



Regulatory Roundup

30 June 2014

Issue 56



In Brief:

FCA: Enhanced Supervision: The FCA publishes policy statement on how it will address serious failings of standards, governance and culture in firms; 'Tackling serious failings in firms'.

FCA: Enforcement and Supervision: Additionally, the FCA publishes its 'Enforcement-focussed' June Regulation round-up.

CASS: Overhaul of Regime: CASS Policy Statement 'Review of the client assets regime for investment business' (PS14/9) is published, with relevant firms facing changes to rules and guidance to be phased-in in three tranches.

Wholesale Markets Review : The government announces a review into wholesale markets and how they operate; a joint FCA/Bank of England/HM Treasury exercise.

EMIR: Additional Reporting: Firms subject to EMIR should be aware that additional (daily) reporting to a Trade Repository (TR) comes into force on 11 August.

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FCA: Enhanced Supervision



Useful links:

[Tackling Failings](#)

[Regulatory Roundup 50](#)

[FCA Supervision Factsheet](#)

The FCA has published a policy statement (**'Tackling serious failings in firms'**) on how it will address serious failings of standards, governance and culture in firms. Although reference is made to the Parliamentary Commission on Banking Standards on its front cover, both its introduction and the accompanying press release make it clear that the statement applies to **all** regulated firms.

Section C of the statement is a useful reminder of the FCA's supervisory model (see also Regulatory Roundup 50), including where necessary a **'deep dive assessment'** in that the Regulator will be looking at:

- frontline business processes;
- systems and controls;
- culture;
- governance; and
- business model

Section D outlines the new **Enhanced Approach** that has been developed for use where the FCA perceive a serious risk to their objectives arising from a failure of **culture, governance** or **standards** and where the FCA do not think that its 'usual' supervisory approach will be sufficient. Situations that could lead to Enhanced Supervision include (and we are told that the FCA will use 'judgement' rather than a formal process) :

- poor management or under-resourced of **Risk, Compliance** or **Internal Audit**;
- lack of challenge at Board level;
- weakness in the way that the Board and senior management influence culture;
- repeated conduct failings (even if each individual failing might not be considered serious);
- failings in several business area;
- evidence of weak risk management

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Enhanced Supervision will include the FCA setting a deadline for a firm to return to 'normal supervision' with regular monitoring of progress. It is expected that the firm's Board will have to make a **formal commitment** to remediation measures, with the possibility of oversight by an independent person being required using s166 powers (see below). Should the FCA not feel confident about the Board's commitment other tools could be used including an **OIREQ** (Own Initiative Requirement). Enhanced Supervision may lead to an Enforcement investigation – but equally a firm may find itself on the receiving end of such an investigation without having been placed in Enhanced Supervision.

The Annex to the statement sets out the tools and powers available to the FCA. It is interesting to note that since last April, when the FCA came into being, the Regulator has commissioned **s166 Skilled Persons reviews** in connection with culture and governance at **22 firms** – four of these were commissioned directly by the FCA.





Useful Links:

[FCA Regulation Round-Up](#)

[Enforcing](#)

[Regulatory Roundup 54](#)

No sooner had the FCA issued its policy statement on **Enhanced Supervision** (**'Tackling serious failings in firms'** – see previous article in this Regulatory Roundup) than the Regulator published its 'Enforcement-focussed' June **Regulation round-up**.

The Welcome page, written by Tracey McDermott, Director of Enforcement and Financial Crime, reminds us that apart from addressing an issue with a particular firm, Enforcement action is also intended to send a message to the industry as a whole about the consequences of serious misconduct and to consider any lessons learnt from such actions which may be applicable to other firms. The March 2013 statement on 'Enforcing' – which is accessed by way of a link in the Regulation round-up - confirmed that the then FSA's policy of 'credible deterrence' would remain central to the Regulator's enforcement approach as it transitioned to the FCA. The declared intention was to build upon progress already made by bringing **more enforcement cases**, pressing for **tough penalties** for infringements of rules and by pursuing more cases against individuals and **holding members of senior management accountable** for their actions.

It may, or may not, be a coincidence that the June Regulation round-up ('Enforcement focussed') also contains an article on the **supervision of C4 firms** (which the vast majority of firms – around 25,000 as at March this year - fall into). In essence, all firms are assigned to one of **four** categories of conduct supervision: C1 to C4 with C1 at the 'large end' covering around 11 major groups. Complyport's Regulatory Roundup 54 provides a link to the publication 'The FCA's Approach to Supervision for C4 firms' which sets out further details, including the **'three Pillars' supervision model** being Pillar 1 (proactive), Pillar 2 (reactive) and Pillar 3 (issues and products).

