursue his application for compensation further.
- 6.4 The *FSCS* must pay any compensation to the claimant, with the following exceptions:
- (1) where the claimant directs that any compensation be paid to another *person*, the *FSCS* may pay compensation as directed by the claimant;
 - (2) where the claimant is not absolutely entitled to the *protected dormant account*:
 - (a) if another *person* is absolutely entitled to the *protected dormant account*, that *person* is the *person* entitled to compensation in respect of the *protected dormant account*, and accordingly the *FSCS* must pay any compensation to the *person* who is absolutely entitled to the *protected dormant account*, provided that the *person* has been identified or is identifiable before the *compensation date*; and
 - (a) if no *person* is absolutely entitled to the *protected dormant account*, the *FSCS* must pay any compensation in accordance with such of 6.5 – 6.8 as applies.
- 6.5 If a *person* is:
- (1) a trustee (other than a bare trustee); or

- (2) the operator of, or the *person* carrying on the *regulated activity* of winding up, a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*,

the *FSCS* must treat their entitlement to compensation in this capacity as separate from their entitlement to compensation in any other capacity, as if the two entitlements were held by different *persons*.

6.6 If a *protected dormant account* is held:

- (1) for the trustees of a *small self-administered scheme*, an *occupational pension scheme* of *micro, small or medium sized enterprise*, or the trustee or operator of, or the *person* carrying on the *regulated activity* of winding up, a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*, or

- (2) for one or more members of a pension scheme (or, where relevant, the beneficiary of any member) whose benefits are *money-purchase benefits*;

the *FSCS* must treat the member or members (or, where relevant, the beneficiary of any member) separately as *persons* entitled to receive compensation.

6.7 If any group of *persons* are:

- (1) co-trustees (other than bare co-trustees); or
- (2) *operators* of, or persons carrying on the *regulated activity* of winding up, a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or a *personal pension scheme*,

(or any combination thereof), the *FSCS* must treat them as a single and continuing *person* distinct from the *persons* who may from time to time be the trustees, or the operators or persons winding up the relevant pension scheme.

6.8 Where the same *person* is:

- (1) trustee for different trusts or for different *stakeholder pension schemes* (which are not *occupational pension schemes*) or *personal pension schemes*; or
- (2) the operator of, or the *person* carrying on the *regulated activity* of winding up, different *stakeholder pension schemes* (which are not *occupational pension schemes*) or *personal pension schemes*,

the *FSCS* shall treat that person's entitlement to compensation in respect of each of these trusts or schemes as if they were entitlements of a *different person*.

6.9 Where any of the provisions of 6.5, 6.7 or 6.8 apply, the *FSCS* must try to ensure that any amount paid to:

- (1) the trustee; or
- (2) the operator of, or the person carrying on the *regulated activity* of winding up, a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*

is, in each case:

- (3) for the benefit of members or beneficiaries whose own *deposits* would be *eligible deposits* if they were held by a *DGS member*; and
 - (4) no more than the amount of the loss suffered by those members or beneficiaries.
- 6.10 Where a person holds a *protected dormant account* as the personal representative of another or on behalf of another, the *FSCS* must treat the personal representative or the person acting on behalf of another in respect of that *protected dormant account* as if they were standing in the shoes of that other *person*.
- 6.11 In applying this Chapter to *protected dormant accounts* held with a branch outside the *United Kingdom* of a *dormant account fund operator*, the *FSCS* must interpret references to:
- (1) *persons* entitled as personal representatives, trustees, bare trustees, *operators of pension schemes* or persons carrying on the *regulated activity* of winding up *pension schemes*; or
 - (2) persons having a joint account or joint interest in a deposit or carrying on business in partnership,
- as references to *persons* entitled, under the law of the relevant country or territory, in a capacity appearing to the *FSCS* to correspond as nearly as may be to that capacity.

7 FORM AND METHOD OF COMPENSATION

- 7.1 This Chapter applies only to the *FSCS*.
- 7.2 Subject to Chapter 6, 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 a *firm* with a *Part 4A permission to accept deposits* or an *incoming firm* or another *dormant account fund operator* 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 a *firm* (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); or
 - (3) (where two or more *persons* have a joint *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 relevant *eligible deposit* immediately prior to the transfer of it to the *dormant account fund operator*.
- 7.3 If the *FSCS* is satisfied that, in principle, compensation is payable in connection with any *protected dormant account claim*, but considers that immediate payment in full would not be prudent because of uncertainty as to the amount of the claimant's

overall *claim*, it may decide to pay an appropriate lesser sum in final settlement, or to make payment on account.

