



Regulatory Roundup – 2 June 2010

Issue #15



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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](#).

EU Legislative Process



Useful Links:

[European Parliament](#)

[European Commission](#)

[Regulatory Roundup #14](#)

There has, of course, been an abundance of articles on the AIFM Directive recently. The quality of reporting is variable, with some headlines suggesting that it's all over (see the last Regulatory Roundup for an accurate assessment of the situation). It would therefore be worth providing a brief explanation of the process that leads to 'Europe' deciding what is best for us.

There are three key players in the process: the **European Commission** is the executive body that prepares a proposal; the **European Parliament** (composed of elected MEPs) suggests amendments and can accept or reject the proposal; and the **European Council** (composed of government ministers) which can accept or reject the European Parliament's amendments – and may put forward their own. Approval by the European Parliament and the European Council is needed before a proposal becomes law. Member states then have to pass legislation to enact the law within their own state.

In the case of the **AIFMD**, the Commission sent the proposed Directive to both the Parliament and the Council at the same time. Under the 'co-decision procedure' the committee representing the Council (**Ecofin**) and the committee appointed by the European Parliament (**ECON**) must work together to reach an agreement. The meetings on the 17th and 18th of May, which generated many press articles, were simply Ecofin and ECON agreeing their respective positions.

The 'first reading' in the European Parliament is scheduled for July, although the timetable could be pushed back. It is the first time the AIFMD will be put to the vote by the full Parliament. European parliamentary procedure allows for up to three readings.



European Supervision – All Change



Useful Links:

[EU Commission proposal to establish ESMA](#)

[EU Commission proposal to establish a European Banking Authority](#)

Whilst we are on things European, a reminder that the European Commission has adopted legislation that will implement a new supervisory framework for the EU, which will include the disappearance of CESR. As might be imagined, this will also introduce a host of new acronyms.

A European Systemic Risk Board (**ESRB**) will be established to assess potential risks to financial stability in the EU. If appropriate risks are identified then the ESRB will issue recommendations to the country (or countries) in question on a 'comply or explain' basis. The ESRB will liaise closely with the Financial Stability Board (**FSB**). The latter was established last April with a mandate to promote financial stability and acts to coordinate at an international level the work of national financial authorities and international standard setting bodies.

There will also be established a European System of Financial Supervisors (**ESFS**) composed of national supervisors and three new European Supervisory Authorities (**ESA**).

The intention is that ESRB will look at financial systems as a whole ('macro-prudential supervision') whilst ESFS will concern itself with the supervision of individual financial institutions ('micro-prudential supervision').

The new ESA's will be created by the transformation of existing Committees. As a result the Committee of European Securities Regulators (**CESR**) will become the European Securities and Markets Authority (**ESMA**); the Committee of European Banking Supervisors (**CEBS**) will become the European Banking Authority (**EBA**); and the Committee of European Insurance and Occupational Pensions Supervisors (**CEIOPS**) will become the European Insurance and Occupational Pensions Authority (**EIOPA**).

The ESAs, which are likely to come into being from January 2011, will assume all the functions of the existing committees and will also have extra roles including the development of proposals for technical standards and playing a part in ensuring consistent application of technical Community rules.

Further details on the workings of EBA and ESMA can be found via the links.



Financial Services Regulation Bill



Useful Links:

[Queen's Speech](#)

The Queen's Speech gave confirmation of an overhaul of the regulation of financial services "Legislation will reform financial services regulation to learn from the financial crisis ..." which is supplemented by a release on the official site of the Prime Minister's Office. The latter advises that the Financial Services Regulation Bill " .. would give the Bank of England control of macro-prudential regulation and oversight of micro-prudential regulation". It's interesting to note the Bank being given responsibility for the oversight of micro-prudential regulation which could either suggest the FSA having the Bank of England as its boss ... or even that the FSA will have no further role to play. However the latter is probably unlikely. The establishment of the FSA took four years and in reality was simply the old self regulatory organisations (IMRO, SFA etc.) 'rebranding'.

Small Firms & Financial Crime

Client Money and Assets



Useful Links:

[FSA Small Firms
Financial Crime
Review](#)

[Regulatory Roundup #10](#)

Following a review of 159 small firms (out of a population of 16,500) across the wholesale and retail sectors the FSA published 'The Small Firms Financial Crime Review'. As firms will be aware, financial crime remains a hot topic for the FSA - and is an area highlighted in the Financial Risk Outlook published earlier this year (see Regulatory Roundup #10).

The review covered three main areas: AML & financial sanctions; data security; and fraud controls.

Although the report does not constitute formal FSA guidance we are told that the FSA expects "... firms to make use of our findings ...". Given this, firms may wish to use the report as a basis of a self review to see if any gaps in procedure exist. If pushed for time then firms can look to Annex 2 for examples of both good practice (e.g. dual signatures required for all payments made over £5000) and bad practice (e.g. the MLRO that was unfamiliar with the JMLSG guidance) found. Other examples quoted include the monitoring of staff emails; disabling USB ports on hardware; and the importance of a clear desk policy.

Although IFAs and Brokers get a frequent mention, examples from other firms, such as discretionary portfolio managers and venture capital firms, also appear – but in any event the principles behind the examples are of more importance than the type of firm in question.

