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Regulatory Roundup
16th July 2014
Issue 57

In Brief:

AIFMD: Marketing Reminder: The AIFMD transitional period ends 21 July 2014 after which AIFMs will require either FCA approval or will have to provide notification to the FCA regarding marketing

FCA Fees and Levies 2014/15: The FCA has published PS14/11 which confirms the final fees and levies payable for 2014/15

Dealing Commission Discussion: Unbundling: The FCA has published Discussion Paper DP14/3 on the use of the dealing commission regime

Wholesale Markets: Competition: The FCA has published a call for inputs on its wholesale sector competition review

EMIR: Clearing Update: ESMA has published two consultation papers on clearing obligations in regard to IRS's and CDS's

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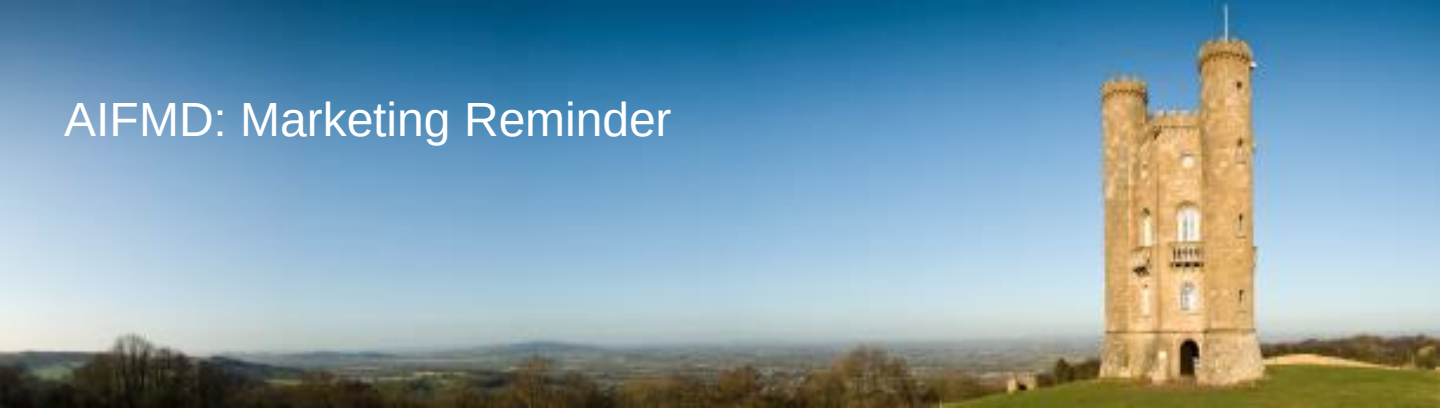
If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact Peter Carlisle.

AIFMD: Marketing Reminder



Useful links:

[Regulatory Roundup 55]

[UK AIFMD Regulations 2013]

[AIFMD marketing permission]

[NPPR]

As mentioned in Regulatory Roundup 55 the AIFMD transitional period ends 21 July 2014 and after that date Alternative Investment Fund Managers should either be authorised under the AIFMD or have already submitted an authorisation application. Firms falling in the latter category must comply with all relevant AIFMD requirements after that date notwithstanding the fact that there applications may not have been determined.

One particular requirement under the UK AIFMD Regulations 2013 (Regulation 50) is that a **full-scope UK AIFM** is **not permitted** to **market** an AIF in the **UK** unless it has received **approval** from the FCA (where a UK or EEA AIF) or **notified** the FCA (where a non-EEA AIF **or** where it is a UK AIF/EEA AIF but is a feeder fund, the master fund of which is either managed by a non-EEA AIFM or the feeder itself is non-EEA). The former is in keeping with AIFMD requirements whereas the latter represents marketing under the national private placement regime ('NPPR'). For the record there are similar requirements for full-scope EEA and third country AIFMs in Regulation 50.

This will probably have been addressed as part of the AIFMD authorisation process but, of course, any AIFs that may be launched following authorisation will not have been included. Firms should therefore ensure that they are compliant with Regulation 50 and that their operational procedures capture these requirements where relevant.

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FCA Fees and Levies 2014/15

Useful links:

PS14/11

Regulatory Roundup 54

FCA Fee Calculator 2014/15

Following the March Consultation Paper (see Regulatory Roundup 54) the FCA has published PS14/11 which confirms the final fees and levies payable for 2014/15.

The annual funding requirement (AFR) remains as per the Consultation Paper (CP14/6) at £446.4m, a **3.3% increase** over the previous year; Table 2.1 in PS14/11 shows the allocation between fee-blocks.