The article informs us that the **Pillar 1 approach is already underway** for retail intermediary and credit union firms. **Sector-specific** approaches will begin from this **July** to C4 firms in **other sectors**. We are promised that **all C4 firms** can expect to receive a four-yearly assessment, whether face-to-face, telephone interview, online or paper-based.

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FCA: Enforcement and Supervision (Cont.)



In the light of the above, and the FCA's Enhanced Supervision model, we recommend firms review their business with particular emphasis upon:

- frontline business processes;
- systems and controls;
- culture;
- governance; and
- business model

With its core team of regulatory and compliance professionals, including former regulators and senior practitioners in the industry, Complyport can offer such a review to both current clients as an additional service and to non-clients. Apart from the advantage of not having to divert your essential business resources to conduct an in-house review, the appointment of Complyport would ensure an independent assessment based upon our experience of working with many types of firms in the industry.

If you would like more information on the services we can provide then please contact us at info@complyport.co.uk.



CASS: Overhaul of Regime



Useful Links:

[PS14/9](#)

[Regulatory Roundup 46](#)

Those firms that do not hold, or control, client assets or client money will doubtless be grateful that they do not have to contend with the 400+ page Policy Statement '**Review of the client assets regime for investment business**' (PS14/9 – albeit that the contents page refers to PS14/8).

Those firms that are subject to CASS will be facing changes to rules and guidance that will be phased-in in three tranches: **1 July 2014**; **1 December 2014**; and **1 June 2015**.

There are numerous changes but a high level **summary** can be found in **chapter 2** of PS14/9 which firms can use to assess the impact upon their own operational model. Some highlights of what is proposed follow below.

CASS 7.8 concerns **trust acknowledgement letters** e.g. a bank **acknowledging** to a firm, within **20 business days**, that a client bank account is held by the firm as trustee. The absence of trust status letters has been a source of several breaches, such as BlackRock Investment Management (UK) Ltd, and has been an area previously highlighted by the Regulator – see Regulatory Round 46 for further details. Changes taking place on 1 December will mean the **abolition of the 20 business day** allowance; instead firms will have to have in place an acknowledgement letter(s) **before** a firm can hold or receive client money. Furthermore **template letters** provided in Annexes to CASS 7 will have to be used. Transitional Provisions allow a firm to continue with existing requirements until 1 June 2015 in relation to arrangements a firm has in place with its existing counterparties/clients as of **30 November 2014**.

Whilst on the subject of depositing client monies with third parties, the **due diligence requirements** are being tightened up. From 1 June 2015, in situations where client money is not deposited with a central bank then CASS 7.13.11 sets out guidance as to what the firm's due diligence should consider. The grounds for selection of the third party(ies) will need to be **documented**, as will the periodic review of the selection(s), and **retained for five years** after **ceasing** to use that particular entity. Firms will also have to **periodically assess** the need to **diversify** the third parties with which it deposits client money and make a **record** of that review (a five year retention period also applies).

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The FCA is also revising the '**delivery versus payment**' (DvP) regime of CASS 7.2. As currently set out, money need not be regarded as client money in respect of a DvP transaction through a commercial settlement system if it is intended that money due from as client for a purchase will be due to the firm within one business day upon the fulfilment of a delivery obligation or, if a client sale, money is due to the client within one business day following the fulfilment of the client's delivery obligation – in each case the DvP exemption ceases if delivery/payment does not occur by the end of the third business day. From 1 December the exemption will require the firm to be a member or participant (or be appropriately sponsored) of the commercial settlement system **and** the client needs to **agree** to the use of the exemption in writing. These changes will also be reflected in the DvP rules in CASS 6 ('Custody rules'). Once again Transitional Provisions come into play so that whilst the rules come into force on 1 December for new clients, firms will have until 1 June 2015 to ensure that existing clients have agreed to these arrangements.

A similar DvP concept applies to transactions in relation to **regulated** collective investment schemes, provided such transactions are carried out in accordance with COLL. From 1 June 2015 the exemption **ceases** if the authorised fund manager has not **paid** the monies to the depositary/client by close of business on the **next business day** - the current rules permit a longer time window. Although this may sound harsh, the proposal in the earlier consultation was to remove the DvP exemption in its entirety for regulated schemes. As is the case for the 'commercial settlement' exemption, it will be necessary for the firm to obtain the client's written agreement to the use of the exemption.

