

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 *passported 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 passported 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 *passported 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*.

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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

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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

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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.