- 7.4 The *FSCS* may also decide to make a payment on account or to pay a lesser sum in final settlement if the claimant has any reasonable prospect for recovery in respect of the *claim* from any third party or by applying for compensation to any other *person*.
- 7.5 The *FSCS* may pay interest on the compensation sum in such circumstances as it considers appropriate.
- 7.6 Interest under 7.5 is not to be taken into account when applying the limits on the compensation sum payable in respect of a *claim* for a *protected dormant account* under 5.2.
- 7.7 Where the *FSCS* considers that the conditions in 7.4 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 *dormant account fund operator*, 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*.

8 CALCULATING COMPENSATION

- 8.1 This Chapter applies only to the *FSCS*.
- 8.2 Subject to 5.2, the amount of compensation payable to the claimant in respect of a *protected dormant account claim* is the amount of his overall net *claim* against the *dormant account fund operator* at the *compensation date*.
- Any reference in this Part to overall *claim* means "overall net *claim*".
- 8.3 The *FSCS* must take into account any payments to the claimant (including amounts recovered by the *FSCS* on behalf of the claimant) made by the *dormant account fund operator* or the *FSCS* or any other *person*, if that payment is connected with the *dormant account fund operator's* liability to the claimant in calculating the claimant's overall *claim*.
- 8.4 The *FSCS* must calculate the amount of compensation due to the claimant as soon as reasonably possible after it is satisfied that the conditions in 4.2 have been met.
- 8.5 The share of each claimant of a joint *protected dormant account* shall be considered separately in calculating the limits provided for in 5.2. In the absence of contrary provision, the joint *protected dormant account* shall be divided equally among the claimants to the nearest penny.
- 8.6 *Protected dormant accounts* to which two or more *persons* are entitled as a members of a business partnership, association or grouping of a similar nature, without legal personality, must be aggregated and treated as if made by a single claimant for the purposes of calculating the limit in 5.2.

- 8.7 Where several *persons* are absolutely entitled to a beneficial interest in a *protected dormant account*, the share of each, under the arrangements subject to which the *protected dormant account* is managed, shall be considered separately in calculating the amount payable to each of them.
- 8.8 Where several *persons* are absolutely entitled to a beneficial interest in a *protected dormant account* and some of them are *persons* whose own *dormant account* would not be a *protected dormant accounts*, the *FSCS* must adjust the amount of the overall *protected dormant account* to eliminate the part of it which, in the *FSCS*'s view, relates to those beneficiaries' interest in the overall *dormant account*.

9 DUTIES OF FSCS

- 9.1 This Chapter applies only to the *FSCS*.
- 9.2 The *FSCS* must administer the *dormant account scheme*:
- (1) in accordance with the rules in this Part and any other rules prescribed by law;
 - (2) in a manner that is procedurally fair; and
 - (3) in accordance with the *European Convention on Human Rights*.
- 9.3 The *FSCS* must publish for *claimants* on its website all necessary information:
- (1) on the operation of the *dormant account scheme*; and
 - (2) on the process, eligibility and conditions for payment of compensation.
- 9.4 The *FSCS* may agree to pay the reasonable costs of an *eligible claimant* bringing or continuing insolvency proceedings against a *dormant account fund operator* in respect of *protected dormant accounts* (whenever instituted), if the *FSCS* is satisfied that those proceedings would help it to discharge its functions under this Part.
- 9.5 The *FSCS* must have regard to the need to use its resources in the most efficient and economic way in carrying out its functions under this Part.
- 9.6 The *FSCS* must take appropriate steps to ensure that claimants are informed of how they can make a *claim* for compensation under the *dormant account scheme* as soon as a possible after the *compensation date*.