[Letter from FSA](#)

[Regulatory Roundup #8](#)

A reminder for those firms in receipt of a 'Dear CEO' letter under the heading of 'Client Money & Asset Report' that went out earlier this year (see Regulatory Roundup #8).

A response was expected from each recipient firm, although no specific date was given. The FSA has now started to send out a letter of reminder to those firms that have yet to respond; a deadline of 30 June is given.



Combined Code



Useful Links:

[UK Corporate Governance Code](#)

[Revisions](#)

[Complyport corporate governance services](#)

The Financial Reporting Council (FRC) has released a revised version of the Combined Code, or, as it is now called, the UK Corporate Governance Code.

Although the Code is strictly only applicable to companies with a Premium Listing (ex Primary Listing), corporate governance is very much high on the agenda for the FSA, as most firms receiving ARROW visits will be aware. Revisions include the responsibility on non-executive directors to provide effective challenge (section A4) and for remuneration incentives to be compatible with risk policies and systems (Schedule A) – both topics having featured in recent FSA outpourings.

The FRC has also published a 'Revisions' paper. Appendix A of this document summarises the main differences between the previous (2008) Code and the new Code. Appendix B shows where the provisions of the previous (2008) Code are located in the new Code together with an indication where the wording has changed.





Useful Links:

[FSA Consolidated Policy Statement](#)

[FSA Fee Calculator](#)

[Regulatory Roundup #5](#)

The FSA has issued PS10/7 – “Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2010/11”. As mentioned in Regulatory Roundup #5, fees will be a combination of a basic minimum £1,000 plus a ‘straight line recovery’ which basically means the fees now increase in proportion to the amount of permitted business undertaken. The one exception to this is in respect of Fee-block A.1 (Deposit acceptors); these will have a premium applied to their tariff data of up to 65%.

The Annual Funding Requirement (AFR) – essentially how much the FSA needs to keep going for another year - for 2010/11 is £454.7m, a 9.9% increase over the previous year. The increase is in part due to the need for the FSA to recruit a further 460 staff needed to “...deliver our intensive, integrated and high quality supervision to higher impact firms ...”. Chapter 12 shows the winners and losers in the allocation of the AFR to fee blocks e.g. dealers or brokers holding client money see a 9.6% increase whilst fund managers can look forward to a 4.5% decline.

The FSA will be invoicing firms from June for their periodic fees. Failure to pay in time will result in an administration charge being levied in the firm in question plus interest at 5% above base rate. Firms can work out their indicative fees using the FSA Fee Calculator using the attached link (although at the time of this article it hadn't been updated).





Useful Links:

[SYSC](#)

Although Christmas seems a long way off, relevant BIPRU firms may wish to ensure that they are on track to meet the reverse stress testing requirements that come into force on the 14 December and which was originally flagged up in the Regulatory Roundup of 18 December last year.

Reverse stress testing is the testing of a business plan to failure and will be covered in SYSC 20 (the rules are accessible now if you use the time travel facility on the FSA website). The new SYSC chapter amplifies SYSC 7.1.1 to SYSC 7.1.8 on risk control.

SYSC 20 will apply to BIPRU firms although a BIPRU investment firm will be excluded from the scope of SYSC 20 if:

- (a) it manages investment or safeguards and administers investments of under £10bn; *or*
- (b) total annual fee and commission income from its regulated activities is no more than £250m; *or*
- (c) it has assets and liabilities of no more than £2bn

All criteria apply on a consolidated basis to all BIPRU investment firms in the group. Reference should be made to SYSC 20.1.1R(2) for the precise exclusion parameters.



Close Links

Extending German Shorts



Useful Links:

[New FSA form](#)

[PS09/17](#)

[Regulatory Roundup #5](#)

As mentioned in Regulatory Roundup #5, the amended rules governing close links reporting which came into effect on 1 June 2010.

The main change is that close links notification now has to be done using a new FSA form (see the link for details). The new form has to be used whether a firm is notifying changes in close links (SUP 11.9) or if it is submitting its annual close links notification (SUP 16.5). Note with regard to the latter there is no change to the method of submission in respect of the annual controllers report (SUP 16.4). As a result those firms that used to combine the two annual reports will no longer be able to do so.

The close links notification and reporting rules pre and post 1 June can be found in Annex B of Appendix 1 of PS09/17.

There are also some minor changes to COND 2.3 (Threshold Conditions).

[The English BaFin press statement of the temporary naked short selling ban](#)

[Regulatory Roundup #14](#)

Following on from the last Regulatory Roundup which detailed the surprise temporary BaFin naked short selling restrictions, BaFin plan to permanently ban naked short selling of certain euro zone securities. The draft bill proposes to ban naked short selling of domestic German stocks, credit default swaps based on eurozone sovereign bonds and currency derivatives if they were being used speculatively rather than for hedging purposes.

However according to a copy of the bill obtained by Reuters, the German cabinet have come to an agreement on these new extended measures, watering down the proposals (as mentioned above) so that there will now be no blanket ban on euro derivatives trading.

These extended measures are expected to become law by mid July, despite a lack of European consensus on the issue.



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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