



Regulatory Roundup

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Issue 24



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Disclosure Obligations: Final rules relating to remuneration disclosure

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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](#).

Remuneration Code



Useful links:

[PS10/20](#)

[Reg Roundup 20](#)

A 'thank you' to those Complyport clients that submitted their comments and views to us on the proposed wordage of the Remuneration Code as set out in consultation paper CP10/19. These were duly submitted to the FSA on an anonymous basis (please see Annex 1 of policy statement PS10/20).

The **final rules** and guidance (which can be viewed in Annex B of PS10/20) **came into effect on 1 January 2011** and appear in SYSC 19A. For the avoidance of doubt, the Remuneration Code will impact BIPRU firms and will not impact e.g. exempt CAD firms.

There is a basic requirement under SYSC 19A 2.1R for such firms to **have in place appropriate remuneration policies**. Complyport clients will already have received a foundation document which should satisfy the basic FSA requirements and which can be refined on an ongoing basis (should you not have received such a document then do please speak to your usual Complyport contact).

Any non-Complyport clients that have not yet addressed the need for a Remuneration Code policy may find the link to Regulatory Roundup 20 useful for providing a basic background to this issue.

In brief, the Remuneration Code is based upon **twelve Principles**, some of which apply firm-wide and some of which only apply to 'Code staff'. It can be applied in a proportionate manner and to this end the FSA has issued guidance (see Appendix 2 of PS10/20). There are four tiers of proportionality - the majority of firms will fall within 'proportionality tier four', which will be BIPRU limited licence/activity firms. All firms are expected to be **'broadly compliant'** with Principles 1 to 6, 9, 10 and 11 **from 1 January 2011** – although note the useful concession in 4.6 of PS10/20 in that any shortfalls should be identified and a time specific plan prepared to rectify them should be in place by the end of January. Principle 12 ('Remuneration structures') has captured the most attention from industry and by virtue of a Transitional Provision certain firms, including those in proportionality tier four, need to comply with these Rules by 1 July 2011.

Remuneration Code & Disclosure Obligations



Useful links:

[PS10/21](#)

[Reg Roundup 23](#)

When refining their Remuneration policies, firms are reminded of the need not to overlook the corresponding **disclosure requirements** – see Regulatory Roundup 23 for an overview based upon the then consultation paper CP10/27. Since that time the FSA has published policy statement PS10/21 (“Implementing CRD3 requirements on the disclosure of remuneration”) which contains final rules.

Although the disclosure rules came into force on 1 January 2011 the FSA will allow firms until 31 December 2011 to make their first disclosure. Such **disclosures** will need to be on **at least an annual basis**.

Note that whilst the Remuneration Code is reflected in SYSC 19, the disclosure obligation is in **BIPRU 11.5**. There are no prescriptive requirements as to media and location so BIPRU 11.3.10R will apply in the same way as it applies to Pillar 3 disclosure. Firms can choose their own form of disclosure “.. provided that this is easily accessible by users, and provides appropriate cross-references to other relevant information and disclosures in the Pillar 3 context”. Note also BIPRU 11.3.10R(2) “To the degree feasible, a firm must provide all disclosures in one medium or location”.

In a similar manner to the Remuneration Code, a proportionate approach can be applied to the disclosure obligations. Please see Appendix 2 of PS10/21 for general guidance on proportionality – within which there is another Appendix 2 which sets out the disclosure requirements depending upon the ‘proportionality tier’ of the firm concerned. BIPRU limited licence/activity firms are proportionality tier four; page 7 of Appendix 2 provides further details of the four proportionality tiers.

Complyport will work with its clients to ensure that they are fully compliant with new rules within the required deadline.

Competence & Ethics



Useful links:

[PS10/18](#)

[APER](#)

[Reg Roundup 11](#)

[Reg Roundup 16](#)

The FSA has released policy statement PS10/18 ('Competence and ethics') which was a follow up to the similarly named consultation paper CP10/12 – see Regulatory Roundup 16 for further details.

The '**Competence**' element of the paper concentrates around changes to the Training and Competence ('TC') module of the handbook. Although normally associated with activities relating to retail clients, SYSC 5.1.4A suggests that firms whose activities are not subject to TC may nevertheless wish to take TC into account when complying with the competence requirements in SYSC.

