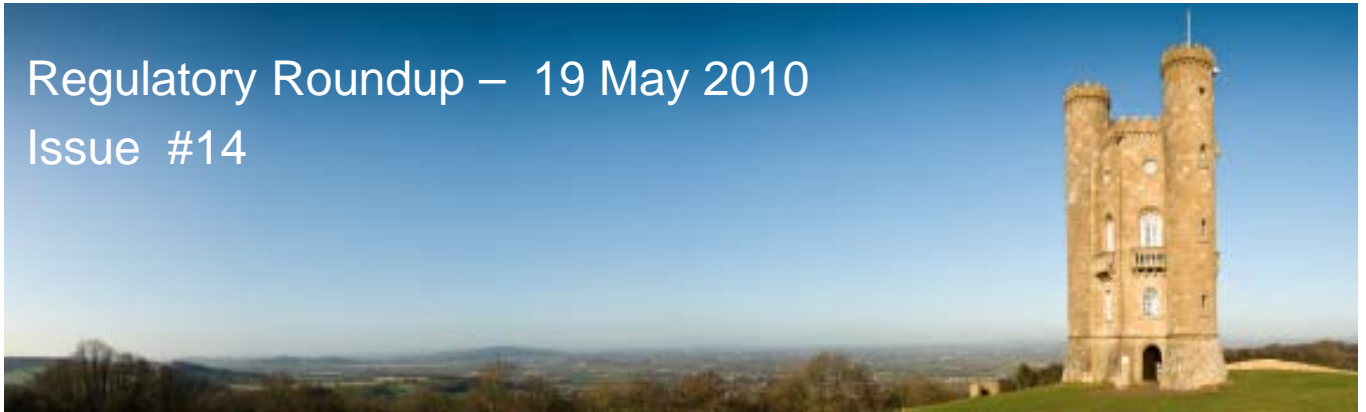




Regulatory Roundup – 19 May 2010

Issue #14



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Naked Short Selling: BaFin impose ban

FSA Actions on Money Laundering: Penalties imposed on both firm and MLRO

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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](#).

Alternative Investment Fund Managers Directive



Useful Links:

[European Parliament press release on ECON vote](#)

[Ecofin press release](#)

On Monday 17 May 2010 the European Parliament's Economic and Monetary Affairs Committee ("ECON") voted 33 votes for and 11 against for the latest amendments to the European Parliament's draft of the AIFM Directive. On Tuesday 18 May European finance ministers met and agreed on a separate draft of the Directive.

Starting with the ECON draft, numerous changes were proposed including, interestingly, a different approach on the third country issue. Rather than granting equivalence status to third countries, the European Parliament draft now proposes a voluntary system, whereby a non-EU AIFM must agree to operate subject to the requirements of the AIFM Directive in order to access EU markets. The national regulator of that country would need to work with the European Securities Markets Authority ("ESMA") to supervise the manager. For a non-EU fund to be marketed within the EU, the country of that fund must have 'high enough standards to combat money laundering and terrorist financing', grant 'reciprocal access to marketing of EU funds on its territory' and have 'agreements in place with the Member States where marketing is intended on exchange of information related to taxation and monitoring matters. Finally, the country must recognise and enforce judgements given in the EU on issues connected to the directive.'

A European Parliament press release (see link) sets out the other key amendments on issues such as transparency, leverage, valuers, depositories and capital requirements.

However, the parliamentary version's new points, including the third country issue, voted on last night will 'need to be elaborated on by the European Commission through implementing rules called delegated acts.' These will specify the details on the agreements between ESMA and the national authorities for example. This version of the draft grants ESMA additional powers and involvement in many of the most important parts of the European Parliament text.

When Ecofin (a grouping of the EU Council of Ministers) met, EU finance ministers agreed on their own proposal for the AIFM Directive (see link), separate to the Commission's parliamentary proposal text. With this version the national authorities would be given some involvement in the terms that funds and managers based outside the EU can market to professional investors within the EU.

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Useful Links:

[ECON meeting documents](#)

Under the Ecofin proposal, third country fund managers 'would be able to market funds established in third countries in an EU member state provided there is sufficient information for investors' and 'appropriate cooperation arrangements' between authorities in the EU and the third country. Meanwhile, fund managers based in the EU 'would be able to market funds located in third countries, provided that they comply with certain but not all provisions of the directive and the member state allows it'.

