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Regulatory Roundup
15 August 2011
Issue 33

In Brief:

Remuneration: Further FSA guidance in the form of a 'Dear CEO' letter

Transaction Reporting Changes: Planned withdrawal of TRS service

Platform Alterations: FSA plans further work before introducing rules banning commission payments

Title Transfer Collateral Arrangements: Consultation Paper proposes extension to firms offering rolling spot forex

Hedge Funds and Systemic Risk: Latest findings from HFS and HFACS

Short Selling Ban: Restrictions in place in France, Italy, Spain and Belgium; FSA will not follow suit with a UK ban

In the Complyport Regulatory Roundup:

COMPLIANCE AWARDS
HIGHLY COMMENDED

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

Remuneration: Further FSA Guidance

Useful links:

[Regulatory Roundup 29]

[Regulatory Roundup 32]

[PS10/20]

[Guidance for Tiers 2, 3 and 4 firms]

[Guidance for Tier 1 firms]

[RPS template]

The FSA has released further consultative guidance on the Remuneration Code (see Regulatory Roundups 29 & 32 for previous guidance).

The guidance, in the form of a 'Dear CEO' letter, actually consists of two separate documents: one exclusively for Tier 1 firms with the other one providing guidance for Tier 2, 3 & 4 firms.

As will be known, the universe of firms subject to the Remuneration Code (Code) was enlarged from around 27 to over 2,500 this January when the relevant parts of CRD3 were transposed into the Handbook (SYSC 19A). The majority of such firms will be Tier 4 firms but if you are uncertain then please feel free to discuss with your usual Complyport contact; alternatively the 'Proportionality Guide' in Appendix 2 of PS10/20 will assist.

Following the expiration of a transitional provision last month, **all BIPRU firms** are now subject to the Code.

All firms within the scope of the Code need to ensure that their remuneration policies, practices and procedures are documented. The FSA has previously provided a template for a 'Remuneration Policy Statement' (**RPS**) – a link to which was included in Regulatory Roundup 29 and is also on the left of this article. It's **not compulsory**, and firms can choose to document their remuneration policies in a different way, but will serve as a **useful checklist**. All firms are expected to have in place a **RPS, or equivalent**, no later than **three months before** the date on which their proposed bonus amounts are to be finalised and signed off.

Firms are advised that remuneration has been raised in a number of ARROW programmes. Firms that are not subject to ARROW should be aware that the FSA intends to assess compliance through **thematic reviews** – the first of which is likely to take place in the **first half of 2012**.

Firms are also expected to take account of risks arising from their remuneration policy when considering their ICAAP. From this September, as part of their supervisory processes, the FSA will be looking for evidence that remuneration risk has been given appropriate consideration in the **ICAAP**.

(cont.)

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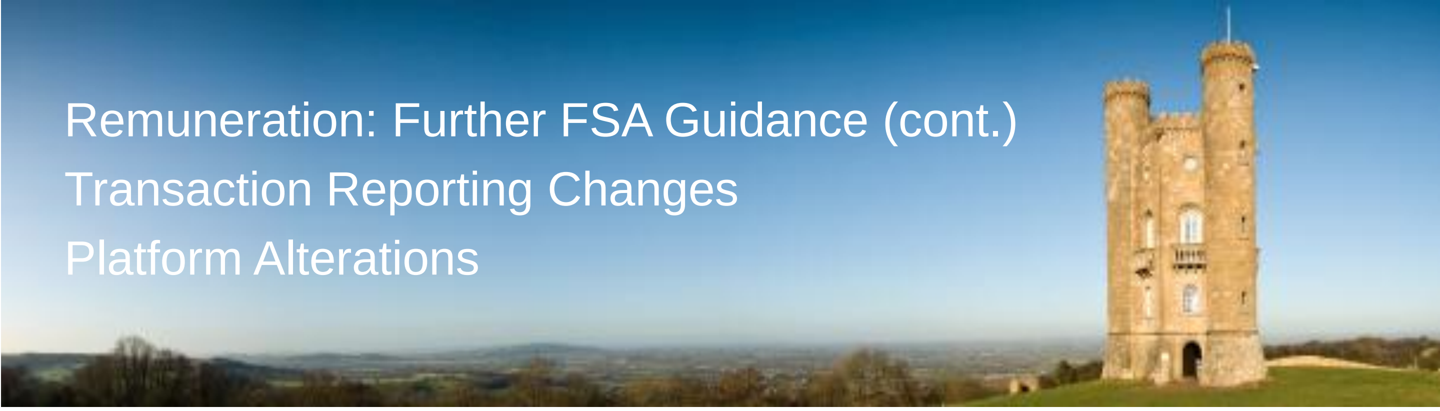

