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Regulatory Roundup
2 June 2011
Issue 30

In Brief:

Zen and the Art of Transaction Reporting: New system to impact on firms' transaction reporting

Derivative Transaction Reporting: New guidance on reporting of on-exchange derivatives

Remuneration Consultation: Comments submitted by Complyport

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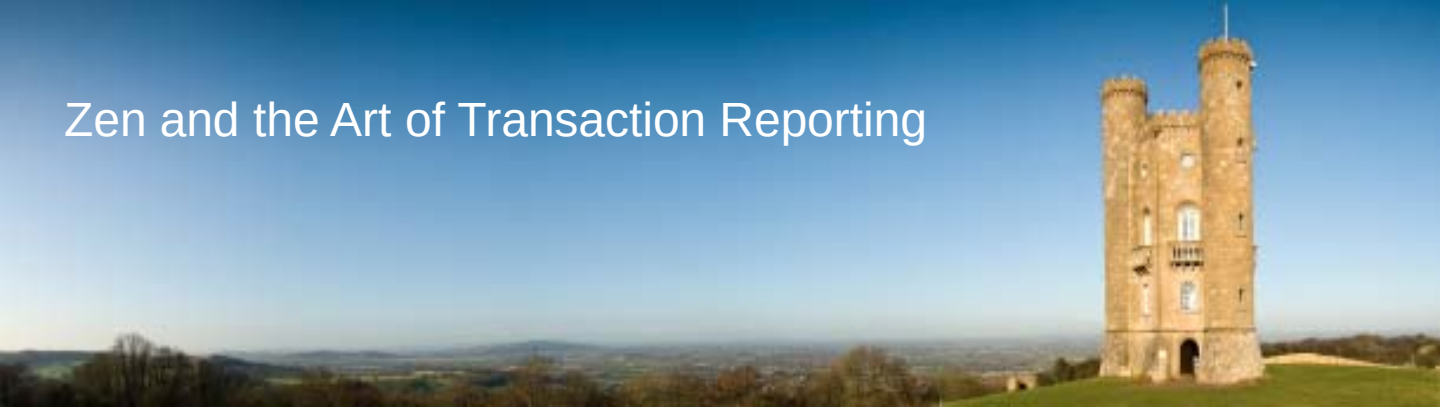
In the Complyport Regulatory Roundup:

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

Zen and the Art of Transaction Reporting



Useful links:

Market Watch 39

Regulatory Roundup 11

ISIN Instrument Identifier

Zen FAQs

TRS Technical

The FSA has published Market Watch 39 (MW39) which contains confirmation that Zen, which will replace the existing Sabre system used by the FSA for market transaction analysis, will go live later this year.

The enhanced capabilities of Zen will **impact** upon firms' **transaction reporting** in that the new system will support transactions identified using the Alternative Instrument Identifier (**Aii**).

Currently, as mentioned in e.g. Regulatory Roundup 11, firms are not obliged to report (but can do so voluntarily) securities derivatives that do not use an **ISIN** (a list of markets employing ISIN as a unique identifier can be found via the link provided).

This will change and all firms have to be **compliant** with the reporting of Aii transactions no later that **13 November 2011** ('hard go-live'), although reporting can begin with effect from 8 August ('soft go-live'). Note from MW39 that there will be changes in some of the validation rules.

Firms that transaction report using the FSA's **TRS** system via **manual keying** shouldn't need to make any changes to their systems as the TRS interface will be updated to allow such firms to send details of Aii transactions. **However** those firms that submit details to TRS via either **web upload** or **system to system** will need to consider system enhancements; the link will provide further assistance. Firms that make use of other reporting mechanisms e.g. Omgeo should contact their system operator.

It is worth reminding firms looking to the transaction reporting **exemption** in SUP 17.2.2 (**portfolio management exemption**) that under certain scenarios the portfolio management firm **cannot rely on the exemption**.

One common example would be when the broker being used is a **non-UK MiFID investment firm** This is because the **FSA** transaction reporting regime **is super-equivalent** to MiFID. The Directive applies reporting requirements in respect of transactions in 'financial instruments admitted to trading on a regulated market' (regardless of whether the transaction is actually effected on a regulated market) whereas the Handbook **also** requires reporting in respect of transactions on a **prescribed market** (such as AIM) and in certain OTC derivatives (see SUP 17.1.4 for details). As such it is likely that the transaction would be outside the reporting rules applicable to the broker's home state.