10 CLAIMS AGAINST THE FSCS AND CHALLENGING FSCS DECISIONS

- 10.1 This Chapter applies only to the *FSCS*.
- 10.2 The *FSCS* must ensure that a person who would be, or considers that they would be, affected by an *FSCS* decision in relation to compensation, has an opportunity to make representations in respect of that potential decision before it is finalised.
- 10.3 The *FSCS* must, if requested by a claimant and subject to other applicable laws, give reasons to the claimant for any decision not to pay compensation in relation to some or all of their *protected dormant accounts*.
- 10.4 The procedure established by the *FSCS* under this Chapter must satisfy the minimum requirements of procedural fairness and comply with the *European Convention on Human Rights* for the handling of any complaints of

maladministration relating to any aspect of the operation of the *dormant account scheme*.

11 ASSIGNMENT OF RIGHTS

- 11.1 This Chapter applies only to the *FSCS*.
- 11.2 The *FSCS* may make any payment of compensation to a claimant in respect of a *protected dormant account* conditional on the claimant assigning the whole or any part of his rights against the *dormant account fund operator*.
- 11.3 If a claimant assigns the whole or any part of his rights against any *person* to the *FSCS* as a condition of payment, the effect of this is the sum payable in relation to the rights so assigned will be payable to the *FSCS* and not the claimant.
- 11.4 Before taking the assignment of rights from the claimant under 11.2, 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.

12 SUBROGATION

- 12.1 This Chapter applies only to the *FSCS*.
- 12.2 The *FSCS*'s powers in this Chapter may be used:
- (1) separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this Part;
 - (2) in relation to all or any part of a *claim* in respect of a *protected dormant account* or class of *claims* in respect of *protected dormant accounts*.
- 12.3 The *FSCS* may determine that the payment of compensation by the *FSCS* in respect of *protected dormant accounts* shall have all or any of the following effects:
- (1) 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 *dormant account fund operator* and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the *dormant account fund operator* 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;
 - (2) 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 *dormant account fund operator* and/or any third party;
 - (3) the subrogated rights and claims conferred on the *FSCS* shall be rights of recovery and claims against the *dormant account fund operator* and/or any third party which are equivalent (including as to amount and priority and whether or not the relevant *dormant account fund operator* is insolvent) to the

payment of compensation made by the *FSCS* and do not exceed the rights and claims that the claimant would have had; and/or

- (4) such rights or obligations (as determined by the *FSCS*) as between the *dormant account fund operator* and the claimant arising out of the *protected dormant account claim* in respect of which the payment was made shall be transferred to, and subsist between, another *dormant account fund operator* with an appropriate permission and the claimant provided that the other *dormant account fund operator* has consented (but the transferred rights and/or obligations shall be treated as existing between the *dormant account fund operator* and the *FSCS* to the extent of any subrogation, transfer or assignment for the purposes of (1) to (3) and 12.4.
- 12.4 (1) The *FSCS* may determine that, if it is necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under 12.3, that the claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be their attorney and agent and on their behalf and in their name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *UK*, 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 compensation recipient or by his agent lawfully authorised in writing or by will.
- 12.5 (1) The powers conferred on the *FSCS* in 12.3 and 12.4 to make a determination must be exercised in writing.
- (2) An instrument by which the *FSCS* makes the determination must specify the provision under which it is made, the date and time from which it takes effect and the *dormant account fund operator* and *protected dormant account claims*, parts of *protected dormant account claims* and/or classes of *protected dormant account 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 12.3 and the *FSCS*'s determination.
- (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 12.3 may be amended, remade or revoked at any time and subject to the same conditions.
- 12.6 (1) The production of a copy of a determination purporting to be made by the *FSCS* under this Chapter:
- (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).

13 RECOVERIES

- 13.1 This Chapter applies only to the *FSCS*.
- 13.2 If the *FSCS* takes assignment or transfer of rights from the claimant 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.
- 13.3 If the *FSCS* decides not to pursue such recoveries and a claimant wishes to pursue those recoveries and so requests in writing, the *FSCS* must comply with that request and assign the rights back to the claimant.
- 13.4 If the *FSCS* makes recoveries in relation to a *protected dormant account claim* it may deduct from any recoveries paid over to the claimant under 13.5 part or all of its reasonable costs of recovery and distribution (if any).
- 13.5 If a claimant 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 7.5) received by the claimant in relation to the *protected dormant account 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 or whose rights and claims had been subrogated to the *FSCS* at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated.
- 13.6 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 or from the subrogation of his rights and claims to the *FSCS* compared with what might have been the position had he delayed his acceptance or had his claims not been subrogated.

