

## Chapter 14

# Participation by EEA Firms

## 14.1 Application and Purpose

### Application

- 14.1.1 **R** This chapter applies to the *FSCS*.
- 14.1.2 **R** This chapter also applies to an *incoming EEA firm* which is a *MiFID investment firm*, an *IDD insurance intermediary*, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*.

### Purpose

- 14.1.3 **G** This chapter provides supplementary *rules* and *guidance*, and contains a broad summary, in *guidance*, of *FSCS* cover, for an *incoming EEA firm* which is an *IDD insurance intermediary*, a *MiFID investment firm*, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*. It reflects in part the implementation of the *Investor Compensation Directive* and *UCITS Directive*.
- 14.1.4 **G**
- (1) An *incoming EEA firm*, which is an *IDD insurance intermediary*, an *MCD mortgage credit intermediary* or a *MiFID investment firm* is not a *participant firm* in relation to its *passport activities* unless it "tops-up" into the *compensation scheme*. This reflects section 213(10) of the Act (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an *incoming EEA firm* also carries on non-*passport activities* for which the *compensation scheme* provides cover, it will be a *participant firm* in relation to those activities and will be covered by the *compensation scheme* for those activities in the usual way.
  - (2) Whether an *incoming EEA firm* which is an *EEA UCITS management company* is a *participant firm* in relation to its *passport activities* depends on the nature of its activities. In so far as it carries on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*, it is not a *participant firm* unless it "tops-up" into the *compensation scheme* and it may only obtain *top-up* cover if it carries on those activities from a *branch* in the *United Kingdom*. To the extent that such a *firm* provides *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom* or under the freedom to

provide *cross border services*, it is a *participant firm* in respect of those services.

- 14.1.4A** **R** For an *incoming EEA firm* which is an *AIFM*, the question of whether it is a *participant firm* for its *passport activities* depends on the type of activities it carries on under that passport. If it manages an *authorised AIF* from a *branch* in the *UK* or under the freedom to provide *cross-border services*, it is a *participant firm* for that activity. If it manages an *unauthorised AIF*, or provides the services in article 6(4) of *AIFMD* from a *branch* in the *UK* or on a *cross-border services* basis, it is not a *participant firm* for that activity; however, it may choose to obtain *top-up cover* for those activities if carried on from a *branch* in the *UK*.
- 14.1.5** **G** In relation to an *incoming EEA firm's passport activities*, its *Home State* compensation scheme must provide compensation cover in respect of business within the scope of the *Investor Compensation Directive*, article 6(3) of the *UCITS Directive* and article 6(4) of *AIFMD*, whether that business is carried on from a *UK branch* or on a *cross border services* basis. *Insurance distribution activity* is not within the scope of the *Investor Compensation Directive*.
- 14.1.6** **G** If there is no cover provided by the *incoming EEA firm's Home State* or the scope and/or level of cover is less than that provided by the *compensation scheme*, this chapter enables the *firm* to obtain cover or 'top-up' cover from the *compensation scheme* for its *passport activities* carried on from a *UK branch*, up to the *compensation scheme's* limits (set out in **COMP 10**). This reflects section 214(5) of the *Act (General)* and regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate). If the *firm* 'tops up' and then becomes insolvent, the *Home State* compensation scheme will pay compensation up to the limit and scope of the *Home State* compensation scheme, with the *FSCS* paying compensation for the additional amount in accordance with the provisions in this sourcebook (**COMP 12.4.1 R** and **COMP 12.4.4 R**).

