



# Regulatory Roundup

## 20th November 2014

### Issue 60



#### In Brief:

**Recovery and Resolution: Resolution:**

The Bank of England publishes its approach to "Resolution"

**Restrictions on Retail Distribution:**

FCA to consult on making restrictions on distribution of contingent convertible instruments permanent

**Money Laundering: Transparency and Beneficial Ownership:**

Financial Action Task Force publishes guidance on Transparency and Beneficial ownership.

**EMIR: Trade Repository Reporting Changes:**

ESMA Consultation Paper to review shortcomings of EMIR Reporting.

**Legal Entity Identifier:** The use of an LEI in COREP Reporting

**EuSEF & EuVECA Update:** ESMA update Q&A on the application of the regulations

**Remuneration Reporting:** Final guidelines on High Earners Reports.

**AIFMD Passport:** ESMA 'Call for Evidence' paper inviting comments from stakeholders

**Country by Country Reporting:** EC report on 'Country by Country' disclosure.

**Financial Crime:** Proposed changes to the FCA's Financial Crime Guide

**Anti-Money Laundering Guidance Update:**

Proposed revision to Private Equity Guidance.

#### In the Complyport Regulatory Roundup:

|  |                           |
|--|---------------------------|
| <i>Recovery and Resolution: Resolution</i>                     | <a href="#"><u>2</u></a>  |
| <i>Restrictions on Retail Distribution</i>                     | <a href="#"><u>3</u></a>  |
| <i>Money Laundering: Transparency and Beneficial Ownership</i> | <a href="#"><u>4</u></a>  |
| <i>EMIR: Trade Repository Reporting Changes</i>                | <a href="#"><u>5</u></a>  |
| <i>Legal Entity Identifier: CRD IV</i>                         | <a href="#"><u>6</u></a>  |
| <i>EuSEF &amp; EuVECA Update</i>                               | <a href="#"><u>7</u></a>  |
| <i>Remuneration Reporting</i>                                  | <a href="#"><u>8</u></a>  |
| <i>AIFMD Passport</i>  | <a href="#"><u>9</u></a>  |
| <i>Country by Country Reporting</i>                            | <a href="#"><u>10</u></a> |
| <i>Financial Crime</i>   | <a href="#"><u>11</u></a> |
| <i>Anti-Money Laundering Guidance Update</i>                   | <a href="#"><u>12</u></a> |

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# Recovery and Resolution: Resolution



## Useful links:

[BoE: Resolution](#)

[Regulatory Roundup 58](#)

As we know, the Bank of England (BoE) will be the **Resolution Authority** for the UK - see 'Recovery and Resolution' article in Regulatory Roundup 58 – albeit that the FCA (and PRA where relevant), in addition to collating firms' recovery plans, will collect the required information from firms on behalf of the BoE.

The FCA published CP14/15 in August which also contained the draft rules. The paper concentrated on the 'recovery' aspect rather than the 'resolution'.

The BoE has now published its approach to 'resolution' of a failed bank, building society or relevant investment firm (IFPRU 730K firm).

The three key stages of resolution which a firm would go through are:

- Stabilisation phase (which may include a transfer of some of the business to a third party);
- Restructuring phase (which will address the causes of failure and will attempt to restore confidence); and
- Exit (which ends the involvement of the BoE: the firm will either cease to exist or will no longer require support)



# Restrictions on Retail Distribution



## Useful links:

[Regulatory Roundup 59](#)

[CP14/23](#)

The last Regulatory Roundup (No 59) advised that a new chapter in COBS came into force on 1 October – **COBS 22** “Restrictions on distribution of contingent convertible instruments” (‘**CoCos**’). The chapter derives from **temporary product intervention** rules and will cease to have an effect on 1 October 2015 (COBS 22.1.1(4)). The effect is to prevent the sale to, or the purchase by, **retail clients** in the **EEA** of these instruments. There are limited exemptions available e.g. certified high net worth investors.

The FCA has had further thoughts on the matter and is now consulting (CP14/23 “Restrictions on the retail distribution of regulatory capital instruments”) on making the restrictions **permanent**. The restrictions will now capture **CoCo funds** as well (the definition of the latter will capture funds which are “wholly or predominantly linked to..” CoCos). In addition the FCA wishes to extend a similar restriction to **mutual society shares**.

Suitability guidance (COBS 9.3) will be amended to draw attention to firms of the restrictions imposed on CoCos etc. **Discretionary investment managers** are reminded that any purchases of such instruments for a retail client’s portfolio should be supported by “detailed and robust justification” of the assessment of its suitability in the portfolio.

The draft rules can be found in Appendix 1 of CP14/23.

The consultation period ends 29<sup>th</sup> January 2015.



