



Regulatory Roundup

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In Brief

ESMA Remuneration Guidelines: UCITS and AIFMD: Official guidelines published by ESMA

Investment and Corporate Banking: Final Report: FCA publishes final report on market study

AIFMD Passport: Non-EU Jurisdictions: ESMA publishes updated 'Advice' paper setting out assessments of third-countries

CFDs and other Speculative Products: Update to ESMA Q&As

Regulatory References: FCA releases Policy Statement PS16/22 containing final rules on regulatory references

In the Complyport Regulatory Roundup:

ESMA Remuneration Guidelines: UCITS and AIFMD	2
Investment and Corporate Banking: Final Report	3
AIFMD Passport: Non-EU Jurisdictions	5
CFDs and other Speculative Products	6
Regulatory References	7

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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ESMA Remuneration Guidelines: UCITS and AIFMD



Useful Links:

[Regulatory Roundup 75](#)

[Remuneration Guidelines: UCITS](#)

[Remuneration Guidelines: AIFMD amendment](#)

Of relevance to:

UCITS management companies and AIFMs

UCITS V introduced the concept of remuneration policies and practices for management companies – see Regulatory Roundup 75 for details of ESMA’s final report on UCITS remuneration guidelines. The UCITS Remuneration Code is, of course, captured in SYSC 19E of the Handbook.

The ‘official’ guidelines have now been published by ESMA (2016/575).

The guidelines apply from **1 January 2017** i.e. they first apply for the calculation of payments relating to new awards of variable remuneration to identified staff from the **first full performance period** commencing after 1 January 2017. The document provides an example of a management company whose accounting period ends on 31 December. In this instance the management company should apply the guidelines to payments relating to the 2017 accounting period.

ESMA also released an amendment to the **AIFMD Remuneration Guidelines**. However, the document is a modest one-page as it simply amends the guidelines for AIFMs that are part of a group.

Investment and Corporate Banking: Final Report



Useful Links:

[Regulatory Roundup 75](#)

[Regulatory Roundup 65](#)

[MS15/1.3 - Final Report](#)

[OP/15 – updated](#)

[CP16/31](#)

Of relevance to:

Corporate finance advisers, investment banks, buy-side investors and IPO Stakeholders in general

In May 2015 the FCA launched a **market study** into **investment and corporate banking** by publishing its Terms of Reference (see Regulatory Roundup 65). One focus of the study was the availability of information during the **IPO process**.

In April of this year, Regulatory Roundup 75 included an article on a double IPO offering from the FCA with the publication of both a **Discussion Paper** based upon feedback and data requests from various firms (“Availability of information in the UK Equity IPO process” – **DP16/3**) and an **Occasional Paper** (“Quid pro quo? What factors influence IPO allocations to investors?” – **OP/15**).

The FCA has now published a Final Report on its market study (**MS15/1.3**) together with an **updated version of OP/15** – please use the link to OP/15 in this article rather than the link within Regulatory Roundup 75.

The conclusion is that the universal banking model works well for a wide range of participants **but** the FCA has highlighted certain areas where action is proposed:

A ban on restrictive contractual clauses

Banks at times use contractual clauses that restrict a client’s choice in future transactions. The FCA proposes to prohibit such exclusivity provisions and has issued a **separate consultation paper** on this area – **CP16/31** “Investment and corporate banking: prohibition of restrictive contractual clauses” where comments are invited by 16 December 2016.

League table misrepresentation

Banks are accused of routinely presenting league tables to clients in a way that inflates their own position. The FCA will work with the British Banking Association and the Association for Financial Markets in Europe with a view to developing industry guidelines to improve the way in which banks present such information to clients.

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3



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Incentives for loss-making trades

Some banks have been identified carrying out loss-making transactions purely to generate a higher position in league tables. The FCA has asked league table providers to review their recognition criteria so as to reduce the incentives for banks to undertake such league table trades.

IPO allocations

There is evidence that banks have skewed IPO allocations to those buy-side investors from whom the banks derive the greatest revenue. It is noted from the paper that the FCA's analysis shows that some banks have not been following their own allocation policies. The FCA will conduct supervisory work with those firms whose allocation policies and practices fall short of expectations. However we are warned that the FCA expects those banks falling outside of this proposed supervisory work should also review their own policies and practices – the FCA then goes on to say “we will consider whether to conduct further work in this area in the future if we do not see adequate changes in allocation practices”.