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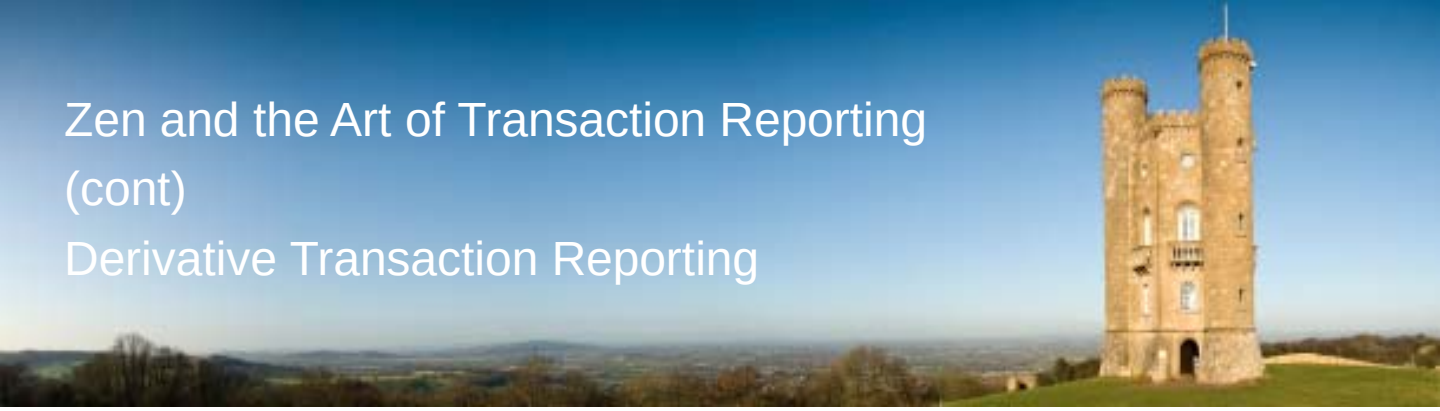

Zen and the Art of Transaction Reporting (cont)
Derivative Transaction Reporting

Useful links:

Regulatory Roundup 28

Another example would be when a portfolio management firm contacts an EEA broker to conduct a transaction in respect of a reportable instrument on a **non-EEA exchange**. If the broker **gives up** the order to a non-EEA broker to execute then the **reporting obligation** would fall on the **portfolio management firm**. Having said that, it would be permissible for the EEA broker to report the transaction and the FSA **suggest** that this could form **part of the agreement** between the firm and its EEA broker.

MW39 also advises that the FSA is currently reviewing the Transaction Reporting User Pack (**TRUP**) with the intention of updating it. The FSA would welcome any comments or input from firms (tmu@fsa.gov.uk).

Market Watch 38, a link to which can be found in Regulatory Roundup 28, also concerned transaction reporting changes, including the need for firms to have a **BIC**.

Useful links:

Reporting on-exchange derivatives

The FSA has issued consultative guidance on the reporting of on-exchange derivatives that are conducted through exchange platforms.

Current guidance depends upon the fungibility of the instrument and in certain circumstances can leave firms with the choice of reporting the transaction as on-exchange or as OTC.

The publication **revises** previous guidance and removes the fungibility element.

Note that the guidance, subject to any post-consultation period changes, will be effective from the Zen hard go-live date (see article on Zen in this Regulatory Roundup).

Firms may need to consider whether any system changes are needed before 13 November.

The consultation period ends 2 June.

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Remuneration Consultation
Client Money & CMAR: Important Changes

Useful links:

Regulatory Roundup 29

As mentioned in Regulatory Roundup 29, the consultation period in respect of the FSA's proposed guidance on the Remuneration Code ended on 18 May.

As promised, and based upon feedback received, Complyport responded to the consultation with two issues.

The first concern was on the disclosure obligations in small firms - or any firm with few Code staff. In a 20 Code staff firm the aggregate disclosure obligation provides a reasonable guarantee of anonymity to those staff. The same would not necessarily be true in, say, a four person firm. Although the proposed guidance and FAQs raised the issue, it was felt that the response did not adequately address the concerns on confidentiality.

The second issue was on 'risk takers' and whether the concept has any meaning for a firm in proportionality tier 4.

Useful links:

Regulatory Roundup 28

PS11/6

In Regulatory Roundup 28 we reminded CASS large and CASS medium firms that the requirement to complete a CMAR (Client Money and Assets Return) was to begin in June.

