



**bankhall®**

Talk **Compliance**  
Issue 15

# FSA publishes final rules for platforms

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On the 1st August the FSA published final rules on platforms regulation. This follows a review of the regulation of platforms in the context of the objectives of the Retail Distribution Review (RDR).

## The FSA has confirmed that they will:-

- require platforms and other nominee companies to transfer, within a reasonable time and in an efficient manner, assets held on behalf of customers to another person, when requested;
- require platforms and other nominees to pass on fund information to the end investor;
- require investment adviser firms using a platform service for the purposes of making a personal recommendation, or arranging the purchase of retail investment products for retail clients, to take reasonable steps to ensure that they use platform services that present their retail investment products without bias;
- require platforms to disclose to professional and retail clients any fees or commission they arrange to accept from third parties in relation to retail investment products. These should be disclosed in advance of the platform providing services to those clients;
- extend the application of the RDR rules on facilitating payment of adviser charges to facilitation through platforms – for instance, if a platform has client cash accounts, it could enable payments of adviser charges out of such accounts; and
- require nominees to respond to information requests by authorised fund managers for liquidity purposes.

The new rules will come into force on 31 December 2012.

In some areas further work is to be conducted. In respect of product provider payments to platforms and cash rebates:-

- The FSA has decided that on balance it is in consumers' interests to ban payments by product providers to platforms and to ban cash rebates to consumers;
- However, the FSA accepts that there could be possible unintended consequences which might arise that are not yet fully understood;
- No rules yet been made to ban either payment, pending further work by FSA considering the impact on consumers and the platform market;
- FSA will consider the timescales for consultation on proposed new rules and whether to include a transitional period; and
- Any new rules in this area will definitely not come into force before 31 December 2012.

## Bankhall support

Often firms looking to adopt a platform are put off by FSA focus on this area in the run up to RDR. Bankhall are able to assist firms in how to maximise their business revenue through the compliant use of platforms as we have guidance from adoption to ongoing use. The guidance we provide is both generic and in support of Bankhall's own platform solution Bankhall One.

For further information on the support that Bankhall including the beneficial terms available for adopting Bankhall One please contact us at [tellmemore@bankhall.co.uk](mailto:tellmemore@bankhall.co.uk)

# What is the Key Investor Information Document (KIIDs)?

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You may have heard about this document and wondered what relevance it has to your firm as the FSA have given very little coverage to the matter.

In fact at the end of August 2011 the FSA hadn't even issued their final policy statement on the subject although firms will be required to follow rules that are already in the FSA Handbook. **Bankhall firms were made aware of the impact on them despite the scant coverage given elsewhere.**

There have recently been major changes in the regulation of collective investment schemes brought about by the Undertakings for Collective Investment in Transferable Securities Directive IV (UCITS IV). UCITS IV repeals the current UCITS Directive and must be implemented into national law by all European Union member States by 1 July 2011, although a 12 month transition period will

be allowed if an individual member states to choose to adopt this, as has happened in the UK. Most of the changes will impact operators of collective investment schemes but the introduction of the key investor information document (KIID) is something that intermediaries should be aware of.

### Impact on intermediaries

The main impact of these changes on your firm is the introduction of the Key Investor Information Document (KIID.) This will be a simple 2 or 3 page pre-sale document giving key facts to investors in a clear and understandable manner. It will assist the investor in making an informed investment decision. The KIID will replace the current Simplified Prospectus.

The KIID sets out the essential characteristics of a fund or share class necessary for an investor to understand the nature and the risks of the fund being offered and make investment decisions on an informed basis.

To achieve this aim KIIDs must be written in non-technical client friendly language. Sentences used in the document should not be overly long.

The European Commission has developed a prescribed format and content, designed to promote harmonisation and comparability of investor information, organised under five key information headings which are:

- Objectives & Investment Policy
- Risk & Reward Profile

- Charges
- Past Performance
- Practical Information

For firms giving advice you will be required to pass on the key features information (KIIF) for the fund prior to investment, in line with your existing obligations to pass on 'simplified prospectus' information.

Perhaps the main impact of the standardisation of the information in the KIIF is to introduce a 1–7 risk scale to confirm the volatility of the fund. Advisers ought to be aware of this information when considering their customers attitude to risk. There is no compulsion on advisers to adopt the same scale when assessing clients' attitude to risk and making recommendations; whilst volatility is a key consideration in any risk rating and assessment, it is not the only factor.

Firms should look out for the new documentation, although until 1 July 2012 collective investment schemes may still be using a Simplified Prospectus as there is a 12 month transitional period for providers to adopt the new documentation for existing collective investment funds.

For further information on the support that Bankhall can provide, please contact us at [tellmemore@bankhall.co.uk](mailto:tellmemore@bankhall.co.uk)

## Can you afford to leave compliance to chance?

A firms systems and controls need to be robust in order to stand the test of any challenge by the FSA. Since the beginning of the year we have seen the FSA continuing to increasing the focus on 'credible deterrence' when dealing with firms. This enables the regulator to maintain effectiveness when dealing with identified compliance failings. In particular, in recent months, the FSA has been conducting a review of a small number of firms to identify if their systems and controls meet with regulatory requirements.

