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Regulatory Roundup
June 2016
Issue 77

In Brief

SFTR Disclosure Obligation: the 'risks and consequences' disclosure obligation arising under the Securities Financing Transactions Regulation (2015/2365) ("SFTR") applies from 13 July 2016

EMIR: Further Clearing Requirements: A third tranche of derivative classes subject to the clearing obligation is published

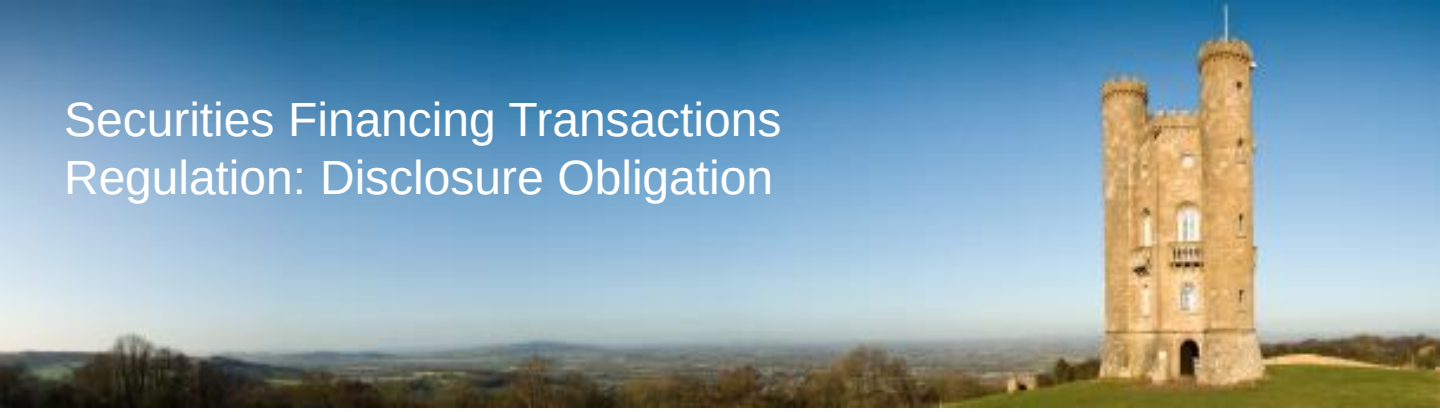
Webinar: Whistleblowing – A Practical Guide For Compliance Teams: Complyport and Compliance Science, together with Intersol Global are excited to announce a partnered webinar on Whistleblowing in 2016

In the Complyport Regulatory Roundup:

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

AsianInvestor ASSET MANAGEMENT AWARDS 2016
Best Compliance Services Provider

The Compliance Register Platinum Awards 2015
Winner: Customer Support Excellence



Securities Financing Transactions Regulation: Disclosure Obligation

Useful Links:

[Regulatory Roundup 72]

[2015/2365]

[648/2012]

Of relevance to:

Firms concluding Securities Financing Transactions

A reminder that, as advised in Regulatory Roundup 72, the 'risks and consequences' disclosure obligation arising under the Securities Financing Transactions Regulation (2015/2365) ("SFTR") applies from **13 July 2016**.

A Securities Financing Transaction ("SFT") is defined as per Article 3(11) of the SFTR as:

- a repurchase transaction;
- securities or commodities lending and securities or commodities borrowing;
- a buy-sell back transaction or sell-buy back transaction; or
- a margin lending transaction.

For the avoidance of doubt, recital 7 informs us that the definition of a SFT does not include derivative contracts that are reportable under EMIR (648/2012).

The 'risks and consequences' obligation refers to **Article 15** of the SFTR on the reuse of financial instruments received under a collateral agreement.

Any right of counterparties to reuse financial instruments, as defined in Section C of Annex I of Directive 2014/65 ('MiFID II'), must be subject to at least the following conditions:

- the providing counterparty has been informed in writing by the receiving counterparty of the risks and consequences of one of the following:
  - granting consent to a right of use of collateral
  - concluding a title transfer collateral arrangement

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Securities Financing Transactions Regulation: Disclosure Obligation (cont)

- the providing counterparty has granted its **prior express consent**, as evidenced by a signature in writing or in a legally equivalent manner, to the reuse of such collateral or has expressly agreed to provide collateral by way of a title transfer collateral agreement.

Any exercise by counterparties of their right to reuse must only be undertaken in accordance with the arrangement referred to in the second bullet above and the financial instruments involved must be transferred from the account of the providing counterparty.

The 'reuse' obligation applies to

- a counterparty established in the EU (including all its branches irrespective of where they are located); and
- third-country established entities where either the reuse is effected by an EU branch of that counterparty or the reuse concerns financial instruments under an arrangement by a counterparty established in the EU or a branch in the EU of a third-country counterparty.

See Article 15 for further details.

The SFTR is concerned with the reporting and transparency of SFTs and the above is simply one of the provisions coming into force shortly – see Regulatory Roundup 72 for an overview of the SFTR as a whole.

Key Dates

The requirement applies from 13 July 2016, including for collateral arrangements existing on that date (Article 33(2)(d)).

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EMIR: Further Clearing Requirements

Useful Links:

[Regulatory Roundup 71]

[Regulatory Roundup 74]

[EMIR 648/2012]

[Draft Delegated Regulation]

[Annex]

[2015/2205]

Of relevance to:

Those entities subject to EMIR

Article 4 of EMIR (648/2012) imposes a **clearing obligation** on all OTC derivative contracts meeting the conditions therein, with ESMA being charged with proposing the particular classes of OTC derivatives that will require clearing.

