

# COMPLIANCE RULES



Welcome to the second edition of *Compliance Rules* for 2009.

*Compliance Rules* is BIBA's quarterly newsletter on all things regulatory and to date we have received plenty of positive and constructive feedback from members. If there is a regulatory topic you would like featured in a forthcoming edition, please let Steve or Vanessa know.

In this issue of *Compliance Rules*, we bring you our usual centrespread round-up of BIBA's regulation updates, together with a back page article by Sharon Campbell, Head of Central Analysis and Reporting at the FSA, on GABRIEL.

#### Hot topics at the BIBA Conference

BIBA's annual exhibition and conference is a great opportunity for us to mix with members and other industry players and to discuss informally current compliance issues. The 2009 conference in Manchester back in May was no exception and we spent many hours chatting about a number of matters which will be of wider interest to members. These included:

**Client money** – the FSA has recently re-awakened its interest in client money with a couple of 'announcements'. First, they have written

to firms with permission to hold client money, pointing out that senior management should pay particular attention to record keeping, acknowledgement of trust, due diligence and diversification and that they will be undertaking some thematic work around the client money rules in the second and third quarters of this year, with a report on their findings expected by the end of the year.

Second, they have reminded firms of the rules around client money audits. These are required if a firm operates a non-statutory trust account, or holds more than £30,000 at any one time in a statutory trust account. This requirement applies irrespective of whether the firm has dispensation from filing audited accounts at Companies House.

**Whistleblowing** – it was clear from several of the conversations and sessions at conference that some members are not aware of how they can report serious matters to the FSA. These can be reported to the FSA directly via the Firm Contact Centre – email [fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk) or by phone on **0845 606 9966**. If members prefer, such information can be reported to BIBA for us to pass on anonymously to the FSA.

**Industry guidance** – there was plenty of debate in Manchester about how to implement the top 10 tips, as set out in the special edition of *Compliance Rules*. Firms are engaging with these tips and it was very encouraging to hear of the positive manner in which changes are being made. Equally the excellent take-up of our half-day regional training workshops sends a clear signal that members are embracing the opportunity to adopt industry guidance in preference to more rules.

**FSCS** – the unfairness of the new funding arrangements for compensation through the Financial Services Compensation Scheme is a headline lobbying issue in BIBA's 2009 *Manifesto*. We pledged to raise this with Government and key decision-makers and members quite rightly asked for an update on progress. We have raised the matter on two separate occasions with the Treasury and have made our views known to the FSA. This matter is of great concern to trade associations right across the financial services sector and we are adding weight to a collective argument.

The best insurance is a BIBA broker

[www.biba.org.uk](http://www.biba.org.uk)

Member helpline:  
0844 77 00 266



**BIBA**

## REGULATORY ROUND-UP

### BIBA lobbying leads to FSA backtracking on large fee increases

The Financial Services Authority has issued Policy Statement PS09/8 setting out its final decision on the level of regulatory fees and levies that firms will have to pay for the 2009-2010 financial year. The policy statement shows that a significant amount of contingency funding has been moved to the deposit takers' block, leading to significant reductions in the originally-proposed fees.

The total funding requirement for the insurance intermediation fee block has been revised downwards from the £41.2m consulted on to £37.6m, which represents a 9.3 per cent year-on-year increase compared to the 19.7 per cent increase proposed in the original consultation paper.

Speaking to the press about the policy statement, Eric Galbraith, BIBA's Chief Executive, said: "BIBA felt very strongly that the original fee proposals were, in respect of insurance intermediaries, unfair. We responded in strong terms to the FSA and actively encouraged our members to do likewise."

He added: "We are pleased that the FSA has reconsidered both its funding requirements and the allocation of these costs and that the voice of BIBA and its members has been listened to in the process."

BIBA's campaigning involved lobbying the FSA and the Treasury on behalf of its members, as well as the provision of a model letter complaining about the fee and levy hikes that members could adapt to show their own circumstances which they could then send to the regulator.

Members can access the updated 2009-2010 fee calculator on the FSA's website at:

[www.fsa.gov.uk/pages/Doing/Regulated/Fees/calculator/index.shtml](http://www.fsa.gov.uk/pages/Doing/Regulated/Fees/calculator/index.shtml)

[www.fsa.gov.uk/pubs/policy/ps09\\_08.pdf](http://www.fsa.gov.uk/pubs/policy/ps09_08.pdf) – PS09/8

### Sanctions compliance under scrutiny

Many firms need to enhance their systems and controls and small firms in particular should improve their awareness of the UK's financial sanctions regime, according to a report from the FSA. The FSA's financial crime and intelligence division reached its conclusion after a survey of 228 firms of various sizes to determine current industry practice across all sectors of the industry. The report discovered a number of misconceptions, including:

- firms that believed they were somehow exempt from the UK financial sanctions regime if they processed only low-value transactions
- firms that believed that the Treasury's sanctions lists only covered people and entities from overseas and not UK-based ones
- firms that did not think that financial sanctions screening was necessary as they did not handle client money
- firms not knowing the difference between a politically-exposed person and a financial sanctions target
- firms that believed that insurance was a no risk or low risk area for financial sanctions.