Remuneration: Further FSA Guidance (cont.)
Transaction Reporting Changes
Platform Alterations

Annex 1 of the 'Dear CEO' letter offers further guidance on defining Remuneration Code staff as well as Long Term Incentive Plans (Remuneration Principle 8) and the structure of alternative instruments (Remuneration Principle 12(f)), although the latter will not be relevant to Tier 3 & 4 firms.

Useful links:
TRS

Approved ARMs

Firms that currently use the FSA's Transaction Reporting System (TRS) to meet their SUP 17 obligations may be aware that the Regulator is planning to withdraw from this service.

The FSA has entered into a conditional agreement to sell TRS to the LSE for £15m. The latter already operates UnaVista which is its own Approved Reporting Mechanism (ARM). The plan is to migrate TRS users to UnaVista on completion of the transaction – which is subject to clearance by the Office of Fair Trading.

Useful links:
PS11/9

Regulatory Roundup 32

The Retail Distribution Review (RDR) continues its progress (see Regulatory Roundup 32 for the most recent update) with the publication of PS11/9 'Platforms – Delivering the RDR and other issues for platforms and nominee-related services'.

Those impacted by the RDR will know that one feature will be the abolition of commission payments after 31 December 2012.

In this spirit the paper explains that the FSA believe that it would be 'desirable, in principle' to **ban payments by product providers** to platforms and, for advised sales, to **ban cash rebates** to consumers. However the FSA accepted that this could lead to unintended consequences and so plans to carry out further work before introducing any rules in this respect and will only say that any rules banning such payments will not come into force until after 31 December 2012.

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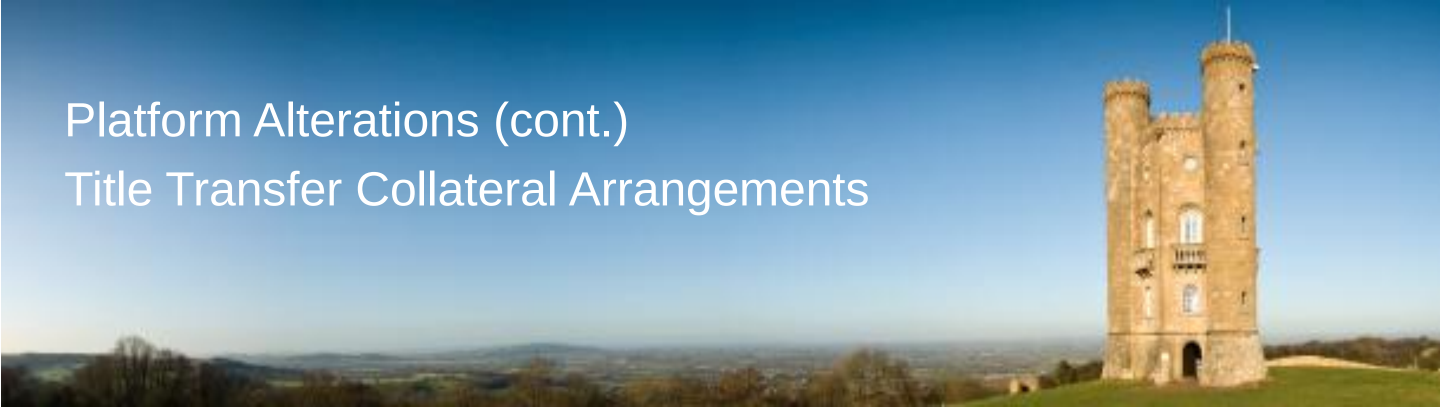

Platform Alterations (cont.)

