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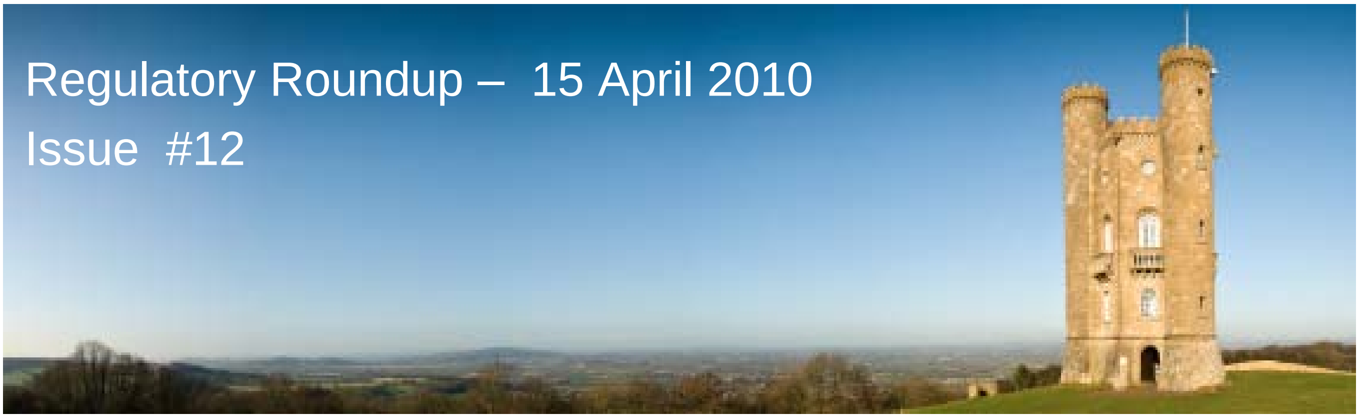
Regulatory Roundup – 15 April 2010
Issue #12



In Brief:

Transaction Reporting: The FSA hit with a vengeance when it fined three big name firms a total of £4.2m for transaction reporting failures

Financial Services Bill: A new financial stability objective for the FSA

Quarterly Consultation: The FSA has released a 122 page bumper edition (CP10/10)

CESR Call: CESR has requested a 'Call for Evidence' to assess European equity markets

In your Complyport Regulatory Roundup:

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

Transaction Reporting

Useful Links:

Credit Suisse Final Notice

Getco Final Notice

Instinet Final Notice

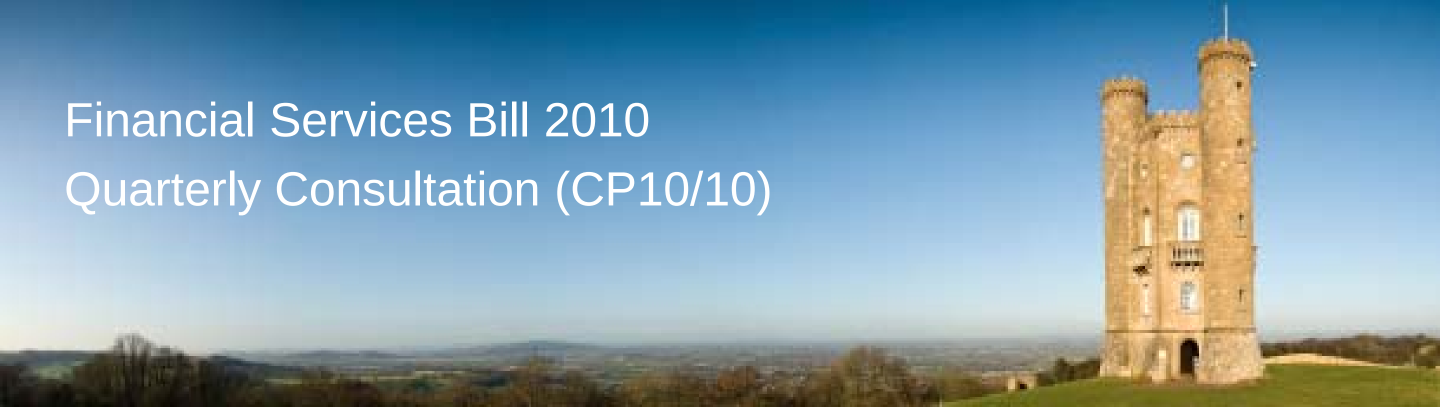
The TRUP

The FSA hit with a vengeance when it fined three big name firms a total of £4.2m for transaction reporting failures. It will be recalled that Barclays suffered a penalty of £2.45m last August for similar failings. Interestingly, in all these cases, including Barclays, there was an inability to report the correct transaction times as a result of moves between GMT and BST, although this is probably of relatively lesser importance than the non-reporting of transactions e.g. 30 million in the case of Credit Suisse. Common to the three cases was a failure of systems and controls – either a failure to ensure that other parties were indeed transaction reporting or a failure to escalate identified problems to senior management.

