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Regulatory Roundup
28 February 2017
Issue 85

In Brief

EMIR - Reporting to Trade Repositories Revision : Revisions to RTS and ITS will apply from 1 November 2017

Variation Margin: EMIR Variation Margin Regulations will apply from 1 March 2017

Illiquid Assets and Open-ended Funds: FCA publishes discussion paper

PRIIPs – Joint Consultation: EBA/EIOPA/ESMA publishes joint consultation paper concerning PRIIPS

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.

EMIR - Reporting to Trade Repositories Revision

Useful Links:

[148/2013]

[1247/2012]

[2017/104]

[2017/105]

[ESMA Q&A]

Of relevance to:

Firms subject to EMIR

The minimum details to be reported to a Trade Repository currently sit within Regulatory Technical Standards ("RTS") Delegated Regulation 148/2013, with the format and frequency of trade reports contained in Implementing Technical Standards ("ITS") Implementing Regulation 1247/2012.

Both the RTS and the ITS have been **revised** and will apply from **1 November 2017**.

Possibly the most notable amendment in **RTS** 2017/104 is the **increase in data fields** from the present 85 to in excess of 120 – see both Table 1 (counterparty data) and Table 2 (common data) in the Annex.

Changes arising out of **ITS** 2017/105 include a greater use of **Legal Entity Identifiers** ("LEI") e.g. under the current regime a BIC can be used for the Broker ID and Reporting entity ID whereas, going forward, only a LEI is permitted.

ESMA has updated its Q&As on EMIR – including reporting to Trade Repositories – which can be accessed via the link provided.

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Variation Margin

Useful Links:

2016/2251

FCA Statement

IOSCO Statement

Joint Statement by ESAs

Of relevance to:

Firms trading in OTC derivatives

A reminder that the EMIR Variation Margin Regulations (2016/2251) apply from **1 March 2017** in respect of uncleared OTC derivatives (although it was 4 February 2017 for those large players with uncleared derivatives in excess of €3 trillion).

The Regulations require a daily mark-to-market calculation of variation margin with exchange of margin within the same business day.

Statements issued by IOSCO and the European Supervisory Authorities acknowledge that this has presented firms with operational challenges.

Subsequently, the FCA has released its own statement to the effect that where a firm has not been able to comply fully with the requirements, it will expect the firm to demonstrate that it has made best efforts to achieve full compliance, concluding with “we expect firms to have come into compliance within the coming months”.

Note that the Regulations also contain an ‘**Initial Margin**’ requirement, although this will be phased in over a period of time ranging from 1 September 2017 (where the average notional amount of non-centrally cleared derivatives is above €2.25 trillion) to 1 September 2020 (derivatives above €8 billion).

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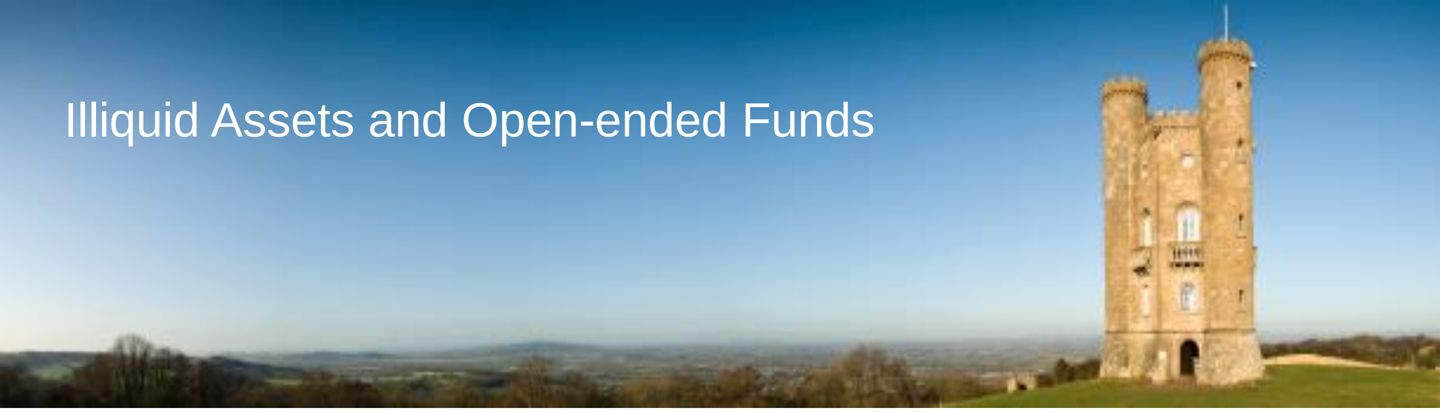

Illiquid Assets and Open-ended Funds

Useful Links:

[DP17/1]

Of relevance to:

Managers of open-ended funds

The FCA has published Discussion Paper DP17/1 on "Illiquid assets and open-ended funds".