14 REJECTION OF APPLICATION AND WITHDRAWAL OF OFFER

- 14.1 This Chapter applies only to the *FSCS*.
- 14.2 If an application for compensation contains any material inaccuracy or omission, the *FSCS* may reject the application unless this is considered by the *FSCS* to be unintentional.

- 14.3 The *FSCS* must reject an application for compensation if:
- (1) the *FSCS* considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:
 - (a) the date on which the *dormant account fund operator* is determined to be *in default*, and
 - b) the date on which the claimant first indicates in writing that he may have a claim against the *dormant account fund operator*,
 unless 14.4 applies.
- 14.4 The *FSCS* may withdraw any offer of compensation made to a claimant if the offer is not accepted or if it is not disputed within 90 days of the date on which the offer is made.
- 14.5 Where the amount of compensation offered is disputed, the *FSCS* may withdraw the offer but must consider exercising its powers to make a reduced or interim payment under 7.3 or 7.4 before doing so.
- 14.6 The *FSCS* may repeat any offer withdrawn under 14.4 or 14.5.
- 14.7 The *FSCS* must withdraw any offer of compensation if it appears to the *FSCS* that no such offer should have been made.
- 14.8 The *FSCS* must seek to recover any compensation paid to a claimant if it appears to the *FSCS* that no such payment should have been made, unless the *FSCS* believes on reasonable grounds that it would be unreasonable to do so, or that the costs of doing so would exceed any amount that could be recovered.

15 TIME LIMITS AND POSTPONING PAYMENT

- 15.1 This Chapter applies only to the *FSCS*.
- 15.2 The *FSCS* must pay a *protected dormant account claim* as soon as reasonably possible after:
- (1) it is satisfied that the conditions in 4.2 have been met; and
 - (2) it has calculated the amount of compensation due to the claimant
- and in any event within three months of that date, unless the *PRA* has granted the *FSCS* an extension, in which case payment must be made no later than six months from that date.
- 15.3 The *FSCS* may postpone paying compensation if the claimant has been charged with an offence arising out of or in relation to *money laundering* and those proceedings have not yet been concluded.
- 15.4 The *FSCS* may pay compensation in respect of a *protected dormant account* to a claimant in respect of assets held by a *dormant account fund operator* if an insolvency practitioner has been appointed to the *dormant account fund operator* and:

- (1) the FSCS considers it likely that the insolvency practitioner would, in due course, return the assets to the claimant;
- (2) the claimant has agreed to be compensated for the assets on the basis of the valuation provided by the FSCS; and
- (3) the claimant has agreed, to the satisfaction of the FSCS, that his rights to the assets in respect of which compensation is payable should pass to it.

16 FUNDING – FSCS’S POWER TO LEVY AND LIMITS ON LEVIES

16.1 This Chapter applies only to the FSCS.

16.2 The FSCS may at any time impose a:

- (1) *DAS compensation costs levy* on a *DAS member*;
- (2) *DAS specific costs levy* on a *DAS member*, or
- (3) *base costs levy* on a *dormant account fund operator*

provided that the FSCS has reasonable grounds for believing that the funds available to it to meet relevant expenses are, or will be, insufficient, taking into account expenditure already incurred, actual and expected recoveries and:

- (a) in the case of a *DAS management expenses levy*, the level of the FSCS's expected expenditure in respect of those expenses in the financial year of the *DAS compensation scheme* in relation to which the levy is imposed;
- (b) in the case of a *DAS compensation costs levy*
 - (i) the FSCS's expenditure in respect of *DAS compensation costs* expected in the 12 *months* following the levy; or, if greater
 - (ii) one third of the FSCS's expenditure in respect of *DAS compensation costs* expected in the 36 *months* following the levy.

16.3 The calculation of *DAS levies* must also take into account previous levies, where funds raised in anticipation of meeting liabilities prove either more or less than the amount actually required.

