



Regulatory Roundup

13 June 2012

Issue 41



In Brief:

Regulatory Fees and Levies for 2012/13: FSA's overall Annual Funding Requirement to increase by 11.9%

UCIS Marketing Woes: FSA fines director £60k for failings in relation to promotion of UCIS and prohibits him from continuing as an approved person

Prospectus & Transparency Update: FSA and HM Treasury publish near-final rules which will result in changes to the PR and DTR modules of the FSA Handbook

Money Laundering Failings: Action taken against firm and MLRO for failings including inadequate review of AML systems and controls and poor record keeping of staff AML training

Cookies: New legislation in force governing use of cookies in firms' websites

In the Complyport Regulatory Roundup:

<i>Regulatory Fees and Levies for 2012/13</i>	<u>2</u>
<i>UCIS Marketing Woes</i>	<u>3</u>
<i>Prospectus & Transparency Update</i>	<u>4</u>
<i>Money Laundering Failings</i>	<u>5</u>
<i>Cookies</i>	<u>6</u>
<i>Regulatory Roundup Archive</i>	<u>7</u>

Follow us on Twitter



Join us on LinkedIn



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

Regulatory Fees and Levies for 2012/13



Useful links:

[Regulatory Alert](#)

[PS12/11](#)

[Fees Calculator 2012/13](#)

The Complyport Regulatory Alert of 3 February contained details of the FSA's proposals on fees and levies for 2012/13. The alert advised that the final fees and levies would not be confirmed until approved by the FSA board.

PS12/11 – 'Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2012/13' – has now been released confirming the **final details**.

The original proposal was to increase the FSA's Annual Funding Requirement (AFR) – basically how much it needs to do the day job – by 15.6% from £500.5M to £578.4M.

The good news for firms is that the AFR has been reduced to £559.8M, an increase of 11.9% (but see below). A press release advises that the FSA "recognises the difficult economic circumstances for many firms and is committed to keeping any essential cost increases to a minimum".

Enforcement fines imposed by the Regulator (£70.7M for 2011/12) are returned to the industry by way of discounts to the AFR ("financial penalty discount") so the actual total amount that needs to be invoiced will be reduced to £489.1M.

The bad news for firms is that as the financial penalty discount used is 18% lower than the previous year's figure, the £489.1M that will be invoiced for 2012/13 is actually a real **increase of 18.1%** (see page 81 of PS12/11) across all the fee-blocks. The actual impact upon individual firms' fees is more complicated as it is dependent upon a number of factors including the increase or decrease in the number of firms that make up each fee-block and year on year variations in a particular fee block's tariff unit e.g. FUM or headcount.

Firms will be invoiced from June onwards with payment due within 30 days; page 7 of PS 12/11 contains a useful timetable. Those firms that do not like surprises can make use of the fees calculator to get an indication of their regulatory fees and levies.



Useful links:

[Regulatory Roundup 39](#)

[Regulatory Roundup 35](#)

[Final Notice - P3](#)

[Final Notice - Patrick O'Donnell](#)

Regular readers of the FSA's website will be aware of its continuing interest in unregulated collective investment schemes (UCIS) e.g. they feature in the FSA's Conduct Risk Outlook 2012 in a list of the most significant retail conduct risks (see Regulatory Roundup 39). Furthermore the Regulator is prepared to take action against the CF10 compliance oversight function (see Regulatory Roundup 35).

Final Notices in respect of P3 Wealth Management and Patrick O'Donnell, the firm's sole director, evidence further FSA action over UCIS misdemeanours. In this particular instance the firm's **Part IV permission** was **cancelled** by the FSA whilst Mr O'Donnell suffered a **penalty of £60,000** and has been **prohibited** from performing any functions in relation to any regulated activity.

Although there is an overlap with the concept of 'suitability' (COBS 9), at the heart of the FSA action was Mr O'Donnell's lack of understanding of the regulatory restrictions surrounding the promotion of UCIS.

Firms are reminded that the **promotion of UCIS** is subject to the recipient meeting one of the categories in **COBS 4.12** – and the need to maintain adequate records to substantiate such categorisation.

Firms may also be able to use one of the exemptions in the **Promotion of Collective Investment Schemes (Exemptions) Order 2001** (PCISO) but these can be tricky so it is **essential** to follow the requirements precisely e.g.:

- the exemption for 'certificated high net worth individuals' only applies in respect of UCIS that invest 'wholly or predominantly in the shares or debentures of one or more unlisted companies';
- warnings must be given in 'black, bold type' and 'surrounded by a black border' etc.

One further important aspect to bear in mind is that the UK restrictions on the promotion of UCIS have to be considered in the light of MiFID requirements which take precedence. As such the **PCISO cannot** be used in connection with **MiFID business** and the relevant MiFID-derived rules in COBS 4 will always apply.

(cont.) 3



UCIS Marketing Woes (cont.)

Prospectus & Transparency Update



This can pose problems for MiFID firms as, whilst on the one hand marketing is not a regulated activity, the effect of recital 82 of the MiFID Implementing Directive, means that it **will** be considered **MiFID business** if it is deemed 'preparatory to the provision of an investment service ...' e.g. advising a client to invest or receiving and transmitting orders to the manager/operator of the scheme.

