COMPLYPORT
COMPLIANCE LEADERSHIP

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Liquidity Standards

This week the FSA published PS09/16 ('Strengthening liquidity standards') which, for the immediate future, should be the final word on liquidity following three Consultation Papers.

The liquidity requirements are contained in a new BIPRU chapter (BIPRU 12). Fortunately the regime for 'non-ILAS' firms (basically BIPRU limited licence; BIPRU limited activity; and 'smaller' full-scope BIPRU investment firms) is lighter than for those firms that fall under the category of 'Standard ILAS' firms.

BIPRU 12 comes into force on 1 December 2009, although various transitional provisions will mean that some sections are delayed until November next year. All BIPRU firms will eventually be required to comply with the overall liquidity adequacy rule (BIPRU 12.2.1) and the overarching liquidity systems and controls requirements (BIPRU 12.3.4). Non-ILAS firms will be required to submit a new data form - FSA055 - on an annual (calendar year) basis. The first submission will be for the year to 31.12.10.

We will be sending Complyport clients an analysis of PS09/16, including a short summary of what this all means for a typical non-ILAS firm.

http://www.fsa.gov.uk/pubs/policy/ps09_16.pdf

Expanding Shorts

As you will know, there is an obligation on firms to disclose short positions of 0.25% or more in securities in (a) a rights issue period or (b) any security in a UK financial sector company - MAR 1.9 refers. The FSA has published a Feedback Statement (FS09/4) on short selling which confirms support for enhanced disclosure requirements rather than imposing restrictions on short selling. The document is the response to DP09/1 - "Short Selling" - published in February this year. One proposal was to require disclosure of short selling of all stocks and not just those set out in MAR 1.9. For now the FSA is not proposing any changes to the current regime. This is not because the FSA has had second thoughts but rather is due to the fact that CESR has issued its own consultation paper on the same subject. The latter is proposing a two tier disclosure regime: private disclosure to the regulator at the 0.1%+ level and public disclosure to the market at the 0.5%+ level (or 0.25%+ in respect of companies in a rights issue). The obligation would extend to the shares of all EEA issuers and to non-EEA issuers whose shares are admitted to trading on such markets. The CESR consultation period has now ended and a final report from CESR is expected before the end of the year. The FSA will work with CESR to develop an agreed European policy for short selling.

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http://www.fsa.gov.uk/pubs/discussion/fs09_04.pdf

Turner Review

Back in March the FSA published The Turner Review and 'A regulatory response to the global banking crisis' (DP09/2). They arose from a request from the Chancellor of the Exchequer made in October 2008 to review the causes of the then current financial crisis. Both documents, totalling 340+ pages between them, looked at the causes of the crisis, shortcomings in regulation and supervision that contributed to it and aimed to stimulate debate. The FSA received 81 responses which led to the publication the other day of FS09/3. In general respondents agreed with the analysis and recommendations in the papers but expressed concerns about the need for international consistency to avoid damage to London's competitiveness and the need for an impact assessment of the whole package of reform. The FSA tell us that their 'own thinking has continued to develop' and some proposals will require 'a more detailed analysis'. As a result the FSA plans to issue a further discussion paper in October. If you would like to have summary of FS09/3 then please speak to your normal Complyport contact.

http://www.fsa.gov.uk/pubs/discussion/dp09_02.pdf
http://www.fsa.gov.uk/pubs/other/turner_review.pdf
http://www.fsa.gov.uk/pubs/discussion/fs09_03.pdf

Global Economy

Some cheering news from the IMF. Its latest World Economic Outlook reports that global economic growth has turned positive, although recovery will be slow. Latest IMF projections show that world output is forecast to expand by around 3% in 2010. The table in the attached link shows that China and India are the powerhouses with 'advanced economies' trailing behind. The figure for the UK is 0.9%; not the best, but certainly not the worst.

http://www.imf.org/external/pubs/ft/survey/so/2009/RES100109A.htm

UCITS

Not that long ago one would not have expected to see 'Hedge fund managers' and 'UCITS' appearing in the same sentence. However things have been changing, no doubt in part fuelled by memories of Lehman's, Ponzi schemes and the proposed AIFM EU Directive. We have recently seen the likes of Man Group and Cheyne Capital announcing the launch of UCITS schemes and the other day Smith & Williamson reported plans to convert its Enterprise Hedge Fund into a UCITS compliant vehicle. An article in the FTfm of 28th September suggests that two-thirds of hedge funds could live within a UCITS wrapper.

David Moffat and Brian Archer of IFDS gave an informative and well received presentation on UCITS Schemes and Regulation the other week at 4 Cavendish Square (a link to the slides is below).

We are thinking of running a follow up presentation on UCITS if there is sufficient interest. The presentation would be focussed on the more practical aspects of the product rather than simply giving an overview of the UCITS regime. The seminar would be specifically directed at the more important logistical issues that face firms when launching a UCITS scheme and how the process may be completed without needing a variation of permission from the FSA. We would also cover other authorised funds which include NURS and QIS.

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If you feel that this would be of interest to you (or a colleague or contact) then do let us know via the contact email address shown in the Regulatory Roundup.

http://www.complyport.com/downloads/ucits.pdf

Compliance Seminars

The UCITS presentation referred to above was one of a series of seminars being held at our 4 Cavendish Square address.

Future topics include US Regulatory Development; Financial Crime; and Market Conduct. If you would be interested in attending one of these then please refer to the link below for further details.

http://www.complyport.com/downloads/icma.pdf

Branching out

If you have any friends or contacts in the industry that are considering branching out on their own then this may be of interest to them. On Thursday October 29, 2009 a selection of alternative investment industry experts will be giving a series of short presentations highlighting the particular issues involved in establishing a new investment or securities business.
The presentations have been designed to give attendees an insight of how the alternative investment sector works and the processes involved in establishing a new fund management or securities business. Each session will be presented by leading practitioners in the area but the themes will be consistent throughout. After the formal presentations there will be opportunities for informal discussions with members of the speaking panel.

http://www.complyport-events.com/36

Market abuse

As we all know, the FSA been stepping up the pressure on market abuse as part of its 'credible deterrence' strategy and will happily take enforcement action against firms and individuals. Therefore the publication by the FSA of Final Notices in respect of Darren Morton and Christopher Parry, two bond traders at Dresdner Kleinwort, will not have come as a surprise given that both were accused of market abuse following trades made after receipt of inside information. However what is unusual is that both individuals were only subject to censure and escaped a fine and/or a ban which would now seem par for the course. Various reasons cited in the Final Notices (which can be accessed via the link below) include the fact that neither had personally profited; didn't act deliberately etc. Separate reports suggest that the relatively light punishment is actually due to the two of them contesting the case (it is clear from both Notices that each put up a spirited defence) and the FSA being less sure of its ground that usual rather than the FSA softening its new hard line approach.

http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/134.shtml

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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 at peter.carlisle@complyport.co.uk

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