



Regulatory Roundup

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Issue #20



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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](#).



Outsourcing and data loss



Useful Links:

[Final Notice](#)

[Reg Roundup #15](#)

A large fine (£2.275m) was imposed on Zurich Insurance Plc for systems and controls failings following the loss of customers' confidential information.

Although, at first sight, the problems of a large global insurance entity may not be thought relevant to more modest sized investment firms, the case does provide a couple of useful reminders for all firms.

Key here was the loss of data (of 46,000 policy holders out of a universe of 51,000 UK customers) by an outsource service provider (albeit – mostly – within the larger group as a whole).

Data security is a topic that the FSA takes very seriously and we draw attention to Regulatory Roundup #15 which included an article on 'The Small Firms Financial Crime Review' issued by the FSA in May. Section 3.2 concerned data security, including issues to think about when a firm outsources any customer data responsibilities to third parties – a term which included using IT companies to administer data systems. Annex 2 of the FSA paper contains examples of good and bad practice.

The other aspect is to bear in mind the maxim that one can delegate a function but not the responsibility. SYSC 8 tells us that when outsourcing 'critical' functions (see SYSC 8.1.4R) a firm must take steps to avoid undue additional operational risk. We would remind firms that where they do outsource, SYSC 8.1.8 lists various conditions that need to be satisfied. By virtue of SUP 15.3.8(e) a firm should notify the FSA when entering into, or significantly changing, a material outsourcing arrangement.

In passing we would confirm that whilst the Final Notice makes frequent reference to SYSC 3, this chapter will not be relevant to investment firms, who will need to look elsewhere for equivalent rules and guidance e.g. SYSC 4 covers general organisational requirements; SYSC 6 concerns financial crime etc.

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More transaction action



Useful Links:

[Final Notice](#)

[Reg Roundup #17](#)

[Reg Roundup #13](#)

Since the Commerzbank AG fine imposed by the FSA in April (see Regulatory Roundup #13), things had been quiet on the (failure to) transaction report front. However behind the scenes the FSA was obviously busy as the other week Société Générale was fined £1.575m for transaction reporting failures.

This is the sixth firm to be fined in just over a year for such a breach. Like Commerzbank AG, Société Générale is an incoming EEA branch so the FSA could not take any action in respect of possible systems and controls failures as this is the responsibility of the home state regulator (the AMF).

There were four distinct structures within the firm's transaction reporting process but, unfortunately, with no complete oversight of the process. Although the firm had identified the need to review its transaction reporting process before October 2008, it wasn't until May 2009 the FSA were advised by the firm that some reporting failures had been discovered. Following a comprehensive review demanded by the FSA it was found that there were around 17.1m transaction reporting errors, which on further review increased to 18.8m.

Firms subject to transaction reporting may wish to take the opportunity to revisit their processes and, perhaps just as importantly, their oversight of the processes. Portfolio managers relying on the exemption in SUP 17.2.2G can refer to Market Watch 35 which was covered in Regulatory Roundup #17.



Read all about it



Useful Links:

[NSM](#)

[NSM uploading
Information and FAQs](#)

[NSM factsheet](#)

The FSA previously maintained a Document Viewing Facility (DVF) in the reception of the FSA building at 25 North Colonnade, Canary Wharf. This provided access to documents made public by listed issuers. Since 1 September this function has been moved online and is now known as the National Storage Mechanism (NSM). The service is run online by Hemscott, a Morningstar company (Morningstar plc was appointed following a tender process last year), and is found on their website. Users can access both the data that was previously held on the FSA's DVF and also all Regulatory Information Service (RIS) announcements via the Hemscott website. Additionally, users may search via company name, headline code, type of document or date as well as print documents as necessary for free.

Note that the NSM is a storage facility and is not a mechanism for making information public; applicable announcements still have to be made via a RIS.



Shorting selling update



Useful Links:

[Reg Roundup #17](#)

[FINMAR 2 financial companies list](#)

[Complyport's FINMAR 2 summary](#)

In Regulatory Roundup #17 we advised that the new sourcebook FINMAR would contain the largely unchanged short selling disclosure requirements from MAR, save for the rights issue disclosure requirements being narrowed slightly.

As you will be aware, the short selling disclosure regime also applies to shares in a 'UK financial sector company'. The FSA has updated its list of UK financial sector companies.