The report contains a list of good and bad practice and member firms, irrespective of their size, would do well to take the time to read its contents:

[www.fsa.gov.uk/pubs/other/Sanctions%20Final%20Report.pdf](http://www.fsa.gov.uk/pubs/other/Sanctions%20Final%20Report.pdf)

Lloyd's too has responded to the growing emphasis on the financial crime front with the publication of a market bulletin about bribery and corruption which provides details about forthcoming

legislation and compliance. This bulletin has also been sent to all of its accredited brokers for information purposes:

[www.lloyds.com/NR/rdonlyres/F84B2E80-4697-4BBC-AEB3-95B907550435/0/Y4278.pdf](http://www.lloyds.com/NR/rdonlyres/F84B2E80-4697-4BBC-AEB3-95B907550435/0/Y4278.pdf)

### BIBA Compliance Manual 2009 now on sale

The 2009 edition of the *BIBA Compliance Manual* is available for sale. The updated manual contains comprehensive yet plain text on areas such as systems and controls, client money, the selling rules (ICOBS) which includes practical ways to deal with the industry guidance on commission disclosure for commercial clients, training and competence, regulatory reporting (RMAR) and complaints. The manual is available on a convenient CD-ROM for £402.50 (inc VAT). An update service is also available to existing owners of the 2008 manual at £258.75.

For further information, please visit the BIBA website at: [www.biba.org.uk/BrokerComplianceManual.aspx](http://www.biba.org.uk/BrokerComplianceManual.aspx)

### Report sets out vision for UK financial services sector

A reformed financial services sector will play an important role in Britain's economic recovery, according to a report published by the Financial Services Global Competitiveness Group, co-chaired by Chancellor Alistair Darling and former Citi Chairman Sir Win Bischoff.

The report, which reflects the view of the UK's financial services leaders, states that the UK's financial services sector can continue to be a world leader by working as a genuine partner of British business and emerging economies while embracing the need for global regulatory reform.

[www.hm-treasury.gov.uk/d/uk\\_internationalfinancialservices070509.pdf](http://www.hm-treasury.gov.uk/d/uk_internationalfinancialservices070509.pdf)

### Proposed changes to FSCS limits to go ahead

Financial Services Compensation Scheme (FSCS) is to press ahead with changes to the compensation limits for insurance, investment and home finance advice business. The changes are set out in Policy Statement PS09/7 entitled *Financial Services Compensation Scheme: Review of limit* which reports on the main issues arising from Consultation Paper CP08/15 (*Financial Services Compensation Scheme: Review of limits*) and publishes final rules.

[www.fsa.gov.uk/pubs/policy/ps09\\_07.pdf](http://www.fsa.gov.uk/pubs/policy/ps09_07.pdf)

From 1 January 2010, the compensation limit for investments, home finance advice and deposits will be the same at £50,000. All claims for non-compulsory insurance will be paid at 90 per cent of the claim, with no upper limit (it is currently 100 per cent of the first £2,000 and 90 per cent of the remainder, with no upper limit). There will be no change to compulsory insurance, such as motor third-party and employers' liability insurance, including mediation. This will remain at 100 per cent protection, with no upper limit.

Separately, Ivan Rogers and Phillip Wallace have been appointed non-executive directors to the FSCS Board. Rogers started his career as a civil servant and joined Citi Group as a senior Government banker for the UK in July 2006. He is a member of Citi Group's UK Banking and Broking Board.

Wallace was a Chartered Accountant at KPMG from 1971 to 2005, finishing as a Vice Chairman and Chairman of the Audit Committee. Since his retirement, Wallace has pursued a number of non-executive roles, including the chairmanship of the Insolvency Services Steering Board which he took up in 2007.

The FSA has also confirmed the reappointment of David Hall as Chairman of FSCS until 31 March 2012.

## Law Commissions ponder micro-businesses

The Law Commission and the Scottish Law Commission have published an issues paper on micro-businesses and pre-contractual information and unfair terms as part of their continuing reform of insurance contract law.

Research shows that many micro-businesses do not have specialised knowledge of insurance and are increasingly buying their insurance online without the benefit of a broker, in much the same way as consumers do.

The paper asks specific questions about protection against unfair terms in insurance contracts for micro-businesses. It also puts forward proposals to treat micro-businesses as consumers for the purposes of pre-contractual information and discusses how a micro-business should be defined. Members have until 17 July 2009 to submit a response to the paper.

