



# Regulatory Roundup

## May 2016

### Issue 76



#### In Brief

##### Suitability in Wealth

##### Management: Further FCA

**Visits:** The FCA's May edition of 'Regulation round-up' revisits its Suitability Review findings as a 'Hot topic'

##### UCITS V and Securities

##### Financing Transactions

##### Regulation: Changes to the

**Handbook:** The FCA has published Consultation Paper CP16/14 – "UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook"

##### Bank of England and Financial

##### Services Act 2016:

The Bank of England and Financial Services Act 2016 received Royal Assent on 4 May 2016

#### In the Complyport Regulatory Roundup:

Suitability in Wealth Management: Further FCA Visits	2
UCITS V and Securities Financing Transactions Regulation: Changes to the Handbook	4
Bank of England and Financial Services Act 2016	6

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



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# Suitability in Wealth Management: Further FCA Visits



## Useful Links:

[Regulatory Roundup 71](#)

[TR15/12](#)

[Regulation round-up May 2016](#)

[Skilled Person Panel](#)

## Of relevance to:

Firms providing discretionary and/or advisory portfolio management services

An article in Regulatory Roundup 71 drew attention to a thematic review (TR15/12) that the FCA had published on **wealth management firms** and **private banks** concerning the **suitability** of investment portfolios.

The review assessed **150** files from **15** firms and, whilst some improvement had been identified (over the past six years the Regulator has completed three separate phases of work in this area, culminating in the publication of TR15/12), the comment was made that many of the sampled firms “still need to raise their standards – in some cases substantially ...”.

There were two key messages arising from the publication:

- **Firms** should take note of the findings and ensure that they are able to demonstrate how the portfolios they manage are suitable; and
- **Senior management** are expected to consider whether any of the concerns raised are reflected in their own firms’ practices and to **take any necessary action**.

The FCA’s May edition of ‘Regulation round-up’ revisits the findings within the thematic review as a ‘Hot topic’. The article advises that the FCA now expects all firms to take the findings on board and to consider how they can consistently demonstrate suitability across their clients files – taking the necessary steps when any shortcomings are identified.

By way of encouragement, the FCA comments that it is preparing to “**visit a number of firms**” at the end of the year to see what action they have taken. We are promised that this will remain a focus of the FCA’s work until firms across the sector can demonstrate that they are delivering suitable investment portfolios.

# Suitability in Wealth Management: Further FCA Visits (continued)



## Actions

Those firms that still have consideration of the findings in TR15/12 on the “to do” list should take heed of this FCA Regulation round-up article and consider what steps need to be taken. Without a doubt, after both the publication of a thematic review publication and a ‘hot topic’, any firm on the receiving end of one of the promised visits that is found wanting in the area of “suitability” – or, worse still, hasn’t made an attempt to meet the FCA’s expectations – can be sure of some form of punitive action by the Regulator.

## How can we help?

Aside from being able to offer a complete range of services to wealth management firms, Complyport has specialist expertise in business conduct, including ‘suitability’ (COBS 9). Complyport has experience of undertaking Skilled Persons Reviews (“s166”) and is proud to be a member of the FCA’s Skilled Person Panel specifically for ‘Conduct of Business’. If we can be of assistance to you in your review of ‘suitability’ and its associated processes then do please contact us at [info@complyport.co.uk](mailto:info@complyport.co.uk)

# UCITS V and Securities Financing Transactions Regulation: Changes to the Handbook



## Useful Links:

[CP16/14](#)

[Official Journal: 24 March 2016](#)

[2016/348](#)

[Regulatory Roundup 72](#)

[Regulatory Roundup 73](#)

[Regulatory Roundup 74](#)

## Of relevance to:

UCITS management companies, AIFMs

The FCA has published Consultation Paper **CP16/14** – “UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook”.

In basic terms the consultation can be broken down in to two specific areas: UCITS V Level 2 Regulation and Securities Financing Transactions Regulation (“**SFTR**”).

## UCITS V Level 2 Regulation

Whilst UCITS V had to be implemented by **18 March 2016**, the **Level 2 Regulation** (2016/438) does not apply until **13 October 2016**, being **6 months** after it came into force – see Regulatory Roundup 73. Although largely aimed at those firms that are acting as a trustee or depositary of a UCITS, the management companies of UCITS will also have a general interest in the Regulation e.g. the contract for the appointment of a depositary, liability for loss of a financial instrument held in custody etc. as well as areas directly relevant to them such as Article 22 and the need for a **management company** to have in place a **decision-making process** for choosing and appointing the depositary.

Being a Regulation it is, of course, directly binding on all firms. However the FCA has taken the opportunity to propose amendments to certain areas of the Handbook (**COLL** and **CASS**) to ensure consistency with the Level 2 measures as well as a clarification in **SYSC 19E** on when a **remuneration committee** will be required.

The changes can be found in **Appendix 1** of CP16/14.

## SFTR

Although the reporting obligations under the SFTR are a good year or two away, certain **transparency requirements** arising under the SFTR that impact upon both **UCITS management companies** and **AIFMs** will apply from next year.



# UCITS V and Securities Financing Transactions Regulation: Changes to the Handbook (continued)



For a general overview of the SFTR, including what falls under the definition of “securities financing transactions”, key dates, transparency etc. please see e.g. Regulatory Roundups 72 and 74.

Once again, as a Regulation, the SFTR is directly applicable to firms and does not require transposition by Member States. However CP16/14 introduces certain changes to the Handbook (**COLL** and **FUND**) to help firms comply with these new transparency requirements. Note that although the required disclosures in the annual report (and also in the half-yearly report in the case of a UCITS) will apply from **13 January 2017**, those relating to the pre-contractual documentation/prospectus will apply from **13 July 2017** (or with **immediate effect** for those funds constituted after 12 January 2016).

The changes being consulted on can be found in **Appendix 2** of CP16/14. It will be seen that the FCA will bring the changes relating to pre-contractual disclosure into force later this year, but subject to transitional provisions expiring on 12 July 2017.

## Key Dates

- Comments on CP16/14 invited by **19 July 2016**
- UCITS V Level 2 Regulation will apply from **13 October 2016**
- Transparency re annual/half yearly reports applies from **13 January 2017**
- Transparency re pre-investment/prospectus applies from **13 July 2017** (or with immediate effect to funds constituted after **12 January 2016**)

# Bank of England and Financial Services Act 2016



## Useful Links:

[Parliamentary Progression](#)

[FSA 2016](#)

[Regulatory Roundup 72](#)

## Of relevance to:

All firms

The Bank of England and Financial Services Act 2016 has made its way through both Houses and received Royal Assent on 4 May.

It's not a massive instrument but some points of interest within it include:

- The **PRA** will no longer be a subsidiary of the Bank of England but rather will be the Bank of England by way of its Prudential Regulation Committee (s12).
- The appointment of the Chief Executive of the FCA will be **subject to** the individual appearing before the Treasury Committee (or a three month delay if earlier) (s18).
- The legal framework for the **extension** of the Senior Managers and Certification Regime to all authorised firms (s21 and Schedule 4).
- Amending the **presumption of responsibility** under the Senior Managers Regime (see Regulatory Roundup 72) (s25).
- **Appointed Representatives** will be permitted to advise on the conversion or transfer of pension benefits (which has only been a regulated activity since last June) (s34).

# Regulatory Roundup Archive



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**[Peter Carlisle](#)**

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