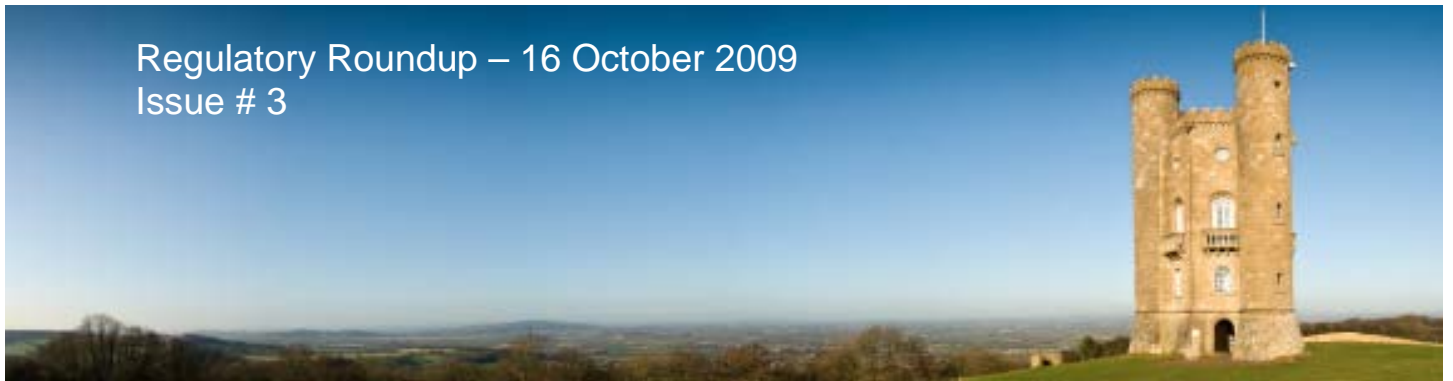




## Regulatory Roundup – 16 October 2009 Issue # 3



### **Approved persons & significant influence functions (SIFs)**

The FSA has sent a 'Dear CEO' letter to 5,000 regulated firms to reinforce how the FSA's intensive regulatory approach ('more intrusive approach' is used in the letter) applies to approving and supervising senior personnel performing a SIF (basically all the CFs bar the CF30 Customer function). The letter acts as a reminder of the importance that the FSA continues to place upon governance and the responsibilities of senior management. If you haven't been lucky enough to receive such a letter you can use the link to view a copy of it.

It also reminds us that the FSA are calling in SIF candidates for interview. Logistically it would seem likely that the FSA will concentrate on higher impact firms - we are advised that since October 2008 the FSA has performed 172 SIF interviews which has resulted in the withdrawal of 18 candidates' applications.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/139.shtml>

[http://www.fsa.gov.uk/pubs/ceo/ceo\\_letter1009.pdf](http://www.fsa.gov.uk/pubs/ceo/ceo_letter1009.pdf)

### **Unregulated Collective Investment Schemes**

The FSA is currently looking at the promotion and advice process in respect of unregulated collective investment schemes and is sending out letters (which will refer to an on-line questionnaire) to a sample of firms. It is assumed that the targets are High Street financial advisers rather than the asset managers of offshore Hedge Funds who are also involved in the promotion of such funds. However the filtering process is unclear e.g. whether firms without 'Retail' on their Part IV will be excluded; whether the trigger is simply the activity of 'advising' coupled with investment instrument 'unit' etc. In any event, firms may feel it worthwhile revisiting their financial promotions procedures and in particular for compliance with COBS 4.12.

### **Wholesale Small Firms**

The FSA held a briefing on October 9th on wholesale brokers, although many of the topics discussed could equally apply across the spectrum of wholesale small firms. What was particularly interesting was the summary given of themes that have emerged from a series of visits to around 300 small firms. Of most note was that documentation was frequently found to be out of date or even non-existent, and where it



did exist in some cases "the ink was still wet on the compliance manual". We were promised more intrusive supervision going forward with more visits to small firms. Some themes to look forward to include; more scrutiny of group risk; more scrutiny of documentation and training; more work on capital adequacy; and more market/firm coordination to highlight best practice. Best put the kettle on now in anticipation of a visit.