Fee-block A.7 (**portfolio managers**) has seen an increase of 11.7% in its allocation of the AFR in part, we are told, to recover the set-up costs of £3.3m for AIFMD implementation. Although the fee-block is categorised as 'portfolio managers' it actually covers the activities of managing a UCITS and managing investments as well as managing an AIF. As such, firms that are unaffected by the AIFMD will nevertheless have to contribute to the associated costs.

It will be recalled that following the merger of fee-blocks A.12 and A.13 there is now only one fee-block (A.13) for '**advisory arrangers, dealers or brokers**'; any firm in this fee-block that holds client money and/or assets will **also** be in fee-block A.21. We are told that some firms have been incorrectly including income arising from client money/assets activities in fee-block A.13 with the result that the final tariff data for A.21 was 11% less than was used to calculate the draft fee rate and so the final fee rates for the fee block will be around 11% higher than in CP14/6.

The **FCA Fee Calculator** has been updated to reflect the final rates (including FSCS etc.) so firms that have not yet been invoiced by the FCA will know what to expect.

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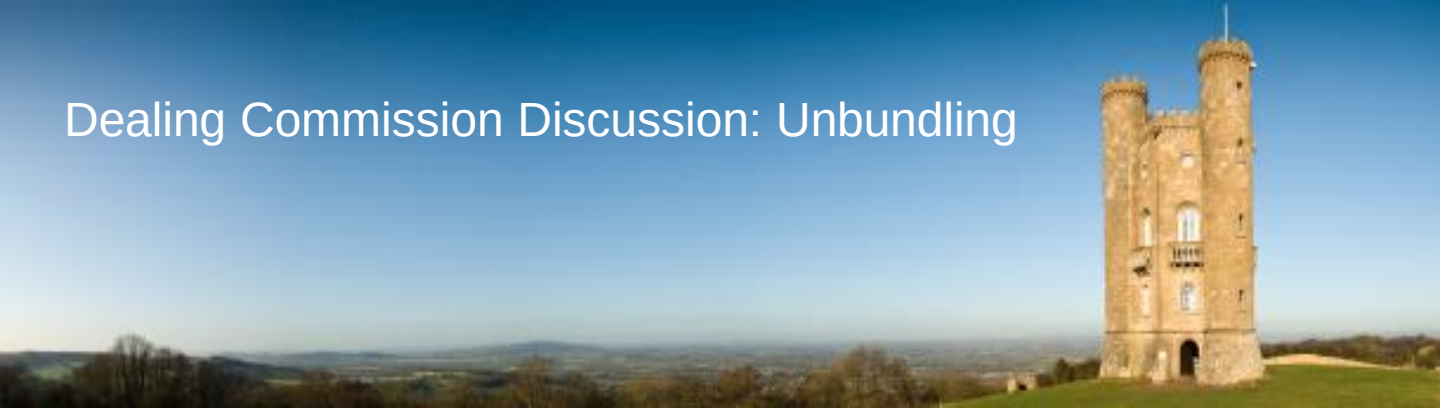
Dealing Commission Discussion: Unbundling



Useful links:

DP14/3

Regulatory Roundup 55

MiFID II

It will be recalled that the FCA published a Policy Statement in May (PS14/7 - see Regulatory Roundup 55) on the use of dealing commission and which contained final revised rules which came into force on 2 June.

Aside from revised rules the Regulator has also carried out a wider review on whether **further reform** is needed and has now published Discussion Paper DP14/3 – "Discussion on the use of dealing commission regime".

DP14/3 reveals that UK investment managers pay around £3bn of dealing commission per year to brokers, half of which was spent on research (compared to approximately £250m spent on **independent** research **across Europe** in 2011). The FCA's view is that **unbundling research** from dealing commissions would be to the benefit of the end user and would also allow **independent research providers** to compete more effectively against brokers. The FCA also has in mind MiFID II – which is likely to apply in early 2017 - under which portfolio managers will not be permitted to accept any monetary or non-monetary benefits provided by third parties, although 'minor non-monetary benefits' will be permissible (see MiFID II, Article 24(8)).

The Discussion Paper includes reference to the FCA's thematic supervisory work, which took in **17 investment managers** and **13 brokers**, conducted between last November and February this year. Only **two** investment managers were found to be operating at the **level expected**. The FCA views **brokers' unpriced bundling** of research and execution services as **preventing competition** based upon the quality of discrete research services and which also makes it difficult for investment managers in trying to assess the value for money of research. The paper acknowledges that the complexity of the business models of **investment banks** and their preference to bundle research services may mean **structural change** for them if transparency is to be achieved.

Firms are encouraged to consider the findings of the thematic work set out chapter 2 of DP14/3 (and if not already done so firms should also consider the revised rules and guidance in COBS 11.6) and review them in the light of their existing practices.

Cont...