DP17/1 concerns itself with the liquidity within a scheme - which in turn would impact upon the ability of investors to redeem their holdings on request - in open-ended funds and, specifically, the liquidity problems associated with investing in illiquid assets e.g. property or unlisted securities.

As far as AIFs are concerned the AIFMD, of course, already requires the AIFM to manage liquidity.

The paper suggests the possibility of developing the regulation of liquidity to support fund managers to meet their liquidity obligations. Possibilities include:

- Setting a cap on the amount of illiquid assets held in a fund or setting a minimum amount of cash/near cash that must be held
- Enhanced disclosure so that investors are aware of issues associated with a fund investing in illiquid assets
- Issuing guidance on the use of different shares classes for retail and professional investors
- Developing a secondary market/matching service between sellers and buyers.

The FCA invites comments by 8 May 2017.

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PRIIPs – Joint Consultation

Useful Links:

[JC 2017 05]

Of relevance to:

Most firms providing investments or investment services to retail investors, including AIFMs, UCITS Management Companies and Authorised Fund Managers of NURS

A joint EBA/EIOPA/ESMA consultation paper (JC 2017 05) has been published concerning Packaged Retail and Insurance-based Investment Products (“**PRIIPs**”) with **environmental** or **social objectives**.

The paper arises from Article 8(4) of the PRIIPs Regulations which empowers the Commission to adopt acts which specify details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives (“EOS PRIIPs”). The paper explains that where a Key Information Document states that a PRIIP targets such objectives, “the manufacturer must be able to demonstrate to stakeholders, and in particular to the potential retail investor, in supporting documentation to the KID, the relevance of these objectives for the whole value chain of the investment process”.

Chapter 4 provides draft ‘Technical Advice’ (page 20) the introduction to which, subject to consultation feedback, advises that the current product oversight and governance provisions for PRIIPs are sufficient for EOS PRIIPs but there would be benefit in another delegated act by the Commission to assist EOS PRIIPs manufacturers to understand what is expected.

It is noted from section 2.3 of JC 2017 05 that we are advised “As of the 1st January 2018 …. PRIIPs manufacturers will have to indicate whether or not a PRIIP targets EOS objectives”.

The consultation period ends 23 March 2017.

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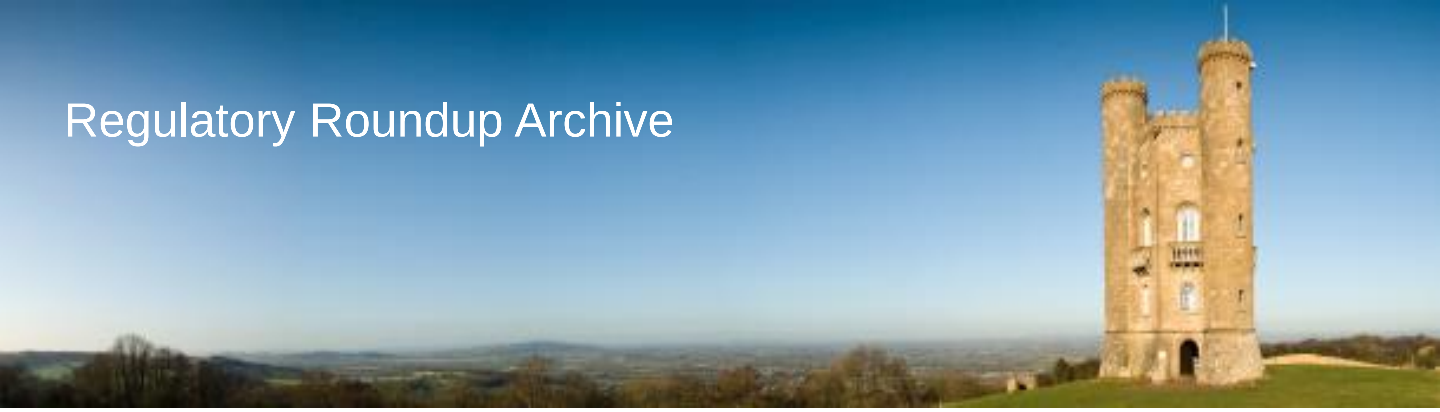

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If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact

[Peter Carlisle]

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