The associated FCA press release advises that the FCA expects to publish a separate **consultation paper** on **changes to the IPO process** in winter 2016/17.

AIFMD Passport: Non-EU Jurisdictions



Useful Links:

[ESMA Advice](#)

[Regulatory Roundup 78](#)

Of relevance to:

AIFMs and non-EU fund managers

As we know (see Regulatory Roundup 78) the AIFMD allows for the extension of the marketing passport to **EU AIFMs of non-EU AIFs** (currently such marketing is subject to the national private placement regime – “NPPR”) and to **non-EU AIFMs** (currently also NPPR only) as well as the extension of the management passport to non-EU AIFMs. ESMA has already given a thumbs-up to a few countries such as Switzerland, Jersey, Hong Kong etc. – please see Regulatory Roundup 78 for further information.

ESMA has published an updated ‘Advice’ paper which sets out in the one place its assessments of these third-countries.

The document advises (page 105) that ESMA has started gathering intelligence on the following non-EU countries:

- Malaysia
- Egypt
- Chile
- Peru
- India
- China
- Taiwan

CFDs and other Speculative Products



Useful Links:

[ESMA Q&As](#)

[Regulatory Roundup 78](#)

Of relevance to:

Firms involved in CFDs and similar products such as binary options and rolling spot forex

ESMA has updated its Q&As on ‘the provision of CFDs and other speculative products to retail investors under MiFID’ – see Regulatory Roundup 78 for the previous version which included the addition of the importance of determining whether the client has the necessary experience and knowledge to understand the risks involved in such investments (the ‘**appropriateness**’ test).

In addition to CFDs, the paper also references rolling spot forex and binary options – these products will also fall under the heading of ‘PRIIPs’.

Strictly speaking the paper is addressed to the competent authorities rather than to firms but, of course, the messages within will also be relevant to firms.

New Q&As added concern:

- **Best execution** obligations for firms
- The use of **leverage**
- The **withdrawal of funds** from trading accounts
- The use of trading benefits e.g. offering ‘**bonuses**’ as an introductory offer



Useful Links:

[Regulatory Roundup 69](#)

[PS16/22](#)

Of relevance to:

All Firms

In October 2015 the FCA launched a joint Consultation Paper (CP15/31) with the PRA on “Strengthening accountability in banking and insurance: regulatory references” – see Regulatory Roundup 69.

The consultation proposed introducing a new chapter in **SYSC** on ‘Regulatory References’ which would be referenced in the Approved Persons chapter of SUP (SUP 10C for ‘relevant authorised persons’) and SUP 10A (for firms that are **not** ‘relevant authorised persons’).

In its simplest form a ‘relevant authorised person’ is either:

- A firm with permission to accept deposits; **or**
- An investment firm that has permission for **dealing in investments as principal** and when carried on by it that activity is a PRA-regulated activity.

For further information on the relevant authorised person regulatory framework please see the article on the Senior Managers Regime which is also in Regulatory Roundup 69.

The FCA has now released Policy Statement **PS16/22** which contains the final rules on regulatory references (which will appear in SYSC 22).

Although the need for ‘regulatory references’ is specific to firms that are ‘relevant authorised persons’ (the new rules refer to a ‘**full scope regulatory reference firm**’ which also captures a Solvency II firm and a large non-directive insurer) it is important to appreciate that the amendments to SUP 10A means that **all firms are impacted** by the proposals to a greater or lesser extent.

SYSC 22 will apply to **both** PRA and to FCA firms in that the latter will be required to provide references to the former in line with SYSC 22 e.g. in the scenario where an employee/ex-employee is moving into a PRA-regime firm.

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7



Regulatory References (continued)



We would draw firms' attention to the need to:

- Ensure that the **HR functions** are aware of the obligations arising in SYSC 22;
- Obtain/supply references for possibly up to **six years** (SYSC 22.2.1(1)(d) and SYSC 22.2.2(3)); and
- Refer to the template (SYSC 22 Annex 1R) to be used by the provider of the regulatory reference.

The table on page 26 of PS16/22 may be useful in that it reminds both relevant authorised persons and FCA only authorised firms of which aspects of the new framework applies to them.

The final rules in SYSC 22 can be found in **Appendix 1** of PS16/22.

The rules, subject to the transitional provisions in TP 5, come into force on **7 March** next year.

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