[www.lawcom.gov.uk/docs/issues5\\_micro-businesses\\_fact-sheet.pdf](http://www.lawcom.gov.uk/docs/issues5_micro-businesses_fact-sheet.pdf)

## FSA issues annual client money audits reminder to intermediaries

The FSA has reminded firms about annual client money audits after recent thematic work carried out at a number of smaller wholesale general insurance intermediaries discovered that some firms were unaware of its requirement to arrange one.

Certain firms can take advantage of a small firms' exemption from requirements to have their accounts audited, however, this exemption DOES NOT extend to client money audit requirements.

To confirm, all general insurance intermediaries must have a client money audit if they:

- hold client money in a non-statutory trust account, or
- have held more than £30,000 in a statutory trust client bank account at any time in the

client money audit period.

A firm should review regularly whether it needs a client money audit and appoint an external auditor to carry out the audit in accordance with the *FSA Handbook* requirements in CASS 5 and Chapter 3 of the *Supervision Manual*.

A firm is not exempt from the requirement to arrange a client money audit even if:

- it is able to rely on the rule waiver which removes the need for the firm to have its accounts audited (the small firms' exemption) or
- it does not need to have its accounts audited because it is a partnership or sole trader.

## Challenge, not conflict, is key to strong governance, says Sants

Financial companies need to create Board-level governance structures that allow for challenge without creating conflict, according to Hector Sants, Chief Executive of the Financial Services Authority. However, the structure of governance in financial companies did not require radical overhaul, Sants told delegates at a recent Securities and Investment Institute conference.

Rather it was the attitudes and competence of the individuals who conduct governance that did, he noted.

"In particular, we need to create governance arrangements that foster challenge without creating conflict. The effectiveness of governance is the key issue and addressing this challenge is the responsibility of all of us, not just regulators and boards," Sants added.

Sants outlined the changes being made in the regulator's approach to judging the competence of firms' senior management as well as their probity in his speech which can be found at the link below:

[www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/0507\\_hs.shtml](http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/0507_hs.shtml)

## BIPAR's annual report is published

The European Federation of Insurance Intermediaries' (BIPAR) annual report is available on BIBA's website.

BIBA has also produced a table setting out the key issues taken from the report, together with a summary of its own position on each. The annual report includes information on: implementation and revision of the Insurance Mediation Directive; recent developments regarding netquoting; follow-up to the EU Competition inquiry into business insurance; reinsurance and coinsurance markets; block exemption regulation; the de Larosière Report and the Commission's consultation on the improvement of supervision for the financial services sector; Commission recommendations on remuneration; Proposed Directive on Consumer Rights; Proposal for a new Directive on VAT for insurance and financial services; the harmonisation of European insurance contract law.

[www.biba.org.uk/BrokerContentDetails.aspx?ContentID=1304](http://www.biba.org.uk/BrokerContentDetails.aspx?ContentID=1304)

## European Commission sets out vision for new financial supervisory framework

The European Commission has published proposals for a new framework for financial supervision in the European Union which it is hoped will be put in place during 2010. The communication follows the February report from the EC's High Level Group on Financial Supervision, chaired by Jacques de Larosière, and the EC's communication entitled *Driving European Recovery*, which came out in March.

The communication sets out proposals for an enhanced European financial supervisory framework that would comprise two pillars. The new European Systemic Risk Council (ESRC), a European body with macro-prudential responsibilities for the financial system as a whole, and a second body, the

European System of Financial Supervisors (ESFS), which would be a network of national financial supervisors with responsibility for the micro-prudential responsibilities for banking, insurance and securities. The network would work in tandem with the ESRC to ensure greater stability and financial soundness.

The Comité Européen des Assurances has welcomed the proposals, but has cautioned that the Council needs to have representatives with the necessary insurance expertise if the new body is to achieve an adequate balance in the representation of the different financial sectors.

[http://ec.europa.eu/internal\\_market/finances/docs/committees/supervision/communication\\_may2009/C-2009\\_715\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/committees/supervision/communication_may2009/C-2009_715_en.pdf)

The ABI published its own report dealing with how market confidence could be restored to the financial services industry in which it warned that regulators and governments must not harm other industries, such as insurance, as they deal with the banking crisis.