In the recently published Policy Statement PS11/6 ('The Client Money and Asset Return (CMAR): Operational Implementation') the FSA has announced a **delay** in the reporting starting date in response to feedback on the tight timetable. The CMAR reporting requirement will now be implemented from **1 October**; the 15 day submission timeframe remains unchanged.

PS11/6 also clarifies that the person with **CF10a** status (see separate article on this function in this Regulatory Roundup) is to be the person **completing and submitting** the CMAR (and so that individual will also need to be a GABRIEL user).

The rule changes, as well as guidance on the completion of the CMAR, can be found in Appendix 1 of the Policy Statement.

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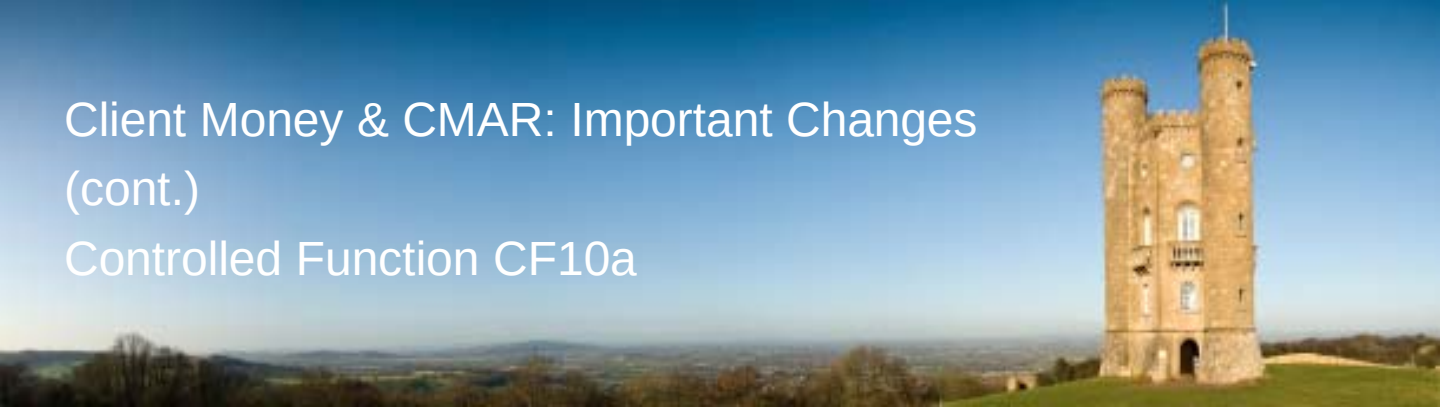

Client Money & CMAR: Important Changes (cont.)

Controlled Function CF10a

Useful links:

Handbook Notice 109

CMAR FAQs

The above applies **only to CASS large and CASS medium firms**. The CMAR reporting arrangements for **CASS small firms** will be postponed 'until further notice' to allow the FSA to implement the CMAR successfully for the medium and larger firms – a consultation for CASS small firms is proposed for later this year. Note that **CASS small firms** will be subject to a **'one-off' notification** in **July** and the FSA will be contacting such firms in early July (see chapter 4 of Handbook Notice 109 for further information).

The **definition** of **CASS large, medium and small** firms can be found in CASS 1A.2.7; a CASS small firm will have held less than £1m in client money and/or £10m in safe custody assets.

Useful links:

Regulatory Roundup 23

Regulatory Roundup 28

CF10a FAQs

As mentioned in previous Regulatory Roundups e.g. issues 23 & 28, CASS medium and large firms (see article above on CMAR for criteria) need to allocate the new function of CF10a (CASS operational oversight function) to a director or senior manager of a firm. Although the rules do not come into force until 1 October, firms can apply from 1 May.

Applications for the CF10a function have to be made by **post** and **not ONA** (see Regulatory Roundup 28 re ONA systems problems and new controlled functions). Further details, including guidance notes on the completion of the application form, can be found from the FAQ link.

Note that **small CASS firms** (generally holding less that £1m in client money but see CASS 1A.2.7R for definition) do not need to apply for a CF10a **but** they **must allocate an individual** to have CASS operational oversight. This individual must be a director performing a significant influence function (**SIF**) **or** a senior manager **performing a SIF** responsibility. The individual will also be responsible for **reporting** to the **firm's governing body** in respect of that oversight.