Complyport has created a two page document summarising the FINMAR 2 requirements on short selling which firms may find of use.



More on the remuneration code



Useful Links:

[Remuneration Code Consultation Paper](#)

[RegRoundup #18](#)

[RegRoundup #19](#)

[FSA Response form](#)

[Email the FSA](#)

The proposed changes to the Remuneration Code (basically the current SYSC 19 will be deleted and replaced by new text) was covered in Regulatory Roundup #18 & #19.

Not surprisingly, there has been a good deal of interest – and comment – from our clients on CP10/19. Where possible, we would encourage firms to let their views be known to the FSA by sending appropriate responses to the FSA; page 3 of the CP provides details. The FSA provide a response form, or if more convenient you can email the FSA.

Having said that, we appreciate that some firms are reluctant to approach the FSA. If appropriate, Complyport would be happy to submit their views on this controversial topic to the FSA on a strictly no names basis. If this would be of interest to any firm then please email us with your observations, comments etc. using either the contact details in this Regulatory Roundup or those of your usual Complyport relationship manager. It will be appreciated that whilst our intention would be to forward on any comments we receive we must reserve the right to modify or edit contributions where we deem necessary in exceptional circumstances. Where we receive several comments expressing the same view we may submit a single consensus comment.

Note that comments have to be received by the FSA by 8 October.



Notification obligations



Useful Links:

[RegRoundup #16](#)

[Final notice](#)

Firms will be aware of the publicity arising from the fine imposed by the FSA on Goldman Sachs International (GSI). The fine (£17.5m) is the second largest fine imposed in the FSA's history, although is still dwarfed by the £33.32m J P Morgan fine in June this year (see Regulatory Roundup #16). Although there is much reference to SEC investigations, Mr Fabrice Tourre and synthetic CDOs – the link to the Final Notice will provide full background details - what is at the heart of the FSA action was the failure of GSI to notify the FSA that an individual holding a controlled function (Mr Tourre was a CF30) had been subject to interest from the SEC.

We are told in SUP 10.13.16 that if a firm becomes aware of information which would reasonably be material to the assessment of an approved person's fitness and propriety then it must inform the FSA on Form D ('Notification of changes in personal information or application details') as soon as practicable. 'Fitness and propriety' links to FIT ('The Fit and Proper test for Approved Persons'). FIT 2.1.3 advises that matters that the FSA will have regard to when assessing a person's honesty, integrity and reputation includes (3) "whether the person has been subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies" and (4) "whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings"



Complyport welcomes John Szeto and Haydon Thomas



We are delighted that **John Szeto** will be joining Complyport as a Senior Compliance Consultant, bringing his experience to us. He is joining from CIMB Securities (UK) Ltd., London where he has been the CF10 and CF11 for several years. He has previously been a Compliance Manager with Natixis- London and has extensive experience as CF10 and 11 with a number of broker/dealers. He is an Associate (ACSI) of the Chartered Institute for Securities & Investment and brings broad regulatory knowledge and business experience. He has been engaged in the investment industry since 1985 in the City of London and abroad, having hands on experience in a number of regulated markets. At Complyport, John will join the Securities Business Division providing consultancy services to retained clients.

Haydon Thomas joined Complyport this month and is part of the Corporate Authorisation team. Haydon has nine years of regulatory experience as an Associate employee of the FSA. Haydon's most recent role was within the Permissions Department where he was responsible for assessing and making recommendations on applications for corporate authorisation and individual approval.

On the corporate approval side, Haydon dealt with applications from a wide range of market sectors which within the asset management sector included hedge fund managers, private equity managers, retail client asset managers, fund of funds managers, investment advisory and marketing firms. Haydon has also led the review of a number of securities firms which included CFD traders, retail advisory firms and corporate finance advisers.



Complyport welcomes John Szeto and Haydon Thomas cont.



On the individual approval side, Haydon frequently sat on interview panels charged with assessing the fitness and propriety of individuals applying to carry out senior management positions in the UK's largest financial institutions, as part of the FSA's enhanced approvals process for individuals holding 'Significant Influence Functions'. He was also responsible for dealing with complex non-routine individual applications, often taking cases to the Regulatory Decisions Committee.

Haydon holds the Financial Planning and Investment Management Certificates.

Bespoke, Practical Consulting



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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