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Regulatory Roundup
23 February 2015
Issue 62

In Brief:

Recovery and Resolution: FCA publish Resolution and Recovery final rules

Changes to Companies Act: Corporate Directors & Controllers:

CASS Changes: Second phase of changes to the CASS regime come into effect

Transaction Reporting: FCA updates the Transaction Reporting User Pack (TRUP)

EMIR: Backloading: Two year time frame for EMIR Reporting

Market Abuse: Asset Management Firms: FCA publishes findings on controlling market abuse risk in asset management firms

Use of Dealing Commission: FCA publishes Feedback Statement

SEC: Annual Updating Reminder: Statement to be submitted within 90 days of end of financial year

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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.

Recovery and Resolution

Useful links:

[Regulatory Roundup 58]

[Regulatory Roundup 59]

[Regulatory Roundup 60]

[PS15/2]

[2014/59/EU]

Following a consultation paper released last August (see Regulatory Roundups 58 – 60) the FCA published on 16 January PS 15/2 - "Recovery and Resolution Directive: Feedback on CP14/15 and final rules".

The rules implement the **Recovery and Resolution Directive** (2014/59/EU) ('RRD') which has the aim of providing "measures, tools and powers in respect of preparing for the recovery of firms in financial difficulty, early intervention in the event of problems, and the resolution of failed firms in a way that reduces the costs to the public and mitigates the impact on the financial system".

Under the RRD, the **FCA** (or the PRA for those firms that they regulate) is responsible for most of the recovery and early intervention aspects whilst the **Bank of England**, in its capacity as the Resolution Authority, will be responsible for the resolution of distressed firms.

Generally the RRD applies to an **IFPRU 730k** firm but can also include a **BIPRU firm** if it is part of a **group** that includes such a firm or a credit institution ('RRD group'); firms should refer to IFPRU 11.1.6 which offers guidance on the application of the RRD. It is the view of the FCA that RRD is unclear as to whether it should also apply to an **IFPRU 125k** or an **IFPRU 50k** firm. For now they are not included but the FCA will continue to explore this with the Commission.

The FCA informs us that there are around 230 IFPRU 730k firms subject the RRD of which 190 are not '**significant IFPRU firms**' (see IFPRU 1.2.3) and hence will be eligible for the 'simplified obligations' approach. Such firms will have to submit **recovery plans** every **two years** whereas significant IFPRU firms will be subject to **annual** submissions and with a greater level of detail (i.e. subject to the 'general obligations'). **Resolution plans**, on the other hand, will be subject to a three year and two year reporting frequency respectively - although the Bank of England is the Resolution Authority, the FCA will be collecting resolution information on behalf of the Bank.

The new rules will be found in **IFPRU 11**, most of which apply from **19th January 2015** with the reporting for recovery plans being phased in from the **end of June 2015** - IFPRU 11.6 comes into force on 1 January 2016. Reporting dates and frequency in respect of both recovery and resolution plans can be found in SUP 16.20.

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Changes to Companies Act: Corporate Directors & Controllers

Useful links:

[Regulatory Roundup 59]

[Small Business, Enterprise and Employment Bill]

[Provisional Implementation Plan]

[PSC Register Terms of Reference]

[PSC Summary & Discussion Paper]

[Corporate Directors: Consultation on Exceptions]

Regulatory Roundup 59 provided an update of the progress being made in respect of the 'Small Business, Enterprise and Employment Bill' ('**SBEEB'**) which would include **changes** to the **Companies Act**.

As a reminder, one of the proposals in the Bill (Part 7) was for companies that fall within the requirement to keep an up-to-date register ('**PSC Register**') of people with **significant control** over the company (for this purpose, 'person' means an individual). In brief 'significant control' includes holding more than 25% of the shares in the company or having significant influence or control over the company – however reference should be made to Schedule 3 (Part 1) of the Bill for all the relevant conditions. Persons who hold control by virtue of only having significant control over some other legal entity that is subject to its own disclosure requirements ('relevant legal entity') will be deemed 'non-registrable' and will not be entered in the Register.

The requirement for a PSC Register will **not** apply to companies whose shares fall within the FCA Sourcebook **DTR5 Rules** (Disclosure and Transparency Rules) – essentially companies listed in the UK and financial instruments relating to those shares.

The Discussion Paper issued last October provides a useful overview of the PSC Register.