Previous Delegated Regulations have been published which impose the clearing obligation on certain interest rate derivative contracts (see Regulatory Roundup 71) and on certain classes of credit default swaps (Regulatory Roundup 74).

A **third tranche** of derivative classes subject to the clearing obligation has now been announced by way of a final draft Delegated Regulation (and Annex) published on 10 June.

The following classes of contracts (denominated in Norwegian **Krone**, Polish **Zloty** and Swedish **Krona**) will fall within scope:

- Fixed-to-float interest rates swaps
- Forward Rate Agreements

The clearing obligation will be phased in over a period of time depending upon the **categorisation of the counterparties** - the time period mentioned below after each category definition is when the clearing obligation applies after **entry into force** (which will be the twentieth day following publication of the Regulation in the Official Journal).

- **Category 1** will include counterparties that are clearing members for at least one of the classes of OTC derivatives set out in this Regulation **or** in the previous Regulation that also concerned interest rate swaps in EUR, GBP, JPY and USD (see Regulatory Roundup 71) (6 months).

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EMIR: Further Clearing Requirements (cont)

- **Category 2** will capture those counterparties not falling within Category 1 above that are financial counterparties (or **AIFs** that are **non**-financial counterparties) and which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives is above €8bn (12 months).

- **Category 3** will be financial counterparties (or **AIFs** that are **non**-financial counterparties) not falling into either of the two categories above (18 months).

- **Category 4** comprises non-financial counterparties not belonging to Categories 1, 2 or 3 above (3 years).

Where counterparties fall into different categories then the clearing obligation will take effect from the **later** date.

The above is a summary – see Articles 2 and 3 of the Delegated Regulation for the finer detail.

Where the counterparties are **AIFs** or **UCITS** then the €8bn referred to in Category 2 above applies individually at fund level.

A **reminder** that the clearing obligation in respect of the **first tranche** of OTC derivatives mentioned above (and as detailed in **2015/2205**) took effect on **21 June 2016** but only for 'Category 1' counterparties, which includes counterparties that are clearing members for at least one of the OTC contracts set out that Annex of at least one of the Central Counterparties authorised or recognised to clear one of those classes.

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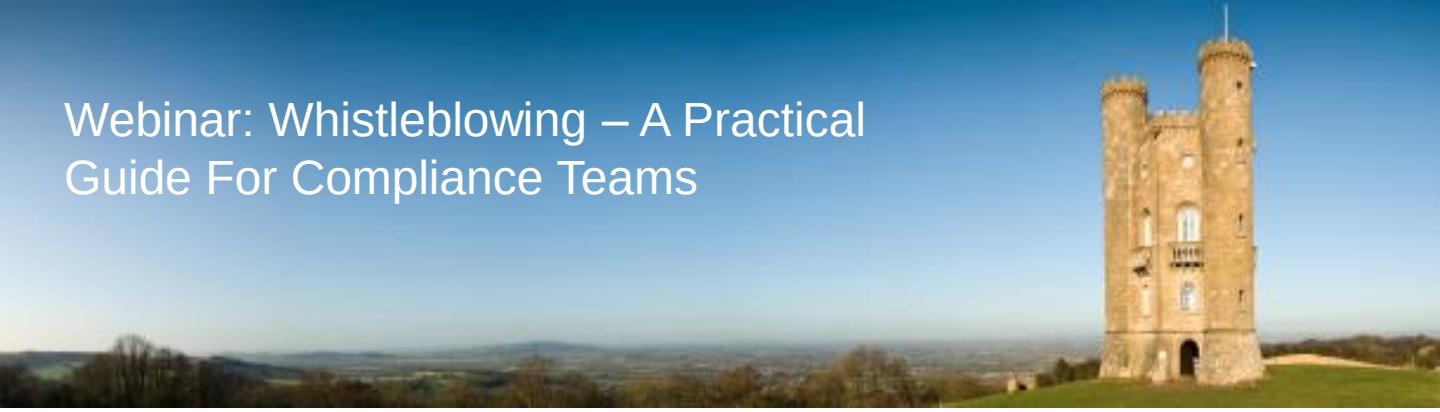

Webinar: Whistleblowing – A Practical Guide For Compliance Teams

Date: 12 July 2016

Time: 14:30 BST

REGISTER HERE

Much has been talked about whistleblowing recently with the introduction of the Senior Managers Regime (SMR) and the soon to be live Market Abuse Regulation (MAR) in the UK but little has focused on the practicalities and how firms and compliance managers should handle this sensitive area. Are there any useful comparisons or lessons to be learned from the US?

Complyport and Compliance Science, together with Intersol Global are excited to announce a partnered webinar on Whistleblowing in 2016. The discussion will aim to give Compliance Managers a transatlantic perspective on the state of whistleblowing in 2016 and share some insights on what the regulators are looking for and how compliance teams can respond.

In this interactive webinar you will hear from three experts from the world of compliance:

Ron Gould, Chairman, Compliance Science

Paul Grainger, CEO, Complyport

Ian Hynes, CEO, Intersol Global

The key areas to be discussed will include:

- Compare and contrast the different approaches to whistleblowing in the US and Europe
- Review the regulators' requirements and guidance for firms in this area
- Share some examples of whistleblowing with both positive and negative outcomes
- Discuss methods firms can use to encourage and protect whistleblowers
- Offer some practical guidelines for compliance teams to manage whistleblowing

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Peter Carlisle

Or for details of any other of Complyport's services, please contact us at info@complyport.co.uk

Complyport is always interested to receive feedback and general comments on either the Regulatory Roundup or the Complyport website. Comments can be sent to info@complyport.co.uk

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