[www.abi.org.uk/BookShop/ResearchReports/ABI%20RESTORING%20MARKET%20CONFIDENCE%20FORMATTED%20content%20200609%204web%20version%20publications.pdf](http://www.abi.org.uk/BookShop/ResearchReports/ABI%20RESTORING%20MARKET%20CONFIDENCE%20FORMATTED%20content%20200609%204web%20version%20publications.pdf)

## RMAR section J help provided

BIBA has issued information about how to complete section J of the RMAR form after fielding a number of queries from members. The guidance can be found at:

[www.biba.org.uk/BrokerContentDetails.aspx?ContentID=1294](http://www.biba.org.uk/BrokerContentDetails.aspx?ContentID=1294)

“Did my RMAR yesterday and the prompts to correct calculations are a million times better than the previous ones which sometimes had calculations of ridiculous length”

“I can see that after getting to know one’s way round the system (while becoming familiar with the changes to the format) I feel that GABRIEL will make reporting a more streamlined process and the change will be a worthwhile exercise... so well done FSA”

## Your Contacts

We hope that you will find this issue of *Compliance Rules* useful. If you have any comments about the content or have ideas for future issues, please contact either



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## FSA Regulatory reporting and GABRIEL

**GABRIEL (GA**thering **Better** Regulatory Information **EL**ectronically) is the new web-based system developed as part of the Financial Services Authority’s (FSA) integrated regulatory reporting programme. It allows us to collect and validate the data firms report in an efficient and effective way, it also helps us to carry out timely, accurate and faster analysis.

GABRIEL went live at the end of August 2008, replacing several legacy systems. Since then, we have introduced firms to the system in phases.

### So what is GABRIEL intended to do?

GABRIEL tailors online returns according to each firm’s regulated activities, so that firms are able to see their (12 month) rolling reporting schedule, which gives them details of what and when they need to report without having to refer to the *FSA Handbook*.

### Initial feedback

Generally, the system has been performing well and a majority of firms were able to access the system without problems. However, some had problems in logging in, or submitting their data. For example, a few had difficulties with their account activation process; to help with this, we improved the activation instructions and provided a step-by-step guide online. There were other problems with validation in parts of the Retail Mediation Activities return (RMAR). We acted on these quickly, and made announcements on the website or via email to affected firms.

We recognise this caused some firms considerable frustration, for which we apologise. We gave this urgent attention, including an upgrade in November 2008, which has improved

GABRIEL’s performance significantly.

### What about smaller firms?

Smaller firms have been reporting electronically via Firms Online since July 2005, GABRIEL has now replaced the regulatory reporting part of Firms Online. Although this has largely been a system change, we also modified the RMAR which most small firms complete. It is one of our stated principles that we would review the relevance of the data we are asking firms to submit and to make change where relevant.

The changes were:

- reducing data requirements by 30 per cent, redundant questions were removed
- improving the layout and wording of certain sections
- tailoring the RMAR, so that certain questions only appear for firms that need to complete them.

As mentioned above, firms had some validation issues but these have been fixed. For help with completing the RMAR, firms should make use of our online frequently asked questions, available at:

[www.fsa.gov.uk/pages/Doing/Regulated/Returns/IRR/gabriel/faqs/faqs\\_data\\_rmar.shtml](http://www.fsa.gov.uk/pages/Doing/Regulated/Returns/IRR/gabriel/faqs/faqs_data_rmar.shtml). This includes some section specific guidance on RMA-C (Client money and assets), RMA-D1 (Regulatory Capital), and RMA-E (PII self-certification).

### Recent feedback

GABRIEL is now used by 20,000 FSA firms, which is more than 95 per cent of our regulated firm population, and we have received some 290,000 data items via the system so far.

Recent feedback from firms indicates the teething problems have been fixed and there are no major issues with the RMAR, it is evident that more firms are beginning to see the benefits of GABRIEL, and are finding the system smoother and more user-friendly.

## TOP TIPS

**So if you are a user of the system what can help to improve your experience?**

- Beat the rush – get your return in early. If you need to contact us, then you should avoid the peak days for queries – our customer contact centre gets much busier in the days before each submission due date.
- Run through the system training so you can be prepared. It is free and is accessible online at: [www.fsa.gov.uk/pages/Doing/Regulated/Returns/IRR/gabriel/training](http://www.fsa.gov.uk/pages/Doing/Regulated/Returns/IRR/gabriel/training)  
It takes no more than 45 minutes, and you can study the modules independently instead of going through the course in one sitting.
- If you use a specialist adviser or consultant to help you compile your return, don’t leave it all to them and keep on top of what is happening. If anything goes wrong, it will be your firm, not your firm’s adviser, who will be responsible.
- Keep in touch with the latest news about GABRIEL on the home page at: [www.fsa.gov.uk/pages/Doing/Regulated/Returns/IRR/gabriel/index.shtml](http://www.fsa.gov.uk/pages/Doing/Regulated/Returns/IRR/gabriel/index.shtml)

### Smaller firms website

We have developed a website specifically for smaller firms. This aims to help you to understand the FSA’s requirements and the background to our regulatory reporting.

This includes a set of 60 one-minute guides and an A-Z to help you find what you want. BIBA also has a section for insurance firms, drawing your attention to the latest information.

[www.fsa.gov.uk/smallfirms/your\\_firm\\_type/gi/index.shtml](http://www.fsa.gov.uk/smallfirms/your_firm_type/gi/index.shtml)

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