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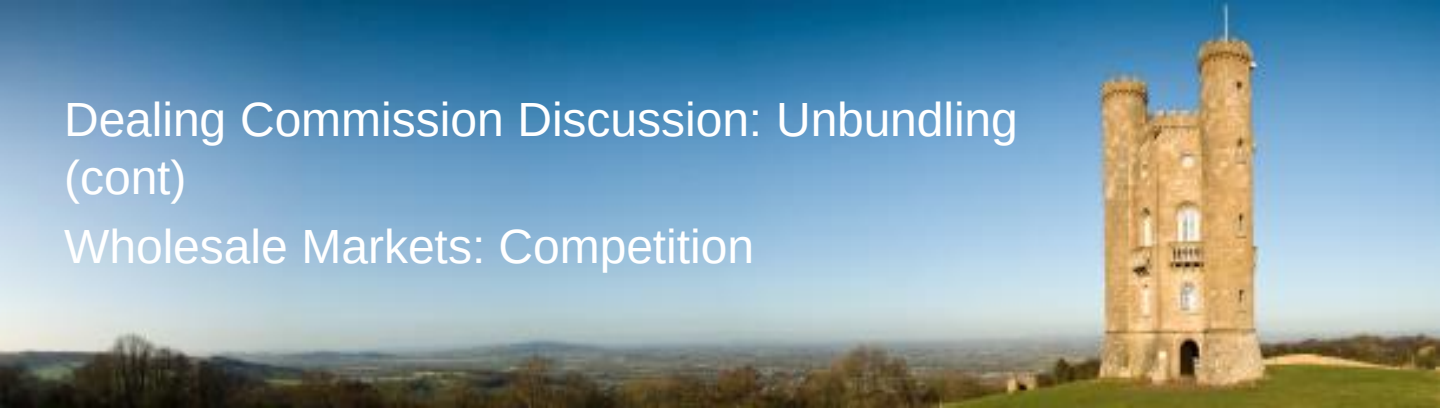

Dealing Commission Discussion: Unbundling (cont)

Wholesale Markets: Competition

From an EU perspective the dealing commission changes are within MiFID and so would have no bearing on **AIFMD** and **UCITS** management activities. With this in mind ESMA has recommended that the European Commission explores the need to **harmonise** MiFID II changes across these other directives.

The FCA invites comments on DP14/3 by 10 October.

Useful Links:

Regulatory Roundup 56

Regulatory Roundup 53

Round Tables

Competition Review

Regulatory Roundup 56 advised that the Bank of England, HM Treasury and the FCA were proposing to undertake a joint review of wholesale markets. Following on from this the FCA has published 'Wholesale sector competition review – Call for inputs'. For the avoidance of doubt, this published review will **not** focus on the trading practices that will be within scope of the aforementioned joint review.

The intention is that the review of competition in the sector will identify any areas that might merit further investigation through an in-depth market study. The scope will take in various areas ranging from **asset management** to **prime brokerage** – see the schematic on **page 10** of the publication. Examples of possible areas of interest include **best execution** (in passing we are told that we can also expect publication of the FCA's thematic on this area 'shortly' – see Regulatory Roundup 53), **transfer agency** and **cross-selling**.

Responses by 9 October are welcome and there is also an invitation to attend – subject to availability - a series of round tables during the consultation period

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EMIR: Clearing Update

Useful Links:

[2014/799]

[2014/800]

[Authorised CCPs]

EMIR: Clearing Update

Under Article 5(2) of EMIR ESMA is required to determine which classes of OTC derivatives should be subject to the clearing obligation and then draft appropriate Regulatory Technical Standards (RTS) within six months of the authorisation (if EU) or recognition (if non-EU) of Central Clearing Counterparties (CCP). With the first CCP having been authorised on 18 March – and nine CCPs in total having been authorised up to 7 July – some ESMA output on clearing was to be expected sooner rather than later.

ESMA has published **two** Consultation Papers: one in respect of **interest rate swaps** (IRS) (2014/799) and the other in respect of **credit default swaps** (CDS) (2014/800). The respective draft regulations can be found in Annex II of each paper.

As far as **IRS** are concerned the following four classes will be subject to clearing:

- Basis swaps;
- Fixed-to-float interest rate swaps;
- Forwards rate agreements; and
- Overnight index swaps

With regard to **CDS** it is proposed that European Untranched Index CDS (iTraxx Europe Main and iTraxx Europe Crossover indices) be subject to clearing.

Any responses to the two Consultations will be considered when ESMA drafts its final RTSs for submission to the European Commission for endorsement.

We are informed that the clearing obligation will follow a phased implementation.

The consultation period ends 18 August for 2014/799 (IRS) and 18 September for 2014/800 (CDS).

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Peter Carlisle

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