

## 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**).