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Regulatory Roundup
DD MMM 2014
Issue 54

In Brief:

In the Complyport Regulatory Roundup:

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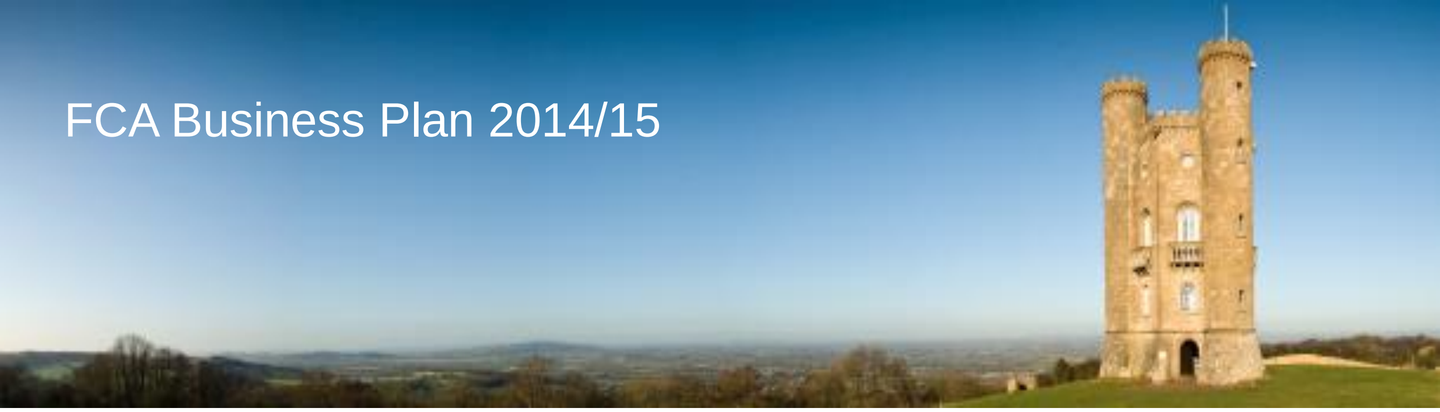
If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact Peter Carlisle.

FCA Business Plan 2014/15



Useful links:

FCA Business Plan 2014/15

Regulatory Roundup 44

Regulatory Roundup 52

Regulatory Roundup 53

The FCA is now a year old and has recently published its second **Business Plan**, which provides an insight into the areas that the FCA will concentrate on, including by way of thematic visits.

In addition to the expected work associated with implementation of the AIFMD and preparation for MiFID II (implementation in 2016/17), the FCA promise no let-up in its work to detect and minimise market abuse (see below) and continuance of its intensive supervision of firms holding **client money** and **custody assets**.

Annex 1 provides details of current and planned thematic work through to the end of 2015. Although the regulator will continue with its **Anti-Money laundering assessments** of major banks it is proposing to **extend** this to **smaller firms** - Annex 1 specifically refers to C3 and C4 firms (all firms should be aware of their 'conduct category'; see Regulatory Roundup 44 for a brief overview on supervision under the FCA).

Elsewhere, between them **asset managers** and **investment banks** can expect thematic reviews relating to **market abuse controls**; controls over the **flow of information**; **conflicts of interest**; and the **agency responsibility of asset managers**. **CFD providers** may find themselves contributing to a thematic on the risks at client take-on and wealth management firms to one on the use of **in-house funds**.

This year we can also expect to see publication of the FCA's findings on **best execution** (see Regulatory Roundup 53) and of policy proposals on the **use of dealing commission** (see Regulatory Roundup 52) together with a broader debate on the future of the use of dealing commission regime.

Firms may wish to examine the Business Plan in detail to determine whether their business activities fall under one of the proposed thematic reviews and, if such is the case, **undertake an in-house review** of those activities to ensure that systems and controls are fit for purpose and meet current regulatory requirements.

Chapter 6 concerns seven forward-looking areas of focus, including the by now infamous reference to life insurance firms and the operation legacy products – see the separate article on the FCA Risk Outlook 2014 for further details.

Cont...

