

2001 No. 1783

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Compensation Scheme: Electing Participants)
Regulations 2001**

Made - - - - - *9th May 2001*

Laid before Parliament *9th May 2001*

Coming into force - - *18th June 2001*

The Treasury, in exercise of the powers conferred on them by sections 213(10), 214(5), 224(4), 417(1)(a) and 428(3) of the Financial Services and Markets Act 2000(b) (“the Act”), hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 and come into force on 18th June 2001.

(2) In these Regulations—

“branch”—

(a) in relation to an investment firm, has the meaning given by Article 1.5 of the investor-compensation schemes directive;

(b) in relation to a credit institution, has the meaning given by Article 1.5 of the deposit-guarantee schemes directive;

“credit institution” has the meaning given by Article 1 of the banking consolidation directive;

“deposit-guarantee schemes directive” means Council and European Parliament Directive 94/19/EC on deposit-guarantee schemes(c);

“depositor” has the same meaning as in the deposit-guarantee schemes directive;

“Financial Services Compensation Scheme” means the compensation scheme established pursuant to Part XV of the Act;

“home State deposit-guarantee scheme” means—

(a) in relation to a credit institution which is exempted by the EEA State in which that institution has its head office from the obligation to belong to a deposit-guarantee scheme by virtue of belonging to a system which protects the credit institution as mentioned in Article 3 of the deposit-guarantee schemes directive, that system; and

(b) in all other cases, the deposit-guarantee scheme officially recognised by that EEA State for the purposes of Article 3.1 of the deposit-guarantee schemes directive;

“home State investor-compensation scheme” means—

(a) in relation to a credit institution which is exempted by the EEA State in which that

(a) See the definition of “prescribed”.

(b) 2000 c. 8.

(c) OJ L135 31.5.1994 p. 5.

institution has its head office from the obligation to belong to an investor-compensation scheme by virtue of Article 2.1 of the investor-compensation schemes directive (participation in a system that protects the credit institution), that system; and

- (b) in all other cases, the investor-compensation scheme officially recognised by that EEA State for the purposes of Article 2.1 of the investor-compensation schemes directive; “investment firm” has the meaning given by Article 1.1 of the investor-compensation schemes directive; “investor” has the meaning given by Article 1.4 of the investor-compensation schemes directive; “investor-compensation schemes directive” means the Council and European Parliament Directive 97/9/EC on investor-compensation schemes(a).

Persons not to be regarded as relevant persons

2. For the purposes of section 213(10) of the Act (certain persons not to be regarded as relevant persons unless they elect to participate), the following categories are prescribed—

- (a) any investment firm; and
- (b) any credit institution.

Persons who may elect to participate

3.—(1) For the purposes of section 214(5) of the Act (persons who may elect to participate), the following categories are prescribed—

- (a) any investment firm which has established a branch in the United Kingdom in exercise of an EEA right and is a member of a home State investor-compensation scheme which meets the condition in paragraph (2); and
- (b) any credit institution which has established a branch in the United Kingdom in exercise of an EEA right and is a member of a home State deposit-guarantee scheme which meets the condition in paragraph (3).

(2) The condition mentioned in paragraph (1)(a) is that the scope or level (including percentage) of the protection afforded to investors by the Financial Services Compensation Scheme exceeds that afforded by the home State investor-compensation scheme.

(3) The condition mentioned in paragraph (1)(b) is that the scope or level (including percentage) of the protection afforded to depositors by the Financial Services Compensation Scheme exceeds that afforded by the home State deposit-guarantee scheme.

Persons in respect of whom inspection under section 224 does not apply

4. For the purposes of section 224(4) of the Act (power to inspect documents held by Official Receiver), the following categories are prescribed—

- (a) any investment firm; and
- (b) any credit institution.

Clive Betts
Greg Pope

9th May 2001

Two of the Lords Commissioners of Her Majesty's Treasury

(a) OJ L084 26.3.1997 p 22.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the circumstances in which a person who qualifies for authorisation under Schedule 3 (EEA passport rights) to the Financial Services and Markets Act 2000 (“the Act”) may participate in the compensation scheme established under Part XV of the Act (“the new scheme”). Regulation 2 provides that any credit institution or investment firm (as defined in regulation 1) are prescribed for the purposes of section 213(10) of the Act with the result that they are not “relevant persons” (and so are not participants in the new scheme) unless they elect to participate in the new scheme. Under section 214, the new scheme may provide that prescribed categories of persons may elect to participate in the scheme. Regulation 3 prescribes for this purpose investment firms and credit institutions which have established a branch in the United Kingdom and whose home state compensation scheme affords a level of protection which is exceeded by the new scheme. Under section 224, the scheme manager under the new scheme will not have a right to inspect documents held by the Official Receiver on the insolvency of prescribed persons who qualify for authorisation under Schedule 3. Regulation 4 prescribes credit institutions and investment firms for this purpose.

These Regulations implement in part Council and European Parliament Directive 94/19/EC on deposit-guarantee schemes (OJ L135 31.5.1994 p. 5) and the Council and European Parliament Directive 97/9/EC on investor-compensation schemes (OJ L084 26.3.1997 p. 22).

S T A T U T O R Y I N S T R U M E N T S

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