

# Heritable Bank

## **FSCS Accelerated Compensation For Depositors Instrument 2008 (Heritable Bank PLC)**

1. On 7 October 2008, the Financial Services Authority declared Heritable Bank plc ("the bank") to be in default (the "FSCS Default") for the purposes of COMP 6.3.1 of the COMP Sourcebook (COMP 15.1.1 G).

2. On 7 October 2008, by the Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 and the Transfer of Rights and Liabilities to ING Order 2008 ("the Orders"), part of the bank's deposit business was transferred to ING.

3. On 8 October 2008, HM Treasury announced that arrangements would be put in place with FSCS to ensure that no eligible depositor, whose deposit was not transferred under the Orders, would lose money as a result of the closure of the bank.

4. On 28 October 2008, the FSA made new compensation rules under COMP 15 providing for an accelerated compensation scheme for retail depositors.

5. Financial Services Compensation Scheme Limited ("FSCS") determines that using the powers set out in this instrument would be beneficial to the generality of eligible claimants with protected deposits made with the bank in respect of whom the powers are to be used. In the absence of such process, eligible claimants would be required to make applications for compensation to FSCS in respect of the first £50,000 of the compensatable claim and for HM Treasury compensation in excess of the FSCS's compensatable sum. This process would not result in eligible claimants receiving full repayment promptly.

6. FSCS determines that using the powers set out in this instrument is unlikely to result in any additional cost to FSCS which would require the imposition of increased levies on participant firms over and above those required if the powers were not exercised. Under the arrangements put in place by HM Treasury, the cost of compensation payable in respect of any excess over the FSCS's payment of each protected deposit will be met by funds advanced by the Bank of England and will not be required to be met by levies on participant firms. The FSCS has determined that the cost of a combined payment process is likely to be less than a dual approach, and in any event that if there were to be an additional cost involved it would be justified by the benefits obtained in view of the desirability of prompt payment for the claimants concerned and wider considerations of the protection of consumers generally.

7. FSCS is satisfied for the purposes of COMP 15.1.14R in respect of the bank that claimants in respect of deposits in excess of the FSCS compensation sum are or are likely to become entitled to receive payment under arrangements made by HM Treasury.

8. FSCS is also satisfied that it will receive funding from the Bank of England and HM Treasury to enable it to make payments of compensation under this process.

9. FSCS has determined to use the powers in COMP Chapter 15 set out below in respect of:

- the bank (COMP 15.1.5R(2)),
- all eligible depositors who held deposits with the bank at 8 October 2008 which were not transferred under the Orders ('the relevant deposits') (COMP 15.1.5R(3)).

10. The powers to be used as an alternative to the powers and processes elsewhere in the COMP Sourcebook (COMP 15.1.5R(1)) are:

10.1 FSCS may pay compensation in respect of any amount in excess of the FSCS's compensatable sum for any relevant deposit by a depositor with the bank (COMP 15.1.14R(3)),

10.2 FSCS may (having been satisfied as to the total amount to be paid to a claimant) ascertain the proportion of any payment attributable to any other provider of funding at any time, whether before or after making the payment (COMP 15.1.14R(5)),

10.3 FSCS may (to the extent that prior funding has not been provided by any other provider of funding) recover from such other provider of funding the whole or any part of the amount of compensation paid or monies paid on account or advanced in respect of potential compensation which is or is likely to be payable to a claimant by such other funder (COMP 15.1.14R(6)),

10.4 FSCS may, in determining the proportion of any payment or advance attributable to FSCS, or any other provider of funding, use any methodology or approach it considers appropriate if (and to the extent that) it considers that the cost of ascertaining the proportion by reference to each claimant would exceed or be disproportionate to the benefit of doing so (COMP 15.1.15R),

10.5 FSCS may, if it has made a payment or advance attributable to any other provider of funding, and has acquired a right or recovery against the bank or any third party in respect of that amount, determine that the whole or any part of any recoveries which it makes shall be held by FSCS for the benefit of and/or shared amongst FSCS, such other provider of funding and/or any other person which has provided prior funding in respect of a payment or advance attributable to any such body (COMP 15.1.16R),

10.6 FSCS may make the payment of compensation by it conditional upon a depositor assigning or transferring the whole or any part of all the rights and claims as he may have against the bank and 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 which the payment of compensation is made on such terms as FSCS determines are appropriate (COMP 15.1.18R).

11. FSCS determines that, in the event that any assignment or transfer of rights envisaged by 15.1.18R is to any extent invalid or ineffective, FSCS shall immediately and automatically be subrogated, to the extent of any such invalidity or ineffectiveness, to such rights (COMP 15.1.17R(3)) with the effects set out in COMP 15.1.17R(4) and (5)).

12. FSCS reserves the right to amend, remake, or revoke these determinations at any time (COMP 15.1.7(5)).

13. This instrument takes effect immediately on the date and at the time on which it is made (COMP 15.1.17(2)).

**By Order of the Board**

**11 December 2008, 6.45pm.**