16.4 The maximum aggregate amount of *DAS compensation costs* and *DAS specific costs* for which the FSCS can levy *class J* in any one financial year of the *dormant account scheme* is limited to £1,500,000,000 less whatever *DGS compensation costs*, *legacy costs* and *DGS specific costs* the FSCS has imposed on *class A* in that same financial year.

17 FUNDING – MANAGEMENT OF FUNDS LEVIED

17.1 This Chapter applies only to the FSCS.

17.2 The FSCS must hold any amount collected from a *DAS specific costs levy* or *DAS compensation costs levy* to the credit of *class J*.

- 17.3 Any funds received by the *FSCS* by way of levy or otherwise for the purposes of the *dormant account scheme* are to be managed as the *FSCS* considers appropriate, and in doing this the *FSCS* must act prudently.
- 17.4 Interest earned by the *FSCS* in the management of funds held to the credit of *class J* must be credited to that *class*, and must be set off against the *DAS management expenses* or *DAS compensation costs* allocated to that *class*.
- 17.5 The *FSCS* must keep accounts which include:
- (1) the funds held to the credit of *class J*; and
 - (2) the liabilities of *class J*.
- 17.6 If the *FSCS* has more funds (whether from levies, recoveries or otherwise) to the credit of *class J* than the *FSCS* believes will be required to meet levies on *class J* for the next 12 months, it may refund the surplus to members or former members of *class J* on any reasonable basis.

18 FUNDING – ADJUSTMENTS TO LEVY SHARES

- 18.1 This Chapter applies only to the *FSCS*.
- 18.2 The *FSCS* may adjust the calculation of a *DAS member's* share of a *DAS levy* to take proper account of:
- (1) any excess, not already taken into account, between previous levies of that type imposed in relation to previous periods and the relevant costs actually incurred in that period; or
 - (2) amounts that the *FSCS* has not been able to recover from *DAS members* as a result of 16.4; or
 - (3) amounts that the *FSCS* has not been able to recover from *DAS members* after having taken reasonable steps; or
 - (4) payments deferred under 25.2, the calculation of levies after an acquisition of business under 19 or 20, calculations under 21.7, remission of additional administrative fee under 23.4; or
 - (5) anything else that the *FSCS* believes on reasonable grounds should be taken into account.
- 18.3 The *FSCS* may not adjust the calculation of a *DAS member's* share of any *DAS levy* under 18.2 on the grounds that it would be inequitable for that *firm* to pay that share or part of it or on the grounds that it would be inequitable for the *FSCS* to retain that share or part of it. Any such claim should be dealt with under 25.
- 18.4 If a *DAS member's* share of a *DAS levy* or an additional administrative fee under this Part would be so small that, in the opinion of the *FSCS*, the costs of collection would be disproportionate to the amount payable, the *FSCS* may treat the *DAS member* as if its share of the levy or additional administrative fee amounted to zero.

19 FUNDING – BUSINESS ACQUISITIONS FROM DAS MEMBERS

- 19.1 This Chapter applies only to the *FSCS*.

- 19.2 If:
- (1) a *DAS member* (A) assumes the liability to repay the *dormant accounts* of another *DAS member* (B);
 - (2) B is no longer liable to pay a *DAS levy* to the *FSCS*; and
 - (3) the assumption of liability takes place after the date to which, or as of which, A's most recent *tariff statement* is drawn up,

the *FSCS* must require A pay an additional amount equal to the levy that would have been payable by B in relation to the relevant business and *class J* if the acquisition had not taken place and B had remained liable to pay *DAS levies*. The amount is based on B's most recent *tariff statement*.

- 19.3 This Chapter only applies with respect to those financial years of the *FSCS* for which A's levies are calculated on the basis of a *tariff statement* drawn up to a date, or as of a date, before the assumption of liability took place.

20 FUNDING – BUSINESS ACQUISITIONS FROM NON-DAS MEMBERS

- 20.1 This Chapter applies only to the *FSCS*.
- 20.2 If a *DAS member* (A) assumes a liability to repay *protected dormant accounts* held by a non-*DAS member* (B) and the assumption of liability takes place after the date to which, or as of which, A's most recent *tariff statement* is drawn up, the *FSCS* must not require A to pay an additional amount as a result of that acquisition.
- 20.3 This Chapter only applies with respect to those financial years of the *FSCS* for which A's levies are calculated on the basis of a *tariff statement* drawn up to a date, or as of a date, before the assumption of liability took place.