Changes to TC include dividing 'advising and dealing' into two activities (securities and derivatives) and the introduction of a 30 month time window in which to attain an appropriate qualification (however the 30-month time limit does not extend to those carrying out overseeing activities). Section 2.5 of PS10/18 advises that the 30-month time limit starts when the trainee commences the relevant activity under supervision and not when they start a training programme. TC 2.2A provides further details.

It is important to bear in mind that the 30 month rule relates to the time an individual must attain an **appropriate qualification**; it does **not relate** to the assessment of **competency**. Although qualifications are a part of assessing competency, so are skills and experience. It will be up to firms to decide on their own time frames for assessing competency.

One **important difference** between CP10/12 and PS10/18 is that the final rules **do not amend the transitional provisions**. It was originally proposed that the exemption available under TC TP 1.1 would cease to apply 30 months after the new rules came into place (1 January 2011). This transitional provision meant that those employees deemed as competent before '**commencement**' (effectively when the FSA came into being – 1 December 2001) were not required to pass any exams. There was also a similar proposal in respect of TC TP 2.1. Apart from minor tweaking the transitionals are now retained. Those taking advantage of the provisions do need to bear in mind the requirement that the role needs to be "the same or substantially the same" – please refer to the transitional provisions for the exact wording.

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COMPLYPORT
COMPLIANCE LEADERSHIP

Complyport Limited

4 Cavendish Square, London W1G 0PG

t: +44 (0) 20 7399 4980

f: +44 (0) 20 7629 8002

e: info@complyport.co.uk

w: www.complyport.co.uk

Competence & Ethics (cont.)



Useful links:

[PS10/18](#)

[APER](#)

[Reg Roundup 11](#)

[Reg Roundup 16](#)

As to the **appropriate qualification**, reference should be made to TC Appendix 4E, including the all-important key at the beginning of this Appendix. By way of example, for 'managing investments' we see that the IMC is an 'appropriate qualification' or, say, CFA Level 1 *plus* SII (now known as the CISI) 'Financial Regulation'. Obviously it will be up to individual firms to determine which precise combinations will be 'appropriate'. With regard to the **IMC**, it is important to note that whilst *pre and post* 2010 examination standards are acceptable for the activity of 'managing investments', the same is not true for the activity of, say, '**advising on securities**'. As a consequence of the RDR, for the qualification to meet requirements post 31 December 2012, **only the Level 4 certificate** is acceptable - and even then the Level 4 IMC has to be combined with other specialist qualifications. In addition to the reference to this in Regulatory Roundup 16, further information can be found using the IMC link in Regulatory Roundup 11.

Under the '**Ethics**' element of the paper, changes to **APER** (APER, of course, **applies to all approved persons** regardless of the firm's client base) will be implemented, the most important of which will be APER 4.5.13A. This provides that an approved person performing a **significant influence function** (being all the controlled functions bar the CF30 customer function) should take steps to **satisfy themselves** that each area of the business they are responsible for **has in place appropriate procedures** to review the competence, skills and performance of **each individual** member of staff.

The FSA has commented (see section 4 of PS10/18) on the **relatively poor knowledge** of APER among approved persons and that it expects such individuals to understand their obligations under APER and the consequences if they fail to adhere to them. Firms' Compliance Officers, or those responsible for training, may wish to give consideration to including APER as a training topic in 2011; the link will take you to the relevant part of the handbook.

All the changes came into force **1 January 2011**; the final handbook text, which is now incorporated in TC, can be found in Appendix 1 of PS10/18.



Fines 2010

UCITS IV



Useful links:

[Fines table - 2010](#)

It has been a bumper year for FSA fines, with a total of £89,121,281.50. £50m of that sum was down to actions taken against JP Morgan (client money failings) and Goldman Sachs (failing to tell the FSA that a CF30 had been subject to interest from the SEC), whilst the 50p is down to the Andre Jean Scerri case (£66,062.50).

The FSA maintain a 'Fines table' which can be accessed using the link which, of course, will provide further details of the three cases mentioned above. Firms' Compliance Officers, or those responsible for training, may find this a useful source from which can be selected those cases which are closest to a firm's own business activities, so making training sessions for staff more relevant.