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Complaints
FSA Performance

Useful links:

CP11/10

Complaints Data

Regulatory Roundup 25

DISP is of particular relevance to firms with eligible complainants (not to be confused with eligible claimants; see Regulatory Roundup 25 for further details) in the handling of complaints e.g. time limit rules (DISP 1.6); submitting details of complaints to the FSA twice a year (DISP 1.10) etc.

The FSA has published Consultation Paper CP11/10 'Consumer complaints: The ombudsman award limit and changes to complaints-handling rules' concerning **changes** to elements of DISP.

Changes include **increasing** the **FOS** award limit from £100,000 **to £150,000** (DISP 3.7.4); abolishing the two-stage process in DISP 1.6; and the need to **appoint an individual**, who must be carrying out a governing function, to have **responsibility for oversight** of the firm's compliance with DISP 1 (new rule DISP 1.3.7).

The changes will take effect (although labelled a 'Consultation Paper' the FSA is really only consulting on a possible minor change in the definition of 'eligible complainant') at various times ranging from this coming 1 July through to 1 July 2012. Further information can be found in Appendix 2 of CP11/10 which contains draft Handbook text.

Useful links:

FSA Performance Standards

The Regulator has published its latest set of performance results for service standards and customer satisfaction for the period 1 October 2010 to 31 March 2011.

There are **54 service standards** in total categorised into seven areas: Authorisation; Regulatory decisions; Complaints against the FSA; Notifications; Communications; Listing; and Customer satisfaction. According to the release the FSA met 33 (62.3%) out of 53 of the standards – one of the standards (relating to responding to requests from EEA on insurance business transfers) did not have any transactions recorded against it. Eight of the missed standards have a 100% target, seven of which were missed by less than 1%.

The results can be found by way of the link provided. It will take you to a FSA web page where you can view the performances of each of the seven areas via the links on the left hand side of that page.

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Cold-shouldering
Decisions, Decisions

Useful links:

The Takeover Code

FSA Cold-shouldering

Some firms may have been in receipt of a 'Dear Compliance Officer' letter reminding them of the 'cold-shouldering' imposed by the Takeover Panel on three individuals.

The concept of cold-shouldering arises from 1(b)(v) of the Introduction to **Takeover Code** ('Code') when a **Panel Statement** is made to the effect that an individual or individuals are not likely to comply with the Code. By virtue of **MAR 4.3** authorised firms must not act, or continue to act, for such persons in connection with a transaction to which the Code applies. The letter advises that firms should remind **all approved persons** at their firm about the cold-shouldering of the three individuals. The Panel Statement remains in place for three years from 30 April 2010.

Useful links:

Regulatory Roundup 22

Enforcement Guide

Decision Notice: Stuart Unwin

Decision Notice: Derek Wright

In Regulatory Roundup 22 mention was made of the FSA being given the power to publish decision notices as well as final notices. An enforcement case consists of a warning notice, followed by a decision notice and then a final notice.

Under the previous regime the FSA only had power to publish a final notice. A decision notice informs the individual of the right to refer the matter to appeal to the Upper Tribunal. The exercise of the right, and assuming that the Tribunal finds in favour of the FSA, would delay the issuance of the final notice with the result that there could be a delay before consumers and industry became aware of the FSA's reasons for taking action. The enhanced powers mean that the FSA can now publish details of a case at a much earlier stage. Section 6.8 of the FSA's Enforcement Guide advises that the Regulator will normally publish decision notices if the subject of the enforcement action decides to refer the matter to the Tribunal.

The **FSA** has, **for the first time**, published two decision notices (**Unwin** and **Wright**) under its enhanced powers. The elements of the two cases have **relevance** for **all authorised firms**.

