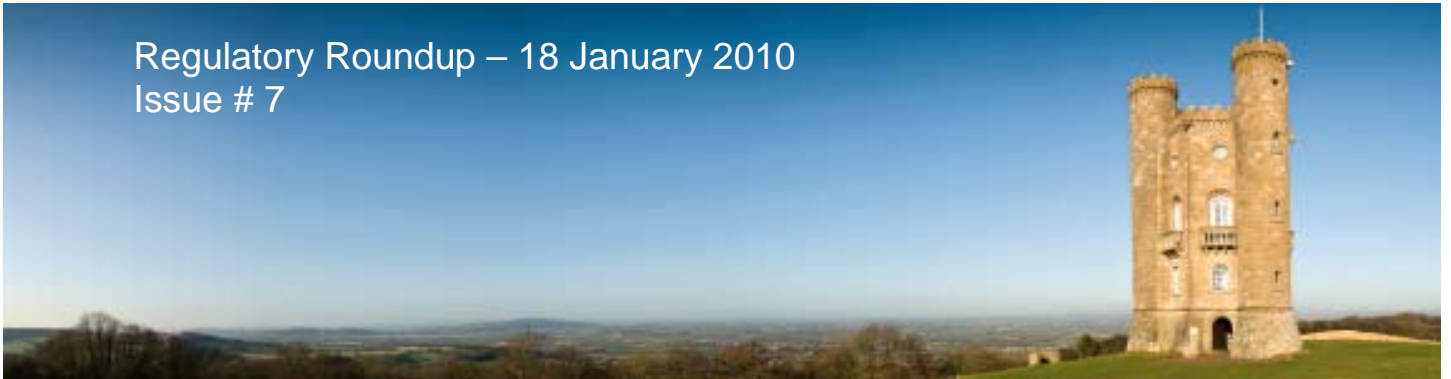




Regulatory Roundup – 18 January 2010 Issue # 7



Changes

The FSA has issued its first consultation paper of 2010 – CP10/1. It is proposing changes to SUP 16.12 (Integrated Regulatory Reporting) and to the Disclosure and Transparency Rules within DTR. Other changes apply to COLL and PRIN.

The CP was possibly edited around the time of the FSA office party as several errors have crept in e.g. Appendices 4 & 5 have been mixed up (although this has since been corrected on the current web version); Chapter 3 refers to non-existent Rules (SUP 16.2.6 & SUP 16.21.33 – substitute “2” & “21”, respectively, with “12”); and the newsletter is asking for responses by 2009.

SUP 16.12 does not contain any major changes but there is clarification e.g. guidance on FSA002 (Income Statement) to avoid double counting performance fees/investment management fees and there are changes to some of the validation tests. Not all data forms will be relevant to all firms e.g. FSA044 is for firms that accept deposits. Firms might want to compare Chapter 3 with copies of their last year’s submissions to see (a) which of their returns are actually affected and if so then (b) to see whether affected data elements will be relevant e.g. although most firms will complete the FSA003 (Capital Adequacy), not all will complete data elements concerning UK consolidation group reporting.

DTR 4 will only be relevant to issuers but proposed changes to DTR 5 may be welcomed by firms. As firms will know, DTR 5.1.2 requires notification once voting rights held exceed certain thresholds. DTR 5.3.1(1)(b) is worded so that this obligation is extended to instruments that are *referenced* to the *shares* of an issuer and which have ‘similar economic effect’. The proposal is to exempt nil-paid rights received from an issuer during a rights issue. It is important to note that there is a ‘passive’ requirement – there must be no trading in the nil-paid shares nor in a holding relating to the issuer.

Responses to the paper need to reach the FSA by 6 March 2010 (or by 31 March 2009 according to page 3 of the accompanying newsletter).

Below is a link to CP10/01. The proposed changes to the handbook can be found in the relevant appendices.

http://www.fsa.gov.uk/pubs/cp/cp10_01.pdf

http://www.fsa.gov.uk/pubs/cp/cp10_01_newsletter.pdf

A Fine Record

Thanks to late contributions from Toronto Dominion Bank (£7m) and UBS AG (£8m), 2009 was a record



year for FSA penalties - £34.9m vs. £22.7m for 2008.

The link below will provide details of the fines, which in terms of numbers are divided roughly equally between penalties imposed on firms and those imposed upon individuals. Some of these cases have, of course, been covered in earlier 'Regulatory Roundups'. It is interesting to note the frequency of reference to failings in 'systems and controls' covering activities ranging from approving financial promotions to the pricing of products.

<http://www.fsa.gov.uk/Pages/About/Media/Facts/fines/index.shtml>

US Developments re Investment Advisers

The Regulatory Roundup of 19 November contained details of the Private Fund Investment Advisers Registration Act 2009, which in its original form could have had implications for U.K. fund managers responsible for funds with U.S. investors (the 'Kanjorski bill' – HR 3818).

On 11 December the House of Representatives passed the 'Wall Street Reform and Consumer Protection Act 2009 (HR 4173)'. Although a fairly lengthy document, tucked away is the 'Private Fund Investment Advisers Registration Act' under "Title V, subtitle A". Although technically these are two separate documents, the contents of the latter virtually mirror the marked up version of the Kanjorski bill. Of importance is the retention of the foreign private fund adviser exemption, which contains the '15 clients' exemption, with 'clients' being defined as funds rather than underlying investors in those funds. At the moment we now have three competing proposals (the third one being the 'Dodd' bill – see the November Roundup for details – which is under discussion) roughly trying to achieve the same objectives including the removal of current exemptions that U.S. advisers can use to avoid SEC registration. One difference with the Dodd proposal is that it leaves it to the S.E.C. to define 'client'.

Anything passed by the House of Representatives still has to go through the Senate so there is still some way to go, but it looks increasingly likely that 'something' will be in place along the lines of the above in the not too distant future.

[http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3818:](http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3818)

[http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4173:](http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4173)

Closed for business

An unusual Final Notice appeared on the FSA website in respect of NFS Yorkshire Ltd. The firm has had its Part IV permission cancelled by the FSA for failing to meet the Threshold Conditions: it did not notify the FSA of a change in the address of its principal place of business. On the face of it this seems an unduly harsh punishment for a small misdemeanor, although the wordage in para 2.3 of the Notice suggests that there may be more to this story. However the Notice is a useful reminder to firms to keep the FSA up to date with events and changes in basic data. SUP 15.3 contains useful guidance on matters which the FSA would expect to be notified about (SUP 15.5.4R(1) covers the matter of a change to firm's principal place of business). In addition, a firm is required to check the accuracy of its standing data within 30 business days of its accounting reference date – see SUP 16.10.4R. The FSA has provided a form for advising it of standing data changes as per the link below.

http://www.fsa.gov.uk/pubs/final/nfs_yorkshire.pdf

http://fsahandbook.info/FSA/docs/sup/standing_data.pdf



Freeze to continue for twelve months

Something to cheer us up in the present cold conditions: the FSA has decided to freeze the salaries of its staff (although some money may be available for pay anomalies). However the FSA has found sufficient funds to maintain the bonus pot of 15% of salaries – last year total bonuses paid were in the order of £20m.

Office space availability

Complyport has access to office space in W1, the heart of Mayfair, available to let. The accommodation comprises the entire second floor of offices in Brook Street, having an approximate total net floor area of around 3,000 sq ft split into a North Suite of 2024 sq.ft and a South Suite of 936 sq.ft. They can be let separately or together and are available on attractive and flexible terms.

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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