The FSA maintains this approach is about the delivery of outcomes, which should make a positive difference to consumers and to the market place. The use of a more intrusive supervisory approach, and higher fines, is designed to make firms and individuals holding controlled functions accountable for their actions.

We are seeing the FSA placing a greater emphasis on the capability and accountability of individuals holding controlled functions. It is therefore important that you do not leave compliance within your business to chance.

Although only a limited number of firms have been contacted regarding the 'supervision review' at this stage, it is anticipated that this initiative will follow the same route as TCF road shows and assessments and span a period of years.

The focus on the day of assessment will be the firms systems and controls, in order to identify if they are robust enough, if they are actually used within the business, whether they are monitored on a regular basis and, where actions are identified, if these been drawn to conclusion.

As you will be aware the FSA require firms to ensure that they establish and maintain systems and controls within their business. The extent of the systems and controls required will be subject to a number of factors. These include the type of activities being undertaken and the size and complexity of your business. Other factors to consider are the how the business is managed if you operate from more than one office, volumes and the risks associated with each operational area of the business.

The controls you have in place should provide sufficient information to demonstrate:

- How and by whom the firm is being managed and controlled;
- What management information is produced and how this is used to identify and address current and potential risks to the firm and the customer base;
- The firm's financial strength and ability to provide services;
- The firm's plans and progress with regard to RDR.

The FSA has identified a trend in the number of firms failing to demonstrate robust systems and controls. As a result, it is expanding its scope of activity and taking action not only against the firm but also those individuals within the firm who are accountable for the failings. Where you have taken the time to establish systems and controls we would urge you to take the time ensure that they are fit for purpose and meet with your current and planned business needs, in preparation for any FSA challenge.

Those individuals concerned will be captured within the director (CF1) and partner (CF4) functions and also those performing the Compliance and Oversight function (CF10) within the firms. These individuals are being held personally accountable for the failure of the firm's systems and controls within their remit.

It is essential that firms take appropriate measures to protect themselves. Of course it is not a one-size-fits-all approach and the right solution will depend on the size and shape of each individual firm, however there are certainly some scenarios, such as firm's recruitment processes, that can help to illustrate the issue.

### **Recruitment processes**

When recruiting individuals into the business FSA requires firms to be able to demonstrate that it has employed individuals who can demonstrate appropriate skills, knowledge and expertise to enable them to undertake the responsibilities and accountabilities of the role. Individuals who hold a controlled function must fully understand their responsibilities.

Firms must take every available measure to ensure the right individual is recruited for any significant influence functions and ensure that their experience, skills and knowledge meets with the requirements of the firm. In some recent cases, the FSA has identified that the

recruitment processes currently in place at some firms are not effective enough to enable them to identify that the individual can fully demonstrate competency and capability and is therefore 'fit and proper' for the requirements of the CF10 role.

In addition, there are concerns regarding individual's competency at outset and how this is determined and demonstrated. Questions have also been raised regarding how individuals holding CF10 are maintaining and developing their knowledge, in line with the firm's business model and the regulatory requirements. The FSA has identified a number of serious gaps in how 'fit and proper', in addition to ongoing competency and capability, are being monitored, tested and recorded.

Any individuals recruited must have the necessary authority, resources and expertise in order to make the function effective. It is not appropriate for firms to recruit what would be considered to be 'junior compliance officers' as they will only be able to demonstrate experience by undertaking day to day compliance activities.

A stark message is being delivered by the FSA and it is important that both Compliance Officers and firm's alike take note of this new approach and test their recruitment procedures accordingly. Firms need to carefully consider their current recruitment process in addition to ongoing monitoring and assessment of the competency and capability of individuals to ensure they remain 'fit and proper' to perform CF10 roles. Only in this way will firms make absolutely certain that they don't run the risk of falling foul of the regulator on this important issue.

### **Bankhall Support**

Being able to demonstrate a smart compliance regime within your business doesn't have to come at the cost of realism. Our flexible compliance support is designed to assist you meet your individual business needs. We are able to complete a phone based supervision review appointment with you: we will provide feedback regarding any gaps we identify and help you to fill them. We will leave you feeling comfortable in the knowledge that when you receive contact from FSA your systems and controls will be in line with your current needs and FSA expectations.

**If you would like us to book in a supervision appointment please contact the Compliance Support Unit (CSU) on 0845 003 0400 and press option 2 to discuss your needs (quote 'Talk Compliance'). This support can be purchased as a stand alone service or part of a wider contractual membership package.**

For further information on the support that Bankhall can provide, please contact us at [tellmemore@bankhall.co.uk](mailto:tellmemore@bankhall.co.uk)