As such, the firm would have to follow the COBS rules and categorise the clients under MiFID.

Complyport clients should feel free to get in touch with their normal contact should they have any particular financial promotion queries.

Useful links:

[Regulatory Roundup 37](#)

[PS12/9](#)

Regulatory Roundup 37 included details of the joint HM Treasury and FSA Consultation Paper (CP11/28) concerning the changes that need to be brought about to the Prospectus (PR) and Transparency (DTR) regimes in the Handbook as a result of Amending Directive 2010/73/EU.

All Member States have until **1 July 2012** to implement the Directive in national legislation. As mentioned in the article, the UK has already introduced two of the required changes: increasing the **investor threshold** before a prospectus is required from **100 to 150 investors** and raising the total size of an offer before an offer falls within the prospectus regime from **€2.5M to €5M**.

Following the end of the consultation period, which received seven responses, a joint Policy Statement (PS12/9 "UK implementation of Amending Directive 2010/73/EU") has been published.

Changes that will come into effect in July will include increasing the exemption requirement from a minimum consideration to be paid by any investor from €50K to €100K and aligning the definition of 'qualified investor' with MiFID (professional client and eligible counterparty).

The near-final rules (which are dependant upon Parliamentary approval of the necessary amendments to The Prospectus Regulations) are in Appendix 2 of PS12/9.



Money Laundering Failings



Useful links:

[Final Notice Habib Bank](#)

[Final Notice Hussain](#)

[Regulatory Roundup 40](#)

[Fines Table 2012](#)

Following the FSA action taken against Coutts & Company in March for money laundering failings, the FSA has fined a further firm for such issues.

Habib Bank AG Zurich (Habib), a privately owned Swiss bank with branches in the UK, suffered a penalty of £525,000 after the usual 30% discount for agreeing to settle early. As has happened in past cases, the Regulator has not only taken action against the firm but also against a specific individual, in this case, Syed Hussain, the **MLRO**. The most recent example of this was the fine imposed both upon Mitsui for corporate governance failings and upon its Chief Executive for failing to ensure adequate arrangements were in place (see Regulatory Roundup 40).

Mr Hussain was fined £17,500, again after a 30% discount, for his failings as MLRO. The action takes into account that Mr Hussain has now retired from working in the financial services industry. The situation brings to mind what Tracey McDermott, acting FSA Director of Enforcement and Financial Crime, said after the Mitsui case: "If those who hold senior positions in financial services firms had any doubt about how seriously we view their regulatory responsibilities this fine and ban should make our position clear".

The background details can be found in the two Final Notices but the following deficiencies are worth noting, especially by firms' MLROs/COs, as being equally relevant to firms other than banks:

- Insufficient records of staff AML training, and training not adequately addressing shortcomings in AML practice identified by the MLRO
- Not conducting sufficient Enhanced Due Diligence in relation to higher risk customers (e.g. when customer not physically present for identification purposes)
- Inadequate reviews of AML systems and controls
- Not taking into account the operational jurisdiction of corporate customers e.g. a UK incorporated company with operations in Africa should be assessed differently to one that acts solely in the UK
- The annual MLRO report failing to assess the adequacy and effectiveness of its AML systems and controls





Useful links:

[ICO Guidance](#)

[ICC Guidance](#)

Although not an FSA regulatory matter, this is a reminder to firms that operate websites that 'new', EU based, legislation has started to bite since the end of May - 'new' in the sense that although introduced into the UK on 25 May 2011, firms effectively had 12 months grace to put the requirements into action. For the avoidance of doubt, the regime applies to all firms that operate websites and not just FSA authorised firms.

In brief it is now a requirement that websites should not use cookies - which are basically small files downloaded onto a user's pc etc. when they access a website - unless a user is both provided with clear information about the purposes of the cookies **and** has given **consent** to their use. There are very limited exemptions to the requirement. Regular users of the FSA website will have noticed that a cookie related banner now appears on the home page.

The Information Commissioner's Office (ICO) has oversight of adherence to the requirements and has produced **guidance** on what firms need to do. Powers available to the ICO include the issuance of an **Enforcement Notice** to compel an organisation to take action (failure to comply can be a criminal offence) and, for the most serious cases, the imposition of a **monetary penalty** up to a maximum of **£50,000**.

There is also a practical guide, including examples of possible wordage to use, published by the International Chamber of Commerce which firms may find of use.





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.



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](#)

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

The Complyport Regulatory Roundup is provided for information purposes only and represents a summary of the above subjects. It is not intended to offer a legal opinion, advice or recommendation as to future action and it is provided solely as a discussion document. ©Complyport Ltd

Complyport Limited ("Complyport"), Company Number: 04333584 is a Limited Company registered in ENGLAND with Registered Office at Devonshire House, 1 Devonshire Street London. W1W 5DR.

This Regulatory Roundup is for the named person's use only. It serves purely for information purposes, and is not an offer or financial promotion. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any transmission errors. If you receive this Regulatory Roundup in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. Transmission is not guaranteed to be secure. Any information contained herein is subject to Complyport's Standard Terms and Conditions of Business which are available upon request. Complyport and its affiliates do not assume any liability whatsoever for the content of this document, or make any representation or warranties, as to the accuracy or completeness of any information contained in this document.

