



Regulatory Roundup

4 July 2011

Issue 31



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Dear CEO: Suitability: Findings of FSA review highlight weaknesses among firms in assessing suitability, including inadequate client classification

The Approach of the FCA: FSA paper indicates greater focus on wholesale conduct, enforcement and intervention under new regime

Quarterly Consultation: Proposed changes to the Handbook including greater clarity on 'Fair, clear and not misleading communications'

Financial Crime Guide: New guidance on financial crime includes reference to new Bribery Act

Money Laundering Review: HM Treasury consulting on changes to the Money Laundering Regulations 2007

FSA Annual Report: The Regulator met 37 of its 41 milestones in the period

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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](#).

Dear CEO: Suitability

The Approach of the FCA



Useful links:

[Regulatory Roundup 28](#)

[Dear CEO](#)

Regulatory Roundup 28 contained an article on guidance issued by the FSA on 'Assessing suitability'. As a reminder, the 'Suitability' rules, which apply to both retail and professional clients, can be found in COBS 9. The same Regulatory Roundup also summarised the FSA Business Plan 2011/12, which included a warning that the FSA will extend its review of the suitability of wealth management firms' clients' portfolios, covering both discretionary and advisory management services.

Some firms may now have received a 'Dear CEO' letter from the FSA dated 14 June on this very subject.

The letter sets out the results arising from a review of 16 firms (a sample which included discretionary investment managers), with no less than 14 of them being judged to pose a high or medium-high risk of detriment to their clients (the letter advises that the FSA "are involved in ongoing regulatory action with these firms"). Some, if not all, of the findings were fairly basic e.g. inadequate client classification; out of date, or absent, KYC; and inconsistencies between portfolios and the client's investment objective and attitude to risk. The letter goes on to suggest that firms may wish to assess the suitability of client files if not recently done. Complyport clients will be aware that 'Suitability' already features in the recommended programme of monitoring devised by their consultants.

Note that **recipients** of the letter are expected to **respond to the FSA** to the effect that they have read and understood the content of the letter and considered the implications for their firm **by 9 August**.

Useful links:

[FCA & Regulation](#)

[Regulatory Roundup 27](#)

As will be known, the FSA is scheduled to disappear at the end of next year as the UK moves to a new model of regulation (for a reminder of the changes please see Regulatory Roundup 27).

The vast majority of firms (the paper quotes 24,500: page 11 provides an analysis by business activity) will fall under the Financial Conduct Authority (FCA) for both conduct and prudential supervision, so the release by the FSA of the FCA's approach to regulation will be of interest to most firms.

(cont.) 2



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The Approach of the FCA (cont.)

Quarterly Consultation



We are promised that the FCA will **intervene earlier** before risk crystallises; have greater powers in **product intervention**; and be able to demand immediate withdrawal of misleading financial promotions. It is interesting to note that the FCA will focus more closely on **wholesale conduct** than the FSA.

The new regulator will have a **single strategic objective**: to protect and enhance confidence in the UK financial system. It must also have regard to **six regulatory principles** (chapter 3 of the paper provides further detail). To this end, the intention is that the FCA will build upon the FSA's 'credible deterrence' approach in strengthening the enforcement function to achieve better outcomes for consumers and across markets. The FCA will place particular focus on firms' culture as a potential root cause of poor outcomes for retail and wholesale consumers and will expect governing bodies to set and maintain a culture that provides an appropriate degree of protection for consumers.

We are told that the purpose of the paper is to 'inform public debate and facilitate stakeholder engagement' and as such the FSA welcomes comments by 1 September (contact details are on page 3).

Useful links:

[CP11/11](#)

Quarterly consultation CP11/11 contains details of various proposed changes to the Handbook. Two particular changes will be relevant to most firms.

A **change** to the submission of **written reports** will mean that such items should be sent to the FSA's Central Reporting team, which will also have a dedicated email address, fax number and telephone number (see Appendix 9 of CP 11/11). For the avoidance of doubt there are **no changes** in respect of **online** submissions.

The FSA proposes tightening up the '**Fair, clear and not misleading communications**' section of the Handbook (COBS 4.2). A communication or financial promotion will **not** be allowed to **describe** a product etc. as "guaranteed", "protected", or "secure" (or similar term) unless the term is capable of being a fair, clear and not misleading description of it (Appendix 5).

Elsewhere, changes are proposed to: SYSC 6 where a firm is operating under a branch passport; Training and Competency sourcebook; liquidity regime; and adviser charging. The consultation period for the proposals ends 6 August save for TC where the period ends 6 July.

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Financial Crime Guide

Money Laundering Review



Useful links:

[Regulatory Roundup 15](#)

[Regulatory Roundup 28](#)

[CP11/12](#)

In May 2010 the FSA published 'The Small Firms Financial Crime Review' (see **Regulatory Roundup 15** for our comments and a link to the document) which covered the three main areas of AML & financial sanctions; data security; and fraud controls.

Of particular use was Annex 2 which contained examples of both good practice (e.g. dual signatures required for all payments made over £5,000) and bad practice (e.g. the MLRO that was unfamiliar with the JMLSG guidance) which firms could use as a basis for a self review.

The FSA has published **new guidance** on financial crime in the form of CP11/12. The guidance is just that: it does not contain any rules nor imposes any new requirements and is not meant to compete with the JMLSG guidance. The expected areas of AML, data security and fraud are covered with the **Bribery Act 2010** making its first appearance (a **reminder** to firms that this **Act came into force on 1 July** and by now firms should be able to demonstrate 'adequate procedures': see past Regulatory Roundups e.g. Issue 28). As in the earlier guidance, the proposed guidance – which is actually in two parts being 'preventing financial crime' and 'thematic reviews' – takes the form of examples of both good and poor practice together with a glossary of terms.

The FSA invite comments on CP11/12 until 21 September.

Useful links:

[Review of ML Regs 2007](#)

HM Treasury has published a consultation on changes to the Money Laundering Regulations 2007 (MLR2007) by way of a response to a review carried out last year. The Government committed to a review two years after implementation.

The good news is that whilst there are seventeen consultation questions, the proposed changes will have no practical day-to-day effect on regulated firms.

The consultation period ends 30 August 2011.





Useful links:

[FSA Annual Report 2010/11](#)

The Regulator issued its Annual Report (the FSA's year is to 31 March), the purpose of which is to provide details of what it has done.

At 178 pages it is something that can be read at leisure but some interesting facts (with page numbers) include: the average number of full-time equivalent employees during the year was 3,291, being an 11% increase on 2010 (page 155); 92% of staff did not receive any salary increase, although £24.8m was paid out in annual staff incentive awards (page 101); and the Regulator met 37 of its 41 milestones, with 4 being reprioritised (page 9).

Bespoke, Practical Consulting



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 [Jon Wedgbury](#)

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