Revised rules surrounding **unclaimed** money, and rules introduced in respect of unclaimed safe custody assets, will enter into force on 1 December permitting firms to pay/transfer such assets to a **registered charity of choice**. For the purposes of these rules unclaimed client money will have a £25 (retail client) or £100 (professional client) de minimis; there will be no de minimis for unclaimed custody assets.

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CASS: Overhaul of Regime (Cont.)

Wholesale Markets Review



There will also be a need for firms to enhance the **provision of information** to clients. Under COBS 6.1.7 firms holding designated investments or client money must provide the client with certain prescribed information, although the rule is largely directed to retail clients. CASS 9.4, which is currently directed at prime brokerage firms, will be enlarged to cover the need for the same information to be provided to **all client types** and for **all custody assets**.

From 1 June 2015 CASS 7 will be **reorganised** so that CASS 7.1 to CASS 7.8 and CASS Annex 1 will be **deleted**, sections of which will appear in CASS 7.10 to CASS 7.18 e.g. trust status acknowledgement letters will thereafter feature in CASS 7.18.

The revised rules can be found in Appendix 1. For ease of reference the changes specific to CASS can be found commencing on pages 13/252 (1 July 2014); 53/252 (1 December 2014) and 112/252 (1 June 2015).

Useful Links:

[Review](#)

Firms feeling beleaguered from the additional attention from the FCA (see articles on 'FCA: Enforcement and Supervision' and 'FCA: Enhanced Supervision') will probably not have been surprised to learn that the government has announced a review into wholesale markets and how they operate.

This will be a joint FCA/Bank of England/HM Treasury exercise with a view to raising standards of conduct in the financial system; **fixed income**, **currency** and **commodity markets** receive a specific mention.

The review – a consultation will be launched this Autumn - will run for 12 months and is expected to make recommendations on topics such as tools to strengthen the oversight of market conduct and whether the regulatory perimeter should be extended e.g. FX and precious metals. A final report is anticipated by June next year.





Useful Links:

[Delegated Regulation 148/2013](#)

[Implementing Regulation 1247/2012](#)

[FCA: EMIR Timetable](#)

[ESMA Q&As June 2014](#)

Firms subject to EMIR should be aware that **additional (daily) reporting** to a Trade Repository (TR) comes into force on **11 August**.

As will be known, the obligation to report to a **TR** under Article 9 of EMIR began on **12 February**. The minimum details to be reported to a TR appear in the Annex of Delegated Regulation 148/2013 and include e.g. time, counterparty ID etc. Data cells 17 onwards requires information relating to **mark to market valuation** of the contract or **mark to model valuation** where applicable.

As for the format and frequency of those TR reporting data cells we have to look to Implementing Regulation 1247/2012. Article 2 tells us that **mark to market** or **mark to model valuations** reported to a TR shall be done on a **daily basis**. Article 5(4) provides a **180 day extension** of the reporting start date of exposures, which means that reporting of this data commences Monday 11 August 2014.

Reporting due dates:

- For contracts entered into before 16.08.2012 and that are still outstanding as at 11.08.2014 must be reported within 90 days of 11.08.2014 (Article 5(3) 1247/2012)
- For contracts entered into before 16.08.2012, that were outstanding at that date but are not outstanding as at 11.08.2014 must be reported within 3 years of 11.08.2014 (Article 5(4)(a) 1247/2012)
- For contracts entered into on or after 16.08.2014 but are not outstanding as at 11.08.2014 must be reported within 3 years of 11.08.2014 (Article 5(4)(b) 1247/2012)
- For contracts entered into on or after 16.08.2014 and that are still outstanding as at 11.08.2014 must be reported by the next day i.e. 12.08.2014
- For contracts entered into on or after 11.08.2014 must be reported by end of next business day

The FCA's EMIR webpage includes access to a high level implementation timetable which briefly addresses the above as well as margining requirements coming into force from **1 December 2015**.





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If you are using the text search for more than one word or a consecutive phrase the use of " " will help speed your search e.g. a search for "regulatory fees" will ensure that only articles that contain that term are found (rather than articles containing the words 'regulatory' and/or 'fees').

Please note that there is a small time-delay between the publication of the latest Regulatory Roundup and its availability in the searchable archive.





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[Peter Carlisle](#)

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