



# Regulatory Roundup

## 19 September 2011

### Issue 34



#### In Brief:

**Non-GABRIEL Paper Reports:**  
Up to seven new NGP reports will be scheduled on GABRIEL

**Recovery and Resolution Plans:** New proposed requirements for banks, large investment firms and firms subject to certain CASS rules

**Swift Decision:** FSA publishes decision notice for firm engaged in market abuse

**UCITS IV:** Handbook changes published by FSA

**Retail Distribution Review:** Consultative guidance covers 'top questions' on RDR

**Transaction Reporting Matters:** Guidance on reporting requirements for derivative transactions

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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](#).

# Non-GABRIEL Paper Reports Recovery and Resolution Plans



## Useful links:

[NGP FAQs](#)

**From 19 September up to seven 'new' types of reports will be scheduled on GABRIEL.**

The reports on GABRIEL will actually be 'Non-GABRIEL Paper' (**NGP**) reports. Although at first sight this may seem contradictory, NGPs are the paper-based reports e.g. the close links report required under SUP 16.5.4 that are submitted to the FSA outside of the GABRIEL system. These reports will also have their own reference number so that the aforementioned close links report, for instance, will be NGP001.

Firms will see the required NGP reports in the GABRIEL reporting schedule but will not be able to enter data or submit the report via GABRIEL; the purpose is simply to help firms with their regulatory reporting. To further assist, GABRIEL will also send automated reminder emails to let firms know that a report is due for submission.

For the full range of NGP reports, together with clarification of the methods of submission, please see the link to FAQs.

## Useful links:

[CP11/16](#)

[CP11/16 Annexes](#)

[Draft Rules](#)

**The FSA has published 'Recovery and Resolution Plans' (RRP) - CP11/16 - which will be of interest to banks, large investment firms and firms subject to either or both CASS 6 (Custody rules) and CASS 7 (Client money rules).**

UK incorporated deposit takers and BIPRU 730k firms with assets exceeding £15bn will need to prepare and keep up-to-date 'recovery plans' and 'resolution packs'. The former will need to identify options to recover financial strength and viability should a firm come under severe stress, whilst the latter will contain detailed information about the business and operational structure.

Recovery plans will be considered by the FSA (".. the FSA may ask the firm to send its recovery plan to the FSA at any time"). In contrast the FSA will consult with the Bank of England and the Treasury on whether a firm's resolution pack is satisfactory.

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# Recovery and Resolution Plans (cont.)

## Swift Decision



### Useful links:

[RRP Guidance](#)

RRPs will need to be reviewed annually and updated on an ongoing basis to reflect any material developments in a firm's business which affects its RRP.

The FSA has also produced guidance to assist firms with their RRP.

Firms subject to CASS 6 and /or CASS 7, regardless of whether they are required to produce an RRP, will need to draw up a **CASS resolution pack**.

The purpose of such a pack is to ensure that a firm maintains information that would, in the event of an insolvency, assist an insolvency practitioner in achieving a timely return of client money and safe custody assets to the firm's clients (each document in the pack should be retrievable within 48 hours). Firms will be subject to **annual reporting** to the FSA, by 31 January each year, concerning compliance with the rules. Further details on the CASS resolution pack and content can be found in Annex 4 of CP11/16.

The rules concerning **RRPs** will be in **FINMAR 4** whilst those concerning **CASS resolution packs** will be found in **CASS 10**.

Comments are invited by 9 November with certain provisions coming into effect in Q1 2012 but with transitional provisions allowing firms until June 2012 to prepare their RRP.

### Useful links:

[Regulatory Roundup 30](#)

As may be recalled, under the Financial Services Act 2010 the **FSA**, in enforcement action cases, now has **enhanced powers** allowing it to **publish decision notices** before issuance of the final notice - previously the FSA only had power to publish final notices which added to the time that had to elapse before a case could be made public. The FSA has used the powers sparingly and Regulatory Roundup 30 provided details of the **first two instances** of decision notices being published. The FSA's Enforcement Guide (Regulatory Roundup 30 provides a link) states that the regulator expects to normally publish a decision notice if the subject of enforcement action decides to exercise their right to refer the matter to the Tribunal.

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# Swift Decision (cont.)



## Useful links:

[Swift Decision Notice](#)

An FSA press release at the end of August reveals that the FSA has exercised its powers once again.

The decision notice dated 6 May relating to **Swift Trade Inc** (or '**7722656 Canada Inc**' as it subsequently renamed itself) shows that the FSA has decided to impose a **penalty of £8m** for engaging in **market abuse** with the accompanying press release advising that Swift Trade Inc (Swift) has referred the matter to the Tribunal.

Swift and its CEO have **also** commenced judicial review proceedings to **challenge the FSA's decision** (on 11 May) to publish the decision notice. In **addition** both also obtained a **High Court injunction** to restrain publication of the decision notice. The injunction lapsed and the High Court **dismissed** a further application for an **interim injunction** to restrain the FSA from publishing the decision notice.

One thing that is of note here is that Swift is a Canadian domiciled entity; was not an FSA authorised firm; and was not a member of the LSE. Nevertheless the FSA considers that it is not only lawful but also appropriate to bring action against Swift for market abuse committed on markets in the UK.