A further proposal was the **prohibition of corporate directors**, albeit with 'exceptions' – there was a consultative review on possible exceptions which closed last month. The review was of the opinion that there was **not** a strong case to prohibit corporate members of **LLPs** but the position will be reviewed in parallel with the review of SBEEB.

The Department for Business, Innovation and Skills has now published a **provisional implementation plan**.

The prohibition on corporate directors is scheduled to come into force in **October** of this year whilst the requirement to keep a **PSC Register** will commence in **January 2016** (however there will not be a need to file this information at Companies House until April 2016).

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CASS changes

Useful links:

[Regulatory Roundup 56]

[PS14/9]

A reminder that the second phase of changes to the CASS regime came into being on 1 December – see Regulatory Roundup 56.

Policy Statement PS14/9 ('Review of the client assets regime for investment business') published in June last year included all the changes to CASS – and to other relevant parts of the Handbook – with a useful summary of the changes in each of the three phases set out in chapter 2.

Changes in December included (but not limited to):

- the possibility of remittance to charity of **unclaimed** client **money** and unclaimed **custody assets** (CASS 7.2.18 & CASS 6.2.8).
- the '**Delivery vs. Payment**' exemption will be reined in so that a firm will have to be a member or participant (or suitably sponsored) of the relevant commercial settlement system **and** will require permission from the client to use the exemption (CASS 7.2.8 & CASS 6.1.12).
- **trust acknowledgement letters** must be in place **before** monies are held in the relevant bank account - the 20 day period of grace has been removed (CASS 7).
- standard **templates** now exist for such trust acknowledgement letters for firms to use (CASS 7 Annex).
- written agreements must be effected whenever assets are placed, or when arranging for such assets to be placed, with a third party **custodian** (CASS 6.3.4A).
- title **transfer collateral arrangements** must be subject to a written agreement (CASS 7.2.3B & CASS 6.1.6B).
- the information that has to be provided to clients under COBS 6.1.7 is extended to include **professional clients** and **eligible counterparties** (CASS 9.4).

Note that there are **transitional provisions** in respect of clients existing before 1 December 2014 and firms should refer to the table in CASS TP1.

The third, and final, phase of changes set out within PS14/9 will come into force on **1 June 2015**.

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Transaction Reporting

Useful links:

[Regulatory Roundup 39]

[TRUP 3.1]

[TRUP changes]

[Feedback Received]

The FCA has updated the Transaction Reporting User Pack (TRUP), the previous version (v 3) was release in March 2012 – see Regulatory Roundup 39. It's not so much an overhaul of what has been previously stated but is rather a clarification exercise.

The majority of changes fall within Chapter 7 (guidelines for reporting fields).

It takes **immediate** effect **except** for sections 7.5, 7.18.2 & 9.1 which will be effective **from 6 August 2015**.

The links provided include the marked-up changes making it easier to see what has, and hasn't, been changed.

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EMIR: Backloading

Useful links:

[Regulatory Roundup 51]

[1247/2012]

It's now a year (12 February 2014) since the reporting obligation to report to a Trade Repository under EMIR came into force.

Firms subject to the EMIR reporting obligation may recall that there were **phased** reporting windows depending whether the contracts were:

i) entered into before 16 August 2012 and were still outstanding at that date; and

ii) entered into on or after 16 August 2012

The 16 August 2012 is the date that EMIR, but not its provisions, came into force.

Those transactions that were still **outstanding** on 12 February 2014 that fell within (i) had to be reported within **90 days** of that date whilst those within (ii) had to be reported on 12 February 2014.

We would remind firms that they now have a **two year** time frame (being three years from 12 February 2014) to report any contracts that fall within (i) or (ii) but which were **not outstanding** on 12 February 2014 – see Article 5(4) of Implementing Regulation 1247/2012.

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Market Abuse: Asset Management Firms

Useful links:

TR15/1

Market Abuse: Enforcement Cases

The FCA has published its **thematic review** findings on controlling the risk of **market abuse** in **asset management firms** – "Asset management firms and the risk of market abuse" (TR15/1).

The review covered **19** asset management firms (of which 17 were subject to a visit) including long-only asset managers, hedge fund managers and an occupational pension scheme; the AuM of the sample firms ranged from £200m to over £100bn.