Title Transfer Collateral Arrangements

The ban would only extend to cash payments so, for example, a **rebate** could be provided **in the form of extra units**, although the Regulator warns that the intention of the rebate is to allow platforms to pass on to clients negotiated discounts, or for fund managers to vary the level of charges, and would **not expect** firms to take the existing adviser commission built into products and simply rebate it back to the client in the form of additional units.

Other proposals on the table include imposing a requirement for platforms to allow assets to be re-registered off their platforms ‘within a reasonable time and in an efficient manner’ and for platforms (and any ‘intermediate unitholder’ – which will include all types of nominee companies) to pass on information provided by authorised fund managers such as reports and voting notifications received to the end investors.

Useful links:

[CP11/15]

[Regulatory Roundup 23]

Regulatory Roundup 23 contained details of the changes to CASS concerning title transfer collateral arrangements (TTCA).

The FSA felt that some firms were using the then current TTCA provisions to indiscriminately remove clients’ money from the client money protection regime. The effect of the changes was that in respect of **spread betting** and **CFD business** TTCA arrangements **only** applied to **non-retail clients**. Firms with retail clients that made use of TTCA would need to ensure that those clients’ money and assets are afforded the protections set out in CASS.

As set out in chapter 3 of CP11/15 the FSA proposes to **extend** the protection to firms offering **rolling spot forex** contracts to retail clients. The consultation period has been shortened to one month (29 August) with proposed rules coming into force 1 October.

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Hedge Funds and Systemic Risk

Useful links:

[Regulatory Roundup 27]

[Hedge Fund Survey July 2011]

The FSA conducts surveys on a six monthly basis ('Hedge Fund Survey' [HFS] and 'Hedge Fund as Counterparty Survey' [HFACS]) in order to assess the systemic risk posed by hedge funds (see Regulatory Roundup 27 for a review of the previous analysis).

Systemic risk in the context of the surveys is a risk which, if it happened without any intervention by the authorities, would mean a high likelihood of major and rapid disruption to the effective operation of a core function of the financial system and so leading to a wider economic impact. The results of the survey have been published in the form of a report.

In the eyes of the FSA the potential risks that could arise from hedge funds could be market dislocations that disrupt liquidity and pricing and/or losses in hedge funds leading to losses by banking and other counterparties.

The HFS (which is voluntary) captured around 50 investment managers with more than 100 'Qualifying Funds' (being hedge funds with a NAV of $500m+) representing approximately $390bn. The FSA estimate that the **HFS captures around 20% of global hedge fund industry net AUM**.

The HFACS (which is also voluntary) covers '14 large FSA-authorised banks'.

The funds in the survey showed an **average return of 7%** for the six months to end of March 2011 (the previous report showed 2% for the six months to September 2010) with **90% of funds reporting positive returns** (contrasted with 75% in the previous survey).

Counterparty exposures remain concentrated with **five banks accounting for 60%** of aggregate net credit counterparty exposure. Having said that, the **average** potential exposure of **any one bank** is **less than $50m** – but it is revealed that there are two hedge funds for which the potential exposure by **banks** is $500m+.

The report advises that current risks to financial stability seem limited and, as many clients will know, counterparties have increased margining requirements.

Short Selling Ban

Useful links:

[FSMA Release]

[AMF Release]

[CNMV Release]

[CONSOB Release]

As has been widely reported, on 11 and 12 August, the respective securities market regulators of France, Italy, Spain and Belgium, in conjunction with the European Securities and Markets Authority (ESMA), announced **restrictions on the shorting of certain banking and financial stocks**. The **FSA** has stated that it **will not be following suit** with a short-selling ban in the UK.

The bans in France, Italy, Spain and Belgium **restrict creating or increasing any net economic short position** in institutions to which the measures apply (although a number of exemptions are available – for example to market makers). The bans in France, Italy and Spain are for **15 days** and extensions may be made in the case of France and Spain. The ban in Belgium does not have an expiry date.

Among the most prominent financial institutions to which the ban applies are France's Société Générale, BNP Paribas and Crédit Agricole, and Spain's Banco Santander.

For further information on the bans please follow the links provided to access releases from each country's respective regulator.

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[Peter Carlisle]

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

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