

FCA and Financial Services Newsletter – January 2014



CRD IV & IFPRU

Events since the start of the recession in 2008 have seen financial services come under increasing scrutiny and calls have been made for the government to improve regulation of the sector.

Controller and Close Links Reports

In this update we consider the Capital Requirement Directive and IFPRU the new sourcebook. We also look at Common Reporting and recent developments in Controller and Close Links Reports

Common Reporting (COREP)

CRD IV & IFPRU

The Capital Requirement Directive (CRD) IV is now in effect as of 1 January 2014. The FCA released a consultation paper in the Autumn of 2013 and have now issued guidance on how various items will be implemented (see policy statement 13/10).

Protected cell regime

The consultation paper asked firms for responses to various proposed ways the FCA was planning to implement the new rules and the majority of firms agreed with the proposals. This included using various discretions to limit the impact on smaller FCA regulated entities. The new regulations were principally designed for banks and it was therefore important to use proportionality when applying the rules to smaller firms.

Proposed changes

In the News

Short selling regulation

The new regulations are being implemented through a new sourcebook called IFPRU and the good news is the majority of IFPRU has been copied from the GENPRU and BIPRU sourcebooks unchanged. Taking some specific areas of interest:

European Market Infrastructure Regulation (EMIR)

Bonus Caps

There was the possibility that a cap would be placed on the variable component of remuneration of 100% of the fixed component. This could increase to 200% with shareholder consent.

FCA Fees

The FCA have used a discretion in the European Legislation to continue to use the 'proportionality' approach with regards to this rule. A firm with total assets under £15bn falls into 'level 3' and may disapply the part of the remuneration code applicable to bonus caps. The FCA do however expect senior management to justify this if requested as to why they believe it is a reasonable approach.

Capital Requirements

Pillar 1 Capital requirements still apply to IFPRU firms as they did before under BIPRU. The FCA has also confirmed that the Pillar 2 regime will be copied from BIPRU unchanged. This relates to the firm's ICAAP.

Capital Buffers

The new regime introduces an array of new capital buffers, but the good news is FCA have confirmed that these will not apply to investment firms which are Small and Medium Sized.

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Changes in eligible funds

There is a requirement under IFPRU to notify the FCA at least one month in advance if the firm intends to issue a capital instrument other than ordinary shares or certain types of debt instrument, which it plans to use for eligible capital.

Controller and Close Links Reports

The way these are to be submitted have changed yet again. Rather than an Excel spreadsheet submitted via email these now require submitting through GABRIEL in the same way as the PDF returns.

If the reporting period end is before 31 December 2013, you should continue to submit using the Excel template method.

Common Reporting (COREP)

This is the European Banking Authority's common regulatory reporting framework and as part of CRD IV, certain information which was previously only submitted to the FCA is now required to be electronically submitted to the EBA as well.

For smaller firms, this will principally include the FSA003 Capital Adequacy and the FSA008 Large Exposures submission. Firms will be required to submit this information to the EBA in a format called XBRL (eXtensible Business Reporting Language). This is the same format as HMRC receive company accounts for corporation tax submissions.

Despite the FCA having this information electronically already, they apparently can't convert it to this new submission format meaning firms will need to invest in software in order to make these returns.

The returns are applicable for periods beginning 1 January 2014 so the first ones aren't likely to be due until around April/May 2014.

What is currently unclear is whether the new submissions replace the existing ones. It would appear from GABRIEL that for the time being both are required.

Protected cell regime

This is now in force for Investment management firms and Open Ended Investment Companies (OEICs) should now be in compliance with this new legislation. The prospectus and KIID documents should also be updated as required.

Proposed changes

The December 2013 consultation paper proposes changes giving fund managers more options with how they communicate with investors. This includes publishing the information on a website as a substitute for sending it directly to the investor. This would only be implemented with the investor's consent and hard copies of information would still be available.

The FCA are also proposing to tighten up on the use of dealing commission paid from investment funds in return for the investment manager receiving research and other services. The FCA believe that investment funds (and therefore the public) are footing the bill for research rather than the investment managers and changes are proposed to COBS which clarify what can be paid for through dealing commission, and what cannot be.

In the News

In December 2013 the FCA imposed its largest ever fine for retail conduct failings on Lloyds Banking Group. The £28m fine was as a result of findings that the staff incentive schemes led to a serious risk that staff were put under pressure to hit targets to receive a bonus or avoid being demoted, rather than focussing on what customers may need or want.

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While the fine is undoubtedly large, it is a fraction of the money set aside against payment protection insurance claims, which continue to be a prominent feature in the financial statements of banks.

It is understood that the Government is planning an initiative called FinTech UK to be launched in early 2014 to help bolster investment in financial services. This follows a trip by David Cameron and other delegates to China in December 2013. Final talks on how this will be implemented are currently under way, but are expected to include communication between the banks and support companies in order to improve the industry as a whole and improve public confidence.

Short selling regulation

This is now in force from November 2013 and requires holders of net short positions in shares or sovereign debt to make notifications once certain thresholds have been breached.

European Market Infrastructure Regulation (EMIR)

This imposes requirements on all types and sizes of entities that enter into any form of derivative contract. It requires an entity to report every derivative contract they enter into to a trade repository. This comes into effect from February 2014.

FCA Fees

A consultation paper (CP13/14) has been released on the FCA Fees and levies for the 2014/15 year. One noticeable change is they are proposing to merge two fee blocks, potentially affecting broker dealers.

The proposed new tariff reduces the fee paid by entities within this block not holding client money, with a slight increase for those holding client money. A decision will not be made on this until mid 2014 after the results of the consultation paper have been analysed.

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Specific advice should be obtained before taking action, or refraining from taking action, in relation to the above.