

Previously reviewed and updated: February 2015
Last reviewed and updated: January 2022

INVESTOR COMPENSATION FUND FOR CLIENTS OF INVESTMENT FIRMS

Subject to the provisions of relevant section of the Investment Services and Activities and Regulated Markets Law No. 87 (I)/2017 (hereinafter – the “Law”) with any amendments thereto, **THE ULTIMA INVESTMENTS CYPRUS LIMITED, previously BrokerCreditService (Cyprus) Limited** (the “Company”) is obliged to comply with the obligations under Directive 97/9/EC.

According to the Directive 97/9/EC every Member State should be required to have an investor-compensation scheme or schemes to which every such investment firm would belong. Each scheme must cover money and instruments held by an investment firm in connection with an investor’s investment operations which, where an investment firm is unable to meet its obligations to its investor clients, cannot be returned to the investor.

The Cyprus regulator, Cyprus Securities and Exchange Commission (The “Commission”) issued the Directives DI87-07 of 2019 and Directive DI87-07(A) of 2020, which set the rules of operating of the Cyprus Investor Compensation Fund, and the requirements, which shall be followed by all investment firms.

Investor Compensation Fund for clients of Investment Firms (hereinafter – the “Fund”) compensates the covered clients¹ for claims arising from the services provided by the Company, so long as failure by the Company to fulfill its obligations has been ascertained, in accordance with the terms and procedure defined in the Law, notwithstanding a relevant obligation of the Company, incurred in accordance with the legislation and the terms which govern its agreement with the covered client and regardless of whether the said obligation is based on the agreement or on wrongdoing.

The Fund shall initiate the compensation payment procedure when:

- (a) the Commission has determined that a member appears, for the time being, for reasons directly related to its financial circumstances, to be unable to meet its

¹ **Non-covered clients** – are those which are included in the list of the Non-covered clients As specified below

obligations arising out of investors' claims and has no early prospect of being able to do so;

(b) a Court of the Republic, has made a ruling, for reasons directly related to a member financial circumstances, which has the effect of suspending investors' ability to make claims against it.

The Commission shall issue its decision for the initiation of the compensation payment procedure by the Fund within a reasonable time, and publish the relevant information on its website.

Procedure of invitation to submit applications

Upon initiation of the compensation payment procedure, the Fund shall publish as soon as possible in at least two national newspapers, an invitation to submit applications for compensation, designating the procedure for the submission of the relevant applications, the deadline for their submission as well as their content.

The publication shall include at least:

- (a) the name and address of the headquarters and the trade name of the involved Fund member;
- (b) the deadline for the submission of the compensation applications, which cannot be less than five months or more than nine months from the date of initiation of the compensation payment procedure, or from the date of its publication;
- (c) the mode of submission of applications; and
- (d) the address and/or website through which covered clients may obtain the relevant claim form provided by the Fund, as provided below.

The publication shall be communicated immediately to the Commission, which shall post the publication on its website too.

A covered client submitting a compensation application after the deadline, shall submit, in addition to the information forming the content of the application, a declaration explaining the reason, if any, for which he was not in a position to claim compensation in time, attaching all supporting evidence to that end.

The Fund covers claims arising due to the Company's failure:

- a) to repay the funds owed to covered clients or belonging to them and held on their behalf in connection with investment operations; or
- b) to return to covered clients any financial instruments belonging to them and held, managed or administered on their behalf in connection with investment operations in accordance with the legal and contractual conditions applicable.

Claim application form

The Fund issues a claim form setting out the information and supporting evidence required in order to evaluate the claims of covered investors.

More information on the procedure of submission of a claim and the claim form can

be found here:

<https://www.cysec.gov.cy/en-GB/investor-protection/tae/information/>
<https://www.cysec.gov.cy/en-GB/investor-protection/tae/application/>

Determination of the amount of the compensation payable

The Fund shall provide coverage for the claims, which applies for the total claims of the covered client against a Fund member and shall be defined as the lower of 90% of the cumulative covered claims of the covered client and €20.000.

In the case of joint investment business:

- (a) in the calculation of the coverage, the share attributable to each covered investor shall be taken into account;
- (b) the claims shall be allocated equally amongst covered investors, unless there exist special provisions, and without prejudice to section (c), each investor is provided with separate coverage;
- (c) claims relating to joint investment business to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, which has no legal personality, shall, for the purpose of calculating the coverage, be aggregated and treated as if arising from an investment made by a single investor.