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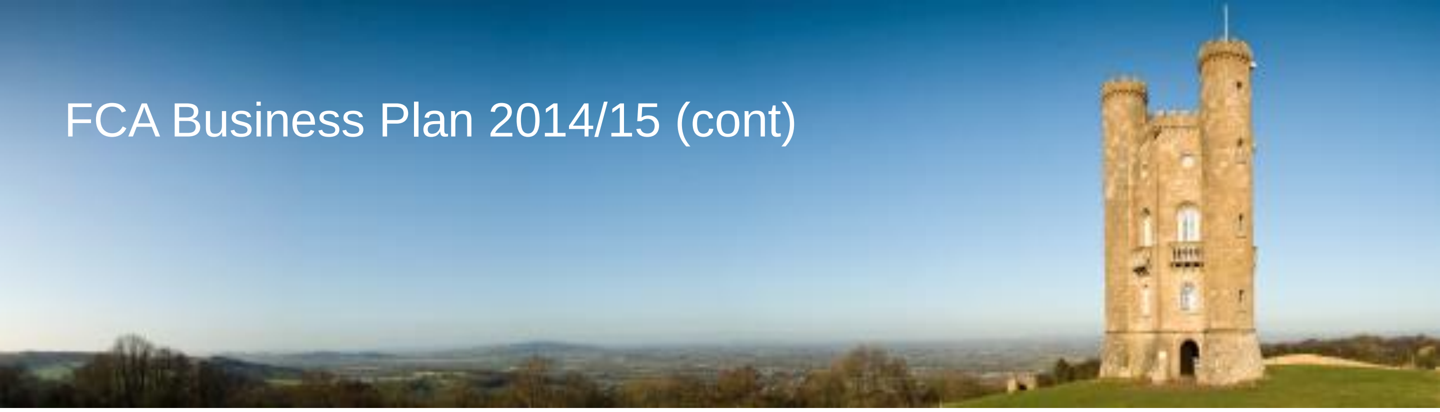

FCA Business Plan 2014/15 (cont)

The FCA budget for 2014/14 (Chapter 8) informs us that the **Ongoing Regulatory Activity expenditure** (‘ORA’) – basically its core operating costs – will increase by £6.3m (+1.4%) to **£452m**. The **Annual Funding Requirement** (‘AFR’) – which includes the ORA and which will be met from fees payable to the FCA – increases by £14.3m (+3.3%) to **£446.4m** (it is lower than the ORA due to a welcome underspend of £10m against the 2013/14 budget). After the benefit of a £43.6m financial penalty rebate, we arrive at a figure for **fees payable** for 2014/15 of **£402.8M** (+ 2.2%). The rebate comes from the financial penalties imposed by the FCA. At one time the regulator was allowed to retain all financial penalties received and to offset them against the fees that firms have to pay. However the Exchequer now receives those monies and the regulator is only permitted to retain the enforcement costs incurred in generating those penalties. Excluded from both the ORA and the AFR is an estimated £41m due to the FCA taking over consumer credit; it is planned that these costs will be recovered from authorised consumer credit firms over a number of years.

Please see the separate article on ‘**FCA Regulated Fees and Levies**’ for further details on the rates proposed for 2014/15.

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FCA Regulated Fees and Levies

Useful links:

[FCA Fees: 2014/15]

[FCA Fee Calculator]

[Regulatory Roundup 52]

As mentioned in the FCA Business Plan article, the FCA's Annual Funding Requirement ('AFR') is identified as £446.4m. A detailed analysis of proposed fees is contained in CP14/6 'FCA Regulated fees and levies: Rates proposals 2014/15'.

Although the approach to allocation has been to maintain an even distribution of the AFR across all fee-blocks, in practice there are some exceptions. **Portfolio managers** (fee-block A.7) see an **increase of 11.7%** whilst '**managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes**' (fee-block A.9) are presented with a **23.6% increase**. In both cases we are advised that this is due to the recovery of the FCA's set-up costs for the implementation of the AIFMD (the activity of 'managing an AIF' falls under both fee-blocks). The allocation of the AFR also reflects the proposals in CP13/14 (see Regulatory Roundup 52) in that fee-block A.12 has merged into fee-block A.13 so that there is now the one fee-block for 'advisory arrangers, dealers or brokers'. The original distinction between these two fee-blocks hinged upon whether client money and/or assets were held; there is now a new fee-block (A.21) for 'firms holding client money or assets or both'. Table 2.2 of CP14/6 shows the allocation across all fee-blocks.

