

Chapter 5

Protected claims



5.5 Protected investment business

5.5.1 R

Protected investment business is:

- (1) *designated investment business* carried on by the *relevant person* with, or for the benefit of, the claimant (so long as that claimant has a *claim*), or as agent on the claimant's behalf;
- (2) the activities of the manager or *trustee* of an *AUT*, provided that the *claim* is made by a *holder*;
- (3) the activities of the *ACD* or *depository* of an *ICVC*, provided that the *claim* is made by a *holder*;
- (4) the activities of the *authorised contractual scheme manager* or *depository* of an *ACS*, provided that the *claim* is made by a *holder*;
- (5) the activities of the *manager* or *depository* of an *LTIF*, provided that the *claim* is made by a *holder*;
- (5A) the activities by a *recognised investment exchange* of *operating a multilateral trading facility* or *operating an organised trading facility*,
- (6) the *intermediation of structured deposits*,

provided that the territorial scope condition in ■COMP 5.5.2 R is satisfied and, for a *firm* acting as the manager or *depository* of a *fund*, one of the conditions in ■COMP 5.5.3 R is satisfied.

5.5.2 R

Territorial scope condition

The territorial scope condition is that the *protected investment business* was carried on from:

- (1) an establishment of the *relevant person* in the *United Kingdom*; or
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) an establishment in an *EEA State* of the *relevant person*, if it is a *TP firm* (other than a *supervised run-off firm*) that is:

- (a) *managing a UK UCITS; or*
- (b) *managing an AIF that is an authorised fund.*

Managers and depositaries of funds

5.5.3

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The conditions referred to in ■ COMP 5.5.1 R for a manager or *depositary* of a *fund* are:

- (1) for the activities of *managing an AIF, managing a UK UCITS or establishing, operating or winding up a collective investment scheme*, the *claim* is in respect of an investment in:
 - (a) *an authorised fund; or*
 - (b) *any other fund which has its registered office or head office in the UK or is otherwise domiciled in the UK unless it is an AIF that is a body corporate and not a collective investment scheme;*
- (2) where a *firm* is acting as *depositary* of a *fund*, the *claim* is in respect of their activities for:
 - (a) *an authorised fund; or*
 - (b) *a charity AIF unless it is a body corporate that is not a collective investment scheme.*

Advising without a personal recommendation

5.5.4

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The FSCS must treat a *claim* relating to advice in relation to a *designated investment* that falls outside article 53(1) of the *Regulated Activities Order* by virtue of article 53(1A) of that Order as being ‘in connection with *protected investment business*’ for the purposes of ■ COMP 5.2.1R(3) where the *relevant person* giving the advice, at the time the act or omission giving rise to the *claim* took place:

- (1) had, or required, *permission to carry on; or*
 - (2) (in the case of an *appointed representative*) was exempt from the *general prohibition* in respect of,
- an activity that was *designated investment business*.