Where a covered client is not the ultimate beneficiary of the funds or financial instruments held by the member:

- (a) compensation shall be paid to the ultimate beneficiary if his identity is or may be established prior to the date of the determination;
- (b) if the ultimate beneficiaries are more than one, in the calculation of the coverage provided for, the share attributable to each one of them according to the arrangements regulating the management of the funds or financial instruments shall be taken into account.

Compensation shall be paid in Euro, and, where the funds and/or financial instruments are expressed in a currency other than the Euro, the exchange reference rate of the said currency against the Euro fixed by the European Central Bank at the end of the day on which the compensation payment procedure was activated, shall be used.

Announcement of Fund's decision

Upon completion of the procedure above the Fund shall:

- (a) issue a decision listing the clients of the Fund member, determining the amount of money each one of them is entitled to receive, and communicate it to the Commission and the Fund member within five working days from its issue;

The said decision shall also list those clients to whom no compensation shall be paid, and the reasons for this.

- (b) communicate to each affected client its decision the soonest possible from its issue.

The claimant to whom the Fund communicates its decision, may, in case of disagreement, submit an objection in writing to the Commission, within one month

from the date on which the decision was notified, justifying its objection sufficiently.

The objection shall be submitted at info@cysec.gov.cy and entitled “**Objection to the decision of the ICF**”.

The Commission in the context of examining an objection may:

- (a) request from the Fund, and/or the Fund member and/or the claimant to submit information and particulars;
- (b) conduct any investigation.

The Commission, must conclude the examination of the objection within forty-five (45) days and in case that identifies an error in the evaluation carried out by the Fund, it shall request in writing from the Fund to immediately rectify the mistake and pay the claimant the correct amount, and inform the affected client accordingly.

Deadline and procedure relating to the payment of compensation

The Fund shall pay each covered client/claimant the compensation that he is entitled to, within three months from the date that the decision was communicated to the covered client.

The payment of the compensation by the Fund shall be deposited to a bank account of the covered client, as designated by the said client in writing.

In extraordinary and justified circumstances, the Fund may request from the Commission an extension of the deadline, but not more than for three months.

Non-covered clients

The Fund shall not compensate the following investor categories:

- (1) The following categories of institutional and professional investors:
 - (a) IFs;
 - (b) legal entities associated with the Fund member and generally belonging to the same group of companies;
 - (c) banks;
 - (d) cooperative credit institutions;
 - (e) insurance companies;
 - (f) collective investment undertakings in transferable securities and their management companies;
 - (g) social insurance institutions and funds;
 - (h) **investors characterized by the member as professionals upon their request**, pursuant to the provisions of paragraph B of the Second Schedule of the Law.
- (2) Supranational institutions, government and central administrative authorities.
- (3) Provincial, regional, local and municipal authorities.
- (4) Enterprises that have close ties with the Fund member as the term «close ties»ⁱ.
- (5) Managerial and administrative staff of the Fund member.
- (6) Shareholders of the Fund member whose participation directly or indirectly in the

capital of the Fund member amounts to at least 5% of its share capital, or its partners who are personally liable for the obligations of the Fund member as well as persons responsible for the carrying out of the financial audit of the Fund member, such as its qualified auditors.

Investors having in enterprises connected with the Fund member and, in general, with the group of companies to which the Fund member belongs, positions or duties corresponding to those listed in sub-paragraphs (5) and (6).

(8) Up to second-degree relatives and spouses of the persons listed in sub-paragraphs (5), (6) and (7), as well as third parties acting for the account of such persons.

(9) Investors-clients of a Fund member responsible for facts pertaining to the Fund member that have caused its financial difficulties or have contributed to the worsening of its financial situation or have profited from these facts.

(10) Other firms in the same group.

(11) Investors in the form of a company, which due to its size, is not allowed to draw a summary balance sheet in accordance with the Companies Law.

In the cases of sub-paragraphs (5), (6), (7), (8), and 10 the Fund shall suspend the payment of compensation informing the interested parties accordingly until it reaches a final decision as to whether such cases apply.

ⁱ (a) participation which means the ownership, direct or by way of control, of at least 20% of the voting rights or capital of an undertaking;

(b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 22, paragraph 1 and 2, of Directive 2013/34/EU, or a similar relationship between any natural or legal person and an undertaking, any subsidiary of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings;

(c) a permanent link of both or all of them to the same person by a control relationship.