The calculation of fees payable by firms is complicated and the headline increases in the AFR allocation do not take into account the financial penalty rebate nor any year-on-year changes in the number of firms in each fee-block, AuM or income etc. The link to the FCA Fee Calculator will allow firms assess the likely regulatory costs for 2014/15, albeit that the calculation will be based upon the consultation rates – at the time of this article it is not clear whether the Calculator has been updated to reflect the FSCS levy for 2014/15 (see separate article).

The consultation period ends 30 May with final fee rates published around end of June.

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FCA Risk Outlook 2014

Useful links:

[FCA Risk outlook 2014]

[Forward-Looking Areas]

The publication of the FCA Business Plan 2014/14 (see separate article in this Regulatory Roundup) was accompanied by the FCA Risk Outlook 2014.

The Risk Outlook identifies potential issues which require monitoring by the FCA to determine when and how it should intervene whereas the Business Plan sets out the work planned for 2014/15 to address identified risks.

Under the section devoted to the underlying drivers of risk, the paper suggests that financial capability is becoming increasingly important for consumers, although research shows that general understanding is weak. Some alarming findings include around 1 in 6 people being unable to identify the available balance when shown a bank statement and 44% of those aged under 35 failing to identify that inflation at 5% would erode the purchasing power of money in an account paying 3% interest.

The latter part of the Risk outlook identifies **seven** 'Forward-Looking Areas of Focus' (summarised in a one-pager – see link) and which are also referenced in the FCA Buisness Plan mentioned above. They have, of course, been overshadowed by the furore following the Clive Adamson interview, before the release of the Risk Outlook, in the Daily Telegraph which suggested that the FCA was planning an inquiry into 30 million pensions and savings policies sold from the 1970s to 2000 which was, somewhat later that day, retracted/clarified by the FCA. The issue, as published in both the Risk Outlook and the Business Plan, is the fair treatment of customers with no apparent mention of reviews going back 40 years. Other areas of focus include excessively complex product terms and conditions, the growth of consumer credit and poor culture and controls continuing to threaten market integrity.

Supervision of C4 Firms

Useful links:

Regulatory Roundup 44

Supervision for C4 Firms

When the FCA took over from the FSA, it introduced a new approach to supervision, albeit that for many small firms it may have been difficult to spot any practical difference. Most firms (around 25,000) will fall within **supervision category C4** (with the largest firms falling under C1, currently 11 major groups) which in turn, subject to any intervening thematic review, results in a four-yearly assessment cycle - see Regulatory Roundup 44.

The FCA has now published a summary of its approach to the supervision of C4 firms which will be of interest to both the governing bodies and the Compliance Officers of such firms.

The aim of the regulator is to understand how a firm's business is run, rather than simply looking at how risks are controlled, and lists the following areas to see how a firm puts the integrity of the market and the fair treatment of customers at the heart its business: **Business model and strategy**; **Culture**; **Front line business processes**; and **Governance** (see pages 11 – 13 of the summary for further details).

The publication also sets out the FCA's approach to prudential supervision which involves categorising a firm as P1, P2. P3 or P4; most C4 firms will fall within P3 (P4 is used for special cases e.g. a firm in administration). Although the regulator will carry out comprehensive capital and liquidity analysis for P1 and P2 firms, it is confirmed that the prudential supervision of P3 firms is mainly through an alerts-based system, although there may be some targeted cross-firm work assessing if firms in a peer group are meeting their financial resources requirements.

Hedge Fund Survey

[Hedge Fund Survey](#)

The latest (March 2014) Hedge Fund Survey has been released by the FCA.

The twice-yearly survey is based upon voluntary participation by the hedge fund industry – the current version benefitted from the input of 49 firms (out of a population of approximately 450 authorised hedge fund managers) and 106 funds; all data was as at the end of September 2013).