## 14.2 Obtaining top-up cover

- 14.2.1** **R** An *incoming EEA firm* may, by notice in writing to the *FSCS*, elect to receive *top-up cover* from the *compensation scheme* if it falls within one of the categories prescribed in regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate).
- 14.2.2** **R** An election under **COMP 14.2.1 R** takes effect on the date when the *FSCS* notifies the *incoming EEA firm* that its election has been accepted.
- 14.2.3** **G** A notice under **COMP 14.2.1 R** should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:
- (1) the *firm* must be:
    - (a) [deleted]
    - (b) an *IDD insurance intermediary*; or
    - (c) a *MiFID investment firm*; or
    - (d) a *UCITS management company* that carries on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*;
    - (e) an *AIFM* that carries on *AIFM management functions* for an *unauthorised AIF*; or
    - (f) an *AIFM* that provides the services in article 6(4) of *AIFMD*;
    - (g) an *MCD mortgage credit intermediary*
  - (2) the *firm* must have established a *branch* in the *United Kingdom* in the exercise of an *EEA right*; and
  - (3) the scope and/or level of cover provided by the *firm's Home State compensation scheme* must be less than that provided by the *compensation scheme*.
- 14.2.4** **R** When the *FSCS* accepts an application, it must allocate the *incoming EEA firm* to the *contribution group* (or groups) which seems to the *FSCS* to be most appropriate, taking into account the nature of the business for which the *incoming EEA firm* is seeking cover from the *compensation scheme*.

14.2.5

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The *FSCS* must put in place and publish procedures to enable an appeal by an *incoming EEA firm* against a rejection by the *FSCS* of an election to receive *top-up cover* or a decision to allocate an *incoming EEA firm*, once the *firm's* election has been accepted, to a particular *contribution group*. Such procedures must satisfy the minimum requirements of procedural fairness and comply with the European Convention on Human Rights.

## 14.3 Co-operation between the FSCS and Home State compensation schemes

### 14.3.1

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Where an *incoming EEA firm* obtains *top-up cover* under ■ COMP 14.2, the *FSCS* must co-operate with that *firm's Home State* compensation scheme. In particular, the *FSCS* must seek to establish with that *firm's Home State* compensation scheme appropriate procedures for the payment of compensation to claimants, following the principles set out in Annex II of the *Investor Compensation Directive*.



## 14.4 Ending top-up cover

### FSCS terminating top-up cover

- 14.4.1 **R** The FSCS must terminate an *incoming EEA firm's top-up cover* where it has ascertained that the conditions in **COMP 14.2.1 R** are no longer satisfied.
- 14.4.2 **R** If an *incoming EEA firm* which has *top-up cover* fails to observe any of the *rules* in this sourcebook which apply to *participant firms*, the FSCS must notify the FCA and the *incoming EEA firm's Home State regulator*.
- 14.4.3 **R** In cases where **COMP 14.4.2 R** applies, the FSCS must co-operate with the *incoming EEA firm's Home State regulator* so that appropriate measures can be taken to ensure that the *incoming EEA firm* meets its obligations under this sourcebook.
- 14.4.4 **R** [deleted]
- 14.4.4A **R** If the *incoming EEA firm* fails to meet its obligations for a period of twelve months following the notice, the FSCS may, subject to obtaining the consent of the *incoming EEA firm's Home State regulator*, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for *protected investment business* transacted before that termination.

14.4.4B **R**

### Resignation of an EEA firm from the compensation scheme

- 14.4.5 **R** An *incoming EEA firm* which has *top-up cover* may terminate that *top-up cover* by giving six months' notice in writing to the FSCS.

### Notice to customers and the FSCS

- 14.4.6 **R** When an *incoming EEA firm's top-up cover* comes to an end under **COMP 14.4.1 R**, **COMP 14.4.4 R** or **COMP 14.4.5 R**, it must:
  - (1) inform all the clients of its *UK branch* no later than six weeks after the date that its participation ends that they are no longer protected (or, if appropriate, of the more limited protection provided) by the

*compensation scheme*, and of the level of compensation which is then available to them; and

(2) within two months, notify the *FSCS* whether it has done so.

**14.4.7** **R** If an *incoming EEA firm* fails to comply with **COMP 14.4.6R (1)**, the *FSCS* must inform the *firm's Home State regulator* of that fact.

**14.4.8** **R** The *FSCS* must bring the ending of an *incoming EEA firm's top-up cover* to the attention of the *incoming EEA firm's clients* by means of a public notice.





**14.5 EEA UCITS management companies**

**14.5.1**

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Where an *EEA UCITS management company* provides *collective portfolio management services* for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, the *FSCS* must allocate the *firm* to the *class* or *classes* which seems to the *FSCS* to be most appropriate, taking into account the nature of the *firm's* business activities.