As a reminder, SUP 17.1.4 places an obligation on firms to report transactions in any 'financial instrument' (a term which covers shares, bonds, futures etc.) that is tradeable on a regulated or prescribed market. Firms should note, of course, that it doesn't matter where the transaction was actually carried out; all that matters is that the financial instrument can be traded on regulated/prescribed markets. In addition, the FSA requires reporting of OTC derivatives as well in the circumstances set out in SUP 17.1.4R(2). Note that these are FSA super-equivalent requirements; MiFID only refers to financial instruments admitted to trading on a regulated market. Reference should also be made to the September TRUP (see previous Regulatory Roundups and 'The TRUP' link) which gives further guidance.

Many (portfolio management) firms, of course, make use of SUP 17.2.2G which allows them to rely on the other party (typically the broker) to make the report.

Although these were big names, these fines send out a message to all firms that are subject to transaction reporting requirements, regardless of size or business, that the FSA takes such reporting seriously and firms may wish to review their current procedures in the light of the Final Notices. Firms that rely on SUP 17.2.2G should ensure that they do have 'reasonable grounds' to rely on the other party –see page 12 of TRUP for suggestions. For those firms with a low risk appetite thought could be given to requesting appropriate confirmation from their brokers.



Financial Services Bill 2010

Quarterly Consultation (CP10/10)

Useful links:

[Financial Services Act]

[FSA Statement]

The last Regulatory Roundup provided an update on the progress of this Bill which amends FSMA 2000.

Possibly as a result of the ‘wash-up’ process following the announcement of the date of the General Election, the Bill received Royal Assent on 8th April.

Its many features include expanding the FSA objectives to include a financial stability objective and moving its consumer education objective to a new consumer financial education body. Greater power is also given to the FSA on the matters of firms’ remuneration policies and the prohibition of short selling.

The links will take you to the Act and an FSA statement.

Useful Link:

[Quarterly Consultation CP10_10]

The FSA has released a 122 page bumper edition of the latest Quarterly Consultation (CP10/10).

Proposed changes in **SUP** include a rewording to SUP 10 Annex1 (FAQs) so removing the reference to up to seven business days the FSA allows itself to process an application for approved person status; guidance added to SUP 11 on when holdings need to be aggregated in determining controllers; and some changes to SUP 16 – Reporting requirements.

With regard to the latter it is mostly clarification but firms that are subject to the ICAAP requirement should note that the FSA 019 data return (‘Pillar 2 information’) will be more probing as a result of additional questions being included. Four of these relate to a wind down of the firm and ask about the costs and what length of time has been assumed for an orderly wind down. Although this is an area that should have already been addressed in the ICAAP, firms may wish to review the document to ensure that this is true so that, when the time comes, the additional questions can be answered.

Changes are proposed to **BIPRU 12** (Liquidity standards) which will be of relevance to ILAS firms that wish to adopt the simplified approach set out in BIPRU 12.6.

There are also changes to **COBS 4** (Communicating with clients, including financial promotions). Mostly these simply involve rewording which the FSA believes helps clarify those rules applicable/not applicable to MiFID business. One change that may be of importance to some firms is in COBS 4.9 (Financial promotions with an overseas element). COBS 4.9.3(2) now places greater onus on a firm to satisfy itself that the overseas person in question will deal with retail clients in the UK in an honest and reliable way.

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CESR Call

Useful Link:
[CESR Call for Evidence]

In an evidence collecting exercise, the Committee of European Securities Regulators has issued a ''Call for Evidence" in order to assess the impact of certain developments in European equity markets.

The document lists six areas of interest to CESR including the risks associated with **Sponsored Access** (as opposed to Direct Market Access) and whether **Indications of Interest** can in some circumstances be inconsistent with MiFID (and comments that the SEC has recently made announcements on these two matters). Other topics in the paper cover **High Frequency Trading; Co-location; Trading Platform Fees;** and the **Reduction of Tick Size.**

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For details of any other of Complyport's services, please contact Philip Chapman

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