Some interesting, although not necessarily surprising, statistics:

- FuM in the UK accounts for around 19% of the total global hedge fun AuM.
- Cayman Islands remains the largest fund domicile (67%) followed by the US and Ireland with 10% each.
- Ownership by institutional investors e.g. pension funds has increased and now account for around 42% of total investors.
- In contrast, funds of hedge funds have fallen to 21% as medium and large size pension funds choose to manage their own portfolios.
- Median leverage has remained stable since the last survey with nearly 55% of sampled funds having gross leverage of less than 5x.

Given the enhanced reporting requirements under the AIFMD, the traditional Hedge Fund Survey, based as it is on voluntary participation, will eventually fade away, although the FCA envisages at least two more versions based upon data reported as at March and September this year.

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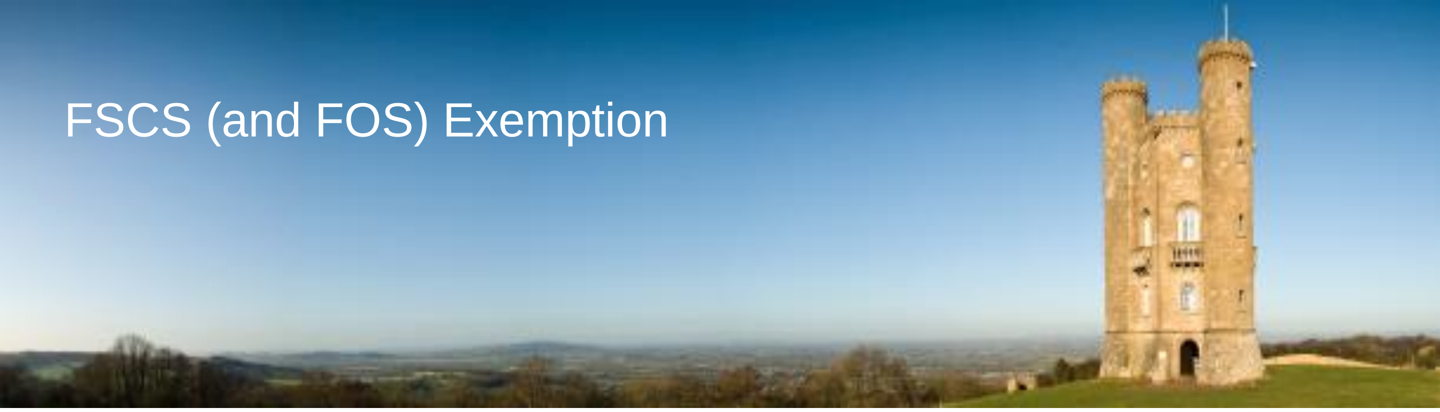

FSCS (and FOS) Exemption

[DISP]

[COMP]

[FSCS Exemption FAQs]

[FSCS Exemption Form]

[FOS Exemption FAQs]

[FOS Exemption Form]

Whilst on the subject of the FSCS levy a reminder to firms to ensure that, where applicable, they have submitted exemption forms in respect of FSCS and FOS levies.

A firm can exempt itself from a FOS levy if it does not conduct business with **eligible complainants** and can benefit from a reduction in the FSCS levy (the base cost levy will still be payable) if it does not conduct business with **eligible claimants**. The two types of client are not the same. A quick rule of thumb, based upon DISP 2.7.9(2) is that eligible complainants will be ‘retail’ whereas, based upon COMP 4.2.2, individuals largely qualify as an eligible claimant. However this is a simplification and firms should familiarise themselves with DISP 2.7 and COMP 4.

Exemption is by way of completing and submitting the appropriate form to the FCA – see the provided links, including relevant FAQs.

Once an exemption is lodged it is rolled over from year to year meaning that annual submissions are not required.

However it is important to note that firms are required to notify the FCA if an exemption no longer applies.

Firms that are authorised as, or applying to be authorised as, an **AIFM** should note that, in the case of an eligible complainant, most **AIFs** are covered by **FOS** (DISP 2.7.6(3A)) and that, in the case of an eligible claimant, most **UK AIFs** will be covered by **FSCS** (COMP 5.5.3).

