



Regulatory Roundup – 29 September 2009 Issue # 1



Welcome to the first of the new 'Regulatory Roundup' regular news emails from Complyport.

FSA Asset Management Conference

Unlike past years when different topics relating to asset management were discussed, this year's conference was devoted to the proposed EU Directive on hedge funds. As a result the five separate panel sessions managed to say the same thing (the draft directive is not fit for purpose) over the eight hour conference.

Two important messages came out including one surprising announcement from Jean-Pierre Jouyey, the Chairman of the AMF (the French securities regulator).

First: The FSA see the need for an AIFM Directive and everyone has to accept that there will be an AIFM directive. Second: If you don't like the draft (and the FSA do not) then attacking Johnny Foreigner in the style of Boris J will not help the situation. What needs to be done is to present sound technical reasons why a particular article in the draft needs to be changed and to provide the EU with an alternative article (this was supported by the FSA).

J-PJ assured us that the French are not attempting to undermine London's role as the AIF market; that it does understand the typical UK model i.e. FSA regulated managers in the UK with a fund based offshore; and that parts of the draft AIFM Directive could do with revision. One example is that the prohibition on marketing offshore funds could be lifted where the investor approaches the manager, rather than the other way around. Another example would be allowing professional investors to invest in offshore funds provided that the fund is managed by an EU asset manager or the country in which the fund is domiciled has signed a cooperation and information sharing agreement within the EU. Obviously these were just ideas but the strong message coming through was that the draft might not be appropriate (as in it is recognised that a one size fits all directive is not appropriate) and the need for proportionality needs to be recognised. J-PJ can see convergence between the UK and the French views (unfortunately there was no German representation).

Hedge Funds & the Germans

Following on from the above article, it was noted there was no German representation at the FSA Asset Management Conference (Germany and France have been seen to be the main proponents to push the Directive through). Another article in the press suggests that the German finance minister, Peer Steinbrueck, is not so conciliatory (and he didn't like Gordon Brown's bank bailout plans last year either).



<http://www.dailymail.co.uk/money/article-1215674/German-finance-minister-hits-UK-regulation-soft.html>

SEC & FSA

From the article on the Asset Management Conference it will be seen that one way non EU domiciled funds could be marketed under any AIFM Directive would be where the third country has entered into an information sharing agreement with the EU. It was therefore interesting to note that on the same day it was announced that the SEC and the FSA have agreed to commit to working with each other to identify a common set of data to be collected from hedge fund managers located in the respective jurisdictions.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/124.shtml>

Financial Crime

The latest edition of the FSA's Financial Crime Newsletter is published reminding us about what could be ominous news for those that can read between the lines.

You will be aware from a previous Roundup that Philip Robinson, the FSA's Director of Financial Crime and Intelligence Division, is retiring at the end of the year. His division will merge with Enforcement to form the Enforcement and Financial Crime Division to be led by Margaret Cole. Margaret Cole, of course, is the current Enforcement Director who is regularly quoted on the FSA website as another firm or approved person is fined/kicked out of the industry. It would seem reasonable to assume that she will apply the same vigour to financial crime so it would be sensible to read the publication for clues where the FSA may look regarding financial crime. Apart from insider trading (possibly regarded as financial crime) page 3 tells us "All firms and sectors should pay careful attention to the report on financial sanctions". An FSA report on offshore operations appeared at the same time and with regard to this page 3 also tells us " We would encourage all firms to use our findings to assess their own systems and controls and make improvements where necessary". The publication also reminds us that HSBC was fined £3m for inadequate systems and controls in place to protect customers' confidential details being lost or stolen. Confidential information was left on open shelves or in unlocked cabinets. The article finishes with another Margaret Cole warning to firms.

http://www.fsa.gov.uk/pubs/newsletters/fc_newsletter13.pdf

IMF and Jersey

The IMF has rated standards of regulation and supervision in Jersey above UK. The IMF's Financial System Stability Assessment update places Jersey in the 'top division' of international financial centres and that it complies with 44 of the financial crime rules, whereas the UK complies with just 36. However, You will be pleased to know that the Isle of Man is now regarded as 'broadly compliant' according to the IMF.

<http://www.moneymarketing.co.uk/cgi-bin/item.cgi?id=193533&d=340&h=341&f=342>



Insider dealing

A finance director and two lawyers are the latest to be pursued for insider dealing (in respect of Neutec Pharma). All three have been committed to stand trial at Southwark Crown Court on eight counts of insider dealing. Details on the charges can be found on the link below (note that the link takes you to an article dated before the Crown Court committal).

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/079.shtml>

AML & JMLSG

Following the overhaul of Part I of the guidance the Joint Money Laundering Steering Group (JMLSG) have released a revised Part II, which is the section that offers firm specific guidance. The changes are out for consultation (Oct 21 deadline). The changes seem to relate to improved guidance rather than there being any major rethink on requirements.

http://www.jmlsg.org.uk/content/1/c6/01/65/70/PART_II_-_Cover_note_to_consultation.pdf

http://www.jmlsg.org.uk/content/1/c6/01/65/69/Part_II_sectors_1-21_Sep_09.pdf

Approved persons

As you'll know, one of the outputs of PS09/14 was that the scope and application of CF1 (director function) and CF2 (non-executive director function) was extended to capture individuals such as directors employed by a holding company whose opinions and actions are regularly taken into account by the governing body of the authorised firm. Sup 10.6.5G provides us with examples of such individuals who may require to be approved for the CF1 function. However SUP 10.6.4G specifically excludes LLPs. They have not carried the principle over to the CF4 (partner function). Therefore if the authorised firm is an LLP they will not be affected by these changes. Having spoken to the FSA this appears to be down to the drafting rather than being intentional. We are advised that the FSA are looking at the issue. Interestingly, the rule in respect of the CF2 function doesn't exclude LLPs.

TRUP

The abbreviation is for the Transaction Reporting Users Pack. The FSA have just issued an update which may be useful in addressing the odd query or two. Also below is a link to the FSA's transaction reporting library.

<http://www.fsa.gov.uk/pubs/other/trup.pdf>

<http://www.fsa.gov.uk/Pages/Doing/Regulated>Returns/mtr/resources/index.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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