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COMPLYPORT
COMPLIANCE LEADERSHIP

Regulatory Roundup
6 May 2011
Issue 29

In Brief:

Remuneration Code Guidance: FSA have issued consultative guidance including a useful Q&A

Remuneration Code Transitional Provisions: FSA propose to extend deadline for certain non-listed firms

Systems and Controls Questionnaire: Proposed changes to clarify reporting requirements

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COLL & Qualifying Money Market Funds: Proposed changes to COLL clarifying money market fund definitions

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In the Complyport Regulatory Roundup:

COMPLIANCE AWARDS
HIGHLY COMMENDED
THOMSON REUTERS COMPLINET

If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact Peter Carlisle.

Remuneration Code Guidance

Remuneration Code Transitional Provisions

Useful links:

[FSA on Remuneration Code]

[Regulatory Roundup 24]

[Regulatory Roundup 20]

The FSA has released consultative guidance on the Remuneration Code (the Code) including a useful FAQs document.

Firms are reminded that despite the timing of this guidance, the Code came into force (via SYSC 19A) on 1 January 2011, with a transitional provision (TP) in respect of Principle 12 'Remuneration Structures' (but note the article below regarding the TP). Regulatory Roundup 24 contained a useful summary on both the Remuneration Code and the Disclosure obligations.

The FSA are inviting comments by 18 May and Complyport will be responding to the consultation. Should any firms wish to make a comment, but are apprehensive about submitting their views directly to the FSA, then we would be happy to include such comments – on an anonymous basis – in our own response (please see Regulatory Roundup 20 on our right to modify etc. any comments that we receive).

The link will take you to the appropriate FSA web page where the full text of the guidance that is being consulted on can be found, as well as details on how to respond.

Useful links:

[Regulatory Roundup 24]

[Remuneration Code Transitional]

This article will only be relevant to proportionality tiers one and two firms and will not, for instance, impact on limited licence or limited activity firms. As a reminder, guidance on proportionality in respect of the Remuneration Code can be found in Appendix 2 of PS10/20 'Revising the Remuneration Code – Feedback on CP10/19 and final rules' (a link can be found in Regulatory Roundup 24). Complyport clients should speak to their usual contact if they need confirmation of their proportionality tier.

The 12 Remuneration Principles are covered in SYSC 19A.3. Remuneration Principle 12 concerns **remuneration structures** with SYSC 19A.3.47 requiring firms to ensure that at least 50% of any variable remuneration is in shares or other non-cash instruments. Whilst the Remuneration Code came into force at the beginning of the year, a transitional provision (SYSC TP3(5)(2)) allowed affected firms until this coming 1 July to comply.

(cont.)

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Remuneration Code Transitional Provisions (cont.)

Systems and Controls Questionnaire

Feedback to the FSA suggests that **certain firms** – mutuals and non-listed - are **having difficulties** in meeting this deadline as they try to devise suitable 'share-linked instruments or equivalent non-cash instruments'. It seems that this problem is also being encountered in other EU Member States.

The FSA propose to extend the deadline for non-listed firms only (whose parent undertakings are also non-listed) to **1 July 2012**. However the warning is given that the FSA would expect such firms to come as close as possible to compliance with the Code's requirements rather than simply not applying the provision in question. Changes to SYSC TP3(5)(2) can be found in Appendix 3 of the link.

Useful links:
[Regulatory Roundup 22]

[FSA055: Appendix 6]

[FSA031 & FSA032]

As mentioned in Regulatory Roundup 22 the FSA introduced a new data item – FSA055 – which was to be completed by non-ILAS BIPRU firms (basically BIPRU limited licence/activity firms and exempt full scope BIPRU investment firms – if any Complyport client is unsure of their status then please speak to your usual Complyport contact). In contrast, ILAS BIPRU firms are required to complete FSA047 to FSA054.

The FSA has received feedback that SUP 16.12 is none too clear on this so minor changes are proposed to SUP 16.12 to clarify the different reporting requirements as well as expanding the guidance on the completion of certain data items for ILAS BIPRU firms.

There are also changes proposed to data items FSA031 and FSA032 (**re exempt CAD firms**), and associated guidance, in respect of the reporting of PII indemnity limits.

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Unregulated Collective Investment Schemes
COLL & Qualifying Money Market Funds

Useful links:
[COBS 4.12]

[Final Notice]

[Regulatory Roundup 19]

Evidence that the FSA's interest in the marketing of unregulated collective investment schemes (UCIS) continues – see Regulatory Roundup 19 – in the form of a Final Notice issued to Specialist Solutions Public Limited Company.

It is worth bearing in mind that a UCIS is essentially any fund that is not: an authorised unit trust; an ICVC; or a recognised scheme. Therefore apart from the traditional Cayman Island fund the definition would also cover, say, a European UCITS that has not been formally recognised under s264 of FSMA.

At the heart of the issue was that the firm promoted UCIS to 101 customers, none of whom had been assessed as eligible to receive such promotions. As you will be aware, the Handbook is fairly restrictive on who can receive UCIS promotions. COBS 4.12 specifies eight categories of persons to whom an authorised firm may promote to. The Notice mentions Category 2 (applicable to established or newly accepted clients) and Category 8 (which requires an adequate assessment of the proposed recipient). In addition firms that do not specifically target retail persons may find Category 7 of most use (no restrictions if the recipient is a 'professional client' or an 'eligible counterparty').