AIFMD: ESMA Q&A
CRD IV: COREP Reporting
FSCS Levy

ESMA 2014/296	ESMA has updated its Q&A on the application of AIFMD.
AIFMD Remuneration: FCA Guidance	The publication is a modest nine pages and addresses questions in respect of **notification of AIFs**, **reporting to national competent authorities** and **remuneration -** including relevant accounting periods for the application of AIFMD remuneration rules when transitional provisions do and do not apply. The FCA did, of course, publish its Guidance on AIFMD Remuneration in January.
FCA: COREP Delay	Those firms that fall within CRD IV should have received a FCA notification concerning a **change** in the final submission date for the first quarterly COREP report by a month to **30 June**. Changes have also been made to the submission dates in respect of the reporting of liquidity and asset encumbrance – please see link to notification for details. Note that we are informed that the **GABRIEL schedules** for Q1 reporting will **not be amended** to reflect this change.
FSCS Final Levy 2014/15 FSCS Plan and Budget: 2014/15	The FSCS has published its final levy for 2014/15, being £276m compared to £285m for the previous year. Although the final levy comes in below the earlier indicative levy for 2014/15 (£313m) that was contained in the "Plan and Budget: 2014/14", the headline fall does not necessarily mean that all parts of the industry will benefit. Whilst **fund managers** can look forward to a **rebate** from the FCSC (as a result of successful recoveries relating to the failure of Keydata), **Life & Pensions intermediaries** and **Investment intermediaries face an increase of 150% and 43% respectively.** This year's levy was the first to be calculated using the new **36 month approach**. In essence the FSCS calculates its expected compensation costs over the next three years and then imposes a levy based upon the higher of either one-third of this figure or the costs expected over the next 12 months. In this way the FSCS hope to reduce the volatility of annual levies and provide the industry with greater certainty.

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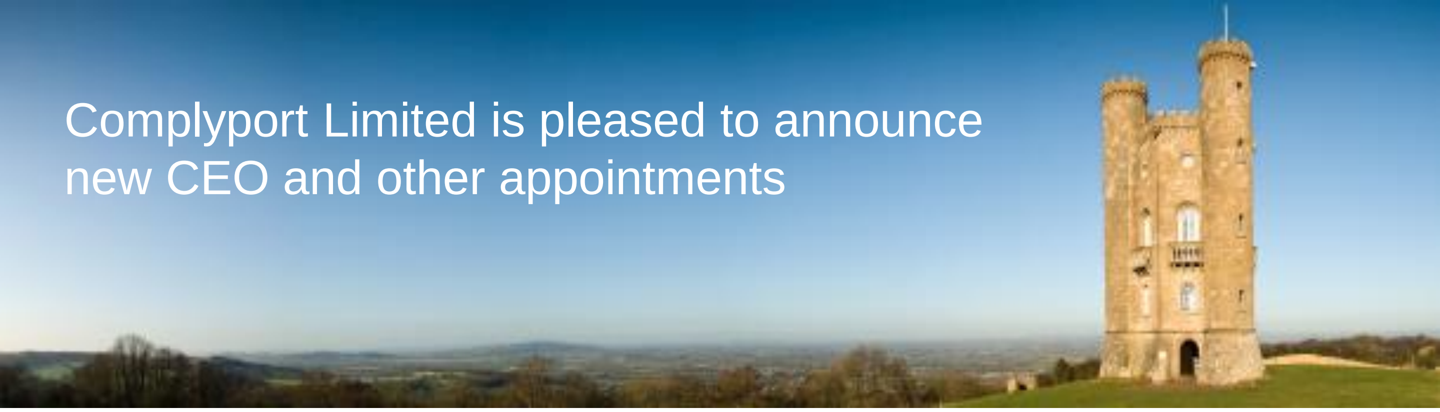

Complyport Limited is pleased to announce new CEO and other appointments

Complyport Limited has appointed **Paul Grainger** as CEO replacing Martin Herriot who left the firm in 2013. Paul Grainger takes over from Richard Eagle who has very successfully acted as interim CEO since July 2013. Richard will continue in his principal role as Director responsible for the Securities Business team.