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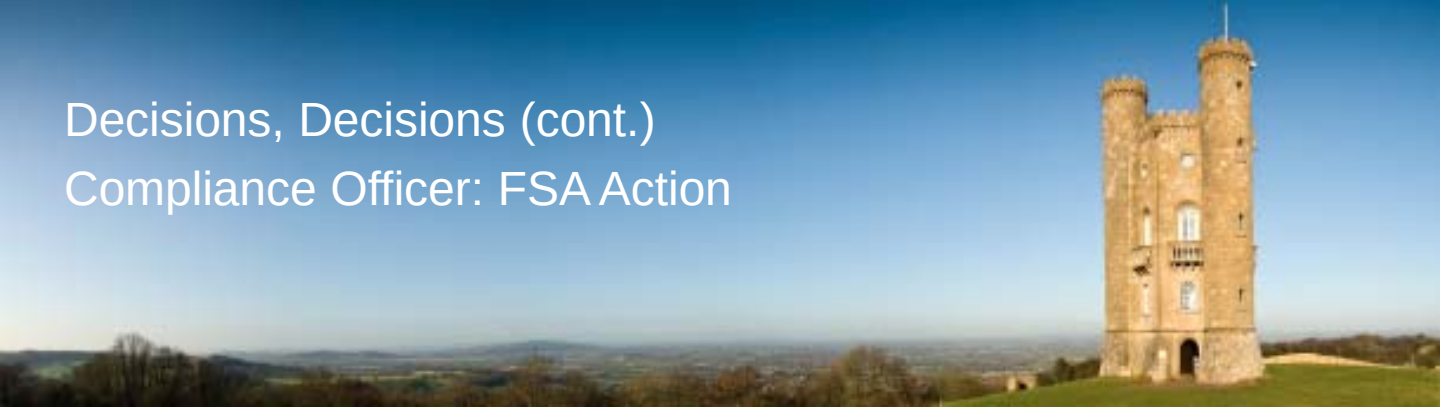
Decisions, Decisions (cont.)
Compliance Officer: FSA Action



Useful links:

Regulatory Roundup 21

Regulatory Roundup 26

Mr Unwin's case included **failure** to ensure that the firm had adequate **systems and controls** in place to ensure that advice was suitable. What is important here is not that it relates to 'advice' but rather there was a failure to have appropriate systems and controls in place to ensure suitability. This is **not the first time** that the FSA has issued a Notice where a systems and controls failing is cited. **SYSC 4.1** sets out the general requirements expected of a firm, including the need to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.

The case concerning Mr Wright included him effectively **undertaking the role of a director without approval**, whilst the sole, and FSA approved, director Mrs Wright did not perform any of the functions associated with a CF1 director. As she did not refer her case to the Tribunal the FSA has published a separate final notice for Mrs Wright. There are **parallels** with the Gerald Casey issue, covered in Regulatory Roundup 21, in that whilst he held the CF4 Partner Controlled Function at his firm, his duties were carried out by another (unapproved) person who ran the day to day business. A similar 'shadow' situation was covered in Regulatory Roundup 26.

Learning from these cases firms may wish to ask themselves whether their current systems and controls would meet the expectations of SYSC and whether all persons having a significant influence over their operation are appropriately approved by the FSA (SUP 10 will provide further guidance).

Useful links:

Final Notice David McGrath

Regulatory Roundup 28

Regulatory Roundup 28 contained an article on the fine imposed upon ActivTrades for client money failings. The action arose following an FSA thematic visit and consequent s166 skilled person report.

In a follow up the FSA has also issued a **Final Notice** in respect of the firm's **compliance officer** David McGrath.

In **addition** to a financial penalty of £3,000 (reduced for early settlement and because of financial hardship) the Regulator also issued Mr McGrath with a **Prohibition Order**. The effect of this is to prohibit him from performing the CF10 compliance oversight function.

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Compliance Officer: FSA Action (cont.)

FSA Fees

This serves as a reminder that where the FSA finds failings the regulator **may take action against** not only the firm concerned but also **individuals**. As the Final Notice explains, "the FSA places **great importance** on the **responsibilities of compliance officers** as they are responsible for ensuring that the businesses that they oversee comply with regulatory requirements and standards". Amongst the failings quoted were an inability to demonstrate an appropriate knowledge of the relevant part of the Handbook; a failure to put in place adequate policies and procedures; a failure to provide the Board with regular management information; and not identifying the regulatory failings through his own **compliance monitoring**.

Useful links:

Regulatory Roundup 26

PS11/7

Policy Statement PS11/7 concerning regulatory fees has been issued and acts as a useful reminder that firms can expect to be invoiced by the FSA in June in respect of fees (and levies e.g. FOS where applicable) which, except for those paying FSA fees of £50,000 or more, must be paid by 1 July, or 30 days after they are invoiced, whichever is the latter.

The section before 'Overview' in PS11/7 contains a useful timetable relating to fees and tariff data.

For further information on fees, as well as a link to the FSA's 'fees calculator', please see Regulatory Roundup 26.

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Or for details of any other of Complyport's services, please contact Jon Wedgbury

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