After an 'early stage' 30% discount the firm was subject to a financial penalty of £35,000.

Useful links:
[Consultation]

Amendments are proposed to the Handbook including the Collective Investment Schemes sourcebook (COLL). The changes arise both from guidelines issued by, as it was then, CESR and consequential amendments under UCITS IV.

In 2008 some UCITS schemes around Europe encountered liquidity issues following investment in money market funds arising from a lack of a harmonised definition of the latter. In addition to the existing **'qualifying money market funds'** (QMMF), COLL will introduce (COLL 5.9) the concept of **'short-term money market funds'** (STMMF) and **'money market funds'** (MMF) and will **prohibit** the use of the term 'money market' for any fund that does not meet the guidelines.

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COLL & Qualifying Money Market Funds (cont.)

Online Invoicing

The FSA estimate that around 40 current schemes/sub-funds will be affected as a result.

The link will take you to the relevant rule amendments – see Appendix 9, Annex H. One amendment worth noting is that COLL 5.2.8(4) – the ability of a UCITS scheme to hold up to 10% of the scheme property in ineligible assets – will not apply to a QMMF/STMMF/MMF and nor will the 20% rule re non-UCITS retail schemes in COLL 5.6.5R(2).

The changes will be **applicable from 1 July 2011**.

Useful links:
User Guide

FAQs and registration

As some firms will be aware, following a pilot scheme the FSA is rolling out invitations to register for Online Invoicing which will allow firms to review their fees account and three year history (although as yet there is no online payment facility).

If you have not yet been approached by the FSA about this, and you feel this would be of benefit, you can apply to the FSA to register your interest – details can be found in the attached links.

Whilst more than one person can register as a user for a firm, a user can only register for one firm – although a request for multiple firms registration can be made to Revenue Operations for their consideration.

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Commentary on SEC Letter Dated 8 April

Useful links:

SEC Letter

Regulatory Roundup 19

A letter from the US Securities and Exchanges Commission ('SEC') to the North American Securities Administrators Association, sent on 8 April, provides an indication that the SEC will look to delay the deadline for firms required to register with the regulator in accordance with the Dodd Frank Act, from 21 July until the first quarter of 2012.

The letter, from Robert E. Plaze, Associate Director of the Division of Investment Management, anticipates that the SEC is still on track to release final rules implementing the provisions of Dodd Frank "in advance of July 21" – it is the requirement to register and comply that would be delayed. The Foreign Private Adviser Exemption will be available from 21 July.

Although not a formal statement by the SEC, the wording of the letter provides a strong signal that the registration requirements will be postponed. The letter states: "given the time needed for advisers to register and come fully into compliance with the obligations applicable to them once they are registered, we expect that the Commission will consider extending the date by which these advisers must register... until the first quarter of 2012."

As firms will recall, one of the key elements of the Dodd Frank Act was to repeal the 'private adviser exemption' bringing many larger hedge funds within the scope of SEC registration; it also introduced a series of new exemptions such as the Private Fund Adviser Exemption (for advisers with less than $150m AUM in the US). For details please refer to Regulatory Roundup 19.

Although not stated explicitly in the letter, it is understood that the requirement to submit an amended Form ADV Part 1 for Exempt Reporting Advisers is likely to also be delayed until the first quarter of 2012. The initial deadline for firms required to submit an amended Form ADV Part 1 under the Exempt Reporting Adviser exemption was 21 August.

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Money Laundering & Overseas Jurisdictions
Standing Data & Telephone Numbers
Mobile Reminder

Useful links:
FATF Public Statement

FATF jurisdiction update

FATF and Argentina

Regulatory Roundup 23

FATF has updated its list of jurisdictions which have strategic AML/CTF deficiencies (see Regulatory Roundup 23 for details of previous position) as well as updating its Public Statement on Iran and the Democratic People's Republic of Korea. Argentina can be added to the list which was the subject of a mutual evaluation exercise.

The message from H M Treasury is that firms should take the lists into account in respect of their systems and controls to counter financial crime.

Useful links:
Regulatory Roundup 24

Standing Data

As mentioned in Regulatory Roundup 24, in addition to the annual standing data check required under SUP16.10.4 the FSA will require advance notice of any change in the telephone number of its principal place of business.

SI2011/27 was released on 28 April confirming that the requirement comes into force on 6 May.

Useful links:
Regulatory Roundup 23

And whilst on the subject of telephone numbers, a reminder that the current exemption applicable to mobile phones 'or other mobile handheld electronic communication device' contained in COBS 11.8.6(1) falls away on 14 November.

Firms which may be affected by this, and have not yet considered a plan of approach, may find the summary in Regulatory Roundup 23 of help.

If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact **[Peter Carlisle]**

Or for details of any other of Complyport's services, please contact **[Jon Wedgbury]**

Past issues of Complyport's Regulatory Roundup are available to view at **http://www.complyport.com/pyPage?docId=roundups**.

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