During this time the Complyport group has undergone a substantial **overhaul** of its management team and business services, launching both ComplyTracker and ComplyTrainer; on-line compliance monitoring and training systems in 2013.

Paul Grainger joins from the RGP Group where he was Managing Director of Resources Compliance (UK) Ltd. Having established Grainger Consulting in the early 1990s, it formed the wholesale markets arm of Compliance.co.uk Group in 2005. The group was acquired by and integrated into the RGP Group, a NASDAQ listed company in 2007 to form its specialist regulatory and compliance consultancy practice. Paul brings with him extensive regulatory experience in many areas of financial regulation.

Haydon Thomas has been promoted to Associate Director on the Authorisations Team and **Kam Jaspal** to Associate Director on the Regulatory Consulting team. Additional consulting staff include **Joe Denney** ex-FCA, **William Jamieson** ex-Lombard Odier (Europe) S.A., **Richard Harding** ex-FCA, **Chris Fincham** ex-Tuckers Solicitors **and Joseph Lazaris** joins our Authorisations team from Thistle Initiatives.

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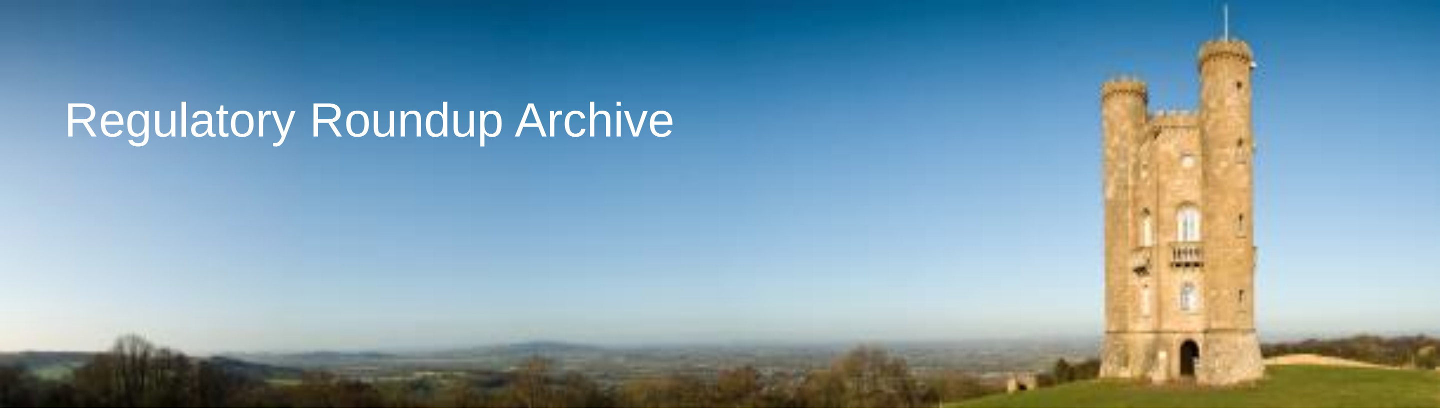

Useful links:

[Past issues]

[Searchable archive]

Past issues of Complyport's Regulatory Roundup are available to view using the link provided.

You can access a searchable version of our Regulatory Roundup archive by clicking on the link.

The Regulatory Roundup archive allows search in three modes: by topic; by issue number; or by text search.

If you are using the text search for more than one word or a consecutive phrase the use of " " will help speed your search e.g. a search for "regulatory fees" will ensure that only articles that contain that term are found (rather than articles containing the words 'regulatory' and/or 'fees').

Please note that there is a small time-delay between the publication of the latest Regulatory Roundup and its availability in the searchable archive.

If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact

[Peter Carlisle]

Or for details of any other of Complyport's services, please contact us at info@complyport.co.uk

Complyport is always interested to receive feedback and general comments on either the Regulatory Roundup or the Complyport website. Comments can be sent to info@complyport.co.uk

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