TR15/1 comments on six specific areas, including **personal account dealing** and controlling **access to inside information**, and for each such area provides examples of **good practice** and **bad practice**.

The paper is very readable in that the content stretches to only **13 pages** and it would certainly be worthwhile a firm putting aside the time to compare its current market abuse procedures and controls with the review's findings and comments.

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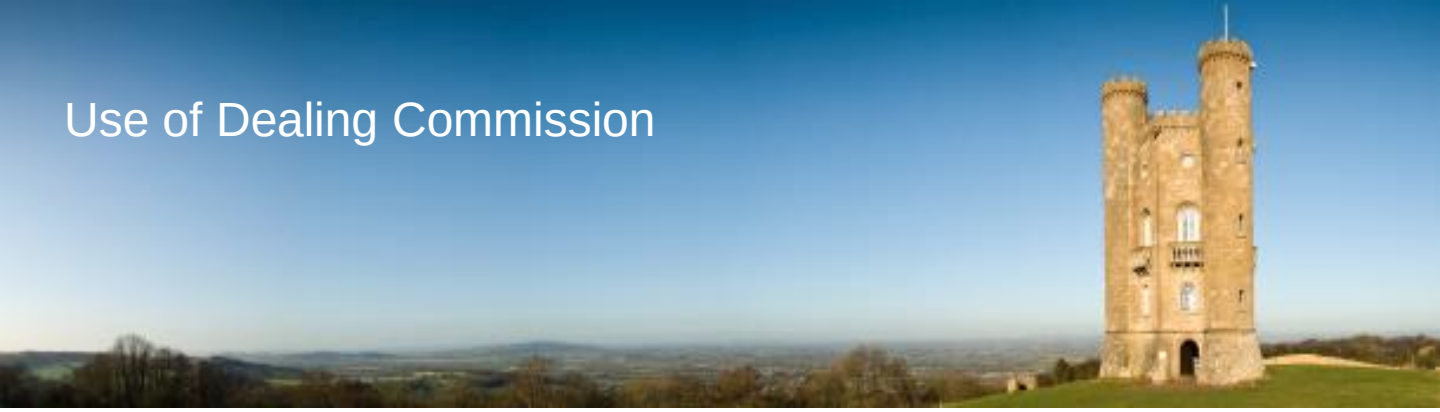
Use of Dealing Commission



Useful links:

FS15/1

DP14/3

Regulatory Roundup 57

Regulatory Roundup 55

MiFID 2

ESMA Technical Advice 2014/1569

Back in July of last year the FCA released a Discussion Paper (DP14/3) on the **use of dealing commission regime** – see Regulatory Roundup 57. The paper included findings from thematic supervisory work which took in **17 investment managers** and **13 brokers**.

A key aspect was the view that **unbundling research** from dealing commission (according to the Discussion Paper UK investment managers pay around £3bn of dealing commission per year to brokers, half of which was spent on research) would be of benefit to the end user and would allow **independent research providers** to compete more effectively against brokers. Comments on DP14/3 were invited by 10 October.

The Regulator has now published a Feedback Statement (FS15/1) in respect of the comments received.

Some respondents favoured the current regime and expressed concerns that investment firms would be not be able, or willing, to absorb the costs of external research nor pass on such costs to the end-user but would instead reduce spending on research which would possibly lead to a loss of performance. However the FCA remains of the view that the current regime requires **further reform** with the **full separation** of the receipt of **research** from **execution**, with such reform leading to a potential **increase** in the number of **suppliers of research**.

It may be recalled that **MiFID 2** (see Article 24(8)) expands upon the current MiFID regime surrounding the payment of inducements to, or by, a third person. Subsequent ESMA Technical Advice (2014/1569) recommends that investment firms providing **portfolio management** (or other investment or ancillary services) to clients **can** receive **investment research** by third parties but **only** if:

- it is paid for by the recipient firm out of its **own resources**; **or**
- payment is made from a separate **research payment account** controlled by the firm **funded** by a specific research charge to the **client**