# Money Laundering: Transparency and Beneficial Ownership



## Useful links:

### [FATFA Guidance](#)

Firms will be aware that the key requirement in applying customer due diligence measures (CDD) for the prevention of money laundering (and, of course, combating terrorist financing) purposes is the identification and verification of the **customer** and, where applicable, of the **beneficial owners**.

The beneficial owner is the person(s) who ultimately owns or controls a customer. In terms of individuals this is, normally, straightforward with the customer being the beneficial owner. However, as we all know, it becomes more complex when faced with e.g. corporate entities, trusts etc. To this end the Joint Money Laundering Steering Group already produces useful guidance to firms to assist in the application of CDD, including identification of the beneficial owner(s).

The Financial Action Task Force (FATF) has recently published its own guidance on 'Transparency and Beneficial Ownership' which, amongst other topics, includes the misuse of legal persons and arrangements and, of course, beneficial ownership.

The guidance is really aimed at national authorities and policy makers but those having responsibility for AML oversight will no doubt wish to add this to their archive of reference material.

Whilst on the subject of beneficial ownership, a reminder that the current version of the **Money Laundering Directive** (fourth) – which is still at the European negotiation stage – includes a requirement (Chapter III) for Member States to ensure that corporate and 'other legal entities' hold information on their **beneficial ownership**. Such information must be **made available** to any entity applying CDD in accordance with general AML requirements. In addition the information must be held in a manner which allows access by competent authorities and Financial Intelligence Units (in the case of the UK this would be the National Crime Agency) **without alerting** the entity concerned. Similar requirements will apply to trustees in terms of identity of the settlor and beneficiaries.



# EMIR: Trade Repository Reporting Changes



## Useful links:

[148/2013](#)

[1247/2012](#)

[ESMA 2014/1352](#)

The reporting requirements arising under Article 9 of EMIR (which became obligatory from 12 February this year) are essentially based upon Implementing Regulation 1247/2012 (format and frequency of trade reports) and Delegated Regulation 148/2013 (minimum details to be reported).

The three month timeframe in which ESMA had to deliver these technical standards was fairly demanding and did not allow thorough investigation and research into this new area of reporting. It is believed that the EMIR reporting has shown some **shortcomings** and that there are instances where **improvements** could be made.

ESMA has now issued a Consultation Paper (2014/1352) containing a review of the EMIR reporting technical standards.

Although the changes in 2014/1352 are still in the consultation stage, firms subject to EMIR reporting – and particularly those who may have developed their own in-house systems – should familiarise themselves with the potential **changes** in order to consider the impact upon current processes and procedures and to plan accordingly.

The consultation period ends 13 February 2015. Once ESMA's final report is submitted to the European Commission the latter will have three months to decide whether to endorse ESMA's draft regulatory and implementing technical standards.



# Legal Entity Identifier: CRD IV



## Useful links:

[FCA: LEI Requirement](#)

[Regulatory Roundup 52](#)

[Regulatory Roundup 59](#)

[EBA 2014/01](#)

The need for a Legal Entity Identifier (**LEI**) is most probably associated with reporting under EMIR (see Regulatory Roundup 52) although its use is encouraged elsewhere e.g. AIFMD Reporting (see Regulatory Roundup 59).

Some firms may have received an email from the FCA extending the use of an LEI for the purposes of **COREP Reporting** – a link to the narrative is provided.

Although an LEI may not be needed for the COREP Reports that a particular firm has to complete, the FCA email stems from an EBA requirement for **all** firms subject to reporting under the CRR to obtain a LEI; see paragraphs 3 to 6 (page 7) of EBA Recommendation 2014/01.

If you are such a firm then a reminder that an LEI for the firm (and for any group entities if applicable) must be obtained by **31 December 2014 at the latest**. Once a LEI(s) has been obtained it has to be submitted to the FCA **and** used in COREP (and FINREP if applicable) reports from the **first reporting reference date in 2015**. Regulatory Roundup 52 provides details on obtaining a LEI. Submission of a firm's LEI(s) to the Regulator is by way of the 'Next' button on the FCA's email.

The FCA has a dedicated email address for any related queries:  
[LEI.queries@fca.org.uk](mailto:LEI.queries@fca.org.uk).



# EuSEF & EuVECA Update



## Useful links:

[ESMA Q&A November 2014](#)

[Regulatory Roundup 47](#)

[Regulatory Roundup 48](#)

Firms involved in, or considering, the management of Social Entrepreneurship and Venture Capital Funds may be interested to learn that ESMA has updated its Q&A on the application of the Regulations. Those not familiar with the concept of these funds can access a brief summary, together with links to the relevant Regulations, in Regulatory Roundup 47 and 48.

The Q&A now confirms (Q1b) that an AIFM above the €500M threshold of Article 3(2)(b) of the AIFMD is also entitled to manage and market EuSEF and EuVECA – in the previous version only the situation of a below threshold manager that subsequently exceeded this threshold was addressed. Question 1c clarifies which provisions will apply to AIFMs above the threshold and that in terms of marketing, the EuVECA/EuSEF provisions prevail over those of the AIFMD. As such, AIFMs above the Article 3(2)(b) threshold can market to retail clients that comply with the Article 6 requirements (minimum commitment of €100,000 and stating in writing that they are aware of the risks associated with such an investment).