[UCITS IV Consultation](#)

The FSA and HM Treasury have issued a joint consultation on the implementation of UCITS IV.

[Draft FSA Handbook text](#)

As will be known, there has been an increasing interest in UCITS since 'the crunch' with fund management entities such as Jupiter, Sabre and GAM, having launched UCITS funds. The consultation paper contains some interesting data such as at the end of 2009 the AuM of UCITS funds were around **€5 trillion** (the most recent fact sheet issued by the European Fund and Asset Management Association quotes €5.7 trillion as at last October) and that there is a proliferation of small funds: 65% of all funds manage less than €50m in assets.

[UCITS IV](#)

The original UCITS Directive came into effect in 1988 in an attempt to harmonise EEA laws governing the operation and regulation of open-ended collectives by, for example, setting borrowing and investment powers with the latter ensuring a spread of risk. We are currently at UCITS III and **UCITS IV** must be transposed into UK law by **1 July 2011**.

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COMPLYPORT
COMPLIANCE LEADERSHIP

Complyport Limited

4 Cavendish Square, London W1G 0PG

t: +44 (0) 20 7399 4980

f: +44 (0) 20 7629 8002

e: info@complyport.co.uk

w: www.complyport.co.uk

UCITS IV (cont.)

Large Exposures



Useful links:

[UCITS IV Consultation](#)

[Draft FSA Handbook text](#)

[UCITS IV](#)

UCITS IV introduces a number of changes including (the COLL rules shown below relate to the proposed revised rules - for further details see link to 'Draft FSA Handbook text'):

Replacing the simplified prospectus (although this will remain for non-UCITS retail schemes – NURS) with a more concise 'key investor information' document (COLL 4.7);

Introduction of master-feeder structures (COLL 11);

Simplifying the cross-border marketing of UCITS to provide speedier access (COLL 12.4);

Introduction of a management company passport i.e. the management company does not need to be established in the same state as the fund. (COLL 12.2).

Between them, the UCITS IV Directive and the Alternative Investment Fund Managers Directive (which governs non-UCITS) will capture all collective investment schemes.

The consultation period ends 21 March 2011.

The links will allow you access to the joint consultation document, and proposed changes to the handbook, and to 'UCITS IV' (2009/65/EC).

[Reg Roundup 19](#)

A reminder to firms that the large exposures regime **no longer applies to BIPRU limited licence/activity firms** – see BIPRU 10.1.1R and Regulatory Roundup 19 for details.

Firms that are still subject to the large exposure rules may wish to review the revisions to BIPRU 10, including the move of the **requirement to notify the FSA** of a large exposure breach from BIPRU 10.5.9R to **SUP 15.3.11(f)**.

Telephone Numbers

Derivative Risk



Useful links:

[Standing data](#)

[CP11/1](#)

A firm is required, on an annual basis, to check the accuracy of its standing data (defined in the attached link) on the FSA website within 30 business days of its accounting reference date and report any changes to the FSA (SUP 16.10.4R). A firm must also give the FSA 'reasonable advance notice' of any change of name, address or, where applicable, change in overseas supervision (SUP 15.5).

It is proposed to add to SUP 15.5 the need to provide the FSA with **prior** notice of any change in the telephone number of the firm's principal place of business in the UK.

Subject to a consultation period ending 6 March, the final rules should be published, and come into effect, in Q2 2011.

The proposed changes to the handbook can be found in Appendix 10 of consultation paper CP11/1.

[FSA proposed guidance](#)

The FSA has published proposed guidance on derivative risk management practices following a survey of twelve asset managers.

Although a 'derivative risk management process' is normally associated with authorised funds (COLL 5.2.24), the thematic review looked beyond COLL ('taking a holistic and outcomes approach..') with the survey taking in the management of hedge funds and 'unregulated off-shore funds'. The guidance also reminds us of Principle 2 ('A firm must conduct its business with due skill, care and diligence') and Principle 3 ('A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems').

The guidance consultation is reasonably short (19 pages) and has the advantage in that Appendix 2 collates the FSA's expectations in respect of areas such as counterparty risk monitoring and oversight structure.



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 [Philip Chapman](#)

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