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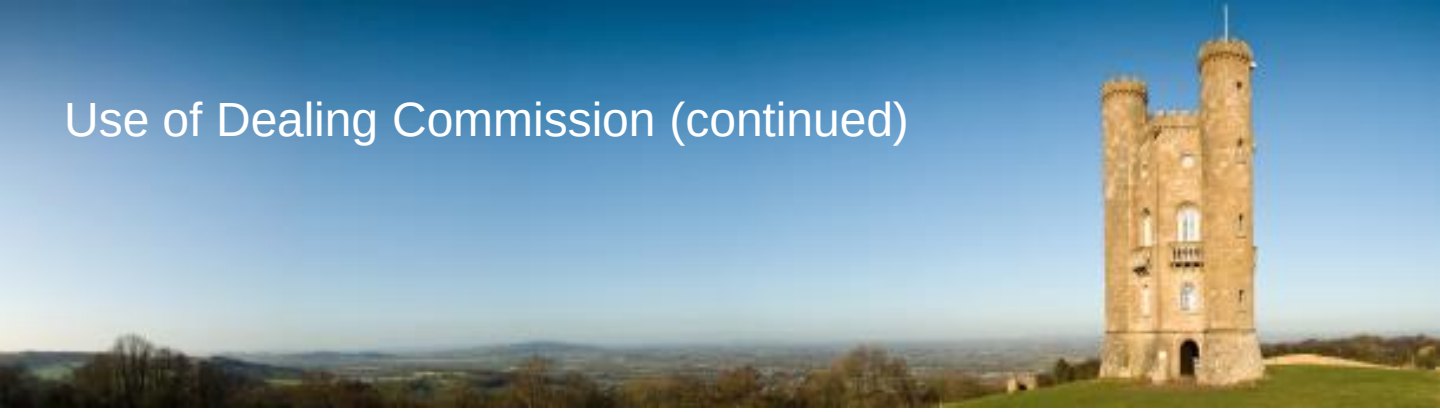
Use of Dealing Commission (continued)



Where the research payment account is the chosen route then the specific research charge must be based upon a research budget set by the firm (and **agreed with the client**) and must **not** be linked to **volume** or **value** of transactions. It is the view of the FCA that the costs of research can be allocated across several research payment accounts on a pro rata basis where more than one client portfolio has benefited from the consumption of that research by an investment manager. As might be suspected this is only a summary and firms are encouraged to read both DP14/3 and section 2.15 of the ESMA Technical Advice for further details.

With this in mind the FCA will not be making any immediate changes to the current rules on the use of dealing commission (COBS 11.6) which, in any event, were overhauled in June last year – see Regulatory Roundup 55 - but instead will implement changes in line with the final reforms under MiFID 2. The FCA intends to publish a **consultation paper** on the implementation of MiFID 2, including inducements requirements, by late Q4 2015.

Although **MiFID 2** does not apply until **3 January 2017**, firms should review their current practices regarding commissions and research now and consider whether any changes may be required in order to be in line with MiFID 2 (the FCA reminds us that **commission sharing arrangements** "would seem incompatible with the intention of ESMA's proposals"), albeit that the EC is still considering the ESMA Technical Advice.

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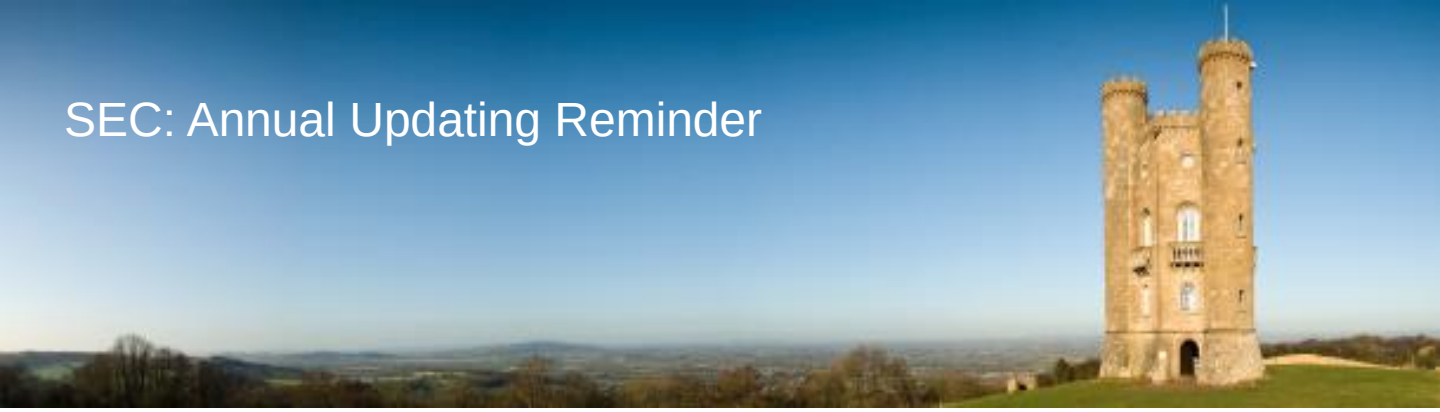
SEC: Annual Updating Reminder



A brief reminder for those firms that are registered with the U.S. Securities and Exchange Commission ("SEC") that they need to submit an annual updating statement within **90 days** of the end of their financial year.