What next? The 'working document' (found in the link on the left from the European Parliament) states that trilogues with the Commission and the Council are the next stage before a European Parliament vote, scheduled for July 2010.



Ban on Naked Short Selling



Useful Links:

[BaFin press statement](#)

[LSE market update](#)

This week the BaFin has announced a temporary ban on naked short selling of shares in 10 banks and insurers and naked short sales of debt securities issued by eurozone countries for trading on domestic stock exchanges in the regulated market. The temporary ban further includes naked credit default swaps. The ban applies from 19 May 2010 00:00 until 31 March 2011 24:00, at which point subsequent review will be taken.

Although Germany has taken this action in an overnight ban without other regulators following suit, it is interesting that the latest European Parliament version of the AIFM Directive proposes a European wide naked short selling ban with further decisions to restrict short selling resting with ESMA. Meanwhile Senators in the US yesterday rejected an amendment to ban naked credit default swaps in their bank reform bill by a vote of 57 to 38, but with Senator Dodd later proposing a partial ban with delayed implementation.

For those that speak German, see the link to the BaFin press statement.



FSA Actions On Money Laundering



Useful Links:

[JMLSG Guidance](#)

[Alpari Final Notice](#)

[Chattopadhyay Final Notice](#)

The FSA has released details of penalties it has imposed on both a firm and its MLRO for inadequate anti-money laundering systems and controls.

Alpari (UK) Ltd and Sudipto Chattopadhyay were fined £140,000 and £14,000 respectively (with the usual notification that these sums represent a 30% discount because both parties settled at an early stage) as a result of the FSA actions. The press release references the case of Sindicatum Holdings Ltd and its MLRO in 2008. This held the distinction of being the first time that an individual MLRO had been fined by the FSA as well as the firm.

Note that in the latest case there was no evidence of money laundering at Alpari nor that the firm acted in a 'deliberate or reckless manner', but was fined for having poor systems and controls in place.

Of particular interest is that the MLRO himself is credited with having identified and having begun to rectify the weaknesses in Alpari's compliance and anti-money laundering functions before the FSA visited. The firm had already increased the headcount in the compliance department and that it was accepted that the firm had placed too much responsibility on the MLRO and failed to provide adequate support in the role (see 2.5 of Sudipto's final notice) – but this was still not enough to escape FSA sanctions (the now ex-MLRO has also agreed not to apply for the role of CF10/CF11 for a period of three years).

Firms (and MLROs) may wish to review the findings in the Final Notice for the firm and the MLRO and compare them with their current situation considering whether an unexpected FSA thematic visit would give cause for concern. Although it is useful to read the final notices in full, as a starting point the failings of the firm are summarised in section 2.2 of its final notice and in section 2.3 of the individual's final notice.

The FSA, in arriving at its conclusions and actions, has "had regard to the guidance issued by the JMLSG". This guidance and the final notices can be found by clicking on the links next to this article. If this is something you are worried about, please speak to your Complyport contact.



Anti-Money Laundering Guidance

Financial Services and Markets Tribunal



Useful Links:

[JMLSG Part III Specialist Guidance](#)

The JMLSG has recently released Part III to its anti-money laundering guidance entitled 'Specialist Guidance'. Part III will include some existing material that the JMLSG feels does not sit comfortably within Parts I & II as well as including some new material. Sections include guidance on equivalent jurisdictions and equivalent markets, compliance with the UK financial sanctions regime, transparency in electronic payments (wire transfers) and proliferation financing. As a consultative document, comments are welcomed; the consultation period ends 9 July.

[Tribunals Service Press Release](#)

It will be noted that the final notices (Alpari (UK) Ltd and Sudipto Chattopadhyay) now refer to a firm/individual being able to appeal to the Upper Tribunal (Tax and Chancery Chamber).

On 1 April 2009 it was known as the Finance and Tax Chamber, and then became the Tax and Chancery Chamber from 1 September 2009. As a result of the Tribunals, Courts and Enforcement Act 2007, the Financial Services and Markets Tribunal was reorganised into the two tier Tribunal structure on 6 April 2010.

Although now classified as 'upper tier' and will deal with appeals, the Upper Tribunal (Tax and Chancery Chamber) still has a first instance jurisdiction.

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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](#)

For details of any other of Complyport's services, please contact [Philip Chapman](#)

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