21 FUNDING – MANAGEMENT EXPENSES

- 21.1 This Chapter applies only to the *FSCS*.
- 21.2 A *DAS member's* share of a *DAS management expenses levy* consists of:
- (1) one or more of a share of a *DAS base costs levy* and a share of a *DAS specific costs levy* if the *DAS member* is a *dormant account fund operator*;
 - (2) a share of a *DAS specific costs levy* if the *DAS member* is not a *dormant account fund operator*.
- 21.3 The *FSCS* must ensure that each *DAS member's* share of a *DAS management expenses levy* separately identifies the *firm's* share of the *DAS base costs levy* and *DAS specific costs levy* as applicable.
- 21.4 The *FSCS* must allocate any *DAS specific costs levy* to *class J* up to the levy limit for *class J* under 16.4.
- 21.5 The *FSCS* must calculate a *DAS member's* share of a *DAS specific costs levy* by:
- (1) identifying the *DAS specific costs* which the *FSCS* has incurred, or expects to incur, in the relevant financial year of the compensation schemes allocated to *class J*, but not yet levied;

- (2) calculating the *DAS member's class J tariff base* as a proportion of the *total class J tariff base*, using the *tariff statement* most recently supplied; and
 - (3) applying the proportion calculated in (2) to the figure in (1).
- 21.6 The *FSCS* must not require a *firm (A)* which becomes a *DAS member* part way through a financial year of the *dormant account scheme* to pay a share of a *DAS specific costs levy* until the financial year of the *FSCS* following the *FSCS* financial year in which *A* became a *DAS member*, at which time *A's* share of a *DAS specific costs levy* must be calculated under 21.7.
- 21.7 (1) Unless otherwise provided in (2) *A's class J tariff base* is calculated, where necessary, using the projected valuation of the business to which the tariff relates.
- (2)
- (a) If *A's class J tariff base* is calculated using data from a period that begins on or after it became a *DAS member*, that data must be used to calculate *A's class J tariff base*.
 - (b) If a *A's class J tariff base* satisfies the following conditions, it must be calculated under (c):
 - (i) *A* became a *DAS member* between 1 April and 31 December inclusive; and
 - (ii) *A's class J tariff base*, but for this rule, is calculated by reference to the financial year ended in the calendar year ending 31 December or the twelve *months* ending 31 December before the *FSCS* financial year.
 - (c) If *A* satisfies the conditions in (b) it must calculate its *class J tariff base* as follows:
 - (i) it must use actual data in relation to the business to which the tariff relates rather than projected valuations;
 - (ii) the tariff is calculated by reference to the period beginning on the date it became a *DAS member* and ending on the 31 December before the start of the *FSCS* financial year; and
 - (iii) the figures are annualised by increasing them by the same proportion as the period of 12 *months* bears to the period starting from when *A* became a *DAS member* to the 31 December, as the case may be.
 - (d) Where *A* is required to use the method in (c) it must notify the *FSCS* of its intention to do so by the date specified in 23.2.
 - (e) Where *A* is required to use actual data under this rule, 23.2 is disapplied, to the extent it is incompatible, in relation to the calculation of *A's* valuation date in its second financial year.

22 FUNDING – DAS COMPENSATION COSTS

- 22.1 This Chapter applies only to the *FSCS*.
- 22.2 The *FSCS* must allocate any *DAS compensation costs levy* to *DAS members* in accordance with the amount of *DAS compensation costs* arising from, or expected to arise from claims in respect of *protected dormant accounts* up to the levy limit of *class J* under 16.4.
- 22.3 The *FSCS* must calculate each *DAS member's* share of a *DAS compensation costs levy* by:
- (1) identifying the *DAS compensation costs* allocated to *class J*;
 - (2) calculating, in relation to *class J*, the *DAS member's* tariff base as a proportion of the total tariff base of all *DAS members* in *class J*, using the *tariff statement* most recently supplied;
 - (3) applying the proportion calculated in (2) to the figure in (1).
- 22.4 When calculating a *DAS member's* share of a *DAS compensation costs levy* or *DAS specific costs levy* allocated to *class J*, the *FSCS* must use the *class J tariff base*.
- 22.5 A *firm* which becomes a *DAS member* part way through a financial year of the *dormant account scheme* will not be liable to pay a share of a *DAS compensation costs levy* made in that year.
- 22.6 21.6 applies to the calculation of a *DAS member's* *DAS compensation costs levy* and its tariff base as it applies to the calculation of its *DAS specific costs levy*.