## Useful links:

### [PS14/14](#)

The requirement for certain firms to submit a **High Earners** report (in relation to employees that earn a total of **€1m** or more in a financial year) has been contained within SUP 16.17 since 1 November 2012.

As a result of new final guidelines being issued by the European Banking Authority - which requires more detailed information – the FCA has published the revised rules in PS14/14 “CRD IV: data collection on remuneration practices”.

In addition to Banks and Building Societies the rules capture all **IFPRU firms** (including limited licence and limited activity IFPRU firms). **Exempt CAD** and **BIPRU** firms will also be captured, **but only** if they are part of a UK lead regulated group that contains an entity to which the reporting obligation applies – see SUP 16.7.4(12) for details.

SUP 16.17 also contains the rules relating to Remuneration Benchmarking and which is applicable to firms with total assets of £50 billion or more; the FCA advise that there are no firms regulated by them that fall within the scope of this requirement.

The revised rules, including the enhanced High Earners Report, can be found in Appendix 1 of PS14/14. The new rules came into force on **7 November 2014**, which was also the date of publication of PS14/14.





## Useful links:

### [ESMA Call for Evidence](#)

Under the AIFMD as it currently stands, a **marketing passport** is only available to EEA AIFMs marketing EEA AIFs (strictly speaking the AIFMD only refers to **EU** AIFMs etc. although the FCA, in both the Handbook and on its website, prefers to use '**EEA**'). As such non-EEA AIFMs, and EEA AIFMs marketing non-EEA AIFs, have to rely on the national private placement regime (**NPPR**) which allows Member States to impose their own conditions. There is also a **management passport** available under Article 33 that allows an EEA AIFM to manage EEA AIFs established in another Member State, but there is no equivalent currently available for non-EEA AIFMs.

By 22 July 2015 ESMA has to provide the European Commission with an opinion on both the functioning of the EU passport and to issue advice on whether the passporting regime should be **extended to non-EEA AIFMs** and to EEA AIFMs marketing non-EEA AIFs. The Articles covering these activities already exist in the AIFMD but by virtue of Article 67 they are not 'switched on' until ESMA has provided its advice to the EC. Should the input from ESMA be positive the EC has **three months** in which to adopt a delegated act specifying the date when these Articles become applicable in all Member States

With this in mind ESMA has published a '**Call for Evidence**' paper (2014/1340) inviting comments from stakeholders on the matters raised within by 8 January 2015.



# Country by Country Reporting



## Useful links:

[EC Report](#)

[Regulatory Roundup 55](#)

One of the obligations introduced by CRD IV was the **Country by Country** disclosure, for the **financial year**, arising from Article 89 of the CRD and with the first full disclosure needing to be made on or before **31 December 2015** (initial, limited, disclosure had to be made for the first time on 1 July 2014) – see Regulatory Roundup 55 for further information.

The reporting was **subject to** the proviso that the European Commission had to report to both the European Parliament and European Commission on an assessment of whether there were any negative economic consequences of the public disclosure of information.

The EC has now published its report and, as might be expected, the EC has not identified any significant negative effects. Therefore the obligations under Article 89 will apply in full from **1 January 2015**.





## Useful links:

[TR14/16](#)

The FCA's Financial Crime Guide (FC) consists of two parts, with part 2 providing summaries of thematic reviews and examples of good and poor practice.

[GC 14/7](#)

The Regulator has published a Guidance Consultation (GC 14/7) which will propose amendments to both parts.

[FC Part 1](#)

Amongst the changes **Part 1** will introduce a new section on **management information** in Chapter 2 ('Financial crime systems and controls') and will include examples of suitable MI. Part 2 will gain two **new chapters** on 'How small banks manage AML and sanctions risk – update' and 'Managing bribery and corruption risk in commercial insurance broking'.

[FC Part 2](#)

The FCA has also published **thematic review** TR14/16 'How small banks manage money laundering and sanctions risk: update'. The Regulator advises that this review is not only relevant for banks and that the findings and examples of good practice may be of interest to all firms subject to SYSC 6.3 ('Financial Crime').

Comments are invited by 6 February 2015.



# Anti-Money Laundering Guidance Update



## Useful links:

[JMLSG Guidance Consultation](#)

Part II of the Guidance issued by the Joint Money Laundering Steering Group contains sectoral guidance relating to various businesses such as discretionary investment managers and execution-only stockbrokers.

It is proposed to revise the Guidance on **Private Equity** (Section 13); details can be found in the link (the consultation period has now ended).





## Useful links:

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**[Peter Carlisle](#)**

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