With this in mind, those firms whose year end is **31 December 2014** must submit to the SEC by **31 March 2015** its annual updating amendment for 2014, as follows:

- Exempt Reporting Advisers: Form ADV Part 1A
- Investment Advisers: Form ADV Part 1A and 2A (Brochure).

These documents must be filed **electronically** with the SEC via the FINRA Investment Adviser Registration Depository ("IARD"), and will be publicly available on-line shortly after submission. Before uploading these documents, it is recommended that you consult the balance in each registered entity's FINRA Flex Funding Account so as to ensure there is sufficient cash available for payment of the required annual fees, as follows:

Registration / Assets Under Management	IARD Annual Fee
Investment Adviser Under USD 25 Million	USD 40
Investment Adviser USD 25 Million – USD 100 Million	USD 150
Investment Adviser Over USD 100 Million	USD 225
SEC Exempt Reporting Adviser	USD 150

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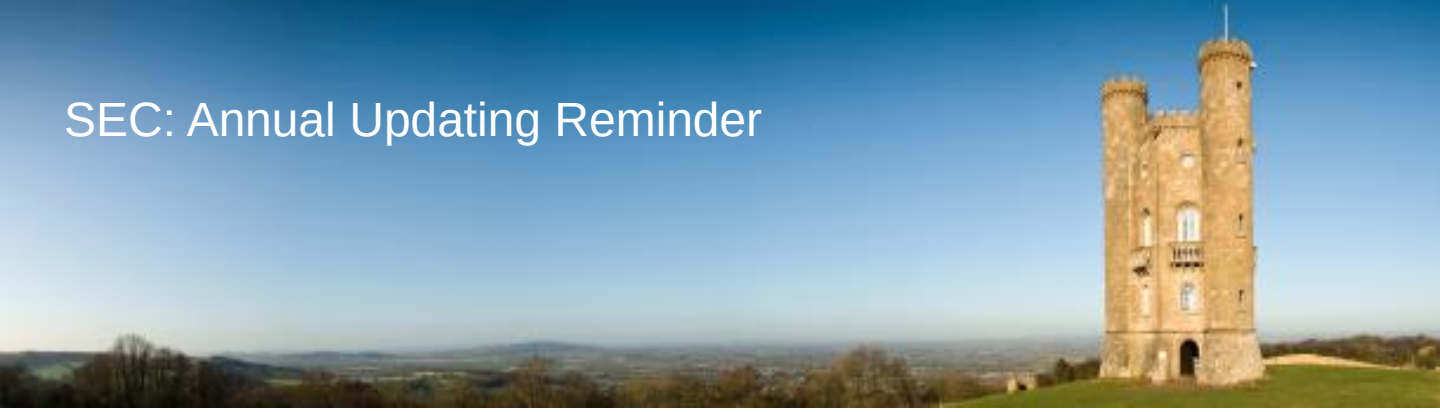
SEC: Annual Updating Reminder



In addition, **Registered Investment Advisers** must deliver annually, within **120 days** of the end of their financial year, to each client for which delivery is required **either**:

(I) a free updated brochure (ADV Part 2A) that either includes a summary of material changes or is accompanied by a summary of material changes, **or**

(II) deliver to each client a summary of material changes that includes an offer to provide a copy of the updated brochure and information on how a client may obtain the brochure.

As a reminder, ADV Part 2B (Brochure Supplement) must be **updated** whenever any information in them becomes materially inaccurate and must be **delivered** to clients following any update to the supplement that amends information in response to Item 3 of Part 2B (disciplinary information). You are not required to file Brochure Supplements, but you must maintain copies of them.

Please let us know if you have any questions regarding the completion or submission of Form ADV.

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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.

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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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