23 FUNDING – REPORTING REQUIREMENTS

- 23.1 This Chapter applies only to *DAS members*.
- 23.2 A *DAS member* must provide the *FSCS* by end of February each year (or, if it has become a *DAS member* part way through the financial year, by the date requested by the *PRA*) with a statement of its *class J tariff base* calculation (measured in accordance with the *class J tariff base*) which it conducted, in respect of the most recent valuation period ending before the relevant year in relation to *class J*.
- The relevant year means the year in which the month of February (referred to above) falls.
- The valuation period will be 31 December.
- 23.3 A new *DAS member* must calculate its *class J tariff base* in accordance with 21.7.
- 23.4 If a *DAS member* does not submit a complete *tariff statement* by the date on which it is due in accordance with 23.2 and any prescribed submission procedures:
- (1) the *DAS member* must pay an administrative fee of £250 (but not if it is already subject to an administrative fee by the *PRA* for the same financial year); and
 - (2) the *DAS compensation costs levy* and any *DAS specific costs levy* will be calculated using (where relevant) the valuation or valuations of business

applicable to the previous period, multiplied by the factor of 1.10 (or, if it has become a *DAS member* part way through a financial year, on the basis of the information provided to the *PRA* for the purposes of FEES 4.4.2 R) or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the true figures are known.

24 FUNDING – OBLIGATION TO PAY

- 24.1 This Chapter applies only to *DAS members*.
- 24.2 A *firm* must pay to the *FSCS* its share of each:
- (1) *DAS management expenses levy*; and
 - (2) *DAS compensation costs levy* allocated to *class J*.
- 24.3 If a *firm* does not pay the total amount of its share of a *DAS levy*, before the end of the date on which it is due, it must pay an additional amount as follows:
- (1) if the *DAS levy* was not paid in full before the end of the due date, an administrative fee of £250; plus
 - (2) interest on any unpaid part of the *DAS levy* or administrative fee at the rate of 5% per annum above the Official Bank Rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

25 FUNDING – OVERPAYMENTS AND DEFERRAL

- 25.1 The *FSCS* may reduce, remit or refund any overpaid amounts paid by a *DAS member* in respect of a particular period, due to a mistake of law or fact by the *DAS member* provided that the claim is made by the *DAS member* not more than 2 years after the beginning of the period to which the overpayment relates.
- 25.2 The *PRA* may defer, in whole or in part, a *firm's* obligation to pay a *DAS levy* if the *PRA* considers that such contributions would jeopardise the liquidity or solvency of the *firm*. Such deferral shall not be granted for a longer period than six months but may be renewed upon request of the *firm*.
- 25.3 Any contributions deferred pursuant to 25.2 shall be paid when the payment no longer jeopardises the liquidity and solvency of the *firm*.

26 PAYMENT OF LEVIES

- 26.1 This Chapter applies only to *DAS members*.
- 26.2 A *firm* must pay its share of any levy made by the *FSCS* in one payment.
- 26.3 A *firm's* share of a *DAS levy* is due on, and payable within, 30 days of the date when the invoice is issued.

- 26.4 A *firm* must pay its share of a *DAS levy* by direct debit, credit transfer (e.g. BACS or CHAPS), cheque, Maestro, Visa Debit or by credit card (Visa/MasterCard/American Express only).
- 26.5 If a *firm* ceases to be a *DAS member* part way through a financial year of the *dormant account scheme*:
- (1) it will remain liable for any unpaid levies which the *FSCS* has already made on the *firm*; and
 - (2) the *FSCS* may make one or more levies upon it (which may be before or after the *firm* has ceased to be a *DAS member* but must be before it ceases to be a *firm* for the costs which it would have been liable to pay had the *FSCS* made a levy on all *DAS members* in the financial year it ceased to be a *DAS member*.