The notice informs us that the FSA states that Swift engaged in manipulative trading - layering – involving orders to buy and sell swaps and CFDs with LSE member firms which resulted in small price movements. Profits cannot be quantified but the notice refers to 'in excess of £1.75m'.

The notice is quite detailed and a key argument was that Swift contended that there was a question over whether the financial instruments concerned were 'qualifying investments' for the purposes of s118(5) of FSMA (in the Handbook the rules concerning 'manipulating transactions' and s118(5) can be found in MAR 1.6) – see s5.2 and s5.13.

Although Swift was **voluntarily dissolved** on 13 December 2010, with remaining assets being transferred to a former holding company, the **FSA will proceed** against Swift as if it had not been dissolved (see s4.36 of the decision notice).



# UCITS IV

## Retail Distribution Review



### Useful links:

[Regulatory Roundup 24](#)

[PS11/10](#)

On 2 September the FSA published PS11/10 - 'Transposition of the revised UCITS Directive' – incorporating the various changes to the Handbook, mainly COLL, brought about as a result of implementing the Directive. However, as the latter was implemented in the UK on 1 July, the transposition deadline, (and hence the revised rules are already in force), the publication is really more a feedback summary.

Regulatory Roundup 24 covered the joint FSA and Treasury consultation paper on the implementation of UCITS IV. As a reminder, changes included:

The introduction of master-feeder arrangements (COLL 11);

A reform in the way the existing *product* passport works (COLL 12.4);

The introduction of the *management* passport (COLL 12.2); and

Replacing the simplified prospectus with the key investor information document (**KIID**) (COLL 4.7). Note that the KIID is only relevant to UCITS schemes and not non-UCITS retail schemes (NURS).

Although most amendments are to COLL, there are knock-on effects in other parts of the Handbook e.g. the **introduction of COBS 4.13** covering UCITS marketing communications. Reference to annexes A to N of PS11/10 will show the full impact on the Handbook.

### Useful links:

[Top RDR Questions](#)

[Regulatory Roundup 32](#)

The FSA has published consultative guidance covering the 'Top questions asked at the Retail Distribution Review (RDR) roadshows'.

The four page document contains 11 FAQs to "further clarify our rules and our expectations of firms post-RDR".

Those that want a refresher on the changes that the RDR will bring about can make use of the relevant links in Regulatory Roundup 32.

The FSA invites comments by 22 September.

# Transaction Reporting Matters



## Useful links:

[Market Watch 40](#)

[Guidance Consultation](#)

**Market Watch 40 (MW40), dedicated to transaction reporting issues, was published earlier this month, followed a few days later by FSA consultative guidance, which features two articles in MW40.**

Back in May, EDX London was absorbed into Turquoise Global Holdings to form **Turquoise Derivatives** (EDX London – which was a Recognised Investment Exchange - is now in the process of being 'De-Recognised' whilst Turquoise Derivatives operates as an MTF). As a consequence, derivatives traded on Turquoise Derivatives are considered to be **OTC** for transaction reporting purposes and **not** via a **regulated market**. However, in recognition of potential significant technical changes that firms may have to undertake the **FSA will allow** firms to report transactions in derivatives admitted to trading on Turquoise Derivatives as if they were derivatives admitted to trading on a **regulated market** **or**, if so wished, they can be reported as **OTC** transactions. Please see the consultative guidance (the consultation period for this topic closes 22 September) for further details.

The **second part** of the **guidance** concerns the reporting of **derivative transactions** conducted **through clearing platforms** of derivative markets **where reference data is not made available to the FSA** and Authorised Reporting Mechanisms (ARMs). The publication gives the example of EUREX which does not provide alternative instrument identifier codes for flex derivative contracts. In these circumstances firms will be required to report such transactions using the equivalent ISIN for ISIN derivative markets or the Aii code for Aii derivative markets of the standardised derivatives contracts. It is proposed that this **guidance** becomes **effective as of 31 March 2012**. MW40 reminds us that **before this implementation** date firms are **not required** to report transactions in derivatives conducted through clearing platforms of derivative markets where reference data is not available to the FSA and ARMS (but can do so if wished).

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# Transaction Reporting Matters (cont.)



## Useful links:

[Regulatory Roundup 30](#)

[Regulatory Roundup 23](#)

Elsewhere in MW40 there is finalised guidance for reporting derivative transactions through **clearing platforms** of derivative markets (see Regulatory Roundup 30 re the draft guidance published in May) which includes a **change in implementation date** of the guidance from 13 November 2011 to 31 March 2012. For the avoidance of doubt, this guidance is **only** in respect of transactions in derivatives conducted **through clearing platforms** of ISIN or Aii markets. **In contrast**, transactions executed on the order book of an ISIN derivative market are **already reportable** under SUP 17 whilst the 'hard-go-live' date of **13 November 2011** for **Aii market** derivative transactions **remains** (see Regulatory Roundup 30). Finalised guidance for reporting transactions in **Chi-X ccCFDs** (see Regulatory Roundup 23) is also included.



# 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](#)

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

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