We were reminded that the Wholesale Small Firms' Strategy is "To improve the compliance of and increase the engagement with wholesale small firms".

### **AML Review**

HM Treasury has announced a review of the Money Laundering Regulations 2007 which implemented the EU's Third Money Laundering Directive in the UK. The intention is to consider how effective and proportionate the UK's anti-money laundering rules are.

To assist in the review, HMT is calling for evidence in two parts: Part A is from professionals (regulated firms, supervisors etc.) whilst Part B is from private individuals and business customers.

Further details, including pdf versions of the call for evidence, can be obtained from the link below.

[http://www.hm-treasury.gov.uk/fin\\_crime\\_review.htm](http://www.hm-treasury.gov.uk/fin_crime_review.htm)

### **Online Notifications and applications ('ONA')**

A reminder that changes in the way that applications and notifications are submitted to the FSA are proposed. The new reporting system - Online Notifications and Applications ('ONA') - will impact the following: Approved Persons; Appointed Representatives; Variations of permissions; Passports; Cancellations; Waivers; and Standing data.

To date, firms have had the choice of submitting the above either in paper-based format or electronically via the Regulatory Transactions option in Firms Online. The FSA propose to remove the above choices (and that includes switching off Firms Online) and move to the web based system.

Mandatory submission via ONA will come into being 'this winter'. Previous timeframes have included 'Autumn 2009' (CP09/20) and 'before the end of December 2009' (website). Firms will need to register to use the system and the FSA will send firms details about this at the appropriate time.

In anticipation of this becoming live you may wish to look at Appendix 7 of CP09/20 - see below - which shows the changes that will be made to SUP, including the format of the new Standing Data form. Further information about ONA, and to follow its development, can be found through the second link to the FSA.

[http://www.fsa.gov.uk/pubs/cp/cp09\\_20.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_20.pdf)

<http://www.fsa.gov.uk/Pages/Doing/Regulated/ona/index.shtml>



## FSA and AML

After the shock of reading that the FSA had apparently gone soft - or had lost its argument - on Darren Morton and Christopher Parry (who were accused of market abuse - details were in the last Regulatory Roundup), it came as relief to learn that the FSA is back to normal. It has won a challenge in the High Court, by lawyers acting for Michael McInerney and Neil Rollins, on its ability to prosecute crimes that fall outside FSMA 2000. The two are separately charged with running a boiler room, and laundering the proceeds; and money laundering respectively.

[http://www.lawreports.co.uk/WLRD/2009/CACrim/R\\_v\\_Rollins.html](http://www.lawreports.co.uk/WLRD/2009/CACrim/R_v_Rollins.html)

## FSA and fraud

And for good measure the FSA has fined Seymour Pierce £154,000 for poor controls to guard against employee fraud. The facts of the case made incredible reading; an employee managed to steal £150,000 completely undetected in 36 separate transactions over a three year period. Around half of this amount was from the firm and the balance from the firm's legacy private clients. Amazingly the misdemeanours only came to light 6 months after he ('Mr A') was dismissed in July 2006 and his replacement conducted a reconciliation process.

[http://www.fsa.gov.uk/pubs/final/seymour\\_pierce.pdf](http://www.fsa.gov.uk/pubs/final/seymour_pierce.pdf)

## UK rules OK

A survey by the World Economic Forum shows that the UK is now the top financial centre out of 55 of the world's largest financially-focussed countries. The previous holder was the US but has now slipped to third place behind Australia. The rankings are based upon more than 120 different variables. Unfortunately if you drill down you'll find that the UK is only ranked 37 in terms of stability, but that would destroy the headline.

<http://www.weforum.org/en/initiatives/gcp/FinancialDevelopmentReport/index.htm>

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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](mailto:peter.carlisle@complyport.co.uk)**

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